

ARDS AND NORTH DOWN BOROUGH COUNCIL

30 October 2023

Dear Sir/Madam

You are hereby invited to attend a hybrid meeting (in person and via Zoom) of the Planning Committee of the Ards and North Down Borough Council which will be held in the Council Chamber, 2 Church Street, Newtownards on **Tuesday 7 November 2023**, commencing at **7.00pm**.

Yours faithfully

Stephen Reid
Chief Executive
Ards and North Down Borough Council

A G E N D A

1. Apologies
2. Declarations of Interest
3. Matters arising from minutes of Planning Committee 03 October 2023 (Copy attached)
4. Planning Applications (Reports attached)

4.1	LA06/2023/1500/F	<p>Queen’s Parade Development Variation of Condition 2 and 3 of previous approval LA06/2020/0097/F</p> <p>Lands at and to the rear of 18 – 52 Main Street (Reeds Rain to TK Maxx), 2 – 34 King Street, 5 -17 Southwell Road, 5 – 41 Queen’s Parade, Marine Gardens car park, the Esplande Gardens, and area around McKee Clock, Queen's Parade, Bangor.</p>
4.2	LA06/2021/0118/F	<p>Housing development of 98 units and detached garages, site nos. 175 to 272 inclusive.</p> <p>West of Nos. 39 and 80 St Andrews Avenue Ballyhalbert, immediately West of 45 Longfield Way and North of Nos. 72 and 84 Longfield Way. Ballyhalbert</p>
4.3	LA06/2022/0689/F	<p>Erection of a Coated Roadstone Plant and associated ancillary development to include bitumen storage tanks, aggregate storage bays, staff facilities, weighbridge and</p>

		<p>recycled asphalt pavement (RAP) processing and storage area</p> <p>Land at Craigtantlet Quarry, 73 Holywood Road, Newtownards</p>
4.4	LA06/2021/0834/F	<p>Residential development of 40 units comprising 14 detached, 22 semi-detached and 4 apartments, car ports, landscaping and associated site works</p> <p>Zoned housing land (HPA 1) and former builders yard, lands to rear of 10 Prospect Road accessed from and north of 100-118 Oakdale, south of 1-4 Prospect Court, south west of 14-30 (even) Prospect Road and east of 9 and 10 The Paddock, Ballygowan.</p> <p>Person speaking in support of the application: Colin McAuley</p>
4.5	LA06/2022/0794/F	<p>Dwelling and shed (addition of retrospective shed and minor alteration to site boundary to Approval LA06/2021/0917/F).</p> <p>Lands 30m East of 7 Cardy Road, Greyabbey</p> <p>Person speaking against the application: Keith Gallagher</p>
4.6	LA06/2021/0282/F	<p>Dwelling, landscaping, widened road access and associated parking</p> <p>46 Newtownards Road, Bangor</p> <p>Person speaking against the application: Anne Maitland</p> <p>Person speaking in support of the application: David Donaldson</p>
4.7	LA06/2020/1052/F	<p>Demolition of existing retail shop and offices and redevelopment comprising of 2 No. three storey units with retail shops on the ground floor and office accommodation above</p> <p>136 and 136a High Street, Holywood</p>
4.8	LA06/2022/1141/F	<p>14no. two storey detached houses, garages and associated works: (Change of house type to plots 23-37 of approval LA06/2016/0982/RM and overall reduction from 15, 9 detached and 6 semi-detached houses).</p>

		<p>Land within 'Hightrees' Development, 90m SE of No.25 Hightrees Drive, Donaghadee</p> <p>Person speaking in support of the application: David Donaldson and David Wilson</p>
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- 5. Update on Planning Appeals (report attached)
- 6. Planning Service Budgetary Control Report – September 2023 (report attached)
- 7. Quarter 1 Statistics 2023/24 (report attached)
- 8. NIPSO Own Initiative Investigation – Trees (report attached)
- 9. Proposal for Borough Design Awards (report attached)
- 10. Update on Regional Planning Improvement Programme (RPIP) (report attached)

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

- 11. Local Development Plan – Housing Growth Options and Allocation (report attached)
- 12. Addressing financial stability of Planning (report attached)

MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)

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

Item 7.1

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ARDS AND NORTH DOWN BOROUGH COUNCIL

A hybrid meeting (in person and via Zoom) of the Planning Committee was held at the Council Chamber, Church Street, Newtownards on Tuesday 3 October 2023 at 7.00pm.

PRESENT:

In the Chair: Alderman McIlveen

Alderman: Smith (7.03 pm)

Councillors:	Cathcart	McRandal
	Creighton	McLaren
	Kerr	Morgan
	McCollum	Wray

Officers: Director of Prosperity (A McCullough), Head of Planning (G Kerr), Senior Professional & Technical Officers (C Rodgers, P Kerr & A Todd), Principal Professional & Technical Officers (C Blair (zoom) & L Maginn) and Democratic Services Officer (S McCrea and J Glasgow)

1. APOLOGIES

Apologies for inability to attend were received from Alderman Graham, Alderman McDowell, Councillor McKee, Councillor Martin and Councillor Woods.

An apology for lateness was received from Alderman Smith.

2. DECLARATIONS OF INTEREST

There were no declarations of interest notified.

(Alderman Smith entered the meeting – 7.03 pm)

3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE 05 SEPTEMBER 2023

PREVIOUSLY CIRCULATED:- Copy of the above.

AGREED TO RECOMMEND, on the proposal of Councillor McCollum, seconded by Councillor Cathcart, that the minutes be noted.

4. PLANNING APPLICATIONS

4.1 LA06/2018/0673/O - Lands approx. 51m east of 1 Cardy Road East and approx. 11m south of 10 Cardy Road East Greyabbey

(Appendices I - II)

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

DEA: Ards Peninsula

Committee Interest: A local development application 'called-in' to Planning Committee from the delegated list by a member of that Committee.

Proposal: Proposed dwelling and garage

Site Location: Lands approx. 51m east of 1 Cardy Road East and approx. 11m south of 10 Cardy Road East Greyabbey

Recommendation: Refusal

The Principal Planning Officer (C Blair) addressed the Committee and explained that the application was before members as it had been 'called-in' to the Planning Committee from the delegated list by Councillor Cathcart. Members were asked to note that as the application was for outline approval, it was the principle of development that was being considered with any detail to be submitted for reserved matters should the recommendation to refuse planning permission be overturned by members. The application was originally refused planning permission on 25 February 2020 after it appeared and was not called in from the weekly planning applications delegated list. The application was then appealed to the Planning Appeals Commission. However, the PAC determined on 30 September 2021 that the Council's decision could not be considered valid, as per section 58 of the Planning Act (Northern Ireland) 2011 as the address submitted by the Planning Agent was incorrect. As it had been advertised and used on neighbour notifications, the PAC found that the requirements of Article 8 of the Planning (General Development Procedure) Order (NI) 2015 had not been satisfied, which rendered the application invalid. The application was therefore required to be considered again and following inclusion on the delegated list for a second time, was called in for debate at Planning Committee.

As there had been no change in the policy to be considered, the reasons for refusal had not changed since the Council's original decision on 25 February 2020.

Furthermore, the applicant had not amended the application since it was previously refused by the Council. The reasons for refusal were not considered by the PAC as it found the application to be invalid. The refusal reasons listed included, the proposal was contrary to the SPPS and PPS 21 'Sustainable Development in the Countryside' – policies:

- CTY 8 – the proposal did not constitute a small gap site and would result in the creation of a ribbon of development;
- CTY 2a – the proposal was not within an existing cluster of development;
- CTY 13 – the proposal failed to be integrated into the surrounding countryside and lacked long established boundaries;

- CTY 14 - the proposed development would erode the rural character of the area due to a build-up of development and the creation of a ribbon of development along Cardy Road East.

Since this application was made valid in November 2021 with a corrected address, two letters of objection had been received. On the day the application was included on the delegated list last month, 14 letters of support were submitted, which had been considered in the Addendum to the Case Officer Report. Members were asked to note that although an additional 14 letters of support were submitted, it counted as 6 given the same address was provided for several letters and others signed a proforma template.

No statutory consultee had objections to the application.

The site was located on the southern side of Cardy Road East within the rural area outside of any settlement limits, consisting of part of a field located between Cardy Gospel Hall and its associated car park to the west of the site and a dwelling to the south of the site at 7 Cardy Road East. The site was relatively flat and the boundary to the road was open with the exception of a couple of small trees. The southeastern, southwestern and western boundaries of the site were undefined while the northwestern boundary with the Gospel Hall was defined by a fence along with some trees. The area was rural in character with agricultural fields, dispersed dwellings and agricultural buildings.

With regard to the policy consideration for the application, the Ards and Down Area Plan 2015 was the local development plan for the area. The site was located in the countryside and was not within an Area of Outstanding Natural Beauty or any specific zonings. The Planning Department's professional judgment had been that the proposal was contrary to the Strategic Planning Policy Statement for Northern Ireland and policies contained within PPS 21 'Sustainable Development in the Countryside'.

Policy CTY 8 of PPS 21 stated that planning permission would be refused for a building which created or added to a ribbon of development. The policy also stated that in order to assess whether an infill opportunity existed, it was necessary to ascertain whether a substantially and continuously built-up frontage existed. Policy CTY8 defined a substantial and built-up frontage to include a line of three or more buildings along a road frontage without accompanying development to the rear. A building was considered to have frontage to a road if the plot on which it stood abutted or shared a boundary with that road. It had been established through a number of Planning Appeal decisions that it was the building's curtilage that needed to extend to the road rather than merely its access.

In this case, there were two buildings located to the immediate northwest of the site. Both belonged to Cardy Gospel Hall and both had a frontage to the road. To the immediate southeast of the site was the dwelling at 7 Cardy Road East. The plot belonging to No. 7 was set back from the road and only its access adjoined the road. As such it could not be considered that this dwelling had a frontage to the road and therefore in this case there was not a substantial and continuously built-up frontage

of 3 or more buildings and the site could not be considered as a gap site for the purposes of Policy CTY8.

Additionally, the proposal for a dwelling and garage would result in the creation of a ribbon of development along this southern side of Cardy Road East as it would clearly read with the two existing gospel hall buildings particularly given that much of the site's vegetation had been removed, which opened up views right to the back of this flat site.

CTY2A explained that planning permission would be granted for a dwelling at an existing cluster of development provided all the listed criteria were met. The first criterion listed in policy CTY 2a stated that the cluster of development lay outside of a farm and consisted of four or more buildings (excluding ancillary buildings such as garages, outbuildings, and open-sided structures) of which at least three were dwellings.

Whilst the area to the northern side of Cardy Road East identified by the applicant's agent would include four or more buildings of which at least three were dwellings, the area did appear to include farms with associated dwellings including numbers 6, 8a and 10. As such, the first criterion of policy CTY 2a could not be met.

An aerial image in slides was shown to provide a clearer view of the site and surrounding area which comprised of a scattering of dispersed development with considerable gaps between buildings close to the Cardy Road / Cardy Road East junction. The agent had advised that the dwelling to the southeast of the site – No.7 Cardy Road East, was outside what was considered by the applicant to be the existing cluster in this area. As such, the sole property to the southern side of the road at the time of writing and next to the application site within the proposed cluster as defined by the applicant's agent was the Gospel Hall site.

The next criterion under Policy CTY 2A was that the cluster appeared as a visual entity in the local landscape. There was no perception of an existing cluster appearing as a visual entity when approaching the site from the east. When viewing the site from the west, there was an acknowledgement of an existing ribbon of development to the northern side of Cardy Road East comprising four dwellings, however there was no appearance or link with being a visual entity to the existing development to the southern side of Cardy Road East, which comprised solely of the Gospel Hall sandwiched between existing fields (as No.7 Cardy Road East was beyond the purported cluster as identified by the applicant).

The third criterion under policy CTY 2a was that the cluster had been associated with a focal point such as a social/community building/facility or was located at a crossroads. The existing gospel hall would represent a focal point given that it would constitute a community building. However, it was not considered that this was located within an existing cluster of development for the purposes of this policy. Additionally, there was no visual link between the alleged cluster and the existing junction between Cardy Road and Cardy Road East. This had been reinforced by the clear visual break in development on the southern side of Cardy Road East. The fourth criterion stipulated that the proposal site provided a suitable degree of enclosure and was bounded on at least two sides with other development in the

cluster. From the slides, the Officer directed Members to a photo which showed that the site was not bounded on at least two sides with other development in the cluster. It also had a number of boundaries which were undefined and could not provide a suitable degree of enclosure lacking integration.

The fifth criterion required that the proposed site could be absorbed into the existing cluster through rounding off and consolidation and would not significantly alter its existing character or visually intrude into the open countryside.

The Planning Department's professional opinion was that there was no existing cluster, which this site was part of. The character of the area was that of a dispersed pattern of development with the exception of the ribbon of development on the opposite northern side of the road. The site would not be easily absorbed given its lack of enclosure and very open views from the public road. It was considered that a dwelling on this site would intrude into the open countryside resulting in an urbanising effect through the creation of a ribbon of development when read with the existing gospel hall buildings and contributing to the general build-up of development within this locality when also read with the dwelling opposite at No. 10. It was also considered that the proposed site did not meet the requirements of policies CTY 13 and 14 of PPS 21 given the lack of integration and erosion of rural character.

It was considered that the proposal complied with the final criterion of CTY 2a in that it would not adversely impact on residential amenity. The proposed site did not meet all of the requirements as required under policy CTY 2a and therefore could not be considered to be a part of an existing cluster of development in this countryside location. In conclusion, the Planning Department's professional opinion had not changed from February 2020 in that the proposed site was contrary to the requirements set out under the SPPS and PPS 21 policies CTY 8, 2A, 13 and 14. The Planning Department remained of the opinion that this application should be refused, as it did during the original processing of the application in February 2020.

The Chairman invited questions from Members.

Councillor McRandal queried CTY8 and built-up frontage wherein there was a requirement for three or more buildings on the road and that a building's curtilage had to extend to the road than just access to the site. The Officer, whilst referring to the slide, pointed out that No.7 Cardy Road East's access reached the roadside as opposed to curtilage abutting the road. There was a green space alongside the road to the left-hand side of the access on the site location plan that appeared to be land owned by the applicant as outlined in blue on the site location plan and as such it was not part of the curtilage of No.7 Cardy Road East.

The Chairman referenced planning site history and whether the invalid determination would be included on that as well as what buildings were included as dwellings within the discussion. The Officer explained that the policy had to be reconsidered during reassessment. There had been no policy change since the time of the original submission. The only change was one reason for refusal being based on a lack of environmental information which had since been submitted. NIEA was content and so the original refusal reason was removed. In regard to the invalid decision being included on planning history, the Officer explained that it was a set context and given that it had been appealed, the committee needed to know. Houses 10, 8A and 6 were on land associated with the farm and with potential dwellings under CTY2A

which states what can be considered to form part of an existing cluster, this was considered part of an existing farm and could not be included. With other remaining dwellings on the northern side, Planning considered they formed part of an existing ribbon of development and not considered to form part of an existing cluster. At the Gospel Hall site, there was the former hall and new building at the back of the site. There was, at the time of writing, no information pertaining to whether houses 10, 8A and 6 were part of the farm, sold off or just on land surrounded by a farm.

The Head of Planning added that, given the extremely tight positioning of dwellings near the farm as could be viewed by aerial photographs, it was acceptable to assume they were farm dwellings.

As there no further questions at this stage, the Chairman invited Mr Magill (Agent) to be brought into the meeting via Zoom.

Mr Magill explained that Mr Davidson ran two large companies in the area and as a reputable businessman he did not seek that which he was not entitled to. He believed Cardy Road was considered as part of a cluster and that it was unfortunate such had not been taken into consideration by the Council. It was his opinion that No.7 was part of the cluster and the site was surrounded by development on all sides whilst being bounded on two sides. He suggested it already availed of a degree of natural enclosure and the site did not intrude on open countryside. With regard to No.7a, 6 and 7 lying within a farm, Mr Magill stated no evidence existed to support the claim and that Mr Davidson had also attested to such not being the case. When viewing the area from the Northeast or whilst rounding the corner, he suggested the area did appear to be a visually entity suggesting a cluster. Vegetation that existed already was in keeping with the environment and would assist in integration however, given this was an outline application, there was an ability to allow for further requirements made through proposals at reserved matters stage. In addressing dwellings, he believed No.4 opposite and No.7 were within the cluster with the latter appearing to be part of the cluster when viewed from Cardy Road East. In addition, Mr Magill believed it met Policy CTY2A to be part of a cluster without changing the character of the area and, when viewed alongside more supporting than objecting representation, he would hope the recommendation would be approval.

The Chairman invited questions from Members.

Councillor McLaren queried Mr Magill's view of No.7 and whether he believed the Committee should place more emphasis on those letters with addresses at the location. Mr Magill disagreed with the Planning Departments' view of that No.7's screening and distance from the road would place it outside of a cluster. He accepted that of 14 letters received, six had separate addresses but pointed out that there were only two objections by comparison and that any representations regardless of address locations should be considered.

In response to Councillor Cathcart querying the farm dwellings, Mr Magill explained that whilst an assertion had been made that the dwellings were part of a farm, no evidence existed to back that claim and though they may appear as part of a farm,

the applicant had confirmed no farm existed in the area and as such the buildings should not be excluded.

Given that two buildings existed at The Cardy Gospel Hall and Mr Magill's suggestion of No.7 being considered part of a cluster would meet a policy for three dwellings, he believed it would be beneficial for Members to visit the site to better understand the view of it being a cluster.

The Chairman asked for clarification on the policy requiring bounding on two sides how this requirement was met. Mr Magill appreciated that the Planning Department were using the argument that No.10 was located across the road and as such would not form a boundary and had been a reason in the past for exclusion. However, he advised the Committee of the PAC setting a precedent in that buildings opposite roads or laneways had been considered previously. If No.10 had been set further back from the road, he agreed it could be called into question but given that it was located right on the road, it was close enough to the site and therefore other than the width of the road, did bound the site.

As there were no further questions for Mr Magill he was returned to the virtual public gallery.

The Chairman invited further questions for the Planning Officer.

Councillors discussed the letters of support and objection and their position in terms of locality to site. Both the Principal Planner and Head of Planning explained that several of the letters had no addresses but that any representations made would be considered no matter the geographical location of the sender. Letters of support had been forwarded at the time of the application appearing on the delegation list and Officers had been unaware if any letters had been received from the local area.

Councillor Cathcart asked, whilst referring to figures 7 and 8 of the presentation, how development would cause demonstrable harm to the locality given his perception of continuous frontage and being bound on sides of the site. In addition, he wanted some clarity on the Planning Department's stance regarding No.7 and the view that it did not form part of a gap-site.

The Head of Planning explained that clusters were not a common subject in the Committee and provided a definition; that clusters appear as a visual entity, associated with tight bands of development; something this location would not be considered as. Clusters included crossroads, staggered junctions and community buildings. If the Committee were to decide this was a cluster, it would also have to accept the decision would open the location to possible future development. A driver would perceive the road as open with no sense of a cluster and, given the wide area considered, it was believed the decision to approve would lead to demonstrable harm. In regard to No.7, the Head of Planning explained there was no frontage to the road and that the curtilage does not fall under ownership of No.7.

Councillor McCollum asked of the initial application's status regarding the dwellings forming part of a cluster and how to resolve the disagreement regarding whether dwellings were part of a farm or not. The Head of Planning advised that as the initial

application had been deemed invalid, the process had begun anew and that proof had not been provided on dwellings being included in a farm or not. As such, it would not meet the policy.

Councillor Wray asked of the merit in a site visit and if the recommendation was overturned, would the precedent significantly affect future planning applications for the area or if a case-by-case methodology could still be applied.

The Chairman explained that a site visit would be a matter for consideration against the Committee's Planning Protocol and that the Committee could visit the site at the next stage of proposal if it helped with a decision. The Head of Planning added that any plans presented in the future would require Members to be mindful of decisions made tonight and provide explanation on why any future consideration would be different.

In response to Councillor McLaren referencing the cleared site and possibility of interference with natural boundaries, the Head of Planning advised that the Case Officer had assessed the site at the time and noted extensive clearing of vegetation when the proposal was first submitted.

Alderman Smith spoke of Policies CTY13 and CTY14 as well as CTY2A and identifying what constituted as farm. He recalled the Principal Planner having spoken of five criteria that all needed to be met. In that analysis, none of the five had been met but in a scenario where only one or two criteria failed, he asked if his understanding was correct in that the whole policy would fall, which the Head of Planning confirmed.

The Chairman recognised the Committee had a lot of issues regarding the identification of a cluster and whether houses in the area formed part of a farm. With no evidence from Mr Magill or the Planning Department, it was up to the Committee to decide on all matters.

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

Alderman Smith explained that Officers had clarified that the application did not meet Policies CTY8, then CTY 13, 14 and CTY2A and as such, there was no criteria on which to approve the application.

With 7 voting FOR, 3 AGAINST, 0 ABSTAINING and 6 ABSENT, the recommendation was agreed. The vote resulted as follows:

FOR (7)	AGAINST (3)	ABSTAINED (0)	ABSENT (6)
Alderman Smith	Alderman McIlveen		Aldermen Graham McDowell
Councillors Creighton McCollum McLaren McRandal	Councillors Cathcart Kerr		Councillors Harbinson Martin McKee Woods

Morgan
Wray

RESOLVED, on the proposal of Alderman Smith, seconded by Councillor McRandal, that the recommendation be adopted and that planning permission be refused.

4.2 LA06/2021/1168/O - Land approx. 70m SE of 15 Newcastle Road, Portaferry
(Appendix III)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Ards Peninsula

Committee Interest: A local development application 'called-in' to Planning Committee from the delegated list by a member of that Committee.

Proposal: Dwelling and garage on farm

Site Location: Land approx. 70m SE of 15 Newcastle Road, Portaferry

Recommendation: Refusal

The Principal Planning Officer (C Blair) advised Members that as the application was for outline permission, it was the principle of development that was to be considered with the detail of the proposal to be submitted at any reserved matters stage should the recommendation for refusal being overturned by members this evening. The application was before members as it had been 'called-in' to the Planning Committee from the delegated list by Councillor Wray.

In terms of consultation responses, DAERA had confirmed that the farm business had been established for more than 6 years with application land part of the farm holding. Members were asked to note that although recommending refusal of the application, the Planning Department was content that Policy CTY 10 of PPS 21 'Sustainable Development in the Countryside' had been met and had not formed a refusal reason on this basis. In addition, Historic Monuments Branch had requested an archaeological evaluation of the site given it contained an archaeological site/monument and this was reflected in the refusal reasons under lack of information as per policies BH2 and BH 3 of PPS 6 'Planning, Archaeology and the Built Heritage'. The remaining consultees had no objection subject to conditions. No representations had been submitted either in support of or objecting to the proposal during the processing of the application.

The application site was located roadside, approximately 70m southeast of 15 Newcastle Road, Portaferry, and was part of an agricultural field. An agricultural gate was located on the southwest boundary and led to the respective field/application site. The applicant's existing farm dwelling and sheds lay adjacent and northwest of the application site. The western side of the application site was elevated above road-level with the topography then declining in an easterly directly with road frontage for approximately 44m with its southwest roadside boundary defined by a stone wall, backed by post and wire fencing. The northern boundary was defined by post and wire fencing and vegetation. The southeast boundary was

defined by a hedgerow and post and wire fencing. The northeast boundary was undefined as the application site formed part of a large agricultural field.

A number of residential properties were located in the immediate surrounding area however, only No. 15 Newcastle Road (the applicant's farm dwelling) and No. 17 Newcastle Road had road frontage on the eastern side of Newcastle Road. A row of detached dwellings was located north of the application site on the opposite side of Newcastle Road.

As for policy considerations for the application, the Ards and Down Area Plan 2015 was the local development plan for the area at the time of writing. The site was located in the countryside and was situated inside Strangford and Lecale Area of Outstanding Natural Beauty and contained an unscheduled archaeological site and monument. While the Planning Department accepted that the applicant had demonstrated six years for an active and established farm, there were also other criteria related to CTY 10 that required to be met including CTY 13 – Integration and CTY 14 – Rural Character.

Policy CTY 13 of PPS 21 which dealt with integration and design of buildings stated that planning permission would be granted where a building could be visually integrated into the surrounding landscape and was of an appropriate design. As this was an application for outline planning permission, the design of the building was not a relevant factor, which would be considered under Reserved Matters. The site fronted the roadside adjacent and southeast of the existing farm dwelling, yard and buildings. The application site occupied a prominent roadside position on elevated land, which was at the highest point in the existing field, and which was visible when travelling in either direction on Newcastle Road, especially from the south to southwest, where the application site could be seen for a considerable distance (up to 380 metres away heading northwards towards the site).

The site lacked long established boundaries to the front and rear with a stone wall and post and fencing along the front (44 metre-wide frontage) and rear undefined. When approaching the site from the southwest, the existing farm dwelling and sheds provided only a partial, short distance minor backdrop as the farm holding was located on a descending sloped site which dropped away from the roadside. When approaching the site from the northwest, there was no backdrop as existing agricultural land fell away from the roadside behind the site. The proposed site did not blend unobtrusively into the surrounding landscape. A new building on this site, which was at the top of a slope would read as a skyline development and prominent feature in the landscape, with no backdrop from most of the short distance and long-distance critical views along Newcastle Road. As such, this proposed siting was considered to be unacceptable in terms of Policy CTY 13.

In terms of Policy CTY 14 'Rural Character,' as had been established, the site was prominent in the landscape and as such Criterion (a) of CTY 14 could not be met. The proposed roadside location of the dwelling and garage would result in a suburban style build up when read with existing and approved development. Although the proposed site had a roadside frontage as per the majority of existing dwellings along Newcastle Road, including the applicant's existing farmhouse, the site's location added to a ribbon of development on this side of Newcastle Road,

which included the applicant's existing farm dwelling and a couple of agricultural sheds. This resulted in an urban form of build-up and loss of rural character failing to comply with CTY 14 and additionally policy CTY 8, which dealt with 'Ribbon Development.

Policy CTY 8 of PPS21 dealt with Ribbon Development. CTY 8 stated that Planning permission would be refused for a building which added or created to a ribbon of development. In the consideration of this application, it was considered that the application site represented roadside development which would extend built development along Newcastle Road and would be considered as ribbon development.

As this site was located in Strangford and Lecale AONB, policy NH6 of PPS 2 'Natural Heritage' applied. As this was an application for Outline Planning Permission with no building details required at this point, criterion (a) applied. As the proposed siting failed to comply with policies CTY 8, 13 and 14 of PPS 21 it was also considered that it was unsympathetic to the special character of the AONB in general and of the particular locality.

Members were asked to note that the Planning Department had attempted to work with the applicant regarding this application and had communicated the need to explore potential alternative sites, including immediately to the rear of the existing farm holding of farm dwelling and sheds, as this would be a location significantly less prominent in the landscape and would not result in adding to a ribbon of development. However, this alternative siting was considered to be unacceptable to the applicant. The Planning Department's professional recommendation was therefore refusal.

The Chairman invited questions from Members.

The Chairman's view had been that an archeological evaluation had not been requested as the application was not being accepted in principle and asked if the applicant would have to provide one in the event that the Committee were minded to overturn the recommendation. The Principal Planner agreed, stating this would be required at reserved matters stage.

Councillor Cathcart referenced the proposed alternative site and what reasons existed in the applicant wanting to place the barn in the suggested location. The Principal Planner explained that no verifiable information had been submitted regarding the placement location of the barn and from that perspective, there was nothing before the Committee suggesting that the applicant could not consider alternative sites given the Planning Department were content that the farm was active and established. The Head of Planning acknowledged that there had been a legitimate case for a farm dwelling and that they had not wished to decline the application. As such, they had attempted to negotiate for more acceptable alternative sites but the applicant did not agree with alternatives, mentioning future plans of the barn but no plans had been submitted in relation to that.

Councillor Wray asked what the sufficient degree of enclosure would be in relation to CTY13 on page 5 of the report. The Principal Planner advised that it was difficult to

indicate what was acceptable given they had not considered it the case in this instance as the existing farm was located on sloping land with only a minor location it could provide as an element of backdrop. Councillor Wray noted the report had stated other sites may exist on page 10 but that the statement could also infer that they also may not exist and asked if the barn was erected, would Planning have to show there was no alternative.

The Chairman warned of the difficulties when investigating from hypothetical standpoints and that Members should consider applications based on what existed instead of what may exist. The Head of Planning advised that the Department would relay alternative sites to a planning agent and that if none existed, the application would still be deemed as unacceptable as it would not have met policy.

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

Councillor Cathcart spoke of the sloping site with an area of archeological interest and how the opportunity to integrate with the farm in the future would be a good approach. However, the application in its current form was not suitable.

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

4.3 LA06/2021/0061/F - Lands to West of Nos. 110 & 110A-110D Movilla Road; North of Nos. 6-10 (evens) Cloverhill Park, Nos. 1, 3 & 10 Cloverhill Crescent, Nos. 5, 7 & 8 Deanswood Crescent, Nos. 12-26 (evens) Edenvale Crescent, Nos. 58 & 87 Stratheden Heights, Nos. 7, 8, 10 & 12 Kensington Park, and Nos. 2, 2A & 4 Earlswood Drive, East of Nos. 15-27 (odds) Cronstown Cottage Avenue, South of No. 8 Cronstown Lane & North of Phase 2 of "Rivenwood", Newtownards
(Appendix IV)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Ards Peninsula

Committee Interest: Application in the Major category of development

Proposal: Proposed residential development comprising the erection of 188 No. dwellings, open space (including NS 43) landscaping, children's play area, next phase of the distributor road, internal road network, SuDs ponds and all associated site and access works and proposed amendment of the section 76 planning agreement (additional information and amended Concept Masterplan and Phasing Plan).

Site Location: Lands to West of Nos. 110 & 110A-110D Movilla Road; North of Nos. 6-10 (evens) Cloverhill Park, Nos. 1, 3 & 10 Cloverhill Crescent, Nos. 5, 7 & 8 Deanswood Crescent, Nos. 12-26 (evens) Edenvale Crescent, Nos. 58 & 87 Stratheden Heights, Nos. 7, 8, 10 & 12 Kensington Park, and Nos. 2, 2A & 4 Earlswood Drive, East of Nos. 15-27 (odds) Cronstown Cottage Avenue, South of No. 8 Cronstown Lane & North of Phase 2 of "Rivenwood", Newtownards

Recommendation: Grant Planning Permission

The Senior Professional & Technical Officer (C Rodgers) explained that full planning permission was sought for the next phase of the Rivenwood housing development in Newtownards. The proposal was for 188 dwellings, open space, a children's play area, the next phase of the NS20 distributor road and a SuDS Pond. In addition, the Applicant had requested an amendment to the terms of the original S76 Planning Agreement. The recommendation was to Grant Planning Permission subject to the execution of an amended planning agreement. In the presented slide, Members could see the location of the site to the north of the existing Rivenwood development accessed from the Movilla Road.

The site formed part of the NS20 housing zoning and the NS43 area of open space designated by the Ards and Down Area Plan. With regard to DP requirements, the Plan stated that development of the zoning would only be permitted in accordance with an agreed comprehensive scheme that would incorporate the NS43 open space and provide the necessary public infrastructure to serve those lands. The Plan further stated proposals that were reliant on the construction of roads schemes would not be permitted in advance of the road scheme being completed to an appropriate stage.

Key Design Considerations for the zoning included:

- A minimum of 20 and a maximum of 25 dwellings per hectare
- Provision of a distributor road – which would run from a roundabout on the Movilla Road to a roundabout on the Donaghadee Road. This would connect to the adjacent housing zonings NS19 and NS21 and would form part of the wider Eastern Distributor Road.
- Phasing of housing development in relation to infrastructure works.
- A 2-hectare site reserved for a new school.
- A local neighbourhood centre on an approximately 1.5 hectare site.

Members were shown the Concept Master Plan for the wider NS20 site: The Applicant's land holding comprised phases 1,2 and 3 of the zoning. The application at the time of writing related to phases 3a and 3b. In 2016 the Council granted planning permission for phase 1 which included the land set aside for the school.

The Council subsequently granted planning permission for phase 2 in 2019. This permission was subject to a Planning Agreement which related to all of the Developer's land holding, including the land which was the subject of the application at the time of writing. The development of phase 1 had been completed and phase 2 was at an advanced stage of construction.

The Original Planning Agreement was designed to ensure comprehensive development of the zoning and in so doing, prevent piecemeal development or the creation of ransom strips of land contrary to planning policy.

The developer agreed to the phased delivery of the key development plan requirements: including the construction of a distributor road through the Developer's entire land holding at various trigger points linked to the quantum of dwellings occupied.

The proposed Concept Masterplan showed the other key requirements of the plan including the school site, neighbourhood centre and NS43 open space located within the Applicant's land holding.

In another slide, a summary of the obligations in the original Planning Agreement in relation to the Distributor Road was provided. The road had already been constructed through phases 1 and 2. The original agreement required the delivery of the entire phase 3 distributor road before the final 35 houses (approved under phase 2) could be occupied.

An issue had arisen whereby NI Water had sought to restrict the occupation of new housing development in the area until the foul sewage infrastructure had been upgraded to deliver sufficient capacity. NI Water had advised that the solution must be developer led and funded. As a consequence, the Developer had requested that the planning agreement was amended to permit occupation of additional units prior to construction of the phase 3 Distributor Road.

In order to facilitate delivery of the development plan in the wider public interest, Planning officials and the Council's solicitor worked closely with the Applicant to agree a solution that was both Plan and policy compliant. Members were presented with the amended obligations. Whilst the amended agreement would allow additional houses to be constructed prior to completion of the road in Phase 3, dates had been introduced by which stage the road was to be delivered which did not feature in the original agreement.

No more than 170 Dwellings in Phase 2 could be occupied until the Road had been constructed in full to the point that was marked, 'Y,' on the phasing plan and this was to be delivered no later than 31st December 2025;
No more than 40 dwellings within Phase 3 could be occupied until the Road had been constructed in full to the point that was marked, 'Z,' and this was to be delivered no later than 31st December 2027.

In order to guarantee the delivery of the road, the applicant had agreed to additional safeguards which also had not formed part of the original agreement.

In the event of non-compliance with the obligations, the Applicant had agreed to the Transfer of the phase 3 road corridor to the Council. The Officer advised Members that the acquisition of land by the Council had been agreed, in principle, by the Council's Corporate Services Committee. The Applicant had also agreed to provide a secure guarantee which would pay to the Council the cost of the construction of the phase 3 distributor road.

Therefore, if the agreement were breached, the Council would have access to the road land and would be able to call upon the secure guarantee to fund its construction. This provided the Council with certainty in relation to its delivery. The Planning Department was satisfied that these measures would ensure comprehensive development of the zoning.

Members were asked to note that there would be no change to obligations relating to the delivery of the remaining road infrastructure including the Movilla and Donaghadee Road roundabouts, the neighbourhood centre and open space, and the transfer of school site to the education authority.

Members were next shown images of the existing Rivenwood development including signalised junction at the Movilla Road, a view across phase 3 lands, the range of the different house types proposed with finishes including white brick and grey cladding, details landscape proposals including the SuDs Pond, Play Park and NS43 Area of open space and finally, the Site Layout Plan.

The overall design, scale, and massing of the proposed dwellings were largely in keeping with the existing Rivenwood development and would respect the character of the wider area where a mix of finishes and house types are present.

Planting was proposed throughout the site to soften the visual impact of the development and assist integration. Trees would line both sides of the distributor road and would also contribute to an attractive street scene. Existing mature vegetation along the eastern boundary was to be retained and enhanced to define the settlement limit.

The Applicant had made adequate provision for open space in line with policy requirements and an equipped children's play area was to be provided in the central landscaped square. Planning conditions would ensure that the open space and playpark were provided, and subsequently managed and maintained in perpetuity by a management company on behalf of the residents.

The impact on residential amenity had been considered in detail. The layout and separation distances provided would prevent any unacceptable impact occurring. In accordance with Creating Places guidance, a local distributor road (to connect the Movilla Road to the Donaghadee Road) was required at the point at which around 400 dwellings had been served.

Therefore, there would be no change to the obligation in the original planning agreement which prevented more than 119 units in phase 3 being occupied until the distributor road was constructed through phases 4&5 to connect to the Donaghadee road.

DFI Roads had provided no objection to the proposal. The proposed DR would allow for bus permeability, and cycleways and pedestrian footpaths would also be provided to promote a shift to a more sustainable mode of transport. It was proposed to amend condition 22 to ensure details of a bollard at the Old Forge pedestrian link were agreed post decision.

Subject to mitigation, no objection had been provided from key consultees in terms of natural heritage interests or designated sites with development carried out in accordance with Construction Environmental Management Plan.

The applicant had proposed to attenuate surface water via a SuDS Pond located in the open space to the west of the site. Underground storage tanks (control flow),

would swale treatment before being discharged to watercourse and permeable paving would be used in driveways.

A peer review of the SuDS design was completed and was subsequently appraised by the Storm Water Management Group in DFI.

In accordance with the advice provided, it was considered that the SuDS proposal was acceptable in principle subject to a negative condition which ensured the detailed design was approved prior to commencement of development. The condition would also require agreement of its future management and maintenance.

DFI Rivers provided no other objection to the proposal in terms of flood risk.

Members were asked to note that the planning agreement would place a restriction on development that could take place prior to a solution to the NI Water sewer capacity issues being agreed and delivered. This was to prevent any risk of harm arising.

Eight letters of objection had been received, and issues raised had been considered in detail in the Case Officer Report. With all material planning considerations examined, it was recommended that Planning permission be Granted subject to the obligations included in an amended planning agreement.

The Planning Agreement would require the separate execution of a land transfer for the road corridor in the event of a default on the terms of the planning obligations, and also a further separate deed of guarantee. This would add a further layer of protection to the Council and guarantee construction of the road.

Delegated authority was sought from the Planning Committee, post resolution, to finalise the terms of the legal documents prior to their execution by the parties.

There were no questions from elected members to the Officer.

The Chairman invited Mr Stokes and Mr Fraser to come forward who were speaking in support of the application.

Mr Stokes thanked the Committee for the opportunity to speak and introduced James Fraser, from Fraser Partners. The application represented phase 3 of the popular Rivenwood development on zoned housing lands 'NS 20'. Subject to approval at the evening's meeting, this phase would provide 188 no. high quality homes for the local community and would build upon the success of the first two phases. The development comprised a mix of detached, semi-detached and bungalow dwellings which would all incorporate eco-friendly components as standard, such as - Inset solar roof panels - Cabling for EV charging point - Double height glass elevations & enlarged window openings (designed to maximise solar gain and maintain higher temperatures in colder months) The proposals represented a high-quality and spacious residential layout which provided for various areas of open space. In Phase 3A, the zoned open space NS43 was incorporated and there was a central area within Phase 3B with an equipped children's play area. There was also a SuDS pond area, which in Phase 2 had proven popular amenity space and

biodiversity area with new residents, and was one of the first of its kind in NI. The proposals were in general conformity with the approved Concept Masterplan and retained a 1.5 hectare site for a future Neighbourhood Centre. The Phase 3 layout also included for the next Phase of the NS 20 Distributor Road. The Applicant had already delivered a substantial section of Distributor Road from Movilla Road into their lands. The delivery of the Distributor Road was secured by a Section 76 Legal Agreement, however, due to the unavailability of NI Water connections for most of Phase 3 of the Rivenwood development at the time of writing, they had made a request to vary the triggers within the Section 76. This request had been subject to careful discussion between the Applicant and the Planning Officers since the application was lodged, to balance supporting ongoing housing with the comprehensive delivery of the distributor road. During the course of the application, it had been agreed that no housing in Phase 3 could be occupied until a 200 metre section of the road between two defined points was constructed and completed to the standard for preliminary adoption, and in any event this initial section must have been completed no later than 31 December 2025. Furthermore, no more than 40 dwellings in the Phase 3 lands could then be occupied until the road was continued to the boundary of the Applicant's lands and in any event no later than 31 December 2027. These commitments to deliver the Distributor Road through the Applicant's lands in two stages had specific dates attached by which those sections must be completed. This, together with a land transfer, and a guarantee to provide funding in the event of default, were all significant assurances that the Distributor Road would continue in advance of occupation of dwellings within the Applicant's lands and were an improvement on the existing Planning Agreement, as there was, at the time of writing, agreed firm dates by which the road must be delivered by and in place.

Finally, Mr Stokes thanked officers for all their input over the last number of years working through the next phase of the development, which the applicant was keen to continue delivering. The scheme represented an investment of around £25m and would sustain around 60 construction jobs and support local suppliers. He respectfully requested the Committee to endorse this recommendation, thanking them for their time.

Councillor Cathcart referenced slide 15 and phasing, and, presuming further development would occur between the open space and playpark with access, asked if they would ensure access would remain available. Mr Stokes directed Members to the slide, explaining that the right-hand side of the image included three pockets of open space. NS43 was the area that had been identified as part of the plan which sat above the 60 metre contour. The middle section where the play area was to be located was accessible by a road network. The open space to the far left of the slide was where the pond would be located which would not be accessible until the rest of the land was developed.

Alderman Smith, in regard to NI Water capacity issue and the Section 76 agreement asked about implications and how it had shaped the proposal before the Committee. In addition, he was concerned about assurances regarding the road in the event that the business could not supply. Mr Stokes advised Members that there were NI Water capacity issues all around Newtownards and that the solution appeared to be one led by multiple house builders with zoned land in the area. At the time of writing, connections were agreed with NI Water for 31 dwellings and with the proposal and

amendment for the road to be delivered in two sections, to build them along with the next 200 metres of road which was approximately 18 months' worth of work. During that time, it was hoped the wider strategic solution with NI water would be resolved with expenditure on local house builders' costs being in the £1.2m to £1.5m region. As for assurances, a third party guarantee existed meaning that, in the very unlikely event that the business was bankrupted, the Council would not be left with a landlocked site and would have control over the road corridor with the third-party funding.

Councillor Morgan asked how provision of pedestrian cycleway was linked to the Movilla Road and how it was affected by delay. Mr Stokes, whilst using the context map, showed how the school site had been reserved and explained that footways and cycleways were in place and identified. The Neighbourhood Centre was within the next section and if planning permission were granted, there would be an obligation to complete that section of road which would effectively unlock the Neighbourhood Centre and design process. There had to be 1.5h centre site set aside, and it had been well documented that a neighbourhood consisting of 500-600 houses meant sustainability. Where any inability to link through for cycling, links were already in place adjacent to and in existing neighbourhoods.

The Chairman asked for further clarity on the guarantee in place, especially with regard to timeframes and whether it would still hold worth with inflation. Mr Stokes explained that there was a new structure in the legal agreement and that the guarantee bond could not be called up in the event of the NI Water solution not being resolved, as Fraser would still hold the obligation to complete the works. As for the third-party guarantee, assurances had been given to legal advisors as to the level of and strength of the balance sheet of the company.

As there no further questions, Mr Stokes and Mr Fraser returned to the gallery.

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

Councillor Wray was happy to see progress in such a large project as well as the various community elements that were to be included whilst Alderman Smith appreciated the gesture of Fraser maintaining the play park in perpetuity.

Councillor Cathcart gave thanks to the developer for their efforts including tree lining and future proofing for car chargers and cycle lanes. He also thanked Officers for their efforts through the process and working so closely with the developer.

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

4.4 LA06/2019/0751/F - Land at Back Hill to the rear of 7 West Hill, Groomsport
(Appendix V)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Bangor East & Donaghadee

Committee Interest: A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

Proposal: Demolition of rear double garage and erection of single storey detached building for ancillary use

Site Location: Land at Back Hill to the rear of 7 West Hill, Groomsport

Recommendation: Grant Planning Permission

Speaking to the Committee, the Planning Manager (A Todd) explained that the application had been recommended for approval and was brought before Planning Committee as six or more representations contrary to the officer's recommendation had been received.

The site was located in a predominantly residential area within the settlement limit of Groomsport. It comprised a 1 ½ storey end terrace dwelling with a detached garage in the garden area to the rear which was separated from the dwelling by a right of way known as Back Hill running along the rear of the terraced properties. The character of Westhill was defined by terraced properties which each had linear plots of garden beyond the right of way containing a variety of ancillary buildings. The site was also located within the proposed Groomsport Area of Village Character with the mid and late Victorian buildings along The Hill and West Hill being highlighted as a key feature of the proposed AVC in draft BMAP. Slides were provided including photos of the site and area. The first photo showed the existing dwelling at No. 7 and whilst the second provided view of the right of way to the rear and some of the existing ancillary buildings on the garden plots behind. The next slide showed the existing double garage which was to be demolished and then also a view of it from the rear within the garden plot. The final two photos showed some more examples of existing ancillary buildings along Back Hill.

The original proposal submitted was for a separate one bedroom dwelling within the rear plot of No. 7 as was shown on the first image. However, the Planning Department considered this proposal to be unacceptable from the outset as it would have resulted in a loss of both parking provision and amenity space for the existing dwelling at No. 7. The proposal was subsequently amended to include ancillary accommodation only for No. 7 as was shown on the second image. This amended proposal also reduced the overall size of the building and retained ample in curtilage parking provision for the existing dwelling. The design and overall scale and massing of the building was modest and simple in form with a pitched slate roof and rendered walls, reflective of the many other ancillary buildings along Back Hill. The building would sit in a similar position on the site to the existing garage to be demolished and would have a modest floorspace of 57sqm. Existing trees and hedgerows within and along the boundaries of the site were to be retained. For these reasons, it was not considered that the proposed building would cause any harm to the overall appearance of the immediate area or the proposed AVC. The

principle of accommodation ancillary to existing dwellings was acceptable under the Addendum to Planning Policy Statement 7 Residential Extensions and Alterations provided its function was supplementary to the use of the host dwelling. While it was recommended that such accommodation should normally be attached to the existing property, exceptions were permitted in cases where an extension was not practicable and provided the scale of accommodation was modest. In this case, due to the right of way located to the immediate rear of the existing dwelling, an extension was not possible, therefore the detached building had been proposed. The level of accommodation was considered to be modest with a small bedroom and a separate small living room.

Similar ancillary accommodation for No. 9 The Hill was approved by Planning Committee in February 2020 as shown on a further slide and had since been constructed. There were also several long-established dwelling units located within some of the back land plots, therefore, a precedent existed for residential accommodation within these rear plots along Back Hill and West Hill which formed part of the character of the area. The proposed small ancillary unit would be entirely in keeping with this established pattern of development.

Objections to the amended proposal for ancillary accommodation had still however been received from 4 separate addresses. The main concerns raised included:

- Adverse impact on character of area
- Loss of privacy to existing dwellings
- Increased traffic congestion
- Potential use as Air BnB

As had been already outlined, the proposal was ancillary accommodation for the existing dwelling at No. 7 and did not involve the creation of a separate self-contained residential unit. It had also been recommended that a condition was attached to any permission stipulating that the building was to be used only for purposes ancillary to the existing dwelling at No. 7 and could not be separated, sold off or leased from No. 7. Any future letting of the building for Air BnB use would be in breach of the recommended planning conditions and would be a matter to be referred to the Planning Department's Enforcement Section. As the proposal was effectively providing additional residential accommodation associated with No. 7, it was unlikely that there would be any intensification of traffic to the site. Furthermore, three in-curtilage parking spaces were proposed which would comply with the parking standards set out in Creating Places for accommodation of this size. The Planning Department had also carefully assessed any potential impact on existing dwellings and was satisfied that there would be no adverse impact by way of loss of privacy or loss of light. The building would be 27m away from 24 The Brae which was located to the rear of the site. This was well in excess of the recommended 20m as set out in the Creating Places Guidelines. Furthermore, the finished floor level of the building would sit 3.5 metres below that of No. 24, and as such would not in any way appear dominant or result in any overshadowing to this dwelling.

In summary, it was considered that the proposal did not offend the policy requirements of either the Addendum to PPS 7 Residential Extensions and Alterations or the Addendum to PPS 6 with reference to the potential impact on the proposed Area of Village Character. The principle of ancillary accommodation was

acceptable and the scale and design of the building was modest and in keeping with other existing buildings in the rear garden plots.

On this basis it was recommended that full planning permission should be granted.

The Chairman invited questions from Members.

Councillor McCollum queried if the report would exclude AirBnB as she thought it had only been mentioned verbally. The Officer confirmed that a condition existed that covered that issue and that letting for AirBnB would not be considered as an ancillary use. The Enforcement Section would investigate any potential breach.

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

Councillor Cathcart believed a precedent had already been set in the past which helped inform the decision to propose.

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

RECESS

The meeting went into recess at 9.00 pm and resumed at 9.12 pm.

4.5 LA06/2023/1329/F -17 Braeside, Newtownards (Appendix VI)

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

DEA: Newtownards

Committee Interest:

Proposal: Demolition of existing garage, two storey and single storey side extensions, Juliet balconies and dormer window to front

Site Location: 17 Braeside, Newtownards

Recommendation: Grant Planning Permission

The Officer (P Kerr) outlined the detail of the application which was a proposal for householder development at 17 Braeside Newtownards consisting of the demolition of the existing garage, two storey and single storey side extensions, Juliet balconies and dormer window to front.

The site was located within a small development of houses consisting of 12 units of varying designs. The character of the area was not uniform. One of the units located within the cluster of development was a bungalow.

The proposal was amended to address overlooking to the rear-two Juliet balconies were removed and in place two obscured windows and a roof light were added.

(Councillor Wray and Councillor McLaren re-entered the meeting)

There were 10 objection letters from six separate addresses and the planning issues raised were:

Overdevelopment of the site, loss of light, loss of privacy, visual impact, parking issues and increase in vehicles, scale, water capacity, flooding, disturbance. Those were addressed in detail in the case officer report and the addendum.

Other issues raised were; property value and potential use as air b'n'b. With regard to impact on property value, that was not a planning concern. With regard to the potential use as an air b'n'b, that was not the proposal presented. This application could and would be conditioned to ensure that the extensions were only used as ancillary accommodation to the dwelling.

Domestic extensions like this due to their scale and nature did not usually warrant consultation with statutory consultees. As the dwelling already existed, the water and roads infrastructure were already in place.

The proposal was within the settlement limit of Newtownards in the Ards and Down Area Plan 2015 and was also located in close proximity to an ecclesiastical site and historical graveyard. HED was consulted and was content with the proposal. The proposal was within an existing domestic curtilage. It was in compliance with the development plan.

The main policy considerations were PPS2 Natural Heritage, PPS3 Access Movement and Parking, Addendum to PPS7 (Residential extensions and alterations), PPS 6 Planning, Archaeology and the Built Heritage.

The proposal was deemed to be compliant with PPS2 Natural Heritage as there were no ecological issues presented by the proposal. The proposal was compliant with PPS3 as it sought to extend a single unit dwelling house to be used by one family and no parking spaces would be lost. Consultation was not required with DFI Roads. There was space in the driveway for five cars and another one in garage as shown in the visuals. PPS 6 had also been complied with as stated above through consultation with HED.

The Planning Officer explained that the main policy consideration was the addendum to PPS7 for residential extensions and alterations, Policy EXT1 which had criteria relating to scale, massing, design, and materials and character of surrounding area, impact of amenity, impact on trees and impact on amenity space of host dwelling. Character of area was not considered to be an issue as there were large dwellings on similar sized plots in the immediate area. The Juliet balconies and dormer window would not have an adverse impact on the character of the area. The site was not located within an ATC. The proposal would be using materials to match the existing dwelling. The dwellings in the area were not uniform. The area had a mix of dwellings which included the co-existence of a single storey dwelling alongside large irregular dwellings.

Due to the fact that the existing garage was to be demolished, the single storey extension to the north was the only notable increase to the foot print of the dwelling.

The dimensions of the two storey extension were 7.3m x 8 x 8m. The dimensions of the single storey extension were 4.6m x 8 x 6.7m. Those were not out of scale with the host dwelling. The different heights of the extensions helped to reduce the massing of the dwelling. The extensions were subordinate to the host dwelling and did not dominate it.

Loss of light and loss of privacy had been considered. With regard to the single storey element there would be no overlooking as there were only ground floor windows. The low ridge height would ensure no significant loss of light was suffered by any adjacent neighbours.

For the two storey element, the Planning Officer referenced each dwelling located adjacent to the proposal. No19 was currently adjacent to the garage of number 17 that would be replaced. Due to separation distance and orientation no significant loss of light would be suffered. The ridge height of the existing garage was 5.4m high and the proposed ridge was 7.3m. There was only a door and roof lights proposed on the two storey extension gable to No.19 and so no overlooking would be created.

With regard to No 5 there were only obscured bathroom windows to the rear and a roof light and therefore no overlooking would be created. There would be no significant loss of light suffered due to the existing rear windows of No 5 being overshadowed by their own tiled canopy. The Officer highlighted that there was an existing garage at this location and the proposed extension was only an additional 1.7m. There was also vegetation breaking the light test at this location.

With regard to number 7 and 9 the location of the two storey elements would mean no impact would be suffered.

There would be no dominant outlook created by the development for any of the adjacent properties due to the scale of the proposal and the fact that the existing garage was part of the current views from neighbouring properties already.

The Juliet balconies and dormer window look over the applicant's own front garden/amenity area and nearby road and no overlooking would be created by those additions.

There would be no impact on trees and approx. 220 sqm of amenity space would remain. With regard to flooding issues, the existing garage took up most of the area where the proposed two storey extension was to be located and therefore would not result in a loss of soak off area. The single storey extension was minor in scale and would not create potential to exacerbate any flooding issues the site may experience in the future as after checking the flood maps there were no current issues. The dwelling would be left an excess of 200sqm amenity space.

With regard to other issues raised - NIW was not consulted as this was an extension to an existing dwelling and therefore there was no capacity issue. The occupier could

add in as many showers/toilets and sinks into the dwelling as they desired at any stage without a planning application or consent from NIW.

With regard to the standards set out in Creating Places it was important to remember that this guidance related to new build housing. Although the document could be used as a useful guide for other applications it was important to remember that the proposal was in relation to a domestic extension and not a new build dwelling.

With regard to the parking issue the family could subdivide their existing dwelling to make more bedrooms without planning permission. Although there was no plan to make any of the grass at the front into hardstanding and it was important to note that that could also be done under permitted development rights up to 5sqm. The parking standards were set out for new build residential development. To expect more than six in curtilage spaces measured out in accordance with parking standards for an existing single unit family dwelling would be unreasonable. After informal discussion with a DfI Roads official on 29 September to ascertain if consultation should have been carried out, he confirmed that consultation was not necessary for a domestic extension and that as the property was not a new build the parking standards did not have to be applied in the same manner. The provision of five to six in curtilage parking spaces was deemed more than appropriate for a single family dwelling whether it was multi-generational or not and no matter the arrangement. It was up to the occupants to decide how the cars were to be parked in-curtilage.

In conclusion the proposal, the Planning Officer stated that the proposal was in compliance with planning policy and approval was therefore recommended.

In relation to the Planning Protocol, the Chairman highlighted that as Councillor McLaren and Councillor Wray had re-entered the meeting after the break during the presentation of the application they were unable to take part in the debate or vote on the application.

The Chairman invited Mr Dickson (Agent) to come forward who was speaking in support of the application.

Mr Dickson commenced by stating that he concurred with the Case Officer's thorough assessment of the application and the recommendation for approval. The development proposed was for the demolition of the existing garage, a two-storey extension to the south side and single storey side extension to the north side. The two-storey replacement was slightly further away from the boundary of No 19 and appeared to be the contentious part of the development for the neighbours. The proposed development was subordinate in scale, height and floor space to the existing dwelling. The design, scale and massing of the proposed extension was not detrimental to the character of the area. The dwelling was to be enlarged to provide for the applicant's traditional extended family and family members who came to stay from the UK and the applicant's home country. The applicant's elderly family would make use of the ground floor extension. The applicant's eldest children would be going to university in Belfast and the proposal enabled them to live at home with a more independent student living environment, but yet within their traditional close family surroundings.

The proposed extension was not a separate annex as there was good integration to the main dwelling and living accommodation. There was no separate access / new entrance to the new accommodation and no separate cooking facilities.

In terms of impact on privacy and amenity of neighbouring residents, Mr Dickson outlined that the garage extension had two additional first-floor bathroom windows with obscured glass proposed to the rear elevation and a velux roof light to the existing bedroom which by its nature would not cause overlooking. There would not be any overlooking of the private amenity space of any adjacent neighbours.

There were two first floor Juliet balconies proposed to the front of the new garage, and a new dormer window to compensate for the removal of the existing gable windows. Those new windows overlooked the applicant's own front garden / driveway / parking area and the development road. No adverse overlooking to neighbours would be created by those across the development road as there was a substantial difference.

The single storey extension would not cause any overlooking or overshadowing due to its height and scale. The applicant's existing detached garage which was generally in the same position already broke the light test. The existing garage was 5.4m high and the proposed extension was 1.7m higher. The pitch roof sloped from the boundary.

In terms of overshadowing, use of the 'light test' was described to be used as guidance in assessing the loss of light any development may create on neighbouring properties. With the angled setting and pattern of development it was difficult to apply the test accurately and conclusively.

Regarding the design and impact on the character of the area, the development was to the sides of the existing dwelling on site and would not be prominent from the street. The single storey would be completely secluded from the road. The applicant's site could arguably be one of the largest plots on the development with 220 sqm of amenity space still being retained. The proposed extended dwelling was not out of character for the area.

The proposed development would not intensify the use of the dwelling as a single dwelling. There was space in the existing driveway for five cars already and another space in the proposed garage. The impact on adjacent dwellings' private amenity was considered and had been assessed within the case officer's report. It was irrelevant and ludicrous that the proposal was suggested to be used for self-catering. The proposed extension was ancillary to the host dwelling.

Mr Dickson stated that all the issues raised by third parties had been considered and assessed within the planning report. The proposals did not create an unacceptable affect, disturbance or loss of privacy on the neighbouring properties.

The Chairman invited questions from Members.

Councillor Cathcart referred to Mr Dickson's comments in respect of the light test and asked Mr Dickson to expand on his point as to why the test light was not

relevant. Mr Dickson explained that the test was carried out from the centre of windows at an angle. The building was already on that angle with a veranda immediately behind the extension. Therefore, he contended the dwelling as it sat already affected the light test.

Councillor Cathcart noted that Mr Dickson did not feel the proposal out of character, Councillor Cathcart stated that it was of a significant scale and questioned how Mr Dickson contended the application was not out of character. Mr Dickson did not feel the proposal was of a significant scale, it was in keeping with the development. It was a replacement of the existing garage, it was a bit closer to the main principle dwelling. The roof would be raised slightly higher however would be a 1m further from the boundary.

The Chairman appreciated the applicant's proposal was for visiting family however the Committee had to give consideration to anyone beyond those currently residing. He was mindful that the application was a homeowner application rather than a developer application however there would be seven bedrooms and he wondered if the application had been a new development would five parking spaces have been sufficient.

Mr Dickson stated that the proposal was not a new development and therefore considered under different planning policies/guidance. The Case Officer had commented that there could be any number of bathrooms installed. The bedrooms were his designation of the names of those rooms, highlighting that a bedroom could be used for different uses including a study, gym, etc. The dwelling housed a big family from Bangladesh and the traditional family unit included grandparents, uncles etc.

The Chairman referred to the consideration of the impact on the amenity of neighbouring properties and the capacity within the curtilage to ensure there was no adverse impact. He referred to the guidelines in respect of the car parking and sought assurance in that regard. Mr Dickson highlighted that there were no restrictions for any residents in the area for parking on the road, it was a public road. All developments for new dwellings had to contain a minimum of two parking spaces within the curtilage. There were six car parking spaces within this proposal.

As there were no further questions for Mr Dickson he returned to the public gallery.

The Chairman invited Mrs Robie to come forward who was speaking against the application.

Mrs Robie commenced by stating that the majority of residents in the area were opposed to the application to increase by more than a third via a double and single storey extension at No 17 Braeside. She stated that she was pleased that the Planning Department had acted on her submission and rectified most of the inaccuracies, although she noted some remained outstanding, including the wrong name of the road detailed by the Architect. She had questioned why DfI Roads had not been consulted as there were plans to have five car parking spaces in curtilage on a bad bend. The road was an adopted public road and there was currently an application in the planning system for that road to serve multiple vehicles leading to a

much larger development behind Braeside. Those vehicles would pass No 17 and she could not understand why DfI Roads had not needed to be consulted.

She did not believe the space available met the standards stipulated in Creating Places, for example in respect of in-curtilage spaces. The planning guidelines, Creating Places, were mentioned in the Planner's report, but many of the reasons for allowing the application were at odds with that same document.

NI Water had not been consulted over sewer capacity, a separate application for two units to the north of Braeside, to connect to the same sewer network as the applicant's was originally refused due to the network capacity constraints, as could be read in the Drainage Assessment. The developer for that application had to undertake further assessments for NI Water Assessment before being permitted connections. With the increased loading on the foul network due to extra bathrooms and extra occupants planned for No 17, she wondered how it could be guaranteed that there would be no detriment to the sewer capacity if NI Water had not been consulted. Page 10 of the Case Officer's report stated, under drainage and sewerage, that there was no intensification of the site but page 4 stated that the dwelling was to be enlarged to provide for the applicant's large family and family members who come to stay. Mrs Robie viewed that as contradictory.

The existing garage of 17 Braeside was 8 metres from the nearest corner of 5 Braeside. The rear of No 17 mostly faced the eastern gable of No 5 giving no current concern with privacy. But replacing the garage with habitable rooms, would render the separation distance unacceptable and contrary to Creating Places guidance. Parage 7.16 of Creating Places stated "Where the development abuts the private garden areas of existing properties, a separation distance greater than 20m would will generally be appropriate to minimise overlooking, with a minimum of around 10m between the rear of the new houses and the common boundary". At 8 metres separation, Mrs Robie highlighted that fell well short of the stipulated distances. Paragraph 7.18 stated that "...schemes likely to result in a significant loss of privacy or overlooking, particularly of existing properties, will not be acceptable." Provision of a suitable boundary treatment to improve the affected privacy would adversely impact the level of daylight received in the garden of No5. The report stated that the proposal would not overlook the private amenity space of any adjacent neighbours. It was acknowledged that the windows would contain obscured glass, but they could still be opened to a clear view of the amenity space of 5 Braeside.

There were concerns about the environmental impact of replacing the front lawn with hard standing. The enlarged footprint along with the plans to lay patios was contrary to Creating Places guidelines (2.01) which say the site should make the best use of existing vegetation, flora and fauna.

The report quoted the Human Rights Act which stated that a person had the right to peaceful enjoyment of all their possessions which includes the home and other land. Mrs Robie did not feel that her human rights had been considered as the proposed development would have a dominating impact on her and her family's and the quiet enjoyment of her property.

Braeside comprised of 11 houses of three different styles. The density, height, coverage, open spacing, scale and proportioning of the extended property would not respect the character and amenity of its neighbours, encroaching on gaps between the boundaries.

Referring to the scale of the extension in comparison to the other properties in the area, Mrs Robie felt the proposal would create a visually unattractive extension and affected the current land proportionality. She viewed the extension as excessive to an already sizeable house on a small and inadequate site. When completed the house would be a 7-bedroom, 5-bathroom house and she could not fathom how that could be acceptable. Residents did not feel the letter of objection had been taken into account, and she hoped the Committee would take the concerns on board and respectfully requested that the application was rejected.

As there no questions from Members for Mrs Robie she returned to the public gallery.

The Chairman invited questions for the Planning Officer.

Referring to the amenity of neighbouring properties, Councillor Cathcart stated that the light test failed and he wondered now with the increase in height to the garage why there would not be more of a detrimental impact. The Planning Officer explained that the existing garage already broke the light test and with the path of the sun that would not result in a significant loss of light. The proposed garage contained a sloping roof. Referring to the visuals, the Officer showed the canopy at No 5 which already overshadowed those windows.

Councillor Cathcart accepted that contact with the statutory consultees NI Water and DfI Roads was not needed for such an application. However, he questioned why contact had since been made with DfI Roads and not NI Water. The Officer explained that because of the parking standard and the general arrangement, she wished to seek assurances that DfI was content that it had not been consulted. Parking standards only went up to five bedrooms and she wished to obtain guidance and advice in that regard. In respect of NI Water, the existing house already had a water connection.

Alderman Smith referred to the issue around dominance and questioned if there was a scale of an extension that would be considered overbearing on neighbours. The Officer explained that the dominance was examined on a case by case basis. In relation to the proposal, there was already an existing garage, there would be a pitched roof and that would not be considered to be a massive increase from what was already in place. The 1.7m increase was not deemed to create a dominant outlook.

Councillor McRandal referred to the increase in footprint of the property, he appreciated the garage was a replacement, however the extension to the other side of the property. With the proposal included, No 17 would appear to be the largest property in the area. Councillor McRandal therefore wondered why that would not be detrimental to the character of the area or the development.

The Planning Officer stated that the proposal met policy requirements, the extension was in scale with the dwelling. The proposal was for a small single storey extension and replacement garage. The type of proposal was not uncommon and such applications had been before the Committee before and appeared on the delegated list. The dwelling was already large and was situated on a large plot. There was a mix of dwellings in the area, referring to the visuals she outlined some had turrets, different angles and levels and therefore visually the proposal would not look out of scale or out of character.

The Head of Planning added that each application was considered on a case by case basis and had to meet the relevant planning policy, not guidelines. In relation to dominance, the properties were large in the development; however, as alluded to the by the agent there was break in ridge heights and the proposal would not create one block of extension. There were no material planning policy considerations as to why this proposal should be refused.

Proposed by Councillor Morgan, seconded by Councillor McRandal, that the recommendation to approve planning permission be adopted.

Speaking to her proposal, Councillor Morgan stated that it was difficult to balance someone's right to an extension with someone's right to amenity. In this case she felt that the Planning Officers had looked at all the issues and she was satisfied that the matters had been satisfactorily addressed.

Councillor McRandal agreed that the application had been thoroughly considered and the reasons for recommendation were sound.

FAVOUR (5) Aldermen Smith	AGAINST (1) Councillor Cathcart	ABSTAINED (2) Alderman McIlveen	ABSENT (6) Aldermen Graham McDowell
Councillors Creighton McCollum McRandal Morgan		Councillor Kerr	Councillors Harbinson Martin McKee Woods

*Councillors McLaren and Wray were unable to vote on the application.

RESOLVED, on the proposal of Councillor Morgan, seconded by Councillor McRandal, that the recommendation to approve planning permission be adopted.

4.6 LA06/2022/1150/F - Abbeyfield, 156 Upper Greenwell Street, Newtownards
(Appendix VII)

PREVIOUSLY CIRCULATED:- Case Officer's report.

DEA: Newtownards

Committee Interest: A local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

Proposal: Assisted living accommodation for young adults

Site Location: Abbeyfield, 156 Upper Greenwell Street, Newtownards

Recommendation: Grant Planning Permission

The Planning Officer (P Kerr) outlined the detail of the application for Members firstly highlighting that all consultees were content with the proposal.

There were 17 letters of objection received and two petitions. The main issues were concerns over noise and antisocial behaviour.

The site was located at 156 Upper Greenwell Street, Newtownards, and comprised of a two storey building with a single storey return. The building was currently vacant but was previously used as a 12 bedroom residential care home.

The proposal was in compliance with the SPPS and the Ards and Down Area Plan 2015 as well as Planning Policy Statements 2, 3, 7 and 12, and also Development Control Advice Note 9 on residential and nursing homes.

The provider for the assisted living accommodation was Connected Health which supports adults with Learning Disabilities, Autism and/or Mental Health illnesses to live in their own homes, which often came after individuals had spent a significant amount of time in hospital. Connected Health did not provide any services in the addiction space and had communicated with the Council that it has no intentions of doing so. The adults would be post-18 age group and the intention was that they would be permanent residents in the building.

The proposal was located within a settlement limit there was a presumption in favour of development. As the proposal was replacing a building that was last used as a 12 bed residential care home with an 8 bed building for supported living it remained in the same Planning Use Class (Use Class C3). In terms of planning there was no intensification of use.

It was important to remember that the existing building on site could be refurbished and used for this purpose as it was.

Under the parking standards there was a requirement for three in-curtilage parking spaces for staff and those had been provided. DFI roads was content.

Environmental Health raised no concerns with regard to noise.

The design and scale of the proposed building was appropriate for the site and for the character of the surrounding area. Due to existing building on site, the proposal would not create any further impact on surrounding residents with regard to loss of light, dominance or overlooking. The proposal was also for a two storey building with a slight increase in ridge height from 7m to 8.8 to accommodate modern living standards and regulations for this type of accommodation. There was a 2m separation distance between the proposed building and no. 158. No.158 had a blank gable so would not suffer any loss of light, dominance or overlooking. Due to

the layout of both the proposal and No.158 no loss of light or overlooking would be suffered to the rear either. There were no buildings directly behind no.158.

With regard to the objections raised, there were no valid planning reasons that would support a refusal for this application. The Planning Department had no evidence that the proposal would create noise or anti-social behaviour and making this assumption would be prejudicial to the application. Given the points outlined approval was recommended.

The Chairman invited questions from Members.

The Chairman noted that when such applications were assessed DCAN 9 was considered and he questioned how much of that policy had been considered - including aspects such as siting, locality, traffic, amenity, design, layout and landscaping. He referred to the potential impact on residential amenity with the previous home being for elderly people.

The Planning Officer assured that the aspects had been thoroughly assessed. Environmental Health had been consulted with regards to noise and was content. There was no evidence submitted to demonstrate any issues.

The Chairman asked if the potential noise considered was that emanating from the building itself. He questioned what complex needs were being assessed, if the accommodation would be secure and the backgrounds of the residents. He felt those were matters that may affect the amenity. The Chairman used the example of a casino and when such was being assessed issues such as littering, people congregating etc. were considered in residential areas.

The Planning Officer highlighted that the considerations would be the same, the current building had been a residential care home and could be refurbished for supported living with 12 people residing from this health care need without planning permission. Advice within DCAN 9 was taken into account and Environmental Health had been consulted. The Officer reiterated that a material consideration was if planning permission was refused, the building could be repurposed for the same use.

The Chairman stated that the application was for the building to be demolished and a fresh building erected and therefore the application must be considered fresh. He noted the risk that if planning permission was refused; however, that should not preclude the Committee from assessing the application for a new residential development.

The Planning Officer stated that there was no evidence presented to suggest that there would be a noise impact. Environmental Health as the noise expert had expressed no objection. All other aspects had been thoroughly assessed. The accommodation would include three parking spaces as those residents in the accommodation would not drive. The accommodation needed to be close to the town centre to allow residents access to local amenities. Planners had not been presented with any evidence or information that would have led them to a refusal decision.

The Head of Planning added that the proposal was within a relatively high density housing area where there could be unlimited noise from properties within the vicinity. She highlighted that the whole thrust of guidelines and policy was to allow adults with learning disabilities to be integrated within existing communities which was what the proposal sought to do.

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

Speaking to her proposal, Councillor Morgan understood the concerns; however, the housing was much needed and she supported the proposal.

Councillor McLaren stated that there was nothing to suggest any contravention of planning policy. She noted the concerns surrounding anti-social behaviour and noise pollution, both of which she felt had been negated by the fact that only one caretaker was necessary to supervise the residents. Councillor McLaren welcomed the proposal.

<p>FOR (8) Alderman Smith Councillors Creighton Kerr McCollum McRandal McLaren Morgan Wray</p>	<p>AGAINST (0)</p>	<p>ABSTAINED (2) Alderman McIlveen Councillor Cathcart</p>	<p>ABSENT (6) Aldermen Graham McDowell Councillors Harbinson Martin McKee Woods</p>
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RESOLVED, on the proposal of Councillor Morgan, seconded by Councillor McLaren, that the recommendation be adopted and that planning permission be granted.

5. UPDATE ON PLANNING APPEALS

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity providing the undernoted update:

Appeal Decisions

No appeal decisions had been received between the date of the last report (21 August 2023) and the date of this report.

New Appeals Lodged

The following appeal was lodged on 7 September 2023

PAC Ref	2023/A0055
Application ref	LA06/2020/1115/F
Appellant	Dr Howard Hastings

Subject of Appeal	Appeal against conditions: 2. The 'Macwall' block wall retaining structure and culvert shall be erected before the expiration of six months from the date of this permission and shall be retained in perpetuity thereafter; 3. All hard and soft landscape works shall be carried out in accordance with Drawing No. 08A and all new planting as indicated shall be undertaken during the first available planting season following the approval date of this application and retained in perpetuity
Location	27 Station Road, Holywood

RECOMMENDED that Council notes this report.

(Councillor Morgan withdrew from the meeting – 10.05 pm)

The Head of Planning highlighted to Members that one new appeal had been lodged.

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

6. UPDATE ON CORRESPONDENCE REGARDING NIW COASTAL FENCE (Appendices VIII - IX)

PREVIOUSLY CIRCULATED:- Report from the Director of Prosperity attaching Response from NIW and Letter to NIW. The purpose of the report was to update Members on the response received to correspondence sent to the Department for Infrastructure (DFI) and Northern Ireland Water (NIW) in relation to the fence erected around Seacourt Pumping Station, Bangor.

Members would recall the Council at its meeting of 5 July 2023 resolved the following proposal:

RESOLVED, on the proposal of Councillor Cathcart, seconded by Councillor McRandal, that the Council and the general public remain dismayed at the erection of the fencing around Seacourt Pumping Station, regardless of its lawfulness under permitted development rights. The Council continues to consider that the fencing is detrimental to the coastal environment, and fails to maintain or enhance the quality of this coastal landscape, and urges NI Water to remove it. If NI Water consider that there is a need for health and safety risk mitigation infrastructure at the site then we ask that NI Water engage with Council with a view to identifying and agreeing solutions that are sympathetic to the area and the natural environment and capable of enjoying the support of the general public and elected representatives.

Furthermore Council notes with concern that the permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 effectively mean that there are no

constraints on the size and type of fence structure that NI Water could erect at Seacourt pumping station. Council will therefore write to Department for Infrastructure to highlight this legal loophole and to request urgent review of the law in order to nullify detrimental impacts that developments such as this fence could have on coastal landscapes and other protected landscapes.”

Since the date of the last report presented to members at 05 September Planning Committee meeting NIW had responded.

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

Councillor Cathcart felt NI Water needed to appreciate the concerns of the community in relation to the fence. He viewed the response from NI Water as abrupt and he felt the Committee needed to be in contact with NI Water again in a face to face capacity in order to highlight the concerns of the Committee, Elected Members and residents. There had been no attempt from NI Water to address any of the concerns to find a way forward.

(Councillor Morgan re-entered the meeting – 10.06 pm)

Proposed by Councillor Cathcart, seconded by Councillor Wray, that this Council notes the belated response and agrees to write to the Chief Executive of NI Water asking for a meeting to discuss the fence at Seacourt pumping station with a delegation of Councillors, one from each party and independent, plus the Mayor.

Speaking to his proposal, Councillor Cathcart stated that the matter had been ongoing for some time. He felt it would be useful to engage face to face with the Chief Executive of NI Water to express the frustration and encourage NI Water to engage and find a way forward.

Councillor Wray concurred, sending letters back and forth was going nowhere and he hoped a face to face meeting would resolve the issue.

Councillor McRandal stated that the Committee could not stand for this with it being no way to treat the coastline. Councillor McKee had suggested that the North Down MLAs should also send a letter to NI Water calling for a meeting.

Councillor Cathcart thanked Members for their support and hoped the meeting could be held to discuss the community's concerns and find a way forward.

AGREED TO RECOMMEND, on the proposal of Councillor Cathcart, seconded by Councillor Wray, that this Council notes the belated response and agrees to write to the Chief Executive of NI Water asking for a meeting to discuss the fence at Seacourt pumping station with a delegation of Councillors, one from each party and independent, plus the Mayor.

EXCLUSION OF THE PUBLIC/PRESS

AGREED, on the proposal of Councillor Cathcart, seconded by Councillor Kerr, that the public/press be excluded during the discussion of the undernoted item of confidential business.

(Councillor Creighton withdrew from the meeting – 10.10 pm)

7. LOCAL DEVELOPMENT PLAN (LDP) - STRATEGIC APPROACH TO UNDEVELOPED COAST

(Appendices X, XI, XIII)

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

NOT FOR PUBLICATION SCHEDULE 6 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

A report from the Director of Prosperity setting out 'policy in development' pertaining to options for Members' consideration and agreement in respect of a strategic policy relating to the Undeveloped Coast within the Local Development Plan (LDP).

The recommendations contained within the report were agreed.

8. LOCAL DEVELOPMENT PLAN (LDP) - TIMETABLE

(Appendix XIV)

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

Option 3: NOT FOR PUBLICATION SCHEDULE 6 – INFORMATION RELATING TO THE FINANCIAL OR BUSINESS AFFAIRS OF ANY PARTICULAR PERSON (INCLUDING THE COUNCIL HOLDING THAT INFORMATION)

SUMMARY

A report from the Director of Prosperity pertaining to issues arising and options for Members' consideration and agreement regards timetabling of the Local Development Plan (LDP).

The recommendations contained within the report were agreed.

RE-ADMITTANCE OF PUBLIC/PRESS

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

TERMINATION OF MEETING

The meeting terminated at 10.49 pm.

ITEM 4.1


Ards and North Down Borough Council

Application Ref	LA06/2023/1500/F
Proposal	<p>Demolition of existing buildings at 5-12 and 35-41 Queen's Parade, 22-30 Main Street (formerly B & M Bargains), 34-36 Main Street (Oxfam and Hospice shops), 6-34 King Street and 5-17 Southwell Road; minor extension and elevational changes to 40-42 Main Street (Caffe Nero); creation of new means of escape and installation of rooflights to 20 Main Street (Halifax); creation of new bin storage and basement access together with minor facade works to 48 Main Street (TK Maxx); erection of a mixed use development comprising culture and leisure facilities (class D), a 66 bedroom hotel, retail units, food and beverage outlets, offices (class B1- (a)), 137 residential units comprising 113 apartments in 3 blocks and 12 duplex apartments along King Street, creation of a new vehicular access onto Southwell Road to serve undercroft car park comprising 217 spaces together with 14 courtyard spaces and 24 on street, creation of new vehicular access onto King Street to serve residential parking, minor modifications to the Main Street and King Street junction and creation of a two-way street along Southwell Road from the junction with Primrose Street, creation of a new service vehicle access onto Main Street, creation of new public squares and courtyards including new pedestrian access points; and the redevelopment of Marine Gardens Car Park including partial demolition of sea-wall to create a public realm space comprising gardens and lawns, play areas, events spaces, covered shelters, 4 kiosks and 2 pavilions (housing food and beverage operators), and water feature together with other ancillary development:</p> <p>Variation of Condition 2 of LA06/2020/0097/F from:</p> <p>'The development hereby approved shall be carried out in accordance with the sequential (numeric) phasing plans as indicated on Drawing Nos. 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022. The development hereby approved shall commence with Phase 1 and be built out sequentially thereafter. No subsequent phase of development shall be commenced unless the preceding phase has been completed and written approval issued by the Council confirming completion.'</p> <p>To:</p>

	<p>'The development hereby approved shall be carried out in the following sequence and restrictions thereon, with each phase as referred to being as delineated on approved plans 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022:</p> <ol style="list-style-type: none"> 1) The developer may commence concurrently, phases 1, 2 and 3 of the development hereby approved. 2) The developer may not occupy or operate phases 1, 2 or 3 of the development until the areas of open space within phases 1 and 2 of the development as delineated on drawing No. 64 date stamped received 28th January 2022, hereby approved have been completed in full and written confirmation of such satisfaction provided by the Council. 3) The developer may not occupy or operate phase 3 of the development until the areas of open space within phase 3 of the development hereby approved comprising the Market Place, Trinity Square and the pedestrian linkage between Market Place and Marine Gardens, as delineated on drawing No. 60C date stamped 30th June 2022, have been completed in full and written confirmation of such satisfaction provided by the Council. 4) Prior to the commencement of construction of any building within phase 4 of the development, the construction of phases 1 and 2 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council. 5) Prior to the occupation of, or operation from, any building within phase 4, the construction of phases 1, 2 and 3 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council. <p>Variation of Condition 3 of LA06/2020/0097/F from:</p> <p>'The proposed public realm areas of open space as indicated on drawing No. 64 bearing the date stamp 28 January 2020 shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the date stamp 28 January 2020 and in accordance with the timing as set out in the above phasing plans. The public realm areas of open space within phases 1 and 2 shall be completed prior to the occupation of any residential unit in phase 2. These areas shall not thereafter be used for any purpose other than as open space (with the exception of the approved kiosks and pavilion buildings) as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'</p> <p>To:</p>
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	'The proposed public realm areas of open space as indicated on the approved drawing No. 64 bearing the Council date stamp 28 January 2020, shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the Council date stamp 28 January 2020 and in accordance with the timing and requirements set out in condition 2 above. These areas shall not thereafter be used for any purpose other than open space with the exception of the approved kiosks and pavilion buildings as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'
Location	Lands at and to the rear of 18 – 52 Main Street (Reeds Rain to TK Maxx), 2 – 34 King Street, 5 -17 Southwell Road, 5 – 41 Queen's Parade, Marine Gardens car park, the Esplanade Gardens, and area around McKee Clock, Queen's Parade, Bangor.
Committee Interest	An application in the major category of development.
Validated	02/03/2023
Summary	<ul style="list-style-type: none"> • This Section 54 application for variation of planning conditions relates to the same development as previously approved under application LA06/2020/0097/F by Council on 29 September 2022. • The purpose of a Section 54 application is not to revisit the principle of development, rather it must only consider the question of the relevant planning conditions of the extant permission. • The current wording of condition 2 under the extant permission allows no more than one phase of development to be under construction at any one time. The amended wording of the condition will allow for a greater degree of flexibility, permitting phases 1, 2 and 3 to commence concurrently. • The revised wording will also incorporate a number of clauses which will continue to ensure that the development within each phase is completed in a timely manner and that the public realm and open space aspects of each phase are delivered in their entirety. • Condition 3 of the extant permission will also be re-worded to reflect the revised wording of condition 2. • The potential impact of various phases being allowed to be constructed in tandem has been considered and Planning

	<p>Service is content that this will not result in any significantly greater impacts on environmental or human receptors.</p> <ul style="list-style-type: none"> • DFI Roads has been consulted and is content with the proposed phasing amendments from a road safety and traffic progression perspective. • A further legal agreement is required to be executed alongside this approval, if forthcoming.
<p>Recommendation</p>	<p>Approval</p>
<p>Attachment</p>	<p>Item 4.1a – Case Officer Report</p>

<p>Development Management Case Officer Report</p>		 <p>Ards and North Down Borough Council</p>
Reference:	LA06/2023/1500/F	DEA: Bangor Central
Proposal:	<p>Demolition of existing buildings at 5-12 and 35-41 Queen's Parade, 22-30 Main Street (formerly B & M Bargains), 34-36 Main Street (Oxfam and Hospice shops), 6-34 King Street and 5-17 Southwell Road; minor extension and elevational changes to 40-42 Main Street (Caffe Nero); creation of new means of escape and installation of rooflights to 20 Main Street (Halifax); creation of new bin storage and basement access together with minor facade works to 48 Main Street (TK Maxx); erection of a mixed use development comprising culture and leisure facilities (class D), a 66 bedroom hotel, retail units, food and beverage outlets, offices (class B1- (a)), 137 residential units comprising 113 apartments in 3 blocks and 12 duplex apartments along King Street, creation of a new vehicular access onto Southwell Road to serve undercroft car park comprising 217 spaces together with 14 courtyard spaces and 24 on street, creation of new vehicular access onto King Street to serve residential parking, minor modifications to the Main Street and King Street junction and creation of a two-way street along Southwell Road from the junction with Primrose Street, creation of a new service vehicle access onto Main Street, creation of new public squares and courtyards including new pedestrian access points; and the redevelopment of Marine Gardens Car Park including partial demolition of sea-wall to create a public realm space comprising gardens and lawns, play areas, events spaces, covered shelters, 4 kiosks and 2 pavilions (housing food and beverage operators), and water feature together with other ancillary development:</p> <p>VARIATION OF CONDITION NO. 2 of LA06/2020/0097/F FROM:</p> <p>'The development hereby approved shall be carried out in accordance with the sequential (numeric) phasing plans as indicated on Drawing Nos. 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022. The development hereby approved shall commence with Phase 1 and be built out sequentially thereafter. No subsequent phase of development shall be commenced unless the preceding phase has been completed and written approval issued by the Council confirming completion.'</p> <p>TO:</p> <p>'The development hereby approved shall be carried out in the following sequence and restrictions thereon, with each phase as referred to being as delineated on approved plans 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022:</p>	

1. The developer may commence concurrently, phases 1, 2 and 3 of the development hereby approved.
2. The developer may not occupy or operate phases 1, 2 or 3 of the development until the areas of open space within phases 1 and 2 of the development as delineated on drawing No. 64 date stamped received 28th January 2022, hereby approved have been completed in full and written confirmation of such satisfaction provided by the Council.
3. The developer may not occupy or operate phase 3 of the development until the areas of open space within phase 3 of the development hereby approved comprising the Market Place, Trinity Square and the pedestrian linkage between Market Place and Marine Gardens, as delineated on drawing No. 60C date stamped 30th June 2022, have been completed in full and written confirmation of such satisfaction provided by the Council.
4. Prior to the commencement of construction of any building within phase 4 of the development, the construction of phases 1 and 2 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.
5. Prior to the occupation of, or operation from, any building within phase 4, the construction of phases 1, 2 and 3 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.

VARIATION OF CONDITION NO. 3 of LA06/2020/0097/F FROM:

'The proposed public realm areas of open space as indicated on drawing No. 64 bearing the date stamp 28 January 2020 shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the date stamp 28 January 2020 and in accordance with the timing as set out in the above phasing plans. The public realm areas of open space within phases 1 and 2 shall be completed prior to the occupation of any residential unit in phase 2. These areas shall not thereafter be used for any purpose other than as open space (with the exception of the approved kiosks and pavilion buildings) as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'

TO:

'The proposed public realm areas of open space as indicated on the approved drawing No. 64 bearing the Council date stamp 28 January 2020, shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the Council date stamp 28 January 2020 and in accordance with the timing and requirements set out in condition 2 above. These areas shall not thereafter be used for any purpose other than open space with the exception of the approved kiosks and pavilion buildings as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'

Location:	Lands at and to the rear of 18 – 52 Main Street (Reeds Rain to TK Maxx), 2 – 34 King Street, 5 -17 Southwell Road, 5 – 41 Queen’s Parade, Marine Gardens car park, the Esplande Gardens, and area around McKee Clock, Queen's Parade, Bangor.		
Applicant:	Bangor Marine Ltd.		
Date valid:	02/03/2023	EIA Screening Required:	Yes
Date last advertised:	10/08/2023	Date last neighbour notified:	02/08/2023
Letters of Support: 1	Letters of Objection: 0	Petitions: 0	
Consultations – synopsis of responses:			
DFI Roads		No objection	
Summary of main issues considered:			
<ul style="list-style-type: none"> Impact of proposed amendments to phasing of development 			
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 Northern Ireland Public Register (planningsystemni.gov.uk)			
1. Site and Surrounding Area			
<p>The application site is located at Queen’s Parade within Bangor city centre and covers an area of land just over 5 hectares. The immediate area within which the site lies is predominantly commercial in nature given the city centre location, with a variety of retail and service uses along Main Street. However, there are also existing residential areas to the immediate south and west of the site on King Street and Southwell Road as well as the leisure and recreation uses associated with the various areas of public open space and Pickie Fun Park to the north of the site adjacent to Bangor Marina. The site itself encompasses the existing Marine Gardens car park adjacent to Bangor Marina, along with areas of existing open space to the north and west of this, and an area of land on the southern side of Queen’s Parade which is framed by Main Street, King Street and Southwell Road.</p> <p>The area of the site on the southern side of Queen’s Parade comprises a mix of occupied and vacant properties which front onto each of the streets. A significant number of buildings which originally fronted Queen’s Parade were demolished some years ago. In recent years, this vacant piece of land was occupied by the Council-run</p>			

initiative, Project 24, on a temporary basis but has now been removed pending redevelopment of the site. A temporary car park and the public King Street car park are also situated to the rear of this part of the site. The site is affected by two rights of way; one known as The Vennel, which runs across the site from Queen’s Parade at the immediate east of Project 24, along the rear of the properties on Main Street and through to King Street to the north; the other right of way runs across the site in an east/west direction from Southwell Road towards the Vennel.

The existing Marine Gardens car park is also located within the site on the opposite side of Queen’s Parade. To the immediate east of the car park is an area of open space including a fountain as a central feature and the listed McKee Clock. Beyond this to the north is an additional hard landscaped area of open space with trees dispersed throughout, with the existing public toilet block located along the northern boundary of the site.

The topography of the site falls initially quite steeply in a north/north westerly direction from its highest point at the junction of Main Street/King Street down 6 to Southwell Road and Queen’s Parade where the ground then levels out and is relatively flat across Queen’s Parade itself and the Marine Gardens car park.

2. Site Location Plan

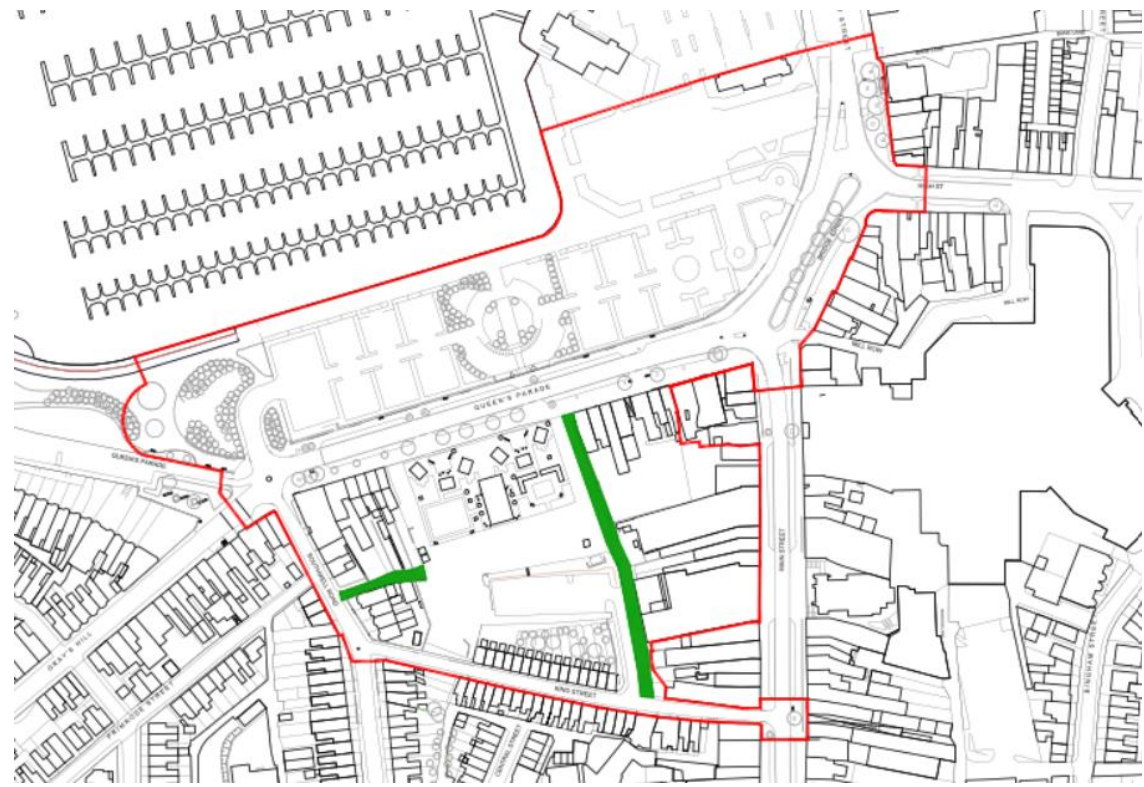


Figure 1 – Site Location Plan



Figure 2 – Aerial view of site

3. Relevant Planning History

W/2014/0456/F

Demolition of existing buildings at 9-12 and 35-41 Queen's Parade, 20-42 Main Street, 6-34 King Street and 5-17 Southwell Road; retention, conversion and extension of 5- 8 Queen's Parade for a 40 bedroom hotel; erection of a mixed use development comprising culture and leisure facilities (class D), a 64 bedroom hotel, retails units, restaurants, offices (class B1 (a), 72 apartments and 8 terraced dwelling houses, multi-storey car park comprising 351 spaces, new accesses at King Street and Southwell Road, creation of a courtyard plaza and public open space on Marine Gardens including: play equipment, landscaping, bandstand, covered walkways, relocation of temporary buildings (Project 24) and covered event spaces as well as other ancillary uses, Lands bounded by 18-52 66 and 68 Main Street, 2-51 King Street, 5-18 Southwell Road, 5-41 Queen's Parade and Marine Gardens car park, Bangor

Approved 20.07.2015

LA06/2019/0608/PAN

Regeneration proposal for Bangor town centre comprising redevelopment of Marine Gardens car park to create public realm area, gardens, kiosks and event space; and the redevelopment of lands at Queen's Parade comprising a mixed use development

consisting of hotel, retail, office, community, cultural and recreation floor space, eateries and residential development together with the creation of new public squares and courtyards including new pedestrian access points; car parking and the relocation of Project 24, Lands bounded by 18-52, 66 and 68 Main Street, 2-51 King Street, 5-18 Southwell Road, 5-41 Queen's Parade and Marine Gardens car park, Bangor (PAN – Proposal of Application Notice for current application)

LA06/2020/0097/F

Demolition of existing buildings at 5-12 and 35-41 Queen's Parade, 22-30 Main Street (formerly B & M Bargains), 34-36 Main Street (Oxfam and Hospice shops), 6-34 King Street and 5-17 Southwell Road; minor extension and elevational changes to 40-42 Main Street (Caffe Nero); creation of new means of escape and installation of rooflights to 20 Main Street (Halifax); creation of new bin storage and basement access together with minor facade works to 48 Main Street (TK Maxx); erection of a mixed use development comprising culture and leisure facilities (class D), a 66 bedroom hotel, retail units, food and beverage outlets, offices (class B1- (a)), 137 residential units comprising 113 apartments in 3 blocks and 12 duplex apartments along King Street, creation of a new vehicular access onto Southwell Road to serve undercroft car park comprising 217 spaces together with 14 courtyard spaces and 24 on street, creation of new vehicular access onto King Street to serve residential parking, minor modifications to the Main Street and King Street junction and creation of a two-way street along Southwell Road from the junction with Primrose Street, creation of a new service vehicle access onto Main Street, creation of new public squares and courtyards including new pedestrian access points; and the redevelopment of Marine Gardens Car Park including partial demolition of sea-wall to create a public realm space comprising gardens and lawns, play areas, events spaces, covered shelters, 4 kiosks and 2 pavilions (housing food and beverage operators), and water feature together with other ancillary development, Lands at and to the rear of 18 – 52 Main Street (Reeds Rain to TK Maxx), 2 – 34 King Street, 5 -17 Southwell Road, 5 – 41 Queen's Parade, Marine Gardens car park, the Esplande Gardens, and area around McKee Clock, Queen's Parade, Bangor.

Approved 29/09/2022

LA06/2023/2026/DC

Discharge of Condition 17 of Planning Approval LA06/2020/0097/F which states ' 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, and submitted to and approved in writing by the Council in consultation with Historic Environment Division, Department for Communities. 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.'

Under Consideration (submitted 19/07/2023)

LA06/2023/2182/DC

Discharge of Condition 45 of Planning Approval LA06/2020/0097/F which states ' No development activity, including ground preparation or vegetation clearance, shall take place with the exception of the establishment of the two site compounds indicated on Drawing No. 58C bearing the date stamp 30 June 2022 and any archaeological works

as required by conditions 17 and 18 above, until an updated breeding bird survey of the site has been undertaken by a suitably qualified and experienced ecologist between April and June and the findings of this survey and appropriate mitigation and compensation measures to be implemented are included in a Breeding Bird Survey and Mitigation Report which shall be submitted to and approved in writing by the Council. The approved Breeding Bird Survey and Mitigation Report shall be implemented in accordance with the approved details, and all works on site shall conform to the approved Breeding Bird Survey and Mitigation Report, unless otherwise agreed in writing by the Council. The Breeding Bird Survey and Mitigation Report shall include the following:

- a) Details of the results of the updated breeding bird survey carried out at the appropriate time of year and using appropriate methodology;
- b) Details of mitigation and compensation measures for birds, including the specifications and locations of the compensatory measures such as nest boxes/bricks;
- c) Details of the appointment of an Ecological Clerk of Works (ECoW) to oversee the implementation of mitigation and compensation measures for birds and their roles and responsibilities.

Under Consideration (submitted 11/09/2023)

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 (SPPS)
- Planning Policy Statement 2 (PPS2) - Natural Heritage
- Planning Policy Statement 3 (PPS3) - Access, Movement and Parking
- Planning Policy Statement 4 (PPS 4) - Planning and Economic Development
- Planning Policy Statement 6 (PPS6) – Planning, Archaeology and the Built Heritage
- Planning Policy Statement 6 Addendum (PPS6A)– Areas of Townscape Character
- Planning Policy Statement 7 (PPS7) – Quality Residential Environments
- Planning Policy Statement 8 (PPS 8) - Open Space, Sport and Outdoor Recreation
- Planning Policy Statement 15 (PPS15) - Planning and Flood Risk
- Planning Policy Statement 16 (PPS16) - Tourism
- Creating Places
- Living Places
- DCAN 8 - Housing in Existing Urban Areas
- DCAN 15 - Vehicular Access Standards

Background and Legislative Requirements

This planning application has been made under Section 54 of The Planning Act (Northern Ireland) 2011 for the variation of conditions 2 and 3 of extant planning permission LA06/2020/0097/F.

The original planning permission, to which this current Section 54 application relates, granted approval for major development as defined in the Planning (Development Management) Regulations (Northern Ireland) 2015. A Planning Application Notice (PAN) was submitted to the Council on 29 May 2019 for the original application which the Council confirmed as acceptable on 21 June 2019. In accordance with Section 28 of the Act, a Planning Application Community Consultation (PACC) Report was also submitted with the application. The report satisfactorily outlined how community consultation was carried out in accordance with the requirements of Section 27 of the Act and Regulation 5 of The Planning (Development Management) Regulations (Northern Ireland) 2015 ('the DM Regs').

As this current application relates to the same development as previously approved under application LA06/2020/0097/F, it also falls within the schedule of development categorised as "major development". While the legislation is silent on the issue of a Pre Application Notice (PAN) including details of pre-application consultation in respect of a Section 54 application that relates to an already approved major development, paragraph 4.12 of Development Management Practice Note (DMPN) 24 states that if a section 54 application already relates to an approved major development where a PACC has already been undertaken, then, it is not the legislative intention that it would be subject to PACC.

The purpose of a Section 54 application is not to revisit the principle of development on a given application site, rather a section 54 application must consider only the question of the conditions attached to an extant planning permission. The PACC is a means to engage the communities in the planning system. Paragraph 4.14 of the DMPN 24 advises that section 54 applications will be subject to statutory publicity and neighbour notification through which the community may engage in the planning process and interested parties may submit representations. Accordingly, even though this application relates to a "major development", there is no requirement in this instance to undertake a PACC prior to the submission of the application.

EIA Screening

A determination was carried out upon receipt of the application under Regulation 12(1) of The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 as to whether the proposal would be EIA development. The Planning Department is satisfied that the proposed development when considered alongside the proposed changes to its phasing as requested under this S54 application, would not be likely to result in any significant environmental effects and therefore is not considered to be EIA development and as such does not need to be accompanied by an Environmental Statement. The Planning Department is also satisfied that there have been no material changes in circumstances relevant to the site or surrounding area since the approval of the original permission which would result in any significantly greater environmental impact.

Development Plan Context

Section 6(4) of the Planning Act (Northern Ireland) 2011 (“the Act”) 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. 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 purported adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) was quashed by the Court of Appeal on 18th May 2017. Consequently, the North Down and Ards Area Plan 1984-1995 (NDAAP) is the statutory development plan for the area, alongside the Bangor Town Centre Plan.

The draft BMAP remains a material consideration. The Chief Planner in his fourth update to Councils dated 29 November 2019 confirmed that the draft Belfast Metropolitan Area Plan remains as an emerging plan and, as such, the draft plan, along with representations received to the draft plan and PAC inquiry reports, remains as a material consideration to be weighed by the decision-maker.

The site lies within the development limit of Bangor as defined in NDAAP. The site is also located within the centre of Bangor as identified in the draft BMAP. There are several other designations and policies in the draft plan which are also applicable to the site as follows:

- Existing open space at Wilson’s Point Local Landscape Policy Area (BR31)
- Bangor Urban Waterfront (BR32)
- Bangor Town Centre Primary Retail Core (BR40)
- Bangor Town Centre Primary Retail Frontage (BR41)
- Development Opportunity Site (BR44)
- Bangor Central Area of Townscape Character (ATC) (BR49)
- Bangor Town Centre Urban Design Criteria (BR48)
- Policy TRAN 4 Areas of Parking Restraint (BR47)
- Policy TRAN 5 Publicly owned off street surface car parks within city and town centres



Figure 3 - Bangor Town Centre (Draft BMAP Map 3I)

Principle of Development

As outlined above, the principle of development on this site has already been established through extant planning permission LA06/2020/0097/F. The only matter under consideration is the proposed variation of conditions 2 and 3 of the permission. All other aspects of the development remain unchanged.

Condition 2 currently reads:

'The development hereby approved shall be carried out in accordance with the sequential (numeric) phasing plans as indicated on Drawing Nos. 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022. The development hereby approved shall commence with Phase 1 and be built out sequentially thereafter. No subsequent phase of development shall be commenced unless the preceding phase has been completed and written approval issued by the Council confirming completion.'

It is proposed to vary the wording of this condition as follows:

'The development hereby approved shall be carried out in the following sequence and restrictions thereon, with each phase as referred to being as delineated on approved plans 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022:

- 1) The developer may commence concurrently, phases 1, 2 and 3 of the development hereby approved.*
- 2) The developer may not occupy or operate phases 1, 2 or 3 of the development until the areas of open space within phases 1 and 2 of the development as*

delineated on drawing No. 64 date stamped received 28th January 2022, hereby approved have been completed in full and written confirmation of such satisfaction provided by the Council.

- 3) The developer may not occupy or operate phase 3 of the development until the areas of open space within phase 3 of the development hereby approved comprising the Market Place, Trinity Square and the pedestrian linkage between Market Place and Marine Gardens, as delineated on drawing No. 60C date stamped 30th June 2022, have been completed in full and written confirmation of such satisfaction provided by the Council.
- 4) Prior to the commencement of construction of any building within phase 4 of the development, the construction of phases 1 and 2 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.
- 5) Prior to the occupation of, or operation from, any building within phase 4, the construction of phases 1, 2 and 3 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.'

As condition 3 also requires the development to be carried out in accordance with the timing of the phasing plans, permission is also sought to vary this condition from the current wording:

'The proposed public realm areas of open space as indicated on drawing No. 64 bearing the date stamp 28 January 2020 shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the date stamp 28 January 2020 and in accordance with the timing as set out in the above phasing plans. The public realm areas of open space within phases 1 and 2 shall be completed prior to the occupation of any residential unit in phase 2. These areas shall not thereafter be used for any purpose other than as open space (with the exception of the approved kiosks and pavilion buildings) as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'

The proposed revised wording of the condition would read as follows:

'The proposed public realm areas of open space as indicated on the approved drawing No. 64 bearing the Council date stamp 28 January 2020, shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the Council date stamp 28 January 2020 and in accordance with the timing and requirements set out in condition 2 above. These areas shall not thereafter be used for any purpose other than open space with the exception of the approved kiosks and pavilion buildings as indicated on drawing No. 64 bearing the date stamp 28 January 2020.'

The developer has advised that a revision to the wording of the above conditions is being sought as the current wording of condition No.2 permits no more than one phase of development to be under construction at any one time. The developer considers this to be overly stringent, prohibiting the efficient delivery of the project. The public realm works along the front of Queen's Parade, including the seafront lawns, play area, promenade, event space and gardens at McKee Clock are included in Phase 1 and Phase 2 of development. It is proposed these phases are brought forward and constructed in tandem to allow the public realm works to be undertaken and completed in their entirety in one uninterrupted stage.

The development will comprise of 4 phases in total as follows:



Phase 1 - Delivery of first part of Marine Gardens, demolition of 34 & 36 Main Street, minor alterations to TK Maxx and Café Nero buildings, existing right of way agreements to be extinguished prior to commencement, works at Trinity Way/Main Street junction to create new vehicular egress.



Phase 2 – Delivery of remaining public realm at Marine Gardens and commencement of development on under-croft car park and residential blocks 1 and 2 with all remaining buildings demolished with exception of King Street, widening of Southwell Road, marking of loading bays at western end of Queen’s Parade



Phase 3 – Commencement of work on hotel, kids' zone, offices, Market Square and associated steps and completion of works to Trinity Square, installation of raised table at Queen's Parade, marking of loading bays at eastern end of Queen's Parade marked out.



Phase 4 – Demolition of King Street terrace and completion of 24 new residential units and cinema building and completion of all hard and landscaped surfaces.

The proposed revised wording of conditions 2 and 3 allows for a degree of flexibility for delivery of the project in its entirety. As revised, the conditions will now permit phases 1, 2 and 3 to commence concurrently. However, the revised wording also incorporates a number of clauses which will continue to ensure that the development within each phase is completed in a timely manner and that the important public realm and open space aspects of each phase are delivered.

To secure the delivery of all open space areas within phases 1 and 2, the proposed condition requires these to be completed prior to the occupation or operation of any part of phases 1, 2 or 3. In addition, the developer may not occupy or operate phase 3 of the development until the areas of open space within phase 3 comprising the Market Place, Trinity Square and the pedestrian linkage between Market Place and Marine Gardens have been completed.

To ensure that earlier phases are completed in a timely manner, phase 4 cannot commence construction of any building until the construction of phases 1 and 2 has been completed. Furthermore, the buildings within phase 4 cannot be occupied or operated until the construction of phases 1, 2 and 3 has been completed.

The revised wording therefore continues to contain safeguards to ensure that the public realm works would be completed first and that no development relating to later phases would commence until written approval from the Council has been provided that the preceding phases have been completed as outlined above.

I am satisfied that the proposed amendments to the timing of the phasing for the development will continue to comply with all the relevant planning policy and development plan requirements as previously set out in the detailed planning report for application LA06/2020/0097/F. The changes to the timing of the phasing will not result in any additional adverse impact on interests of acknowledged importance including:

- visual impact,
- impact on the character of the area and appearance of the proposed ATC,
- traffic impact, road safety and parking (DFI Roads consulted and advised no objections)
- archaeology and built heritage
- flooding and drainage
- natural heritage interests including impact on designated sites and protected species
- residential amenity of nearby occupied dwellings
- retail impact/impact on the vitality and viability of the city centre
- the provision of public open space
- existing sewerage infrastructure

All other planning conditions of the original permission will continue to apply the development and shall be included in the decision for this Section 54 application. While two applications have been submitted to discharge conditions 17 and 45 of the original permission, these remain under consideration at the time of writing this report.

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).

Other material considerations

As the proposed amendments to the phasing of the development will allow the construction of a number of phases in tandem rather than just one phase at a time, the potential additional impact and any implications of increased construction activity being carried out simultaneously must be considered.

DFI Roads was consulted in this regard and has raised no objections to the proposed phasing amendments. The phasing amendments will not conflict with any of the Roads conditions outlined below.

With the potential for a greater amount of construction activity being undertaken at the same time, there would be potential for increased noise and disturbance which could impact upon nearby properties and residents. However, it is noted that the construction noise predictions set out in the Noise Impact Assessment submitted with the original application, were based on all construction activity within all phases being simultaneously active, therefore the proposed changes to the phasing of the development which permit some phases to be simultaneously under construction, will not result in any great noise impact than that already considered by Environmental Health. Furthermore, conditions 26-28 of the original planning permission will continue to include restrictions and measures to ensure that any noise impact from construction will be mitigated. These include restrictions on the hours for demolition and construction works, noise monitoring to ensure the appropriate threshold limit is not exceeded and the erection of construction barriers to provide noise reduction.

Condition 38 of the original permission also requires submission of a dust management plan to be agreed in writing by the Council prior to commencement. This shall outline the site-specific dust mitigation measures to be employed during demolition and construction phases to minimise the generation and movement of dust from the proposed development to surrounding area and must consider the revised phasing.

Condition 16 of the original permission requires a Construction Event Management Plan and Construction Site Traffic Management Plan to be submitted and agreed by the Council prior to commencement of development. This plan must now set out how construction and site traffic will be managed in accordance with the revised phasing i.e. with a number of phases simultaneously under construction. Condition 16 also requires submission of a construction methodology and details of the timings of works of development which must be approved by the Council in consultation with NIEA prior to the commencement of works.

5. Representations

One letter of support has been received from Mr Ian Nesbitt.

6. Recommendation

Grant Planning Permission

7. Conditions

- 1. The development hereby permitted shall be begun before the 29th September 2027.

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011 and in accordance with planning permission LA06/2020/0097/F.

2. The development hereby approved shall be carried out in the following sequence and restrictions thereon, with each phase as referred to being as delineated on approved plans 58C, 59C, 60C and 61C bearing the date stamp 30th June 2022:
 1. The developer may commence concurrently, phases 1, 2 and 3 of the development hereby approved.
 2. The developer may not occupy or operate phases 1, 2 or 3 of the development until the areas of open space within phases 1 and 2 of the development as delineated on drawing No. 64 date stamped received 28th January 2022, hereby approved have been completed in full and written confirmation of such satisfaction provided by the Council.
 3. The developer may not occupy or operate phase 3 of the development until the areas of open space within phase 3 of the development hereby approved comprising the Market Place, Trinity Square and the pedestrian linkage between Market Place and Marine Gardens, as delineated on drawing No. 60C date stamped 30th June 2022, have been completed in full and written confirmation of such satisfaction provided by the Council.
 4. Prior to the commencement of construction of any building within phase 4 of the development, the construction of phases 1 and 2 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.
 5. Prior to the occupation of, or operation from, any building within phase 4, the construction of phases 1, 2 and 3 of the development hereby approved must be completed (excluding interior fit out) and confirmation of completion of construction provided in writing by the Council.

Reason: To ensure the orderly development of the site.

3. The proposed public realm areas of open space as indicated on the approved drawing No. 64 bearing the Council date stamp 28 January 2020, shall be laid out in accordance with drawing Nos. 64, 65, 66, 67 and 68 bearing the Council date stamp 28 January 2020 and in accordance with the timing and requirements set out in condition 2 above. These areas shall not thereafter be used for any purpose other than open space with the exception of the approved kiosks and pavilion buildings as indicated on drawing No. 64 bearing the date stamp 28 January 2020.

Reason: To ensure the provision, retention and maintenance of a high standard of public open space.

4. The proposed public realm areas of open space as indicated hatched purple on the approved drawing No. 63 bearing the Council date stamp of 28 January 2020, shall remain open and accessible to the public, 24 hours a day and 7 days a week.

Reason: To ensure that an adequate level of public access through the site is maintained in perpetuity.

5. The proposed public realm areas of open space as indicated hatched purple and red on the approved drawing No. 63 bearing the date stamp of 28 January 2020 shall be managed and maintained in perpetuity by a management company commissioned by the developer. Details of the arrangements to be put in place to establish the management company and details of the alternative measures which will take effect in the event that the management arrangements break down, must be submitted to and agreed in writing with the Council prior to the occupation or operation of the development. These public realm areas of open space shall be completed in accordance with the approved plans prior to occupation of the residential units in phase 2 and prior to operation of the hotel, offices and culture/leisure facilities in phase 3.

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

6. No development/site clearance works, lopping, topping or felling of trees, trucking machinery over tree roots, shall take place on the site until full details of both hard and soft landscape works required in conjunction with the development have been submitted to and approved in writing by the Council and these works shall be carried out in accordance with the approved phasing plans as indicated on Drawing No. 58C, 59C, 60C & 61C bearing the date stamp 30 June 2022. The works as approved shall be completed during the first available planting season following completion of ease phase.

Reason: To ensure the provision of amenity afforded by appropriate landscape design.

7. The hard and soft landscape works to be submitted as required by condition 6 above shall include the following details:
- (a) proposed finished levels and proposed contours;
 - (b) any means of enclosure, hard surface materials/minor artefacts and structures e.g. street furniture, play equipment, refuse storage, lighting, existing and proposed services above and below ground;
 - (c) soft landscape works including planting plans; written planting specifications; schedules of plants and trees indicating site preparation, planting methods, planting medium and additives together with the species, appropriate numbers of native species trees and shrubs, the size at time of planting, the presentation, location, spacing and numbers and an implementation programme.
 - (d) details of the protection of retained trees and hedgerows by appropriate fencing in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations.

Reason: To ensure the provision of amenity afforded by appropriate landscape design, to compensate for the loss of existing vegetation on the site and to minimise the impact of the proposal on the biodiversity of the site.

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 landscape.

9. A detailed landscape management and maintenance plan, including long term design objectives, performance indicators, management responsibilities and maintenance schedules for all areas of open space and public realm as indicated hatched red and purple on the approved drawing No. 63 bearing the date stamp 28 January 2020, shall be submitted to the Council for approval prior to the commencement of development. The landscape management and maintenance plan shall be carried out as approved.

Reason: To ensure the sustainability of the approved landscape design through its successful establishment and long-term maintenance.

10. Prior to the commencement of each phase of development with the exception of ground preparation, site investigation works, vegetation clearance, or any archaeological works required under conditions 17 and 18, no works shall commence until detailed drawings showing the proposed design and finishes for all of the structures, buildings and street furniture located within the public realm areas as indicated on drawing No. 64 bearing the date stamp 28 January 2020 have been submitted to and approved by the Council. The development shall be carried out in accordance with the approved details and in accordance with the approved phasing plans referred to in condition 2 above.

Reason: In the interest of visual amenity and to allow the Council to control the external appearance of the structures, buildings and street furniture.

11. The two pavilion buildings indicated as B1 and B2 on drawing No. 64 bearing the date stamp 28 January 2020, shall be single storey and shall have a maximum ridge height of 6.5m in height when measured from finished floor level and a maximum internal floor space of 200sqm. Details of the design and finishes shall be submitted to and approved in writing by the Council prior to commencement of construction of either of the pavilion buildings. The development shall be carried out in accordance with the details as subsequently approved.

Reason: In the interest of visual amenity and to ensure that the buildings will not appear dominant in the coastal setting.

12. The proposed kiosks and shelters indicated as S1-S5 and K1-K4 on drawing No. 64 bearing the date stamp 28 January 2020 shall not exceed 4.25m in height when measured from finished floor level. The internal floor space of the kiosks shall not exceed 20sqm and the footprint of the shelters hereby

approved shall not exceed 32sqm. Details of the design and finishes shall be submitted to and approved in writing by the Council prior to commencement of construction of the kiosks and shelters. The development shall be carried out in accordance with the details as subsequently approved.

Reason: In the interest of visual amenity and to ensure that the buildings will not appear dominant in the coastal setting.

13. Prior to the commencement of development within phase 2 and onwards, details of the specification and colour of the proposed brick to be used for the buildings within each phase shall be submitted to and approved in writing by the Council. The development shall be carried out in accordance with the details as subsequently approved.

Reason: To ensure that the materials and finishes of the built development will respect the character and appearance of the area.

14. The height and floorspace of the proposed plant rooms and housing on the roofs of blocks 5, 6 and 10 (otherwise known as the hotel, office and cinema buildings) shall not exceed that shown on drawing Nos. 41 and 42 bearing the date stamp 28 January 2020 and 43B and 44B bearing the date stamp 22 December 2020.

Reason: To ensure that the plant will not appear as an adversely prominent feature within the existing townscape setting.

15. Prior to the installation of any rooftop plant as referred to in condition 14 above, details of the proposed materials and finishes for all plant rooms and enclosures shall be submitted to the Council for approval. The development shall be carried out in accordance with the details as subsequently approved.

Reason: To ensure that the materials and finishes of the built development will respect the character and appearance of the area.

16. No development, including ground preparation or vegetation clearance, shall take place, with the exception of the establishment of the two site compounds and any archaeological works required under conditions 17 and 18 as shown on phasing drawing No. 58C bearing the date stamp 30 June 2022 and any archaeological works required under conditions 17 and 18 below, until a final Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Council. This shall reflect all of the mitigation and avoidance measures detailed in the outline CEMP and the Ecological Impact Assessment. The approved CEMP shall be implemented in accordance with the approved details and all works on site shall conform to the approved CEMP, unless otherwise agreed in writing by the Council. The CEMP shall include the following:

- a) Construction methodology and timings of works;
- b) Pollution Prevention Plan; including suitable buffers between the location of all construction works, storage of excavated spoil and construction materials, any refuelling, storage of oil/fuel, concrete mixing and washing

areas and any watercourses or surface drains present on or adjacent to the site;

- c) Site Drainage Management Plan; including Sustainable Drainage Systems (SuDS), foul water disposal and silt management measures;
- d) Water Quality Monitoring Plan;
- e) Environmental Emergency Plan;
- f) Details of appropriate mitigation measures to protect hedgehogs;
- g) Details of updated Japanese knotweed surveys to be carried out and any necessary mitigation and/or management measures required;
- h) Details of the appointment of an Ecological Clerk of Works (ECoW) and their roles and responsibilities
- i) A Construction Event Management Plan and Construction Site Traffic Management Plan.

Reason: To ensure that the appointed contractor undertaking the work is fully appraised of all the risks associated with the proposal and to provide effective mitigation ensuring there are no adverse impacts on the integrity of European sites or priority habitats and species.

17.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, and submitted to and approved in writing by the Council in consultation with Historic Environment Division, Department for Communities. 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.

18.No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 17 above.

Reason: to ensure that archaeological remains within the application site are properly identified and protected or appropriately recorded.

19.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 17 above. 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.

20. The development hereby permitted shall not commence until a detailed remediation strategy to address all unacceptable risks to environmental receptors identified in Atkins Ltd Contaminated Land Assessment. Queens Parade, Bangor August 2019 has been submitted to and agreed in writing by the Council. This strategy shall identify all unacceptable risks on the site, the remedial objectives/criteria and the measures which are proposed to mitigate them (including maps/plans showing the remediation design, implementation plan detailing timetable of works, remedial criteria, monitoring program, etc).

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

21. The development hereby permitted shall not be occupied until the remediation measures as described in the remediation strategy submitted under condition 20 have been implemented to the satisfaction of the Council. The Council must be given 2 weeks written notification prior to the commencement of remediation work.

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

22. In the event that contamination or risks not previously considered are encountered during any of the approved development phases, all works shall cease and the Council shall be notified immediately. This new contamination shall be fully investigated in accordance with the Model Procedures for the Management of Land Contamination (CLR11) and/or the Land Contamination: Risk Management (LCRM) guidance available at <https://www.gov.uk/guidance/landcontamination-how-to-manage-the-risks>, as applicable. In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Council in writing, and subsequently implemented and verified to its satisfaction.

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

23. After completing the remediation works under conditions 21 to 23; and prior to occupation of the development, a verification report shall be submitted in writing and agreed with the Council. This report shall be completed by competent persons in accordance with the Model Procedures for the Management of Land Contamination (CLR11) and/or the Land Contamination: Risk Management (LCRM) guidance available at <https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks>, as applicable. 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.

24. No piling work shall commence on this site until a piling risk assessment has been submitted to and agreed in writing by the Council. Piling risk assessments should be undertaken in accordance with current best practice.

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

25. All noise mitigation measures for the construction and demolition phase shall be incorporated into the development as detailed in section 4.3 of Noise Impact Assessment, Redevelopment at Queens Parade, Bangor, prepared by RPS, referenced NI2123 17th December 2019.

Reason: To ensure the occupiers of nearby premises are not adversely affected by construction noise

26. Demolition or construction works shall not take place outside the following hours: - Mondays - Fridays -07:00 hrs 19:00hrs, Saturdays - 08:00hrs - 13:00hrs and not at all on Sundays or Public/Bank Holidays.

Reason: To ensure the occupiers of nearby properties are not adversely affected by construction noise.

27. Noise from the construction site shall not exceed the Category A noise threshold limit of 65dB at nearest residential premises. Construction noise monitoring shall be carried out throughout the construction period to ensure compliance with the noise threshold limits set and records be kept for inspection by the Council.

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

28. Prior to the commencement of development in each phase, a construction barrier shall be erected around the perimeter of the site which shall provide at least 10dB reduction in noise levels and shall be retained until the relevant phase is complete.

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

29. Glazing, capable of providing a sound reduction index of at least 33dB Rw shall be installed within all habitable rooms within the residential development prior to occupation and shall be permanently retained thereafter.

Reason: To ensure future occupants of the apartments are not adversely affected by noise.

30. An alternative form of ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of at least 33dB Rw when

in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all habitable rooms in the residential development prior to occupation and shall be permanently retained thereafter.

Reason: To ensure future occupants of the apartments are not adversely affected by noise.

31. Prior to the commencement of operation of each commercial/retail unit, details of the location and specification of all plant and equipment to be used in connection with the commercial/retail units shall be submitted to and agreed in writing by the Council. All plant and equipment associated with the commercial/ retail units must be demonstrated to comply with the derived threshold limits at noise sensitive receptors as detailed in Table 5.5 of Noise Impact Assessment, Redevelopment at Queens Parade, Bangor, prepared by RPS, referenced NI2123 17th December 2019. The development shall be carried out in accordance with the approved details.

Reason: To ensure future occupants of the apartments and patrons of the hotel are not adversely affected by noise.

32. Glazing, capable of providing a sound reduction index of at least 36dB Rw shall be installed within all hotel rooms on the first floor prior to the commencement of operation and shall be permanently retained thereafter.

Reason: To ensure future patrons of the hotel are not adversely affected by noise.

33. An alternative form of ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of at least 36dB Rw when in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all hotel rooms on the first floor.

Reason: To ensure future patrons of the hotel are not adversely affected by noise.

34. Glazing, capable of providing a sound reduction index of at least 33dB RW shall be installed within all hotel rooms on the second floor prior to the commencement of operation and shall be permanently retained thereafter.

Reason: To ensure future patrons of the hotel are not adversely affected by noise.

35. An alternative form of ventilation, in addition to that provided by open windows, capable of achieving a sound reduction of at least 33dB Rw when in the open position (with respect to noise transmission from the exterior to the interior of the building), shall be provided to all hotel rooms on the first floor prior to the commencement of operation and shall be permanently retained thereafter.

Reason: To ensure future patrons of the hotel are not adversely affected by noise.

36. Prior to the commencement of operation of the hotel, details of the location and specification of all plant and equipment to be used in connection with the hotel shall be submitted to and approved in writing by the Council. All plant and equipment associated with the hotel must be demonstrated to comply with the derived threshold limits at noise sensitive receptors as detailed in Table 5.8 of Noise Impact Assessment, Redevelopment at Queens Parade, Bangor, prepared by RPS, referenced NI2123 17th December 2019. The development shall be carried out in accordance with the approved details.

Reason: To ensure future occupants of the apartments and patrons of the hotel are not adversely affected by noise.

37. The details of the specific sound insulation/design measures and noise control measures for the cinema shall be submitted to and approved in writing by the Council, prior to the commencement of development of the cinema. The development shall be carried out in accordance with the approved details.

Reason: To ensure future occupants of the apartments and patrons of the hotel are not adversely affected by noise.

38. Prior to the commencement of development, a dust management plan shall be submitted to and agreed in writing by the Council. This shall outline the site-specific dust mitigation measures to be employed during demolition and construction phases to minimise the generation and movement of dust from the proposed development to surrounding areas.

Reason: To ensure the emission of dust is controlled during the demolition and construction phase of the development.

39. The measures agreed in the dust management plan secured by condition 38 above shall be implemented, controlled and managed, with all records held on-site and made available to the Council if required.

Reason: To ensure the emission of dust is controlled during the demolition and construction phase of the development.

40. Prior to installation, full details and specifications of all combustion units to be installed are to be submitted to and approved in writing by the Council (in consultation with its Environmental Health Department). All installations as approved shall be completed and commissioned prior to occupation. No changes to the approved heating system provision shall be made without the prior written approval of the Council.

Reason: To control impact on air quality through emissions from any associated combustion plant.

41. Prior to commencement of any tenant fit out, for each unit or part thereof, full details and specifications of extract ventilation and odour control are to be forwarded to Ards and North Down Borough Council Environmental Health Department for review and approval in writing prior to installation. All installations are to 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 occupants of nearby residential premises are not adversely affected by cooking odours from the proposed food businesses.

42. Deliveries by commercial vehicles shall not take place outside the following hours: - 07:00-23:00hrs Monday to Saturday and not at all on Sundays or Public/Bank Holidays.

Reason: To ensure nearby residents are not adversely affected by noise from delivery vehicles and associated activity.

43. Prior to the commencement of any development hereby approved, with the exception of the establishment of the two site compounds as shown on Drawing No. 58C bearing the date stamp 30 June 2022 and any archaeological works required under conditions 17 and 18 above, a final drainage assessment, containing a detailed drainage network design and compliant with Annex D of PPS 15 shall be submitted to and approved in writing by the Council.

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

44. Prior to the commencement of any works on site with the exception of the establishment of the two site compounds as shown on Drawing No. 58C bearing the date stamp 30 June 2022 and any archaeological works required under conditions 17 and 18 above, an inspection shall be undertaken to review the site conditions and the potential for any re-occurrence of Japanese knotweed. If Japanese knotweed or other invasive species are found, necessary action shall be taken prior to works commencing on site. Details of these inspections and any action required shall be included in the 136 final Construction Environmental Management Plan (CEMP) referred to in condition 16 above. The development shall be carried out in accordance with the approved details.

Reason: To ensure that the presence of any invasive species is eradicated from the site.

45. No development activity, including ground preparation or vegetation clearance, shall take place with the exception of the establishment of the two site compounds as shown on Drawing No. 58C bearing the date stamp 30 June 2022 and any archaeological works required under conditions 17 and 18 above, until an updated breeding bird survey of the site has been undertaken by a suitably qualified and experienced ecologist between April and June and the findings of this survey and appropriate mitigation and

compensation measures to be implemented are included in a Breeding Bird Survey and Mitigation Report which shall be submitted to and approved in writing by the Planning Authority. The approved Breeding Bird Survey and Mitigation Report shall be implemented in accordance with the approved details and all works on site shall conform to the approved Breeding Bird Survey and Mitigation Report, unless otherwise agreed in writing by the Planning Authority. The Breeding Bird Survey and Mitigation Report shall include the following:

- a) Details of the results of the updated breeding bird survey carried out at the appropriate time of year and using appropriate methodology;
- b) Details of mitigation and compensation measures for birds, including the specifications and locations of the compensatory measures such as nest boxes/bricks;
- c) Details of the appointment of an Ecological Clerk of Works (ECoW) to oversee the implementation of mitigation and compensation measures for birds and their roles and responsibilities.

Reason: To protect breeding birds.

46. No vegetation clearance or building demolition shall take place between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a detailed check for active bird's nests immediately before clearance/demolition and provided written confirmation that no nests are present/birds will be harmed and/or there are appropriate measures in place to protect nesting birds. Any such written confirmation shall be submitted to the Council within 6 weeks of works commencing.

Reason: To protect breeding birds.

47. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. The Council hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 82 bearing the date stamp 24 May 2021.

Reason: To ensure there is a safe and convenient road system within the 137 development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

48. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. Prior to development in each phase becoming operational/occupied, the works necessary for the improvement of a public road shall be completed in accordance with the phasing particulars outlined below and the works outlined in blue on Drawing No. 82 bearing the date stamp 24 May 2021. The Council hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

Phase 1

- Footway works – connection to Marine Gardens at Queen’s Parade/Bridge Street junction and at Trinity Way connection to Main Street.
- Carriageway works at Trinity Way/Main Street junction to create a new vehicular egress route onto Main Street.
- Improvements to the kerb line radii and loading bay amendments to Main Street/King Street junction.

Phase 2

- Southwell Road widened and made two-way between Primrose Street and Queen’s Parade/Grays Hill/Southwell Road mini roundabout junction to allow creation of basement car park access.
- Works to King Street footway to allow creation of private residential courtyard.
- Marking of loading bays to western section of Queen’s Parade.
- Marking of disabled parking bays on Queen’s Parade.

Phase 3

- Raised table on Queen’s Parade at end of phase 3
- Loading bays marked out to eastern section of Queen’s Parade.

Phase 4

- Works to King Street footway and final surfacing to The Vennel.

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

49. No development hereby permitted shall be occupied or become operational as detailed in the phasing plan until hard surfaced areas associated with that phase have been constructed and permanently marked in accordance with the approved Drawing Nos. 58C (phase 1), 59C (phase 2), 60C (phase 3) and 61C (phase 4) bearing the date stamp 30 June 2022 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 parking, servicing and traffic circulation within the site.

50. No development hereby permitted shall be occupied or become operational until a Parking Management Plan has been submitted to and agreed in writing by the Council. The Plan as submitted shall be generally in accordance with that detailed on figure 8-2 of the Transport Assessment bearing the date stamp 10 February 2020. The development shall be carried out in accordance with the Parking Management Plan as agreed.

Reason: To ensure the safe and functional operation of the parking provided in accordance with its associated planned use.

51. The development hereby permitted shall not be occupied or become operational until a Travel Plan has been submitted to and agreed in writing

by the Council. The Travel Plan as submitted shall be generally in accordance with the Travel Plan framework bearing the stamp 10 February 2020. The development shall operate in accordance with the Travel Plan as agreed.

Reason: To facilitate access to the site by means other than the private car and in the interests of road safety and traffic progression to ensure the adequacy of the service facilities.

52. The development hereby permitted shall operate in accordance with the Service Management Plan bearing the date stamp 10 February 2020.

Reason: To facilitate access to the site by means other than the private car and in the interests of road safety and traffic progression to ensure the adequacy of the service facilities.

53. Refuse collection for the development hereby approved shall be carried out by a private company utilising Euro Bins. Details of the final management arrangements for refuse collection shall be submitted to and approved in writing by the Council prior to the occupation or operation of any part of the development hereby approved and the approved arrangements shall be carried out in perpetuity thereafter.

Reason: In the interests of road safety and traffic progression and to ensure the adequacy of the service facilities.

54. The vehicular access associated with each phase of the development, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing Nos. 58C (phase 1), 59C (phase 2), 60C (phase 3) and 61C (phase 4) bearing the date stamp 30 June 2022 prior to the commencement of any works within that phase. The area within the visibility splays and any forward sight line shall be cleared 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.

55. The access gradients to the development hereby permitted shall not exceed 4% (1 in 25) over the first 10 m outside the road boundary. Where the vehicular access crosses 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.

56. A Road Safety Audit in accordance with GG119 of the Design Manual for Roads and Bridges shall be carried out at appropriate stages within the construction and operation process. Any out workings of the safety audit shall be submitted to and approved in writing by the Council (in consultation with

DFI Roads) with stage 1 and 2 audits being prior to the commencement of development with the exception of the establishment of the two site compounds as shown in phasing drawing No. 58C bearing the date stamp 30 June 2022.

Reason: In the interest of safety and convenience of road users.

57. Details of the temporary structure required to enclose the undercroft car park, screening/safety structures adjacent to the proposed retail units and steps required to be constructed within phase 2 of the development as indicated on Drawing No. 59C bearing the date stamp 30 June 2022, shall be submitted to and approved in writing by the Council prior to the commencement of phase 2. The structures as approved shall be erected prior to the occupation/operation of any of the residential or retail uses within phase 2 and shall be removed prior to the occupation/operation of any part of phase 3.

Reason: In the interests of site safety and visual amenity.

58. The proposed lift as indicated on Drawing No. 25 bearing the date stamp 28 January 2020 shall be installed and fully functional prior to the occupation/operation of any of the residential or retail uses within phase 2 and shall be permanently retained thereafter.

Reason: To ensure the provision of suitable means of alternative access to the development between the Market Place and Queen's Parade.

Informatives

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.

Case Officer Signature:		Date:	
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Main Street ((Google Streetview image May 2023)



Queen's Parade (Google Streetview image May 2023)



Marine Gardens Car Park (Google Streetview image September 2022)



Existing entrance to site from King Street (Google Streetview image September 2022)




Southwell Road

ITEM 4.2

Ards and North Down Borough Council

Application Ref	LA06/2021/0118/F
Proposal	Housing development of 98 units and detached garages, site nos. 175 to 272 inclusive.
Location	West of Nos. 39 and 80 St Andrews Avenue, immediately West of 45 Longfield Way and North of Nos. 72 and 84 Longfield Way, Ballyhalbert.
Committee Interest	An application in the major category of development.
Validated	03/03/2021
Summary	<ul style="list-style-type: none"> • Section 27 of the Planning Act (NI) 2011 places a statutory duty on developers to carry out a Pre-application Community Consultation (PACC) on major development proposals. The Planning Department considered the PACC to meet the statutory requirements. • There is significant planning history for the site and the principle of development has been established through the granting of planning permission since 2007. • The site abuts the countryside and the proposed landscape buffer is similar to that approved under previous applications and officers consider the overall provision will soften the urban/rural relationship. • Planning Service considers the proposed development complies with the requirements set out under the LDP, SPPS and the extant regional planning policies. • Officers are satisfied that the proposed design and layout respects the character of the wider area, the overall layout makes adequate provision for public open space and that the proposal will not result in unacceptable impacts on residential amenity. • DfI Roads – no objections raised regarding the proposed access from the Shore Road and private streets determination agreed with Roads. In-curtilage parking and the provision of visitor parking considered sufficient. • The Strategic Flood Map (NI) indicates that there is a band of floodplain running parallel to the Inishargy Drain MW 3614 which flows along the north eastern boundary. A revised

	<p>Storm Drainage Layout Drawing was submitted, which is in line with PPS 15.</p> <ul style="list-style-type: none"> • One objection has been received and is considered within the case officer’s report.
<p>Recommendation</p>	<p>Approval</p>
<p>Attachment</p>	<p>Item 4.2a – Case Officer Report</p>

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2021/0118/F	DEA: Ards Peninsula	
Proposal:	Housing development of 98 units and detached garages, site nos. 175 to 272 inclusive.	Location:	West of Nos. 39 and 80 St Andrews Avenue Ballyhalbert, immediately West of 45 Longfield Way and North of Nos. 72 and 84 Longfield Way Ballyhalbert.
Applicant:	Boland Reilly Homes		
Date valid:	03/03/2021	EIA Screening Required:	Yes
Date last advertised:	15/04/2021	Date last neighbour notified:	07/03/2022
Consultations – synopsis of responses:			
DFI Roads		No objection subject to conditions	
DAERA Natural Environment Division		No objection subject to conditions	
Water Management Unit		Consult with Northern Ireland Water Limited (NIW) to determine if both the WWTW and associated sewer network will be able to cope with the additional load or whether they would need to be upgraded.	
NI Water		Available capacity at WWTW. NI Water did not highlight any capacity issues.	
Environmental Health		No objection	
Shared Environmental Service		No objection subject to conditions	
Rivers Agency		No objection subject to condition	
Letters of Support	0	Letters of Objection	1
Petitions	0		
Summary of main issues considered:			
<ul style="list-style-type: none"> • 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://epicpublic.planningni.gov.uk/publicaccess/>

1. Site and Surrounding Area

The application site is located on the western side of Shore Road, west of St Andrews Avenue and north of Ballyhalbert Park Homes. The site comprises areas of bare ground (hard standing), some grassland, scrub and wet/marshy grassland. There is a river running along part of the northern site boundary with the western section of the northern boundary being defined by a post and wire fence. A hedgerow forms the western boundary and the eastern and southern boundaries are undefined.

The site is within the settlement of Ballyhalbert and is on land zoned for housing (BT02 / HPA1) in the Ards and Down Area Plan 2015. The area is mainly residential in character. The existing dwellings are mainly 2 storey in height and either townhouses, detached or semi-detached house types.

2. Site Location Plan



3. Relevant Planning History

LA06/2020/0648/PAN (Proposal of Application Notice)

Section 27 of the Planning Act (NI) 2011 places a statutory duty on developers to carry out a Pre-application Community Consultation on major development proposals. The threshold for this proposal, which falls under housing, with the number of units exceeding the threshold of 50 and the site area also exceeds the threshold of 2 hectares. The PAN was submitted to the Council on 31 March 2022 and the application was received on 31 July 2020. The PAN was submitted more than 12 weeks in advance of the submission of this application.

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

A Public Information Notice was placed in the Newtownards Chronicle and the County Down Spectator on 3 September 2020. A leaflet drop to residential properties within a 200m radius of the application site took place on the 3 September 2020. These properties were located on St Andrews Avenue, Longfield Way, Ballyhalbert Park Homes – Kingfisher Way, Swallow Crescent, Linnet Drive and Sandpiper Avenue.

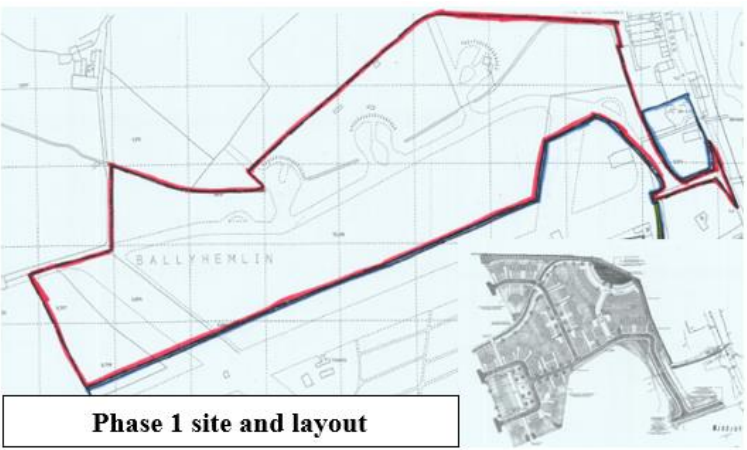
A Community Consultation Report was submitted alongside this proposal to explain what has been done to effect such compliance with Section 28 of the Planning Act (NI) 2011.

Outline approval

X/1997/0887/O - Site for housing development – Permission granted 5/10/2000

Reserved Matters – Phase 1

X/2002/0573/RM - Proposed development of 71 No dwellings (phase1) – Permission granted 05/03/2003.



Phase 1 site and layout

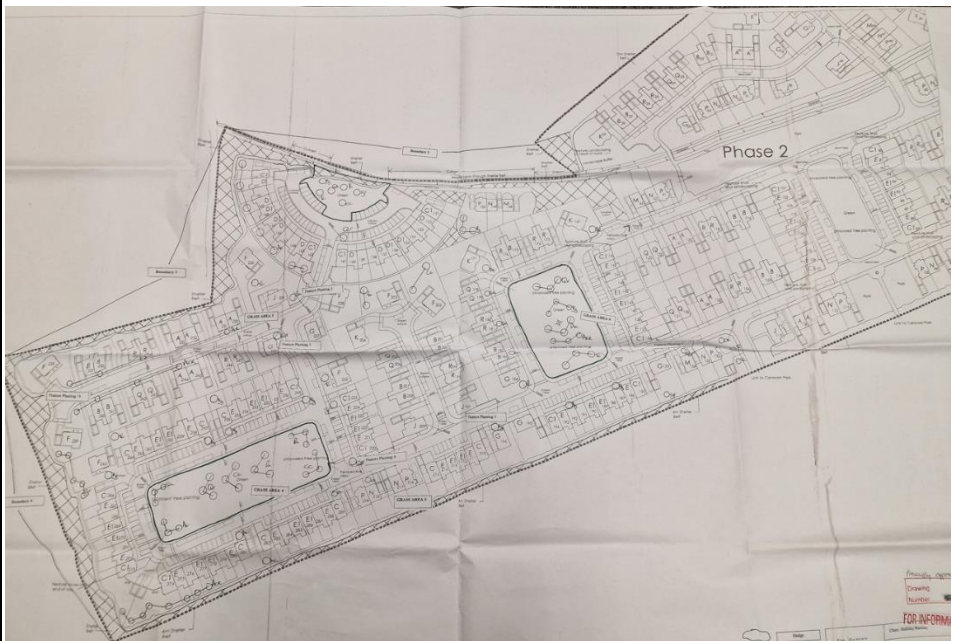
as per the adjacent site plan.



The Council's earliest orthophotography since the date of the approval is dated 2008 and it shows the road constructed along with 3 houses

Reserved Matters – Phase 2

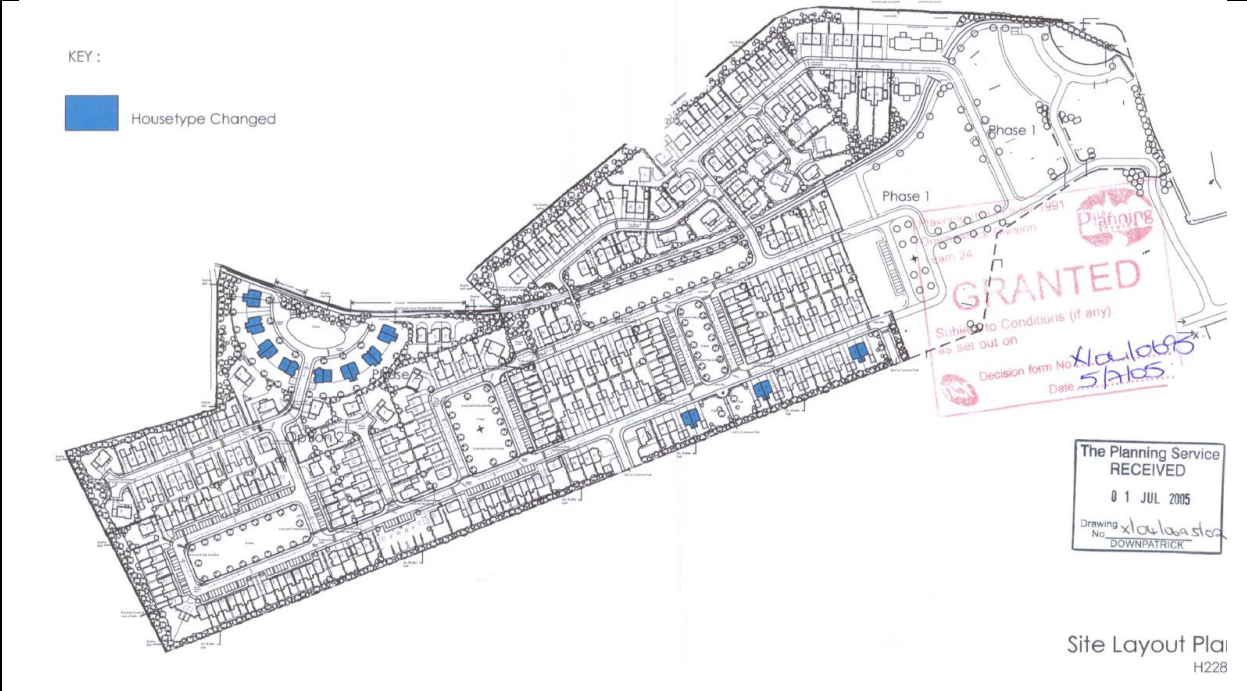
X/2002/1280/RM - Proposed development of 289 No. dwellings (Phase 2) including pumping station – Allowed on appeal (2003/A264) 16/02/2004.



The 2008 orthophotography image also shows the erection of the semi-detached dwellings between the first two areas of open space. I have considered the conditions imposed by the PAC and there were no phasing conditions. Since the 2002 approval, there have been a number of house type changes submitted and approved.

House Type Changes

X/2004/0695/F Change of house type – Permission granted 05/07/2005. The dwellings highlighted in blue on the arc below are located within the current application site and remain in a similar layout to that approved under X/2002/1280/RM. The areas of open space were not amended.



X/2008/0231/F - Proposed house type changes 97 No units detached semi detached & townhouses with detached garages site nos 175 to 272 inclusive – Permission granted 23/04/2012



4. Planning Assessment

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

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

Planning Guidance:

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

Principle of Development

The principle of development has been established on the site through the granting of planning permission since 2007. It is evident from the orthophotography that the reserved matters applications have been partially built out with further change of house type applications submitted as the need within the market has changed.

The general layout, including areas of open space is consistent with the Phase 2 reserved matters approval. An additional roadway along the northern boundary was approved under the 2008 application and it is retained in this proposal. There is one additional dwelling proposed in this application in comparison to the original reserved matters approval and the subsequent 2008 approval.

The site is located within the settlement of Ballyhalbert and is on land zoned for housing (BT02 / HPA1) in the Ards and Down Area Plan 2015. The key design considerations state that the access and dwelling layout shall ensure that dwellings front onto internal access roads, pedestrian and cycle links shall be provided to Shore Road, boundaries adjacent to countryside shall have 8-10m deep planted buffer and interim sewerage disposal methods may be necessary.

The dwellings will front onto access roads and there are pedestrian and cycle links to Shore Road via the main access road.

The site does abut the countryside on its northern boundary. There is existing planting along the boundary. A watercourse runs along the south-eastern boundary of the site. The existing planting will be supplemented with woodland planting. Drawing No 0602 PH2 which was approved under X/2002/1280/RM (included in Section 3. Relevant planning History) identifies the previously approved shelter belt adjacent to the countryside. The belt was provided along the northern, western and southern boundaries and ranged from 1m to 23m in depth. The 2008 approval replicates the varying belt depth with the exception of a section adjacent to the landscaped green area on the northern boundary which has no buffer planting proposed.

The proposed landscape buffer is similar to the previous approvals in that it ranges in depth from nothing up to 22m and therefore weight has to be attached to the history on the site. Public views from the Ballyhemlin Road are taken over an 800m distance and the north western boundary which will be most open to this view will have an 8-10 buffer of landscaping. I therefore consider that the overall provision will adequately soften the urban/rural relationship.

Sewerage disposal will be dealt with via the existing foul drainage infrastructure within St. Andrews Point. The proposal is considered to be in conformity with the plan provided it complies with the relevant regional planning policies.

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

Design, Visual Impact and Impact on Character of the Area

The proposal involves the erection of 98 No. dwellings within an urban context. The density of the proposed development would equate to approximately 22 dwellings per hectare (dph). The wider Established Residential Area (ERA) for the purposes of this assessment is considered to include all residential development in St. Andrews.

The area is characterised by medium housing in a range of house types and plot sizes. The average density in the area is 75dph. The density of the proposed development is lower than that found in the area and it is interspersed with areas of landscaping and open space. The density is not considered to be out of character with the area. The plot sizes are larger than many other sites within the larger development and therefore in my professional opinion the proposal complies with policy LC1.

The proposal involves the erection of 98 No. dwellings comprising of house types A, B, B1, C, C1, C2, C3, D, E, F and G. House type G is single storey and the other house types are all two storey. There is a mix of townhouses, detached and semi-detached house types. These house types are already present within the existing development. The finishes will be in render or in brick which will be in-keeping with the area. Some

sites will have integral garages within the house type and some will have detached garages.

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

The layout, scale and massing of the proposed dwellings will respect the topography of the site and the character of the area.

Public Open Space/Private Amenity Space

A minimum of 70sqm of private amenity space is provided to the rear of each dwelling and will be enclosed by fencing and proposed planting.

Policy OS 2: Public Open Space in New Residential Development from PPS 8 requires new residential development of 25 or more units, or on sites of one hectare or more, to have public open space provided as an integral part of the development. Whilst 98 No. houses are proposed on the application site, the overall development involves the erection of under 300 dwellings and therefore criteria (i) applies to the site. Criteria (i) advises that an expectation of at least 10% of the total site area is provided. The open space is provided in accordance with the 2002 reserved matters approval and therefore weight can be accorded to the provision provided.

Impact on Residential Amenity

Policy DQ1 (h) states that design and layout should not conflict with adjacent land uses and there should be no unacceptable adverse effect on existing or proposed properties in terms of over-looking, loss of light, overshadowing, noise or other disturbance.

The site is relatively level with all proposed dwellings being at a similar level to the existing and approved dwellings abutting the application site.

There is a pumping station abutting the western boundary and a large area of open space is proposed in front of 29-38 St Andrews Avenue. Sites 174 and 175 will look towards the parking areas in front of No. 38 St. Andrews Avenue however this is a public area.

The existing and approved dwellings along the southern and western boundaries of the site face either the side elevations of the proposed dwellings or another area of proposed open space. I have no concerns regarding the impact on the private amenity of existing or approved development.

I have also considered residential amenity for the proposed residents and noted that the proposed first floor gable windows primarily serve en-suites and are whilst these

are likely to be finished in obscure glazing, I do not consider that there will be intervisibility due to the proposed layout of the dwellings. Dwellings with bedroom or landing windows are orientated so that there will be no intervisibility with neighbouring windows and whilst rear windows will over-look private amenity areas, this is a relationship that you would expect within an urban area. The separation distances between opposing first floor windows ranges from 17-20m. 20m is the recommended back-to-back separation distance in Creating Places but as the ground levels are relatively level, I do not consider that the small shortfall will cause an unacceptable adverse impact in terms of loss of light, over-shadowing or dominance.

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

Access, Road Safety and Car Parking

The proposed site will use an existing access from the Shore Road. Each dwelling will have two car parking spaces. There are 21No. 3-bed townhouse, 2No. 2-bed bungalow, 11No. 3-bed detached, 35No. 4-bed detached and 28No. 3-bed semi-detached. In addition to the 2 in-curtilage parking spaces provided per dwelling, visitor parking spaces are also required in accordance with the Parking Standards document. House Type C can either be 3-bed or 4-bed so worst case scenario would require 57.75 visitor spaces and I note from Drawing 02D that 56 visitor spaces are indicated. If any of these dwellings are constructed as 3-bed, a reduction of 0.25 per dwelling is required for the visitor parking. On balance, I consider that a provision of 56 visitor spaces is sufficient.

DFI Roads has been consulted regarding the access and no objections have been raised. Private Streets Determination has been agreed by DfI Roads.

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

Archaeology and Built Heritage

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

Security from Crime

The layout has been designed to deter crime as the back gardens will be enclosed by other residential development. The dwellings will look onto the roadway.

Designated Sites/Other Natural Heritage Interests

The application site is hydrologically linked to Outer Ards Area of Special Scientific Interest (ASSI), Special Protection Area (SPA) and Ramsar site, hereafter referred to as the designated sites, which are of international and national importance and are protected by the habitats Regulations and The Environment (Northern Ireland) Order 2002 (as amended).

Ards and North Down Borough Council in its role as the competent Authority under the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended), and in accordance with its duty under Regulation 43, has adopted the Habitats Regulations Assessment (HRA) report, and conclusions therein, prepared by Shared Environmental Service, dated 13/02/2023. This found that the project would not have an adverse effect on the integrity of any European site.

The site contains hedgerows and the stream along the northern site boundary, all of which are Northern Ireland priority habitats (NIPH). Drawing No. 46A indicates that the existing boundary hedges are to be retained. This is welcomed by NED as they are priority habitats. An Outline Construction Environmental Management Plan (OCEMP) was submitted to the Council to provide details of the construction planned in close proximity to the stream, including all pollution prevention measures, such as suitable buffers between construction works, storage of excavated spoil, construction materials, refuelling, storage of oil/fuel, concrete mixing and washing areas and any watercourses or surface drains present on or adjacent to the site. NED is content with the majority of the plan however would rather that the 5m buffer is extended to 10m where possible. NED recommends that final details of the proposed mitigation measures and construction methods of all works in proximity to the surface drains and watercourse, including the storm outfalls, should be provided in a final CEMP which will be conditioned accordingly.

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 be reasonably required. NED has considered the content of the checklist and agrees that the hedgerows and scrub on site have the potential to support breeding birds. NED notes that scrub clearance is required, however, providing this is carried out outside the bird breeding season, or following a check for active nests by a competent ecologist as recommended in the Biodiversity Checklist, NED considers that this is unlikely to have a significant impact on breeding birds. Replacement planting is proposed and this is welcomed by NED. No other protected species were found to be utilising the site as a habitat.

Other Planning Matters

Flooding and Drainage

FLD 1 - Development in Fluvial (River) and Coastal Flood Plains. The Strategic Flood Map (NI) indicates that there is a band of floodplain running parallel to the Inishargy Drain MW 3614 which flows along the north eastern boundary.

The Revised Storm Drainage Layout Drawing relocated House 272 to outside the floodplain and House 225 now omitted from the proposals. Finished levels are confirmed to be min 600mm above the floodplain. Hence DfI Rivers cannot sustain an objection under this sub-policy FLD 1. Existing ground levels within the strategic established floodplain should remain undeveloped should not be raised.

DfI Rivers PAMU, while not being responsible for the preparation of the report and the Revised Storm Drainage Layout Drawing Number 54, accepts its logic and has no reason to disagree with its conclusions.

FLD 2 – Protection of Flood Defence and Drainage Infrastructure. The designated watercourse known as the Inishargy Drain MW 3614 flows along the north east boundary. The Revised Storm Drainage Layout Drawing complies with FLD 2.

FLD 3 - Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains. DfI Rivers PAMU have reviewed the additional information and the Schedule 6 Consent and whilst not being responsible for the preparation of the Drainage Assessment, it accepts its logic and has no reason to disagree with its conclusions.

It should be brought to the attention of the applicant that the responsibility for justifying the Drainage Assessment and implementation of the proposed flood risk measures (as laid out in the assessment) rests with the developer and his/her professional advisors (refer to section 5.1 of Revised Planning Policy Statement 15). The Drainage Assessment has demonstrated that the design and construction of a suitable drainage network is feasible. It indicates that the 1 in 100 year event could be contained within the attenuation system, when discharging at existing green field runoff rate, and therefore there will be no exceedance flows during this event. Further assessment of the drainage network will be made by NI Water prior to adoption. However, in order to ensure compliance with PPS 15, a condition requesting the submission of a final drainage assessment should be included on the decision notice.

Other Considerations

Local neighbourhood facilities are not required due to the scale of the proposal. The proposal will not damage the quality of the local area.

5. Representations

1 letter of objection has been received from the occupier of a dwelling in Ballyhalbert Park Homes. The concerns relate to parking availability in the area and the impact on the infrastructure of Ballyhalbert. In-curtilage parking will be provided for each unit and visitor parking can be provided within the red line to serve the development. Consultations have been carried out with external bodies regarding the impacts on infrastructure and no objections have been raised.

6. Recommendation

Grant Planning Permission

7. Conditions

- 1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

- 2. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.
The Council hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing Nos. 57E and 58A.

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

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

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

- 4. The dwellings hereby approved shall not be occupied until provision has been made and permanently retained within the curtilage of each dwelling for the parking of private cars at the rate of 2 spaces.

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

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

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

6. All hard and soft landscape works shall be carried out in accordance with the approved plan Drawing No. 56B dated 26 January 2023 and the appropriate British Standard or other recognised Codes of Practice.

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

7. Prior to the occupation of any dwelling details of the proposed phased implementation of hard and soft landscaping works and timings must be submitted to and agreed in writing by the Council. The hard and soft landscaping works shall be implemented in accordance with the approved phasing plan and time limits.

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

8. The existing planting along the northern and western boundaries as indicated on Drawing No. 56B shall be retained and augmented with a new hedge in accordance with the approved plans.

Reason: To ensure the provision, establishment and maintenance of a high standard of landscape and to protect Northern Ireland priority habitats.

9. 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.

10. No more than 25 of the dwellings hereby approved shall be occupied on site until the communal open space as indicated on Drawing No. 56B has been provided in accordance with the details shown on the plan. The open space areas shall be permanently retained and shall not be used for any purpose other than as open space.

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

11. The Planting and Maintenance Plan bearing the date stamp 3 March 2023 shall be carried out in perpetuity.

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

12. The long term management and maintenance of the open space, as indicated on Drawing No. 56B, shall be undertaken by a management company commissioned by the developer. Details of the arrangements to be put in place to establish the management company and details of the alternative measures which will take effect in the event that the management arrangements break down, shall be submitted to and agreed in writing with the Council prior to the occupation of any dwelling hereby approved.

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

13. If any retained planting is removed, uprooted or destroyed or dies, another tree or trees shall be planted at the same place and those trees shall be of such size and species and shall be planted within the next available planting season.

Reason: To ensure the continuity of amenity afforded by existing planting.

14. No development activity, including ground preparation or vegetation clearance, shall take place until a final Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Council. The approved CEMP shall be implemented in accordance with the approved details and all works on site shall conform to the approved CEMP, unless otherwise agreed in writing by the Council. The CEMP shall include the following:

a) the information presented in the Outline CEMP by Lisbane Consultants dated May 2022 and the further information highlighted by DAERA's Water Management Unit and Natural Environment Division in response dated 18/01/2023

b) Construction methodology and timings of works;

c) Pollution Prevention Plan; including suitable buffers between the location of all construction works, storage of excavated spoil and construction materials, any refuelling, storage of oil/fuel, concrete mixing and washing areas and any watercourses or surface drains present on or adjacent to the site;

- d) Site Drainage Management Plan; including Sustainable Drainage Systems (SuDS), foul water disposal and silt management measures;
- e) Water Quality Monitoring Plan;
- f) Environmental Emergency Plan;
- g) References to current GPP/PPGs and relevant good practice documentation;
- h) Direct reference to the Control of Pollution (Oil Storage) Regulations (Northern Ireland) 2010 and supporting mitigation measures in regards to compliance with the Oil Storage Regulations;
- i) In-depth details on the mitigation measures for silt and spoil treatment, cement/concrete/grout, oil/fuel storage and any other potentially polluting discharge generated from the proposed works, including the proposed methods of containment and final disposal.

Reason: To protect Northern Ireland priority habitats and species, to ensure implementation of mitigation measures identified within the Environmental Statement and to prevent likely significant effects on the Outer Ards Area of Special Scientific Interest (ASSI), Special Protection Area (SPA) and Ramsar site.

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

Reason: To ensure the project will not have an adverse effect on the integrity of any European site.

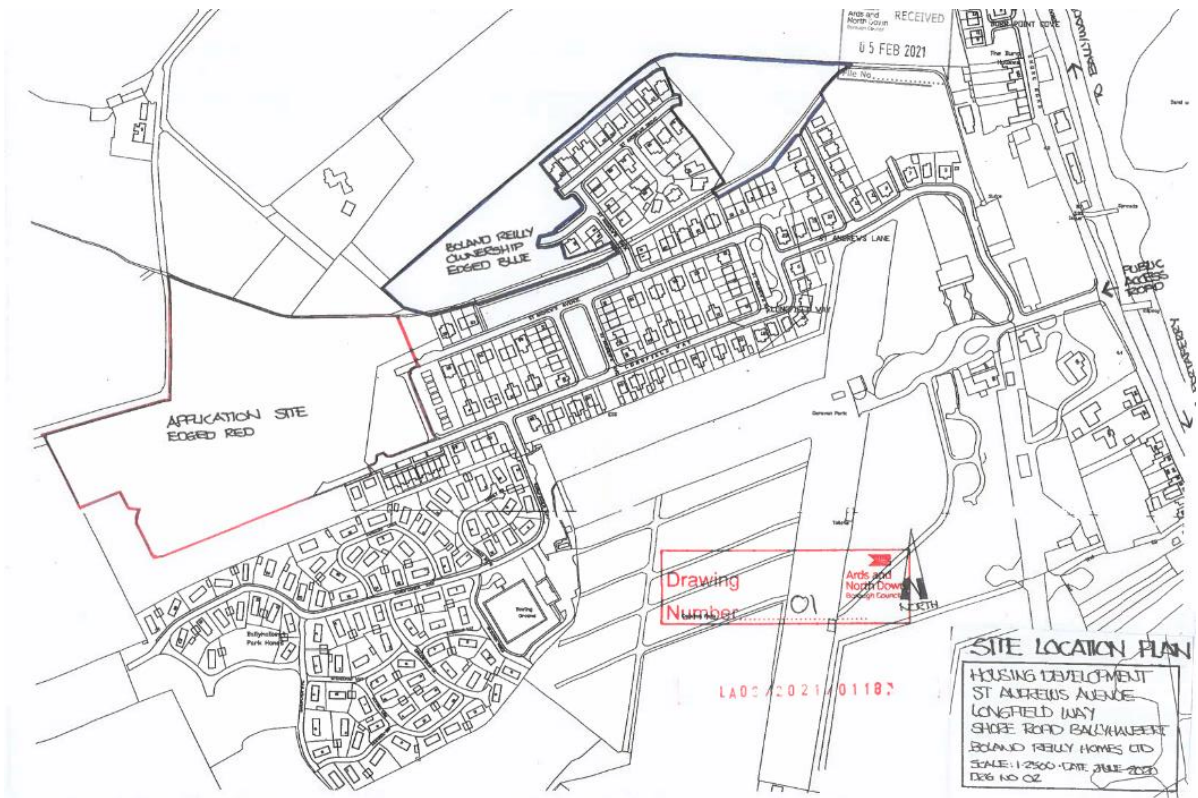
16. Prior to the construction of the drainage network, a final drainage assessment, compliant with FLD 3 and Annex D of PPS 15, shall be submitted to and agreed in writing with the Council. It shall demonstrate the safe management of any out of sewer flooding emanating from the surface water drainage network, agreed under Article 161, in a 1 in 100 year event. The approved details shall be fully implemented to the satisfaction of the Council.

Reason: In order to safeguard against surface water flood risk to the development and manage and mitigate any increase in surface water flood risk from the development to elsewhere.

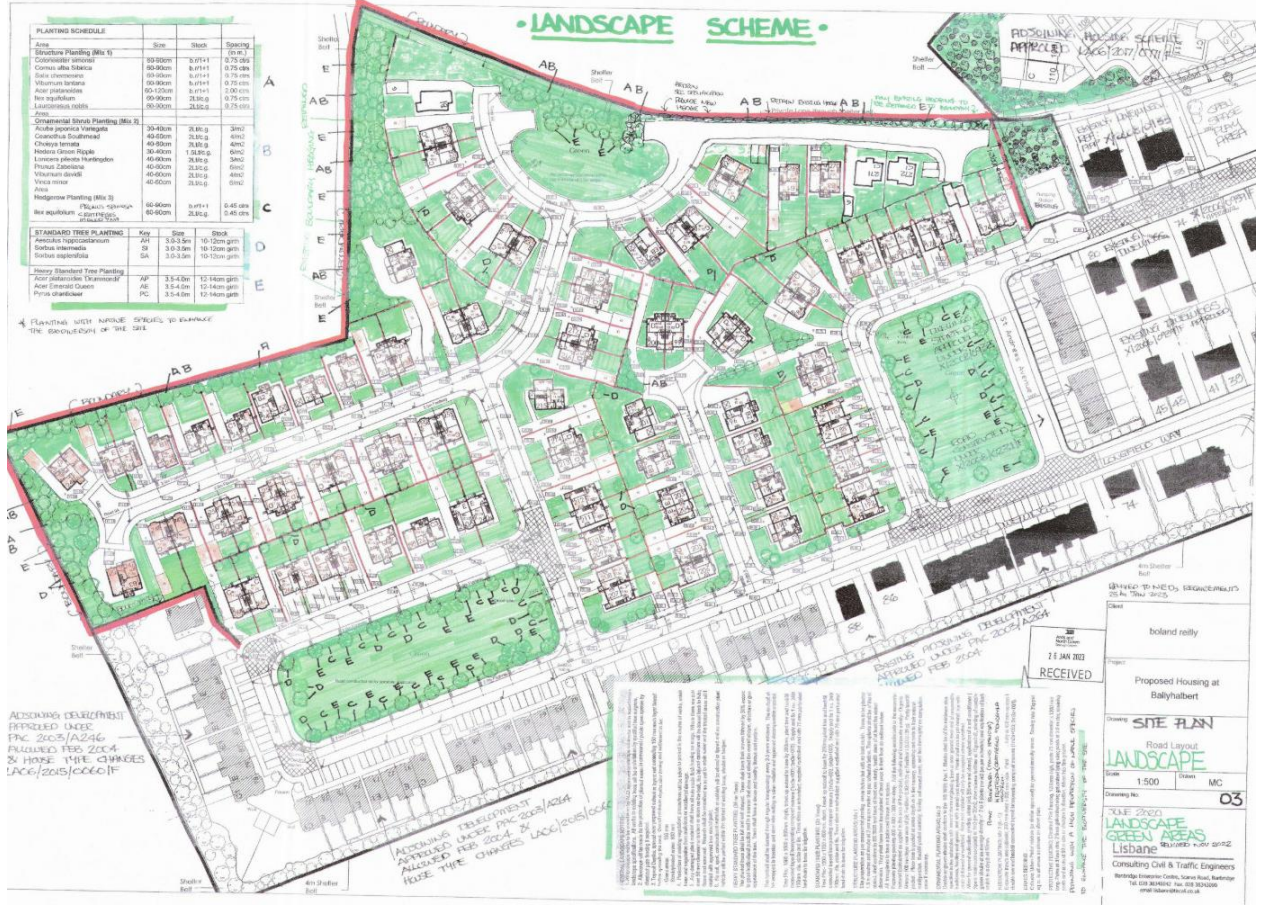
Informative

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.

Site location



Landscape Scheme/Site Layout



Private Streets Determination



House Type B – Townhouses



House Type B2

Proposed Front Elevation

Proposed Gable Elevation

Technical specifications and notes for House Type B2 elevations, including material requirements and structural details.

Proposed Rear Elevation

Technical specifications and notes for the proposed rear elevation of House Type B2.

RECEIVED
Ards and North Down Borough Council
08 APR 2021
File No.
LA06/2021/0118
Type B2
Ards and North Down Borough Council
Drawing Number: 48A

Technical specifications and notes for House Type B2, including material requirements and structural details.

House Type C – Semi-detached dwelling

Proposed Front Elevation 5 bedroom

Proposed Front Elevation 4 bedroom

Technical specifications and notes for House Type C front elevations, including material requirements and structural details.

Proposed Rear Elevation (typical)

Proposed Gable Elevation (typical)

Technical specifications and notes for House Type C rear and gable elevations, including material requirements and structural details.

Drawing Number: 18
Ards & North Down Borough Council
LA06/2021/0118
05 FEB 2021
Type C - 3/4 Bedroom

Technical specifications and notes for House Type C, including material requirements and structural details.

House Type G – Single Storey dwelling

Proposed Front Elevation

Technical specifications and notes for the front elevation, including roof pitch, window types, and door details.

Proposed Rear Elevation

Technical specifications and notes for the rear elevation, including roof pitch, window types, and door details.

Drawing Number 44

Arts and North Down Borough Council

RECEIVED 05 FEB 2021

LA06/2018/1155

Proposed Gable Elevation (1)

Technical specifications and notes for the first gable elevation, including roof pitch, window types, and door details.

Proposed Gable Elevation (2)

Technical specifications and notes for the second gable elevation, including roof pitch, window types, and door details.

Type G

REV A - Building Information - June 2007

AMENDMENTS

CONTRACT

Proposed Building Development of 100m² Floor, Suburban of 100m² Fully Finished

SHEET

House Type G Proposed Elevations

SCALE

1:50 @ A1 1:100 @ A3

DATE June 2007

BOLAND REILLY HOMES LTD.

Building Information


Design Co: 01875 1155

tel: 01875 3007 1000 fax: 01875 3007 1000

ITEM 4.3

Ards and North Down Borough Council

Application Ref	LA06/2022/0689/F
Proposal	Erection of a Coated Roadstone Plant and associated ancillary development to include bitumen storage tanks, aggregate storage bays, staff facilities, weighbridge and recycled asphalt pavement (RAP) processing and storage area.
Location	Land at Craigantlet Quarry, 73 Holywood Road, Newtownards
Committee Interest	An application in the major category of development.
Validated	12/08/2022
Summary	<ul style="list-style-type: none"> • Section 27 of the Planning Act (NI) 2011 places a statutory duty on developers to carry out a Pre-application Community Consultation (PACC) on major development proposals. Planning Service considered the PACC to meet the statutory requirements. • Proposal is located within an existing approved site for quarrying and ancillary activities - principle of development having been established subject to the development complying with all other policy and environmental considerations set out under regional planning policies. • Proposal meets requirement of SPPS and PPS 21 Policies CTY 13 & 14 given higher landform to the rear and vegetated backdrop, thus no adverse impact on skyline. • In terms of residential amenity, separation distances and intervening vegetation mitigate against any adverse impacts on residential amenity. • Environmental Health - content that the predicted process emissions are acceptable and there will be no adverse impact on the ASSI. • Natural Environment Division content that there will be no significant impacts on designated sites. • DfI Roads - no objections - ample in-curtilage parking available within quarry site and road access already exists. • The Regulation Unit (RU) Land and Groundwater Team - no objection following the submission of a Preliminary Risk Assessment. • No representations have been received.
Recommendation	Approval
Attachment	Item 4.3a – Case Officer Report

Development Management Case Officer Report			 Ards and North Down Borough Council		
Reference:	LA06/2022/0689/F	DEA: Comber			
Proposal:	Erection of a Coated Roadstone Plant and associated ancillary development to include bitumen storage tanks, aggregate storage bays, staff facilities, weighbridge and recycled asphalt pavement (RAP) processing and storage area	Location:	Land at Craigtantlet Quarry, 73 Holywood Road Newtownards		
Applicant:	Northstone (NI) LTD				
Date valid:	12/08/2022	EIA Screening Required:	Yes		
Date last advertised:	31/08/2022	Date last neighbour notified:	No neighbouring properties		
Consultations – synopsis of responses:					
DFI Roads		No objection			
NI Water		No objection			
DAERA Water Management Unit		No objection			
DAERA Regulation Unit		No objection subject to conditions			
DAERA Natural Environment Division		No objection			
Industrial Pollution & Radiochemical Inspectorate		Subject to other legislation			
Environmental Health (EHD)		No objection subject to conditions			
Historic Environment Division		No objection			
Belfast City Airport		No objection			
Letters of Support	0	Letters of Objection	0	Petitions	0
Summary of main issues considered:					
<ul style="list-style-type: none"> • Principle of Development • Integration and Impact on Rural Character • Residential Amenity • Access and Roads Safety • Designated Sites and Natural Heritage Interests • Pre application community consultation report 					

- 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://epicpublic.planningni.gov.uk/publicaccess/>

1. Site and Surrounding Area

The site is located on the eastern side of the Holywood Road. There is an existing quarry which covers some 32 hectares (ha). The planning application area is approx. 2ha and is rectangular in shape. It is located on the eastern part of the quarry and is currently utilised as a concrete batching facility and block yard. The topography of the site is relatively flat. Access to the quarry will remain unchanged from the Holywood Road. The surrounding area comprises the existing quarry site, agricultural lands and single dwellings.

The site is located within the countryside between Newtownards and Holywood, outside the settlements limits as designated in draft BMAP.

2. Site Location Plan



3. Relevant Planning History

LA06/2022/0338/PAN (Proposal of Application Notice)

The application falls within the major category of development. Section 27 of the Planning Act (NI) 2011 places a statutory duty on developers to carry out a Pre-application Community Consultation (PACC) on major development proposals. The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations 2020 (as amended) suspended the requirement for a PACC public event. In accordance with temporary statutory provisions during the emergency period the Applicant put in place alternative arrangements to engage with the public at pre-application stage. The PAN was submitted to the Council on 31 March 2022, more than 12 weeks in advance of the application being received on 5 July 2022.

The PAN complies with the legislation and it included details on the information proposed to be made available to the public and how the information could be accessed – either in hard copy or via electronic means via Quarryplan’s website. The advertisement was placed in the Newtownards Chronicle on 28 April 2022 and comments or questions on the project were to be submitted within a period of four weeks from the date of the advertisement. A Community Consultation Report was submitted alongside this proposal and comments raised by the public were minimal. Having reviewed the Pre-Community Consultation Report, I am satisfied that all statutory pre-application requirements have been fulfilled.

Historical approvals

W/1974/0136 – Continuation of existing quarry and ancillary activities – Permission granted

W/2001/0610 – Non-compliance with condition 8 of W/1974/0136 - The area to the north-east of the green line on Drawing 30/132/7274 shall be excluded from quarrying or ancillary uses – Permission granted



W/2013/0019/F - Temporary erection of coated road stone plant and ancillary stock bays – Permission granted



1. This development shall be for a limited period only, and shall cease on or before 31st May 2015
Reason: To limit the duration of the development in the interests of amenity.
2. No plant machinery shall be operated or deliveries taken at, or dispatched from the site outside the following times:
07.00 - 18.00 Monday to Friday
07.00 - 14.00 Saturday
And at no time on a Sunday or Public Holidays.
Reason: To safeguard the living conditions of residents in adjoining and nearby properties.
3. Within 2 months of the expiry of the time period for working referred to in Condition 01, all plant and machinery, shall be removed from the site.
Reason: To facilitate restoration of the site.

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
- 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 21: Sustainable Development in the Countryside
- A Planning Strategy for Rural Northern Ireland (PSRNI)

Environmental Impact Assessment (EIA) Screening

As the development is within an existing quarry which falls under Schedule 1, the proposal falls under Category 13 (b) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (NI) 2017 and therefore the Council is obliged under Regulation 12 (1) of these Regulations to make a determination as to whether the application is or is not EIA development. An EIA Screening Determination was carried out and it was determined that the planning application does not require to be accompanied by an Environmental Statement.

Principle of Development

The site is located within the countryside, outside designated settlement limits identified in draft Belfast Metropolitan Area Plan 2015. The adopted Belfast Metropolitan Area Plan 2015 (BMAP) has been quashed as a result of a judgement 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.

The application site is located within the countryside within each of the aforementioned plans. Draft BMAP is silent in relation to policy provisions for minerals workings and indicates that the policy provisions within the Planning Strategy for Rural Northern Ireland (PSRNI) will apply throughout the plan area.

The SPPS indicates that sustainable development should be permitted, having regard to material considerations, unless the proposed development will cause harm to interests of acknowledged importance. The SPPS recognises growing a sustainable economy and investing in the future as a key priority.

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. The policy states that minerals development will be assessed in accordance with the MIN Policies of PSRNI.

Given that the site is located within an established quarry site, the principle of development has been established subject to the development complying with all other policy and environmental considerations.

Integration and Impact on Rural Character

The site is located within the countryside unaffected by any environmental or landscape designation. It is also not located within an Area of Outstanding Natural Beauty.

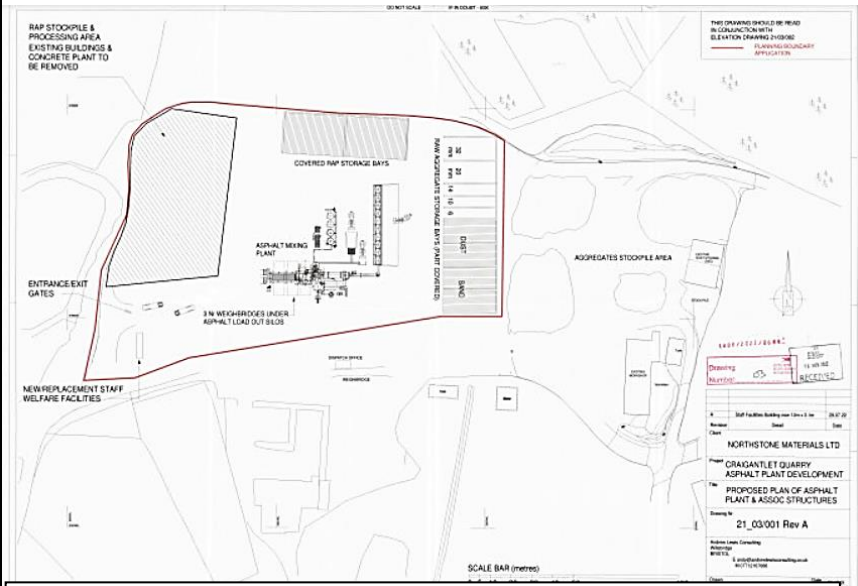
The Northern Ireland Landscape Character Assessment located the application site within LCA 102 Holywood Hills.

The application site is located some 150m from the nearest public road. The site benefits from its topography as it inclines from both the Holywood Road and Craigtantlet Road over the first 100m and then it falls gradually again in an eastern direction. There are also mature trees screening the quarry site.

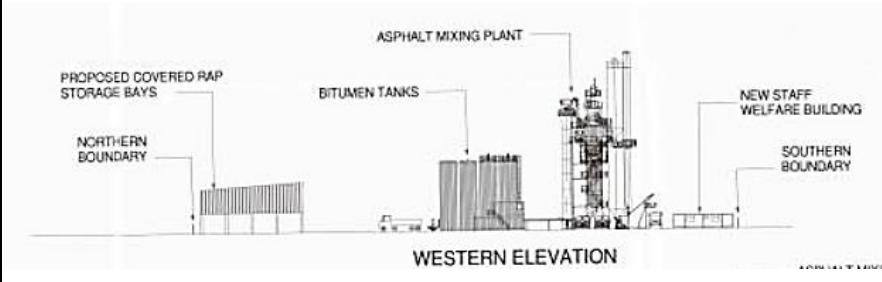
The siting of the new plant and ancillary structures is enveloped within the existing quarry site. The development includes a Coated Roadstone Plant which will be 35m high, bitumen storage tanks 14m high, aggregate storage bays 10m high, staff facilities 3m high, weighbridge and recycled asphalt pavement (RAP) processing and storage area.

Whilst short distance views from the Holywood Road are obscured, critical views of the site are evident from longer distances along the Carrowreagh Road and Ballymiscaw Road. A Landscape and Visual Appraisal was submitted with the planning application.

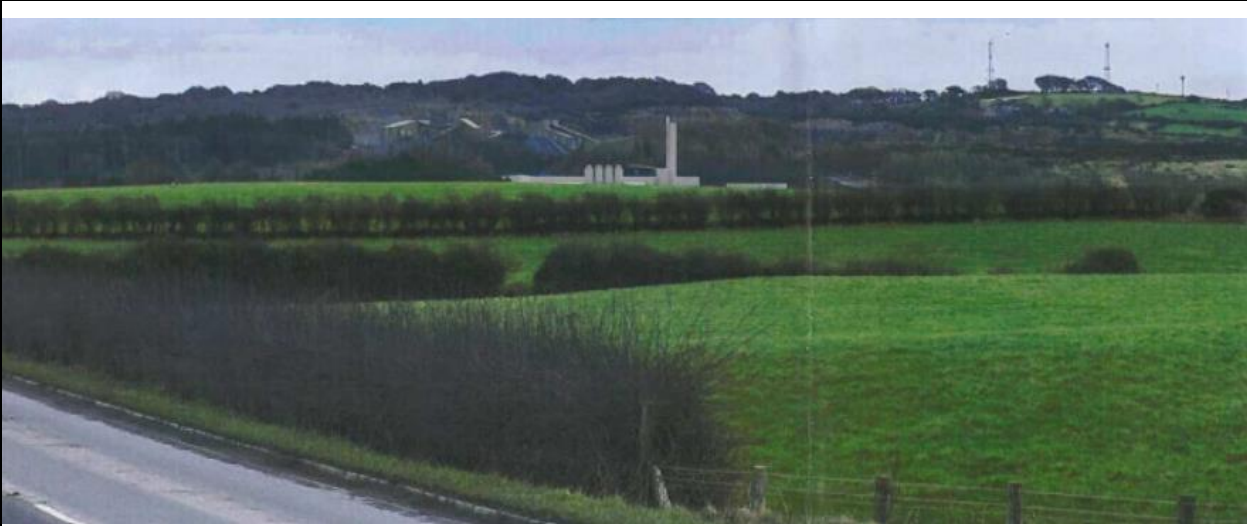
The proposed plant will be visually evident in the landscape however it is consumed along with the existing plant and ancillary structures and there is a back drop of vegetation.



Site layout



Western elevation (from Holywood Road)



Proposed view from Ballymiscaw Road

Policy MIN 2 of the Planning Strategy for Rural Northern Ireland (PSRNI) relates to visual implications and states that to minimise the visual impact, advantage should be taken of existing landforms and features. I consider that the siting of the plant is on lower land to ensure that it can avail of the landform to the rear which provides a backdrop for the proposed plant. The policy refers to the preservation of skylines and I am content that the siting of the plant will not have an adverse impact on the skyline.

On this basis I am satisfied that the development will visually integrate into the landscape and will cause no harm to the rural character of the area in accordance also with Policies CTY13 and CTY14 of PPS 21.

Residential Amenity

The nearest dwelling to the application site is 69 Hollywood Road (south-west of site) which is approx. 150m from the application site. 9 Craigtantlet Road (north-west of site) is approx. 169m from the application site.

Noise

A Noise Impact Assessment was submitted for the proposal and was considered by the Council’s Environmental Health Department (EHD) and it is content with the predicted noise levels. Conditions will be added to any potential approval to restrict the cumulative noise level at the nearby noise sensitive receptors following operation of the plant.

Air Quality

The application is sited approximately 1.2km north of Craigtantlet Woods ASSI. An Air Quality Assessment report was submitted and the Natural Environment Division (NED)

and Council's Environmental Health Department (EHD) were consulted on it. The report has concluded that emissions from the plant are not predicted to have any significant impacts on the adjacent ASSI. Given the location of the proposed development and on the basis of the submitted information, NED consider that the proposed development is unlikely to have any significant impacts on any designated sites. EHD is content that the predicted process emissions are acceptable.

The Industrial Regulation & Radiochemical Inspectorate (IRPI) response advised that the tar and bitumen activities detailed in the application will be regulated under the Pollution Prevention & Control (Industrial Emissions) Regulations (NI) 2013. As per permit PPC0091/08B condition 2.2.1.2 the operator is required to undertake annual monitoring and submit report to IPRI.

I am content that the separation distances and intervening vegetation will mitigate against any adverse impacts on residential amenity.

Access and Roads Safety

DfI Roads was consulted on the proposal and no objections were raised. Ample in-curtilage parking and turning can be provided for the proposal.

Designated Sites and Natural Heritage Interests

Part 1 of NIEA's Biodiversity Checklist was employed as a guide to identify potential adverse impacts on designated sites. No such scenario was identified.

An informal consultation was sent to Shared Environmental Service and it confirmed that the red line boundary is 25+ metres from a local watercourse located to the south east of the proposal. This connects over 12 kilometres into Strangford Lough European designated sites. Run-off from the proposed works is not considered an issue due to the 25+-metre buffer separating the works from the watercourse but also due to the type and nature of proposal requiring statutory permissions. NED also consider that the proposed development is unlikely to have any significant impacts on any Designated Sites.

Water Management Unit advised that it has issued a discharge consent for sewage TC69/88 (20427/76/8), and site drainage TC32/99 (31569/99/6) for this site. The applicant must refer and adhere to all the relevant precepts contained in DAERA Standing Advice Industrial and Commercial Developments paying particular regard to the circumstances that mean a review of any existing discharge consent is required.

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.

In terms of protected and priority species, a Biodiversity Checklist and Ecological Report were submitted as part of the planning application. The Natural Environment Division was consulted on the proposal and it offered no objections in relation to the potential impact on protected species and priority habitats.

Contamination

Regulation Unit (RU) Land and Groundwater Team noted that previous activities at the application site may have caused the land to be affected by contamination. A Preliminary Contaminated Land Risk Assessment (PRA) was requested and Waste Regulation Unit advised that if the construction of the proposed development involves the use of waste materials (for raising levels for example), a waste authorisation from NIEA will be required for this. It should also be noted that the development intends to bring on reclaimed asphalt pavement (RAP) in order to recycle it. As a result, a Waste Management Authorisation will be required in order that this activity can proceed.

A Preliminary Risk Assessment by Quarry Plan was subsequently submitted, and it confirmed that minimal, if any, excavation works will be required for the development as all plant and machinery will be located on concrete slabs of between 150 and 200 mm depth. Quarry Plan further noted that the slabs will sit on top of, or within very shallow foundations of, the existing surface that comprises of concrete and compacted aggregate material.

Regulation Unit (RU) noted that the proposal includes development of storage bays and one or more weighbridges that may require excavation works, however, given the likely shallow nature of any associated excavation and confirmed existing ground conditions, RU are content that there is limited risk of encountering contamination during the proposed works. RU would have no objection to any planning application subject to the recommended conditions to state what is required if new contamination is encountered during construction.

5. Representations

No letters of representation have been received.

6. Recommendation

Grant Planning Permission

7. Conditions

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2. The noise level at nearby sensitive receptors due to the operation of the roadstone coating plant, associated traffic movements and the proposed RAP processing operations(daytime) shall not exceed the predicted noise levels (dB LAeq, 1hr) detailed in the table below. The noise sensitive receptor locations are as detailed within the Noise Impact Assessment, prepared by AONA Environmental and dated March 2022.

Noise Sensitive Receptor Location	Predicted cumulative night-time noise level dB(A)	Predicted cumulative daytime noise level dB(A)
NSR 1 – 61-69 Hollywood Road	41.9	45.8
NSR 2 – 83A Dunlady Road	37.1	39.0
NSR 3 – 1 Craigantlet Road	37.5	40.0
NSR 4 - 9 Craigantlet Road	41.0	45.1
NSR 5 – 21 Craigantlet Road	37.5	41.6

Reason: In order to protect amenity at nearby sensitive receptors.

3. Following notification of a noise complaint by the Council to the quarry operator, the quarry operator shall, at their own expense, carryout an investigation and undertake noise monitoring to demonstrate compliance with the noise levels provided in Condition 2. The results of any monitoring undertaken shall be forwarded to the Council within 4 weeks of being requested.

Reason: In order to protect amenity at nearby sensitive receptors.

4. If during the development works, new contamination or risks to the water environment 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 by the Council, and subsequently implemented and verified to its satisfaction.

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

5. After completing any remediation works required under Condition 4 and prior to operation of the development, a verification report shall be submitted to and agreed in writing by 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 and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

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

6. In the event of cessation of operations for a continuous period of 2 years, the plant shall be dismantled and removed from the site.

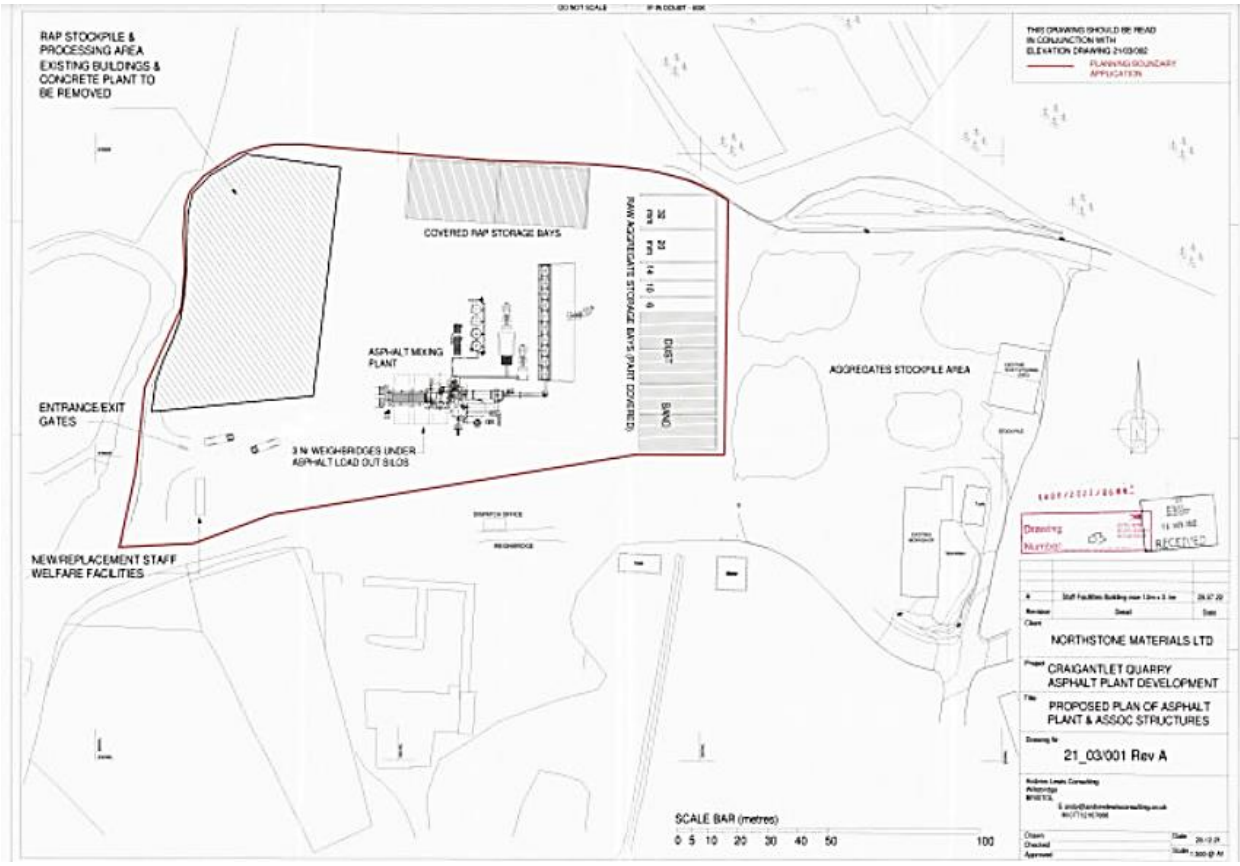
Reason: In the interests of visual amenity and site restoration.

Informative

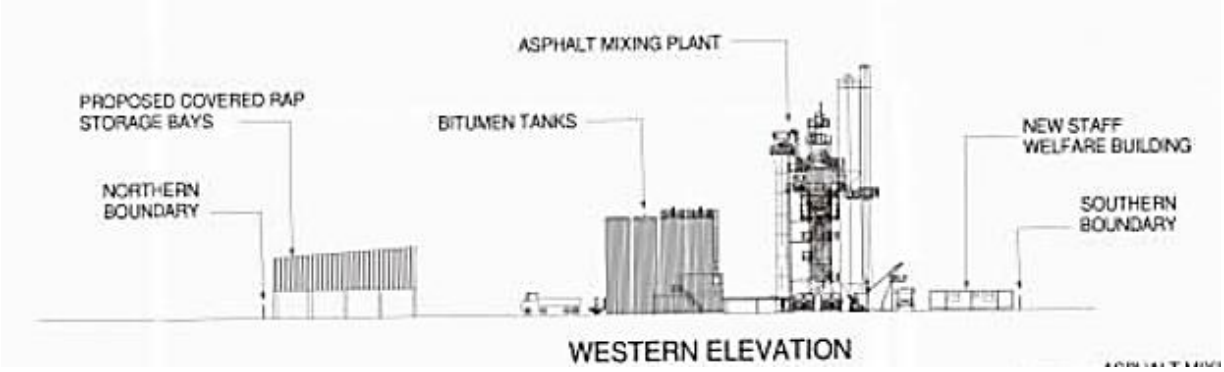
This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where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



Application site, entire quarry site and neighbouring dwellings indicated in pink



Site Plan




Elevation from Hollywood Road

ITEM 4.4

Ards and North Down Borough Council

Application Ref	LA06/2021/0834/F
Proposal	Residential development of 40 units comprising 14 detached, 22 semi-detached and 4 apartments, car ports, landscaping and associated site works (reduced no. of units from 41 to 40).
Location	Zoned housing land (HPA 1) and former builder's yard lands to rear of 10 Prospect Road, accessed from and north of 100-118 Oakdale, south of 1-4 Prospect Court, southwest of 14-30 (even) Prospect Road, and east of 9 and 10 The Paddock, Ballygowan.
Committee Interest	A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation.
Validated	14/07/2021
Summary	<ul style="list-style-type: none"> • Site within land zoned for housing under Ards & Down Area Plan 2015 – Designation HPA 1. • DfI Roads consultation response of Oct 2023 states that there is no requirement for the provision of the right turning lane or any other junction improvements at this time. • The site layout was amended in October 2022 and the units reduced from 41 to 40. • Six objections received regarding the original design and layout however no further objections submitted since the amendments of October 2022. Objections are considered within the Case Officer's Report. • The design and layout of this application meet the requirements of the SPPS and Policy QD1 of PPS 7 'Quality Residential Environments'. • The area of Open Space/communal space is appropriately designed with proposed residential units overlooking the area to promote safety and security. • The Planning Service's Tree Officer is content with the proposed scheme following changes regarding the protected trees at the site. • Waste water dealt with by negative condition requiring treatment works to be agreed prior to commencement of scheme and submitted in writing to Council.
Recommendation	Approval
Attachment	Item 4.4a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2021/0834/F	DEA: Comber	
Proposal:	Residential development of 40 units comprising 14 detached, 22 semi-detached and 4 apartments, car ports, landscaping and associated site works		
Location:	Zoned housing land (HPA 1) and former builders yard, lands to rear of 10 Prospect Road accessed from and north of 100-118 Oakdale, south of 1-4 Prospect Court, south west of 14-30 (even) Prospect Road and east of 9 and 10 The Paddock, Ballygowan.		
Applicant:	Brian Dawson Innova Developments (NI) Ltd		
Date valid:	14.07.2021	EIA Screening Required:	yes
Date last advertised:	12.01.2023	Date last neighbour notified:	28.12.2022
Letters of Support: 0	Letters of Objection: 6 from 6 separate addresses	Petitions: 0	
Consultations – synopsis of responses:			
Dfl Roads	No objection subject to conditions.		
NI Water	Capacity issues at foul sewer.		
Environmental Health Department	No objections subject to conditions.		
Dfl Rivers	No objections subject to a condition.		
DAERA NED	No objections subject to conditions.		
DAERA Regulation Unit	No objections subject to conditions.		
Council Tree Officer	Advice and guidance provided.		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Principle of development • Planning history of the site and surrounding area • Impacts on residential amenity • Natural heritage impacts, impact on protected trees and the potential effects on European Sites • Impact on the character and appearance of the area • Access and parking requirements • Potential for contamination • Impacts on existing infrastructure and sewerage requirements for the proposed dwellings 			

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 Northern Ireland Public Register (planningsystemni.gov.uk)

1. Site and Surrounding Area

The site is within an existing suburban residential area in Ballygowan. The access is via an existing vehicular access point from Oakdale. The site occupies lands known as 'Ballygowan House' and its associated gardens. The site was last used as a commercial builders yard and any buildings associated with this use and Ballygowan House and gardens have since been demolished and the site cleared. It has grassed areas and trees within the site. In terms of topography, the lands within the site fall gently throughout the site in a southerly direction towards Oakdale. A substantial band of mature trees defines the western boundary of the site. The northern, eastern and southern boundaries are formed by a mix of property boundaries of mostly close boarded timber fencing and hedgerows.

The site is surrounded by existing housing to the north, south and west and is therefore well screened from view from the surrounding public roads. The site is located within a well-established residential area of medium density, of predominantly one and a half and two storey semi-detached dwellings. External finishes are mostly red brick and render.



Figure 1 Aerial image showing the location of the site in Ballygowan

2. Site Location Plan



Figure 2 Site location plan

3. Relevant Planning History

On site

LA06/2019/0058/TPO – Lands at Ballygowan House, 12 Prospect Road, Ballygowan – Request to fell 6 trees – consent granted.

TPO/2008/0010 - Lands at Ballygowan House, Ballygowan – TPO confirmed: 19.03.2008

Adjacent to the site

LA06/2017/1149/O – 10 Prospect Road, Ballygowan – 15 dwellings – Outline permission granted on 05.02.2020.

In the wider area of the site

LA06/2018/1213/F - Lands to the East of 52 to 74 Dickson Park and to the South of Ballygowan WWTW Dickson Park, Newtownards - Waste Water Treatment Works (WWTW) with tanks, pipework, metalwork access - walkways, paladin perimeter fencing, perimeter earth bund, landscaping - Permission Granted: 04.12.2019

4. Planning Assessment

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

- Ards and North Down 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 site is within the settlement limit for Ballygowan with the majority of the site on lands identified as zoned lands for housing in the Ards and Down Area Plan 2015, so the principle of development in this case is acceptable.

Ards and Down Area Plan 2015 (ADAP)

The Ards and Down Area Plan 2015 sets out the land use proposals that will be used to guide development within the area. The site is within the settlement limit of Ballygowan as designated within the Ards and Down Area Plan 2015 and is zoned for housing – ‘HPA 1 Gardens and land to the rear of Ballygowan House’.

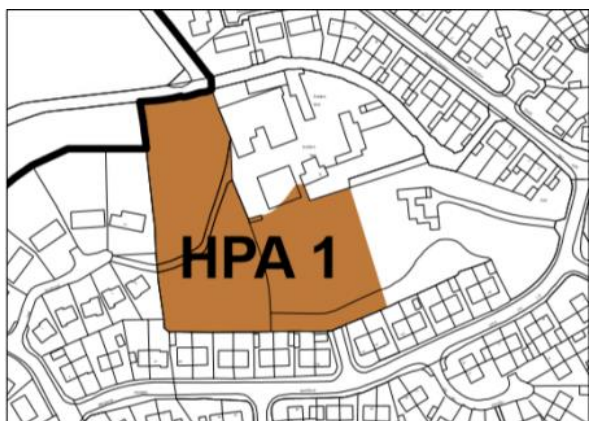


Figure 3 Extract taken from Map No.2/006

There are a number of Key Design Considerations are set out under this designation:

1. provision of a satisfactory standard of access via Oakdale, provision of a right turn facility at the junction of Belfast Road;
 2. the development layout and access arrangements shall be designed and landscaped to ensure that dwellings integrate well with existing development;
 3. the retention of all existing vegetation and the provision of additional well designed landscape planting using indigenous species along the outer boundaries and boundaries with existing development;
 4. an appropriate planted landscape buffer, using native species, to be provided along the boundaries of existing commercial premises; and
 5. interim sewage disposal measures may be necessary until such time as the required upgrade to the Waste Water Treatment Works for Ballygowan is complete and fully operational.
-
1. The application does not include a right turn facility at the junction of Belfast Road. The applicant has stated that this planning application was preceded by a detailed pre-application discussion with DfI Roads who agreed that a RTL was not necessary. The detail was included in the submitted Transport Assessment Form (TAF). DfI Roads has confirmed in a consultation response dated 6 October 2023 that this matter was discussed by DfI Roads officers and the applicant's agent and it was agreed that there was no requirement for the provision of the right turning lane or any other junction improvements at this time.
 2. The site layout plan shows that the development layout and access have been designed and landscaped to ensure the proposed dwellings integrate with the existing development.
 3. The agent explained that in his opinion the retention of all existing vegetation was unrealistic and that it is not physically possible to achieve the development of this part zoned/part brownfield site in a manner which retains all existing vegetation. Some minor clearance of a small number of trees to provide the vehicular access from Oakdale is planned as well as the centre of the site, however the majority of the trees within the site are retained as well as a proposed substantive planting plan. It is considered that this reasoning is suitably justified and the proposal will provide a quality residential environment which complies with the relevant regional planning policies. This will be discussed further in the report.
 4. This KDC is no longer relevant as the commercial premises have been demolished and has been incorporated into the current application site for development.
 5. The Council is aware of recent planning permission for a new WWTW. NI Water anticipate that this will be completed prior to the occupation of any proposed dwelling however as a precaution, a condition can be included that 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.

The proposal complies broadly with the zoning and all of the Key Design Considerations set out in the plan except for one relating to the non-provision of the right hand turn lane however as justification has been given by the applicant and agreed by DFI Roads, I am attributing determining weight to the factors for the non-provision and consider it to be acceptable for this site and area. It is therefore considered that the proposal is in general conformity with the plan and the principle of development is acceptable.

SPPS

Regional planning policies of relevance are set out in the SPPS and other retained policies. There is no conflict between the provisions of the SPPS and the retained policies in relation to the proposal. 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. The proposed development represents a sustainable form of development through the creation of residential units within a settlement limit and is therefore acceptable in principle subject to its compliance with the relevant planning policies as set out below.

Amended layout received on 18 October 2022

The initial proposal was for 41 units however it was considered to be unacceptable in terms of the site layout and relationship between existing and proposed properties. An amended scheme was received on 18 October 2022 which reduced the scheme from 41 units to 40 units and included changes to the design layout, communal open space and amenity relating to the proposed apartments. This scheme will be considered below.

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

The proposal is for 40 units comprising 14 detached, 22 semi-detached and 4 apartments, and the policy context therefore includes Policy QD1 of PPS 7. PPS7 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. The site is within the settlement limit of Ballygowan, it is on land that is zoned in the Plan for housing and is located adjacent to a predominantly residential area. The layout, scale and massing of the proposed dwellings will respect the topography of the site and the character of the area. The site gently falls towards the south and the layout has been designed to respect this and allow the dwellings to integrate with the existing topography. Changes to the existing levels of the site are minimal.

The proposed dwellings will be two-storey which respects the scale and massing of the area. The proposal will provide a mix of detached and semi-detached dwellings with 3-4 bedrooms and one apartment building providing 4 x 2 bed apartments which will provide choice and variety within the development. The dwellings will be finished in a mix of facing brick walls red in colour and smooth render soft white in colour with concrete interlocking roof tiles grey in colour. This will not have an adverse impact on the visual amenity of the area as a variety of finishes is expected within the urban area

and surrounding existing dwellings and within the wider area of Ballygowan there are many examples of different finishes.

All dwellings will front onto the internal road layout and will have in curtilage parking spaces which respects the pattern of development in the area. Garages will also be provided.

Landscaping will be provided within the site to soften the visual impact of the proposal. Existing mature trees will be retained as shown on the detailed landscaping plan with planting of new native species trees throughout as illustrated. New native species hedgerows will augment existing boundary vegetation.

The TPO trees within the site will be retained and protected during the construction phase and there is a sufficient separation distance between them and any new development to ensure their protection and maintain the existing character of the area. Further details will be provided regarding the TPO trees later in this report.

The density of the proposed development is not considered as significantly higher than the surrounding residential area. The list of Key Design Considerations for the zoning does not include density specifications. The proposed density of the proposed development is approximately 22 dwellings per hectare, compared with approximately 29 dwellings per hectare in Oakdale. It is considered that the density on site will not erode the character of the area as the form, scale, massing and layout of the new development will respect that of adjacent housing and will create a quality residential environment. It is considered that sufficient amenity space, parking, and landscaping will be provided and there will be no unacceptable adverse impacts on the privacy of residents due to separation distances between existing and proposed dwellings. The proposal is therefore 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.

Amenity Space

Sufficient amenity space will be provided within the development. The size of plot for each dwelling is adequate to ensure that sufficient provision is made for private amenity space in rear gardens with the average space standard for the development as a whole providing greater than 70m² amenity space per dwelling as recommended in Creating Places. The private amenity space for the dwellings ranges from approximately 65sqm to 553sqm with the average space standard of 122sqm per dwelling. In order to comply with Policy OS 2 of PPS 8, as the residential development is for more than 25 units, an area of useable open space has been provided in the western area of the site. It has been demonstrated that it equates to 12% of the total site area which is above the expected 10% provision advised in Policy OS 2. The open space has been designed as an integral part of the development. The dwellings adjacent to the open space have been designed to overlook it to provide an attractive outlook and security. The provision of public open space contributes to creating a quality residential environment. The proposal is therefore 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.

Impact on Residential Amenity

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

The proposed dwellings on sites 13-25 back onto the properties on Prospect Road and Prospect Court. The separation distances achieve the minimum 20m back to back standard required by Creating Places paragraph 7.16 measured from the rear of the proposed single storey sun rooms. This separation distance together with the lower finished floor levels of the proposed dwellings compared with the more slightly elevated finished floor levels of the single storey dwellings on Prospect Court and the chalet bungalows at Prospect Road combined with intervening boundary treatments and proposed landscaping will ensure that the proposed dwellings will not have any unacceptable impact on the amenity of adjoining dwellings.

The proposed dwellings on sites 1, 40 and 37 are positioned side on to the rear of the existing properties in Oakdale. There are no first floor windows on the southern elevation facing the existing dwellings and on this basis no adverse loss of amenity will be caused to the existing dwellings in Oakdale as a direct result of the proposed dwellings.

Outline planning permission for 15 dwellings on lands adjoining the site to the east was granted in February 2020 (LA06/2017/1149/O). The proposed dwellings on sites 1-13 abut the site boundary. I have reviewed the approved concept layout for the approved 15 dwellings, and I am satisfied that the separation distance and orientation of the dwellings in relation to the proposed development will ensure the residential amenity of all future occupants will not be unduly harmed.

The proposed internal residential layout has been designed to help safeguard the residential amenity of the proposed dwellings. It is considered that the proposed separation distances between new dwellings, the location and orientation of windows, and the proposed intervening boundary features, will together ensure that there will be no unacceptable adverse impact on the residential amenity of proposed dwellings in terms of overlooking, loss of light, overshadowing, or dominance. The proposed apartment building has only 1 bedroom window at first floor level on the western elevation closest to the proposed dwelling on site 31. This window is shown to be fitted with opaque glazing and will be conditioned on any permission granted. The communal parking for the apartments has been re-positioned away from the adjoining rear gardens on sites 31 and 32. The enclosed bin store has also been relocated further away from the boundary with a screen wall separating it as well as additional landscaping. 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

The proposal will use an existing access onto Oakdale. Oakdale is not a protected route. DfI Roads was consulted and offers no objections to the access. The road layout has been designed to adoption standards with PSD drawings included. The site layout demonstrates that each dwelling will be provided with 2 in curtilage parking spaces as well as on street visitor parking. The 4no.2 bed apartments requires 1.5spaces per unit

as per the Parking Standards and 6 spaces have been provided which is acceptable. DfI Roads has considered the plans and has offered no objections. As DfI Roads offers no objections it is considered that the proposal will not prejudice road safety or significantly inconvenience the flow of traffic. It is therefore considered that the proposal complies with Policies AMP 2, AMP 3 and AMP 7 of PPS 3, part (f) of Policy QD1 of PPS 7 and all relevant guidance including the Parking Standards.

Archaeology and Built Heritage

There are no features of the archaeological and built heritage to protect and integrate into the overall design and layout of the development. It is therefore considered that the proposal complies with 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 all communal areas are overlooked by proposed properties. It is therefore considered that the proposal complies with part (i) of Policy QD1 of PPS 7 and all relevant guidance.

Local Neighbourhood Facilities

Due to the modest scale of the proposed residential provision, there is no need to provide local neighbourhood facilities as part of the development. It is therefore considered that the proposal complies with part (d) 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.

In terms of protected and priority species, a Preliminary Ecological Appraisal completed by Ayre Environmental Consulting Ltd and a Tree Survey Report Sheet were submitted and NIEA Natural Environment Division (NED) was consulted. It commented that it 'has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns subject to recommendations.'

NED note that the ecologist states that 'Development proposals will see the removal of 20 existing trees wither due to the health condition of the tree or in order to facilitate the development of the site'. Drawing No.02 Site Layout/Tree Impact shows Trees 69, 92, 100, 105, 148 proposed for felling due to condition, and a further 15 trees (Nos. 68, 70, 70a, 71, 75, 78, 80, 83, 86, 87, 88, 96, 101, 102 and 104) proposed for removal to facilitate the development. The ecologist has assessed the bat roosting potential of trees that will be impacted as a result of the development, of the 20 trees assessed, 18 were found to have negligible roosting potential, and the remaining 2 trees (Nos. 83 and 88) were found to have low roosting potential. NED agree with the ecologist

recommendation that the two trees assessed as having low potential should be subject to soft felling techniques in order to ensure to impacts arise on bats which may use these trees for roosting. This will be included as a condition on any approval. It is therefore considered that the proposal complies with Policies NH1, NH2 and NH5 of PPS 2.

Protected Trees

The Council's tree officer has been consulted regarding the proposal and following numerous requests for additional details, the tree officer has offered advice and guidance including a number of conditions to be included on any permission granted. An annotation is included on the drawings to advise that there will be no change to existing levels within the root protection areas of trees to be retained. Protective measures details for the trees have been provided as well as details for the fence foundation methodology. All utilities will be located within the internal road network and service strips as annotated on the drawings. The detail provided in relation to proposed pathways is insufficient at present and a condition should be included to obtain site specific details in relation to the construction and make up of the new pathways to ensure that there will be no adverse impact upon trees to be retained.

Potential for Contaminated Lands issues

A Preliminary Risk Assessment and a Generic Quantitative Risk Assessment (Report No. 18-1162. 15/06/2021) was submitted together with a Remedial Validation Report. DAERA's Regulation Unit and the Council's Environmental Health Department have been consulted and have no objections subject to conditions.

Flood risk

Dfl Rivers has considered the Drainage Assessment by WSC Consulting dated May 2021. Dfl Rivers also has considered the objector's letter.

There are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within this site. An undesignated watercourse traverses the western portion of the site. Dfl Rivers has considered the potential flood risk in relation to the proposed development as per the criteria set out in PPS15 (revised).

Policy FLD1 - Development in Fluvial and Coastal Flood Plains – The Flood Hazard Map (NI) indicates that the development does not lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain.

Policy FLD2 - Protection of Flood Defence and Drainage Infrastructure – Section 7.iv of the Drainage Assessment states "There is no proposal to development any area of the lands within the 5m boundary of the watercourse as indicated on the site plan and therefore the proposal complies with FLD2." Therefore, Dfl Rivers considers Policy FLD2 is satisfied.

Policy FLD3 - Development and Surface Water – Dfl Rivers has reviewed the Drainage Assessment by WSC Consulting dated May 2021 and comments as follows:
Dfl Rivers, while not being responsible for the preparation of the Drainage Assessment accepts its logic and has no reason to disagree with its conclusions.

It should be brought to the attention of the applicant that the responsibility for justifying the Drainage Assessment and implementation of the proposed flood risk measures (as laid out in the assessment) rests with the developer and his/her professional advisors (refer to section 5.1 of Revised Planning Policy Statement 15).

The Drainage Assessment states that this is a preliminary drainage design, therefore DfI Rivers requests that the Council includes the following Condition as part of its planning permission if granted.

Condition - Prior to the commencement of any of the approved development on site, a final drainage assessment, compliant with FLD 3 & Annex D of PPS 15, and Sewers for Adoption Northern Ireland 1st Edition, including a detailed drainage network design and a demonstration of how out of sewer flooding due to exceedance of the drainage network will be managed, must be submitted to the Council for its consideration and approval.

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

Policy FLD4 - Artificial Modification of watercourses – Not applicable to this site based on the information provided.

Policy FLD5 - Development in Proximity to Reservoirs – Not applicable to this site.

It is therefore considered that the proposal complies with the policies in PPS 15 and will not be at risk from flooding or increase the risk of flooding elsewhere.

Sewage Disposal

The consultation response from NI Water indicates that whilst there is a public foul sewer within 20m of the proposed development boundary, the receiving foul sewerage network has reached capacity. The public system cannot presently serve this development proposal without significant risk of environmental harm and public disamenity including pollution, flooding and detrimental impact on existing properties.

Due to this it is considered that the proposal can be conditioned that 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. Evidence of this consent shall be submitted to the Council prior to the commencement of any development. This will ensure that there is no adverse effect on the water environment.

Water supply

NI Water has advised that the existing water supply network is operating at or above design capacity. The public system cannot presently serve this development proposal without detrimental impact to existing customers causing reduced pressure and potential water supply outages. NI Water has no plans within its current investment cycle to upgrade the water supply network in this area and is recommending connections to the system are curtailed. The Applicant is advised to consult directly with NI Water (InfrastructurePlanning@niwater.com) to ascertain whether a solution can be agreed. An Impact Assessment will be required for consideration by NI Water. On this basis a negative condition will be included so that no development shall take place until the method of water supply has been agreed in writing with NI Water. This

will ensure there is no adverse effect on the water environment.

5. Representations

6 letters of objection have been received from 6 separate addresses.

When the original proposal for 41no. dwellings was neighbour notified and advertised in the local press, all of the 6 letters of objection were received. The proposal was revised and amended to 40no. dwelling and following re-notification and advertisement in the local press no further letters of objection were received.

I have read all the letters and the main points of concern are summarised below:

Out of character, higher density, will cause overlooking and loss of light to existing properties abutting the site.

The above issues have been discussed and addressed previously in this report.

Increase in traffic, especially when added to the traffic generated from the extant approval for 15 dwellings on the adjoining site.

DfI Roads has been consulted regarding this application and is satisfied that the existing road infrastructure can accommodate the additional traffic generated from this development. It has stated it has no objections to the proposed development in terms of road safety.

Water pressure and capacity issues.

These issues have been discussed and addressed previously in the main report.

Protected trees to be removed.

This issue has been discussed and addressed previously in the main report. Any specific requests for works to be carried out to protected trees on the site boundary for amenity reasons should be made in writing in a separate request to the Council in relation to that TPO.

Site boundary treatments

A new hedgerow is to be planted along the site boundary adjacent to the properties on Prospect Court and Prospect Road as shown on the landscape plan Drawing 27A. The existing boundaries are outside the site outlined in red and should not be impacted upon by the proposed development.

On Street parking at 114 and 116 Oakdale

114 and 116 Oakdale have a detached garage on each property so there is off-street parking provision at each property for 1 car.

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. Prior to the commencement of any of the approved development on site, a final drainage assessment, compliant with Policy FLD 3 & Annex D of PPS 15, and Sewers for Adoption Northern Ireland 1st Edition, including a detailed drainage network design and a demonstration of how out of sewer flooding due to exceedance of the drainage network will be managed, must be submitted to the Council for its consideration and approval.

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

3. 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. Evidence of this consent shall be submitted to the Council prior to the commencement of any development.

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

4. No development shall take place on-site until the method of water supply has been agreed in writing with Northern Ireland Water. Evidence of this shall be submitted to the Council prior to the commencement of any development.

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

5. A soft-felling approach must be implemented for the felling of Tree nos. 83 and 88, assessed as having low roosting potential, as recommended in the Preliminary Ecological Appraisal completed by Ayre Environmental Consultancy Ltd, and dated June 2021. Each section of the tree should then be lowered to the ground and left undisturbed for no less than 24 hours prior to off-site removal or on-site chipping.

Reason: To minimise potential impacts on roosting bats.

6. No vegetation clearance/removal of hedgerows, trees or shrubs shall take place

between 1 March and 31 August inclusive, unless a competent ecologist has undertaken a detailed check for active bird's nests immediately before clearance/demolition and provided written confirmation that no nests are present/birds will be harmed and/or there are appropriate measures in place to protect nesting birds. Any such written confirmation shall be submitted to the Council within 6 weeks of works commencing.

Reason: To protect breeding birds.

7. All remediation measures as outlined in Section 6 of the Stratex Report, 12 Prospect Road Ballygowan, Preliminary Risk Assessment and Generic Quantitative Risk Assessment referenced no. 18-1162 and dated 15th June 2021 must be undertaken.

The applicant shall undertake additional soil sampling at and around the area of TP6 to delineate the extent of the hydrocarbon and PAH contamination within the shallow soils. Samples should be submitted to an accredited UK laboratory and screened against relevant GACs for a residential with plant uptake standard. Samples should be taken from depths of 0.0-1.0mbgl. An appropriate capping system shall then be installed within the garden and landscaped areas confirmed from analysis. A minimum capping system shall be 800mm dept within the gardens of all houses within this area with a minimum of a 250mm crushed stone capillary break at the base overlain with clean subsoils and topsoil. A 600mm capping system is recommended in landscaping areas with a minimum of 200mm crushed stone capillary break in the base overlain with subsoil and topsoil.

Install hydrocarbon vapour protection measures within any buildings that may be within the area identified in Figure 6 as a minimum based on the development plans provided within Figure 3. These protection measures should be incorporated into the proposed building floor designs for all properties within this area:

Provision of hydrocarbon vapour protection measures appropriate to prevent vapour intrusion within residential properties.

Concrete floor slabs (precast) with joints sealed and seals around any service entries.

Installation of a specific hydrocarbon vapour proof membrane suitable for hydrocarbon contaminants. The membrane should be hydrocarbon vapour proof, the membrane installed shall withstand the construction process. All joints and service penetrations should be lapped and sealed, and any other manufacturer's recommendations are adhered to.

A passive sub floor ventilation (minimum 150mm sub floor void) to achieve a minimum of one complete air change a day.

Reason: Protection of human health

8. On completion of the remediation and prior to the occupation of the proposed development, the applicant shall provide to Council, for approval, a Verification Report. This report shall demonstrate the successful completion of remediation works and demonstrate that the site is now fit for end-use and include details of:

Capping system

The Methodology and programme of the capping system.

Photographs and records of any excavation works within the source area including photographs showing depths to accommodate the capping layer.

Photographs of the clean material being used and placed on the source area, also showing depths being placed.

Records and photographs showing the depth of the capping system as required.

Details of the materials that were used for the capping system along with laboratory certificates and results which confirm that the materials are suitable for use

Hydrocarbon vapour protection measures

Final design of the hydrocarbon vapour protection measures along with any relevant calculations.

Specifications of membrane type and joint tape.

Records of the installation process including all inspections completed by a suitably qualified person.

Photographic and documented records installation and inspection results of each installation on a property-by-property basis.

Reason: Protection of human health

9. In the event that contamination not previously considered is encountered during the approved development of this site, the development shall cease and a written report detailing the nature of this contamination and its management must be submitted to Ards and North Down Borough Council for approval. This investigation and risk assessment must be undertaken in accordance with current best practice.

Reason: Protection of human health

10. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. Council hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No 28B.

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

11. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. No other development hereby permitted shall be occupied until the works necessary for the improvement of a public road have been completed in accordance with the

details outlined blue on Drawing Number 28B. Council hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

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

12. No dwelling shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of the development.

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

13. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the DfI Roads Street Lighting Section. (These works will be carried out entirely at the developer's expense.)

Reason: To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians.

14. No dwelling shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of cars at the rate of 2 spaces per dwelling.

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

15. All hard and soft landscape works shall be carried out in accordance with the approved Drawing 27A and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out within 6 months following the occupation of the last dwelling hereby permitted.

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

16. 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.

17. The long-term management and maintenance of the open space, as indicated on Drawing 27A and the Landscape Management Plan, shall be undertaken by

a management company commissioned by the developer. Details of the arrangements to be put in place to establish the management company and details of the alternative measures which will take effect in the event that the management arrangements break down, must be submitted to and agreed in writing with the Council prior to the occupation of any dwelling hereby approved. The landscape management plan shall be carried out as approved as per Drawing 27A, in perpetuity.

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

18. The existing trees indicated on the approved plan, Drawing 02B shall be retained. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place or any retained tree be topped or lopped other than in accordance with the approved plans and particulars, without the written consent of the Council. Any arboricultural work or tree surgery approved shall be carried out in accordance with the relevant British Standard 3998: 2010.

Reason: To ensure the continuity of amenity afforded by the existing trees.

19. The erection of fencing for the protection of any retained tree shall be undertaken in accordance with the approved plan Drawing 02B and in accordance with BS5837:2012 before any equipment, machinery or materials are brought onto the site for the purposes of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. Nothing shall be stored or placed in any area fenced in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavation be made or any other works carried out, or fires lit without the written consent of the Council.

Reason: To ensure the continuity of amenity afforded by existing trees.

20. No development shall take place until a schedule of landscape maintenance and management for the existing protected trees within the site has been submitted to and approved in writing by the Council. The Landscape Maintenance and Management Plan shall be carried out as approved.

Reason: To ensure the continuity of amenity afforded by existing trees.

21. The first-floor side windows highlighted green on drawings 04, 05 and 06, bearing the date stamp 10.06.2021, shall comprise of obscure glazing. The obscure glazing must be fitted prior to the residential units hereby approved being occupied and retained in perpetuity thereafter.

Reason: To protect the private amenity of the neighbouring properties.

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

Photos



Photograph of the vehicular access to the site, located between 114 and 116 Oakdale



Photograph of the dwellings on Oakdale with 114 Oakdale adjacent to the site access



Photograph of the dwelling on Oakdale with 116 Oakdale adjacent to the site access



Photograph of the existing site taken from the access



Photograph of the existing site taken from the access

Plans



Proposed Site Layout



Example of a detached dwelling (House Type A1.1)



Front Elevation - Brick Option



Side Elevation - Brick Option



Rear Elevation - Brick Option



Side Elevation - Brick Option

Example of a semi-detached dwelling (House Type C2.1)



Elevation to Street



Side Elevation



Entrance Elevation



Side Elevation


Apartment building

ITEM 4.5

Ards and North Down Borough Council

Application Ref	LA06/2022/0794/F
Proposal	Dwelling and shed (addition of retrospective shed and minor alteration to site boundary to Approval LA06/2021/0917/F).
Location	Lands 30m East of 7 Cardy Road, Greyabbey
Committee Interest	<p><i>A Local development application ‘called-in’ to Planning Committee from the delegated list by Cllr Martin for discussion on –</i></p> <p><i>“Policy CTY 13 – Integration and Design of Buildings in the Countryside</i></p> <p><i>e) the design of the building is inappropriate for the site and its locality; or</i></p> <p><i>(f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop In particular for the retrospective shed.”</i></p>
Validated	12/08/2022
Summary	<ul style="list-style-type: none"> • Principle of a dwelling on site has been established and remains acceptable given the site history. It was previously considered that the policy test under Policy CTY 10 was met with the previous permission remaining extant, giving the applicant a legitimate fallback position. • The changes to the house design are acceptable; however, it is the retrospective shed that is the principal reason for this “called-in” application. • The shed, located on lands within the approved curtilage, measures 14m x 9m with a 5m ridge height. • The front of the shed is 95m from the objector’s dwelling (No.9B) (measured building to building) and as such will not cause overshadowing, loss of natural light or dominance. Given the distance the Planning Service is satisfied that there will no significant loss of amenity in terms of noise, overlooking and loss of privacy. • The domestic shed backs onto adjacent farm sheds and reads with this group of buildings when viewed from Cardy Road. As such Planning Service is satisfied that there is no adverse impact on the surrounding rural character.

	<ul style="list-style-type: none"> • The applicant has submitted information to support his need for this size of domestic shed and has clarified that there is no business use associated with the shed. The applicant and family own a number of vehicles, trailers for their own personal use, for a motorsport and car club hobbies. • Any approval will be conditioned to remove Permitted Development rights to prevent any alteration to the shed or construction of further sheds/buildings without the written consent of the Council. • The Planning Service considers that the application meets the policy requirements of the SPPS, retained PPS 21 and the local development plan.
Recommendation	Approval
Attachment	Item 4.5a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2022/0794/F	DEA: Ards Peninsula	
Proposal:	Dwelling and shed (addition of retrospective shed to Planning Approval LA06/2021/0917/F)		
Location:	Lands 30m East of 7 Cardy Road, Greyabbey		
Applicant:	Mr Ian Culbert		
Date valid:	12 th August 2022	EIA Screening Required:	No
Date last advertised:	10 th August 2023	Date last neighbour notified:	31 st July 2023
Letters of Support: 0	Letters of Objection: 4 (from one address)	Non-committal: 0	
None			
<p>Summary of main issues considered:</p> <ul style="list-style-type: none"> • Scale, design and appearance; • Impact on amenity of neighbouring dwellings; • Impact on character and appearance of the character ; • Impact on landscape features and environmental quality; • 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 https://epicpublic.planningni.gov.uk/publicaccess/			

1. Site and Surrounding Area

This site consists of a parcel of land within a larger agricultural field approximately halfway between Greyabbey and Carrowdore. The site is set back from the road frontage – by approximately 220m - and is essentially the south-eastern corner of the field. Access is taken from an existing farm lane. The site is adjacent to a small farm holding with several outbuildings. There was a workman on site at the time of my inspection. There was a half-completed shed on the site (steelwork completed and blockwork on the lower half). Works have started on a dwelling with blockwork advanced to subfloor level.

The southern boundary of the site is largely defined by the existing farm buildings; the northern boundary remains undefined; hedgerow defines the eastern boundary. The farm buildings are located atop a small hill and are clearly visible to passing traffic. The site occupies lands on the northern side of the hill.

The area has a rural character with fields on all sides. There are a number of single dwellings in the area to the north at the road junction

2. Site Location Plan



3. Relevant Planning History

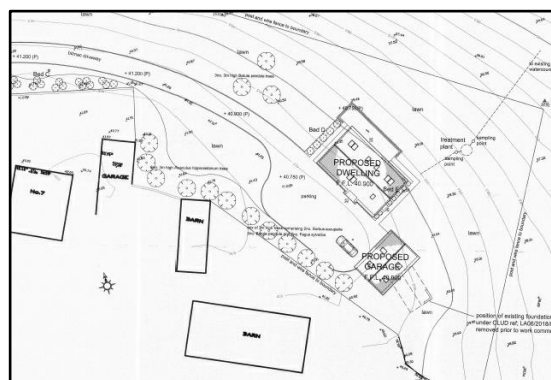
There are a number of planning histories material to the current application.

Planning history for a farm dwelling and garage was approved on the site in January 2011 (X/20090622/F).

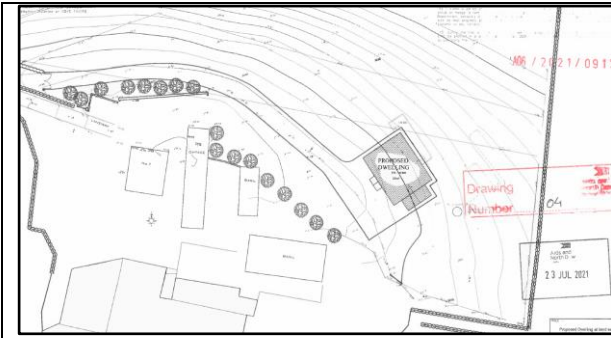
In 2018 the Council received an application for a Certificate of Lawful Existing Development in relation to the commencement of works in relation to farm dwelling referred to above. The Council was satisfied that the information provided by the applicant proved that works had lawfully commenced (LA06/2018/0752/LDE).

Following the Certificate, the Council then received an application for a change of house type to the original farm dwelling (LA06/2019/0238/F). Application was approved in April 2020. A second application for change of house type was considered and approved under reference LA06/2021/0917/F. Permission was granted in January 2022 and will expire in January 2027. Approval was granted with a condition that the foundations in relation to the Certificate (LA06/2018/0752/LDE) be removed prior to the commencement of any other works. In relation to this condition, an alleged breach was considered by the Council's Enforcement Team (LA06/2022/0005/CA). The Enforcement Team was satisfied the founds had been removed and the case was closed in July 2022.

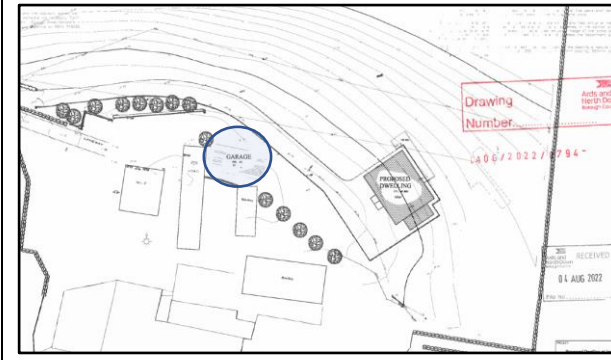
Beyond this, works appear to have started including an unauthorised shed. The shed was reported to Planning Enforcement and the current application was submitted to address this breach.



Site layout from first change of house type (CHT) in 2019 LA06/2019/0238/F



Layout from CHT in 2021 (Extant);



Proposed layout -location of shed highlighted in blue

4. Planning Assessments

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

- Ards & Down Area Plan 2015 (ADAP)
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 21: Sustainable Development in the Countryside
- Planning Policy Statement 2: Natural Heritage

Planning Guidance:

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

Principle of Development

Despite its end date, ADAP currently acts as the LDP for this area. The site is within the countryside outwith any settlement. The plan makes no specific provisions for single dwellings but defers instead to current regional policies. In this context, PPS21 -Sustainable Development in the Countryside is retained and is the latest expression of policy for this kind of development.

In relation to the subject matter, the SPPS echoes the provisions of PPS 21 in relation to dwellings in countryside.

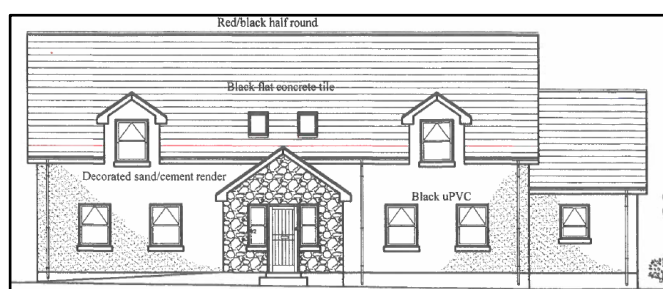
CTY1 of Planning Policy Statement 21 'Sustainable Development in the Countryside' sets out the types of development which are considered to be

acceptable in the countryside. All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for drainage, access and road safety. More specifically, CTY1 makes provision for a farm dwelling in accordance with CTY 10.

It was previously considered that the policy tests in relation to CTY10 were satisfied and a farm dwelling was subsequently approved. Permission for the dwelling is extant. In light of the planning history and the legitimate fallback position available to the applicant, it is considered the principle of a dwelling on the site has been established and remains acceptable.

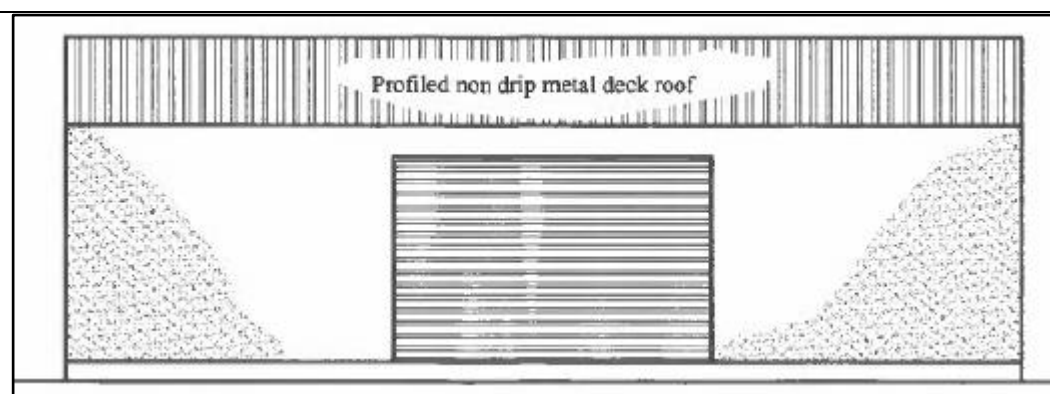
Integration and Impact on Rural Character

Permission is sought for a storey-and-a-half dwelling. The dwelling will be the same design as was approved in the previous approval. The siting and orientation are to remain as approved. It would therefore not be possible to 'build-out' both houses. The dwelling will be of typical form and massing with a modest return to one side. Dormers on the wall plate, walls to be rendered with porch finished in stone cladding. Reasonable solid-to-void ratio and roof material described as black flat concrete tile. The dwelling will be approximately 300m from the public road and will be built at a lower level than the adjoining farm buildings. The dwelling itself will have no greater impact on the landscape than what has been approved. The main difference between the current application and the extant permission is the addition of the shed. No material change in the size of the curtilage. The red line boundary has been drawn more neatly around the farm buildings resulting in the shape of the southern boundary differing from the southern boundary of the extant permission; I do not consider this to be of any consequence to the landscape or to the rural character of the area. The shed would appear to be located on lands within the approved curtilage.



Proposed front elevation

The proposal includes a retrospective shed – which is materially different from the extant permission. The shed is larger than the average domestic shed and has been the focus of a number of objections submitted from No.9B. The shed will be 95m from the objector (measured from building to building). The shed is 14m x 9m and has a 5m ridge height.



Proposed shed

Whilst the objection was mainly concerned with the impact on residential amenity, the impact on the local landscape was also raised.

The building will 'back onto' the adjacent farm sheds. When viewed from the road, the shed will essentially be read with the existing group of buildings. The siting adjacent to existing man-made structures effectively assists integration and minimises the impact on the character of the rural landscape. Notwithstanding other arguments about the need for such a shed or the impact on amenity, I consider the building to be sympathetically sited adjacent to these existing man-made structures and will have no material impact on the landscape value of the area.

Taking into account the extant permission and the proximity of existing agricultural buildings in relation to the proposed shed, I do not consider the impact on rural character to be determining.

A landscaping plan was submitted with the application. It is recommended that any decision to grant permission be appropriately conditioned to ensure the undefined northern boundary is planted, and maintained with a native species hedgerow.

Sewerage Disposal

The application form indicates use of a septic tank (as did the previous application). Applicant has obtained a Consent to Discharge from NIEA and it is therefore considered there is negligible risk from disposal of effluent. The Consent was granted in February 2023 and was subject to several conditions (including the discharge consisting of sewage effluent from a single domestic dwelling). The issue of where the effluent will discharge to was also raised by the objector. The objector considers the receptor to be nothing more than a ditch and states that he was informed by this office during a previous application that the ditch was not a watercourse. At the time, the Case Officer had confirmed it was not a *known* waterway. Regardless of how it is described, DAERA has assessed the details of the Consent application and considered it to be acceptable.

Residential Amenity

The Council considers it important that the amenity of all residents is protected from 'unneighbourly' development 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.

The closest dwelling to the site is the old farmhouse at No.7. There are interposing farm buildings located between the shed and the farmhouse. There will be no direct views between the proposal and the No.7 and I do not consider the amenities of same to be materially affected. Clearly the permission was sought by the farmer originally, so the most affected 3rd-party who is not related to the planning history is the objector's property at No. 9B.

Residential amenity was highlighted as the main reason for the objection. The objector questioned the nature and description of the proposal. The applicant's original application Form described the proposal as a 'dwelling and garage'. In the interests of transparency this was later described as a 'dwelling and shed', as it was considered this would better convey the nature of the proposal to the reader. The Form also indicated that the building was built to cluster with the farm and would be used to garage emergency response vehicles for the NI 4X4 Response Network. This explanation raised concerns from the objector in that the building would be used for a non-domestic purpose. The objector feared the shed would be used more akin to a business with access required 24hours a day and 365 days a year. The objector considered this would lead to increased noise and traffic day and night on Cardy Road. From speaking with the objector and talking with them on site, they have grave concerns the proposal would lead to visitors coming and going with vehicles at all times of the day. Furthermore, it was feared the proposal would be used as something of a gathering point for the Response Network with people standing outside the shed with direct and unobstructed views towards No.9B.

These comments provoked the applicant to submit further information to clarify matters. The submission explained the shed will only be for personal and domestic use and would not be a base for the Network. The family own a number of 4x4's, two cars and also a couple of trailers. All vehicles are personally owned by the family, and the 'response' aspect of the vehicles was secondary to use as an 'everyday' domestic shed. For context, the applicant stated he has been called upon to assist four times in the past two years. Whilst speaking with the applicant, he considered the original reference to the Network to have given a false impression as to the nature of the shed. The applicant has clarified that he and his wife both have a car and jointly use a Land Rover for everyday journeys (the Land Rover is also used for the Response Network). A second Land Rover is used in association with the applicant's volunteering and also in his role as a Motorsport UK licensed rescue and recovery official (the applicant has stated a trailer and recovery 'dolly' are used in connection with this role). The applicant has also said that a further two vehicles are used in connection with participation in cross-country motorsport events. Mr Culbert also owns a classic Land Rover which is displayed at events organised by NI Land Rover Club.



Proposed shed in red; objector's dwelling in blue (No.9B)

The objector remains unconvinced as to the domestic nature of the shed. Questions were raised as to how the Council could consider this under a residential application given the size of the shed. I informed the objector that, in terms of scale, I was not aware of a cut-off point after which a building cannot be domestic; rather, it is a matter of scale and degree in the context of the particulars of the application. The more pertinent matter is that I do not consider any third party to be prejudiced by the description. The application is being considered as a domestic shed and any future approval should include a condition to ensure the use of the shed remains incidental to the use of the dwelling. As a further control, it is my professional opinion that the removal of Permitted Development rights to ensure the shed cannot be extended/alterd – and to ensure that more sheds cannot be erected – is justified given the circumstances of the application.

The objector's dwelling sits at a much lower level than the garage – essentially the outlook from the front of their property will be one of looking directly up towards the front elevation of the shed. It must be said that there is already a number of farm buildings on top of the hill which are already in clear sight when looking from the front of the objector's property. The shed will be orientated towards the north (towards the objector) whereas the farm sheds face west towards the road. However, I do not consider this to be determining especially when account is taken of the considerable separation distance (95m) between the objector and the shed. Whilst the shed will have a roller-shutter door, there are no windows on the elevation facing the objector. On balance, I consider this distance to mitigate against any sense of dominance and any significant loss of amenity in terms of noise, overlooking and loss of privacy.



Objector’s dwelling to left: proposed shed to right

Access and Road safety

No alterations to the access are proposed. Proposal relates to a change of house type only and no additional dwellings will be built. Given the extant approval it has not been considered expedient to consult with DfI Roads.

Impact on Designated Sites/Natural Heritage Interests

Part 1 of NIEA’s Biodiversity Checklist was employed as a guide to identify any potential adverse impacts on designated sites. The site is approximately 2km from the coast and its associated protected areas. The closest waterway is 350m to the west (although there is a small area of pondage approximately 200m to the east). Given these separation distances, I do not consider there to be any reasonable prospect of run off or contamination of any environmentally sensitive area. As referred to above, there is an extant approval on the site, and I do not consider the proposal to have any greater impact on any designated areas that what has been approved. 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. The proposal will not involve demolition or conversion. No material removal of trees and hedgerows is associated with the development.

5. Representations

The Council received a number of objections from No.9B. Objections focussed on how the shed would be used and the impact on residential amenity. It is not necessary to rehearse all that I have said above, suffice to say I consider the site capable of accommodating a larger shed without detriment to both the character of the area and the amenities of those living

in No.9B. Whilst there may be an unusual juxtaposition between the shed and the objector's dwelling in that they will face one another, I consider there to be sufficient separation to avoid any sense of dominance or significant loss of amenity. The shed will be adjacent to existing farm buildings, and I do not consider it to be incongruous on the landscape. The shed will be almost entirely within the originally approved domestic curtilage and both parties are aware that it would be my intention to add a condition to restrict the use of the shed to incidental purposes only. Any breach of condition or change of use on the site would be subject to investigation from the Planning Department's Enforcement section.

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. All hard and soft landscape works shall be carried out in accordance with the approved details as shown on drawing No.02B and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out in the first available planting season following occupation of the dwelling hereby permitted.

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

3. The new boundary, as indicated by A-B on drawing No.02B shall be defined by a timber post and wire fence with a native species hedgerow planted on the inside in the first available planting season following occupation of the dwelling and shall be retained in perpetuity at a minimum height of 1.5m.

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

4. 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.

- 5. This planning permission is granted in substitution for planning permission LA06/2021/0917/F and only one dwelling shall be erected within the site outlined in red on stamped approved drawing No.01.

Reason: To prevent an accumulation of dwellings on the site.

- 6. The shed, hereby permitted, highlighted in blue on approved drawing No. 02B, shall not be used at any time other than for the purposes incidental to the dwelling hereby approved.

Reason: To control the use of the building at this rural location.

- 7. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 or any order revoking and re-enacting that order, the shed highlighted in blue on approved drawing No.02B shall not be altered in any way without the written consent of the Council.

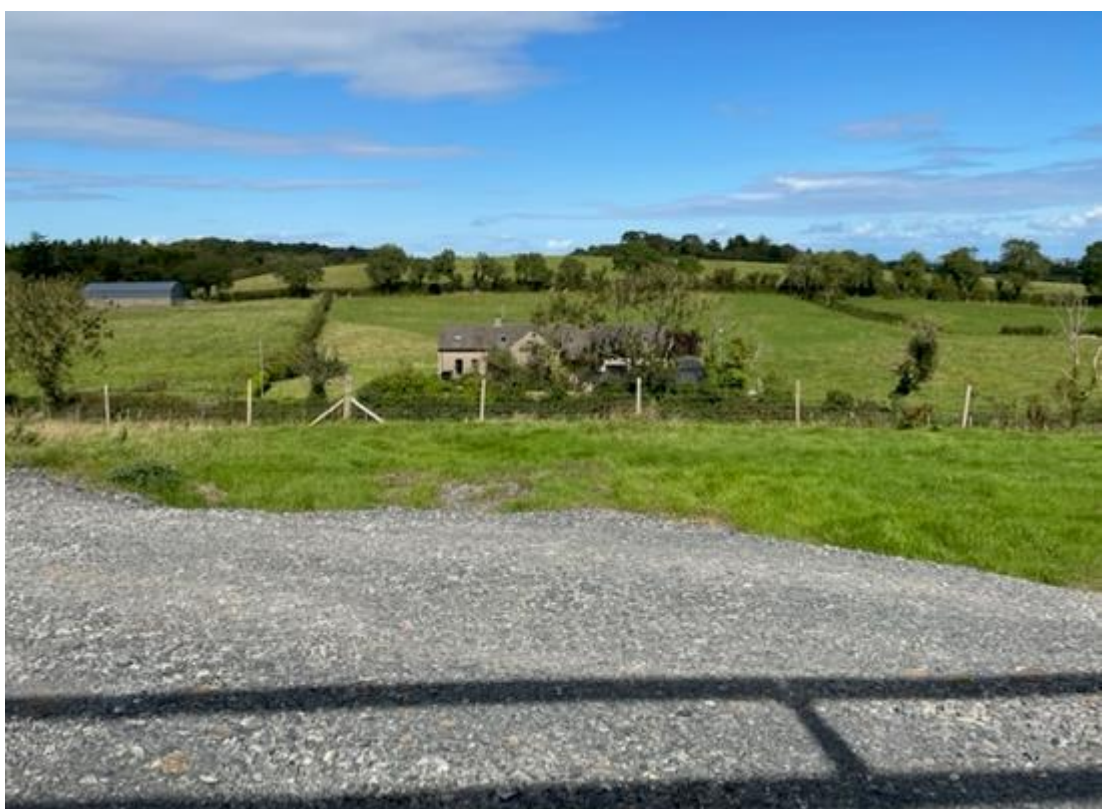
Reason: To control the scale and use of the building in this rural location.

- 8. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 or any order revoking and re-enacting that order, no building or enclosure, as defined in Class D of Part 1, shall be constructed without the written consent of the Council.

Reason: To control the number of incidental buildings on 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.



View standing in front of shed looking towards objector's dwelling






View from objector's dwelling

ITEM 4.6

Ards and North Down Borough Council

Application Ref	LA06/2021/0282/F
Proposal	Dwelling, landscaping, widened road access and associated parking (amended plans).
Location	46 Newtownards Road, Bangor.
Committee Interest	A local development application attracting six or more separate individual objections which are contrary to officers' recommendation.
Validated	24/03/2021
Summary	<ul style="list-style-type: none"> • The proposal has been amended on several occasions due to concerns re overdevelopment of the site and adverse impact on the amenity of adjacent dwellings. The application was initially for three dwellings, then changed to two dwellings and then to the current scheme for one dwelling. • Officers are content that the amended design and layout (including proposed amenity space to the new house and changes to the existing house at No.46) respects the character of the wider area and will not result in unacceptable impacts on residential amenity, in line with PPS 7 'Quality Residential Environments'. • The proposed design does not lead to overlooking or a loss of natural light to neighbouring dwellings. It is considered the proposed form and scale respects the local context with existing landscaping retained. • In terms of the proposed backland development in this application, the Addendum to PPS 7 'Safeguarding the Character of Established Residential Areas' is not applicable as the site is located along a designated arterial route and is an exception to this policy. • The proposed backland development will not set a precedent in the area as No.46 (and No.44) occupies a significantly larger plot than other dwellings along the Newtownards Road. The proposed density is comparable to that found in the surrounding area. • DfI Roads is content with the amended proposal and the in-curtilage parking provided will be two spaces per dwelling (that is the proposed development and existing house at No.46).

	<ul style="list-style-type: none">• In terms of NIW capacity issues, the Planning Service will attach a negative condition to any approval prohibiting development taking 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.• Letters of objection have been received from six separate addresses during the processing of this application, which are considered in the case officer's report.
Recommendation	Approval
Attachment	Item 4.6a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2021/0282/F	DEA: Bangor West	
Proposal:	Dwelling, landscaping, widened road access and associated parking		
Location:	46 Newtownards Road Bangor BT20 4BP		
Applicant:	Mr Finn Logan		
Date valid:	24/3/2021	EIA Screening Required:	No
Date last advertised:	28/09/2023	Date last neighbour notified:	19/09/2023
Letters of Support: 0	Letters of Objection: 26 (6 different addresses)	Petitions: 0	
Consultations – synopsis of responses:			
DFI Roads	No objection subject to condition		
NI Water	Refusal – capacity issues		
Environmental Health	No objection		
HED	No objection subject to condition		
NIEA - NED	No objection		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Principle of development • Parking and Access • Impact on Residential Amenity • Visual impact and impact on character of area • Impact on Biodiversity • Impact on 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 Northern Ireland Public Register (planningsystemni.gov.uk)			

1. Site and Surrounding Area

The site consists of a semi-detached two storey dwelling with incurtilage parking and a large mature garden to the rear. A nursing home is located immediately to the south of the site and the surrounding area is predominately residential in nature, with a mix of house types.

The application site is located within the settlement development limits of Bangor under both the North Down & Ards Area Plan and the Draft Belfast Metropolitan Area Plan 2015.



Figure 1 – Existing dwelling



Figure 2 – Rear of existing dwelling



Figure 3 – Side of existing dwelling



Figure 4 – Adjacent nursing home



Figure 5 – Existing dwellings to the rear

2. Site Location Plan



Figure 6



Figure 7

3. Relevant Planning History

There is no relevant planning history for the site.

Surrounding area:

W/2007/0355/F – 2 Church Drive, Bangor - New dwelling – Approval – March 2008

W/2011/0056/F - 58-60 Newtownards Road, Bangor - A Housing development of 5 no. dwellings – Approval – June 2011

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 & Parking
- Planning Policy Statement 6: Planning, Archaeology & the Built Heritage
- Planning Policy Statement 7: Quality Residential Environments
- Planning Policy Statement 12: Housing in Settlements
- Planning Policy Statement 15: Revised – Planning and Flood Risk

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

Principle of Development

Regional planning policies of relevance are set out in the SPPS and other retained policies. 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. In respect of the proposed development, there is no conflict or change in policy direction between the provisions of the SPPS and the retained policies contained in PPS2, PPS3, PPS6, PPS7, PPS12 and PPS15 therefore these remain the applicable policy documents to consider the development under.

The application site is within the settlement limit of Bangor as defined in both the North Down and Ards Area Plan 1984-1995 and the Draft Belfast Metropolitan Area Plan 2015. NDAAP currently acts as the LDP for this area, despite its end date, with dBMAP remaining a material consideration where applicable.

The NDAAP at section 13.7 states that new development should be carefully designed to respect the scale and character of existing buildings, using sympathetic building materials and should respect existing street patterns, landmarks, topographical and other features which contribute to the character of each town.

Subject to detailed assessment against the policies contained within PPS7 Quality Residential Environments and the above mentioned associated supplementary guidance, I am accepting of the principle of developing a single dwelling on the application site as this would facilitate the policy objective contained in the SPPS of promoting housing density within existing urban areas.

Background

The scheme currently under consideration has been amended a number of times. The original scheme submitted in March 2021 was for 3 dwellings which was deemed to be unacceptable due to overdevelopment of the site and the impact on the amenity of adjacent dwellings. Amendments were received in July 2022 with the number reduced to 2 dwellings, again this was considered to be unacceptable given the impact on neighbours and overall density. Further plans were submitted in November 2022 for a single dwelling with small amendments made in July 2023 to the turning head. However, this was also considered to be unacceptable due to the potential impact on existing neighbouring properties. Final plans were submitted in September 2023 which are the subject of this assessment.

Design, Visual Impact and Impact on Character of the Area

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. It goes on to state that in established residential areas proposals for housing development will not be permitted where they would result in unacceptable damage to the local character, environmental quality or residential amenity of these areas.

Planning Policy Statement 7: Addendum – Safeguarding the Character of Established Residential Areas is not applicable in this case as Annex E within the PPS states that in the recognition of the desirability of promoting increased housing density in appropriate locations, Policy LC1 will not apply in certain cases. One such case is if the site is located along a main arterial route within a large town which would apply to this application. PPS7 Addendum is therefore not applicable in this case.

Development Control Advice Note 8 provides guidance to ensure that urban and environmental quality is maintained, amenity preserved and privacy respected when new proposals are considered for housing development within existing urban areas. Proposals should seek to ensure that the form, density and character of any new development is in harmony with adjacent housing and does not detract from the environmental quality, residential amenity and established character of the surrounding area.

The proposal is for back land development in a garden area. Backland Development: para 5.7 of DCAN8 states that there is potential in appropriate circumstances to integrate residential developments into backland areas to produce a high-quality residential environment. Para 5.7 states for a backland development to be successful there are a number of design principles that should be followed.

The proposal should:

- a) Relate to a site which has appropriate plot depth and configuration;
- b) Be of a form and scale which respects the local context;
- c) Achieve a coherent and legible form;
- d) Integrate existing landscape features;
- e) Provide a residential aspect onto the new road;
- f) Take care over the integration of the existing and new landscapes and streets.

DCAN8 states that 'Backland development on plot depths of less than 80m is unlikely to be acceptable, except where the existing urban grain is very urban in character, and where careful design can overcome concerns of overlooking and day lighting.'

The plot depth of the site at No.46 is 45m, and 22m if taking in only the proposed site. The existing urban grain is very urban in character and careful consideration has been given to potential overlooking and loss of light to neighbouring properties in the overall design of the proposed dwelling. Given the design of the proposed development I am satisfied that the proposal is of a form and scale which respects the local context. The existing landscaping is to be retained and fully integrated into the site. Given the latter, I am content that the site depth is acceptable.

It is considered that the proposed development will not set a negative precedent for backland development within the area. No. 46 and its neighbour at No. 44 are exceptions in the area in that both occupy significantly larger plots than the other dwellings along the Newtownards Road. Regardless, each site must be considered on its own merits. There are also other examples of backland development in the immediate area as indicated on the map below.



Figure 8 -Backland development

The proposed dwelling would be sited centrally on the plot and both the footprint of the dwelling and the resulting plot sizes of both the existing and proposed dwellings would be comparable in size to others in the immediate area.

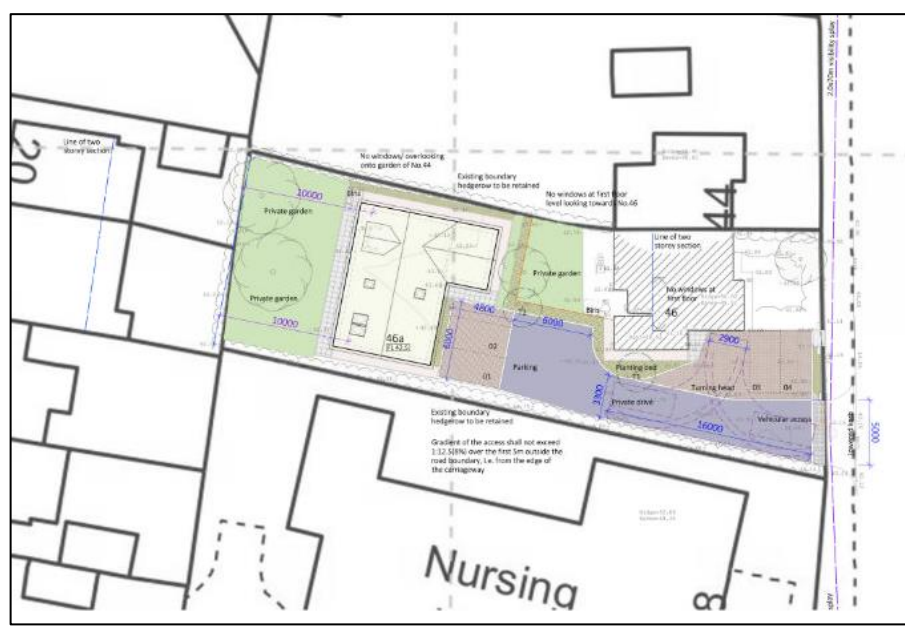


Figure 9 - Proposed block plan

The density of the proposed development is not considered to be significantly higher than the surrounding residential area. The density of the proposed development would equate to 29dph (dwellings per hectare). There is a variety of densities evident within the surrounding area as indicated in figures 10–15 below. These range between 16-55dph. It is therefore considered that the proposed density at 29dph is comparable to that found in the area and would not be significantly higher.



Figure 10 – Density of proposed development 29dph

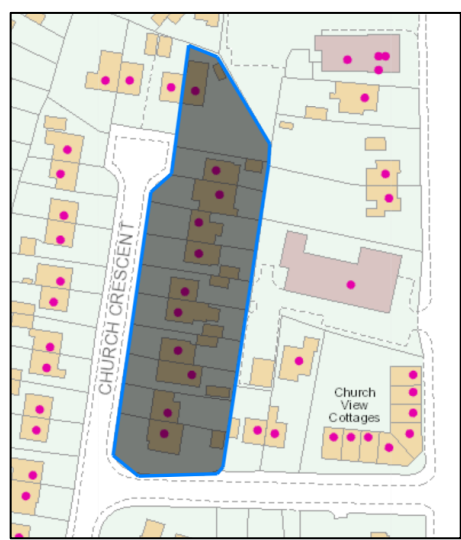


Figure 11 – 2-22 Church Crescent (31dph)



Figure 12 – 2/2a Church Drive & 1-10 Church View Cottages (55dph)



Figure 13 – Abbey Drive/Newtownards Road (32dph)



Figure 14 – 44, 44a & 46 Newtownards Rd (16dph)



Figure 15 – Ardmore Gardens (25dph)

The proposed dwelling itself will be one and a half storey with a modest height of 6.5m, a pitched roof design, white dash render finish and slate roof tiles. Its scale, massing and design will be in keeping with the established built form of the area.



Figure 16 – Proposed dwelling

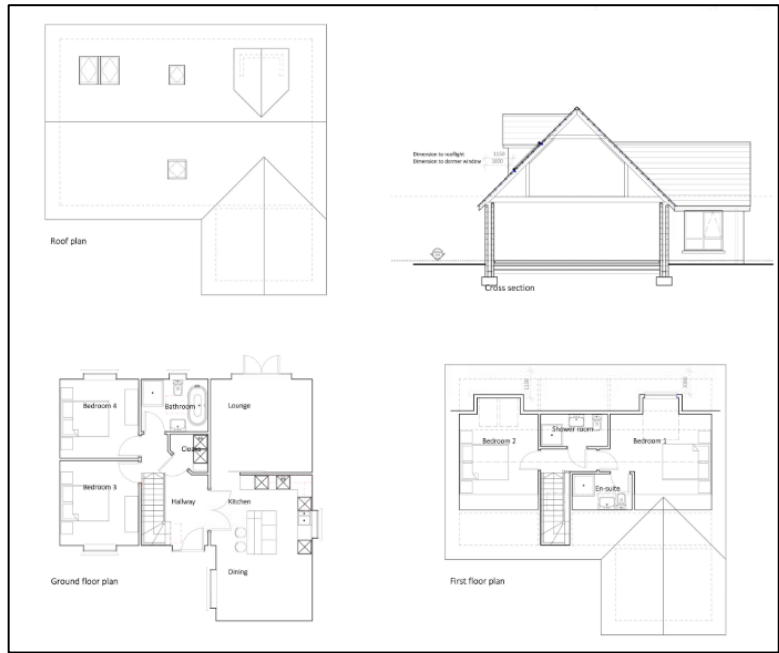


Figure 17 – Proposed floor plans

The proposed dwelling does have a slightly larger footprint than the dwellings immediately adjacent, however there is also a large nursing home building located to the immediate south of the site and given the lower 1 ½ storey height, this is considered acceptable and the overall massing and scale of the building will not be out of keeping with the character of the area. Furthermore, given the backland location, there would only be very limited public views of the building therefore there would be little potential for the development to impact upon the character of the wider area.

In keeping with the established built form and character of the area, vehicular access would be taken directly from the existing access onto the Newtownards Road which would be shared with the existing dwelling at No. 46. While an additional area of hardstanding will be created to provide parking for No. 46, the remaining front garden will be retained maintaining the character of residential front garden areas along this stretch of the road.

In summary, I am satisfied that the proposed scale, massing and design and ground works would allow the proposal to integrate into the area in a manner which would not be out of keeping with the appearance and character of the area. I am therefore content that the proposal satisfies the planning policy in this regard.

Amenity Space

Sufficient amenity space will be provided within the development. The size of the plot is adequate to ensure that sufficient provision is made for private amenity space in the rear garden which will equate to 130sqm. This would be well in excess of the recommended minimum of 40sqm as set out in the Creating Places Guidelines. All existing hedge boundary treatment is to be retained to aid integration and provide screening. The arrangement for private amenity space and soft and hard landscaping areas are considered to be in keeping with the appearance and character of the area and therefore acceptable.

The existing dwelling at No.46, will be left with a rear amenity space of 47sqm, which will be enclosed by a 2m high closed board fence with shrubs on the outside. This area would also exceed the recommended minimum of 40sqm.

Access, Roads Safety and Car Parking

Planning Policy Statement (PPS) 3: Access, Movement and Parking

Policy AMP 2: Access to Public Roads

Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic.

The existing access to No. 46 will be utilized, being widened and extended to serve both dwellings. Having considered all of the submitted supporting information and the representations received, DFI Roads has advised it has no objections to the proposal in terms of road safety or traffic progression at this location. It should be noted that although the Newtownards Road is not a protected route it is a main arterial route.

Policy AMP 7 Car Parking and Servicing Arrangements

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.

The site layout plan demonstrates that the proposed and existing dwellings will each have 2 in-curtilage parking spaces. The existing dwelling has only one in curtilage space within its driveway at present, therefore the provision of two spaces will be a betterment. According to Creating places, the proposed detached four bedroom dwelling would require a total of 3 spaces. However, the guidelines also state advise that lesser provision may be acceptable in inner urban locations or other higher density areas. This area is within walking distance of Bangor town centre and on a main bus route. The agent has also submitted a Parking Survey which demonstrates adequate on street parking capacity within walking distance of the site. Given the availability of on street parking in the immediate area, and that two spaces per dwelling appears to be the standard in the area, I am content with the level of parking provided.

DFI Roads have considered the latest plans that include a turning head and has advised it has no objections to the proposal on road safety grounds.

Impact on Privacy and Amenity of Neighbouring Residents

The closest neighbouring property is No. 46 Newtownards Road, which is owned by the applicant, and is sited immediately east of the application site. There are no first floor windows proposed on the front elevation, facing the rear of No. 46, with the exception of two small roof lights. At ground floor, the rear of No. 46 will be screened from views by the proposed 2m high timber fence.

There are no windows proposed at first floor level on the side gables of the dwelling and therefore no unacceptable overlooking issues are envisaged towards the rear of the neighbouring dwelling at 44 or towards the nursing home to the south.

A first floor bedroom dormer window and two roof lights (one large and one smaller and at a higher level) are proposed to the rear, facing the rear of Nos.18 and 20 Church Crescent, which are to the immediate west of the site. There would be a separation distance of 17m from the rear of the proposed dwelling to the ground floor of No.20 and 19.4m to the first-floor level. This measurement is slightly increased when taken from the first floor of No.18, due the relationship between the dwellings.

Within Creating Places, para 7.16 states that where a development abuts an existing property a separation distance greater than 20 will generally be appropriate to minimise overlooking, with a minimum of around 10m between the rear of new houses and the common boundary. There is a separation distance of 9m to the common boundary and 10m from the first floor window to the common boundary. The dormer and larger roof light have been set into the roof which sets them back 1.0m from the face of the rear elevation, this allows for a minimum of 10m between the rear boundary and the first floor windows. There will be no overlooking from the small bathroom roof light as it is positioned higher on the roof above eye level.

Para.7.15 states that on green-field sites and in low-density developments, good practice indicates that a separation distance of around 20m or greater between the opposing rear first floor windows of new houses is generally acceptable. There is a separation distance of 20m between the opposing first floor windows of the existing and proposed dwellings, therefore complying with Creating Places.

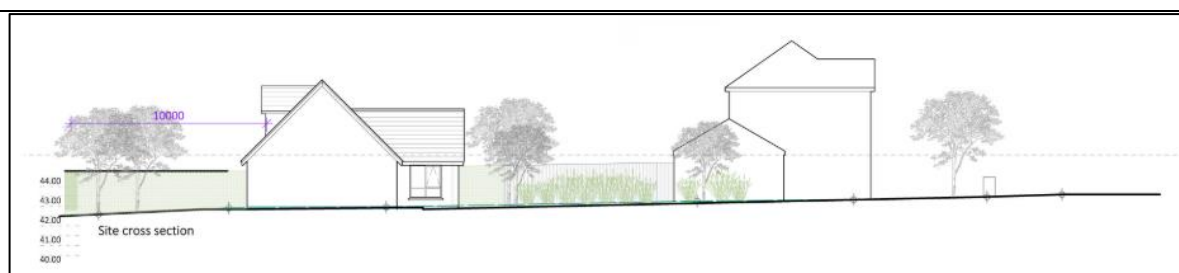


Figure 18 -Site Cross Section

Due to the site orientation and given that there is adequate spacing between the proposed dwelling and neighbouring properties, I am satisfied that there would be no unacceptable adverse effects in terms of loss of light, overshadowing, noise or other disturbance. The surrounding area is residential so the proposed dwelling will not conflict with adjacent land uses.

Impact on Trees/Landscape Features

The proposal will not cause the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality. It is noted that it is proposed to remove the existing Holly and Horse Chestnut trees, however, these do not have Tree Preservation Orders, nor will their loss significantly impact the character of the area. The existing hedges are proposed to be retained and would be conditioned as such.

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. A Biodiversity Checklist was submitted by Ayre Environmental Consulting which found that no further investigation was required. It is noted that an objection was received in regard to the survey and that it failed to look at the 'bigger picture' and that the garden provided an environmental oasis for biodiversity. However, I have no reason to disagree with the report. NED were also consulted and had no objections to the proposal.

Sewage disposal

NI Water has advised that there would be potential foul sewer network capacity issues associated with this site. This establishes significant risks of detrimental effect to the environment and detrimental impact on existing properties. For this reason NI Water has recommended that connections to the public sewerage system are curtailed. The Applicant is advised to consult directly with NI Water (InfrastructurePlanning@niwater.com) to ascertain whether any necessary alternative drainage /treatment solutions can be agreed. An Impact Assessment will be required.

I am satisfied that the capacity issue can be dealt with by attaching a negative condition stipulating that 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. The condition will also require that evidence of this consent shall be submitted to the Council prior to the commencement of any development.

The applicant will be able to liaise with the relevant authorities outside of the planning process to establish if a solution can be reached. If the applicant is unable to find an acceptable solution, then he/she will be unable to implement the permission. If a private treatment plant solution is required, a separate planning application for this would be required.

Flooding and Drainage

The Flood Hazard Map (NI) indicates that the development does not lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain. There are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within this site. No watercourses run through the site.

A drainage assessment is not required under Policy FLD 3 of PPS 15, as it does not exceed any of the required thresholds:

- Residential development comprising 10 dwelling units or more.
- A Development site in excess of 1 hectare.
- New hard-surfacing exceeding 1000m².

Security from Crime

The layout has been designed to deter crime and promote safety and rear amenity space will be protected by the existing landscaping. It is therefore considered that the proposal complies with part (i) of Policy QD1 of PPS 7 and all relevant guidance.

Local Neighbourhood Facilities

As the proposal is for one dwelling there is no need to provide local neighbourhood facilities as part of the development. The site is within the settlement limit of Bangor with access to shops and services. It is therefore considered that the proposal complies with part (d) of Policy QD1 of PPS 7 and all relevant guidance.

Archaeology and Built Heritage

There are no features of the archaeological and built heritage to protect and integrate into the overall design and layout of the development. It is therefore considered that the proposal complies with part (b) of Policy QD1 of PPS 7 and all relevant guidance. HED were consulted and offered no objections to the proposal but they have reviewed the objection letter of 8th April 2021, and the objection letter of 21st June 2021 as a rebuttal to the agent's response date-stamped 28th May 2021. HED notes that the WWII air raid shelter referenced in the objection letters is not marked on the Defence Heritage Record maintained by this Department. However, HED state that there is sufficient lack of knowledge regarding the existence of the shelter and the impact of the development on it to require further investigation.

Therefore, HED (Historic Monuments) is content that the proposal satisfies PPS 6 policy requirements, subject to conditions for the agreement and implementation of archaeological mitigation.

It has also been stated that the application site includes a WWII air raid shelter. While this is not recorded on the Defence Heritage Record, HED have stated that there is sufficient doubt to request further archaeological mitigation to preserve the monument in situ or via record.

5. Representations

In total 26 letters of objection from 6 separate addresses were received during the processing of the application. The number of objections received following the submission of each amendment to the proposal is broken down as follows:

March 2021 (proposal for 3 dwellings)

April 21-Feb 22 -18 objections received

July 2022 (proposal for 2 dwellings)

0 objections

Nov 2022 (proposal for 1 dwelling)

Dec 22 -3 objections received

July 2023 (proposal for 1 dwelling – turning head amended)

July 23 – 2 objections received

Aug 23 - 3 objections received

September 2023 (proposal for 1 dwelling – amendment to rear bedroom window)

0 objections

The main issues raised in the objections received for the amended scheme for 1 dwelling area as follows:

- Backland development out of character
- Intensification, overdevelopment of site
- Out of scale, mass with immediate area
- Loss of mature garden, including impact on biodiversity
- Loss of holly tree and horse chestnut
- Loss of light
- Overshadowing
- Overlooking
- Lack of amenity space
- Air raid shelter lost
- Set a negative precedent
- Parking, turning circle insufficient, dangerous
- All previous points should also be applied to new proposal

These matters have been addressed in detail under section 4 above.

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 dwelling shall not be occupied until provision has been made within the curtilage of the site for the parking of private cars for both the existing and proposed dwellings in accordance with approved Drawing No.07D.

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

3. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with approved Drawing No.01A prior to commencement of 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.

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

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

6. The existing natural screenings of this site as indicated in green on the approved plan Drawing No.07D, shall be retained unless removal is necessary to prevent danger to the public in which case a full explanation shall be given to the Council in writing prior to their removal.

Reason: To ensure the development integrates into the surroundings and to

ensure the maintenance of screening to the site.

7. If any retained planting is removed, uprooted or destroyed or dies, another hedgerow/tree/s shall be planted at the same place and shall be of such size and species and shall be planted within the next available planting season.

Reason: To ensure the continuity of amenity afforded by existing planting.

8. 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.

9. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department for Communities – Historic Environment Division to observe the operations and to monitor the implementation of archaeological requirements.

Reason: To monitor programmed works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

10. No site works of any nature or development shall take place until arrangements have been made and agreed with the Department for Communities – Historic Environment Division, for archaeological surveillance of topsoil stripping and site preparation, and for the recording of any archaeological remains which may be identified.

Reason: To ensure that any archaeological remains which may exist within the application site are identified and recorded.

11. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 or any Order revoking and re-enacting that Order, no buildings, walls, gate pillars, fences or other structures shall be erected within the curtilage of the dwelling hereby permitted without the grant of a separate planning permission from the Council.

Reason: In the interests of visual amenity.

12. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no extension or enlargement (including alteration to roofs) shall be made to the dwelling hereby permitted without the grant of a separate planning permission from the Council.

Reason: The further extension of these dwellings requires detailed consideration to safeguard the amenities of the surrounding area.

13. The existing mature trees/shrubs and hedging as shaded green on drawing No.07D shall be retained in perpetuity at a minimum height of 1.8m.

Reason: To ensure the wider setting of the listed building is retained.

14. The finished floor levels and proposed ground levels for the dwelling hereby approved shall be in accordance with the details set out on Drawing No. 07D.

Reason: In the interest of privacy and visual amenity.

15. A 2m fence shall be erected in accordance with the approved drawing No.07D prior to the occupation of the dwelling and shall be permanently retained thereafter.

Reason: In the interest of privacy and amenity.

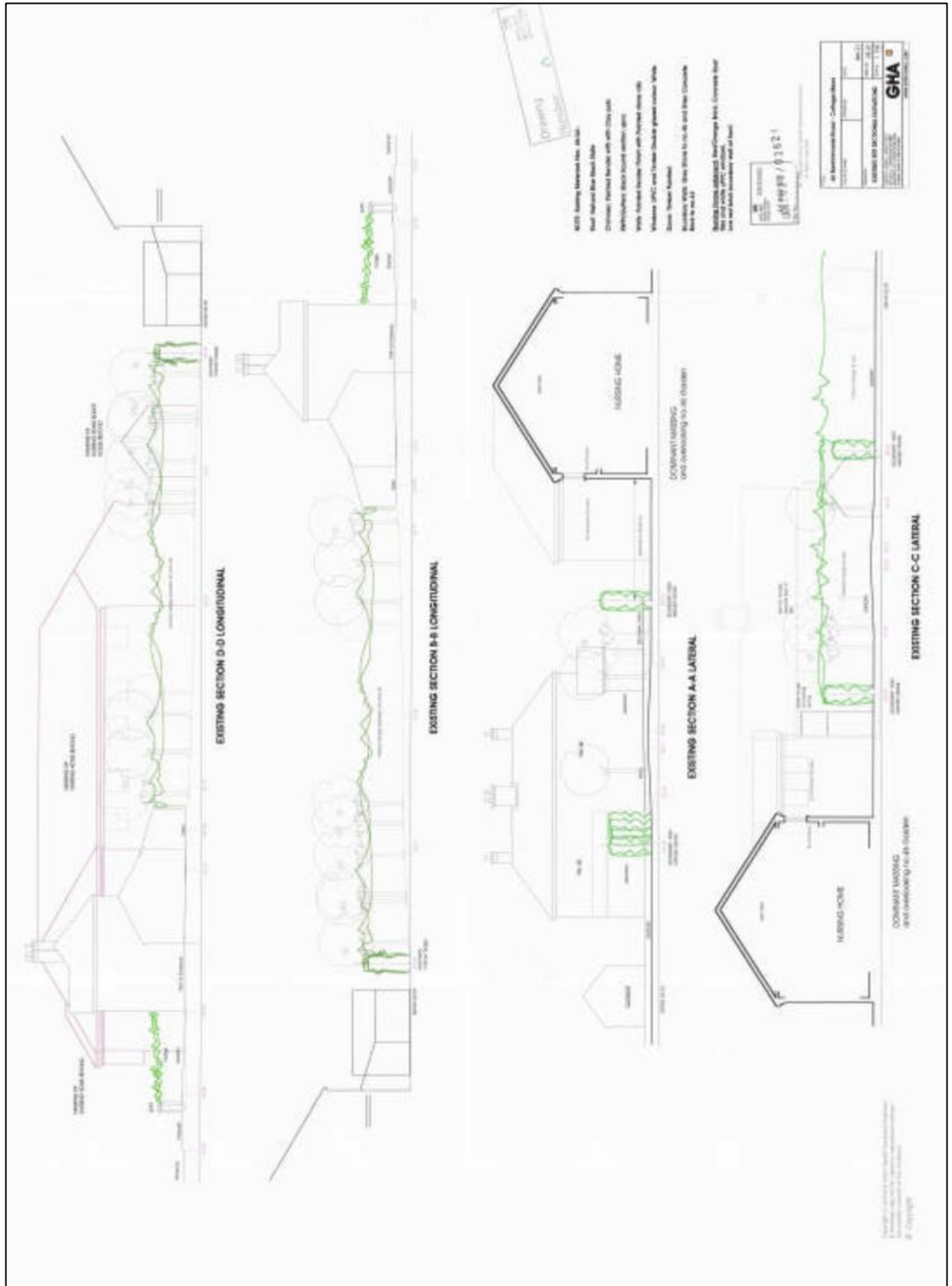
Informative

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.

Case Officer Signature:		Date:	
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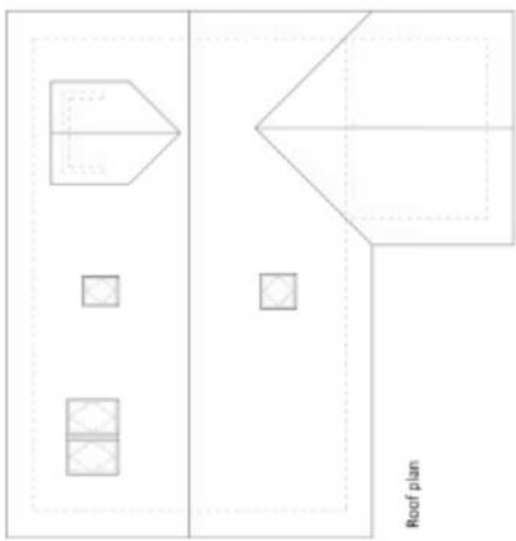
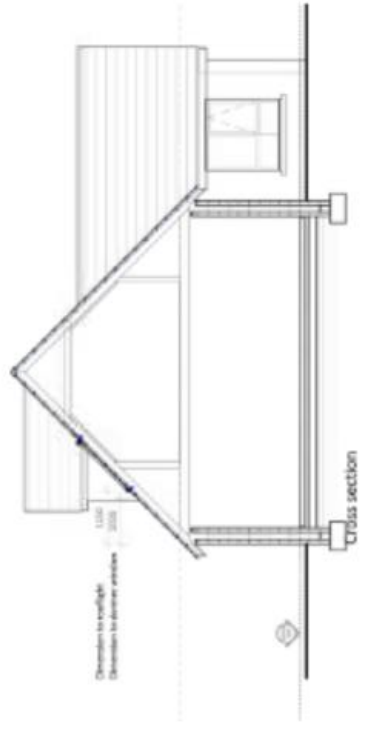
NO	DESCRIPTION
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- Notes:**
1. All dimensions are in millimetres unless otherwise stated.
 2. All dimensions are to the face of the work unless otherwise stated.
 3. All dimensions are to the centre of the work unless otherwise stated.
 4. All dimensions are to the edge of the work unless otherwise stated.
 5. All dimensions are to the top of the work unless otherwise stated.
 6. All dimensions are to the bottom of the work unless otherwise stated.
 7. All dimensions are to the side of the work unless otherwise stated.
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 50. All dimensions are to the top-left corner of the work unless otherwise stated.





Site Address
46 Newtownards Road, Bangor

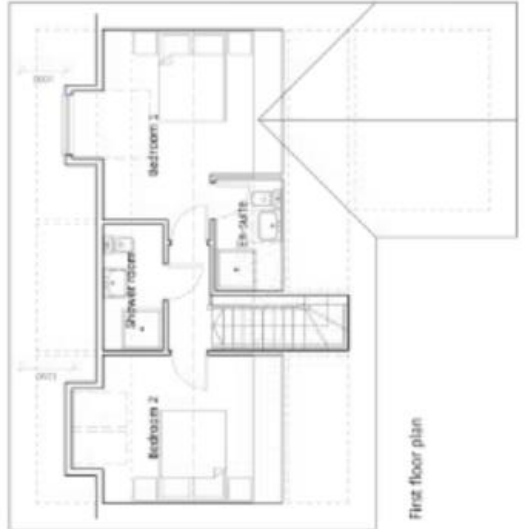


Project Name	46 Newtownards Road	Project No.	2021/01
Client	Mr Finn Logan	Scale	1:100
Project Type	Residential Development	Date	Sept 2023
Architect	Studio Lowry Architecture	Drawn by	AL
Project Address	46 Newtownards Road, Bangor	Client Ref	43
Project No.	2021/01	Project Ref	AL
Scale	1:100	Project Ref	AL
Date	Sept 2023	Project Ref	AL
Architect	Studio Lowry Architecture	Project Ref	AL
Project Address	46 Newtownards Road, Bangor	Project Ref	AL
Project No.	2021/01	Project Ref	AL
Scale	1:100	Project Ref	AL
Date	Sept 2023	Project Ref	AL
Architect	Studio Lowry Architecture	Project Ref	AL

Studio Lowry ARCHITECTURE
 46 Newtownards Road, Bangor, Co. Down BT21 3JH
 Tel: 028 2232 8888
 Email: info@studiolowry.com

Site No: 22.11
 Drawing No: P-13
 Revision: A

This drawing is for information only and is not to be used for construction purposes.



46 Newtownards Road, Bangor

External Finishes

ELEMENT	FINISH	COLOR
Roof	Asph/Flt Shingles	Black Grey
Roof Ceiling	100% RFR Acoust. Gypsum and Sheetrock	Black
Exterior	PAV. (RFR Acoust. Gypsum and Sheetrock)	Black
Walls	White Silt Render	White
Cladding	Vertical Composite Cladding	Light Grey
Windows	UPVC	White
Doors	UPVC	White
DB	Double Glazing	

Front elevation

Side elevation

Rear elevation

NO.	DATE	DESCRIPTION	BY	CHECKED BY

Planning Issue
46 Newtownards Road
Bangor
Residential Development

Client:
Mr Finn Logan

Project No:
Proposed Elevations
Bungalow

Scale:
1:100

Date:
Sept 2023

Sheet No:
A1

Studio Lowry ARCHITECTURE
123232 - 1234567890
1234567890 - 1234567890
1234567890 - 1234567890

Sheet No:
12.13

Revision:
P-E-23

Scale:
A

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40.00






ITEM 4.7**Ards and North Down Borough Council**

Application Ref	LA06/2020/1052/F
Proposal	Demolition of existing retail shop and offices and redevelopment comprising of 2no. three storey units with retail shops on the ground floor and office accommodation above.
Location	136 and 136a High Street, Holywood
Committee Interest	A local development application attracting six or more separate individual objections which are contrary to officers' recommendation.
Validated	05/11/2020
Summary	<ul style="list-style-type: none"> • It is considered that the proposal meets the aim of the SPPS and the LDP. The proposal site is located within Holywood town centre (though outside the Primary Retail Core) and is currently a retail use. The ground floor of this proposal retains the retail use at the site. • This complements the Regional Development Strategy which promotes established town centres as the appropriate first choice for retailing. • The proposal satisfies Policy OF1 of dBMAP given the proposed office development above the replacement retailing on the ground floor. • The proposal meets the requirements of Policy PED 1 of PPS 4 re economic development in settlements - the proposed development combines office and retail use with other appropriate town centre uses. • The site lies within the proposed Holywood South Area of Townscape Character. The existing buildings make no material contribution to the character or appearance of the area and have no particular design merit. As such the proposal meets Policy ATC 1 (demolition control) of the Addendum to PPS 6 – Areas of Townscape Character. • The proposed height (three-storey) and design of the building meet Policy ATC 2 and is in keeping with the established built form of the area and will not appear dominant in the street-scene. The proposed materials and finishes will also complement and blend sympathetically with the existing buildings. • The proposal is close to a number of listed buildings and therefore must comply with Policy BH11 of PPS 6 –

	<p>Development affecting the Setting of a Listed Building. HED originally raised some concerns however following amendments HED now has no objections.</p> <ul style="list-style-type: none"> • Whilst the parking provision comprises a shortfall of formal in-curtilage parking within the site (10no. proposed), policy AMP 7 of PPS 3 states that a reduced level may be acceptable in a highly accessible location well served by public transport or where the development would benefit from spare capacity available in nearby public car parks or adjacent on street parking. The site provides a cycle storage area and is in close proximity to bus and trains as well as nearby car parks and street parking. It should also be noted that the existing site provided no formal parking provision. • An acceptable NIW Infrastructure resolution was found through negotiation between NIW and the agent (subject to conditions should the application be approved). • All objections have been fully considered in the Case Officer’s Report.
<p>Recommendation</p>	<p>Approval</p>
<p>Attachment</p>	<p>Item 4.7a – Case Officer Report</p>

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2020/1052/F	DEA: Holywood & Clandeboye	
Proposal:	Demolition of existing retail shop and offices and redevelopment comprising of 2 No. three storey units with retail shops on the ground floor and office accommodation above		
Location:	136 and 136a High Street Holywood BT18 9HW		
Applicant:	Antrim Construction Company Ltd		
Date valid:	15/11/2020	EIA Screening Required:	No
Date last advertised:	28/09/2023	Date last neighbour notified:	15/09/2023
Letters of Support: 0	Letters of Objection: 14 (from 10 separate addresses)	Petitions: 0	
Consultations – synopsis of responses:			
DFI Roads	No objection subject to condition		
Historic Environment	No objection subject to condition		
Environmental Health	No objection subject to condition		
NI Water	No objection subject to conditions		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Principle of the use at this location • Parking and Access • Impact on Residential Amenity • Visual impact • Impact on Biodiversity • Impact on the Primary Retail Core of Holywood • Impact on the character and appearance of the proposed ATC • Impact on the setting of listed buildings within the vicinity of the site 			
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 [Northern Ireland Public Register \(planningsystemni.gov.uk\)](http://Northern Ireland Public Register (planningsystemni.gov.uk))

1. Site and Surrounding Area

The application site is located at Nos. 136-136a High Street, within Holywood town centre. The buildings consist of two flat roof, two storey buildings with rendered frontages, with large scale windows at first and ground floor of No. 136 and a full width and height shopfront window at ground level only at No.136a. The previous uses of both No.136 and 136a was retail (Boots No,136a) and a Dental Laboratory (No.136). 136a is now used in conjunction with the adjacent funeral directors at 138 and 136 is now in use as a credit union.

The surrounding area is mixed use in character comprising retail, residential and office uses. No138 is located at the end of the existing terrace and is bounded by Ean Hill, which also provides existing access to the rear of the application site. The site is also within the proposed Holywood South Area of Townscape Character (ATC).

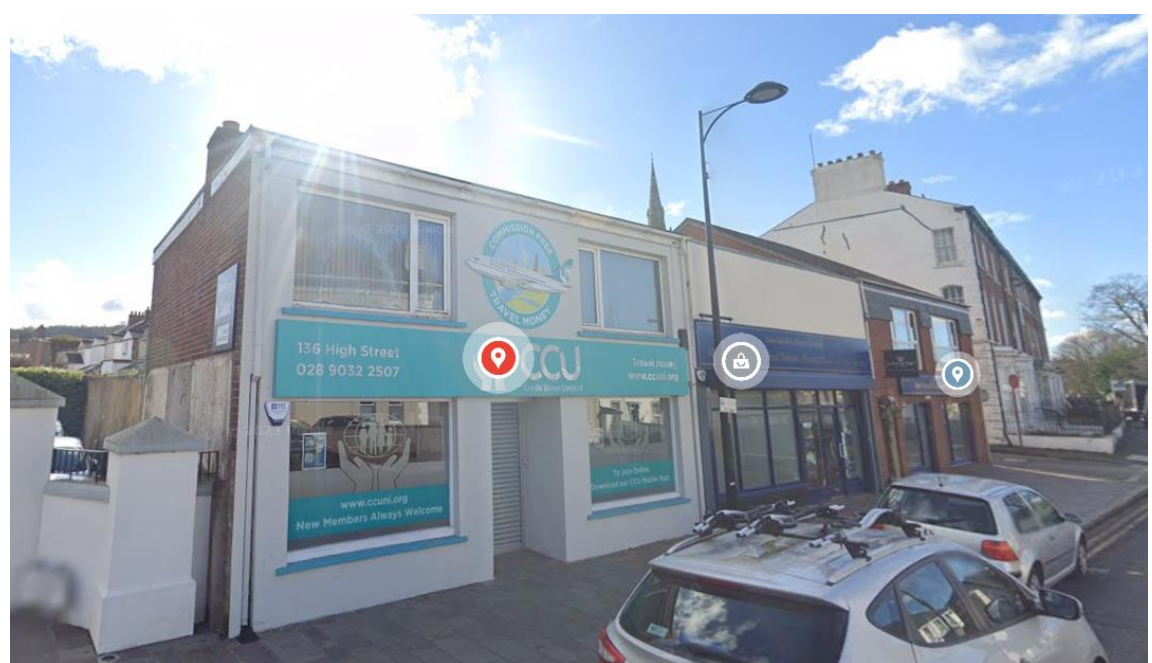


Figure 1 – Front of site (Google Streetview March 2023)



Figure 2 – Rear of site

2. Site Location Plan



Figure 3 – Site location plan



Figure 4 – Aerial view

3. Relevant Planning History

LA06/2021/0307/F - 136A - 138 High Street, Holywood - Change of use from vacant retail unit to allow for expansion of funeral directors' business at 138 High Street, Holywood – Approved June 2021

W/2006/0653/F - 136 High Street, Holywood - The demolition of the existing building and proposed erection of office block with associated site works – Approved January 2007

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 (SPPS)
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement & Parking

- Planning Policy Statement 4: Planning and Economic Development
- Planning Policy Statement 6: Planning, Archaeology & the Built Heritage
- Addendum to Planning Policy Statement 6: Areas of Townscape Character
- Living Places
- DCAN 15: Vehicular Access Standards

Principle of Development

The application site is within the settlement limit of Holywood in both the North Down and Ards Area Plan (NDAAP) 1984-1995 and the Draft Belfast Metropolitan Area Plan (dBMAP) 2015. It is also within the town centre as defined by both plans but lies outside of the primary retail core identified in Draft BMAP. The site also lies within the Holywood South Area of Townscape Character as proposed in Draft BMAP. NDAAP currently acts as the LDP for this area, despite its end date, with dBMAP remaining a material consideration where applicable. The principle of retail and office use in this town centre location is assessed below against the policies contained within both plans, PPS4 and the SPPS.

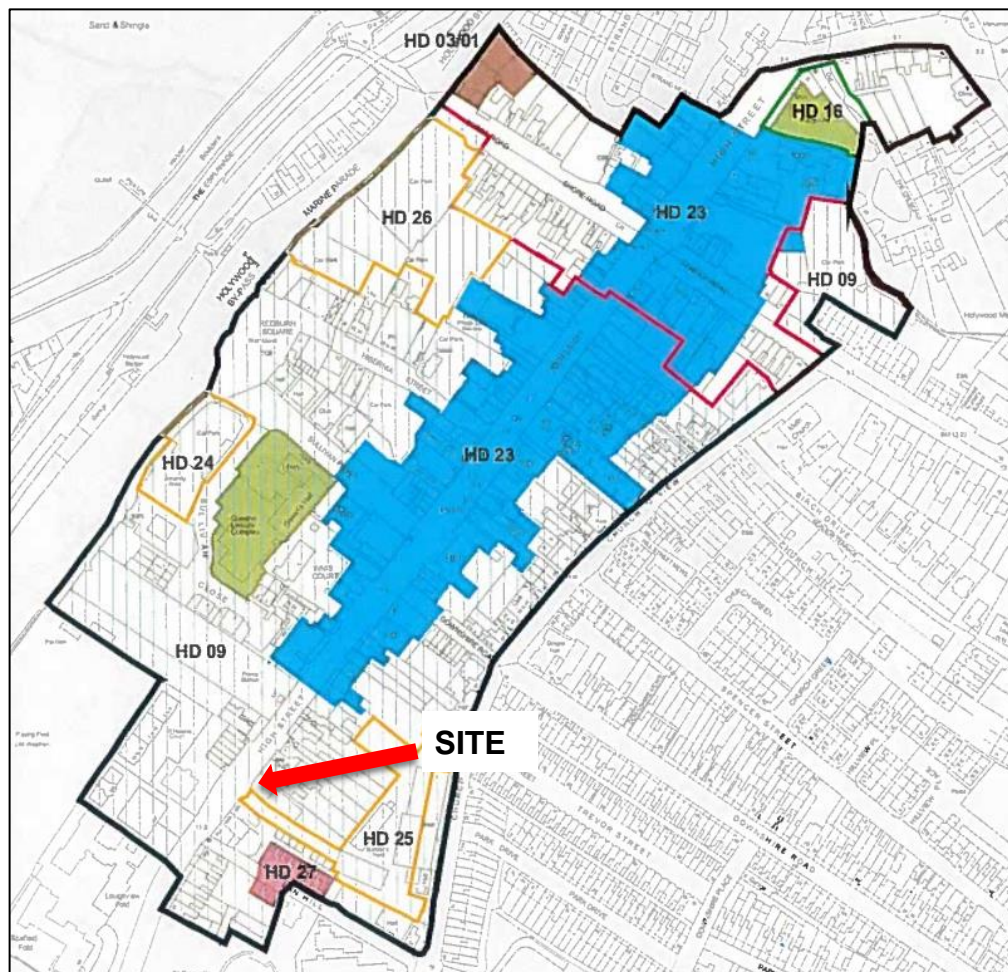


Figure 5 – Holywood Town Centre (Draft BMAP)

Town Centres and Retailing

The SPPS contains policies for town centres and retailing and supersedes policy previously contained within Planning Policy Statement 5.

The SPPS states that it is important that planning supports the role of town centres and contributes to their success. The aim of the SPPS is to support and sustain vibrant town centres through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions, consistent with the Regional Development Strategy.

Given that the site is located within the town centre and also considering the existing use of the site is retail, it is considered that the proposed development which includes retail use at ground floor, is acceptable at this location.

Policy R1 of Draft BMAP - Retailing in City and Town Centres, states that planning permission will be granted for retail development in all town and city centres. The policy also states that the Primary Retail Cores (PRC) 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.

While the application site is outside the Primary Retail Core, the site is already in use as existing retail, therefore determining weight must be attributed to this. It is not considered that the replacement retail use will have any adverse impact on the vibrancy and vitality of the town's Primary Retail Core which is currently very healthy with a very high occupancy rate and it is not considered that there would be any suitable vacant units currently within the PRC which could accommodate the proposed development.

Town Centres and Offices

Policy OF1 of Draft BMAP- Belfast City Centre, Lisburn City Centre and other Town Centres, states that planning permission will be granted for office development within Classes A2 and B1 of the Planning (Use Classes) Order (NI) in the designated Belfast town centres.

It is accepted that the proposed office accommodation, included as part of this planning application, is ideally situated within Holywood Town Centre as directed by Policy OF 1. Furthermore, the office accommodation will be restricted to the upper floors of the development allowing the ground floors to be retained for retail encouraging greater footfall within the town centre.

City and town centres lie at the heart of local transport networks, including public transport. Promotion of office development within these areas will support sustainable development, assist urban renaissance and provide jobs in local areas, which are accessible to all sections of the community. Holywood Town Centre is well served by public transport and the application site is in close proximity to Holywood Train Station. I am satisfied that the proposed office development will meet the objectives of Policy OF 1.

Policy PED1 of Planning Policy Statement 4 - Economic Development in Settlements, also supports office development within town centres. The policy advises that development proposals for a Class B1 business use will be permitted in a city or town centre (having regard to any specified provisions of a development plan) and in other locations that may be specified for such use in a development plan, such as a district or local centre.

The Regional Development Strategy indicates that the urban hubs/clusters of the region will be the main focus for employment and services. The objective is to capitalise on development opportunities provided by the concentration of people and goods combined with available infrastructure and the clustering of a range of business services, including the professional, technical and financial services essential to economic development.

The SPPS also states that in larger settlements, appropriate proposals for Class B1 business uses (such as offices and call centres) should be permitted if located within city or town centres, and in other locations that may be specified for such use in a LDP, such as a district or local centre.

In summary, the proposed development offers the opportunity to combine office and retail use with other appropriate town centre uses. The proposal for retail and offices within the town centre will fully comply with the aims and objectives for town centres as set out in the SPPS and the development plans which require a town centre first approach for retailing and other main town centre uses such as businesses and offices.

Visual Impact, Design and Impact on the Appearance of the Proposed ATC

Addendum to Planning Policy Statement (PPS) 6: Areas of Townscape Character Policy ATC 1 – Demolition Control in an Area of Townscape Character

There will be a presumption in favour of retaining any building which makes a positive contribution to the character of an Area of Townscape Character. The demolition of an unlisted building in an Area of Townscape Character will normally only be permitted where the building makes no material contribution to the distinctive character of the area. Where permission for demolition is granted this will normally be conditional on prior agreement for the redevelopment of the site.

The existing buildings make no material contribution to the character or appearance of the area. In fact, it is considered that the buildings actually harm the appearance of the area. The buildings as a whole have no particular design merit and make no contribution to the overall appearance of the ATC. As can be seen from the image below, the flat roof design and large picture windows are at odds with the design and proportions of the more traditional built development along the street. As such, it is my opinion that the demolition of these buildings will cause no harm to the character or appearance of the proposed ATC.



Figure 6 – Existing buildings make no material contribution to the proposed ATC.

Addendum to Planning Policy Statement (PPS) 6: Areas of Townscape Character Policy ATC 2 – New Development in an Area of Townscape Character

Policy ATC2 states that development proposals in an Area of Townscape Character will only be permitted where the development maintains or enhances its overall character and respects the built form of the area. As it is not known how any lawfully adopted BMAP will describe the overall character of the area to be designated, it is not possible to assess the impact of the proposed development on that character. However, recent decisions by the PAC have clarified that the impact of an application on the overall appearance of a proposed ATC remains a material consideration and can be objectively assessed.

As outlined above, the Hollywood South ATC (HD 09) is a proposed ATC rather than a designated ATC due to the draft status of BMAP. Nevertheless, it has been established by the Planning Appeals Commission in number of appeal decisions that the impact on the appearance of the proposed ATC remains to be a material consideration if it is likely that the ATC could be included in any future adopted plan.

Case law (South Lakeland District Council –v- Secretary of State for the Environment (1992)) has established that it is the effect on the character/appearance of the Conservation Area/Area of Townscape Character (ATC) as a whole to which attention must be directed and that preserving the character or appearance of a Conservation Area or ATC can be achieved by a development which leaves this unharmed (the ‘no harm’ test).

The proposed Hollywood South ATC covers a large area from the commercial, higher density area around High Street right the way down to the lower density residential areas around My Lady's Mile and Demesne Road. 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. Draft BMAP does not highlight any key features of the ATC which are specific to this site.

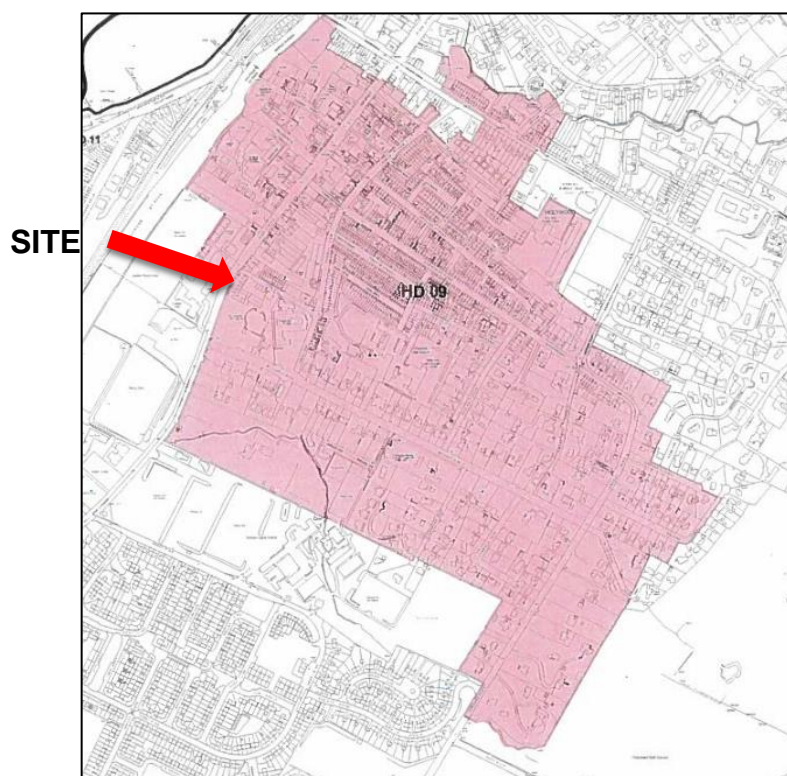


Figure 7 – Extract from Draft BMAP – Proposed Hollywood South ATC designation

The site is located on the edge of the commercial area of the proposed ATC. There is a mix of different building types and architectural styles within the immediate area of High Street. Immediately adjacent is a modern two storey red brick building currently in use as a funeral directors and beyond this further to the south is an attractive three storey listed terrace as shown in Figure 8 below. To the north of the site, there are three buildings set back from the road frontage which are two, two and a half and three storey and then another three storey terrace on the road frontage as shown in Figures 9 and 10 below. On the opposite side of the road is a substantial two storey listed property known as St Helen's House with a two storey building of traditional design to the south and a more modern single storey building occupied by an Indian Restaurant to the north as shown in Figure 11 below. Therefore, there is very much a mix of modern and traditional buildings of varying architectural styles.



Figure 8 - Existing 3 storey buildings to south of site



Figure 9 - Existing 2 1/2 storey buildings to the east of site



Figure 10 – Substantial listed 2 ½ storey building opposite site



Figure 11 - Existing buildings to the north of site

The proposed development will be three storey in height with a smooth render finish and natural slate to the roof. Given the other three storey properties within close proximity to the site, the proposed height is considered to be in keeping with the established built form of the area and will not appear dominant in the street-scene. The proposed materials and finishes will also complement and blend sympathetically with the existing buildings. Windows have also been carefully placed on the facades to reflect the more traditional elevational treatment of the nearby listed buildings respecting the vertical emphasis of window design and the solid to void ratio. Figures 12-14 below show the existing and proposed streetscapes, which show the proposed development in the context of the adjacent buildings.

Therefore, having fully carefully considered the submitted proposal, I am satisfied that the development will cause no harm to the overall appearance of the proposed ATC and that the proposal therefore complies with the requirements of policy ATC2. I am also content that the scale and design of the building will comply with the principles of good design as set out in the SPSS.



Figure 12 – Existing and Proposed Streetscape



Figure 13 - Existing and proposed views of rear of site

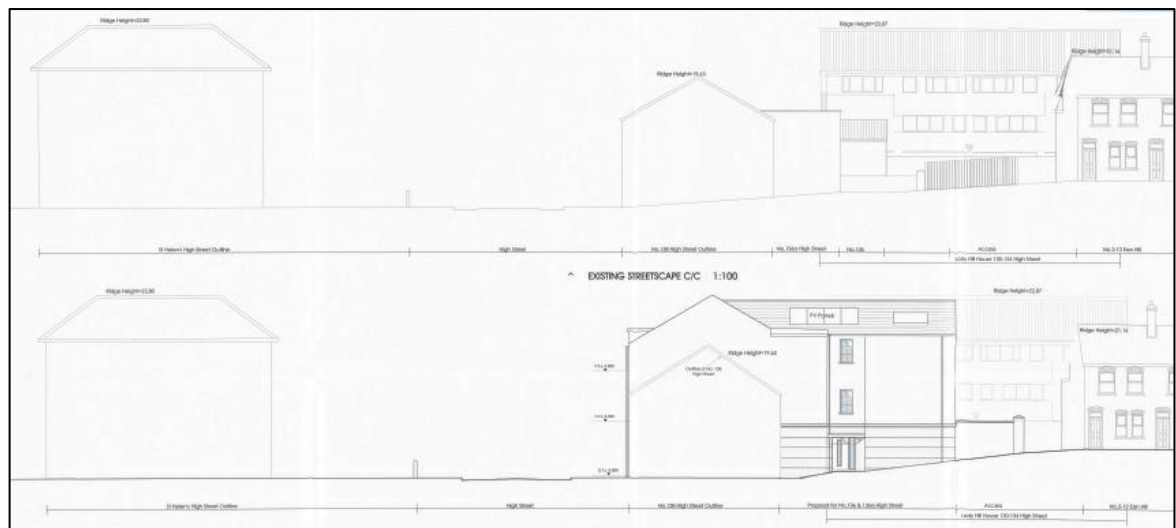


Figure 14 – Existing and proposed views of side

Impact on Listed Buildings

**Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage
Policy BH11 – Development affecting the Setting of a Listed Building**

This policy states that development will not normally be permitted which would adversely affect the setting of a listed building. Development proposals will normally only be considered appropriate where all the following criteria are met:

- (a) the detailed design respects the listed building in terms of scale, height, massing and alignment;
- (b) the works proposed makes use of traditional or sympathetic building materials and techniques which respect those found on the building; and
- (c) the nature of the use proposed respects the character of the setting of the building.

The site is in close proximity to the following listed buildings:

HB23 19 002 A	118-120 High Street, Hollywood	B1
HB23 19 002 C	122 High Street, Hollywood	B1
HB23 19 006 A	140 High Street, Hollywood	B2
HB23 19 006 B	142 High Street, Hollywood	B2
HB23 19 006 C	144 High Street, Hollywood	B2
HB23 19 006 D	146 High Street, Hollywood	B2
HB23 19 006 E	148 High Street, Hollywood	B2
HB23 19 006 F	150 High Street, Hollywood	B2
HB23 19 007	St Helen's House, 155 High Street, Hollywood	B1
HB23 19 011	1 Ean Hill, Hollywood	B2

The proposed development is considered to be acceptable and will not detract from the overall setting of the nearby listed buildings. Historic Environment Division (HED) was consulted and initially raised objections in relation to the design of the development and the impact it would have on the listed buildings. These concerns were taken into consideration and amended plans were received. The amendments included the revision of the roof pitch, the plan was revised to provide a more traditional form and massing and the roof tiles were changed from concrete to natural slate.



Figure 15 - Original proposal



Figure 16 - Amended proposal

Following the submission of these amendments HED offered no objections to the proposal subject to conditions.

Access, Road Safety and Parking

Planning Policy Statement (PPS) 3: Access, Movement and Parking

Policy AMP 2: Access to Public Roads

Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic.

There is a vehicular access from High Street to the rear of the site along Ean Hill and a second vehicular access is also proposed via the existing access that serves St Helen's Business Park. Having considered all of the submitted supporting information and the representations received, DFI Roads has advised it has no objections to the proposal in terms of road safety or traffic progression at this location.

Policy AMP 7 Car Parking and Servicing Arrangements

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.

The existing buildings have no formally laid out in curtilage parking provision. There is a rough area of unmarked ground to the rear of the funeral directors which the agent has advised is being used on a temporary basis by the funeral directors. Indeed this area was not included as parking provision for the funeral directors in the recent permission for expansion into unit 136a. There is a further area of rough ground to the northern end of the site which is also accessed off Ean Hill. This appears to be currently used by residents for parking.



Figure 17 - Google Aerial view



Figure 18 – Photographs of existing unsurfaced temporary parking to the rear of the site

The proposal will provide a total of 10 parking spaces within the site. These will be formally laid out and be exclusively for the proposed development (see site layout in figure 19 below)

Parking Standards set out the parking requirements for various types of development. For retail/office development of this size 28 spaces would be required. It is argued in the submitted Parking Survey that if the same parking standards were applied to the existing uses, a total of 16 spaces would be required based on the floorspace. However as outlined above, the existing uses have no permanent, formally laid out in curtilage parking provision. It is therefore argued that the provision for the existing uses is already substandard and that this must be taken into consideration when assessing the proposed development.

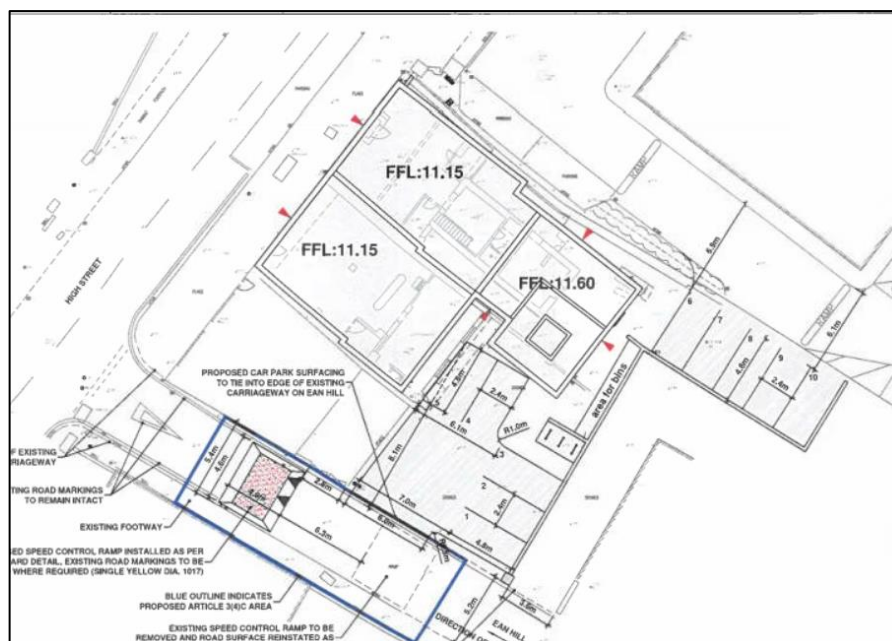


Figure 19 – proposed block plan

An additional Supporting Statement was received from Hoy Dorman, dated 26 July 2023, which addresses how the proposal will incorporate adequate parking provision and how existing parking arrangements will be affected as a result of the proposed development.

The statement provided further clarification on the existing parking arrangements for the site and surrounding area. It advised that the current parking arrangements allow for the funeral directors to use the parking area to the rear of the site while on a temporary basis existing pending redevelopment of the site and that this arrangement will cease upon redevelopment of the site.

The statement goes on to provide further clarification. The image below shows No.136 High Street and an area of ground to the rear, used as an informal parking area associated with No. 136, it is stated that no other vehicles are authorised to park in this area.

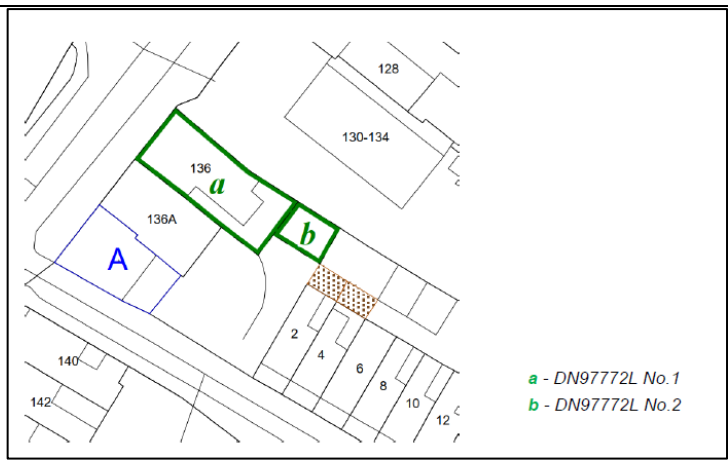


Figure 20 – Extract from Parking Statement

The image below shows the area of land located to the rear of no. 2 and no. 4 Ean Hill and adjacent to the boundary of St Helens Business Park. This land is owned by Antrim Construction Company. No. 136 High Street has use of this area for parking purposes. Again, it is stated that no other vehicles are authorised to park within this area.

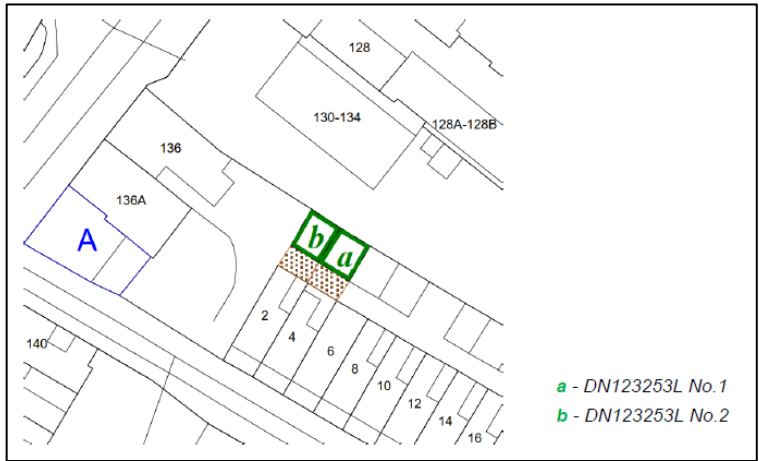


Figure 21 – Extract from Parking Statement

Both No. 2 Ean Hill and No. 4 Ean Hill have an easement (indicated by brown shading) to the rear of the property with access provided to this area along the side of No. 2 Ean Hill as highlighted in yellow (access is maintained with the proposed development).

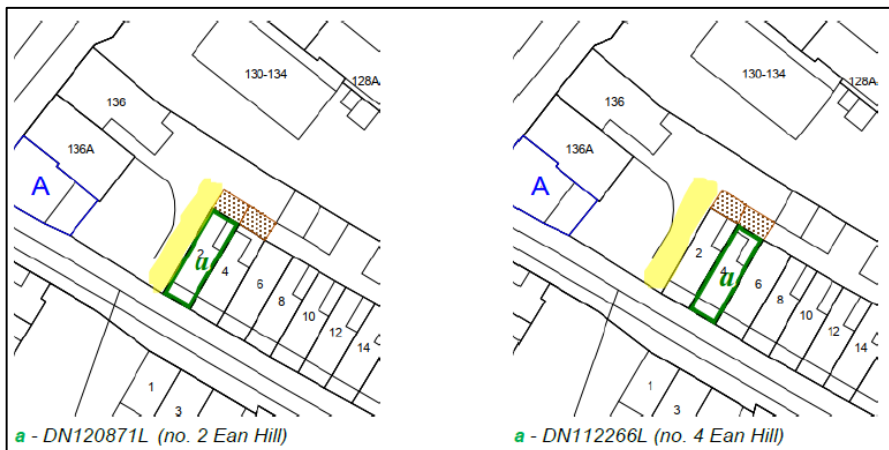


Figure 22 – Extract from Parking Statement

The report also states that parking for both no. 2 and no. 4 Ean Hill is currently 'on street' as the area indicated in brown is not suitable for vehicle parking. It would therefore appear that any current resident parking within the application site is unauthorised according to the agent. As there are no permanent or formally laid out in curtilage parking arrangements within these areas either for the existing commercial uses or for adjacent dwellings, I am satisfied that there would be no loss of existing parking provision at this location as a result of the development.

The statement also included findings of an additional parking survey for the existing St Helens Business Park undertaken on Thursday 25 May 2023 between the hours of 0800-1100, 1200-1500 and 1600-1900. The parking survey found that the average occupancy of the car park at St Helens Business Park over the survey period was 32%, equating to an average of 17 parking spaces being available.

In addition to the 10 in curtilage parking spaces proposed, these results demonstrate that further parking adjacent to the proposed development is available and within the control of the Applicant. Helens Business Park is located adjacent to the development within a short walking distance. The statement shows the number of spaces allocated to the developer.

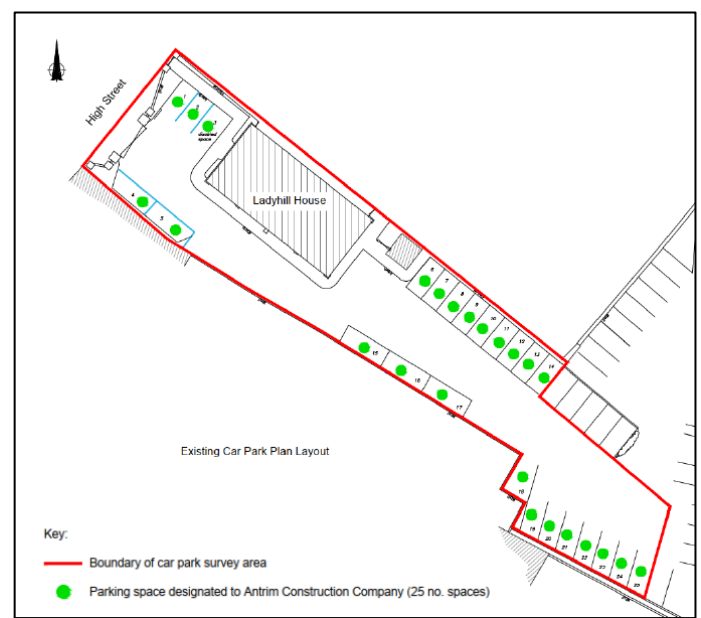


Figure 23 – Extract from Parking Statement

It is important to note that this is an additional option for extra parking, however the decision is not determined on the basis of relying on these additional spaces to cater for the development, as it has also been demonstrated that there is adequate on street/public parking available within the vicinity of the site.

A parking survey was conducted by Hoy Dorman on a Thursday between the hours of 8am–7pm. This included all existing public/on street parking provision within a 200m radius of the application site. 200m radius is an established benchmark for a reasonable walking distance from a mode of transport to a given facility. The areas surveyed are set out in Figure 24 below.

The results demonstrated that there was in excess of 31 no. available parking spaces within the study area at any time of the day (see figure graph extract from Hoy Dorman survey). The majority of available spaces were found to be within the Spafield car park and along High Street and My Lady's Mile with very little availability if any along Church View and Downshire Road. The parking spaces required for the proposed development would equate to a 22.5% utilisation of this available parking capacity within a 200m radius of the proposed site.

Street / Car Park Name	No. of Parking Spaces	Comment
Spafield Car Park	109	Existing car park within 200m of proposed site.
High Street	15	The survey extent for High Street extended north east from the proposed site to Downshire Road junction. While the town side of High Street had delineated spaces for some 15 vehicles there was significant parking available beyond Spafield Car Park with wide carriageways, good lighting and links to Spa Field Car Park and town centre.
Downshire Road	0	Predominantly terrace housing on both sides with typical parking arrangements. The lower end of Downshire Road is used for town centre parking but on an illegal basis. Therefore, this street was noted as having 0 parking spaces.
Church View	29	Typical terrace housing parking environment with tight spaces along both sides of the carriageway. Little to no evidence of town parking in this vicinity.
Ean Hill	20	Typical arrangement for streets adjacent to town centre, constant change of parking but spaces available.
My Lady's Mile	14	Directly across the road from Spafield Car Park with a significantly underused resource regarding parking.

Figure 24 – Existing parking within 200m radius of site

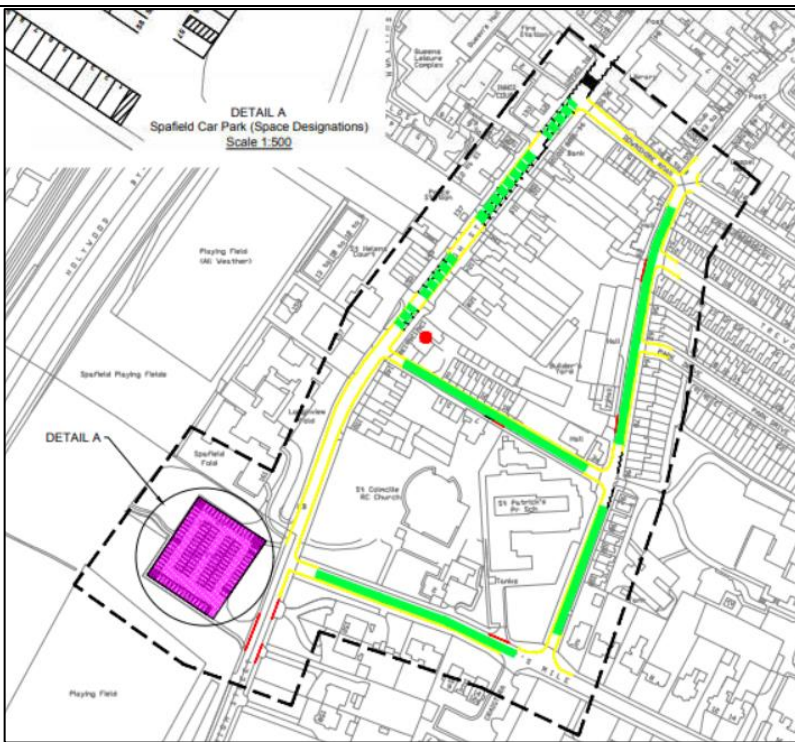


Figure 25 – Parking Study Area

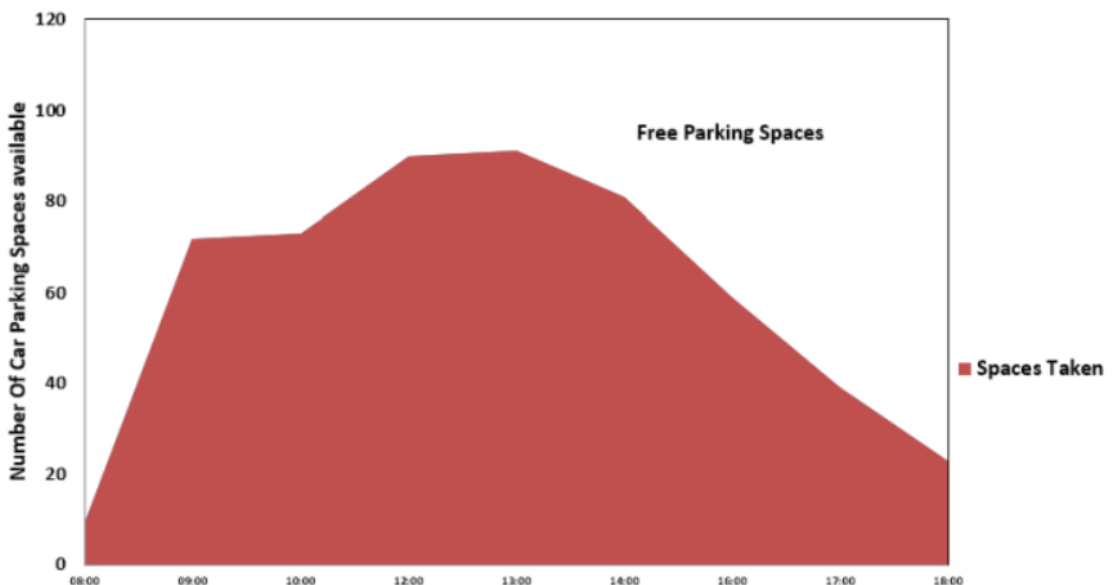


Figure 26 – Parking availability within 200m radius of site

Policy AMP7 advises that beyond areas of parking restraint identified in a development plan, a reduced level of parking provision may be acceptable in circumstances where the development is in a highly accessible location well served by public transport or where the development would benefit from spare capacity available in nearby public car parks or adjacent on street parking.

The site benefits from a high level of accessibility being within Hollywood town centre, a high-density location. Due to its location, there is good accessibility to public transport

by train and bus within easy walking distance with regular bus and train services to Belfast and Bangor. Pedestrian and cycle movements are also likely to be more popular modes of transport due to the position of the site. The proposal includes provision for cycle storage within the site.

The existing uses on the site and their associated parking provision and traffic generation are also material considerations in the assessment of this proposal as these represent a 'fallback' position. At present the existing units have no permanent or formally laid out in-curtilage parking provision therefore the majority of visitors would have to avail of on street parking or existing public car parks.

While it is acknowledged that when assessed strictly against the parking standards, there would be a shortfall of 18 spaces for a development of this size, determining weight is attributed to the other material considerations in this case as outlined above. Namely; the lack of permanent, formally laid out in-curtilage parking for the existing uses, available capacity on street parking and within public car parks, available capacity with St Helen's Business Park Car Park (under control of applicant), the accessible town centre location and good public transport links. It is therefore considered on balance that the 10 in-curtilage spaces proposed are sufficient to serve the development.

Impact on Designated Sites and Natural Heritage Interests

Planning Policy Statement 2: Natural Heritage

Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

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. A Biodiversity checklist was completed which demonstrates that the proposal is not likely to impact any designated sites, protected species or priority species or habitats. It is therefore considered that the proposal complies with Policies NH1, NH2 and NH5 of PPS 2.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance it has indicated that there is not a reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

Impact on Residential Amenity

There are no overlooking issues as the rear windows proposed are for a stairwell, toilets and staffrooms, which will be obscured. The proposed side windows look onto a commercial parking area.

There will be no unacceptable loss of light or dominance concerns as the nearest dwelling (no.2) is 7m away, across a lane and has a blank gable and return. No.1 and 3 are 25-30m away on the opposite side of the road, therefore, they will not be impacted upon by loss of light or dominance.

Flooding and Drainage

The Flood Hazard Map (NI) indicates that the development does not lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain. There are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within this site. No watercourses run through the site. The site is not within a Reservoir inundation area.

A drainage assessment is not required under Policy FLD 3 of PPS 15, as it does not exceed any of the required thresholds:

- Residential development comprising 10 dwelling units or more.
- A Development site in excess of 1 hectare.
- New hard-surfacing exceeding 1000m².

NIW Infrastructure

NI Water was consulted and initially recommended refusal due to potential network capacity issues, however through negotiation with the agent an acceptable solution was agreed and a further recommendation to approve was provided, subject to conditions.

5. Representations

14 letters of objection (11 different addresses, one MLA) have been received in regard to the application.

8 objections were received in response to the original proposal;
5 objections were received following the amended plans received in 25/5/2021;
No further objections received after latest amended plans submitted 19/7/2021;
Nor were any more received following receipt of the parking survey and parking report.

The main concerns are as follows:

- Increase in traffic/safety
- Lack of parking
- loss of light to Ean Hill residents
- Impact on house value
- No need for additional offices
- Neighbour notification
- Access road to parking for properties opposite site (140-150)
- Impact from construction – residential amenity, road safety, damage to road
- Character of area - overcrowding detrimental to area
- Overlooking

- Dominance
- Height out of keeping
- Previous proposal for Change of use from office to a childcare facility for primary aged children - before & after school club - Refused planning permission- due to parking (W/2014/0225/F).

All neighbours that abut the site were notified of the proposed development.

Impact on house value is not a material planning consideration.

Any noise from construction works is considered temporary and will not adversely impact on residential amenity and as the area is within the settlement limit of Holywood and the town centre, the erection of buildings is expected.

Refusal for No.140 Ean Hill W/2014/0225/F - Change of use from office to a childcare facility for primary aged children, before & after school club – DFI Roads had objected to this application due to the potential road safety, parking and traffic progression related issues, however they have no objections to the current application. The agent also failed to provide justification to overcome the concerns raised by DFI Roads.

It is important to note that the type of use proposed is different from the previous refusal; wraparound childcare is different in nature in terms of parking requirements due to various pick up/drop off at the premises. Parking has been addressed under Section 4.

All other matters raised have been addressed in detail under section 4 above.

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 visibility splays shall be provided in accordance with Drawing No.9 prior to the commencement of development hereby permitted.

Reason: To ensure adequate parking 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 to provide a level surface no higher than 250mm above the level of the adjoining carriageway, prior to the commencement of development hereby permitted and

such splays shall be retained and kept clear thereafter in perpetuity.

Reason: To ensure adequate parking 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 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. Materials shall be as follows:
 - a. Pitched roof: natural slate with clay ridge tile;
 - b. Dormer roofs: Lead or zinc, dressed over front and sides to conceal fascia board;
 - c. Rainwater goods: aluminium;
 - d. Walls: rendered smooth and painted, with ashlar banding to ground floor;
 - e. Stringcourse and cills: moulded concrete; and
 - f. Windows, shopfronts and external doors: aluminium

Reason: To respect the quality and character of the setting to the nearby listed buildings, incompliance with PPS6 BH11 criterion (b).

6. Prior to the commencement of use of the units within the development hereby approved, all windows indicated as 'opaque window' and coloured yellow on Drawing Nos. 02B and 03B shall be fitted with obscure glass and this obscure glazing shall be permanently retained thereafter.

Reason: In the interest of privacy and amenity.

7. There shall be no construction activity or deliveries to site on Sundays, Bank Holidays or outside the hours of 07:00 – 18:00 Monday – Friday, and 09:00 – 13:00 Saturdays. The level of construction noise shall comply with the Category A limit (65 dB LAeq daytime) selected for this development, as outlined in The British Standard BS5228:2009+A1:2014.

Reason: To ensure that there will be no unacceptable impact on the amenity of residents by way of noise and disturbance during construction.

8. The development hereby approved shall not be occupied until the road works indicated on Drawing No 09 have been fully completed in accordance with the approved plans.

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

9. The development hereby approved shall not commence operation until provision has been made within the curtilage of the site for the parking of cars in accordance with the details set out on Drawing 09. This parking provision shall be permanently retained thereafter.

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


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.

Case Officer Signature:		Date:	
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126 & 136a High Street, Hollywood

11 OCT 2021

2020/1052

Key: Proposed Car parking layout, Proposed 1.1m zone, Proposed 2.1m zone, Proposed new location wall A, Proposed new location wall B


New dimensions subject to parking area AG 23 01-21
 New C Chaining subject to new Civil Strategy AG 08 19-21

Drawings


1:1:500

1:200


1:50



Location plan - 1:1250 (0.14 hectares)



Site survey - 1:500



Site layout 1:200


0 25 50

Car parking fee from (not valued) in new floor space (see below calculations).

Adding floor space for 136 High Street to a total of 255sqm. Assume a total space for the new building to be a total of 226sqm, with a difference of 29sqm.

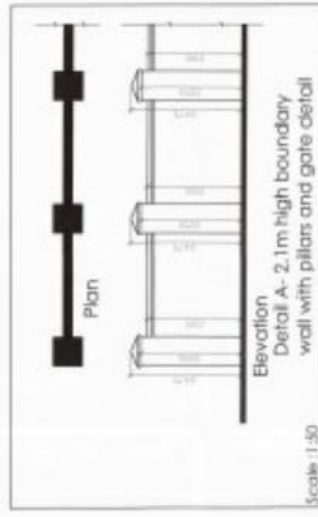
We have established this space within the site boundaries and have concluded that the parking requirements for the development are 146 spaces (including 100 in the surrounding area) (including 100 in the surrounding area) (including 100 in the surrounding area).

The proposed development has been considered in respect of access to the public transport network which serves the site (including the 136 High Street) and the availability of nearby public transport and street parking or the adjacent roads.



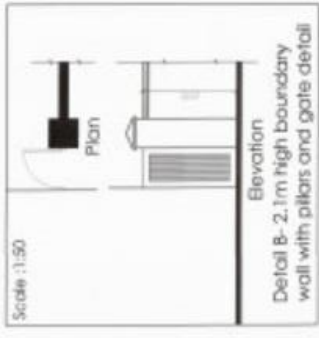
Car parking schedule 1:300

Denotes car parking space



Detail A - 2.1m high boundary wall with pillars and gate detail

Scale: 1:50



Detail B - 2.1m high boundary wall with pillars and gate detail

Scale: 1:50

Please Note: Adapted from Ordnance Survey of Northern Ireland maps with the permission of the Controller of the Crown. Copyright License No. 328

Scale As shown - AH - 23rd Oct 2020

2114.000/04.02.001.001

Location plan, site survey, site layout & car parking schedule - Sites 136 & 136a High Street, Hollywood

Antrim Construction Company
176 & 136a High Street, Holywood

AREA 8200000
100 BUCKINGHAM SQUARE LONDON E13 5JH (H) 181 3166

1ST Floor 2700sqft / 250m²
Office A: 1500sqft / 139m² (Office area 117sqft 10.9m²)
Office B: 1200sqft / 111m² (Office area 100sqft 9.3m²)
Office C: 1000sqft / 93m² (Office area 85sqft 7.9m²)

2nd Floor 2700sqft / 250m²
Office A: 1500sqft / 139m² (Office area 117sqft 10.9m²)
Office B: 1200sqft / 111m² (Office area 100sqft 9.3m²)
Office C: 1000sqft / 93m² (Office area 85sqft 7.9m²)

PROPOSED GROUND FLOOR PLAN 1:100

PROPOSED ROOF PLAN 1:100

PROPOSED FIRST FLOOR PLAN 1:100

PROPOSED SECOND FLOOR PLAN 1:100

4888/2020/1052

Scale: 1:100 - 30-MAY-2021

41 LITTLEFIELD ROAD, HOLYWOOD

Proposed Floor Plans - Sites 136 & 136a High Street, Holywood

Drawing Number: 003-15

81 JUL 2021



PROPOSED FRONT ELEVATION WITH EXISTING NO. 138 1:100



PROPOSED SIDE ELEVATION WITH EXISTING NO. 138 1:100



PROPOSED SIDE ELEVATION 1:100



PROPOSED REAR ELEVATION WITH EXISTING NO. 138 1:100

Drawing
 Number: 6-75
 1-888-718-1011
 1-888-718-1011
 1-888-718-1011
 1-888-718-1011

Proposed Elevations - Sites 136 & 136a High Street, Hollywood
 Scale: 1:100 - SS - May 2021
 2014-00-00-04-Proposed Elevations



Elevation Sections / Streetscapes - Sites 136 & 136a High Street, Hollywood

Scale: 1:100 - 15 - May 2021
 2114-01042-05-Streetscapes 1

Antrim Construction Company
136 & 136a High Street, Holywood



EXISTING STREETSCAPE BB 1:100



PROPOSED STREETSCAPE BB 1:100



Site Layout Key NTS

Elevation Sections / Streetscapes - Sites 136 & 136a High Street, Holywood

Scale 1:100 - 31 May 2020
214-001-007-STREETSCAPE 3



Company
136 & 136a High Street, Hollywood

EXISTING STREETScape C/C 1:100

PROPOSED STREETScape C/C 1:100

Site Layout Key MIS

Elevation Sections / Streetscapes - Sites 136 & 136a High Street, Hollywood
 Scale 1:100 - 05 - May 2021
 2114-C10-05-04-StreetScapes 2

Drawing Number: 65
 1488/2020/1052/F
 05 JUL 2021

Antrim Construction Company
133 & 136a High Street, Holywood

Existing Floor Plans & Elevations - Sites 136 & 136a High Street, Holywood
 Scale 1:100 - DWGAG - July 2020
 2114-010-02-01-Existing jobs and elevations

EXISTING 136F FLOOR PLANS 1:100

EXISTING GROUND FLOOR PLANS 1:100

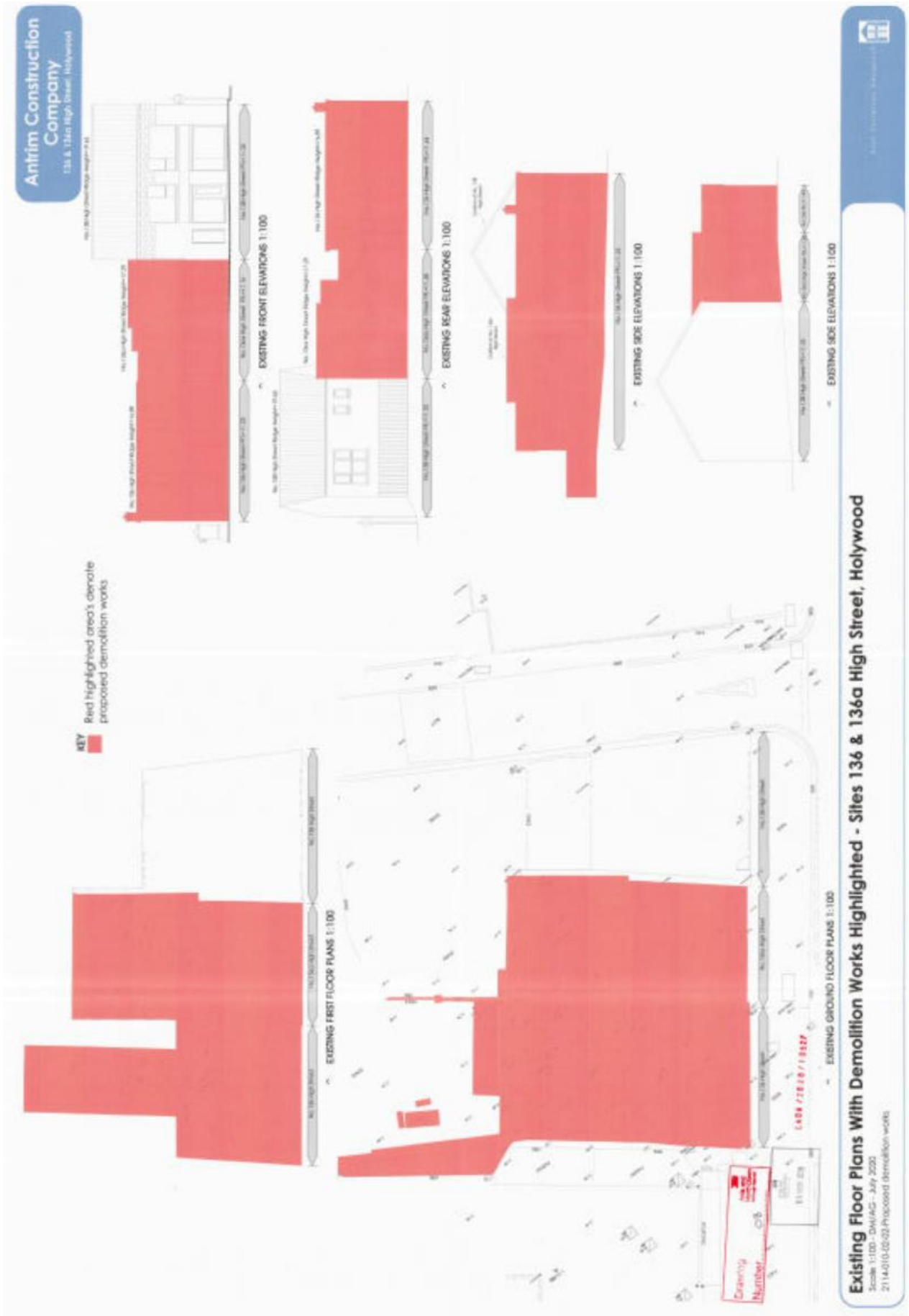
EXISTING FRONT ELEVATIONS 1:100

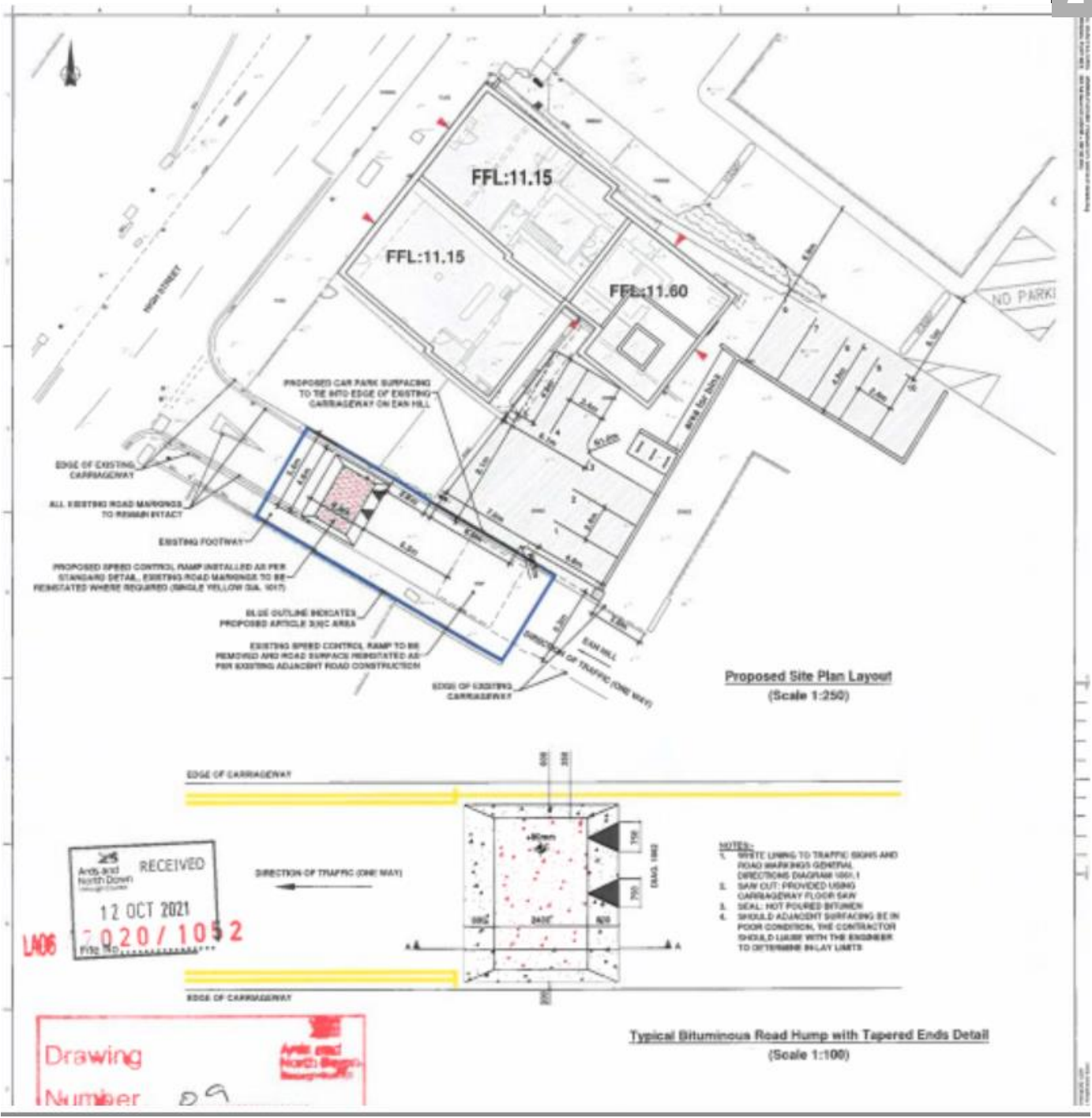
EXISTING REAR ELEVATIONS 1:100

EXISTING SIDE ELEVATIONS 1:100

Antrim Construction Company
133 & 136a High Street, Holywood

Existing Floor Plans & Elevations - Sites 136 & 136a High Street, Holywood
 Scale 1:100 - DWGAG - July 2020
 2114-010-02-01-Existing jobs and elevations
















ITEM 4.8

Ards and North Down Borough Council

Application Ref	LA06/2022/1141/F
Proposal	14no. two storey detached houses, garages and associated works: (Change of house type to plots 23-37 of approval LA06/2016/0982/RM and overall reduction from 15, 9 detached and 6 semi-detached houses).
Location	Land within 'Hightrees' Development 90m SE of No.25 Hightrees Drive, Donaghadee
Committee Interest	A planning (legal) agreement or modification to a legal agreement forms part of the consideration.
Validated	14/11/2022
Summary	<ul style="list-style-type: none"> • The site comprises part of a previously zoned site for residential development (DE11) under ADAP 2015. • Principle of development already agreed and presented before Committee through previous applications for housing on the site - LA06/2016/0982/RM (Residential development of 390 dwellings) granted on 26 September 2018. • This application represents one of a series of applications relating to smaller changes required on the site from that originally granted planning permission. • This proposal is for change of house type but as it is a stand-alone application, a legal agreement is required to ensure the conditions of the 'primary' application are delivered. • The current proposal sees a reduction from 15 to 14 dwellings in this section. • The applicant, with respect to the wider development site, has agreed to enter into a Section 76 Planning Agreement. This will impose the planning conditions with regard to the delivery of the distributor road as obligations under a deed of agreement. This legal agreement must be executed in parallel with the approval, if forthcoming.

	<ul style="list-style-type: none"> • The proposed change of house type to the 14 No. dwellings meets the requirements of the SPPS and Policy QD1 of PPS 7 'Quality Residential Environments' in terms design, scale and layout, impact on residential amenity and character. • DfI Roads content with regard to the previously approved Private Streets Determination, slight adjustments to the turning heads to the NE and SE, and the proposal is fully compliant with parking provisions. • An updated Tree Report submitted with this application with sites 29 and 30 repositioned further away from the protected trees so all foundations outside root protection areas. • A Preliminary Ecological Appraisal (PEA) and updated Lighting study were submitted following request from NED which now has no objections. • There were no representations received in respect of this application.
<p>Recommendation</p>	<p>Approval</p>
<p>Attachment</p>	<p>Item 4.8a – Case Officer Report</p>

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2022/1141/F	DEA: Bangor East & Donaghadee	
Proposal:	14 two storey detached houses, garages, and associated works. (Change of house type to plots 23-37 of approval LA06/2016/0982/RM and overall reduction from 15 dwellings, 9 detached and 6 semi-detached houses).		
Location:	Land within High Trees Development. 90m South-East of No 25 Hightrees Drive, Donaghadee.		
Applicant:	Strand Homes Ltd		
Date valid:	14/11/22	EIA Screening Required:	No
Date last advertised:	18/11/22	Date last neighbour notified:	18/11/22
Letters of Support : 0		Letters of Objection: 0	Petitions: 0
Consultations – synopsis of responses:			
ANDBC Tree Officer	Content. Precedent set. Separate tree application required for any works to TPO trees.		
DAERA Water Management Unit	Content subject to Standard Conditions, Informatives & Standing Advice.		
DAERA Natural Environment Division	The extant permission was acceptable to NED and can still be implemented. Given this fallback position, the layout remaining largely the same, along with a reduction in total numbers of dwellings further updated information including PEA is not required.		
NI Water Multiple Units East	Precedent set with extant approval. Lower number of units.		
DFI Roads	Content with conditions. Private Streets Determination approved for the current application.		

Summary of main issues considered:

- Principle of Development
- Impact on Character and Residential Amenity
- Impact on Parking
- Impact on Trees/Landscape
- 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:

[Northern Ireland Public Register \(planningsystemni.gov.uk\)](http://planningsystemni.gov.uk)

1. Site and Surrounding Area

The site is located within the boundary of a construction site for residential development of 390 units, previously approved under applications Reference: LA06/2016/0982/RM and Outline Application Ref X/2014/0473/O. Implementation of these permissions has commenced with several dwellings constructed. The site is located, and accessed off, the Southern side of the Newtownards Road, opposite Donaghadee Rugby Club, with residential development in the wider vicinity.



Photos 1 & 2 Generic Development Views: High Trees Development, Donaghadee



Photos 4 & 5: Views towards application site with adjacent dwelling no17 under construction (left)

The current application site is located within the northeastern part of the site. The site lies within the settlement limit of Donaghadee, as shown in the Ards and Down Area Plan 2015 and is associated with the zoned housing site. (DE11).

2. Site Location Plan

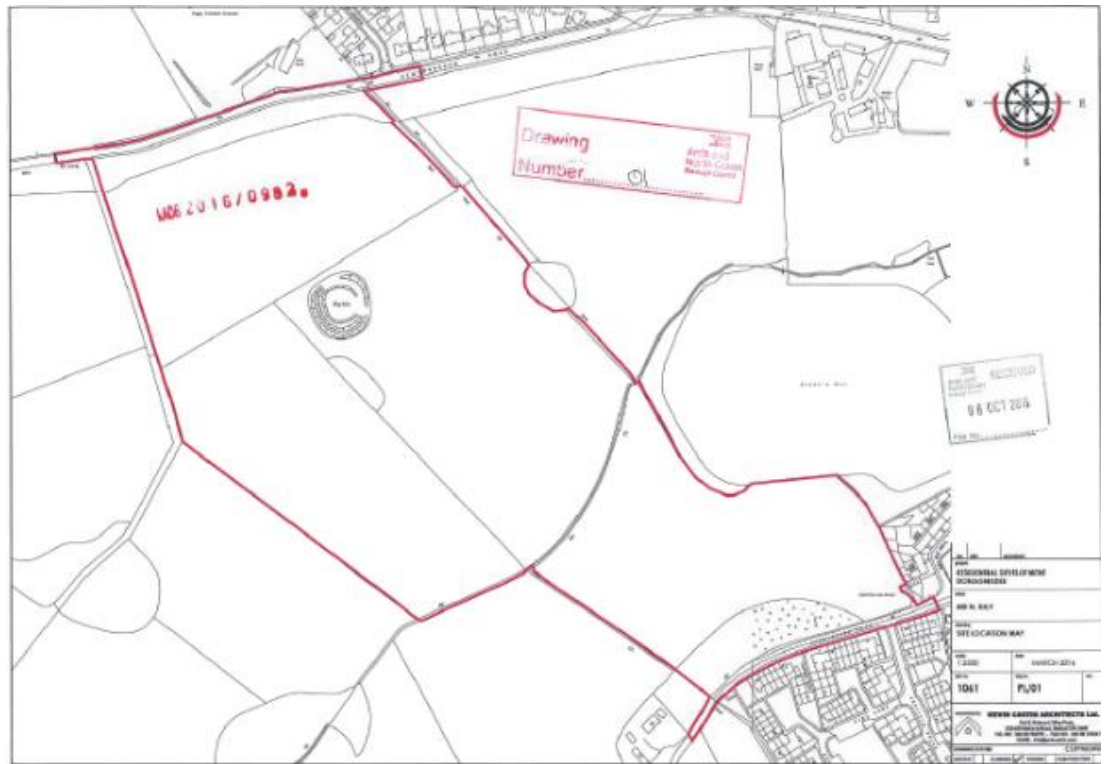


Fig 1 Location Plan (GIS OS Extract) under Reserved Matters Approval Drawing Number LA06/2016/0982/RM 01

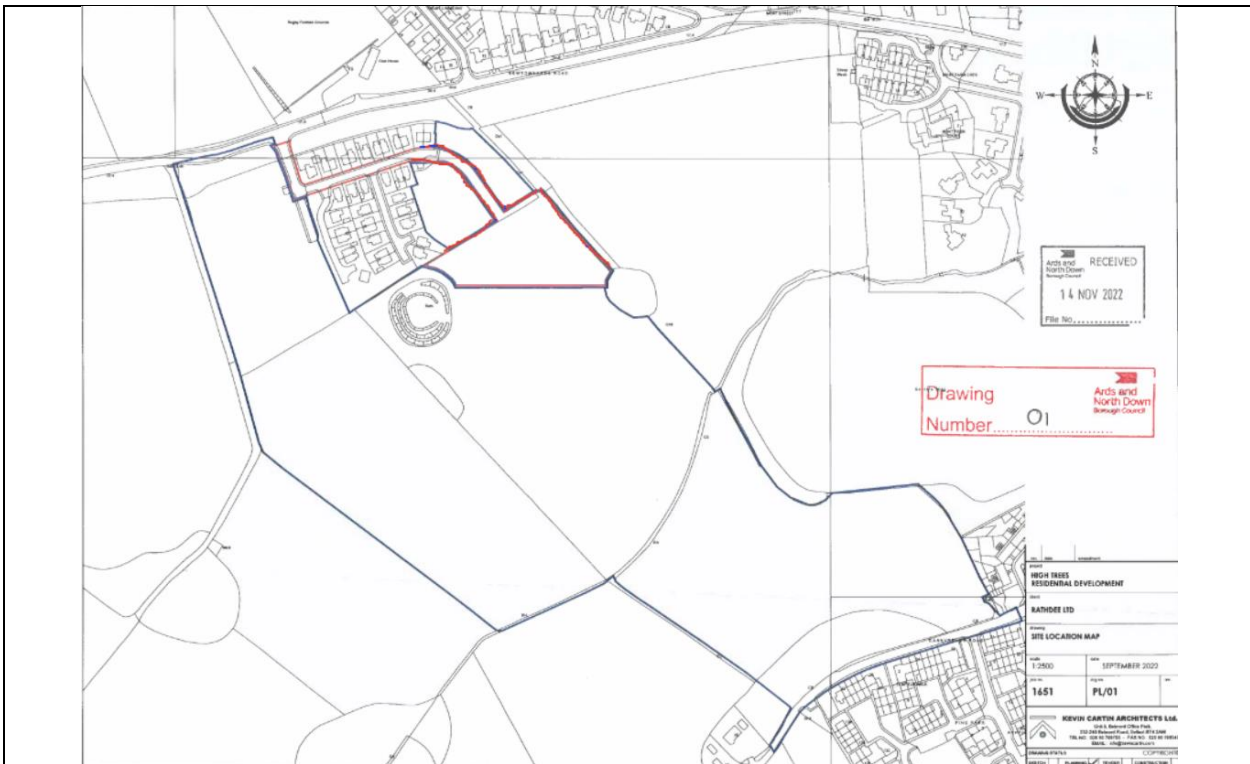


Fig 2 Location Plan (GIS OS Extract) under this application Drawing Number LA06/2022/1141/F 01



PROPOSED SITE PLAN

TO BE READ IN CONJUNCTION WITH ROADS ENGINEERS TJK CONSULTING DRAWINGS
Fig 3 Drawing LA06/2022/1141 04C – Proposed Site Plan

3. Relevant Planning History

On 3 March 2015 Outline Planning Permission was granted for residential development under Reference **X/2014/0473/O** to include mix of house types (inc. social/affordable housing), neighbourhood facilities, amenity open space, landscaping, and ancillary works. Lands between the Newtownards Road and Cannyreagh Road, Donaghadee.

On 27th September 2018 Reserved Matters were granted under reference **LA06/2016/0982/RM** for the residential development comprising 390 dwellings (to include mix of detached, semi-detached, town houses and apartments) with associated landscaping and amenity space and provision of new Road link from Newtownards Road to Cannyreagh Road. This followed on from the Outline Planning Permission granted in March 2015.

In addition, the following applications for change of house types, minor non-material changes, discharge of conditions and works to trees have subsequently been approved by the Council in relation to the original approvals, including:

Reference **LA06/2019/0548/DC** 'Residential Development of 390 dwellings. Discharge of Condition 34 approved under LA06/2016/0982/RM.' Satisfied Condition 34 can be partially discharged 22/10/2020.

Reference **LA06/2029/0549/NMC** 'Residential development of 390 dwellings - non-material change to house types, including larger patio doors and glazing to rear elevations previously approved under LA06/2016/0982/RM' – Approved 10/08/2020.

Reference **LA06/2019/0550/NMC** 'Residential development of 390 dwellings - Non-material change to condition 33 of LA06/2016/0982/RM to facilitate tree protective fencing to take place prior to work commencing within each of the phases of development set out in accordance with Condition 34' – Approved 22/10/2020.

Reference **LA06/2019/0554/NMC** 'Residential development of 390 dwellings - non-material change to Condition 11 of approval LA06/2016/0982/RM to facilitate design and certification of culvert across watercourse by chartered engineer. Culvert to be installed at a stage when road construction is required over the watercourse.' – Approved 13/10/2020.

Reference **LA06/2019/0555/DC** 'Residential development of 390 dwellings - Works to Discharge Condition 24 of approval LA06/2016/0982/RM re archaeological survey' – Partial Discharge of Condition 28/06/2019.

Reference **LA06/2019/0556/DC** 'Residential development of 390 dwellings - Discharge of Condition 28 of approval LA06/2016/0982/RM re submission of a Construction Environmental Management Plan.' Approved 10/07/2020.

Reference **LA06/2019/0721/F** 'Section 54 application to vary Condition 4 of Approval LA06/2016/0982/RM 'The Private Streets (Northern Ireland) Order 1992. Newtownards Road - No other development hereby permitted shall be commenced until the works necessary for the improvement of Newtownards Road have been completed in

accordance with the details outlined in blue on drawing numbers LA06/2016/0982/131C, 132C & 135C, bearing the Council's date stamp 27th February 2018. DFI Roads hereby attaches to the determination a requirement under Article 3 (4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C)'. The Amended Condition should read: 'No dwelling shall be occupied until the works necessary for the improvement of Newtownards Road have been completed in accordance with the details indicated in blue on drawing numbers LA06/2016/0982/131C, 132C and 135C, bearing the Council's date stamp 27th February 2018. DFI Roads hereby attaches to the determination a requirement under Article 3 (4A) of the above Order that such works shall be carried out in accordance with an Agreement under Article 3(4C)'. - Withdrawn 07/12/2020

Reference **LA06/2019/1126/DC** 'Discharge of condition 24 of planning approval LA06/2016/0982/RM 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 the archaeological remains within the site, for mitigation of the impacts of the development through excavation recording or by preservation of remains and for preparation of an archaeological report. Reason: To ensure that archaeological remains within the application site are properly identified and protected or appropriately recorded. (Previous partial discharge under LA06/2019/0555/DC)' – Discharged in Full 12/11/2020.

Reference **LA06/2020/0503/TPO** 'Request to fell four trees (Tree nos 546, 547, 788 and 789 as identified within the TPO) and carry out works to one tree group (Tree no. 118 as identified within LA06/2016/0982/RM) (TPO Ref: TPO/2009/0026 and Planning App Ref: LA06/2016/0982/RM)' Approved 15/07/2020.

Reference **LA06/2020/0659/F** '5 dwellings (change of house types on site No. 55, 56, 80, 109 and 110 within housing development approved under ref LA06/2016/0982/RM).' Approved 02.08.2020.

Reference **LA06/2020/0929/DC** 'Discharge of Condition 36 of Planning Approval LA06/2016/0982/RM which states 'The long term management and maintenance of the open space and play area, as indicated on drawing numbers LA06/2016/0982/122B, 123B, 124B, 125B, 130B, bearing the Council's date stamp 10th October 2017, also numbers 126A, 127A, 128A, bearing the Council's date stamp 30th May 2017, number 162, bearing the Council's date stamp 4th June 2018, number 163, bearing the Council's date stamp 20th August 2018, shall be undertaken by a management company commissioned by the developer. Details of the arrangements to be put in place to establish the management company and details of the alternative measures which will take effect in the event that the management arrangements break down, must be submitted to and agreed in writing with the Council prior to the occupation of any dwelling hereby approved.' Approved, discharged in full 29/01/21.

Reference **LA06/2020/0963/DC** 'Discharge of condition 35 of LA06/2016/0982/RM.' - Approved 25/01/21.

Reference **LA06/2021/0246/F** '2No.Dwellings (Change of House Types in relation to planning approval LA06/2016/0982/RM to include single-storey rear sunrooms on plots 93 and 94)' – Approved 11/10/21.

Reference **LA06/2021/0345/F** '8 new dwellings - amendment to plots 81-91 of planning approval LA06/2016/0982/RM to reduce numbers from 10No. semi-detached and 1No. detached house to provide 8No. detached houses and detached garages (Amended Drawings).' Approved 16/11/21.

Reference **LA06/2021/0752/TPO** 'Request to fell 3 trees (Tree no: 116, 117 and 119) protected by a TPO (TPO/2009/0026)' - No objection to 1 17/02/22; 2 covered by previous application.

Reference **LA06/2021/1178/F** 'Change of House Type from Planning Approval LA06/2016/0982/RM for 7 No. dwellings' – Approval 26/05/22.

Reference **LA06/2022/0978/F** '2 Dwellings (Change of House Type to Include Sunrooms and Detached Garages – from approval LA06/2016/0982/RM)' – Approved 15/06/23.

There are also applications, including for change in house types, currently in the system under consideration including:

Reference **LA06/2021/1438/F** 'Amendment to approved realignment of Cannyreagh Road and provision of new link section to ensure retention of vehicular and pedestrian access for existing residential properties' (Amended Plans) on land adjacent to 11-13 Cannyreagh Road, Donaghadee.

Reference **LA06/2022/1274/F** '9 No. Dwellings, Plots 253-261 of approval LA06/2016/0982/RM: Alterations to siting (Change of House Type) and revisions to approved road layout to facilitate sustainable urban drainage scheme.'

4. Planning Assessment

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

- Ards & Down Area Plan 2015 (ADAP)
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 2: Natural Heritage (PPS2)
- Planning Policy Statement 3: Access, Movement & Parking (PPS3)
- Planning Policy Statement 7: Quality Residential Environments (PPS7)
- Planning Policy Statement 7: Addendum – Safeguarding the Character of Established Residential Areas (Addendum of PPS7)
- Planning Policy Statement 12: Housing in Settlements (PPS12)

Planning Guidance:

- Creating Places
- Living Places
- Development Control Advice Note 8 Housing in Existing Urban Areas (DCAN8)
- DCAN 15 Vehicular Access Standards

Principle of Development

Compliance with the Development Plan

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

The Ards and Down Area Plan is the Local Development Plan for this area. According to the Ards and Down Area Plan 2015 (ADAP) the site is located within the designated Settlement Limit of Donaghadee. Within the defined Settlement Limit new residential development is acceptable in principle. The site comprises part of a previously zoned site for residential development (DE11) so the principle of residential development has already been established on the site.

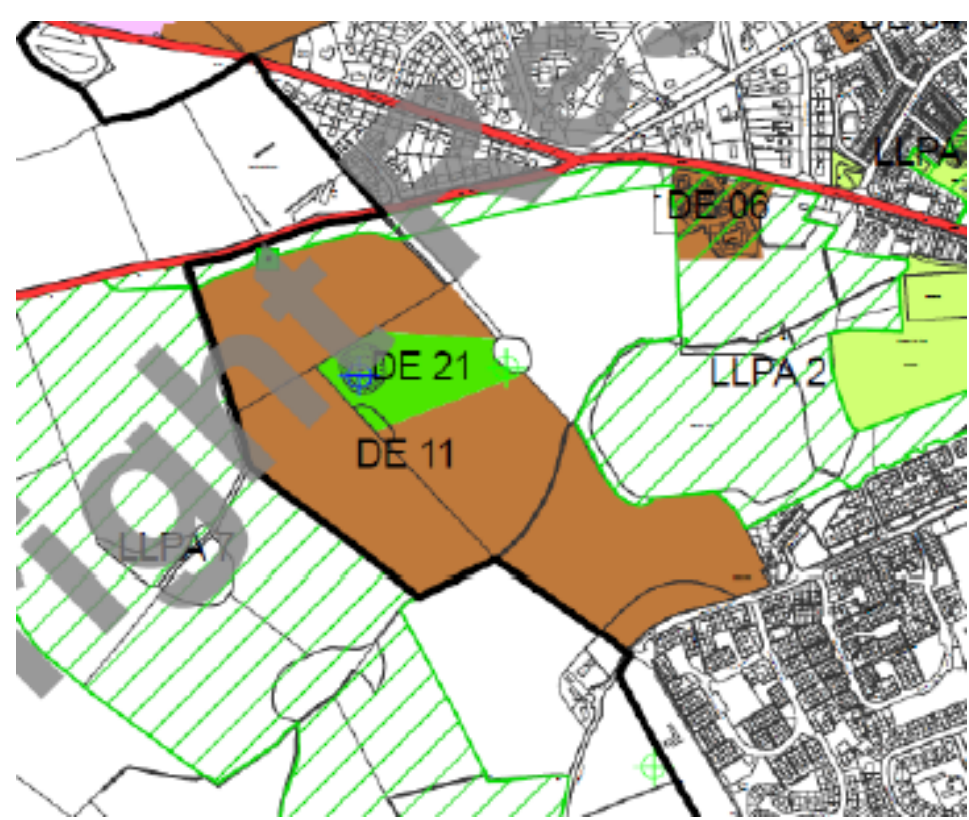


Fig 4: Extract Ards and Down Area Plan 2015 Residential allocation/zoning of site DE11

The current proposal is for 14 detached houses, a reduction from 15 houses (9 detached and 6 semi-detached) approved under LA06/2016/0982/RM. This is a small change to an overall scheme of almost 400 dwellings. Development on the site has already commenced in line with the Reserved Matters permission.

In assessing subsequent applications for change of house type proposals such as this, the original parent planning permission must always be considered. Any amendments to the original parent permission should remain compliant with the overall approved concept for the site and any planning conditions. In this case, the amendments proposed are minor, comprising a reduction in overall numbers by one and changing 6no. semi-detached dwellings to detached. This was originally approved under parent applications X/2014/0473/O and LA06/2016/0982/RM. The parent permissions included planning conditions requiring completion of the distributor road between Cannyreagh Road and Newtownards Road prior to the occupation of 200 houses (condition 2 – LA06/2016/0982/RM and condition 10 – X/2014/0473/O). Extracts from the decision notices are included for the relevant conditions:

X/2014/0473/O extract, Condition 10:

10. The distributor road link from Newtownards Road through to Cannyreagh Road shall be completed prior to 200 dwellings on the site being occupied.

Reason: For traffic progression and the safety and convenience of road users.

LA06/2016/0982/RM extract, Condition 2:

2. The distributor road link from Newtownards Road through to Cannyreagh Road shall be completed prior to 200 dwellings on the site being occupied.

Reason: For traffic progression and the safety and convenience of road users.

Given that a number of stand-alone change of house type applications have already been approved and taking account of this current application along with one further change of house type application in the system and application LA06/2021/1438/F relating to the realignment of the Cannyreagh Road, measures must be put in place to ensure that the conditions relating to the provision of the distributor road can still be met.

Going forward, to ensure that the approval of separate stand-alone change of house type applications will not result in the potential to breach the above conditions with respect to the number of houses occupied, the applicant, with respect to the wider development site, has agreed to enter into a Planning Agreement prepared under Section 76 of the Planning Act (Northern Ireland) 2011. This will impose the planning conditions with regard to the delivery of the distributor road as obligations under a deed of agreement. This pertains to the wider site's development and is being prepared in conjunction with change of house type application LA06/2022/0978/F, granted permission on 15 June 2023 (due to the minor nature of the changes) and current change of house type applications LA06/2022/1141/F and LA06/2022/1274/F. It is considered appropriate that the issuance of any decision be conditional upon the confirmation that the applicant and any other interests have signed the agreement. The

agreement considered alongside this application at Committee and then will need to be approved by Full Council.

Strategic Planning Policy

Regional planning policies of relevance are set out in the Strategic Planning Policy Statement and other retained policies, specifically PPS 7. The guiding principle of the SPPS 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 harm to interests of acknowledged importance. The SPPS also promotes good design.

QD1 of PPS7 (Quality in New Residential Development) 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 sets out criteria to which proposals are expected to conform. Proposals will not be permitted where they would result in unacceptable damage to the local character, environmental quality, or the residential amenity of these areas.

Impact on Character & Amenity

Within the overall High Trees residential development site there are a variety of house types, detached, semi-detached and apartments, some with garages and sunrooms. As the principle of dwellings on this site has been established the main issues for consideration in this instance are therefore the changes to the scheme including details such as layout, siting together with the potential impact on residential amenity. It is not proposed to change the road layout or the housing plots in any substantial way – the main change being a reduction in one unit overall and 6 dwellings changing to detached from semi-detached. There are minor proposed adjustments to the road position in the North-East and South-East the site. Private road areas are highlighted. It is not proposed to change the road layout or the housing plots in any substantial way. The proposed changes to the road layout will not directly impact on the access from Cannyreagh Road or the delivery of the entire distributor road linking the Newtownards Road and Cannyreagh Road.

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



Fig 5 Extant approval showing Layout & Siting of dwellings - Extract from Drawing LA06/2016/0982/RM 02



Fig 6 Proposed Layout & Siting of dwellings Extract from Drawing LA06/2022/1141 04B



Fig 6 Proposed Layout & Siting of dwellings Extract from Amended Drawing LA06/2022/1141 04C (Our Ref)

The proposed siting, and design of the dwellings is very similar to existing. Privacy and amenity of the individual dwellings is respected and will not be more adversely impacted. Separation distances are comparable to the approved scheme and there is integrated landscaping along the NW boundary. To the NE separation distances to houses to the north are largely unchanged. As open space is to be to the immediate south and landscaped/tree boundary to the East, it is not considered there would be any adverse impact on the amenity of neighbours. The design of the dwellings accords with the dwelling types in the overall development. Attractive design features and materials include smooth concrete tiles for the roofs with optional chimneys, solar PV panels subject to orientation, select red facing brick, hardwood timber doors and roughcast render gabled fronts. There is no further loss of light or overlooking created from detached units over the semi-detached dwellings.



HOUSE TYPE B (SITES 32, 33 & 34)

Fig 7 Illustrative proposed detached dwellings SW of current application site – Drawing LA06/2022/1141 23

The overall layout, density, scale, massing, materials, and details of the proposed dwelling respects the character of the wider residential area, in accordance with the requirements of the criteria of Policy QD1 of PPS7. With regard to APPS7 density is not an issue as there is a reduction from previous approval.

Access

There is no change to the point of access as a result of the proposals. Parking provision is fully compatible with policy requirements. While there are some minor adjustments to the angle of the turning head accesses to the NE and SE, impact will be minimal. Private roads are highlighted. DFI Roads have been consulted and are content with conditions, including those relating to the Private Streets Determination. There is no impact on the wider road network and the road that was part of the planning agreement.

Trees

All trees within the site are covered by a Tree Preservation Order. Trees were considered as part of the previous applications for the entire site with conditions attached. A tree survey report accompanied this application completed by an independent arboriculture consultant. A precedent has been set by the previously approved layout providing for 15 dwellings on this part of the site. The current application is for a change of house type, and it is considered, overall, that this will not impact significantly further than that previously approved. New planting species is indicated as previously approved. An updated tree report has now been received with numbering which aligns with the original site survey undertaken for the Reserved Matters, LA06/2016/0982/RM. Trees 120, 122 and 124 all had to be removed at an earlier date due to ash dieback or unsafe condition. In relation to sites 29 and 30 there has been a slight repositioning of the dwellings on the latest amended drawing LA06/2022/1141 04C further away from the trees so that all foundation works will be outside the Root Protection Areas. This will also ensure good separation between habitable windows and trees to be retained. In addition, a separate tree works application will need to be made to the Council for assessment for any TPO trees affected as a result of proposals.

Biodiversity

The previous application for the entire site was subject to various ecological surveys and mitigation plans for protected species. This included the area of the current application and land to the east of the proposed development. Natural Environment Division of NIEA were reconsulted and requested further updated information including a Preliminary Ecological Appraisal (PEA) given the adjacent wooded areas and the treeline adjacent to the eastern boundary of the site. Updated lighting study and information was submitted to address NED comments. On site it was noted that following the granting of the original planning applications this area of the site is now partly stripped of vegetation and topsoil in preparation for construction. Having regard to the fall back of the previous permission which can still be implemented and the fact that the general layout of this section will remain largely the same we are content that a PEA will not be required.

5. Representations

None

6. Recommendation

Grant Planning Permission

7. Conditions

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.

2. The distributor road link from Newtownards Road through to Cannyreagh road shall be completed in line with the Planning Agreement.

Reason: For traffic progression and the safety and convenience of road users.

1. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.

The width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No LA06/2022/1141 05A.

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

2. No dwellings shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of the development.

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

3. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no buildings, walls, or fences shall be erected, nor hedges, nor formal rows of trees grown in verges/service strips determined for adoption.

Reason: To ensure adequate visibility in the interests of road safety and the convenience of road users and to prevent damage or obstruction to services.

4. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no planting other than grass, flowers or shrubs with a shallow root system and a mature height of less than 500mm shall be carried out in verges/service strips determined for adoption.

Reason: To ensure adequate visibility in the interests of road safety and the convenience of road users and to prevent damage or obstruction to services.

5. The dwellings hereby approved, 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 a minimum of 2 spaces per dwelling.

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

6. All appropriate road markings and associated signage within the development and on the public road shall be provided by the developer/applicant in accordance with the Department for Infrastructure's specification (Design Manual for Roads and Bridges) and as directed by DFI Roads Traffic Management Section prior to the occupation of any dwelling.

Reason: In the interest of road safety and traffic progression

7. The gradient of private accesses shall not exceed 8% for the first 5m outside the public road boundary and a maximum gradient of 10% thereafter.

Reason: In the interest of road safety.

8. A suitable buffer of at least 10 metres must be maintained between the refueling location of machinery/vehicles/vessels, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/materials/spoil etc. and the watercourse present within the application site.

Reason: In order to protect the aquatic environment.

9. The street lighting proposals shall be implemented in accordance with Drawing No. LA06/2022/1141 29 prior to the occupation of the dwellings hereby approved.

Reason: In the interests of natural heritage.

10. All hard and soft landscape works shall be carried out in accordance with the appropriate British Standard or other recognised Codes of Practice and the details shown on Drawing Nos. 122B, 123B, 124B, 125B, 130B bearing the Council's date stamp 10th October 2017, Drawing Nos. 126A, 127A, 128A bearing the Council's date stamp 30th May 2017, Drawing No. 162 bearing the Council's date stamp 4th June 2018, Drawing No. 163 bearing the Council's date stamp 20th August 2018 and the Landscaping Management Plan bearing the Council's date stamp 6th October 2016 as approved under application LA06/2016/0982/RM. The hard and soft landscaping works shall be implemented in accordance with the phasing plan as approved under application LA06/2019/0548/DC.

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

11. The erection of fencing for the protection of any retained tree shall be in accordance with approved plan Drawing No. LA06/2022/1141/F 04C and BS5837:2012 before any equipment, machinery or materials are brought onto the site for the purposes

of the development, and shall be maintained until all equipment, machinery and surplus materials have been removed from the site. No building equipment, machinery or materials shall be stored or placed in any area fenced off in accordance with this condition.

Reason: To ensure the continuity and amenity of existing trees.

12. Any hedgerow or tree removal shall be carried out outside of the bird breeding season which runs from 1st March to 31st August.

Reason: To protect breeding birds.

Informatives

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.
2. This approval is subject to a Planning Agreement prepared under Section 76 of the Planning Act (Northern Ireland) 2011.

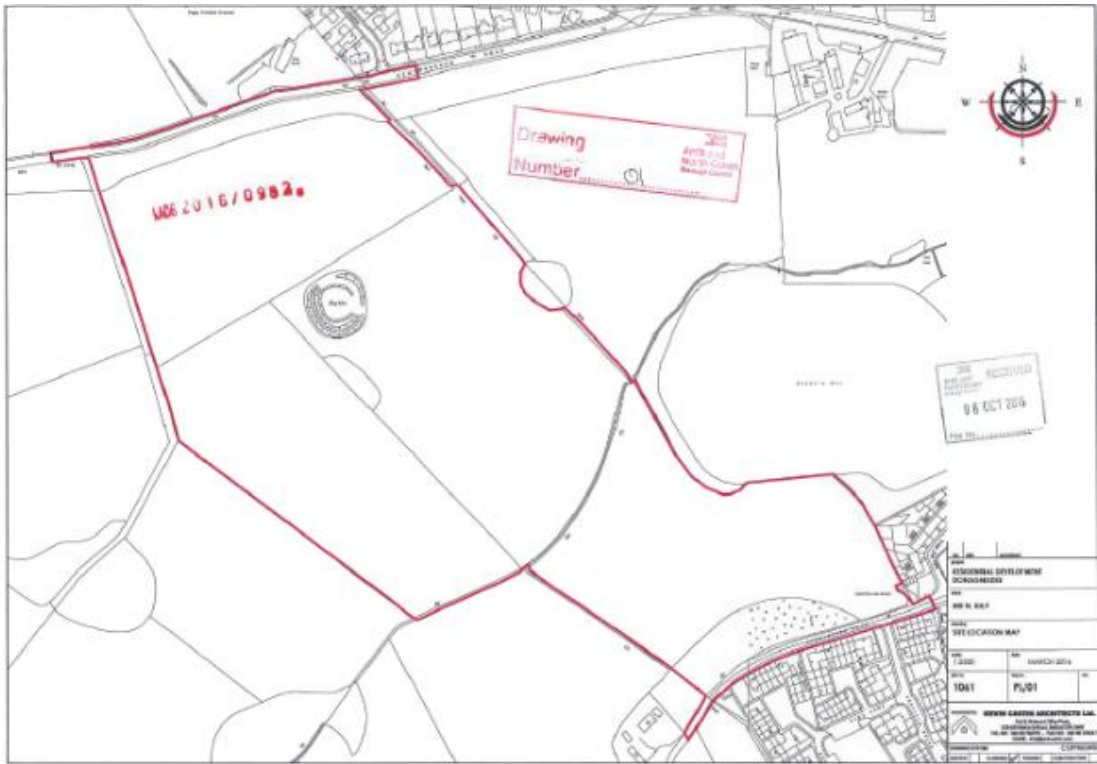


Fig 1 Location Plan (GIS OS Extract) under Reserved Matters Approval Drawing Number LA06/2016/0982/RM 01

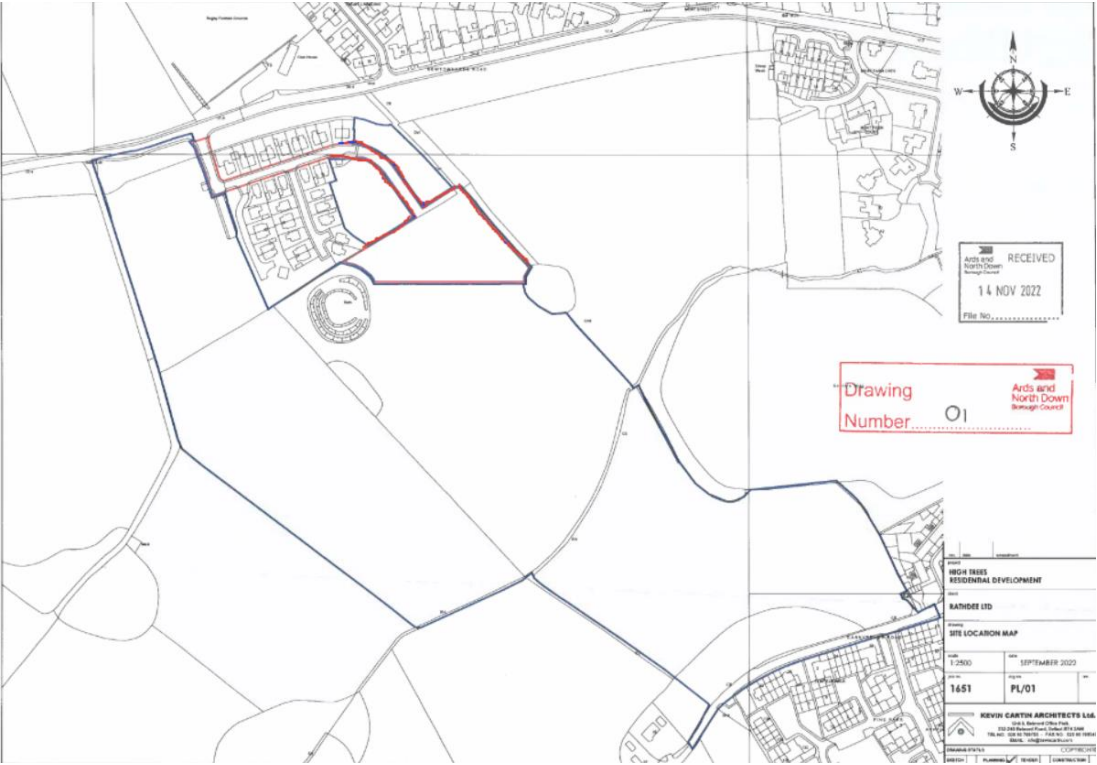


Fig 2 Location Plan (GIS OS Extract) under this application Drawing Number LA06/2022/1141/F 01

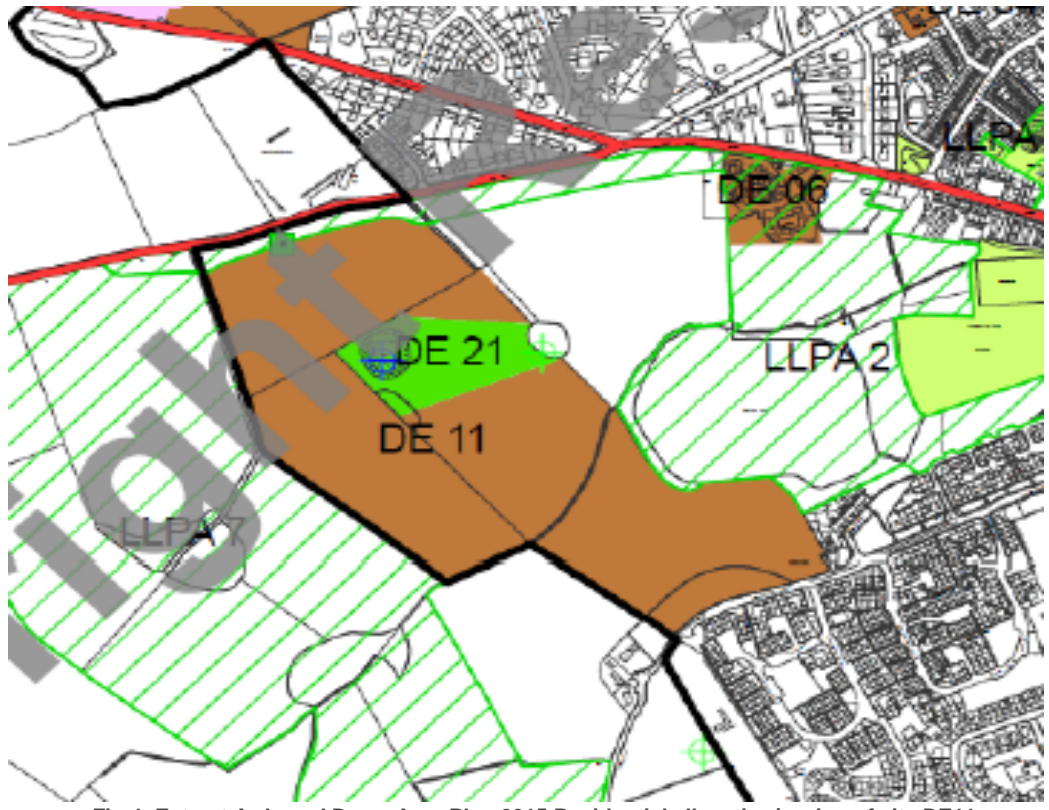
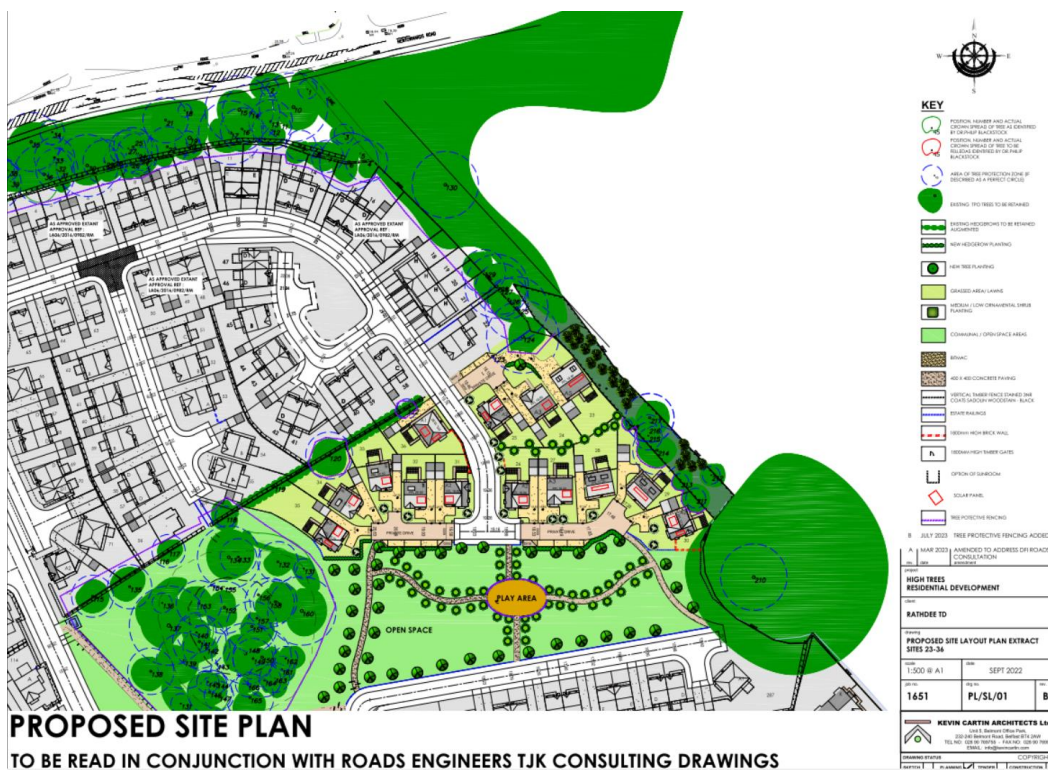


Fig 4: Extract Ards and Down Area Plan 2015 Residential allocation/zoning of site DE11



Fig 5 Extant approval showing Layout & Siting of dwellings - Extract from Drawing LA06/2016/0982/RM 02



Fig 6 Proposed Layout & Siting of dwellings Extract from Drawing LA06/2022/1141 04B



PROPOSED SITE PLAN
TO BE READ IN CONJUNCTION WITH ROADS ENGINEERS TJK CONSULTING DRAWINGS



HOUSE TYPE B (SITES 32, 33 & 34)

Fig 7 Illustrative proposed detached dwellings SW of current application site – Drawing LA06/2022/1141 23



Photo 1 Entrance Site View/Plan High Trees Development



Photo 2 Entrance Site View/Plan High Trees Development



Photo 3: View towards application site with adjacent dwelling no17 under construction (left)



Photo 4: View South towards application site

Unclassified

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ITEM 5**Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	16 October 2023
File Reference	N/A
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Not applicable
Subject	Update on Planning Appeals
Attachments	Item 5a - 2021/E0026 Item 5b - 2022/A0184

Appeal Decisions

1. The following appeal was dismissed on 25 September 2023. The terms of the Notice were varied.

PAC Ref	2021/E0026
Application ref	LA06/2017/0337/CA & EN/2020/0013
Appellant	Mr J Hair (J Hair Car Sales)
Subject of Appeal	Alleged change of use from yard area to car sales
Location	Premises on land behind Dicksons Garden Centre, 79 Cootehall Road, Crawfordsburn

Not Applicable

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The appeal was brought on Grounds (a), (e), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. There was a deemed planning application by virtue of Section 145(5).

Ground (e) that copies of the Enforcement Notice were not properly served

- The Commissioner considered that the Notice was appropriately served, and this ground of appeal failed.

Ground (a) that planning permission ought to be granted - The appeal site comprises a small area of hardstanding which sits within the existing boundaries of a vacant garden centre. The garden centre was approved in 1988 as part of approval W/1988/0115 for the demolition of existing complex and erection of new indoor garden centre and restaurant with associated external horticultural areas. The garden centre is now vacant, and the wider site is occupied by several other businesses including a pet shop specialising in tropical fish, a conservatory supply and installation showroom and a concrete products retailer. These businesses all involve the sale of goods to the public. The appellant argued that the appeal site was part of an approved retail complex and as such this represents a reasonable fallback position. The appellant further advised that any other type of retail at the site other than vehicle sales, which is sui generis, would not require further planning permission.

The Commissioner considered that the use of the site was retailing and prevailing policy within the SPPS states that retailing will be directed to town centres and the development of inappropriate retail facilities in the countryside must be resisted. No sequential test was submitted, and the Commissioner was not convinced that the appeal development represented an appropriate use in the countryside in accordance with the policy. It therefore does not meet the requirements of the SPPS.

In respect of the appellant's reliance on a fall-back, the sale of vehicles has a distinct character which separates it from other retail uses. Therefore, to use the previous use of the site to justify vehicle sales does not account for the fact that any change of use to vehicle sales must require permission. There is clear distinction between the nature of these uses and the fallback position as a garden centre. The previous use of the site is not adequate to establish the principle of the appeal development.

In respect of the deemed application, the Commissioner found that the Council's objections to the principle of the car sales use of the appeal site in respect of Policy CTY 1 of PPS 21 were sustained in that it was not demonstrated that there were any overriding reasons why the development is essential in this countryside location and could not be located within a settlement.

Ground (f) – that the steps required by the Enforcement Notice exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity caused by any such breach – the Commissioner did not consider that there was any ambiguity within the wording of the Enforcement Notice, and the appeal under this ground failed.

Not Applicable

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Ground (g) – that the period for compliance specified in the Enforcement Notice falls short of what would reasonably be allowed - The Council had stipulated a 90-day timescale for the cessation of the use and the removal of the portacabin and return of the land to its condition before the breach took place. The Commissioner varied the terms of the Notice to provide a period of six months.

2. The following appeal was dismissed on 12 October 2023.

PAC Ref	2022/A0184
Application ref	LA06/2021/0375/O
Appellant	Mr John McKee
Subject of Appeal	2 detached dwellings with garages and ancillary works
Location	Lands located between Nos. 20 and 20a Lower Balloo Road, Groomsport, and No. 160 Springwell Road, Bangor

The Council refused planning on 16 November 2022 for the following reasons:

- i. 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;
- ii. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY 8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the site 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, create a ribbon of development along the Springwell Road and Lower Balloo Road, resulting in the loss of a valuable visual break within the existing road frontage; and
- iii. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY 14 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 would add to a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.

The main issues in this appeal were whether the proposal is acceptable in principle in the countryside and would erode the rural character of the area.

The Commissioner considered that there were no designations or zonings in the Development Plan and that the proposal is contrary to the SPPS and prevailing planning policies under PPS 21 applied namely CTY 1, CTY 8 and CTY 14.

Not Applicable

252

The Commissioner concluded that despite the curvature of the road at the intersection between Springwell Road and Lower Balloo Road, the proposed development site fronts onto the roads and therefore belongs to two distinct and separate frontages (see map below). As such there is no substantial and continuously built-up frontage along this section of the Lower Balloo Road, as it depends on development fronting onto Springwell Road acting as a bookend to establish a line of three or more buildings within which the proposal would be located. As such, the appeal site cannot constitute a small gap site within an otherwise substantial and continuously built-up frontage.

In terms of the size of the gap at the location it is determined that the subject gap is sufficient to accommodate more than two dwellings, which would respect the existing development pattern along the frontage in terms of size, scale, siting, and plot size, based on the range of plot sizes within this area. As such the proposal does not meet the exceptional test.

Finally in terms of CTY 8 the Commission concluded that the appeal development would still create a built-up appearance along the road, resulting in a ribbon of development and the loss of an important visual break.

In terms of CTY 14 the Commissioner determined that a ribbon of development would be created as per CTY 8. Further, development on the appeal site will lead to the built-up appearance of the area, resulting in a suburban style build-up of development that would cause a detrimental change to the rural character.

With regard to Policy CTY 1 of PPS 21 Policy CTY 1 of PPS 21 as it was not demonstrated that there were any overriding reasons why the development is essential in this countryside location and could not be located within a settlement, the policy requirement was also not sustained.



Not Applicable

253

New Appeals Lodged

3. The following appeal was lodged on 11 September 2023.

PAC Ref	2023/A0056
Application ref	LA06/2020/0483/O
Appellant	John Gracey
Subject of Appeal	Refusal of planning permission for 2 no. dwellings and detached garages
Location	Land immediately adjacent to and NE of 9 Corrog Lane, Portaferry

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.



Enforcement Appeal Decision

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254

Appeal Reference:	2021/E0026
Appeal by:	Mr J Hair
Appeal against:	An Enforcement Notice dated 11 th June 2021
Alleged Breach of Planning Control:	Change of use from yard area to car sales
Location:	Premises on land behind Dicksons Garden Centre, 79 Cootehall Road, Crawfordsburn. Down.
Planning Authority:	Ards and North Down Borough Council
Authority's Reference:	LA06/2017/0337/CA & EN/2020/0013
Procedure:	Hearing on 21 st April 2022
Decision by:	Commissioner Kenneth Donaghey, dated 25 th September 2023

Grounds of Appeal

1. The appeal was brought on Grounds (a), (e), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. There is a deemed planning application by virtue of Section 145(5).

Ground (e) – that copies of the Enforcement Notice were not properly served

2. Section 138 (2) (a) of the Planning Act (Northern Ireland) 2015 requires that copies of the Enforcement Notice (the Notice), be served on the owner and occupier of the land to which it relates. Section 138 (2) (b) also requires that the Notice be served on any other person having an estate in the land, which in the Council's opinion, is materially affected by it.
3. At the hearing, the Council confirmed that the Notice had only been served on the appellant. It was also confirmed that the landowner of the site had not been served with a Notice. The reason for this was the Council had conducted a Land and Property Services check which revealed the land to be unregistered. The Council stated that they conducted further research online and were not able to identify the owner of the site. It was accepted at the hearing that that the landowner of the site was not aware of the Notice or the pertaining appeal proceedings.
4. Section 144 (3) of the Act provides that where a person required to be served with a copy of the Notice was not so served, the Commission may disregard the fact if that person has not been substantially prejudiced by the failure to serve the copy of the Notice on them. The critical test to be considered is whether anyone has been denied an opportunity to participate in the appeal proceedings. The appellant, who has been renting the property since 2017, stated at the hearing that he was not aware of the identity of the owner of the site. Any interactions which the

appellant has had about the premises, including the payment of rent, were with a property letting agent.

5. At the hearing the appellant was unable to provide the name and address of the landowner of the site. Following the hearing, on the 29th April 2022, the Commission wrote to the appellant and seeking that the appellant provided copies of the rental agreement to the Commission within 14 days.
6. In response to this request, the landowner of the site was identified. The Commission wrote to the landowner on the 9th June 2022 and advised that an Enforcement Notice that affected his property had been served and a hearing to consider it had already taken place. The landowner was further advised that he must *“inform the Commission in writing by 4pm on the 23rd June 2022 if you wish to participate in any further proceedings in relation to the above mentioned Enforcement Notice”*. No comments were received from the landowner.
7. The landowner of the site was invited to comment upon the Notice and given an opportunity to participate in any further proceedings. They did not avail of this opportunity to participate. I am satisfied that no substantial prejudice has been caused. Therefore, the appeal under Ground (e) fails.

Ground (a) that planning permission ought to be granted

8. The main issues in the appeal are whether the development is acceptable in principle in the countryside, if it is capable of integrating satisfactorily, and its impact on rural character.
9. Section 45(1) of the Planning Act requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) to be unlawful on 18 May 2017 and consequently BMAP must be disregarded. The North Down and Ards Area Plan 1984 - 1995 (NDAAP), despite its vintage, operates as the LDP for the area the site lies in. The appeal site sits outside any defined settlement within NDAAP. It is also within the zoned green belt which has since been succeeded by regional policies for development in the countryside. A further consequence of the Court of Appeal judgement is that the draft BMAP (dBMAP), published in 2004, is a material consideration in the determination of this appeal. In dBMAP the appeal site lies outside any settlement limit and is not zoned for any purpose. Both plans are silent on development of the type stated in the Notice and defer to regional policies for development in the countryside.
10. The Strategic Planning Policy Statement for Northern Ireland Planning for Sustainable Development (SPPS) is material to all appeals. The transitional arrangements set out in Paragraph 1.10 of the SPPS indicate that until such times as a Plan Strategy for the whole council area has been adopted, planning authorities will apply existing policy within Planning Policy Statements that have not been cancelled together with the SPPS. The relevant planning context is the SPPS, Planning Policy Statement 21: Sustainable Development in the Countryside

(PPS21), Planning Policy Statement 3: Access, Parking and Movement (PPS3) and Planning Policy Statement 4: Planning and Economic Development (PPS4).

11. The appeal site comprises a small area of hardstanding which sits within the existing boundaries of a vacant garden centre. The garden centre was approved in 1988 as part of approval W/1988/0115 for the demolition of existing complex and erection of new indoor garden centre and restaurant with associated external horticultural areas. The garden centre is now vacant, and the wider site is occupied by several other businesses including a pet shop specialising in tropical fish, a conservatory supply and installation showroom and a concrete products retailer. These businesses all involve the sale of goods to the public. The appellant argued that the appeal site was part of an approved retail complex and as such this represents a reasonable fallback position. The appellant further advised that any other type of retail at the site other than vehicle sales, which is sui generis, would not require further planning permission.
12. Notwithstanding the historic development on the appeal site, the site is located in the countryside. Policy CTY1 of Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21) allows certain types of non-residential development in the countryside. The appeal development relates to the retention of car sales. At the hearing, the parties argued that Planning Policy Statement 4 - Planning and Economic Development (PPS 4) provides the policy context for the appeal development. Parties believe the appeal development constitutes a sui generis employment use. The preamble of the policy advises that the policy approach and associated guidance contained within PPS 4 may be useful in assessing proposals for other sui generis employment uses. The same preamble then also states that this PPS does not provide policy for retail uses. Commercial vehicle sales is a sui generis use which falls outside the uses specified in the Planning (Use Classes) Order (Northern Ireland) 2015. Nonetheless, the use of the word 'sales' clearly points to the use being a form of retail activity, and this forms the basis of the evidence before me. Therefore, the reliance on PPS4 is misplaced.
13. Notwithstanding my conclusions relating to the relevance of PPS4 for retail development in the countryside, the appellant sought to rely on the policy support in accordance with the redevelopment of an established economic development use in the countryside as permitted by Policy PED4 of PPS4. However, it clearly states that redevelopment of proposals involving retailing, will not be permitted. Nonetheless, the appellant's arguments related to the historic use of the site as a garden centre along with the other planning approvals granted in the vicinity of the appeal site. Notwithstanding these factors, the site is outside of the development limits of Bangor, in the rural area, and falls to be determined in accordance with the prevailing policies for the countryside. No other arguments were advanced in accordance with the range of types of non-residential development that would be considered acceptable in the countryside in accordance with Policy CTY1 of PPS21.
14. Policy CTY 1 of PPS 21 directs that the current regional policy for retailing is contained in Planning Policy Statement 5: Retailing and Town Centres (PPS5), paragraph 1.16 of the SPPS cancelled PPS5. Paragraph 6.73 of the SPPS lists the strategic policy for types of non-residential development in the countryside.

- Whilst none of these relate to retail development, paragraph 6.74 thereafter provides for consideration of other types of development in the countryside in line with other policies set out within the SPPS. Paragraph 6.279 of the SPPS deals with retailing in the countryside. It states that retailing will be directed to town centres and the development of inappropriate retail facilities in the countryside must be resisted. It goes on to state that as a general exception to this policy approach, some retail facilities may be considered appropriate outside settlement limits including farm shops, craft shops and shops serving tourist or recreational facilities. This list is not exhaustive and the use of the word 'including' infers that other typologies of retail facilities may be acceptable. The policy goes on to indicate that those retail facilities considered appropriate should be located within existing buildings. The use of the word 'should' implies that this requirement is recommended and not mandatory. The policy states that all proposals must ensure that there will be no unacceptable adverse impact on the vitality and viability of an existing centre within the catchment.
15. The SPPS places emphasis on the need to direct retailing to town centres and paragraph 6.270 states that it seeks to promote established town centres as the appropriate first choice location for retailing and other complementary functions. Paragraph 6.280 states that a sequential test should be applied to planning applications for main town centres uses whilst paragraph 6.281 details that such uses will be considered in the following order of preference – primary retail core, town centres, edge of centres and out of centre locations. Whilst vehicle sales may not be suited to the town centre as argued by the appellant, this does not preclude consideration of the other options within the sequential test. No sequential test has been conducted by the appellant. The appellant did advise that there will be no impact on the viability or vitality of the existing town centre however this has not been substantiated by any quantitative analysis.
 16. The appeal development is not located inside existing buildings which is the policy preference. Furthermore, the sequential test is not met and the argument on need has not been grappled with by the appellant. The appeal development is around 500m² and therefore is of such a small scale that it is unlikely to have an unacceptable adverse impact on the vitality and viability of the existing centres in the catchment. In the context of the SPPS, I am not convinced that the appeal development represents an appropriate use in the countryside in accordance with the policy. It therefore does not meet the requirements of the SPPS.
 17. I agree that the last legal use of the appeal site is as part of a large garden centre complex. Furthermore, I accept that this represents a reasonable fallback position. Other similar uses have been allowed to become established within the site of the approved garden centre. There are historic approvals for a conservatory sales business and a concrete products sales business at the wider site. A pet shop is also evident adjacent to the appeal site but no information has been provided to demonstrate the lawfulness or otherwise of this use. The previously approved and implemented use as a garden centre and the current approved uses around the site are an important material consideration. The garden centre offered the retail sale of garden materials to the public. The approved uses are also retail uses that offer sales of goods to the public. Whilst these approvals were not issued by the

Council, they have not provided any comment which would suggest that they do not agree with them.

18. Sui generis uses are unique in that any change to a sui generis use must require planning permission. The sale of vehicles has a distinct character which separates it from other retail uses. Therefore, to use the previous use of the site to justify vehicle sales does not account for the fact that any change of use to vehicle sales must require permission. There is clear distinction between the nature of these uses and the fallback position as a garden centre. The previous use of the site is not adequate to establish the principle of the appeal development. I have already considered that the development does not meet the requirements of the SPPS or Policy CTY 1 of PPS 21, this is not outweighed by the planning history of the site.
19. Policy CTY 1 of PPS 21 states that there are a range of other types of non-residential development that may be acceptable in the countryside and these will be considered in accordance with existing published planning policies. Having regard to the published retailing policy set out in the SPPS and its sequentially preferred sites approach, it has not been demonstrated that there are no available sites to accommodate the appeal proposal in nearby urban centres in the catchment. Nor have I been given any persuasive reason why the proposal is essential in its present location. There is therefore no overriding reason why the development is essential in this countryside location and could not be located within a settlement. I find that the development does not comply with the retailing policy in the SPPS nor Policy CTY1 of PPS21.
20. Paragraph 6.70 of the SPPS states that all development in the countryside must integrate into its setting and respect rural character. Policy CTY1 of PPS21 states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings. The site sits within the confines of a larger commercial site. The whole site is bound by a 2 metres high paladin fence. The appeal site sits adjacent to this fence at the south west corner of the larger site and around 40 metres to the north of the A2 Belfast to Bangor dual carriageway. The Council argue that the appearance of the temporary buildings and the vehicles which are displayed for sale do not integrate sympathetically to their surroundings and also have a significant impact upon rural character when viewed from the A2.
21. The site sits close to the development limits of Bangor adjacent to the main A2 Belfast to Bangor dual carriageway and within a complex of commercial units. On approach to the site from the west the roadside vegetation obscures any views of the site until the site frontage of the appeal site itself. This is the same for approaches from the east. The site is set back almost 40 metres from the road and separated by a large green space. When one arrives at the frontage of the appeal site it is viewed in the context of the wider commercial site. The small portacabin type structure is barely perceptible when viewed against the backdrop of much larger buildings which comprise the remainder of the commercial site. The vehicles and buildings at the appeal site are not unduly prominent, nor are they particularly out of character when viewed in the context of the wider commercial site. Traffic on the A2 Belfast - Bangor dual carriageway is fast moving at the stretch of road adjacent to the appeal site, therefore it is unlikely that any views of the proposed

development are long lasting. The views identified by the Council are short range and transient. The appeal site is set against a wider backdrop of commercial development and therefore the appeal development integrates into its surroundings and respects the character of the surrounding area. The Council's objections regarding integration and rural character have not been sustained.

22. The Council's objections to the principle of the car sales use of the appeal site in respect of Policy CTY 1 of PPS 21 have been sustained in that it has not been demonstrated that there any overriding reasons why the development is essential in this countryside location and could not be located within a settlement. Furthermore, I have found that the proposal is contrary to the SPPS. Consequently, the appeal under ground (a) must fail.

Ground (f) – that the steps required by the Enforcement Notice exceed what is necessary to remedy any breach of planning control or to remedy any injury to amenity caused by any such breach.

23. The main issue in respect of ground (f) is whether the steps required by the EN exceed what is necessary to remedy the breach of planning control. I have already considered that the reference to signage within part 4 of the Notice is misplaced and shall be removed. The appellant further alleges that the phrase at part 4 of the notice which requires the appellant to 'remove all associated site works' is unclear and unreasonable. The appellant is of the view that the site has been hard surfaced and enclosed by fencing for many years. At the hearing the Council clarified that the term all associated site works referred to the entrance gates, boundary fencing and spotlights around the site. However, this is not obvious from the reading of the notice itself.
24. I agree with the appellant that the term 'all associated site works' is not specific. However, when considered with the Notice as a whole they clearly relate to the works which the appellant has carried out as part of the breach of planning control. Whilst certain elements of part 3 of the Notice refer to operational development, they are intrinsically linked to the use of the site for vehicle sales. I do not consider the enforcement notice to have any ambiguity in this respect. For this reason the appeal under Ground (f) must fail.

Ground (g) – that the period for compliance specified in the Enforcement Notice falls short of what would reasonably be allowed.

25. The main issue to consider in respect of ground (g) is if the period for compliance with the notice falls short of what should reasonably be allowed. The Council has stipulated a 90-day timescale for the cessation of the use and the removal of the portacabin and return of the land to its condition before the breach took place. The appellant argues that this is unreasonably short. The appellant argues that this is an inadequate period in which to find an alternate location or to dispose of all current stock without incurring significant financial loss. The appellant has requested a 6 month period to comply with the Notice.
26. At the time of my site inspection the appellant had a significant number of vehicles for sale which were displayed in the forecourt. However, any financial loss which the appellant alleges may be incurred has not been quantified. The period of 90 days in which to identify and secure an alternate site and move the appellants

business is unreasonable given the nature of the task involved in relocating a business. Therefore, the appeal under ground (g) succeeds and the period for compliance with the Notice is amended to 6 months from the date of this decision.

Decision

The decision is as follows:-

- The appeal on ground (e) fails.
- The appeal on ground (a) fails.
- The appeal on ground (f) fails
- The appeal on ground (g) succeeds and the period for compliance with the notice is amended to 6 months.

COMMISSIONER KENNETH DONAGHEY

List of Appearances

Planning Authority:-	Ms W Murray (Ards and North Down Borough Council) Mr C Blair (Ards and North Down Borough Council)
Appellants:-	Mr D Donaldson (Donaldson Planning Ltd) Mr J Hair (Appellant)

List of Documents

Planning Authority:-	"A" Written statement of case
Appellant:-	"B" Written statement of case

PLANNING APPEALS COMMISSION**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58****Appeal by Mr John McKee****against the refusal of outline planning permission for 2 detached dwellings with
garages and ancillary works on lands located between nos. 20 and 20A Lower Balloo
Road, Groomsport, and no. 160 Springwell Road, Bangor, BT19 6LY.****Report****by****Commissioner Kieran O'Connell****Planning Authority Reference: LA06/2021/0375/O****Procedure: Written Representations****Commissioner's Site Visit: 20th September 2023****Report Date: 3rd October 2023**

1.0 **BACKGROUND**

- 1.1 Ards and North Down Borough Council received the application on 26th March 2021. By notice dated 16th November 2022 the Council refused permission, giving the following reasons: -
- **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;**
 - **The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY 8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the site 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, create a ribbon of development along the Springwell Road and Lower Balloo Road, resulting in the loss of a valuable visual break within the existing road frontage; and**
 - **The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY 14 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 would add to a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.**
- 1.2 The Commission received the appeal on 23rd January 2023 and advertised it in the local press on 23rd February 2023. No representations were received at the appeal stage. One representation was received from a third party at the application stage. The Council forwarded this representation to the Commission.

2.0 **SITE AND SURROUNDINGS**

- 2.1 The appeal site is located on the eastern side of Springwell Road, broadly adjacent to the triangular junction of Springwell Road and Lower Balloo Road, to the southeast of Groomsport. The appeal site comprises a roadside section of a larger agricultural field on lands between Nos. 20 and 20A Lower Balloo Road (north) and No. 160 Springwell Road (south) and is approximately 0.4 ha in area.
- 2.2 The western roadside boundary is defined by a post-and-wire fence with sparse hedging and shrubs. The site is undefined to the rear (east) and open to the wider field. Post and wire fencing define the northern boundary adjacent to No. 20 and 20A Lower Balloo Road. The southern boundary adjacent to No. 160 Springwell Road is defined by a post and wire fence with a close-boarded wooden fence and mature trees within the grounds of No. 160 Springwell Road. The appeal site undulates throughout, rising gently in an easterly direction from the Springwell Road. A

vegetated rocky outcrop is situated centrally (approximately) within the appeal site and forms a prominent feature of the site.

- 2.3 No. 20A Lower Balloo Road is a detached one-and-half-storey dwelling with two modular buildings to the rear (east) and accesses onto the Lower Balloo Road. No. 20 Lower Balloo Road is located to the rear (east) of No. 20A and is a large detached single-storey dwelling with a sizable garden wrapping around No. 20 Lower Balloo Road. Access to No. 20 is immediately adjacent to the northern boundary of No.20 A. No.18 Lower Balloo Road is located north of No. 20 and 20A Lower Balloo Road and is a detached bungalow with an attached garage and adjacent outbuildings. No. 160 Springwell Road is situated on the southern side of the appeal site and consists of a detached dwelling and outbuildings. Access to No. 160 Springwell Road is taken from an adjacent laneway on the southern side of the dwelling.
- 2.4 The Springwell Road is curved in alignment and is the priority road. There are two intersections at this location, creating a triangular grassed island.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 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 appeal and to any other material considerations. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the Local Development Plan unless material considerations indicate otherwise.
- 3.2 The appeal site is located within the countryside as designated within both the North Down and Ards Area Plan (NDAAP) 1984-1995 and the Draft Belfast Metropolitan Area Plan (dBMAP) 2015. NDAAP currently acts as the Local Development Plan (LDP) for this area despite its end date, with dBMAP remaining a material consideration. The NDAAP contains no specific policies relating to dwellings in the countryside at this location; therefore, the relevant policy context is provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21), which, as made clear in the Strategic Planning Policy Statement (SPPS), is a retained policy document.
- 3.3 The appeal site is located on the eastern side of Springwell Road, to the southeast of Groomsport. The site comprises a roadside section of an agricultural field on lands between Nos. 20 and 20A Lower Balloo Road (north) and No. 160 Springwell Road (south) and is approximately 0.4 ha in area. The roadside boundary to the west is defined by a post and wire fence with sparse hedging and shrubs. The site is undefined to the rear and open to the wider field. There is additional post and wire fencing to the north and south. Beyond the site, within the curtilages of the adjacent neighbouring properties, there are young trees, shrubs, and vegetation to the north (No. 20) and wooden fencing and mature trees to the south (No. 160).
- 3.4 There is a field gate opening along the frontage, and the public road sits on a similar level to the northern section of the land within the site. There is a mound of mature vegetation roughly in the middle of the site before the land falls again to the south towards No. 160 Springwell Road, which is also on a similar ground level to the road. No. 162 Springwell Road (south-east) sits on a slightly higher ground level, and the

surrounding land and public road gradually rise upwards to the south-east in the direction of High Bangor Road. There are no relevant hazards or constraints in this area.

- 3.5 Policy CTY1 of Planning Policy Statement 21 (PPS21) states that there are a range of types of development which in principle, are considered acceptable in the countryside and that will contribute to the aims of sustainable development. Outline permission is sought under Policy CTY 8 of PPS21 for two dwellings and garages, which will include alteration of the existing field access.
- 3.6 Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. The policy has an exception which allows 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, 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.
- 3.7 The first step in determining whether an infill opportunity exists is to identify whether there is a substantial and continuously built-up frontage present. Policy CTY 8 states that for the purpose of this policy, the definition of a substantial and built-up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear. The accepted position of the Planning Appeals Commission (PAC) is that a building has a frontage to a road if the plot on which it stands abuts or shares a boundary with the road.
- 3.8 There is no substantial and continuously built up frontage because the buildings referred to (No. 160 Springwell Road, Nos. 20, 20A, and 18 Lower Balloo Road and their associated outbuildings) are not on the same road and the frontage of Springwell Road (onto which the appeal site fronts) is broken by the junction of Springwell Road and Lower Balloo Road, and as such, the proposal fails to meet the first test of Policy CTY 8 in that there is no substantial and continuously built up frontage containing 3 or more buildings as required by the policy.
- 3.9 This approach is consistent with PAC decisions, including:
- 2014/A0241: 20m north-west of 54 Battleford Road, Armagh. The appeal was dismissed as the site relied upon two frontages;
 - 2016/A0160: North of 14 Ballycreely Road, Comber. The appeal was dismissed as the frontage was broken by a road junction;
 - 2016/A0224: Lands between 1 Brae Road and 212 Belfast Road, Ballynahinch. The appeal was dismissed as the site fronted two different roads;
 - 2017/A0017: Lands immediately west of 62 Mountfield Road, Claudy. The appeal was dismissed as the frontage was physically and visually separated by a road; and
 - 2017/A0254: 20m east of 15 Newry Road and 45m north of 96 Maphoner Road, Mullaghbawn. The appeal was dismissed as a junction formed a break in the frontage.
- 3.10 Regard has been given to these appeal decisions as they demonstrate the PAC's approach and policy interpretation in cases where a gap site relies upon buildings

within two separate frontages or where a road or junction creates a physical break in the frontage. It is acknowledged that none of the appeal decisions are directly comparable to the appeal site, but each example reinforces the principle that a gap site cannot rely on two different road frontages, which is clearly the case for the appeal site. The appeals referenced demonstrate examples of where a road bisects the common frontage at a T-junction or at a right angle; however, believes that the junction of Springwell Road/Lower Balloo Road also bisects the common frontage along the appeal site.

- 3.11 The Appellant's Statement of Case (SOC) indicates that the appeals referenced in the Case Officer Report (COR): 2014/A0241, 2016/A0160, and 2017/A0254 demonstrate examples of where a road junction bisects a common frontage. The Appellant states that the eastern road frontage of Springwell Road/Lower Balloo Road is continuous because there is nothing which interrupts the ribbon of development on the eastern side. However, there is not a substantial and continuously built up frontage because the buildings referred to (No. 160 Springwell Road, Nos. 20, 20A, 18 Lower Balloo Road and their associated outbuildings) are not on the same road and the frontage of Springwell Road (onto which the appeal site fronts) is broken by the junction of Springwell Road/Lower Balloo Road.
- 3.12 The exception test of Policy CTY 8 makes provision for the development of a small gap site sufficient only to accommodate a maximum of two houses, provided this respects the existing development pattern along the frontage in terms of size, scale, siting, and plot size. In the amplification of CTY 8 (Paragraph 5.34), reference is made to 'gaps between houses and other buildings' and it is clear that the gap is not assessed as the width of the site itself but rather the distance between existing buildings.
- 3.13 It has already been established that the site is not contained within a substantial and continuously built up frontage for the reasons stated above. However, in the event that the PAC were to take the view that the buildings along Lower Balloo Road should be considered as forming part of a substantial and continuously built up frontage for the appeal site, the gap between the dwelling at No. 160 Springwell Road and the nearest outbuilding at No. 20 Lower Balloo Road is approximately 140m. In terms of development pattern, along the eastern side of Springwell Road and Lower Balloo Road, the average plot width of Nos. 18, 20, 20a Lower Balloo Road and 160 Springwell Road is approximately 51m and the range of the plot widths is from 14.9m to 95.4m.
- 3.14 The gap between buildings is approximately 140m because the garden building referred to in the Appellant's SOC is ancillary to the main dwellinghouse at No. 160 Springwell Road. It is located to the rear of No. 160 and positioned behind the building line. It is not readily visible from the road, but when visible, it is clearly subordinate to the dwelling and appears to have an ancillary use. For the purposes of the assessment and given the design, size, and scale of the garden building referred to, it was discounted because it is ancillary to the dwellinghouse and located within its curtilage. This is supported by appeal decision 2018/A0080, which found that a detached garage did not have a frontage to the road because of its subordinate spatial arrangement within the plot.
- 3.15 The plot sizes along the frontage are:

- No.18 Lower Balloo Road has an approximate plot size of 46.3m
 - No.20 Lower Balloo Road has an approximate plot size of 95.4m (excluding the area of frontage where No. 20A is located).
 - No.20A Lower Balloo Road has an approximate plot size of 14.9m.
 - No.160 Springwell Road has an approximate plot size of 47.8m.
- 3.16 If the average plot width is 51m and the gap between buildings is 140m then it cannot be considered that the gap site is small. Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside (BoT) advises that when a gap is more than twice the length of the average plot width within the road frontage, it is often unsuitable for infill with two new plots. The gap between the buildings in this instance is large enough to accommodate up to 3 new houses. Each would have a frontage of 46.6m which would be comparable to the average plot width of 51m and similar to the plot widths of No. 18 Lower Balloo Road and No. 160 Springwell Road, while still respecting the existing development pattern found along the eastern side of the Springwell and Lower Balloo Roads. Two new houses within the gap would each have a frontage of 70m which would significantly exceed the average plot width of 51m and would therefore fail to respect the existing pattern of development.
- 3.17 The Appellant's SOC suggests that the developed frontage at this location is some 400m (from the outbuilding to the north of No. 18 Lower Balloo Road to No. 160 Springwell Road). Also, that the road frontage of the appeal site is some 92m and the gap between the outbuilding to the north of No. 160 Springwell Road and the nearest outbuilding at No. 20 Lower Balloo Road is approximately 125m which is less than the 140m gap identified by the Council in the COR. The outbuilding to the north of No. 160 is a garden building, and the SOC indicates that the Council failed to identify it.
- 3.18 In his SOC, the Appellant has considered and assessed whether a gap of 125m is 'small' and indicates that a gap of some 125m is sufficient to accommodate up to a maximum of 2 new dwellings. The Appellant suggests that the average frontage (or plot width) is approximately 74.5m and the appeal site has an overall frontage/plot width of 92m which is approximately 46m for each proposed dwelling. The Appellant has quoted the average as approximately 74.5m given the inclusion of the extended plot of No. 18 Lower Balloo Road (which is the established domestic curtilage as evidenced by W/1995/0017/F). This area was discounted due to its overgrown nature and given that there is little indication that the extended plot to the north is in use as the domestic curtilage, which has been enclosed by wooden fencing. However, despite this discrepancy, the appeal site still does not represent a small gap site.
- 3.19 For the purposes of the policy, the gap between buildings must be small, and 125m does not represent a small gap because it is large enough to accommodate more than 2 new dwellings.
- 3.20 The Appellant has suggested a gap size of 125m is more than twice the length of the average frontage/plot width (approximately 51m). In comparison to the existing frontages/plots in the adjoining ribbon, the appeal site is large enough to accommodate as many as 3 new houses, each with a plot width of approximately 30.66m (within the suggested 92m plot width), whilst continuing to respect the

existing development pattern along the frontage in terms of size, scale, siting and plot size.

- 3.21 While 30.66m is less than the average plot width of 51m (and 74.5m as quoted by the Appellant), it is enough to reflect the existing frontages in the area, in particular the frontage of No. 20A Lower Balloo Road (to the north). No. 20A has been built to the west of No. 20 Lower Balloo Road and has an overall plot size totalling approximately 449sqm and a plot width/frontage of approximately 15m. The Appellant's suggestion that the gap in this case is limited to what can be accommodated within the established boundaries of the appeal site is not correct. Based on the Appellant's analysis that the site frontage is 92m, the appeal site still represents a large gap that could accommodate as many as 6 new houses with a frontage/plot similar in size to No. 20A. For the purposes of the policy, the gap between buildings must be small and should respect the existing development pattern along the frontage in terms of size, scale, siting, and plot size.
- 3.22 The Appellant suggests that 125m can be regarded as 'small' in the policy context due to the findings of appeal references 2021/A0123 and 2021/A0124. However, in these examples, it was agreed by all parties that there was a substantial and continuously built up frontage. The presence of both the junction of Springwell Road/Lower Balloo Road (in terms of how it breaks the common frontage) and the position of No. 20A (in terms of its size, scale, siting, and plot size) means that the appeal references quoted are different to the site context of the appeal site and are not directly comparable to it.
- 3.23 The Appellant is correct that the consideration and assessment of a proposal for infill development is not merely a mathematical calculation and that it must be considered 'in the round'. However, this reasoning is not sufficient to allow for the consolidation of gaps between houses or other buildings in the countryside. The exception for infill development is conditional on four elements of the policy being satisfied, namely, (i) the gap must be within an otherwise substantial and continuously built up frontage; (ii) the gap site must be small; (iii) the existing development pattern must be respected; and (iv) other planning and environmental requirements must be met as referenced in appeal decision: 2015/A0091.
- 3.24 The proposed development does not meet the exception test contained within Policy CTY 8, as the appeal site is not considered to be a small gap. Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development.
- 3.25 In addition to concerns regarding the principle of development on the appeal site, it is considered that the proposal would create a suburban style build-up of development along Springwell Road/Lower Balloo Road and result in the extension of a ribbon of development. As paragraph 5.33 of the Justification and Amplification of Policy CTY 8, clarifies, ribbon development can occur not only when buildings have a shared frontage but also when they are visually linked. The buildings along Lower Balloo Road must also be considered in the assessment of whether ribbon development will be created or extended.

- 3.26 There is already a ribbon on Lower Balloo Road with the three dwellings (Nos. 18, 20 and 20A) and their associated outbuildings. The addition of two dwellings beyond this would extend this ribbon when viewed from both Lower Balloo Road and Springwell Road. Over a long distance, from outside No. 150 Springwell Road to the north-west, of over 240m the extended ribbon would be visible and would visually link with No. 160 Springwell Road. While No. 160 is well screened by vegetation, its presence is still visible from the road, with the upper half of the building and roof visible. While there are no long-distance views of the ribbon on approach from the south (given the vegetation around No. 160 and the curve in the road), it will still be perceived from transient views while travelling along this part of the road and, if developed, would be visually linked with the existing buildings and extend the ribbon.
- 3.27 The appeal site has a roadside boundary of a post and wire fence with sparse hedging and shrubs, and there is a physical gap of 140m between the existing buildings. In addition to this, there is a butte/mound of mature vegetation within the site itself. The land contributes positively to the rural character in this area and represents an important visual break in the developed appearance of the locality by providing relief. A recent Judicial Review (Ref: SCO11856, *in the Matter of Application by Gordon Duff For Judicial Review And In The Matter Of A Decision Of Newry, Mourne And Down District Council*) pins the importance on the retention of important visual breaks even if the other criteria of CTY 8 are met. The judgement emphasises the BoT guidance, which advises that while some gaps which provide a visual break may be suitable for infill, there may be sites offering an “important” visual break which are not. The appeal site represents an “important” visual break in the developed appearance of the locality.
- 3.28 When viewed for a sustained distance on approach from the north-west along Springwell Road, the area is characterised by a dispersed pattern of development. The development of the site would harm rural character by reason of a build-up of development and a resultant urbanising effect. The proposed two new houses with garages and alteration of the existing field gate to provide a new access onto Springwell Road would cause a detrimental change to the rural character of this area of the countryside by adding to a ribbon of development. The proposal is therefore considered to be contrary to the requirements of both Policy CTY 8 and Policy CTY 14 in this respect.
- 3.29 Given the lack of a substantial and continuously built up frontage and considering the total distance between the buildings (approximately 140m) the appeal site is not suitable for infill. While the Appellant indicates that services are available and no objections from consultees or written representations have been received, there are additional concerns in relation to rural character. Policy CTY 14 states that a new building will be unacceptable where it results in a suburban style build-up of development when viewed with existing and approved buildings. In this case, the proposal, in conjunction with Nos. 160 Springwell Road, 20A, 20, and 18 Lower Balloo Road (and their associated outbuildings), would appear as sequentially visually linked on approach along Springwell Road in either direction. The proposal would reinforce the built up appearance of the road, thereby adding to suburban style development to the detriment of the rural character of the area.
- 3.30 The proposal is contrary to the provisions contained in The Strategic Planning Policy Statement for Northern Ireland (SPPS), Policies CTY 1, CTY 8, and CTY 14 of

PPS21 in relation to ribbon development. It is also contrary to Policy CTY 1 of PPS 21, as there are no overriding reasons why the development is essential and could not be located in a settlement. It is requested that the appeal is dismissed on this basis.

- 3.31 In the event that the Commission determines that planning permission be granted, the following conditions are recommended:
- Reserved matters application submitted within 3 years;
 - Time limits;
 - Approval of siting, design and external appearance of the buildings, the means of access and the landscaping of the site by the Council before any development is commenced;
 - Access details to be provided showing visibility splays of 2.4m x 55m (left hand side exiting and 2.4m x 80m right hand side exiting along the Springwell Road/Lower Balloo Road to be constructed prior to the commencement of development;
 - A requirement for the area within the visibility splays and forward sight line shall be cleared prior to the commencement of the construction of the development.
 - Requirement for a detailed landscaping scheme;
 - Retention of vegetation at a height of 2m;
 - Requirement for a plan indicating floor levels of the proposed dwelling in relation to existing and proposed ground levels; and
 - Maximum ridge height of 5.8m above finished floor level and depth of underbuilding between finished floor level and existing ground level shall not exceed 0.45 metres at any point.

4.0 OBJECTORS' CASE

- 4.1 I strongly object to this proposal. The existing NIE transformer on this line is already under duress.
- 4.2 My home is at the end of the line and from the time I have moved in I have suffered from power quality issues and at one point my electricity bills rose by 400% despite no change in my usage.
- 4.3 The impact of having another two dwellings on this line with the existing transformer will cause an increase in existing power quality issues.
- 4.4 I am not one to object but unless NIE upgrade the existing transformer and re-balance the load on the line, then I have no choice but to object.

5.0 APPELLANT'S CASE

- 5.1 The appeal site is located close to the junction of Springwell Road and Lower Balloo Road, just south of Groomsport. It is positioned between No. 160 Springwell Road to the south and No 20 Lower Balloo Road to the north.
- 5.2 The site comprises the lower part of a larger field which rises gently in an easterly direction. There is a vegetated rocky outcrop in the centre of the appeal site.

- 5.3 There is no relevant history on the appeal site. There is some history on the dwellings to the north, but nothing material to a decision on this appeal, other than to note that the approved and partially built garage at No. 18 Lower Balloo Road (W/1995/0017/F) was set within its accepted residential curtilage. It may also be noted that No. 20A was built a few years ago as a replacement dwelling under permission W/2010/0285/F.
- 5.4 As with all applications, the starting point must be the SPSS presumption that permission should be granted, having regard to the development plan, unless demonstrable harm will be caused. The provision of two dwellings on this well defined site will clearly not give rise to demonstrable harm.
- 5.5 The North Down and Ards Area Plan 1984-1995 is the statutory plan for this area. This contains no specific policies for rural development. Neither does draft BMAP, which remains unadopted. PPS 21 provides the appropriate policies for rural development. This seeks to strike a balance between the need to protect the countryside from unnecessary or inappropriate development, whilst supporting rural communities.
- 5.6 Policy CTY 1 of PPS21 indicates that there are a range of types of development which in principle, are considered to be acceptable. However, the document recognises the important legal principle that all material considerations may be relevant, and that there may be cases where material considerations will outweigh the policies and justify a contrary decision.
- 5.7 BoT is the most recent expression of Supplementary Guidance, and it post-dates PPS21. It states that it will be used as a development management tool and will be material in the determination of planning applications. BOT sets out the important considerations with respect to infill developments. In particular, the diagram on page 71 shows how typical infill sites may be accommodated, while the text on page 71 notes that when a gap is more than twice the average plot width, it will often be unsuitable for infill with two new plots. The appeal site is similar in scale to two identified sites.
- 5.8 The first step in any case is to establish whether a substantial and continuously built up frontage exists in accordance with the definition. The policy states that a substantial and continuously built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear. The text adds that buildings sited back, staggered, or at angles can still represent ribbon development, if they have a common frontage or they are visually linked.
- 5.9 In this case, it is clear that there is a ribbon of development stretching for some 400 metres along Springwell Road and Lower Balloo Road. This comprises the dwellings at No. 160 Springwell Road, and No's 20, 20A and No.18 Lower Balloo Road, as well as various outbuildings.
- 5.10 The Council's key assertion in this case is that there is not a continuously built up frontage because the buildings referred to are not on the same road. The case officer report refers to several examples where a road junction was considered to break up the frontage. However, the examples referred to are all materially different in that the road junctions or laneways in these cases created a break within the actual frontage,

- i.e. 2014/A0241 – a road junction bisects the common frontage; 2016/A0160 – a road junction bisects the common frontage; and 2017/A0254 – a road junction bisects the common frontage.
- 5.11 In this case, the eastern road frontage is continuous. Travelling from Lower Balloo Road and merging onto Springwell Road, there is nothing which interrupts the ribbon of development along the continuous frontage.
- 5.12 The second step is to consider whether this site constitutes a 'small gap sufficient only to accommodate up to a maximum of two houses'. The developed frontage at this location extends to about 400 metres, with the road frontage of the appeal site measuring about 92 metres. The gap between the small outbuilding in the garden of No. 160 and the nearest buildings in No. 20 is about 125 metres. This is less than the 140 metre gap asserted by the Council, as it has failed to identify the building within the garden of No. 160.
- 5.13 A key consideration is whether a gap of about 125 metres could be considered 'small'. Essentially this will depend upon the established development pattern. The following sets out the frontages of the properties within the established pattern.
- 5.14 A comparison of the frontage sizes with those of the Council is provided:
- 18 Lower Balloo Rd: The Council calculated the frontage at 46.3m. The frontage is 140m. The frontage includes the detached garage and the overgrown area. Although overgrown, this is part of the established domestic curtilage, as evidenced by W/1995/0017/F;
 - 20 Lower Balloo Rd: The Council calculated the frontage at 95.4m. The frontage is 95m;
 - 20A Lower Balloo Rd: The Council calculated frontage at 14.9m. The frontage is 15m;
 - 160 Springwell Road: The Council calculated the frontage at 47.8m. The frontage is 48m;
 - Average: Council calculated frontage at 51m. The frontage is 74.5; and
 - Appeal Sites: The Council calculated frontage at 46m. The frontage is $92\text{m}/2 = 46\text{m}$.
- 5.15 The established pattern is one where the existing houses are generally well spaced out and set within generous plots. Regardless of whether the Council's average of 51m is taken (or the more accurate average of 74.5m) the site frontages of about 46m per plot are consistent with the 'Building on Tradition' guidance, as the frontages remain less than twice the average plot width.
- 5.16 It should also be noted that the curtilages of the adjacent dwellings are well defined. Even if permission was granted for these two infill sites, it would not be feasible to satisfactorily accommodate any further dwellings within the small sections of the adjacent curtilages whilst respecting the development pattern. The development potential in this gap is effectively limited to that which can be accommodated within the well established boundaries of the appeal site.
- 5.17 The fact that a gap of about 125 metres can be regarded as 'small' in the policy context is confirmed by a number of appeals, including 2021/A0123 and A0124, at

Scarva. Here, the Commissioner accepted that the frontage of the two sites proposed would be compatible with the local character.

- 5.18 The third step is to consider whether the proposal respects the existing development pattern in terms of size, scale, siting and plot size. As appeal 2019/A0027 (paragraph 6 below) makes clear, these are not just mathematical calculations, but must be considered ‘in the round’:
- “6. The appeal site occupies part of a gap of some 80m between buildings at Nos 151 and 153. The Council stated that between them, Nos 151, 153 and 157 had an average frontage of 49m and argued that consequently, it would not be possible to develop the gap site in a way that would respect the existing development pattern along the frontage, as one dwelling would appear too spacious and two would appear too cramped. However, while a measure such as average frontage width can inform assessment the existing frontage development pattern, the policy does not necessitate duplication of such a mathematical factor in respect of proposals for infill development. The assessment of whether a proposal would respect the existing development pattern along the frontage requires consideration of the matters of size, scale, siting and plot size in the round”.*
- 5.19 The proposed dwellings will each have plots of about 0.2 hectares. This is larger than the plots of No. 160 and No. 20A (0.11 and 0.08 respectively), but considerably smaller than both No. 20 and No. 18 (0.97 and 0.4ha respectively). Indeed, the average of the four existing residential plots equates to 0.39ha, and so both plots will be below the average. Plainly, the size and scale of the proposed development will be consistent with the local character.
- 5.20 The fourth element in determining whether a development is acceptable is that it should meet other planning and environmental requirements. Services are available, and the site can be developed without adverse environmental impact. None of the consultees have raised any concerns. Nor have any of the neighbours.
- 5.21 In relation to integration, it is clear that this proposal will comfortably integrate into the local environment. The site benefits from mature boundaries and a good degree of enclosure. The Council has accepted that the field rises up to the rear and that the retention of the existing ‘butte’ would assist with integration. If permission is granted retention of this existing ‘butte’ as part of an overall landscape plan would be acceptable as a condition.
- 5.22 The identified issue of rural character under Policy CTY 14 is considered, taking each of the criteria in turn. It is clear that: a) the development on this site will not be unduly prominent. This has been accepted by the Council. The land rises to the rear and will provide a backdrop to development; b) this cannot be ‘suburban style’ development, as it meets the exceptions tests under CTY 8; c) the established pattern of development (i.e. dwellings well spaced along the road frontage) will be respected; d) it will not create or add to a ribbon as it meets the CTY 8 exceptions; and e) there will be minimal impact as a consequence of the access requirements.
- 5.23 The PAC has previously addressed proposals which comply with the exceptions tests in Policy CTY 8, but which have been asserted by the Council to impact upon local character. Appeal references 2021/A0123 and A0124 (Appendix 2) are again helpful in this regard. The relevant paragraphs are below:

“21. Policy CTY 14 Rural Character 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. This issue was also raised as a concern in the Council’s third reason for refusal. The main reason presented by the Council in respect of this issue is linked with the consideration of each site (Appeal 1 and Appeal 2) not qualifying as an exception to Policy CTY 8. For the reasons set out above, I have found that the appeal proposals meet the exception provided for by Policy CTY 8. Accordingly, for this reason the proposals do not offend the provisions of Policy CTY 14 in respect the impact of this development on rural character.”

22. As I have found that the proposed infill sites relate to the development of a small gap in a substantial and continuously built-up frontage; that respect the existing development pattern; and meet other planning and environmental requirements all the elements of Policy CTY 8 have been met. The proposals therefore meet the exception to ribbon development provided for in Policy CTY 8 and consequently the requirements of Policy CTY 14. The Council’s reasons for refusal 2 and 3 in each appeal and third parties’ concerns relating to these issues are not sustained”.

- 5.24 The same logic must apply to the current appeal proposal. As it meets the exceptions which have been written into Policy CTY 8, the development cannot be regarded as out of character.
- 5.25 The presumption in favour of sustainable development must apply in this instance. The proposed dwellings will nestle comfortably into an established ribbon of development at this location, without any adverse impact upon rural character.
- 5.26 Similarly, the Council’s photographs do not support the assertion that this site is an important visual break. Rather, this is development which complies fully with the relevant policy provisions. Paragraph 1.19 contains the only direct reference to Policy CTY 14. As set out in our statement of case, Policy CTY 14 is satisfied as the proposal complies with CTY 8.
- 5.27 The Council has helpfully set out draft conditions should the appeal be allowed. These are generally acceptable, subject to two comments:
- i) Condition 3 refers to Form RS1. This condition may be better expressed by simply referring to visibility splays of 2.4 by 55 to the south and 2.4 by 70 to the north.
 - ii) Condition 9 refers to a maximum ridge height of 5.8 meters. A ridge height of about 6.5 metres would afford greater flexibility for the designer whilst still reflecting local character.
- 5.28 The Commission is requested to grant outline permission for this development.

6.0 CONSIDERATION

- 6.1 The main issues in this appeal are whether the proposal would:
- be acceptable in principle in the countryside, and
 - erode the rural character of the area.

- 6.2 Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 6.3 The adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal in May 2017. Consequently, the North Down and Ards Area Plan 1984 – 1995 (NDAAP) operates as the relevant LDP for the location the appeal site is in. In NDAAP the appeal site is located in the countryside and outside any designations. There are no policies in NDAAP that are applicable to this proposal. A further consequence of the above judgement is that the draft Belfast Metropolitan Area Plan published in 2004 (dBMAP) remains a material consideration. In dBMAP the site lies within the countryside and akin to the acting LDP, it contains no policies or designations material to the appeal proposal.
- 6.4 The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for a Council area is adopted. In this Council area, no Plan Strategy has been adopted. Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements (PPSs), and it sets out the arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements, namely PPS21, must be resolved in favour of the provisions of the SPPS. As no conflict arises between the policy provisions of the SPPS and retained policy in so far as it relates to the appeal proposal, the latter provides the relevant policy context.
- 6.5 Policy CTY1 of PPS21 states that there are a range of types of development that are considered, in principle, to be acceptable in the countryside. One of these is the development of a small gap site sufficient only to accommodate up to two houses within an otherwise substantial and continuously built up frontage, in accordance with Policy CTY 8 of PPS21. It follows that if Policy CTY 8 is met, then Policy CTY 1 is also satisfied. Additional guidance is provided in BoT.
- 6.6 Policy CTY 8 'Ribbon Development' states that planning permission will be refused for a building which creates or adds to a ribbon of development. It continues that 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.
- 6.7 The first step in determining whether the proposal constitutes an exception in accordance with policy CTY 8 is to determine whether there is a substantial and continuously built up frontage. The Council is of the view that there is no substantial and continuously built up frontage because No. 160 Springwell Road, Nos. 20, 20A and 18 Lower Balloo Road and their associated outbuildings are not on the same road and therefore frontage. In addition, the Council states that the frontage of the Springwell Road, onto which the appeal site faces, is broken by the junction of

Springwell Road and Lower Balloo Road. The Appellant contends that the eastern road frontage of the Springwell Road and Lower Balloo Road is a continuous, singular frontage with no physical break in it.

- 6.8 The exception in Policy CTY 8 applies to development along a frontage, road, or lane but does not apply to frontages. No.160 Springwell Road has a frontage onto the Springwell Road; No.'s 18, 20, and 20a Lower Balloo Road all have frontages onto the Lower Balloo Road. The Appellant contends that the eastern road frontage is continuous along the Lower Balloo Road, merging onto the Springwell Road, as there is no physical feature to interrupt the ribbon of development. However, the junction acts as a clear demarcating point between the Springwell Road and the Lower Balloo Road. The white lines and the give-way markings reinforce the fact that there are two frontages, as drivers would potentially have to stop and give way. To achieve the policy requirement of three or more buildings, the Appellant must rely on development along two frontages. This approach is not supported by Policy CTY 8.
- 6.9 Despite the curvature of the road at the intersection, the development fronting onto the roads nevertheless belongs to two distinct and separate frontages. I therefore conclude that there is no substantially and continuously built up frontage along this section of the Lower Balloo Road, as it depends on development fronting onto Springwell Road acting as a bookend to establish a line of three or more buildings within which the proposal would be located. As such, the appeal site cannot constitute a small gap site within an otherwise substantial and continuously built up frontage.
- 6.10 Even if I were to accept the Appellant's argument that there is a single frontage, the appeal development must also meet the remainder of the policy requirements. The Appellant draws comparisons to two illustrative sites contained within BoT at page 71, denoted as being likely to comply with Policy CTY 8. However, that guidance is predicated on there being a single frontage. This is not the case in the appeal before me. For the purposes of the policy, the gap to be considered is that between buildings. Even if I were to accept the Appellant's stated gap size of 125m and their analysis of plot sizes and the disposition of buildings, I do not consider the gap to be small. As the policy test does not equate to a mere mathematical exercise. The subject gap is sufficient to accommodate more than two dwellings, which would respect the existing development pattern along the frontage in terms of size, scale, siting, and plot size, based on the range of plot sizes within this area. For the reasons given above, the appeal development does not meet the exceptional test.
- 6.11 The Council's second and third reasons for refusal relate to ribbon development. Paragraph 5.33 of the Justification and Amplification text states that a ribbon does not have to have a continuous or uniform building line, and those buildings sited back, staggered, or at angles and with gaps between them can still represent ribbon development if they have a common frontage or are visually linked. The proposal would visually link the existing development at No. 18, 20, 20A Lower Balloo Road, and No. 160 Springwell Road from views when travelling in either direction on approach along the two roads. Notwithstanding the Appellant's offer of retaining the vegetated "butte" within the site, the appeal development would still create a built up appearance along the road, resulting in a ribbon of development and the loss of an important visual break. In this respect, the appeal proposal also offends Policy CTY 8. For reasons given below pertaining to rural character, the appeal development

would also fail to meet other planning and environmental requirements as per the final aspect of Policy CTY 8. For the reasons given above, the appeal development does not comply with Policy CTY 8 and the related provisions of the SPPS. The Council's second reason for refusal is sustained.

- 6.12 The Council's third reason for refusal relates to the erosion of rural character. Policy CTY 14 permits a building where it does not cause a detrimental change to or further erode the rural character of an area. The policy identifies five criteria where a new building would be unacceptable. I have already found that the proposal would create a ribbon of development, which conflicts with criterion (d). I consider that Nos. 160 Springwell Road, 20A, 20 and 18 Lower Balloo Road (and their associated outbuildings) would appear visually linked when travelling in either direction along Springwell Road and Lower Balloo Road. Development on the appeal site will lead to the built-up appearance of this area, resulting in a suburban style build-up of development that would cause a detrimental change to the rural character. The appeal proposal is also contrary to criterion (b) of Policy CTY 14. For the reasons stated above, the appeal development would fail to comply with Policy CTY 14 of PPS21 when read as a whole and the related provisions of the SPPS. The Council has sustained its third reason for refusal.
- 6.13 With regard to the power supply issues of the third party, neither the Council nor Appellant have expressed any concerns about this matter. In any event, given my findings above, which do not support the proposal, the issue falls away.
- 6.14 The Appellant referred to a number of cases to support their position. I do not consider them to be directly comparable to the circumstances of this appeal. In any event, each case falls to be determined in its own site specific and evidential context. No material considerations were advanced that would outweigh the policy objections to the proposal.
- 6.15 There is no evidence to suggest that the proposal falls into any of the other types of development that are listed as acceptable in principle in the countryside under Policy CTY1 or that there are any overriding reasons why the development is essential and could not be located in a settlement. The proposal is contrary to Policies CTY1, CTY 8 and CTY 14 of PPS21 and the related provisions of the SPPS. The Council's reasons for refusal are sustained.

7.0 RECOMMENDATION

- 7.1 I recommend to the Commission that the appeal be dismissed and that outline planning permission be refused.
- 7.2 This recommendation relates to the following drawings: -
- 1:2,500 site location Drawing Number 01/A received by the Planning Authority on the 13th May 2022.
 - 1:500 Concept Layout Plan Drawing Number 02 date stamped received by the Planning Authority 26th March 2021.

List of Documents

Planning Authority:-	“A” Written Statement of Case by Ards and North Down Borough Council.
	“A1” Written Rebuttal Statement by Ards and North Down Borough Council.
Appellant:-	“B” Written Statement of Case by Donaldson Planning.
	“B1” Written Rebuttal Statement by Donaldson Planning.

Unclassified

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ITEM 6**Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Finance
Date of Report	17 October 2023
File Reference	FIN45
Legislation	Section 5 Local Government Finance Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below:
Subject	Planning Service Budgetary Control Report - September 2023
Attachments	

The Planning Service's Budgetary Control Report covers the 6-month period 1 April to 30 September 2023. The net cost of the Service is showing an overspend of £82k (10.7%) – box A on page 2.

Explanation of Variance

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

Report	Type	Variance	Page
Report 2	Payroll Expenditure	£105k favourable	2
Report 3	Goods & Services Expenditure	£20k adverse	2
Report 4	Income	£168k adverse	2

Not Applicable

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Explanation of Variance

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

Type	Variance £'000	Comment
Payroll	(105)	Vacant posts within Planning include Manager's post and Administration posts. Vacant posts are expected to be filled over the next few months.
Goods & Services	20	Legal fees – 2/3 large on-going cases which require significant legal advice. Planning portal costs – higher than expected. These overspends have been partially offset by small underspends in areas such as advertising and printing.
Income	168	Planning application fees. No major applications received. General slowdown in applications in NI.

REPORT 1 BUDGETARY CONTROL REPORT					
Period 6 - September 2023					
	Year to Date Actual £	Year to Date Budget £	Variance £	Annual Budget £	Variance %
Planning					
730 Planning	848,987	766,600	82,387	1,541,500	10.7
Total	848,987	766,600	A 82,387	1,541,500	10.7
REPORT 2 PAYROLL REPORT					
	£	£	£	£	%
Planning - Payroll					
730 Planning	1,086,303	1,191,500	(105,197)	2,383,000	(8.8)
Total	1,086,303	1,191,500	(105,197)	2,383,000	(8.8)
REPORT 3 GOODS & SERVICES REPORT					
	£	£	£	£	%
Planning - Goods & Services					
730 Planning	154,906	134,900	20,006	308,100	14.8
Total	154,906	134,900	20,006	308,100	14.8
REPORT 4 INCOME REPORT					
	£	£	£	£	%
Planning - Income					
730 Planning	(392,222)	(559,800)	167,578	(1,149,600)	29.9
Totals	(392,222)	(559,800)	167,578	(1,149,600)	29.9

RECOMMENDATION

It is recommended that the Council notes this report.

Unclassified

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ITEM 7**Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	23 October 2023
File Reference	
Legislation	The Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: N/A
Subject	Quarter 1 Statistics 2023/24
Attachments	Item 7a - Statistical Bulletin

Background

The Department's Analysis, Statistics and Research Branch published provisional statistics for Planning activity on 12 October 2023 for Quarter 1 (April – June) of 2023/24.

The Statistical Bulletin is attached at Item 7a.

Members can view the full statistical tables at <https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-june-2023>

Not Applicable

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Detail**Local Applications**

The Council determined 175 residential applications in Quarter 1 of 2023/24 compared to 180 such applications in the same period of the year before. Residential applications include a range of proposals, but notably dwellings and residential extensions. Some residential extensions or applications for single dwellings in the countryside, whilst seeming innocuous, can attract a high volume of objection which triggers referral to the Planning Committee for determination, or are called into Committee from the delegated list, which obviously adds time to the processing timeline.

Processing times are also dependent on the quality of the application when submitted (i.e. whether additional information is required by Council or statutory/non-statutory consultees), staff resource and volume of representations raising material planning considerations to be considered. They also have to be considered in the context of all other work within the section i.e. assessment and determination of applications for Certificates of Lawfulness, Non-Material Changes, Discharge of Conditions, preparation of Statements of Case for planning appeals, and planning enquiries.

The average processing time for applications in the local category of development in Quarter 1 was 15 weeks, in line with statutory performance indicators.

Major Applications

Recorded in the statistics is one application determined in the major category of development with an average processing time of 93.2 weeks against the statutory performance target of 30 weeks.

The detail of that application is set out below:

LA06/2021/0817/F	Residential development of 58 No. dwellings (comprising detached and semi-detached dwellings), garages, landscaping, open space, internal road network, right hand turn lane at Ballygowan Road and all other associated site and access works (Amended landscaping/ landscape management plan)
------------------	---

Lands adjacent to and West of Ardara Grove and Ardara Elms, to the rear and West of Nos 8 and 9 Swallow Close, and South of Nos 24 to 38 (evens) Heathermount Court, and Nos 20 to 22 Dalton Glen, Comber

The application, on land zoned for housing within the Ards and Down Area Plan, was submitted 28 June 2021.

Consultations were required with the following bodies:

Not Applicable

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DFI Roads – initially considered the application unacceptable as submitted due to there being insufficient detail provided on transportation issues

DFI Rivers – required further information in order to fully assess the submitted Drainage Assessment in respect of the viability of the proposals

Natural Environment Division – which requested further information

Water Management Unit – advised that the proposal had the potential to adversely affect the surface water environment.

Shared Environmental Service – initially required additional information to enable a Habitats Regulations Assessment to be carried out.

NI Water - advised that the receiving foul sewerage network had reached capacity and recommended refusal. As a consequence the applicant had to consult directly with NIW to ascertain whether an alternative drainage/treatment solution could be agreed, and NIW required submission of an Impact Assessment for consideration.

Historic Environment Division – initially had concerns regarding the proposal in the context of adjacent listed buildings.

All of the above required submission of additional information and amended designs, which in turn required to be re-advertised and re-neighbour notified, and the carrying out of further consultation and all subsequent further objections assessed.

NI Water and the applicant eventually agreed a downstream engineering solution to mitigate the foul capacity issue and allow connection for this development proposal, the solution to be fully funded and delivered by the applicant. However, the agreement could not be carried out through use of planning conditions, therefore a separate legal agreement required to be drafted by the Council's Planning lawyers and then executed between the Council and the applicant and sealed by the Council.

The last information submitted by the applicant was November 2022 and the application was presented to Planning Committee on 06 December 2022 with a recommendation of approval, subject to execution of the legal agreement referred to above. The legal agreement was then draw up between the Council's lawyers and the developer's lawyers and was given approval to be signed and sealed at the Council meeting on 26 April 2023. The agreement was then signed and sealed once the call-in period had expired, and the decision notice was issued dated 17 May 2023.

Further information on majors and locals is contained in Tables 3.2 and 4.2 respectively of the Statistical Tables.

Enforcement

The Planning Service opened 100 new enforcement cases in the first quarter of 2023/24.

Not Applicable

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73 cases were closed with the reasons as follows:

Closure Reason	Number
Remedied/Resolved	27
Planning permission granted	14
Not expedient	6
No breach	22
Immune from enforcement action	4

Enforcement case conclusion times against the statutory performance indicator are not yet available.

Householder Applications

During Quarter 1 the Planning Service processed 112 applications within the householder category of development.

74 of these were processed within the internal performance target of 8 weeks (66%), with 97 being processed within the 15 week statutory performance indicator (87%) while the remaining 15 were processed within 28 weeks.

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	29	29
Certificates of Lawfulness (Existing/Proposed)	7	15
Non-Material Changes	18	12
Pre-Application Discussions (PADs)	8	8
Proposal of Application Notice (PANs)	2	2
Consent to carry out tree works	18	11

Further detail on the above table is contained in Table 9.1 of the Department's Statistical Tables.

RECOMMENDATION

It is recommended that the Council notes the content of this report and attachment.



Northern Ireland
Statistics and Research Agency
Gníomhaireacht Thuaisceart Éireann
um Staitisticí agus Taighde



Department for
Infrastructure

An Roinn
Bonneagair

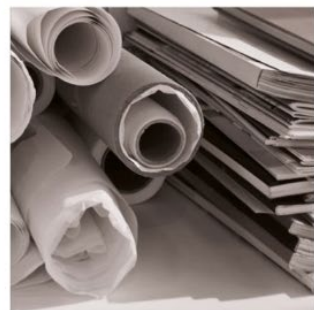
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NORTHERN IRELAND PLANNING STATISTICS

First Quarter 2023/24 Statistical Bulletin

April to June 2023: Provisional Figures



Theme: People and Places
Coverage: Northern Ireland
Frequency: Quarterly
Date of Publication: 12 October 2023

Published by: Analysis, Statistics & Research
Branch
Department for Infrastructure
Room 5-25, Clarence Court
Adelaide Street, Belfast, BT2 8GB

Statistician: James Magill
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Email: ASRB@nisra.gov.uk



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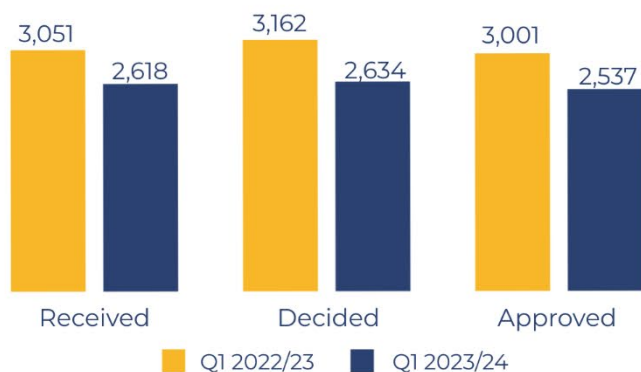
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Key points

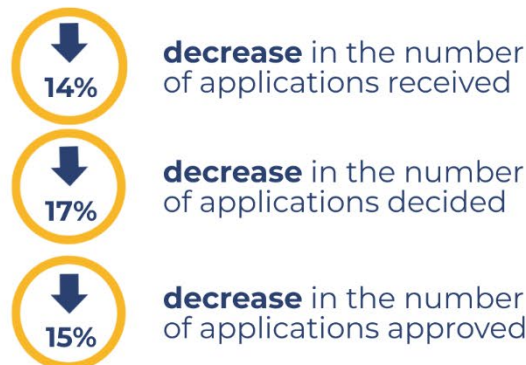
- There were 2,618 planning applications received in Northern Ireland (NI) during the first quarter of 2023/24; a decrease of almost eight percent on the previous quarter and down by over fourteen percent on the same period a year earlier. This comprised of 2,585 local and 33 major applications.
- In the first quarter of 2023/24, 2,634 planning applications were decided upon; up by over eight percent from the previous quarter but down by nearly seventeen percent from the same period a year earlier. Decisions were issued on 2,598 local and 36 major applications during the most recent quarter.
- The average processing time for local applications brought to a decision or withdrawal during the first three months of 2023/24 was 18.9 weeks across all councils. This exceeds the 15 week target and represents an increase of 2.3 weeks from the same period a year earlier. Three of the 11 councils were within the 15 week target after the first three months of 2023/24.
- The average processing time for major applications brought to a decision or withdrawal during the first three months of 2023/24 was 59.6 weeks across all councils. This represents an increase of 8.2 weeks compared with the same period a year earlier and is almost double the 30 week target.
- The number of enforcement cases concluded and corresponding processing times are not presented in this report. This information will be published later and users will be notified when available.

Overall planning applications

Applications received, decided & approved

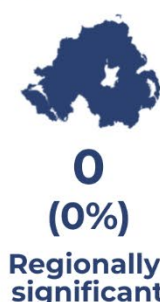


Comparing Q1 2023/24 with Q1 2022/23:

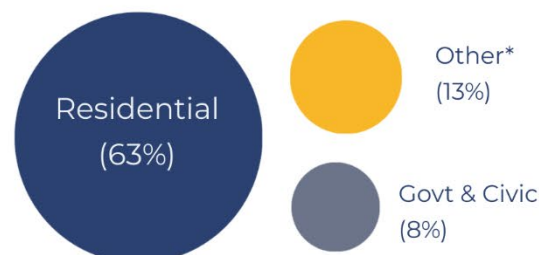


Applications received

A total of 2,618 planning applications were received during Q1 2023/24:



3 largest development types



*Other includes work to facilitate disabled persons, signs/advertisements & listed buildings

Planning statutory targets

Average processing times (weeks) - major



Average processing times (weeks) - local



Councils within major target



Councils within local target



Northern Ireland Planning Statistics: First Quarter 2023/24 Statistical Bulletin

Introduction

This statistical bulletin presents a summary of Northern Ireland (NI) planning volumes and processing performance for councils and the Department for Infrastructure during the first quarter of 2023/24.

These quarterly figures are provisional and will be subject to scheduled revisions ahead of finalised annual figures, to be published in July 2024. Enforcement figures for 2022/23 remain provisional and will be subject to a further revision once the full suite of enforcement data is available.

The records of all planning applications from 1 April to 30 June 2023 were transferred in August 2023 from live databases. This included all live planning applications in the Northern Ireland and Mid Ulster Planning Portals. The data were validated by Analysis, Statistics and Research Branch (ASRB). Local councils and the Department were provided with their own headline planning statistics as part of the quality assurance process. Once validations were complete, a final extract was taken in September 2023.

Detailed notes on the background of NI Planning Statistics and user guidance for this publication can be found [here](#).

Future releases

The next quarterly bulletin containing provisional planning data up to 30 September 2023 is planned for release in December 2023. The next annual report covering 2023/24 is planned for release in July 2024. See [GOV.UK](#) Release Calendar and [upcoming statistical releases](#) on the Department's website for future publication dates.

User engagement

ASRB carried out a user consultation exercise during the summer 2023. The outcome report on this consultation can be found [here](#).

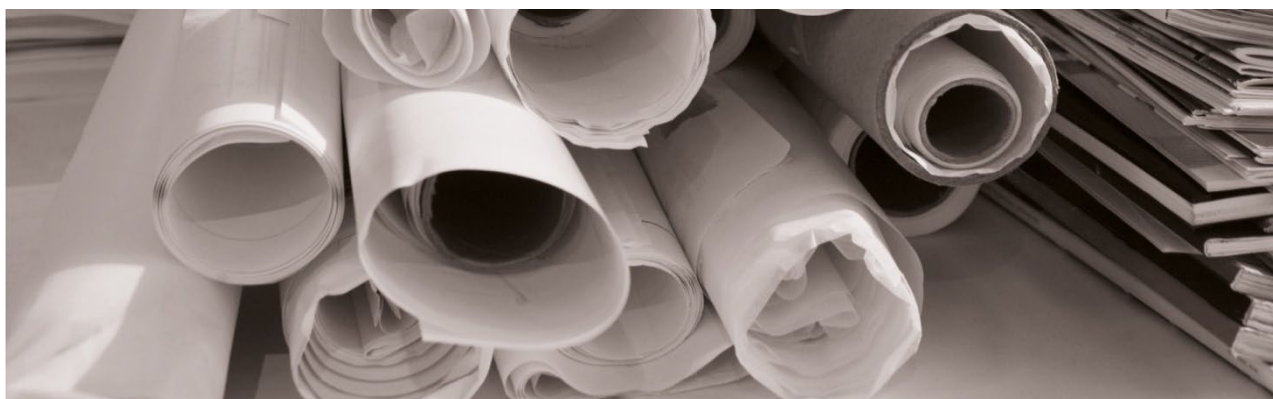
The content of this report has changed following the user consultation to make it more streamlined and focussed on the legislative targets and high-level planning activity. All data that would have been referred to in previous quarterly reports can still be found in the detailed data tables. Additionally, a separate '[User Guidance](#)' document has been created.

Northern Ireland regional planning IT systems

In 2022, two new planning portals were introduced; the [Northern Ireland Planning Portal](#) for 10 councils and the Department for Infrastructure, and the [Mid Ulster planning portal](#). The transfer to the new planning portals will have impacted on planning activity and processing performance; this should be borne in mind and caution taken when interpreting these figures and when making comparisons with other time periods. Data relating to the number of enforcements concluded and processing times for these is absent from this report. This will be published at a later date and users will be notified when available.

Alternative formats

This document may be made available in alternative formats, please contact us to discuss your requirements. Contact details are available on the cover page of this report.



Chapter 1: Overall Northern Ireland planning activity

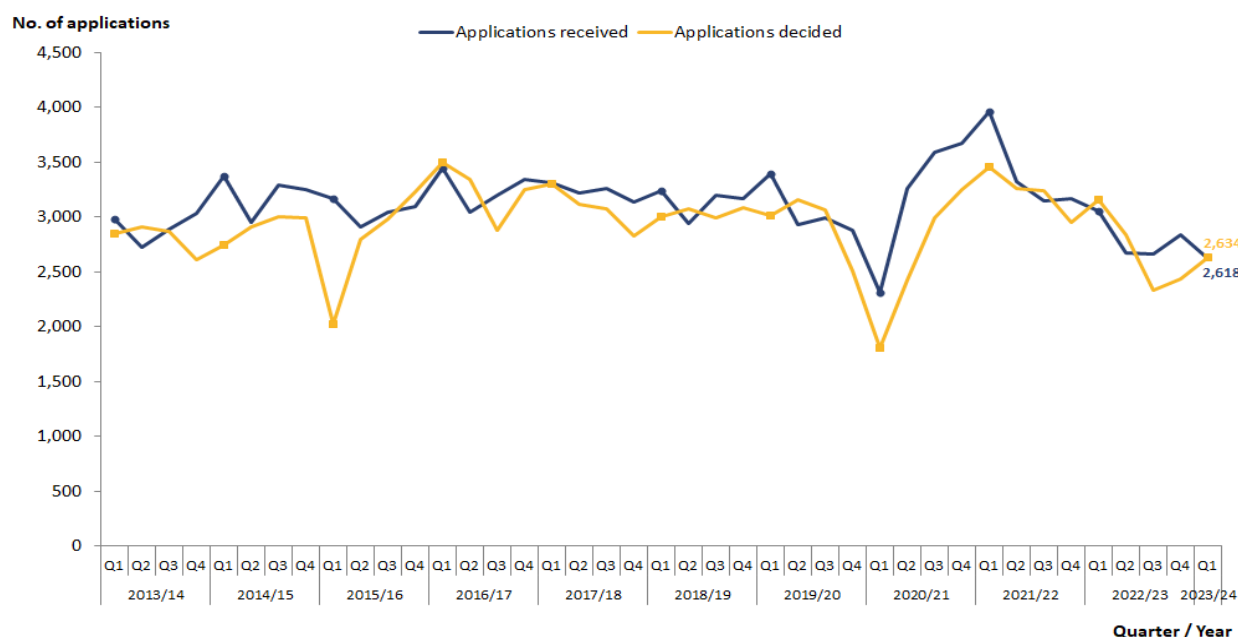
The volume of planning applications received in the first quarter of 2023/24 has decreased from the previous quarter and from the same period last year. For applications processed (i.e. decided or withdrawn) the volume processed has increased from the previous quarter but was lower than the levels recorded during the same period the previous year. The number of enforcement cases opened in the period April to June 2023 (Q1) increased from the previous quarter but was lower than the same period a year earlier; the number of cases closed was also higher than the previous quarter, but lower than in Q1 2022/23.

There have been some key events in recent years that will have impacted on planning activity and processing performance. These were the coronavirus pandemic with varying restrictions in place up until February 2022; the accessibility of the planning system for some users for a period during January and February 2022, and a significant change in IT planning systems with the development and implementation of two new planning systems in June and December 2022. All these factors should be borne in mind when interpreting these figures and when making comparisons with other time periods.

Applications received

The number of planning applications received in Northern Ireland (NI) by councils and the Department in Q1 2023/24 was 2,618; decreases of 7.6% on the previous quarter (2,834) and 14.2% on the same period a year earlier (3,051) (Figure 1.1). [Refer to Tables 1.1, 1.2.](#)

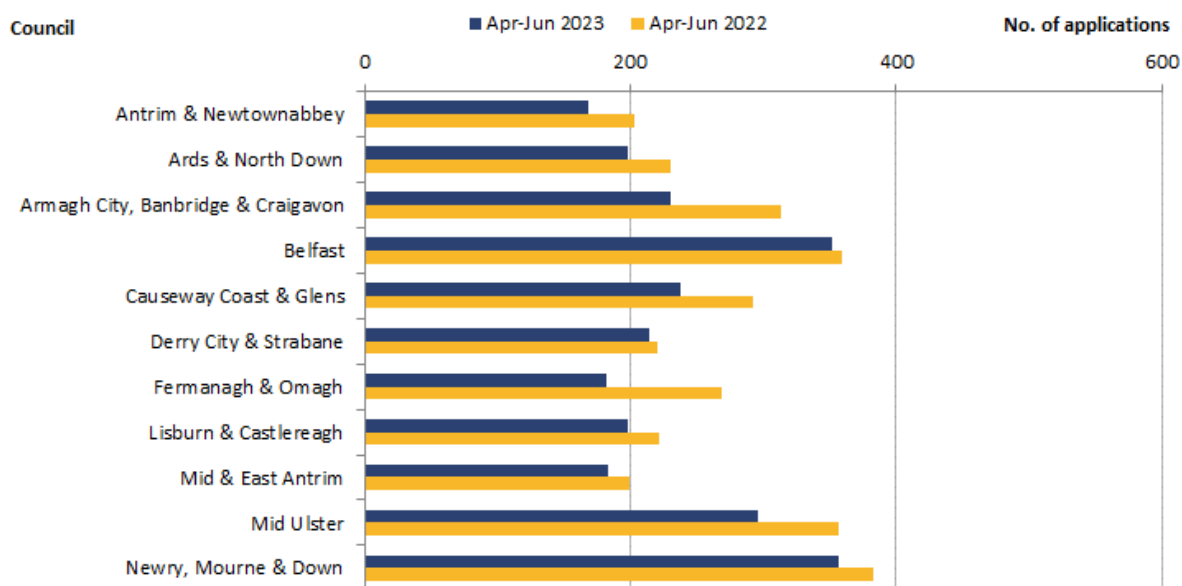
Fig 1.1 NI planning applications, quarterly, April 2013 to June 2023



Eight councils reported a decrease in the number of planning applications received in Q1 2023/24 compared with the previous quarter, with the decrease greatest in Causeway Coast and Glens (-19.6%). Two councils reported a small increase over the quarter with the increase greatest in Newry, Mourne and Down (2.3%); one council was unchanged.

Comparing Q1 in 2023/24 with the same period in 2022/23, all eleven councils reported a decrease in the number of applications received, with the greatest decrease reported by Fermanagh and Omagh (-32.3%). (Figure 1.2).

Fig 1.2 Applications received by council, April to June 2022 & 2023

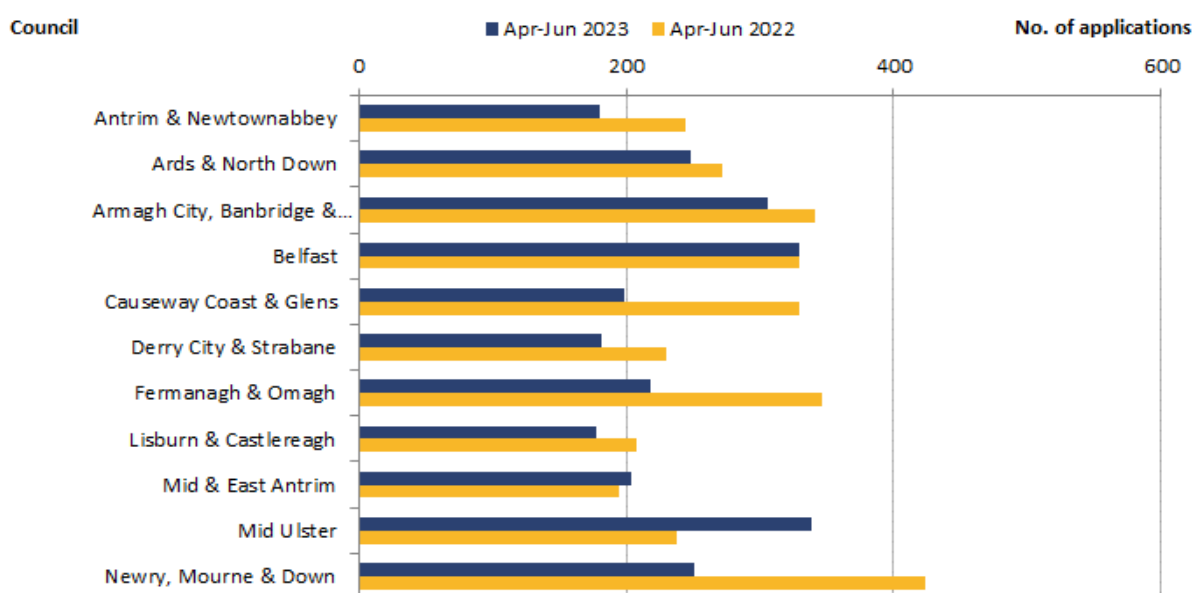


Applications decided

The number of planning decisions issued during Q1 2023/24 was 2,634; up by 8.2% on Q4 2022/23 (2,435) but down by 16.7% when compared with the same period a year earlier (3,162). [Refer to Tables 1.1, 1.2.](#)

Comparing Q1 in 2023/24 with the same period in 2022/23, nine councils reported a decrease in the number of applications decided, with the largest decrease recorded in Newry, Mourne and Down (-40.8%). Two councils reported an increase over the same period with Mid Ulster reporting the greatest increase (42.4%) (Figure 1.3).

Fig 1.3 Applications decided by council, April to June 2022 & 2023



In Q1 2023/24, 139 applications were withdrawn; an increase on the previous quarter (130) but down when compared with the same period a year earlier (148).

Approval rates

The overall Northern Ireland approval rate for all planning applications was 96.3% in Q1 2023/24. This was higher than both the previous quarter (96.0%) and the same period a year earlier (94.9%). [Refer to Table 1.1.](#)

Approval rates varied across councils during Q1 2023/24, from 99.5% in Fermanagh and Omagh to 91.1% in Antrim and Newtownabbey. These rates are dependent on many factors and care should be taken in making any comparisons. [Refer to Table 1.2.](#)

Live applications

There were 7,967 live applications in the planning system across NI at the end of June 2023, down from the end of March 2023 (8,092), and similar to the count at the end of the June 2022 (7,952).

Over one-quarter of live applications at the end of June 2023 were over one year old (26.9%); a slight increase from the proportion reported at the end of March 2023 (25.8%). [Refer to Table 1.3.](#)

Departmental activity

There were no applications received by the Department in Q1 2023/24; this compares to one received during the previous quarter and one during the same period a year earlier. No applications were decided during the first quarter of 2023/24; this compares to five decisions during the previous quarter and four decisions during the same period a year earlier. There were no applications withdrawn during Q1 2023/24. At the end of June 2023 there were 18 live Departmental applications; 17 out of 18 were in the planning system for over a year.



It is a target for the Department to contribute to sustainable economic growth by processing regionally significant planning applications from date valid to a ministerial recommendation or withdrawal within an average of 30 weeks.

Of the four RSD applications live in the planning system at the end of June 2023, two have been progressed to ministerial recommendation but the 30 week period for recommendation / withdrawal has been exceeded. Of the remaining two awaiting ministerial recommendation, the 30 week period has been exceeded for one, and the other which was received during Q4 2022/23 will be progressed in future months.

Development type

The majority of planning applications received and decided in NI are for residential development. Residential applications accounted for over three-fifths (1,653; 63.1%) of applications received in Q1 2023/24, followed by 'Other' (336; 12.8%) and 'Government and Civic' (202; 7.7%). The top three development types decided in Q1 2023/24 were 'Residential' (1,682), 'Other' (334) and 'Government and Civic' (202). [Refer to Tables 5.1, 5.2.](#)

Renewable energy activity

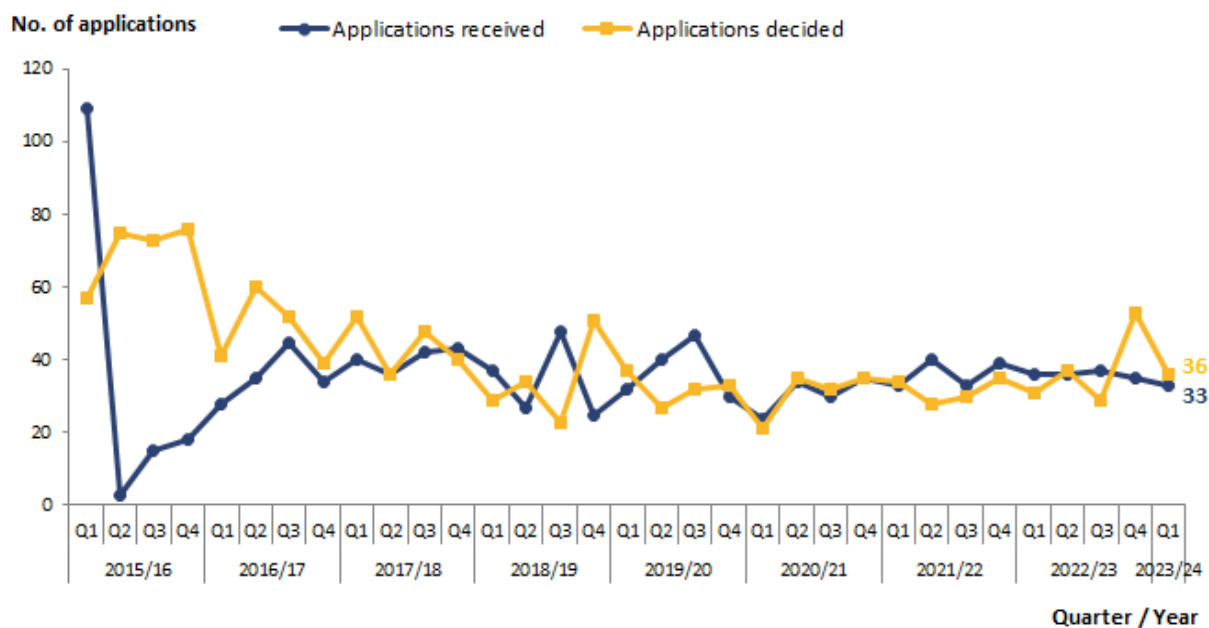
Twenty-four renewable energy applications were received in Q1 2023/24; down from the previous quarter (36) but similar to the same period the previous year (23). Nineteen renewable energy applications were decided during Q1 2023/24; this compares to 23 in the previous quarter and 19 in the same period last year.



Chapter 2: Major development planning applications

Major Developments have important economic, social and environmental implications. The majority of major applications are multiple housing, commercial, and government and civic types of development. A total of 33 major planning applications were received in NI during Q1 2023/24; similar to the previous quarter (35) and the same period a year earlier (36). [Refer to Table 3.1.](#)

Fig 3.1 Major development applications, quarterly, April 2015 to June 2023



During Q1 2023/24, 36 major planning applications were decided; down from 53 decided in the previous quarter but up from 31 decided during the first quarter of 2022/23 (Figure 3.1).

The approval rate for major applications decided upon in NI during Q1 2023/24 was 97.2%. [Refer to Tables 3.1, 3.2.](#)

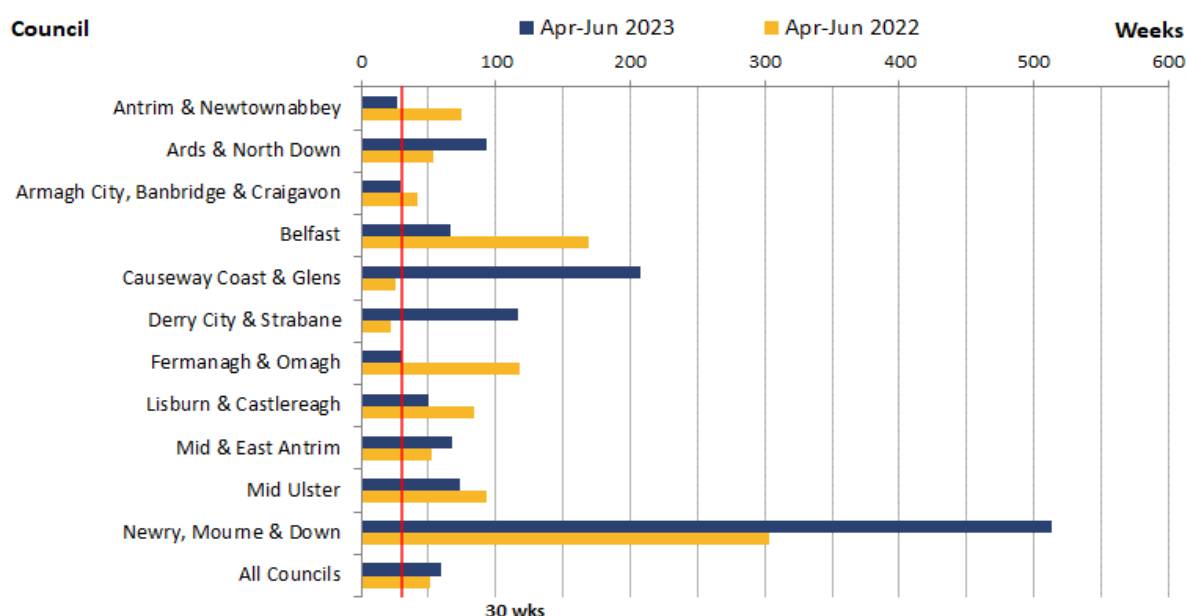
Major planning applications statutory target



It is a statutory target for each council that major development planning applications will be processed from the date valid to decision issued or withdrawal date within an average of 30 weeks.

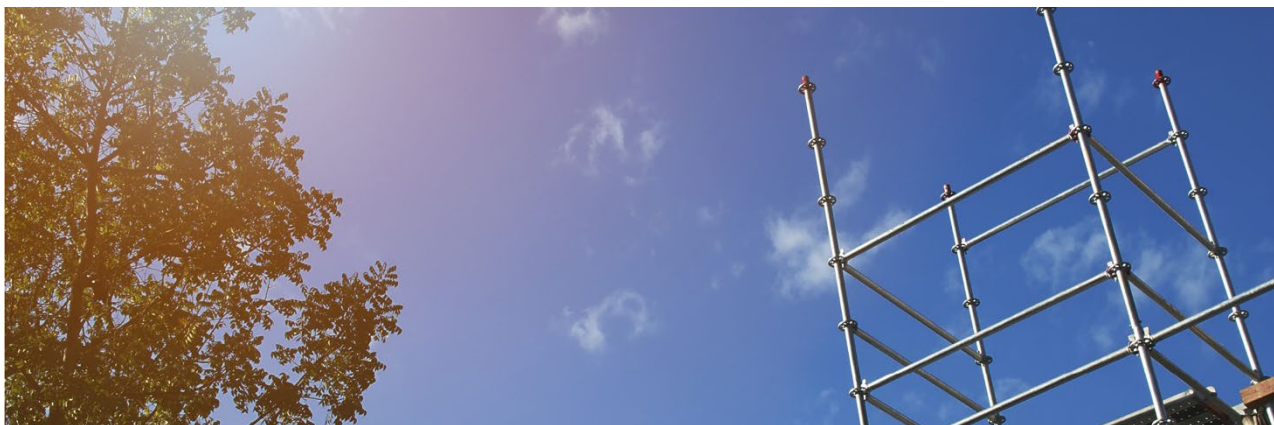
Figure 3.2 presents annual average processing times for major applications. The average processing time for major applications brought to a decision or withdrawal during the first three months of 2023/24 was 59.6 weeks across all councils. This represents an increase of 8.2 weeks compared with the same period in 2022/23 (51.4 weeks) and is almost double the 30 week target.

Fig 3.2 Major development average processing times by council, April to June 2022 & 2023



Note: Whilst Figure 3.2 has been provided for completeness, across councils there may be an insufficient number of major applications processed during the period reported to allow any meaningful assessment of their individual performance.

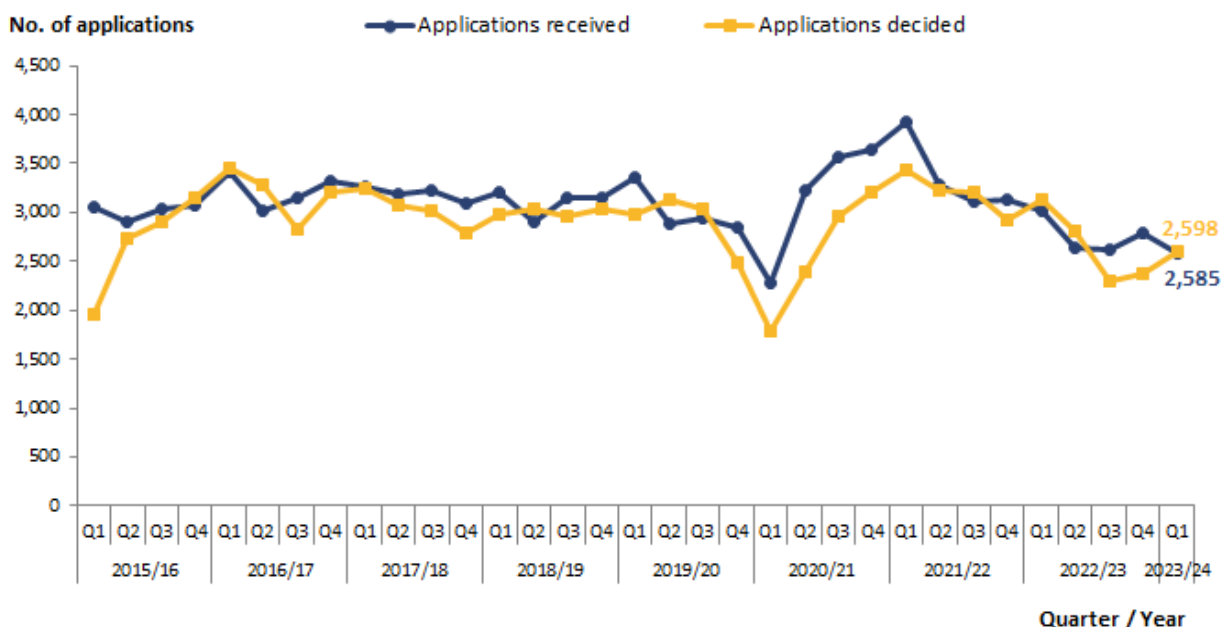
[Refer to Table 3.2 for further information.](#)



Chapter 3: Local development planning applications

Local Development planning applications are mostly residential and minor commercial applications and are largely determined by the councils. The number of local applications received in NI during Q1 2023/24 was 2,585; a decrease of 7.6% on the previous quarter (2,798) and down by 14.3% on the same the same period a year earlier (3,015). [Refer to Table 4.1.](#)

Fig 4.1 Local development applications, quarterly, April 2015 to June 2023



The number of local applications decided in Q1 2023/24 was 2,598; up by 9.1% on Q4 2022/23 (2,382) but down by 17.0% compared with the same period a year earlier (3,131); [refer to Table 4.1.](#) The overall Northern Ireland approval rate for local applications was

96.3% in Q1 2023/24; up from the rates reported for the previous quarter (96.0%) and the same period a year earlier (94.9%).

Local planning applications statutory target

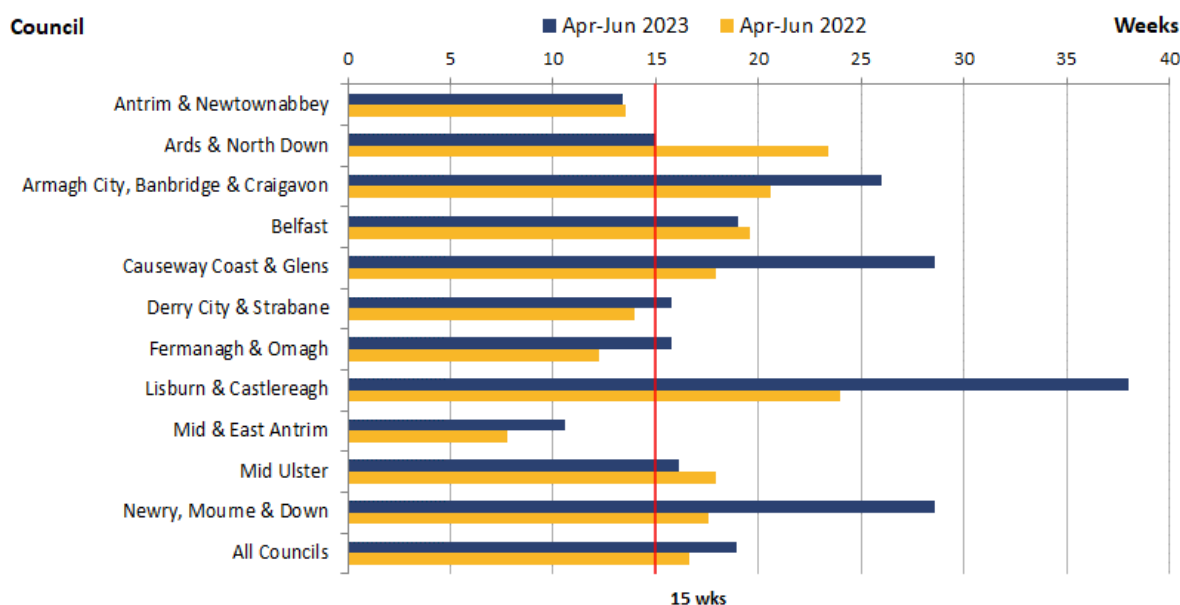


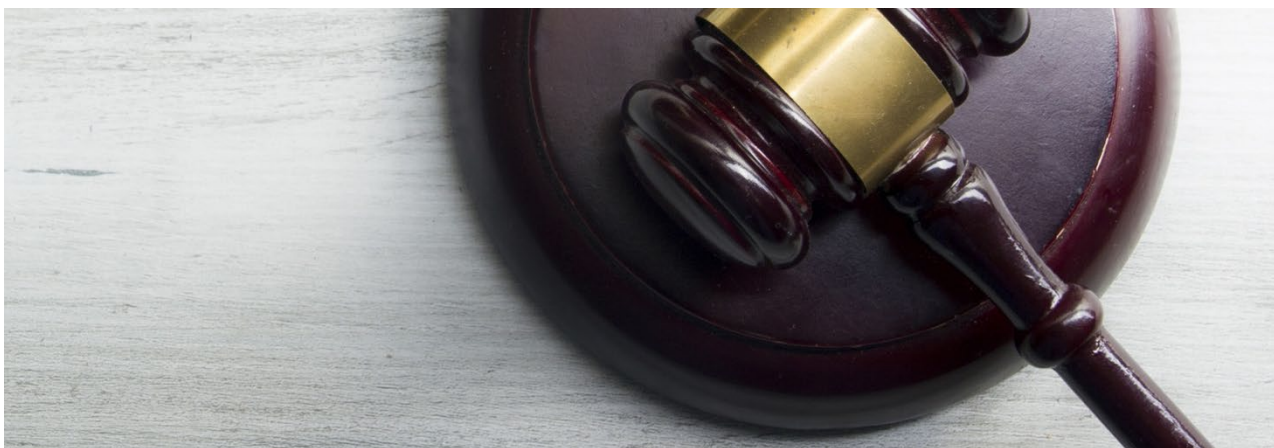
It is a statutory target for each council that local development planning applications will be processed from the date valid to decision issued or withdrawal date within an average of 15 weeks.

The average processing time for local applications brought to a decision or withdrawal during the most recent quarter (Q1 2023/24) was 18.9 weeks, exceeding the statutory target of 15 weeks. This is down over the quarter from 21.0 weeks, and up when compared to the same period the previous year (16.6 weeks).

Three of the 11 councils were within the 15 week target after the first three months of 2023/24: Mid and East Antrim (10.6 weeks), Antrim and Newtownabbey (13.4 weeks) and Ards and North Down (15.0 weeks) (Figure 4.1). [Refer to Table 4.2.](#)

Fig 4.2 Local development average processing times by council, April to June 2022 & 2023

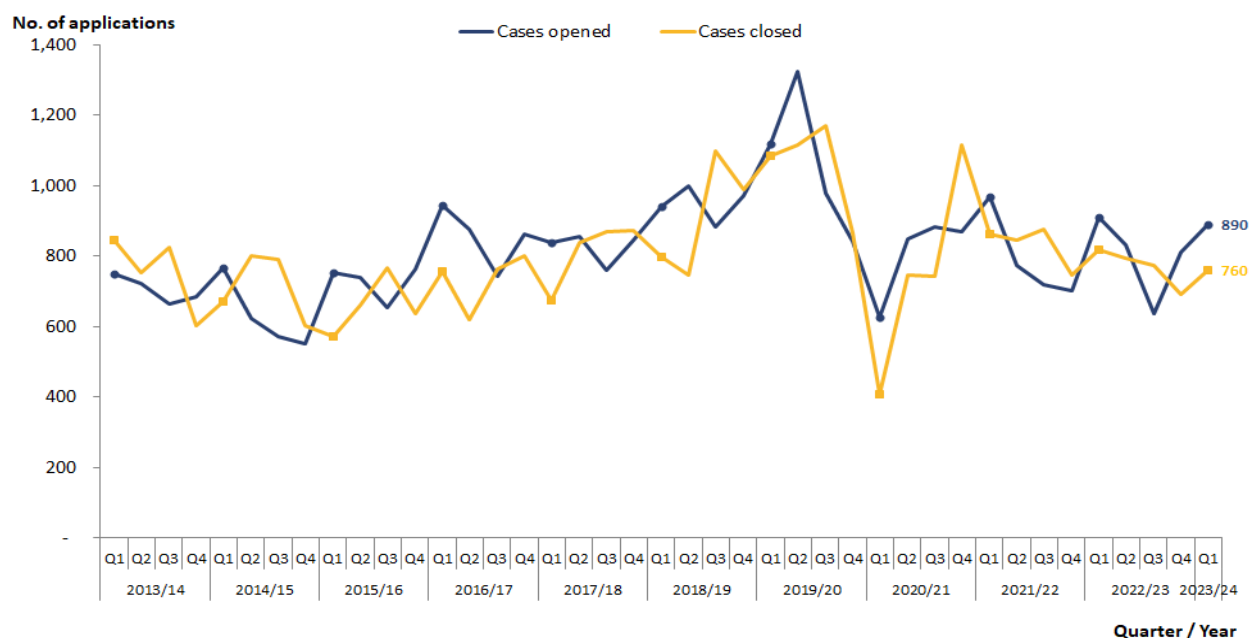




Chapter 4: Enforcement activity

The number of enforcement cases opened in NI during the first quarter of 2023/24 was 890; up by 9.5% over the quarter (813) and down by 2.2% from the same period a year earlier (910). [Refer to Table 6.1.](#)

Fig 6.1 Enforcement cases opened & closed, quarterly from April 2013 to June 2023



The number of enforcement cases closed during Q1 2023/24 was 760; up by 10.0% over the quarter (691) and down by 7.1% from the same period a year earlier (818) (Figure 6.1).

The number of enforcement cases over two years old stood at 1,403 at the end of June 2023, accounting for 36.0% of all live cases. This compared with 35.0% of live cases at the end of March 2023 and 31.2% at the end of June 2022.

[Refer to Tables and 6.1 and 6.4.](#)

Enforcement cases statutory target



It is a statutory target that 70% of all enforcement cases dealt with by councils are progressed to target conclusion within 39 weeks of receipt of complaint.

The number of enforcement cases concluded and corresponding processing times (statutory target) is not presented in this report. This information will be published later and users will be notified when available.



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Any enquiries regarding this document should be sent to us at ASRB@nisra.gov.uk.

National Statistics status

The Northern Ireland Planning Statistics were accredited as National Statistics in December 2020, following an independent review by the Office for Statistics Regulation (OSR). This means that the statistics comply with the standards of trustworthiness, quality and value in the [Code of Practice for Statistics](#) and should be labelled '[accredited official statistics](#)'¹.

Our statistical practice is regulated by the OSR who sets the standards of trustworthiness, quality and value in the [Code of Practice for Statistics](#) that all producers of official statistics should adhere to. You are welcome to contact us directly with any comments about how we meet these standards. Alternatively, you can contact OSR by emailing regulation@statistics.gov.uk or via the OSR website.

¹ National Statistics are [accredited official statistics](#). In the Statistics and Registration Service Act 2007 [accredited official statistics](#) are called National Statistics.

Unclassified

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ITEM 8**Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	23 October 2023
File Reference	
Legislation	The Planning (NI) Act 2011 & The Planning (Trees) Regulations (NI) 2015
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: N/A
Subject	NIPSO Own Initiative Investigation - Trees
Attachments	Item 8a - Covering Letter from NIPSO 29/09/23 Item 8b - NIPSO Report - 'Tree Protection: Strengthening Our Roots' Item 8c - Covering letter from Chief Executive 16/10/23 Item 8d - ANDBC Response to NIPSO Report Item 8e - Extract from ANDBC Response to DFI consultation on Implementation of the Planning Act

Background

In July 2022 the Northern Ireland Ombudsman wrote to all local councils and the Department for Infrastructure (the Department) proposing an Own Initiative investigation, under section 8 of the 2016 Act¹, into how public bodies effectively promote, administer and enforce the statutory protection of trees.

Not Applicable

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She advised that concerns had been raised with her office about the actions of public bodies in carrying out their statutory duties to protect trees. Following an assessment of this matter she identified potential systemic issues which included, but were not limited to concerns about:

- The availability of information to the public about the protection of trees, planned works on trees, and enforcement outcomes;
- The extent to which Councils are following the correct procedures when granting permission for works to protected trees (including situations in which Councils submit applications for works on their own land);
- The level of independent evidence which Councils are seeking from applicants in support of applications for works to protected trees;
- The responsiveness and robustness of enforcement activity in respect of potential breaches of Tree Preservation Orders (TPOs); and
- How information is used within Councils to align environmental and planning strategies and decision making to ensure the effective protection of trees.

In setting out her proposal, the Ombudsman requested considerable information from each council and the Department to help inform her decision making; and further information was provided for clarity on some points.

Detail

The Ombudsman has now written to all Chief Executives to advise that she has chosen not to proceed to full investigation at this time, referring to the comprehensive information gathered during the proposal stage which she states has enabled her to draw out significant observations and recommendations. These are presented in a Report entitled '*Tree Protection: Strengthening Our Roots*'. Each Council was asked to comment on factual accuracy by mid-October 2023.

The Planning Service reviewed the content of the Report and its recommendations and determined that it was necessary to comment, not just in respect of points of accuracy, but also raise concern regarding some of the recommendations which would present an additional resource and financial burden to Council.

RECOMMENDATION

It is recommended that Council notes the Ombudsman's Report entitled '*Tree Protection: Strengthening Our Roots*' and the response issued in respect of the observations and recommendations contained therein.

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Our Ref: 202001965

29 September 2023

Mr. Stephen Reid
Chief Executive
Ards & North Down Borough Council
Town Hall
The Castle
BANGOR
BT20 4BT

By email stephen.reid@ardsandnorthdown.gov.uk
frances.thompson@ardsandnorthdown.gov.uk

Dear Mr Reid,

THE PUBLIC SERVICES OMBUDSMAN ACT (NORTHERN IRELAND) 2016

In July 2022 I wrote to all local councils and the Department for Infrastructure (the Department) proposing an Own Initiative investigation, under section 8 of the 2016 Act¹, into how public bodies effectively promote, administer and enforce the statutory protection of trees.

In setting out my proposal, I requested considerable information from each council and the Department to help inform my decision making. The proposal stage also involved returning to several councils to seek further clarity on the information provided, and a meeting with Department Officials earlier this year.

After careful consideration and having regard to my published criteria², including whether I consider the issue is the best and most proportionate use of investigative resources, I have chosen not to proceed to full investigation at this time. The information gathered during the proposal stage was however comprehensive and has allowed me to draw out significant observations and recommendations.

I have set out the basis upon which I make these observations and recommendations within the enclosed overview report, '*Tree Protection: Strengthening Our Roots*'. The report has also been shared with the Department, and I am of the view that it can make a positive contribution to ongoing work in this area.

¹ [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(legislation.gov.uk\)](#)

² [Own Initiative Criteria](#)

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The protection of trees within the Northern Ireland planning system continues to be a key issue of concern that is in the public interest, and I encourage all local councils and the Department to utilise this opportunity to make the recommended improvements.

Although I have chosen not to proceed to full investigation at this time, it should be noted that I may choose to reassess this issue in the future. I would therefore be grateful if Ards and North Down Borough Council continues to engage with my Office on this matter and that alongside the other councils and the Department coordinate providing updates of any changes made following my report.

Given the public interest in this area, I have also decided to publish my overview report and **request that you provide any comments you may have on factual accuracy by 13 October**. Should you be unable to respond within the requested timeframe please contact the Own Initiative team at Owninitiative@nipso.org.uk so that a new timeframe can be considered.

Please also advise as to whether the observations and recommendations in my report is to be tabled with your Planning Committee. Should the Committee consider engagement with my Office on this matter to be helpful, we would be happy to arrange following publication.

I note in your response to my proposal you had advised that the Council is interested in understanding how the work of my Office and the Office for Environmental Protection aligns. There are indeed areas of interest that are relevant to both remits, which I view as a positive development. As such, we have in place regular engagement and have drafted a Memorandum of Understanding so that collectively we can act to promote both compliance with environmental law and the principles of good administration.

Yours sincerely,



MARGARET KELLY
Northern Ireland Public Services Ombudsman

TREE PROTECTION: STRENGTHENING OUR ROOTS

An overview report by the Northern Ireland Public Services Ombudsman with recommendations to the Department for Infrastructure and Local Councils for improvement.

The Role of the Ombudsman

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act) and includes a discretionary power to undertake investigations on her Own Initiative, with or without a prior complaint(s) being made.

Under Section 8 of the 2016 Act the Ombudsman may launch an investigation where she has reasonable suspicion that there is systemic maladministration or that systemic injustice has been sustained (injustice as a result of the exercise of professional judgement in health and social care).

In order to make a determination on reasonable suspicion, the Ombudsman initially gathers information relating to an issue of concern. This may include desktop research, contact with the body concerned, the use of a strategic enquiry, consultation with Section 51 bodies, etc. The Ombudsman assesses this information against her published Own Initiative Criteria in order to decide whether or not to proceed with an investigation.

Where the Ombudsman determines that an issue has not met her published criteria, but she considers that an overview of her actions in considering an investigation could provide learning, she may determine it appropriate to provide any relevant organisations with an overview report.

What is Maladministration and Systemic Maladministration?

Maladministration is not defined in the legislation but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Systemic maladministration is maladministration which has occurred repeatedly in an area or particular part of the public service. Systemic maladministration does not have to be an establishment that the same failing has occurred in the 'majority of cases', instead it is an identification that an issue/failing has repeatedly occurred and is likely to occur again if left unremedied; or alternatively, an identification that a combination or series of failings have occurred throughout a process which are likely to occur again if left unremedied.

¹ [Own Initiative Criteria](#)

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Executive Summary

Within the planning system in Northern Ireland, the Department for Infrastructure (the Department) and local councils have statutory duties to consider the protection of trees. The effective promotion, administration and enforcement of tree protection is critical to long term strategies to improve the social, environmental and economic well being of our areas and people. Trees have a key role not only in increasing biodiversity and combating climate change but are also increasingly recognised for the value they add to homes and public spaces and for their wide ranging benefits to public health.

Within recent years much attention has been given to the importance of planting more trees, and I welcome the many initiatives that have been undertaken in this area. There is however also a need for a renewed focus on recognising our existing trees as valuable infrastructure assets which need to be carefully managed and protected. The importance of protecting trees within our planning system is even more critical given that it has been established that Northern Ireland ranks amongst the worst in the world for biodiversity loss², is one of the lowest in Europe for woodland cover³ and is likely to fall short of its 2050 net zero emissions target.⁴

In July 2022 I wrote to the Department and all eleven councils to advise that concerns had been raised with my Office indicating potential systemic maladministration in how public bodies fulfil their duties to protect trees within the planning system. I had also noted ongoing and significant public confidence issues, including community distress, consistently reported in the public domain. This included concerns about the extent that works to 'protected' trees (including the removal of) were granted and that adequate enforcement action was not being taken in response to wilful destruction.

I shared with the Department and councils a proposal to investigate using my own initiative powers. I requested information from the Department and each council to help inform my decision making in this matter. Whilst I have chosen not to proceed to full investigation at this time, the information gathered during the proposal stage was comprehensive and has allowed me to draw out significant observations and recommendations.

The [Principles of Good Administration](#) are the standards by which I expect public bodies to deliver good administration. The first principle is **getting it right** and in [Section 1](#) I set out the main strategies, policies and procedures which I have been advised are currently in place to deliver council functions to protect trees. Whilst some councils have developed comprehensive tree strategies to align their actions in this important area of planning this is not yet evident in all council areas. There is

² A 2021 NHM & RSPB study ranks Northern Ireland as 12th lowest, out of 240 countries/territories, for biodiversity intactness. Available from: [biodiversity-intactness-index-summary-report-v5-1-1.pdf](#)

³ 9% Northern Ireland, 19% Scotland, 15% Wales, 10% England, *National Statistics on Woodland* produced by Forest Research, approved by UK Statistics Authority, 16 June 2022. Available from: [Woodland Statistics](#). EU-27 averages at 40%, [Woodland cover targets.pdf \(defra.gov.uk\)](#)

⁴ [Advice-report-The-path-to-a-Net-Zero-Northern-Ireland \(1\).pdf](#), March 2023.

also an absence of procedural guidance to supplement the legislative framework around tree protection, which I consider is necessary to ensure consistency in decision making processes and to promote the application of good practice. I further consider that the Department has a greater role to play in developing regional guidance and in facilitating the sharing of best practice.

In [Section 2](#), I outline how Tree Preservation Orders (TPOs) are administered and the variation in the number of TPOs requested and approved across council areas. A TPO is an order made by a planning authority which provides statutory protection to specific trees, groups of trees or woodlands. Whilst recognising this continues to be an evolving area of expertise, further work is required by both the Department and councils to establish how best to assess the 'amenity' value of a tree when considering the use of TPOs. This should include councils documenting a clear methodology and exploring better use of valuation software in this process. The Department should also issue guidance on the key TPO terms contained within the legislation.

Within this section I also note the potential for greater **openness and transparency** through increased electronic mapping of TPOs and provision of online access to the TPO registers. Council websites should provide clear information about the process that members of the public can follow to request a TPO, and the schemes of delegation should outline where the decision making on making TPOs sits within the council.

Similarly, there is the opportunity for increased transparency about the granting of works to protected trees. Within [Section 3](#), I outline the variation in the volume of applications made and approved across the region. Councils should consider the potential of publishing details of the applications and decision making to increase accountability and public confidence. The introduction of community notification for residents likely to be affected, which is a procedure recommended in England, should also be examined as a way of improving engagement in the planning system.

When considering how application for works are processed, it is important that councils clarify the circumstances in which independent evidence is required to support the applications for work and the parties responsible for obtaining it. **Being customer focused** involves public bodies explaining clearly what they expect of a service user as well as what is expected from the public body. Consistency of approach in processing applications for works could be further supported by all councils having standardised forms available online and signposting the use of the planning portal.

To comply with the principle of **acting fairly and proportionately**, the actions and decisions of public bodies should be free from interests that could prejudice their actions and decisions. Within [Section 4](#), I considered how councils approach cases in which the council wishes to carry out work to a protected tree on land which it owns, and the processes used to investigate where a council is suspected of a breach. The responses highlighted the variation in council awareness and interpretation of the governing legislation and best practice in this area. Department

and councils should agree clear procedural guidance to comply with the legislation and to ensure potential conflicts of interest are being appropriately managed.

The need for adequate oversight and engagement between the Department, councils and statutory undertakers in respect of the removal of protected trees on operational land is discussed in [Section 5](#). Public bodies must work effectively together to mitigate against adverse impact, but also proactively communicate with the public on why, and how, the work is being undertaken.

When taking decisions, public bodies should ensure that the measures taken are proportionate to the objectives pursued. Taking appropriate enforcement action, to prevent or remedy harm, is central to the effectiveness and credibility of the planning system and to meeting the principle of **putting things right**.

Within [Section 6](#), the figures gathered regionally provide insight into the level of enforcement action taken in respect of reported breaches of planning control concerning protected trees. Out of 369 tree protection breaches reported to councils over a three year period, only one resulted in formal enforcement action being taken. No cases were brought to court. I have not carried out an analysis of the individual decision making however the low level of enforcement activity should be a concern for councils as they seek to improve the environmental quality of their area.

The figures further showed that nearly one fifth of the overall number of cases were closed as 'not expedient', indicating that a breach was established but that the council decided not to take further action having applied the 'expediency test'. I have recommended an examination of these cases to establish if the approaches taken are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. Council enforcement strategies should also provide clear information on the 'expediency test' and ensure there is sufficient oversight when enforcement decisions are taken under delegated authority.

I also recommend that the Department collate, monitor and publish enforcement data specific to tree protection enforcement cases to further enhance scrutiny at a regional level.

In adhering to the principle of **seeking continuous improvement**, public bodies should actively seek and welcome all feedback to improve their public service delivery. I was pleased to note that whilst all councils asserted that they meet their obligations to protect trees, several welcomed the proposal as an opportunity to review policies and practice for potential improvements.

Having considered the responses to my investigation proposal I have made 26 recommendations for improvement which I have shared with the Department and councils. I am hopeful this will make a positive contribution to the protection of trees within the Northern Ireland planning system. If required, I may choose to reassess this issue in the future.

The Statutory Duty to Protect Trees

The Planning Act (Northern Ireland) 2011 (the 2011 Act) introduced a new two-tier system for the delivery of planning functions in Northern Ireland. This system, which came into effect in April 2015, resulted in the majority of planning functions passing from the Department for Infrastructure (the Department) to local councils.

The eleven local councils have responsibility for delivering most operational planning functions including the determination of planning applications and the investigation of alleged breaches of planning control. The Department retains responsibility for regional planning policy and legislation as well as monitoring and reporting on the performance of local councils. It also retains certain reserved enforcement powers and continues to make planning decisions in respect of regionally significant and 'called-in' planning applications.

Figure 1: A map of the 11 local councils in Northern Ireland

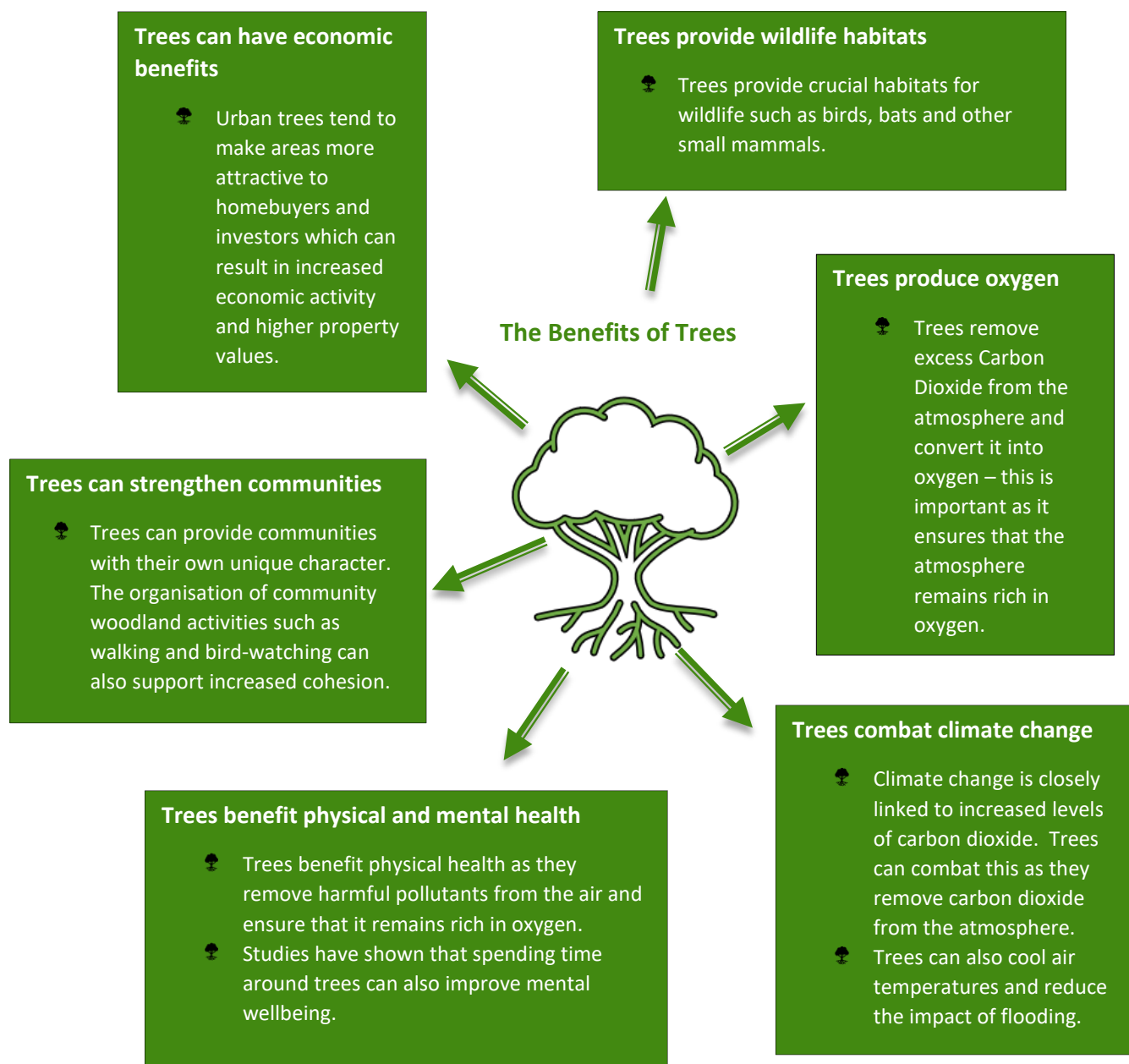


The 2011 Act places statutory duties on councils and the Department to make adequate provision for the protection of trees, where appropriate, within the planning system.⁵ It is vital that these duties are fully understood and implemented. This means that councils should protect existing trees, as well as promoting further planting of trees. Trees provide many important benefits for both members of the public and the natural environment. Key benefits include the fact that they provide

⁵ [Planning Act \(Northern Ireland\) 2011, Chapter 3, s.121-128](#)

habitats for wildlife, play a significant role in combating climate change and bring important advantages for public health.⁶

Figure 2: The Benefits of Trees



⁶ A 2021 study carried out by Forest Research found that trees provide significant benefits for wellbeing & estimated that the mental health benefits associated with visits to UK woodlands save £185 million in mental health treatment costs annually. [Valuing the mental health benefits of woodlands \(forestresearch.gov.uk\)](https://www.forestresearch.gov.uk/valuing-the-mental-health-benefits-of-woodlands)

It is recognised that not all trees are considered as requiring statutory protection and that there is a need to scrutinise and prioritise the protection of trees determined to be of greater value. This continues to be an evolving area of expertise. Native trees, for example, are thought to be more beneficial for biodiversity than non-native trees.⁷ Areas of ancient woodland are also extremely valuable natural assets which are of greater environmental benefit than younger trees.⁸

The importance of public bodies upholding and promoting their responsibilities to protect trees is further reinforced by the growing concerns in relation to the current state of Northern Ireland's trees and woodland areas. Northern Ireland is one of the least wooded areas in Europe⁹ and it has the lowest density of woodland coverage in the United Kingdom.¹⁰ It was also recently ranked the 12th worst out of 240 countries in terms of biodiversity loss.¹¹ Within the last Biodiversity Strategy¹² for Northern Ireland, it was highlighted that land use change and development has a major impact on biodiversity. The important role which planning controls and policy play in mitigating against biodiversity loss was also emphasised. Northern Ireland's comparatively low level of woodland cover and lack of biodiversity therefore reinforces how important it is for planning authorities to take proactive steps to protect the region's existing tree assets.

The planning system in Northern Ireland currently protects trees in three main ways:

1. *Tree Preservation Orders*

Tree Preservation Orders (TPOs) are statutory protections afforded to trees under the 2011 Act.¹³ The 2011 Act gives local councils the 'discretionary' power to make TPOs where they consider that it is 'expedient in the interests of amenity'. Whilst the making of new TPOs primarily sits under the remit of councils, the Department also retains the power to make them in certain circumstances. The 2011 Act is supplemented by The Planning (Trees) Regulations (Northern Ireland) 2015 (the 2015 Regulations) which set out the form which TPOs should take along with the procedures to be followed when making, confirming and revoking TPOs.¹⁴

A TPO can be applied to a single tree or a group of trees. Whilst the issuing of a TPO is discretionary, where one is made the planning authority has a duty to enforce it. If a tree is protected by a TPO it is necessary to apply for consent from the

⁷ [Biodiversity: why native woods are important - Woodland Trust](#)

⁸ [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁹ The Woodland Trust reports that Northern Ireland has just over 8.7% woodland cover [Our Work in Northern Ireland - Woodland Trust](#) compared to a European average of 40% - see [Woodland cover targets Detailed evidence report.pdf \(defra.gov.uk\)](#)

¹⁰ [State of the UK's Woods and Trees 2021 \(woodlandtrust.org.uk\)](#), pg.29

¹¹ [48398rspb-biodiversity-intactness-index-summary-report-v5-1-1.pdf](#) (2021)

¹² The former Department of the Environment published a [Biodiversity Strategy for Northern Ireland](#) in July 2015 in compliance with The Wildlife and Natural Environment Act (Northern Ireland) 2011 (WANE). WANE places a duty on all public bodies to conserve biodiversity when exercising their functions ([s.1](#)).

¹³ [Planning Act \(Northern Ireland\) 2011, s.122 -124](#)

¹⁴ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015](#)

council or, in some circumstances, the Department before carrying out any felling or pruning work. Breach of a TPO is a criminal offence which can result in a fine of up to £100,000 on summary conviction or an unlimited fine on conviction on indictment.¹⁵

2. Conservation Areas

Conservation Areas are areas designated by planning authorities as having special architectural or historic interest. Trees located in conservation areas receive similar protection to those which are protected by TPOs. It is a criminal offence to carry out works to trees in conservation areas without first serving notice on the council or, in certain circumstances, the Department.¹⁶ If the council or the Department objects to any proposed works, it can make a formal TPO to protect the tree(s).

3. Planning Conditions

Trees can also be protected by planning conditions attached to grants of planning permission.¹⁷ A planning condition may, for example, stipulate that an existing tree or trees must be retained.

Breach of a planning condition protecting trees is not a criminal offence. If a breach is identified a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice can however give rise to a criminal offence which is punishable by a fine of up to £1000 on summary conviction.¹⁸

It is notable there is a considerable penalty variation between breaches of TPOs and planning conditions, with the maximum fine for a breach of a TPO significantly higher than a breach of a planning condition notice. Given the differing levels of protection, planning authorities should carefully consider in each case whether a planning condition or TPO or both provides the most effective safeguard. It is not considered reasonable to use planning conditions as the means to secure long term protection of trees, where TPOs are available for this purpose.

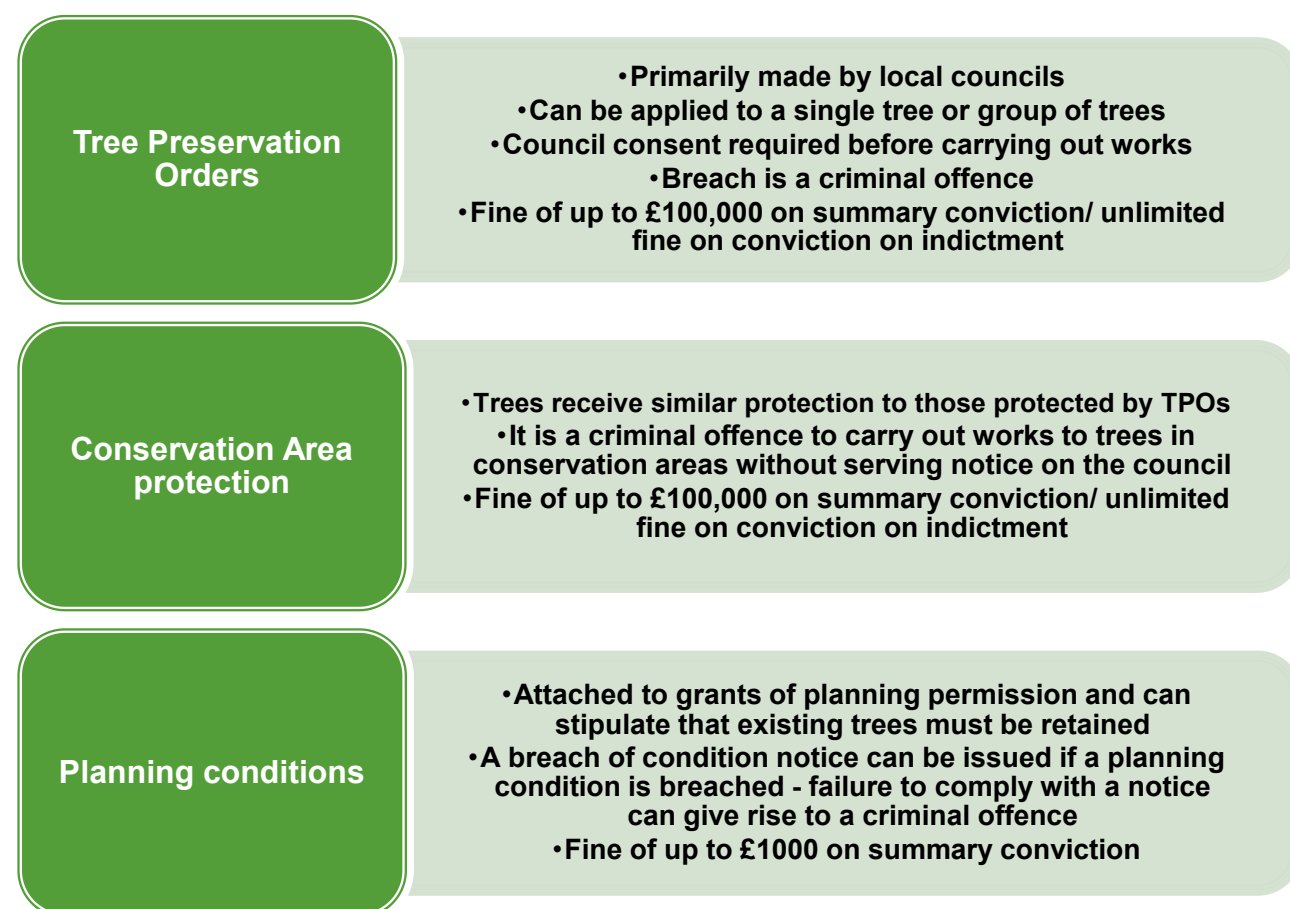
¹⁵ [Planning Act \(Northern Ireland\) 2011, s.126 \(1\)](#)

¹⁶ [Planning Act \(Northern Ireland\) 2011, s. 127 \(1-4\)](#)

¹⁷ [Planning Act \(Northern Ireland\) 2011, s.121](#)

¹⁸ [Planning Act \(Northern Ireland\) 2011, s.152](#)

Figure 3: The three main ways in which the Northern Ireland planning system protects trees



Section 1: Strategies, Policies and Procedures

1.1 The Councils

All eleven councils were asked to provide my Office with copies of the policies and procedures which they have in place to fulfil their duties to effectively promote, administer and enforce the protection of trees.

Whilst recognising the autonomy of each council to develop local policy, the responses highlighted several points of concern including an absence of strategies in some council areas and a lack of procedural guidance to underpin key functions. This section will set out my observations in respect of:

- (i) Local Development Plans;
- (ii) Strategies;
- (iii) Schemes of Delegation; and
- (iv) Procedural Guidance.

(i) Local Development Plans

The 2011 Act requires each council to prepare its own Local Development Plan (LDP).¹⁹ A council's LDP is intended to be a 15-year framework which sets out a vision for how the council area should look in the future in terms of the type and scale of development. The legislation requires each LDP to be made up of a Plan Strategy and a Local Policies Plan. Whilst it was originally anticipated that it would take approximately three years for councils to complete their LDPs, it is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.²⁰ In its recent review of Planning in Northern Ireland, the Northern Ireland Audit Office (NIAO) commented on the lack of progress made in completing LDPs and made a recommendation in relation to reviewing timetables for completion and streamlining the remaining steps of the process.²¹

It is concerning to note that none of the LDPs have been completed despite the passage of more than seven years.

Most of the councils referred to their LDPs when providing copies of their policies and procedures to protect trees. Some of the councils shared copies of their draft Plan Strategies²² and I welcome the fact that most appear to be including information in relation to the protection of trees within these strategies. I consider that the LDPs present a good opportunity for councils to set out a long-term vision for how they will balance development with the need to protect trees and woodland within the council

¹⁹ [Planning Act \(Northern Ireland\) 2011, Part 2](#)

²⁰ The former DOE's *Strategic Planning Policy for NI* (2015) set out an indicative timeframe for the completion of LDPs - [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\)](#), pg.30

²¹ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\)](#) – see LDP recommendation on pg.26

²² Three councils have adopted their Plan Strategies since my initial enquiries – Fermanagh & Omagh Council in March 23, Belfast City Council in May 23 and Lisburn & Castlereagh in June 23.

area. However, it is not possible to comment substantively on the effectiveness of the Plan Strategies as, to date, most have not been adopted by the councils.

It should also be noted that most of the councils also referred to using regional planning guidance to assist them in setting planning conditions to protect trees, which I will discuss further in section 1.2. A number of councils provided my Office with sample planning conditions used to protect trees.

I note and welcome that Belfast City Council has also recently published 'Trees and Development' planning guidance to supplement policies in its LDP, to support its aims to 'protect, promote and preserve' trees.²³

(ii) Strategies

Tree and Woodland Strategies

Alongside local plans, the development of Tree and Woodland Strategies are a way in which councils can set out their long-term approach for managing the trees within their council area. Three councils currently have such strategies, or supporting policies, in place.²⁴ Whilst these strategies do not solely relate to the protection of trees, most contain some information in relation to the approaches which the councils are currently taking in this area. For example, one council stated that it only carries out tree works where necessary whilst another stated that it avoids the unnecessary removal or disfigurement of trees with 'amenity' or high wildlife value.

3 councils currently have tree strategies. 8 councils do not have tree strategies however 3 currently have draft strategies.

The remaining eight councils do not have tree strategies in place however three are currently working on draft strategies.²⁵ I note Belfast City Council's draft strategy was shared for public consultation and welcome the level of detail which it contains as well as its commitment to protecting Belfast's tree population.

I would encourage the councils which do not currently have tree strategies in place to consider the benefits of developing one. I would also encourage councils which do have tree strategies to review their strategies to ensure they are comprehensive.

²³ [Trees and Development \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk)

²⁴ Ards and North Down Borough Council has published a Tree and Woodland Strategy -

[Ards and North Down Tree and Woodland Strategy .pdf \(ardsandnorthdown.gov.uk\)](https://www.ardsandnorthdown.gov.uk)

Armagh Banbridge & Craigavon Borough Council has published a Tree Management Policy -

<https://www.armaghbanbridgecraigavon.gov.uk/download/51/policies/37522/tree-managment-policy.pdf>

Lisburn and Castlereagh City Council provided my Office with a copy of its current Tree Policy. This policy is not available online and the council stated within its response that it is currently working on a much wider and more in-depth strategy.

²⁵ Belfast City Council published its [Draft Strategy](#) in January 2023 as part of a public consultation which ran from January until April 2023. Newry Mourne and Down District Council stated that it was preparing a draft tree strategy which would be published for consultation. Causeway Coast and Glens Borough Council also provided me with a copy of its draft Tree Risk Management Plan.

The strategies should include the different functions of the council to ensure priorities in this area are aligned. For example, the role of enforcement activity to remedy and prevent harm should be sufficiently valued in the context of protecting tree stock, biodiversity and public health.

I note that one council included the appointment of a Tree Officer as one of the proposed actions within its tree strategy and within their responses to my investigation proposal, six councils referred to having designated Tree Officers. The appointment of Tree Officers appears to be increasingly common across the councils with the aim to promote the protection of trees.

It is also critical that within their strategies councils consider how effectively they are communicating with the public in this important area. Ten of the eleven councils currently have dedicated tree preservation sections within their websites. Whilst it is encouraging that the majority of councils do provide online information in this area, it is concerning that one council does not and I would urge it to rectify this as soon as possible. Throughout this report I highlight several areas and make recommendations for increased availability of information to the public.

Enforcement strategies

All of the councils have Planning Enforcement Strategies

An effective enforcement strategy is key to remedying, and indeed preventing, harm to trees already subject of protection through planning conditions, TPOs or location within a conservation area. A planning enforcement strategy sets out a council's enforcement objectives as well as how breaches of planning control are investigated. These strategies also outline how the investigation of enforcement complaints are prioritised.

All of the local councils have planning enforcement strategies in place. They are very similar in content and, whilst none are specific to trees, all of the council strategies refer to TPO breaches when outlining enforcement priorities. It is notable that all of the councils give complaints about alleged TPO breaches the highest possible priority for investigation. I will however set out several significant concerns I have identified in respect of 'Enforcement Activity' later in this report within [Section 6](#).

(iii) Schemes of Delegation

Under the 2011 Act, it is a statutory requirement for councils to have schemes of delegation for planning.²⁶ Schemes of delegation outline which decisions are made by the Planning Committee and which are delegated to council officers.

²⁶ 2011 Act – s.31

Whilst all of the local councils have developed their own schemes of delegation, there is some variation in relation to the decision-making mechanisms which councils are employing around TPOs. Some councils delegate all decision-making in this area to council officers whereas others require their Planning Committees to play a role in certain aspects of TPO decision-making.

There is variation across the councils in relation to how decisions around TPOs are made.

The wording of some of the schemes of delegation has however the potential to cause confusion. Of the three councils whose Planning Committees retain decision making functions for making TPOs, it is not clear from the schemes if the Planning Committees review **all** requests for TPOs or only those which council officers recommend are made.²⁷ It is also not clear how they would operate where there is a need to act quickly to protect trees. Open and transparent information about the process is necessary not only for Committee and council officers to ensure procedural compliance, but also to instill public confidence in the process.

It is also notable that, within their schemes of delegation, two councils refer to delegating functions which they do not possess. Both of these councils state that they delegate the revocation of TPOs to council officers however this runs contrary to the 2011 Act which does not extend this power to local councils. Whilst I note that the Department, in its 2022 Review of the Implementation of the 2011 Act, indicated that it intended to bring forward proposals to permit councils to vary or revoke TPOs, this is not currently enacted in law.²⁸

I would encourage all councils to review their schemes of delegation to ensure that they are satisfied that decision making processes on TPOs are given the appropriate priority. Councils should also ensure that their schemes are clear and accurate.

(iv) Procedural Guidance

The responses to my investigation proposal indicate that there is variation regarding the extent to which councils have developed procedural guidance to supplement the legislative framework around trees subject to TPOs and conservation area protection. Whilst it is correct that the governing statutory instruments set out the legal obligations the planning authorities must comply with, policies and procedures are necessary to outline the practical steps required to fulfil these duties. Procedural guidance helps to provide clarity and consistency in the process and supports good administration to help get decisions right.

²⁷ For example, in response to an individual complaint made against a council to this Office, the council stated that ‘a decision not to place a TPO does not have to go to the Planning Committee.’ The wording of the Council’s Scheme of Delegation could however be interpreted that *all* requests for TPOs are considered and determined by the Committee.

²⁸ [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](https://www.ni.gov.uk) – P.66.

Although some of the councils provided copies of procedural guidance documents, it is of concern that other councils do not appear to have developed any of their own procedural guidance. It is also worth highlighting that some of the guidance documents provided are outdated and contain inaccuracies. For example, a procedural document in place within one of the councils dates back to 2010 and contains incorrect references to the Department being the primary decision maker in relation to applications for works to protected trees. In another council, guidance which purports to demonstrate their procedures for dealing with applications for works to protected trees on council owned land fails to refer to the Department's decision-making role in these cases.

I consider this further evidence of why it is important that councils supplement the legislative framework in this area with up to date guidance and I strongly encourage all councils to take steps to implement detailed and accurate written procedures.

1.2 The Department

It is notable that in response to my queries some councils referred to a lack of regional support from the Department. One council referred to a lack of support in relation to tree preservation work, and another stated that there was a 'significant gap' in regional advice and guidance. Reference was also made to a loss of expertise and resource following the transfer of planning powers to local councils.

In response to my investigation proposal, the Department was asked to provide details of the guidance which it provides to support local councils in relation to the protection of trees. Some of the guidance relied upon by the Department as being available for councils is significantly outdated and does not reflect the transfer of planning powers to the councils.

This section will outline my observations in respect of the Department's:

- Guidance specific to the protection of trees;
- Regional planning guidance and policies; and
- Enforcement Practice Notes.

(i) Guidance specific to the protection of trees

In response to asking what guidance is provided to councils, the Department provided two pieces of guidance which focus on the protection of trees. Both of these documents were issued by its predecessor department, the Department of the Environment (DOE):

- *Tree Preservation Orders: A Guide to Protected Trees*²⁹ (the 2011 guidance)
- *Trees and Development: A Guide to Best Practice*³⁰ (the 2003 guidance)

The 2011 guidance is specific to TPOs and covers a number of areas including the criteria used to assess a potential TPO and how TPOs are processed. The 2003

²⁹ [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](https://infrastructure-ni.gov.uk)

³⁰ [Trees and Development - A Guide to Best Practice \(infrastructure-ni.gov.uk\)](https://infrastructure-ni.gov.uk)

guidance focuses on the value of trees and how they can be accommodated in the construction process. The following areas of concern have been identified in relation to these documents:

1. The guidance is outdated – neither of the documents have been updated to reflect the legislative and departmental changes which have occurred since their original publication. The 2011 guidance, for example, contains several inaccurate references to the now non-existent DOE having primary responsibility for making TPOs and processing applications for works to protected trees. It has not been updated to reflect the fact that these powers now sit primarily with the local councils.
2. The guides are aimed at members of the public rather than the councils – although the Department highlighted these documents as being guidance which they provide to support local councils, it is clear the guides are primarily written for members of the public³¹ and developers rather than councils. Given the intended reader is the general public, it is even more concerning that the information presented is inaccurate.

The Department's failure to provide an updated guide, providing clear information on the current roles and duties of the Department and councils, has the potential to cause confusion. It may further risk creating a perception that it does not view the protection of trees as an area of priority within the planning system.

I note that both guides contain explanatory notes (dated 2019) that existing guidance within the documents will cease to have effect once the councils have adopted their Plan Strategies, only three councils have adopted their strategies to date. Adoption across the remaining councils is likely to take some time yet. Notwithstanding that the current guides may cease to have effect, I am of the view that given its oversight and monitoring remit, the Department should have a continued role to develop best practice guidance in this area to support councils.

I also note that the Department has not developed any internal procedural guidance specific to its own responsibilities and duties within the regime to supplement the legislative framework, for e.g., should the Department be asked to revoke or amend a TPO. Nor did it issue procedures by which a council must seek consent from the Department for works, an area of concern which I discuss further within [Section 4](#).

I encourage the Department to consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. The establishment of a Tree Forum with representatives from both the Department and the councils may be beneficial in strengthening relationships and knowledge sharing.

³¹ The 2011 guidance opens with the statement, *'This leaflet is intended to provide advice for tree owners, conservation groups and the general public on protected trees.'*

(ii) Regional planning guidance and policies

In addition to the 2003 and 2011 guides outlined, the Department also provided my Office with a number of wider regional guidance documents and policies in respect of land use and planning development. Most of the councils referred to using these guidance and policy statements to assist them in setting planning conditions to protect trees. It is worth noting that some of these documents will also cease to have effect once the councils adopt their Plan Strategies whereas others will remain in force.³²

In responding to my investigation proposal, the Department also referred to the Strategic Planning Policy Statement³³ (SPPS) for Northern Ireland which aims to consolidate existing planning policies and provides further information in relation to the transitional arrangements which are in place pending councils adopting their Plan Strategies.

Whilst the wider regional guidance documents do refer to the need to protect trees and woodland areas, they are very broad in scope and do not go into the specifics of how trees can be protected. Similarly to the 2003 and 2011 guidance referred to above, the wider regional guidance documents are dated and, when read in isolation from the SPPS, they do not reflect the transfer of planning powers to the local councils.

(iii) Enforcement Practice Notes

The Department has also published four enforcement practice notes which are designed to guide planning officers through the enforcement process.³⁴ These practice notes deal primarily with procedural matters whilst also setting out good practice. They are not specific to the protection of trees but they do provide councils with general guidance which can be applied to the investigation of alleged tree protection breaches. Enforcement Practice Note 3 is particularly useful as it provides guidance in relation to the stages which councils should follow when carrying out enforcement investigations.³⁵ The guidance was developed in 2016 and I note there are no enforcement practice notes, or guidance issued, which outlines the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. I will discuss this issue further in [Section 4](#).

³² Guidance which will cease to have effect:-

- [PPS 2: Natural Heritage \(infrastructure-ni.gov.uk\)](#) (2013)
- [Planning Policy Statement 6 \(PPS 6\): Planning, Archaeology and the Built Heritage \(infrastructure-ni.gov.uk\)](#) (1999)
- [PPS 6 Addendum: Areas of Townscape Character \(infrastructure-ni.gov.uk\)](#) (2005)

Guidance which will remain in force:-

- [best practice guidance pps23.pdf \(infrastructure-ni.gov.uk\)](#) (2014)
- [Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside \(infrastructure-ni.gov.uk\)](#) (2012)
- [Creating Places - Achieving Quality in Residential Environments \(infrastructure-ni.gov.uk\)](#) (2000)

³³ [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\) \(2015\)](#)

³⁴ [Enforcement Practice Notes | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

³⁵ [Enforcement Practice Note 3 Investigative Approaches \(infrastructure-ni.gov.uk\)](#)

Section 1 Strategies, Policies and Procedures- recommendations

Recommendation 1: All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.

Recommendation 2: Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their Schemes of Delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.

Recommendation 3: Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of, or alongside, planning conditions to best secure the long term protection of trees.

Recommendation 4: The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.

Recommendation 5: The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and setting up a regional Tree Forum. The Department and councils should also utilise the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.

Section 2: Tree Preservation Orders

The 2011 Act provides a discretionary power for councils to make a TPO to protect a specific tree or woodland from deliberate or willful damage. Members of the public can submit requests for TPOs to their local councils. TPOs can also be initiated by the councils themselves and the Department has the power to make TPOs in consultation with the appropriate council.³⁶

From my enquiries I have established that across the region there are variations in how TPO records are maintained by councils, and the level of information is made available to the public. There are also variations in the processes to request a TPO and in the rates of requests received.

This section will set out my observations in respect of:

- TPO records (The Orders, Registers and Mapping);
- TPO requests and approval rates across the councils; and
- Criteria for making TPOs.

2.1 TPO records

The Orders

It is imperative that councils make and maintain accurate TPO records so that they can easily identify protected trees to process applications for works, investigate potential breaches and monitor their overall approach to tree preservation.

The 2015 Regulations³⁷ set out the form that an Order must take. When a TPO is made it should include the following information:

- The total number of tree(s) protected by an order; and
- A map showing the precise location of the protected tree(s).

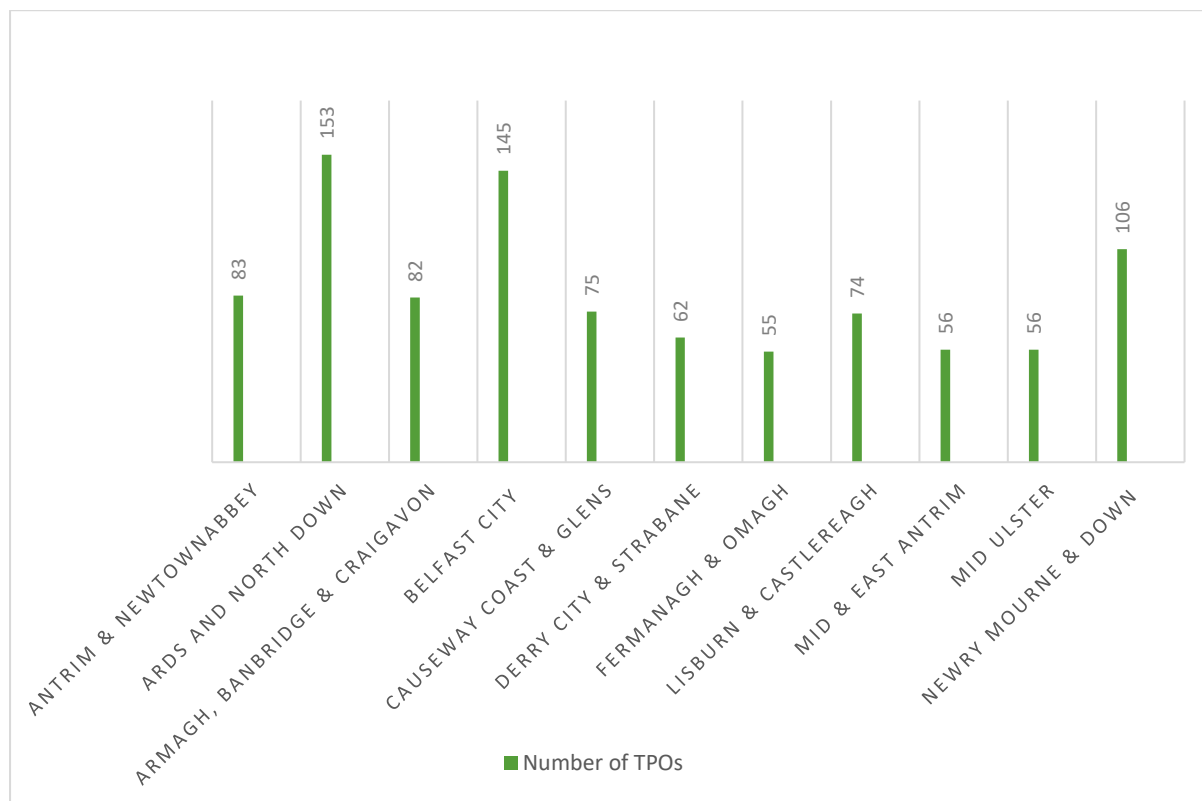
It is also good practice to regularly review the TPOs in place and evidence that the tree(s) still requires protection, for example, with an up-to-date health and condition survey.

I established from my enquiries that there were 947 TPOs in place throughout Northern Ireland in July 2022. The numbers varied across the councils, ranging from 55 in one council area to 153 in another.

³⁶ Department's power - 2011 Act – s.124(1)

³⁷ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015, S.2.](#)

Figure 4: The number of TPOs in place across the council areas in July 2022



As part of my investigation proposal, I also asked each of the councils to clarify how they maintain their TPO records. Most of the councils indicated that they maintain their records on their TPO registers. It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas.

The councils were also asked to confirm how often they review their TPO records. There was variation in the responses received with some councils appearing to be more proactive in their reviews than others.

- **One council did not refer to carrying out any reviews** of its TPO records.
- **Two councils** stated that they **only review individual TPO records upon receipt of specific requests** such as applications to carry out works.
- **Eight councils** indicated that they have **carried out wider, proactive reviews** of all of their TPO records however the majority of these reviews appear to have been one-off exercises rather than part of a rolling review programme.

Within their responses to my investigation proposal, two councils raised concerns in relation to whether some of the TPOs which they inherited from the former DOE were legally sound. It has been suggested that some inherited TPOs had not been confirmed by the DOE. One of the two councils advised it has now rectified the issues it identified, and the other council remains in the process of doing so. This highlights the importance of ensuring there is clear procedural guidance to follow in respect of making TPOs and that records are subject to regular review.

I am concerned that the issues identified by the two councils around inherited TPOs may be a wider problem and I am not satisfied this matter has been adequately addressed at a regional level. A failure to tackle this issue has the potential to negatively impact on the regulation of works to protected trees and taking enforcement action against breaches.

I would strongly encourage all councils to carry out detailed reviews of their TPO records to ensure that all TPOs in place remain valid. Councils should also ensure that their reviews of TPO records are not stand-alone exercises and that they form part of an ongoing programme of review and monitoring of their approach to tree preservation. Councils should support the regular review of records, and adequacy of information available, by carrying out site visits to check on the health of the protected trees, or indeed whether they have been subject of harm since the order was put in place.

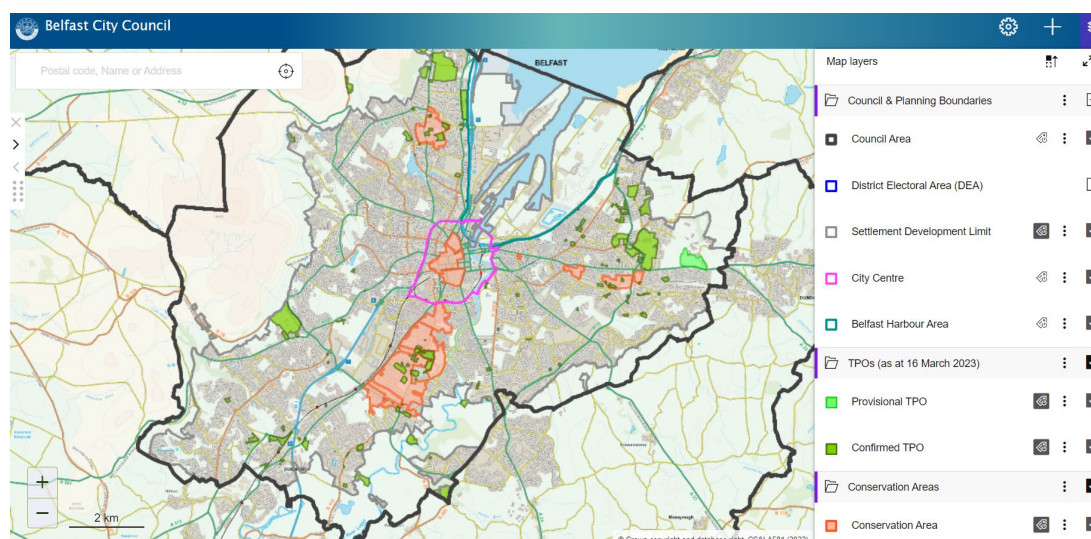
TPO Registers and Mapping

It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas. A council's TPO register must also be available for inspection by the public at all reasonable hours.³⁸ When responding to my investigation proposal, the majority of councils confirmed that they have physical TPO registers which can be made available for public inspection at their offices.

I also made enquiries to establish if councils had mapped the TPOs within their area and what information they make available online. It should be noted that the 2004 Environmental Information Regulations made it a statutory requirement for public authorities to progressively make environmental information that they hold available by electronic means which are easily accessible.³⁹ Accessibility of this information to the public is critical in making sure they are alert to the protections that are in place, both to ensure that they do not carry out unauthorised works and to support the reporting of breaches.

Nine out of the eleven councils have created interactive Geographic Information System (GIS) maps which display the locations of TPOs within their council areas. Six of these nine councils signpost to their maps within the tree preservation sections of their websites however the other three councils do not. Two out of these three councils advised my Office that they do not make their maps available to the public as they are for internal use only. Of the two councils which do not currently have GIS maps, one has advised that it hopes to develop one at some stage this year.

Figure 5: Belfast City Council's GIS map (accessed 23/5/23)



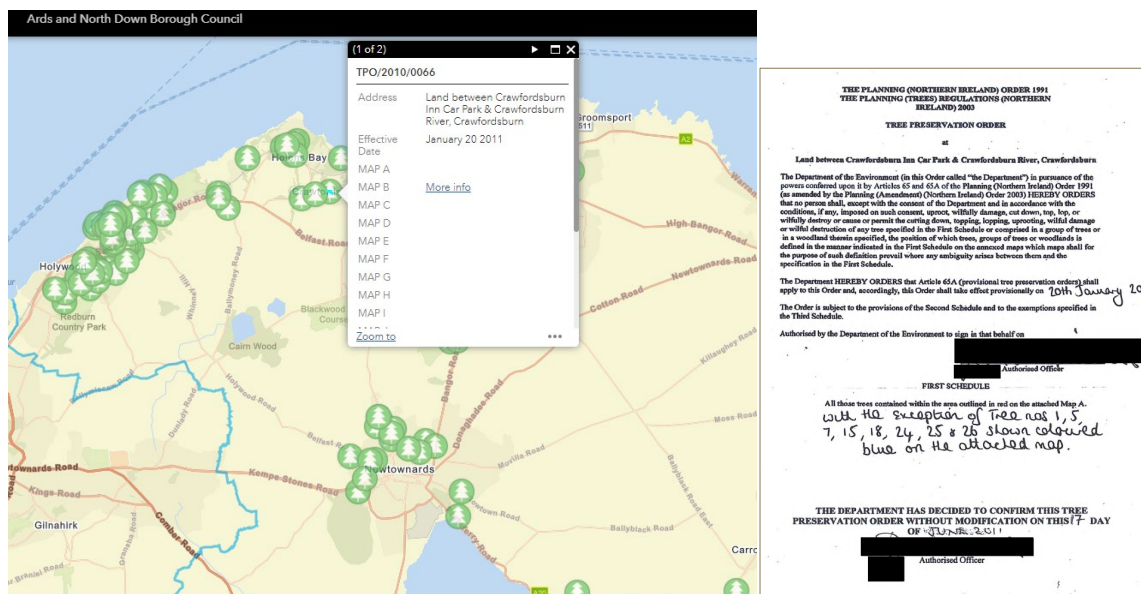
There is also some variation across the councils in the information which they include within their interactive maps. Whilst all of the maps display the locations of TPOs within the council area, only three also highlight conservation areas.

³⁸ 2011 Act, s.242

³⁹ [The Environmental Information Regulations 2004, s.4 \(1\)](#)

I note however that only one council’s map includes the facility to review the original documentation and maps associated with each TPO. The provision of this documentation online is an example of good practice. I am of the view that it would be beneficial for all councils to electronically map the TPOs within their area and provide online access to the TPO register and associated documentation.

Figure 6: Ards and North Down Borough Council’s GIS map (accessed 20/07/23)

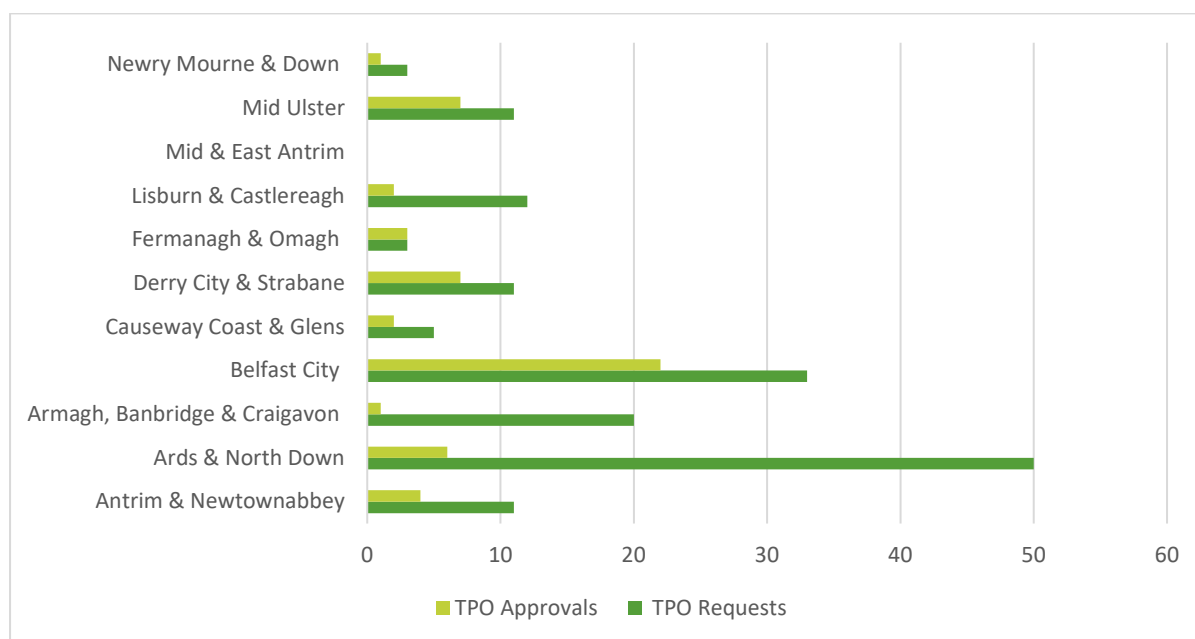


I am further of the view that a regional map may also be beneficial. I have been advised by the Department that it has engaged with the Woodland Trust on this matter. Working with interested parties, the Department as the duty bearer should take the lead in developing a regional map which displays the locations of all TPOs in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

2.2 TPO requests and approval rates across the councils

There is variation across the councils regarding the number of TPO requests which are received; one council reported receiving 50 requests within the last three years whilst another council did not receive any. Differences have also been identified in relation to council approval rates for TPO requests ranging from 10% to 88%. Although variation across the councils is to be expected and not in itself a cause for concern, the level of variation may benefit from having increased scrutiny and guidance at regional level.

Figure 7: Council TPO requests and approvals over a 3-year period during 2019-2022

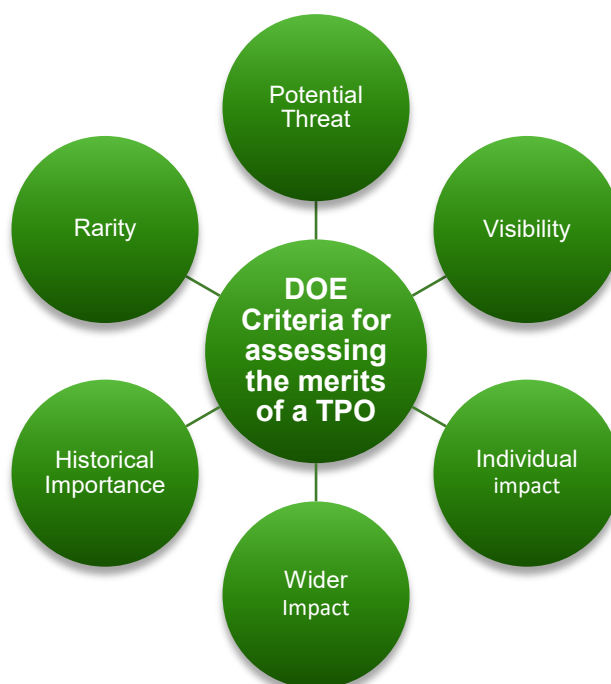


2.3 Criteria for making TPOs

The 2011 Act provides councils with the power to make TPOs where they feel it is ‘in the interests of amenity’. The term ‘amenity’ is not defined in the legislation and the Department has not provided any recent guidance in relation to how it should be interpreted. The former DOE did however publish a list of criteria for assessing the merits of imposing TPOs as part of its 2011 guidance.⁴⁰

⁴⁰ See [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/publications/tree-preservation-orders-a-guide-to-protecting-trees), pg.4

Figure 8: Criteria published by the DOE in 2011 for assessing the merits of imposing TPOs



Within their responses to my investigation proposal, most of the councils referred to using this criterion when assessing whether or not to impose TPOs. Whilst the criteria remains valid, I note there is limited guidance provided about the factors to consider under each criteria. It may therefore be beneficial for councils to work together to further develop and document the methodology (including the potential use of valuation software⁴¹) that they use to assist in assessing the ‘amenity’ value of trees.

I consider that the Department also has an important role to play in providing further guidance for councils in relation to the definition of the term ‘amenity’ so that an appropriate methodology to assess trees is developed and applied by councils. When responding to the Department’s Call for Evidence regarding its Review of the Implementation of the 2011 Planning Act, a number of councils highlighted the need for further guidance from the Department in relation to the term ‘amenity’. In its response, the Department committed to considering whether there is a need for it to provide further guidance in relation to ‘certain TPO terms’.⁴² The Department has not published any further guidance or provided an update in relation to its progress.

Processes for Requesting TPOs

Some of the councils do not provide any information on their websites detailing the processes which should be followed by members of the public who wish to submit

⁴¹ Some of the councils are already familiar with this type of software and methodology. In its 2022 study of Belfast’s Urban Forest Belfast City Council, for example, made use of i-tree software & the CAVAT methodology – see [Belfast Technical Report \(treeconomics.co.uk\)](https://www.treeconomics.co.uk/)

⁴² [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/), pg,65-66

requests for TPOs. It is notable that the councils with no information on their websites about how to request a TPO are those which received the lowest number. Other councils do provide information however, in some cases, the detail provided is limited and does not outline the type of evidence which is required to support a request for a TPO. Only one of the councils has the facility for online submission of TPO requests via its own website and it is worth noting that this facility was only recently introduced.

None of the councils currently include any information within the TPO sections of their websites on the use of Northern Ireland's new planning portal for the online submission of TPO requests'.⁴³ The new planning portal was launched by the Department in December 2022 and is currently being used by all of the councils apart from Mid Ulster. It has the functionality to accept online requests for TPOs. This development should help to standardise the TPO request process across the councils however it is disappointing that none of the councils have updated their websites to include information in relation to this new process. I would encourage all of the councils to review the content of their websites to ensure that clear and accurate information is being provided in relation to the processes which members of the public can follow when requesting TPOs. All methods for requesting TPOs, including the new online process, should be highlighted.

Councils should also ensure that, as well as dealing with requests from members of the public for TPOs, appropriate consideration is given to the initiation of TPO requests by council officers with responsibilities in this area. A proactive approach should be taken by councils to identifying trees which could benefit from protection and a strategy for identifying appropriate trees could be set out within a council's wider tree strategy.

⁴³ Northern Ireland's new planning portal launched on 5 December 2022. It replaces the old planning portal and is currently being used by 10 out of the 11 councils. Mid Ulster launched its own separate portal in June 2022.

Section 2 Tree Preservation Orders - recommendations

Recommendation 6: Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.

Recommendation 7: All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.

Recommendation 8: The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

Recommendation 9: Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

Recommendation 10: In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.

Recommendation 11: All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.

Section 3: Applications for Works to Protected Trees

If a tree is protected by a TPO it is necessary to apply to the relevant council or, in certain circumstances, the Department for consent to carry out any felling or pruning work. The council or the Department has a range of options which are:

- grant full permission for the works;
- grant permission subject to conditions; or
- refuse consent.

There are however some exemptions to seeking consent, for example, it is not necessary to seek permission for works to trees which are dead or have become dangerous.⁴⁴ The owner must however ensure they have proof that the tree is dead or dangerous, and it is recommended that they make the relevant planning authority aware of the proposed works prior to them being carried out.

The process is also slightly different for trees located in conservation areas as notice of any proposed works must be served on the council or, in some cases, the Department; if the council or the Department objects to the proposed works, a TPO can be made to protect the tree(s).

I have identified examples of both good practice and concern in this area. This section will set out my observations in respect of:

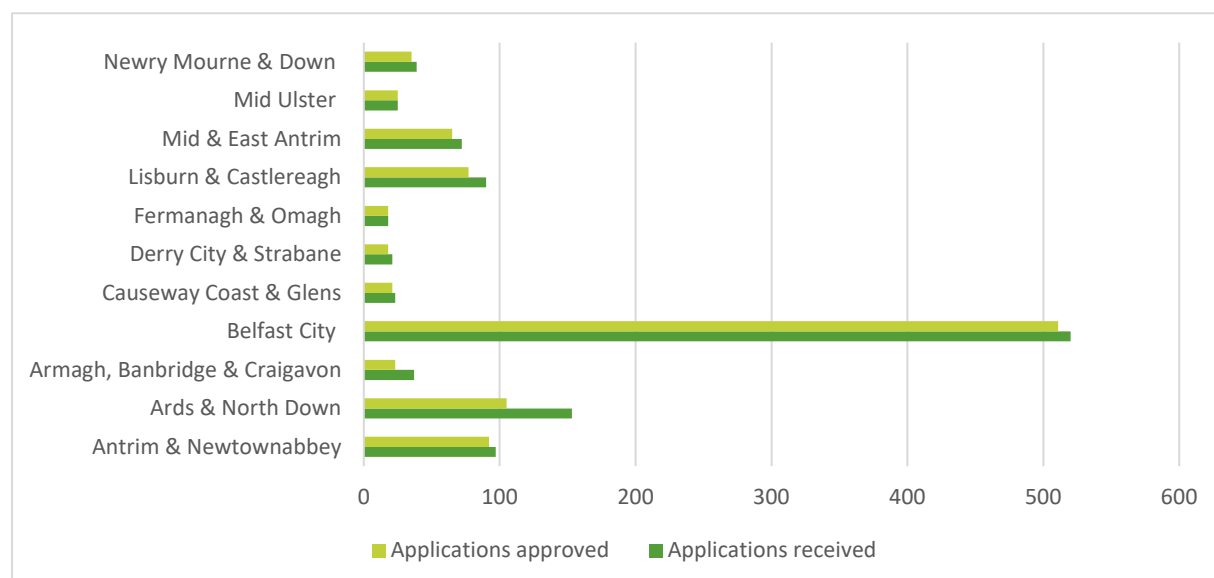
- Level of applications and approval rates across the councils;
- Processes for applying for works to protected trees;
- The use of independent evidence to support applications for works to protected trees; and
- Publication and notification procedures.

3.1 Level of applications and approval rates across the councils

There is variation across the councils in relation to the number of applications for works to protected trees which they are receiving with some councils receiving far greater numbers than others. One council reported receiving 520 applications within the last three years whereas another council received just 18. There is less disparity in relation to approval rates for these applications as these are high across the majority of the councils, ranging from 73% to 100%.

⁴⁴ 2011 Act, s.122 (5)

Figure 9: Applications for works to protected trees which were received and approved by councils over a three-year period during 2019-2022



The following key trends have been identified from the figures reported by the councils over a three year period during 2019-22:

- **Four councils** reported **approval of all** of their decided applications.
- **Five councils** reported **approval of 90% and over** of their decided applications.
- The remaining **two councils** reported **approval of more than 70%** of their decided applications.
- The **average approval rate** across the councils during this time period was **93%**.

3.2 Processes for applying for works to protected trees

Decision making on works to protected trees is a delegated function⁴⁵ which means that for the most part council officers, and not the planning committee, will grant or refuse the applications. Within the responses to my investigation proposal, the councils provided information in relation to how they process applications for works

⁴⁵ 8 councils clearly state within their Schemes of Delegations that this is a delegated function. The other 3 councils don't directly comment within their schemes of delegation.

to protected trees. Further information was also obtained from the council websites. I have identified some concerns about the variation of the level of information made available to the public on the need to apply for works to protected trees and the accessibility of the process.

Whilst most of the councils provide information on their websites detailing the processes which members of the public should follow when submitting applications for works to protected trees⁴⁶ some councils provide more detail than others. For example, some provide information in relation to the different procedures which apply dependent upon whether a tree is protected by a TPO or located within a conservation area whereas others do not highlight any differences. It is disappointing to note that two councils do not publish any information on their websites in respect of this matter.

Nine of the councils have developed their own application forms which applicants are required to complete when applying to carry out works to protected trees, however only seven councils make these forms available online. Furthermore, only two councils currently have facilities on their websites for online submission. Whilst it is encouraging that these councils have this facility, it is surprising that none of the other councils provide this as an option. It is also notable that none of the council websites direct applicants to the new planning portal which has the functionality to accept online applications for works to protected trees.

3.3 The use of independent evidence to support applications for works to protected trees

Concerns have also been raised with my office in relation to councils approving applications for works to protected trees (including the felling of trees) without independent evidence to support the need for the works. Evidence to support an application could include for example, an arboricultural report assessing the health and condition of a tree, if reported to be of risk to the public or surrounding property.

The responses to my investigation proposal indicate that there is variation in the approaches being taken by the councils in this area.

- **Two councils** indicated that they **always require independent evidence** in support of applications for works to protected trees.
- **Two councils** stated that they **require independent evidence in the majority of cases**.
- The remaining **seven councils did not address this** within their responses to my investigation proposal.

⁴⁶ 9 of the 11 councils provide information on their websites in relation to submitting applications for works to protected trees.

A review of the different application forms for works which are currently being used by the councils provides some further insight into the varied approaches being taken.

- **Five** of the application forms list the circumstances in which independent evidence **‘must be provided’**.
- **One** application form lists the circumstances in which independent evidence should **‘usually’** be provided.
- **One** application form states that independent evidence **‘may be requested’**.
- **One** application form states that independent evidence is **‘strongly encouraged’**.
- **One** application form **does not make any reference** to independent evidence.

Whilst the information available indicates that there may be some variation in the approaches councils are taking to the use of independent evidence, it has not been possible to reach any firm conclusions in relation to how the councils are acting in practice. It is my view that the councils need to review and provide clarity in relation to the circumstances in which they require independent evidence to be provided in support of applications for work to protected trees. Councils should also clarify whether the onus to provide independent evidence is always placed on the applicant or whether there are situations in which the councils themselves will obtain their own independent evidence whilst assessing applications.

Given the lack of clarity about the gathering and use of independent evidence to support applications, the high approval rates for works are a matter of concern. In my view, works to protected trees should be fully supported by independent evidence to ensure it is in the wider public interest.

3.4 Publication and notification procedures

Publication

Whilst I note that there is no statutory requirement to publish pending or concluded applications for works, I would encourage councils to explore the potential of making this information publicly available in an accessible format. It is common practice for local authorities in England to publish applications for works to protected trees via their online planning registers.⁴⁷ This enables members of the public to view copies

⁴⁷ Of a sample of 10 local authorities in England, 9 published applications for works on their online planning registers. It is worth noting that s.12 of the Town and Country Planning (Tree Preservation) (England) Regulations places a duty on local authorities to keep planning registers which include ‘details of every

of application forms, supporting evidence and details of decisions. If local councils published similar information, it might serve to increase transparency around decision making in this area.

I welcome the recent motion⁴⁸ passed by Ards and North Down Council ‘for transparency and in response to growing public interest’ for regular reports to be made to the Planning Committee to include:

- The number of applications for works to protected trees;
- Whether granted or refused; and
- The basis for the decision making.

Consideration was also to be given by the Council to uploading these details to the planning portal or its website to ensure public access. I note reports have since been submitted to the Planning Committee and are available on the website⁴⁹, however navigating access is difficult. The details do not appear to have been uploaded on the planning portal. The reports also do not outline the basis for the decision made.

I note that none of the other councils publish any details of pending or concluded applications for works to protected trees.

Notification

It is also notable that none of the councils have processes in place for notifying local residents of pending applications for works to protected trees. Whilst it is a statutory requirement to notify any affected persons of the making of a TPO, there is no statutory requirement to notify affected persons of proposed works to protected trees.⁵⁰ Councils should explore whether it would be possible to introduce community notification procedures for residents likely to be affected by proposed works to protected trees. In England, whilst there is no statutory notification procedure for proposed works to protected trees, the government has issued guidance which recommends that local authorities consider displaying site notices or notifying affected residents where they are likely to be affected by an application or where there is likely to be significant public interest.⁵¹

Notifying local residents of proposed works which are likely to impact upon them could increase transparency and bolster community engagement in the application process. There has been considerable criticism of the lack of community

application under an order and of the authority’s decision’. See - [The Town and Country Planning \(Tree Preservation\)\(England\) Regulations 2012 \(legislation.gov.uk\)](#). The former Ministry of Housing, Communities and Local Government published guidance in 2014 which encouraged local authorities to make their registers available online. [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#) (para 77).

⁴⁸ [Ards & North Down Planning Committee Minutes, 1 March 2022](#)

⁴⁹ [Planning Committee \(06/12/2022\) \(ardsandnorthdown.gov.uk\)](#), p77-78. [Planning Committee \(07/03/2023\) \(ardsandnorthdown.gov.uk\)](#), p52-53.

⁵⁰ [s.3 of the 2015 Regulations](#) places an obligation on councils to notify interested persons of the making of a TPO and allow a 28 day period during which objections and representations can be submitted.

⁵¹ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#), para 77

engagement in Northern Ireland's planning system⁵² and the Department itself has recognised that reform is required.⁵³ The Department potentially has a role to play in producing best practice guidance for councils around notification procedures.

Section 3 Applications for Works to Protected Trees - recommendations

Recommendation 12: Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

Recommendation 13: Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.

Recommendation 14: Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.

Recommendation 15: Councils should explore the potential to publish details of applications for works to protected trees in an accessible format.

Recommendation 16: Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

Recommendation 17: The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).

⁵² In its 2022 report, the Open Government Network was critical of the NI planning system's lack of meaningful engagement with local communities, describing it as a system which 'has evolved to prioritise efficiency and growth above community needs or environmental sustainability' (pg.5) [NIOGN-OLG-REPORT.pdf](#) (opengovernment.org.uk)

⁵³ In its 2022 report, the DFI's Planning Engagement Partnership set out 8 recommendations to enhance the quality and depth of community engagement in both local and regional planning – see [Planning Your Place: Getting Involved - March 2022](#) (infrastructure-ni.gov.uk)

Section 4: Protected Trees on Council Owned Land

If a protected tree is located on council owned land, this can result in a situation where the council itself is the applicant in a tree works request or suspected of a tree protection breach. It is crucial that cases where the council is in this position are dealt with transparently and that conflicts of interest are avoided or adequately managed. The processes and decision making in these cases must also be perceived as fair to ensure that public confidence is not negatively impacted.

I have identified a number of concerns in respect of:

- Cases in which the council is the applicant in a tree works request; and
- Cases in which the council is suspected of a breach of tree protection.

4.1 Cases in which the council is the applicant in a tree works request

If a council wishes to carry out work to a protected tree on land which it owns, it must seek consent from the Department rather than approving an application for works itself. This is a statutory requirement under Regulation 10 of the Planning General Regulations (Northern Ireland) 2015 which states that councils cannot seek consent from themselves.⁵⁴

The responses to my investigation proposal highlighted that there is variation across the councils in relation to their awareness and interpretation of Regulation 10. Whilst some councils do appear to be aware of the need to refer, others seem to have been either unaware of or not applying Regulation 10 correctly.

⁵⁴ Regulation 10 states - *Where an interested council is seeking a consent of a council under Parts 3, 4 (except chapters 1 and 2 of that Part) or 5 (except sections 157 to 163) of the 2011 Act other than planning permission to develop land or a consent to display an advertisement pursuant to regulations made under section 130 and that council is itself the council by whom such consent would be given, it shall make an application for such consent to the Department.* [The Planning General Regulations \(Northern Ireland\) 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/1000/regulations/10)

- **One council does not appear to be aware of Regulation 10** and advised that it refers applications for works to protected trees on council owned land to its own senior officers or the Planning Committee.
- **Two councils** were aware of Regulation 10 but their responses to my proposal indicate that they are **not applying it correctly in practice**. One of these councils incorrectly referred to the fact that Regulation 10 only applies if a protected tree is located within a conservation area.
- **Six councils** do seem to have **the correct understanding** of the implications of Regulation 10. However, it is notable that one council stated that it only recently became aware of Regulation 10 when the Department highlighted it in connection with a high-profile case in which the council was seeking to remove a number of trees within a conservation area on council owned land.
- **Two councils did not address the approach** which they take to Regulation 10 within their responses to my investigation proposal.

This variation in council approaches is concerning and supports the need for the Department to provide clarity. It further demonstrates the importance, as outlined in [Section 1](#), of having clear procedural guidance that underpins the legislative framework. The Department should work with the councils on developing clear procedural guidance in relation to the processes which councils should follow when they wish to carry out works to protected trees on their own land.

4.2 Cases in which the council is suspected of a breach of tree protection

The councils were also asked to clarify whether they followed any different processes if the council itself was suspected of involvement in a tree protection breach. Whilst a number of the councils did not clearly address this within their responses to my investigation proposal, amongst those that did, the majority referred to following the same processes regardless of who was suspected of the breach. Only two of the councils made reference to referring enforcement cases involving the council to the Department.

- **Six councils** stated that they **follow the same processes** regardless of who is suspected of the breach.
- **Two councils** made reference to **referring these cases to the Department** however it was notable that only one of these councils indicated that this was common practice; the other council suggested that referral to the Department was optional.
- **Three councils did not clearly address this issue** within their responses.

Whilst there is no statutory requirement for enforcement cases involving the councils to be referred to the Department, I recognise and support the introduction of a mechanism to investigate these cases to manage potential conflicts of interest, whether real or perceived. I consider that there is a need for the Department to explore with the councils how best independent investigation of a reported or suspected breach by councils of tree preservation could be achieved. There is also the need for the Department to consider and set out the procedures to be followed where the Department is suspected of a breach, and how to introduce a mechanism to manage conflict of interests in such circumstances.

Section 4 Protected Trees on Council Owned Land - recommendations

Recommendation 18: The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.

Recommendation 19: The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision making process.

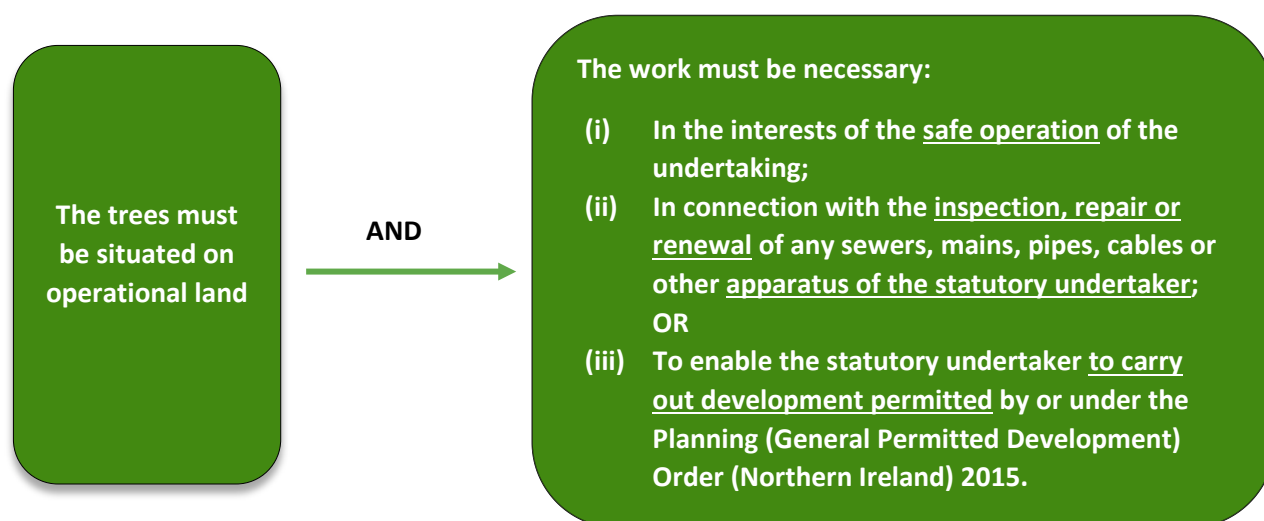
Section 5: Statutory Undertakers

Statutory undertakers are bodies and organisations which have been given statutory powers to carry out certain public functions. Examples include transport providers and utility companies.⁵⁵ Concerns have been raised with my office in relation to statutory undertakers removing protected trees and the oversight of their actions.

5.1 Statutory undertakers: the legislation

There are legislative provisions which enable statutory undertakers to remove protected trees without consent in certain circumstances. Schedule 3 of the 2015 Regulations enables statutory undertakers to carry out works to protected trees without council consent in specific circumstances. The trees must be situated on operational land and the work must be necessary for either safety reasons, in connection with the inspection, repair or renewal of apparatus or to enable a statutory undertaker to carry out permitted development.⁵⁶

Figure 10: The circumstances in which statutory undertakers can carry out work to protected trees without consent



⁵⁵ s.250 of the 2011 Planning Act provides a definition of a statutory undertaker - [Planning Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

⁵⁶ [2015 Regulations – Sch 3, s.2\(b\) \(i\)-\(iii\)](#)

Whilst the legislative framework sets out the circumstances in which statutory bodies can act, I am concerned there may be a lack of guidance between statutory undertakers and planning authorities to underpin this important area. I consider that effective engagement in this matter is critical as the work carried out by statutory undertakers is often significant in scale with the potential to adversely impact on the biodiversity of an area and public confidence. For example, it was reported that Translink proposed to remove 141 trees, including some protected trees, at Carnalea train station, Bangor for safety reasons.⁵⁷ There is therefore an onus on public bodies to examine and consult on how they can best carry out work which may necessitate the removal of trees and how any harmful impact may be mitigated.

5.2 Guidance and monitoring

I note that the Department has not issued any guidance for statutory undertakers in relation to how the Schedule 3 exemptions should be interpreted. Whilst I recognise that there are situations in which statutory undertakers are justified in removing protected trees, I consider that there is a need for direction from the Department in relation to best practice in this area. It is notable that guidance has been issued in other jurisdictions. In England, the former Ministry of Housing, Communities and Local Government included guidance on exceptions for tree works carried out by statutory undertakers within its 2014 guidance document on tree protection. This guidance is fairly brief but it does advise statutory undertakers to liaise with local authorities prior to carrying out any work to protected trees.⁵⁸

The Department should also consider whether it could play a role in the oversight and monitoring of the activities of statutory undertakers in relation to the removal of protected trees across the region.

5.3 Engagement and co-operation

Councils also have a role to play in ensuring that they engage with statutory undertakers in relation to tree protection issues. It is unclear to what extent engagement and co-operation takes place, in particular where a statutory undertaker considers consent is not required for works, and I would encourage the councils and statutory undertakers to consider how it can be better facilitated. I welcome the fact that Belfast City Council has set out a number of actions aimed at increasing co-operation with utilities providers within its draft tree strategy. The actions put forward include the setting up of engagement workshops, the provision of training and the implementation of a tree charter.⁵⁹ This type of co-operation is to be encouraged as it provides councils with a good opportunity to promote the importance of tree protection to statutory undertakers.

⁵⁷ [Reaction to the removal of 141 trees in Carnalea \(greenparty.org\)](#)

⁵⁸ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#) – para 85

⁵⁹ [Draft Belfast Tree Strategy \(belfastcity.gov.uk\)](#) – see section C3.

Section 5 Statutory Undertakers- recommendations

Recommendation 20: The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations.

Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.

Recommendation 21: Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

Section 6: Enforcement Activity

Planning authorities have a duty to investigate reports of alleged breaches of planning control and take formal enforcement action where it is appropriate to do so. Under the 2011 Act, local councils have primary responsibility for planning enforcement within their council areas. The Department retains certain reserve enforcement powers and is also responsible for monitoring the performance of the councils.

It is important to note that the powers available to planning authorities to take enforcement action are discretionary, and where a breach is established, the authority must consider whether it is 'expedient' to take formal action. Whilst 'expediency' in planning is not defined, the concept is described within departmental guidance as a test of whether the activity is '*causing unacceptable harm to the environment and/or public amenity, having regards to the provisions of the local development plan and to any other material considerations*'.⁶⁰

Taking enforcement action which is proportionate to the seriousness of the breach, including the extent of the harm caused, is central to the effectiveness and credibility of the planning system. Whilst planning enforcement is intended to be remedial rather than punitive, it is critical that it is robust in its response and that the interests of the environment and the public are not marginalised. It is also important to highlight that unlike some other breaches of planning control, where unauthorised works to protected trees are carried out, including removal, it is not possible for the breach to be fully rectified.

It is of note that over recent years, a number of local authorities in Great Britain, have pursued significant prosecutorial action in respect of breaches of tree protection. This has included considering how the offenders (landowners and contractors) benefited from the proceeds of the crime, as well as the harm caused by the planning breach.⁶¹ In contrast if enforcement is not taken seriously by local councils, or is perceived as not being taken seriously, both the effectiveness and public confidence in the planning system is undermined.

Concerns were raised with my Office that local councils appear to be reluctant to take enforcement action where tree protection breaches have been identified. I requested that all eleven councils provide relevant data on the action taken over a three year period in respect of reported tree protection breaches. This section will set out my observations and recommendations in respect of:

- Council enforcement powers in tree protection cases;
- Recent trends in tree protection enforcement cases;
- Cases closed as 'Not Expedient';
- Council enforcement strategies and procedures; and
- Monitoring of Tree Protection Enforcement Activity by the Department.

⁶⁰ [Enforcement Practice Note 1 Introduction to Planning Enforcement \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/enforcement-practice-note-1-introduction-to-planning-enforcement)

⁶¹ See [Landowner and contractor fined £255,000 for tree destruction | Enfield Council](https://www.enfield.gov.uk/news/landowner-and-contractor-fined-255000-for-tree-destruction) and [Homeowner Fined Under Proceeds Of Crime Act For Cutting Back Tree - Timms Solicitors \(timms-law.com\)](https://www.timms-law.com/news/homeowner-fined-under-proceeds-of-crime-act-for-cutting-back-tree)

6.1 Council enforcement powers in tree protection cases

The councils have various strong enforcement powers available to them under the 2011 Act and this section will briefly outline the main enforcement powers which can be used in tree protection cases.⁶²

TPOs

Councils can pursue prosecutions against individuals found to be in breach of TPOs. Contravention of a TPO by undertaking works likely to destroy a protected tree is identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence which is punishable by a fine of up to £100,000 on summary conviction or an unlimited fine on indictment.

Councils also have the responsibility to enforce measures, subject to a TPO, for the landowner to replace trees by planting a tree or trees of a specified size and species. Where this is not complied with within the specified period, councils have the power to enter onto land to replant trees subject of the TPO and recover costs.

Conservation area protection

Councils can also pursue prosecutions for breaches of conservation area protections. Breach of a conservation area protection by undertaking works likely to destroy a protected tree(s) is also identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence punishable by the same penalties which apply to TPO breaches.

Councils also have the responsibility to serve a notice on a landowner to replant a tree or trees of an appropriate size and species in the same space in a conservation area.

Planning conditions

Breach of a planning condition which protects trees is not a criminal offence in itself. If a breach has been identified, a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice is a criminal offence which is punishable by a fine of up to £1000 on summary conviction.

6.2 Recent trends in tree protection enforcement cases

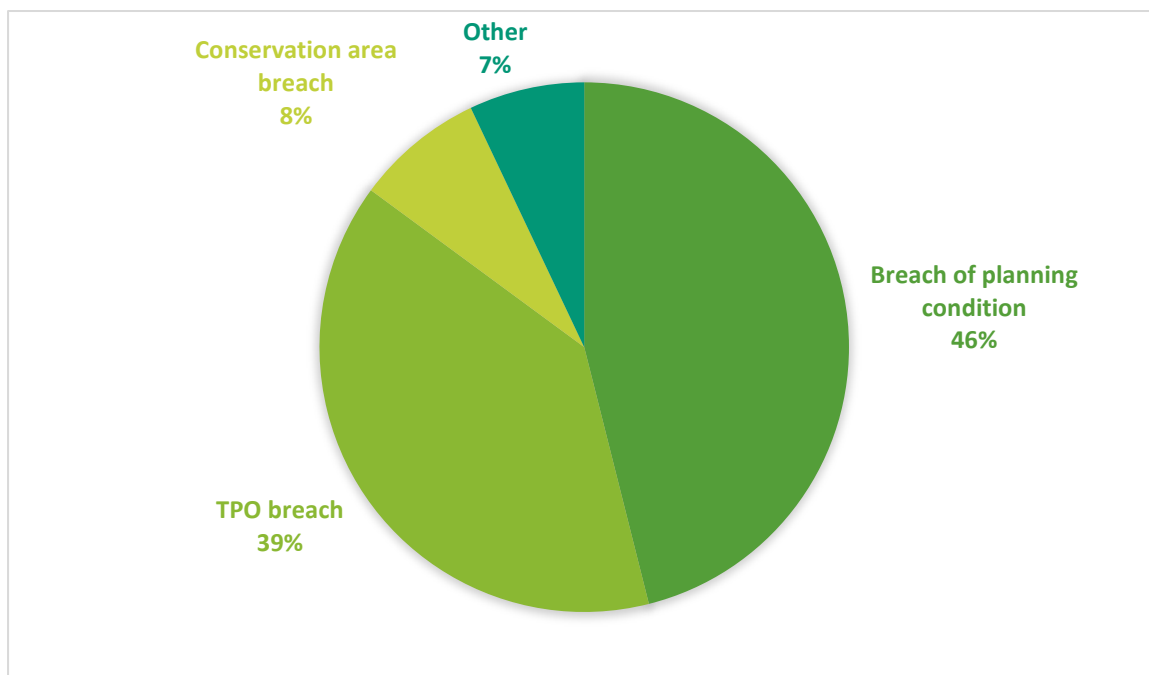
The responses to my investigation proposal highlighted a number of trends in relation to the type and outcome of tree protection enforcement cases which were reported to the councils over a three year period, during 2019-2022. It should be noted that this data is not available centrally and had to be collated from each of the councils individually.

⁶² [Planning Act \(Northern Ireland\) 2011, s.126, 127, 152, 164, 166 & 167](#)

Types of case

From the data provided to my Office, it was identified that 369 tree protection breaches were reported to the councils over the three year period. The most commonly reported breaches were in relation to alleged contraventions of planning conditions with 170 reported in total. 144 of the cases which were reported related to alleged breaches of TPOs and 29 were in relation to alleged breaches of conservation area protections.

Figure 11: Breakdown of type of tree protection cases opened by councils over the three year period during 2019-2022



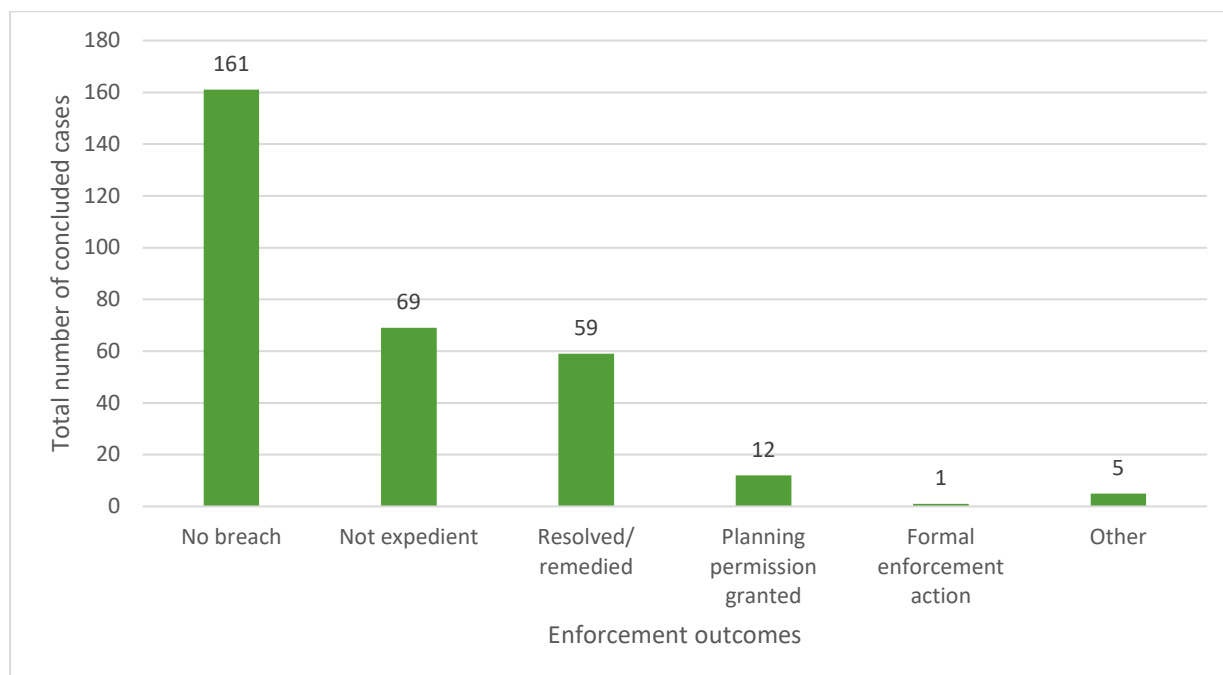
Outcomes

The most frequently reported outcome in tree protection enforcement cases was a finding of no breach which was reported in 52% of cases. The second most common outcome which was reported in 22% of cases was a conclusion that it would not be ‘expedient’ to investigate the alleged breach any further. This was followed closely by 18% of cases which were classified as remedied or resolved.

Formal enforcement action⁶³ was only reported to have been taken in one case (a breach of condition notice was issued) and none of the councils have pursued any prosecutions within a three year period. The fact that only one council has taken formal enforcement action has the potential to support concerns about the approach of councils in this area, however this cannot be determined without review of the casework.

⁶³ The issuing of an Enforcement Notice or the service of a Breach of Conditions Notice. Failure to comply with either constitutes an offence.

Figure 12: Breakdown of council enforcement outcomes in tree protection cases over a three year period during 2019-2022



6.3 Cases closed as ‘Not Expedient’

When considering the overall outcome trends, it is worth noting that nearly one fifth of the overall number of tree protection cases were closed as ‘not expedient’, with percentage variation between the type of breaches reported.

Over a three year period:

- 15% of reported planning conditions breaches;
- 22% of reported TPO breaches; and
- 42% of reported conservation area breaches resulted in a ‘not expedient’ outcome.

This area is of particular interest, as having determined this category of outcome, it is indicative the council has established a breach but having applied the expediency test has decided not to take further action. The level of tree protection cases determined as ‘not expedient’ appears to sit somewhat at odds with the priority outwardly stated by councils to be given to the protection of trees. I consider that it would be valuable for the Department and councils to examine the recorded considerations and develop an analysis of whether the reasoning is in keeping with best practice in enforcement guidance and council priorities.

Furthermore, given the ‘direct offence’ nature of TPO and conservation area breaches, it would be useful to establish the extent to which ‘expediency’ should be

applied and whether there are repeat issues that could be identified and acted upon. For example, whether the maintenance of records including identifying that orders had not been confirmed by the DOE (as outlined in [Section 2](#)), or a potential lack of public knowledge about the processes to apply for works to trees (as outlined in [Section 3](#)) are repeat factors.

I also consider that it would be valuable to include analysis of the small number of 'other' outcomes, in which various descriptions of outcomes were presented. It was concerning that in one reported TPO breach, the closure category of 'immune' was used when this is not an outcome that is applicable to a 'direct offence'.

There is also a notable variation across the councils in relation to the proportion of cases with the outcome 'not expedient'. One council reached this outcome in 38% of its cases whereas 3 others reported a significantly smaller proportion of 'not expedient' outcomes at just 12%. Given this level of variation I recommend that when examining the recorded reasoning and overall analysis for 'not expedient' outcomes, that the Department and councils consider whether there are differences in council approaches to apply the expediency test.

The analysis of 'not expedient' and 'other' outcomes in reported breaches of tree protection cases may also contribute to work recommended by the NIAO in the area of planning enforcement. Within its 2022 review of planning in Northern Ireland, the NIAO examined overall trends in all enforcement cases across Northern Ireland between 2015-2020.⁶⁴ It noted a substantial variation in percentages of outcome type across councils (including non-expedient cases) and recommended that the Department and the councils carry out further investigations to ensure that enforcement cases are being processed consistently in Northern Ireland.

6.4 Council enforcement strategies and procedures

As outlined in [Section 1](#), all councils have planning enforcement strategies in place and have the autonomy to set local priorities. In addition to identifying areas of concern from the data provided on enforcement activity, I note several issues that require further consideration in respect of council enforcement strategies and procedures, specific to tree protection and wider enforcement policy and practice.

Factors to be taken into account when assessing expediency

Expediency is a key concept within planning enforcement as councils only take enforcement action when they consider that it is expedient to do so. Within the enforcement strategies reviewed by my Office, it is noted that some of the councils refer to factors taken into account when assessing expediency, whereas others do not. I would encourage all councils to review their strategies to ensure clear information is provided on the expediency test, including the range of factors taken into account when assessing whether or not to take enforcement action.

⁶⁴ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\), p.32-34](#)

Sign off procedures for 'not expedient' decisions

None of the councils include any detail within their enforcement strategies in relation to their sign off procedures for 'not expedient' decisions. It is not clear if senior or other verifying council officers are involved in signing off or reviewing these decisions. Given the level of discretion in this area, I would encourage all councils to consider whether there is sufficient oversight of 'not expedient' decisions within their strategies and procedures.

Although not specific to breaches of tree protection, it is of note that I reported earlier this year on an enforcement planning case in which I found that the council did not document full and accurate reasons on why it did not consider it expedient to take enforcement action which I considered was maladministration.⁶⁵

Tree specific enforcement policies

The local council enforcement strategies are broad in scope and cover all areas of planning enforcement. I note that some local authorities in England have implemented enforcement policies specific to tree protection to supplement the main council planning enforcement strategy and I would encourage local councils to consider whether it may be beneficial to implement similar policies.

Reporting Tree Protection Breaches

Despite having these significant enforcement powers to protect trees, I note that only five of the councils reference within their tree preservation sections that it is a criminal offence to carry out works to protected trees without consent, whereas others do not make any reference to the consequences of breaches. Furthermore, none of the councils publish any information within the tree preservation sections of their websites regarding the processes which members of the public should follow when reporting suspected tree protection breaches. Whilst most of the councils do publish information in relation to the reporting of general planning breaches within the planning enforcement sections of their websites, I consider that it is important to also include or signpost this information within the tree preservation sections of their websites.

I also note that the new planning portal has the functionality to accept online planning enforcement complaints⁶⁶ and some councils do refer to this within the planning enforcement sections of their websites. I would encourage all of the councils to ensure that they highlight or signpost this functionality within the tree preservation sections of their websites.

⁶⁵ [NIPSO s44 Investigation Report ref202002188 - 30 March 2023](#)

⁶⁶ [Northern Ireland Public Register \(planningsystemni.gov.uk\)](#)

6.5 Monitoring of Tree Protection Enforcement Activity by the Department

As part of its oversight and monitoring role, the Department currently publishes quarterly and annual statistical bulletins which contain data in relation to a number of aspects of planning including the following data on enforcement cases⁶⁷:

- The number of enforcement cases opened by councils;
- The number of enforcement cases closed by councils;
- The number of enforcement cases concluded by councils;
- Enforcement case conclusion times;
- The percentage of enforcement cases closed by councils within 39 weeks; and
- The number of court actions taken by councils (including a breakdown of prosecutions and convictions).

This data is broken down by council area and, whilst it is useful for identifying broad overall trends, it is limited by the fact that it is not broken down by types of enforcement case. The Department do not collate or publish enforcement data which is specific to tree protection cases. I note that an Assembly Question seeking to establish regional enforcement figures on reported tree protection breaches was not answered, as the figures were available only at council level.⁶⁸

The Department should consider routinely collating and publishing enforcement data which is specific to tree protection cases. As well as making it easier for the Department to carry out its monitoring role, the availability of this data may also serve to increase public confidence that enforcement in this area is being taken seriously.

⁶⁷ [Planning activity statistics | Department for Infrastructure \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/planning-activity-statistics)

⁶⁸ See AQW6798/12-22 - [Written Questions Search Results \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/written-questions-search-results)

Section 6 Enforcement Activity- recommendations

Recommendation 22: The Department and councils should examine the reported tree protection breaches closed as 'not expedient' and 'other', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

Recommendation 23: Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for 'not expedient' decisions are robust.

Recommendation 24: Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

Recommendation 25: Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.

Recommendation 26: The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.

Margaret Kelly
Northern Ireland Public Services Ombudsman
Progressive House
33 Wellington Place
Belfast
BT1 6HN

Via Email Only: Owninitiative@nipso.org.uk

16 October 2022

Dear Margaret,

THE PUBLIC SERVICES OMBUDSMAN ACT (NORTHERN IRELAND) 2016

NIPSO Own Initiative Investigation Proposal: Protection of Trees

I refer to the above Act and your letter received via email on 29 September 2023 regarding the above Own Initiative Proposal and attaching your report 'Tree Protection: Strengthening Our Roots'.

I note your intention not to proceed to a full investigation at this time, and welcome the observations and recommendations made within the aforementioned report.

I have reviewed the report in detail and requested the Council's Planning Service to review and provide comments in respect of each of your recommendations as appropriate. I hope that you consider these to be helpful and accept them in the proactive manner that they are intended.

It is the intention that your report, alongside the Planning Service's comments, is tabled at the next meeting of the Planning Committee, due to take place on 07 November 2023. Thank you for your offer to engage with the Committee should it consider it helpful.

In the meantime, should you require any further clarification on any point contained within our response, I should advise that you can make contact with the interim Director of Prosperity who has responsibility for Planning, as follows:

Mrs Ann McCullough

Email: ann.mccullough@ardsandnorthdown.gov.uk

Phone: 07464654208



**Ards and
North Down**
Borough Council

Yours sincerely

Stephen Reid
Chief Executive

Enc

1. ANDBC Response to NIPSO Review – October 2023
2. Extract from ANDBC's Response to DFI's Review of the Implementation of the Planning Act

Tree Protection: Strengthening our roots

Ards and North Down Borough Council (ANDBC) Response

Section 1 Strategies, Policies and Procedures- recommendations

Recommendation 1

All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.

ANDBC does have a tree strategy, Tree and Woodland Strategy 2021 - 2032 and is content that it is comprehensive. The Strategy refers to tree protection within the Borough by virtue of TPO and Conservation Area. In line with the Tree Strategy the Council's Planning Service is committed to conserving and retaining existing trees and other features where it is considered that they have landscape or amenity value and will use its powers to protect trees where necessary. This is also in line with its duties as set out under the Planning Act (Northern Ireland) 2011. The Council is committed to ensuring improved tree cover within the Borough, and to promote the importance of trees in order to ensure a number of Corporate and Community Plan objectives are met.

Recommendation 2

Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their Schemes of Delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.

ANDBC is already motivated to ensuring openness and transparency in relation to all layers of work related to protected trees. The Planning Service Scheme of Delegation sets out clearly which functions under the Planning Act are delegated to an appointed officer (senior or Head of Service) in relation to trees as follows:

- The making and serving of a provisional Tree Preservation Order;
- The making and serving of a Tree Preservation Order;
- Revocation of a Tree Preservation Order;
- Determination of any application to carry out works to a protected tree (i.e. a tree the subject of a Tree Preservation Order or within a Conservation Area);
- Determination as to appropriate replanting in relation to tree(s) the subject of a Tree Preservation Order or within a Conservation Area;
- Service of Tree Replanting Notice;
- Withdrawal/modification of any such Notice specified above, as appropriate;

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

Although the tree function is fully delegated, the Planning Committee is provided with quarterly reports on detail of tree works, to include number of requests received seeking TPOs, and number served; number of applications submitted in respect of consent for works to protected trees, or within Conservation Areas, and detail of such consent granted and reasoning.

Recommendation 3

Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of, or alongside, planning conditions to best secure the long term protection of trees.

This Council provides extensive detail on the Planning pages of the website to advise on its duties and responsibilities accordingly; however, it accepts this recommendation and will work to produce specific guidance in this regard. The Council would however highlight that legislation provides the basis for planning approvals on a site protected by a TPO to supersede the TPO protection, where considered appropriate. This applies in respect of full planning permissions and approvals of reserved matters.

It should also be noted that it is not lawful (in respect of the six legal tests for planning conditions) to protect trees on a site by virtue of both a planning condition and a TPO, as this would be duplication of protection already afforded by a TPO.

Recommendation 4

The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.

The Council would welcome this and also note that there has been little interaction with the Department regarding matters of tree protection since the transfer of the majority of planning powers to Councils in April 2015.

Recommendation 5

The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.

ANDBC would welcome this as there has definitely been a lack of support and guidance. Although there is collaboration between many of the Council's Tree Officers and attempts to share knowledge to ensure consistency across the board, this is not entirely possible without some overarching advice and guidance at a regional level.

Tree Forum - Pre-RPA there was a tree forum amongst the DOE's Divisional Planning Offices which met several times a year sharing best practice and experience. A Council-wide Tree Forum was established early in 2017 which met quarterly and was chaired by a Principal Planning Officer from ANDBC with extensive experience as a chartered town planner with specialist knowledge re trees.

The tree forum continued to meet up until the COVID 19 pandemic but as a result of the response to the COVID 19 pandemic and resources having to be focused into other areas, it was postponed. A meeting has been convened for October 2023 to continue this important forum for discussion in respect of consistency of approach to meet our duties as appropriate.

Section 2 Tree Preservation Orders – recommendations**Recommendation 6**

Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.

This has been an exercise ongoing within ANDBC since 2019. Following RPA circa 150 TPOs transferred to ANDBC with the oldest being a red line, non-tree specific, order served in 1978. Under the management of the Department these were never reviewed. As a consequence, it is now the responsibility of the Council to review such Orders and expend considerable monies and resources in respect of site visits, review of planning histories, and procure health and condition surveys as appropriate. No monies transferred from the Department in respect of this area of work. This work has to be undertaken alongside work in relation to assessing new requests for TPOs, and the administrative resource required in serving and publicising provisional TPOs, assessing consent for works applications, tree enforcement investigations, and responding to consultations on planning applications where there are TPO trees on site or which may be affected by the proposal. This Council only has one dedicated Tree Officer, who is a chartered Town Planner, and

therefore the Council must allocate its work priorities as appropriate. Coupled with this is the lack of fee income attributed to any such requests for consents.

Given the age of a large number of these TPOs, it is inevitable that the situation on site has changed considerably. Some have planning approvals approved and built on them, others have submitted consents over the years which may have included felling and naturally the health and condition of certain trees will have deteriorated significantly. This Council's Planning Service is working through each individual TPO reviewing the health and condition of all of the trees within the red line in order that any Order can be updated accordingly in respect of trees existing on site which are considered worthy of protection. This process is complicated further by the lack of legislation to enable councils to revoke any Order served by the previous planning authority. It would have been useful if such an exercise in relation to monitoring of Orders had been carried out prior to transfer in 2015.

Recommendation 7

All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.

As the Ombudsman is aware, this Council has in place an interactive map which shows not only the location of sites protected by a TPO, but which also contains a link to the Order and Map. In line with the recommendation above, the Map has now been updated to show the boundary of the Borough's three conservation areas.

It is further the intention of the Planning Service to upload copies of consents granted in relation to TPO sites to the Map for the benefit of the public in order that when tree works take place, the information is available via the webpage to assuage concerns that works are being undertaken without the requisite consents.

Recommendation 8

The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

The Council would welcome development of such a map and is content to provide the information to DFI as required.

Recommendation 9

Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

Currently the Council utilises, and references, the criteria previously used by DOE in respect of evaluating the suitability of a TPO for a site. To include the utilisation of software represents additional costs to Council, but which the Council will explore further. It is of the view that in order to provide a consistent approach, such methodology should be developed by the Department as a regional approach.

Recommendation 10

In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.

The Council would welcome this and would also comment that planning transferred to Councils some 8 years ago. As referred to earlier this is required to ensure that a consistent approach is taken Council wide in all matters concerning protected trees. The word 'amenity' is something that the Council's Planning Service receives significant correspondence on in relation to trees. I would refer you to the extract attached from this Council's response to the DFI's Review of the Planning Act in relation to this specific issue.

Recommendation 11

All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.

ANDBC has already included a vast amount in relation to this matter on its website but have since updated to ensure that the website now makes reference to the ability to submit via the Planning Portal system.

Section 3 Applications for Works to Protected Trees – recommendations

Recommendation 12

Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

ANDBC already has its own application form for works to protected trees.

Recommendation 13

Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.

This Council is content with the content of its Planning pages on the website relating to this matter, and as referenced above, we have added to reference to ability to submit via the Planning Portal system.

Recommendation 14

Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.

ANDBC will take on board this recommendation in respect of review of its guidance in this regard. The Planning Service would comment that it does specify that applicants may wish to seek advice from a qualified tree surgeon who can make appropriate recommendations for work. There is no legislative requirement for the Council to insist on use of qualified arboriculturists/tree surgeons in this regard, but where it appears to the Council to be advisable, we will request as appropriate.

As in the case for registered architects or qualified planning agents in respect of planning applications, the Council can't identify professionals in this area who could be used but will attempt to signpost to the relevant appropriate sector.

Recommendation 15

Councils should explore the potential to publish details of applications for works to protected trees in an accessible format

The Council already has a requirement to hold a register in relation to TPOs which the Council considers includes requests for consent to carry out works (under Section 242 of the Planning Act (NI) 2011).

The Council is currently programming work to upload decisions on consent applications to the interactive TPO map for the benefit of the public.

Recommendation 16

Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

This is not a recommendation that the Council supports and the Planning Service has previously taken legal advice in this regard. There is currently no legislative basis for the Council to make these applications public and no ability in legislation to consider representations in the context of WPT applications.

Applications for consents to carry out works are not planning applications, rather an application by the individual tree owner to carry out works to a protected tree within their ownership. There is no basis or justification for the Council to consider objections in relation to such applications, in the same way as there exists for planning applications or provisional TPOs.

It should be noted that as set out in the Strategic Planning Policy Statement for Northern Ireland, the planning system does not exist to protect the private interests of one person against the activities of another. Whilst the Council accepts there is wider public amenity issue at play, it considers that to introduce such procedures would raise expectations that neighbouring properties can object to the works or

submit issues to consider and in terms of the legislation they are not material for the Council's decision making.

The Council considers that this would require an amendment to legislation. It should also be noted that there is no legislative basis for a neighbour/objector to partake in any appeal brought by an applicant who has had an application for consent for works to protected trees refused by the Council.

The Council considers that this would impose another significant burden on the Planning Service in terms of administrative and Tree Officer resources, where there is no legislative basis for it, and would raise public expectations inappropriately.

Recommendation 17

The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).

The Council refers you to its comments under Recommendation 16 above.

Section 4 Protected Trees on Council Owned Land - recommendations

Recommendation 18

The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.

ANDBC would be eager to have this detailed and clear guidance given although we are now clear on the process that needs to be followed as advised by DFI in relation to a previous case. It was disappointing that DFI did not appear to be aware of its own responsibilities in this regard at the outset, despite drafting the Planning General Regulations (Northern Ireland) 2015.

Recommendation 19

The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision-making process.

The Council would welcome this and would be eager to engage with the Department in providing clearer guidance in many different areas for protected trees.

Section 5 Statutory Undertakers- recommendations

Recommendation 20

The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations. Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.

The Council would welcome this, however, considers that this would require a legislative basis to be meaningful.

Recommendation 21

Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

ANDBC has a good working relationship with a number of the statutory undertakers in terms of applying best practice whereby they notify the Council's Planning Service prior to carrying out works. As we have a large expanse of heavily treed areas within the Borough there are often planning enforcement complaints received regarding alleged unauthorised works when these statutory bodies are carrying out works.

The Council engages with these bodies, for example NIE, and they now submit notification to allow the Council to consider the location, extent of works proposed and timeframe alongside a nominated contact. Frontloading in this respect allows the Council to be able to push out messaging as required via its webpages, and therefore respond to any queries/complaints.

The Council would prefer that the Department publishes some formal guidance on this that applies across Northern Ireland, so all statutory undertakers are aware of and abide by a consistent approach.

Section 6 Enforcement Activity- recommendations

Recommendation 22

The Department and councils should examine the reported tree protection breaches closed as 'not expedient' and 'other', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

The Council will actively engage with the Department on this matter if this recommendation is taken forward.

ANDBC takes planning enforcement very seriously and prioritises breaches regarding protected trees as outlined within its Planning Enforcement Strategy.

It should be highlighted that the burden of proof in respect of alleged breaches of planning control, as a 'direct offence' in respect of protected trees, is extremely high and it has proven particularly difficult to be able to prosecute in this respect.

Recommendation 23

Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for 'not expedient' decisions are robust.

The Council accepts this recommendation.

Recommendation 24

Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

The Council does not consider that this is required as it already included within legislation and the Council's existing Enforcement Strategy.

Recommendation 25

Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.

The wording on our website already contains the appropriate information and warning in this regard.

The Council will update this reference in respect of directing the public to how to report a suspected breach in relation to protected trees.

Recommendation 26

The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.

The Council would engage on this as appropriate; however, would caution that each breach needs to be reviewed in its own context whilst applying the public interest test. In certain planning enforcement cases regarding protected trees the Council cannot evidence who committed the offence and whether it was a deliberate act, in which case a prosecution cannot be brought. In these cases the remedy is to seek replanting through a replanting notice and then enforcing its compliance as appropriate. The Council would comment that there is little value in applying an increase in the fines against an offender in relation to trees, if it is not easy for the Council to evidence such an offence as required by the Courts.

Extract from ANDBC's Response to DFI's Review of the Implementation of the Planning Act (sent to DFI 14 April 2021)

Section 124 (10) & (2) – due to the wording of the current legislation, the Council cannot revoke or amend a Tree Preservation Order served by the then Department of the Environment and as such requires the Department to deal with. The legislation needs amended to enable the Council to carry out this function as appropriate.

Section 122 (1) refers to 'amenity' yet it is often difficult to clarify what is meant by amenity as it can be interpreted differently. It would be considered appropriate if this were re-worded or clarification provided.

Whilst it is incumbent on the Council to serve Tree Preservation Orders where considered expedient in the interests of 'amenity' the serving of such then necessitates the submission and processing of associated application for tree works, which for this borough, involves a considerable body of work for which no recompense is forthcoming. This could be seen by some councils as a deterrent to carrying out these duties accordingly.

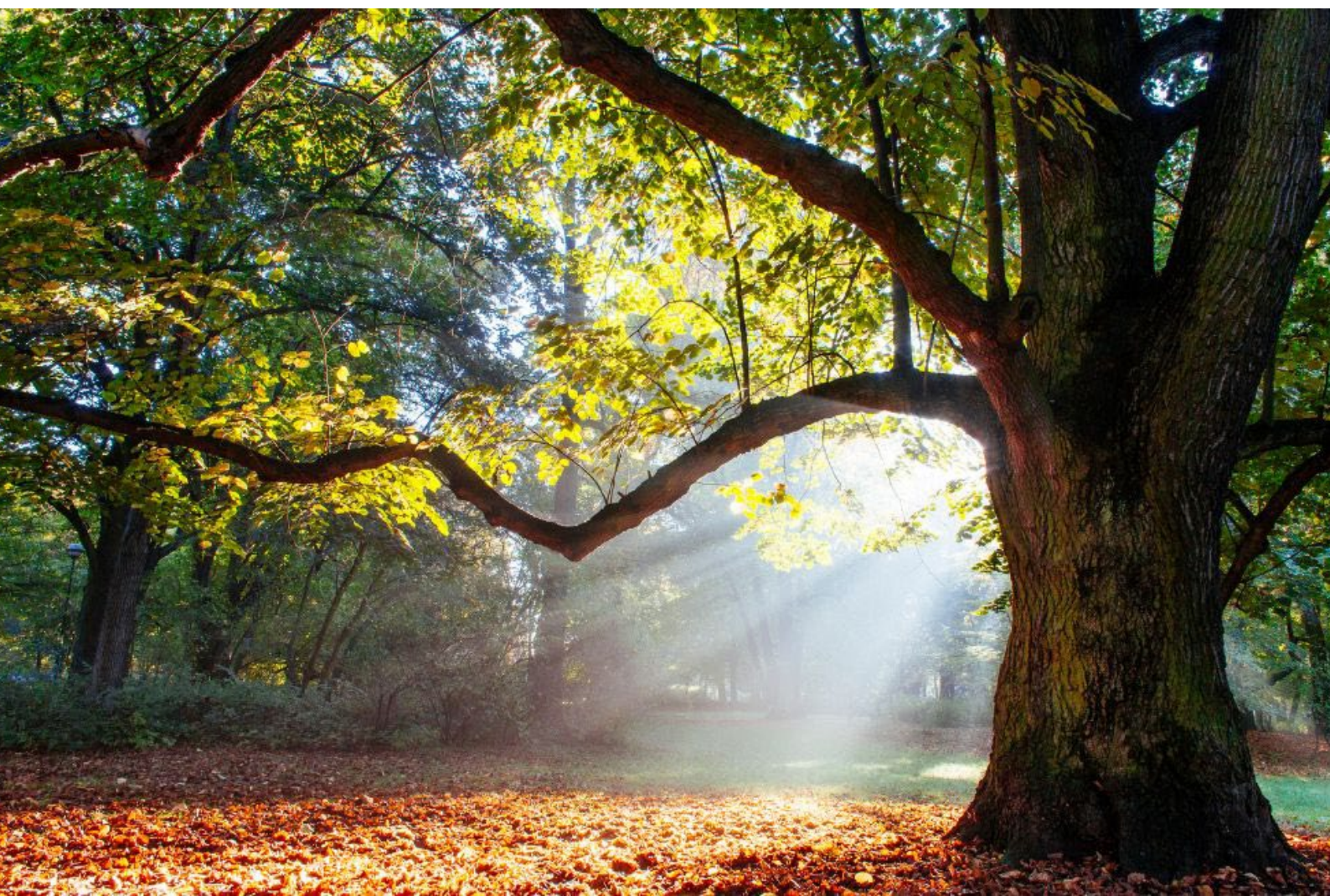
Section 122 (5) refers to 'abatement of a nuisance' – this term has caused issue for the planning authority and as such some clarification or rewording would be welcomed.

There should be included some mechanism whereby the council can preserve vegetation on sites proposed for development, as the current system of conditioning for retention is pointless as the developer can take down but state he's not implementing his decision, then go in months later and state he now is. Trees should be protected throughout the borough automatically without the need for CA designation or TPO.



Strengthening Our Roots

An overview report by the
Northern Ireland Public Services Ombudsman
on **Tree Protection** in the planning system



The Role of the Ombudsman

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act) and includes a discretionary power to undertake investigations on her Own Initiative, with or without a prior complaint(s) being made.

Under Section 8 of the 2016 Act the Ombudsman may launch an investigation where she has reasonable suspicion that there is systemic maladministration or that systemic injustice has been sustained (injustice as a result of the exercise of professional judgement in health and social care).

In order to make a determination on reasonable suspicion, the Ombudsman initially gathers information relating to an issue of concern. This may include desktop research, contact with the body concerned, the use of a strategic inquiry, consultation with Section 51 bodies, etc. The Ombudsman assesses this information against her published Own Initiative Criteria¹ in order to decide whether or not to proceed with an investigation.

Where the Ombudsman determines that an issue has not met her published criteria, but she considers that an overview of her actions in considering an investigation could provide learning, she may determine it appropriate to provide any relevant organisations with an overview report.

What is Maladministration and Systemic Maladministration?

Maladministration is not defined in the legislation but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Systemic maladministration is maladministration which has occurred repeatedly in an area or particular part of the public service. Systemic maladministration does not have to be an establishment that the same failing has occurred in the 'majority of cases', instead it is an identification that an issue/failing has repeatedly occurred and is likely to occur again if left unremedied; or alternatively, an identification that a combination or series of failings have occurred throughout a process which are likely to occur again if left unremedied.

¹ [Own Initiative Criteria](#)

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Executive Summary

Within the planning system in Northern Ireland, the Department for Infrastructure (the Department) and local councils have statutory duties to consider the protection of trees. The effective promotion, administration and enforcement of tree protection is critical to long term strategies to improve the social, environmental and economic well-being of our areas and people. Trees have a key role not only in increasing biodiversity and combating climate change but are also increasingly recognised for the value they add to homes and public spaces and for their wide ranging benefits to public health.

Within recent years much attention has been given to the importance of planting more trees, and I welcome the many initiatives that have been undertaken in this area. There is however also a need for a renewed focus on recognising our existing trees as valuable infrastructure assets which need to be carefully managed and protected. The importance of protecting trees is even more critical given that it has been established that Northern Ireland ranks amongst the worst in the world for biodiversity loss², is one of the lowest in Europe for woodland cover³ and is likely to fall short of its 2050 net zero emissions target.⁴

In July 2022 I wrote to the Department and all eleven councils to advise that concerns had been raised with my Office indicating potential systemic maladministration in how public bodies fulfil their duties to protect trees within the planning system. I had also noted ongoing and significant public confidence issues, including community distress, consistently reported in the public domain. This included concerns about the extent that works to 'protected' trees (including the removal of) were granted and that adequate enforcement action was not being taken in response to wilful destruction.

I shared with the Department and councils a proposal to investigate using my own initiative powers. I requested information from the Department and each council to help inform my decision making in this matter. Whilst I have chosen not to proceed to full investigation at this time, the information gathered during the proposal stage was comprehensive and has allowed me to draw out significant observations and recommendations.

The **Principles of Good Administration** are the standards by which I expect public bodies to deliver good administration. The first principle is **getting it right** and in [Section 1](#) I set out the main strategies, policies and procedures which I have been advised are currently in place to deliver council functions to protect trees. Whilst some councils have developed comprehensive strategies to align their actions in this important area of planning this is not yet evident in all council areas. There is also an absence of procedural guidance to supplement the legislative framework around tree protection, which I consider is necessary to ensure consistency in decision making processes and to promote the application of good practice. I further consider that the Department has a greater role to play in developing regional guidance and in facilitating the sharing of best practice.

² A [2021 NHM & RSPB study](#) ranks Northern Ireland as 12th lowest, out of 240 countries/territories, for biodiversity intactness.

³ 9% Northern Ireland, 19% Scotland, 15% Wales, 10% England. *National Statistics on Woodland* produced by Forest Research, approved by UK Statistics Authority, 16 June 2022. Available from: [Woodland Statistics](#). EU-27 averages at 40%. [Woodland cover targets.pdf \(defra.gov.uk\)](#)

⁴ [Advice Report: The path to a Net Zero Northern Ireland](#), March 2023.

In [Section 2](#), I outline how Tree Preservation Orders (TPOs) are administered and the variation in the number of TPOs requested and approved across council areas. A TPO is an order made by a planning authority which provides statutory protection to specific trees, groups of trees or woodlands. Whilst recognising this continues to be an evolving area of expertise, further work is required by both the Department and councils to establish how best to assess the 'amenity' value of a tree when considering the use of TPOs. This should include councils documenting a clear methodology and exploring better use of valuation software in this process. The Department should also issue guidance on the key TPO terms contained within the legislation.

Within this section I also note the potential for greater **openness and transparency** through increased electronic mapping of TPOs and provision of online access to the TPO registers. Council websites should provide clear information about the process that members of the public can follow to request a TPO, and the schemes of delegation should outline where the decision making on making TPOs sits within the council.

Similarly, there is the opportunity for increased transparency about the granting of works to protected trees. Within [Section 3](#), I outline the variation in the volume of applications made and approved across the region. Councils should consider the potential of publishing details of the applications and decision making to increase accountability and public confidence. The introduction of community notification for residents likely to be affected, which is a procedure recommended in England, should also be examined as a way of improving engagement in the planning system.

When considering how application for works are processed, it is important that councils clarify the circumstances in which independent evidence is required to support the applications for work and the parties responsible for obtaining it. **Being customer focused** involves public bodies explaining clearly what they expect of a service user as well as what is expected from the public body. Consistency of approach in processing applications for works could be further supported by all councils having standardised forms available online and signposting the use of the planning portal.

To comply with the principle of **acting fairly and proportionately**, the actions and decisions of public bodies should be free from interests that could prejudice their actions and decisions. Within [Section 4](#), I considered how councils approach cases in which the council wishes to carry out work to a protected tree on land which it owns, and the processes used to investigate where a council is suspected of a breach. The responses highlighted the variation in council awareness and interpretation of the governing legislation and best practice in this area. Department and councils should agree clear procedural guidance to comply with the legislation and to ensure potential conflicts of interest are being appropriately managed.

The need for adequate oversight and engagement between the Department, councils and statutory undertakers in respect of the removal of protected trees on operational land is discussed in [Section 5](#). Public bodies must work effectively together to mitigate against adverse impact, but also proactively communicate with the public on why, and how, the work is being undertaken.

When taking decisions, public bodies should ensure that the measures taken are proportionate to the objectives pursued. Taking appropriate enforcement action, to prevent or remedy harm, is central to the effectiveness and credibility of the planning system and to meeting the principle of **putting things right**.

Within [Section 6](#), the figures gathered regionally provide insight into the level of enforcement action taken in respect of reported breaches of planning control concerning protected trees. Out of 369 tree protection breaches reported to councils over a three year period, only one resulted in formal enforcement action being taken. No cases were brought to court. I have not carried out an analysis of the individual decision making however the low level of enforcement activity should be a concern for councils as they seek to improve the environmental quality of their area.

The figures further showed that nearly one fifth of the overall number of cases were closed as 'not expedient', indicating that a breach was established but that the council decided not to take further action having applied the 'expediency test'. I have recommended an examination of these cases to establish if the approaches taken are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. Council enforcement strategies should also provide clear information on the 'expediency test' and ensure there is sufficient oversight when enforcement decisions are taken under delegated authority.

I also recommend that the Department collate, monitor and publish enforcement data specific to tree protection enforcement cases to further enhance scrutiny at a regional level.

In adhering to the principle of **seeking continuous improvement**, public bodies should actively seek and welcome all feedback to improve their public service delivery. I was pleased to note that whilst all councils asserted that they meet their obligations to protect trees, several welcomed the proposal as an opportunity to review policies and practice for potential improvements.

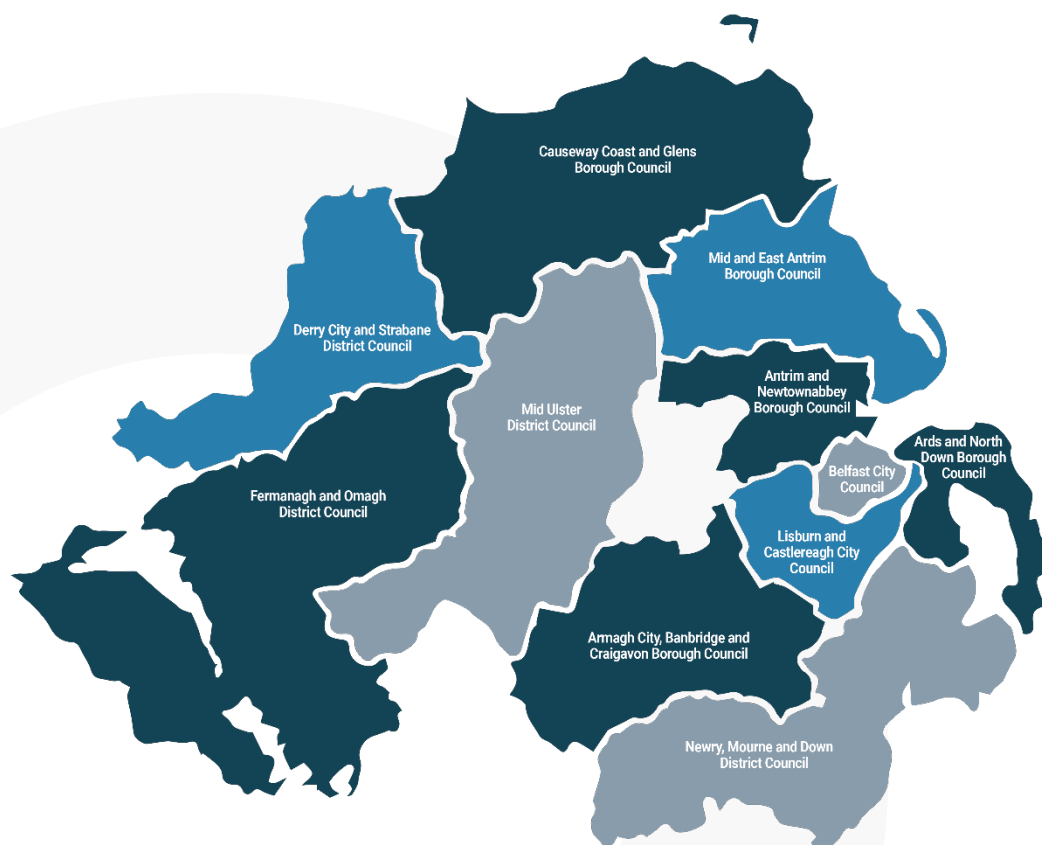
Having considered the responses to my investigation proposal I have made 26 recommendations for improvement which I have shared with the Department and councils. I am mindful that some councils have already implemented a number of the recommendations and I have highlighted examples of existing good practice. I am hopeful my report will make a positive contribution to the protection of trees within the Northern Ireland planning system. If required, I may choose to reassess this issue in the future.

The Statutory Duty to Protect Trees

The Planning Act (Northern Ireland) 2011 (the 2011 Act) introduced a new two-tier system for the delivery of planning functions in Northern Ireland. This system, which came into effect in April 2015, resulted in the majority of planning functions passing from the former Department of the Environment (DoE) to local councils.

The eleven local councils have responsibility for delivering most operational planning functions including the determination of planning applications and the investigation of alleged breaches of planning control. The Department for Infrastructure (the Department) was established in 2016 and has responsibility for regional planning policy and legislation as well as monitoring and reporting on the performance of local councils. It also has certain reserve enforcement powers and can make planning decisions in respect of regionally significant and 'called-in' planning applications.

Figure 1: A map of the 11 local councils in Northern Ireland

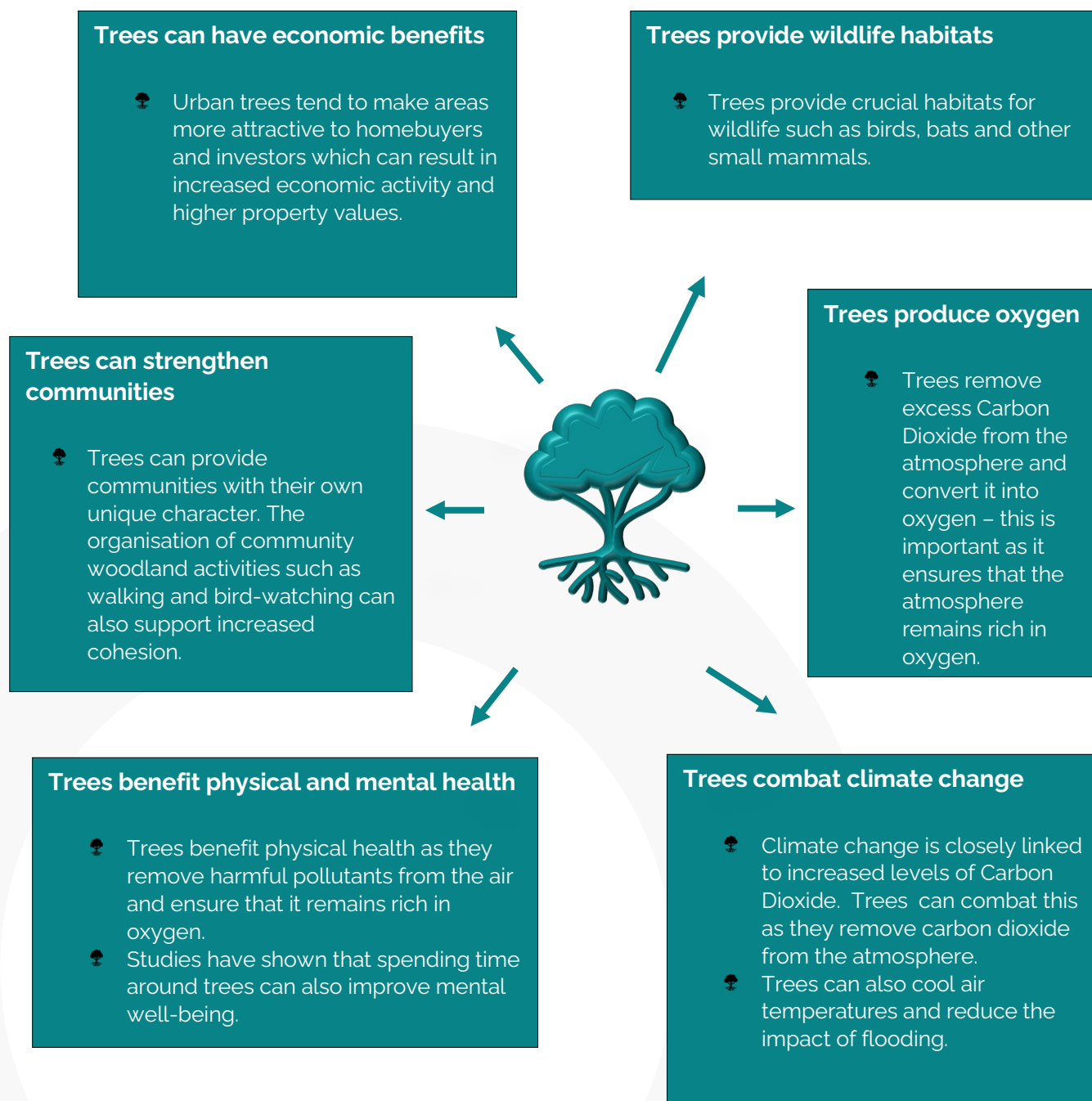


The 2011 Act places statutory duties on councils and the Department to make adequate provision for the protection of trees, where appropriate, within the planning system.⁵ It is vital that these duties are fully understood and implemented. This means that councils should protect existing trees, as well as promoting further planting of trees. Trees provide many

⁵ [Planning Act \(Northern Ireland\) 2011, Chapter 3, s.121-128](#)

important benefits for both members of the public and the natural environment. Key benefits include the fact that they provide habitats for wildlife, play a significant role in combating climate change and bring important advantages for public health.⁶

Figure 2: The Benefits of Trees



⁶ A 2021 study carried out by Forest Research found that trees provide significant benefits for wellbeing & estimated that the mental health benefits associated with visits to UK woodlands save £185 million in mental health treatment costs annually. [Valuing the mental health benefits of woodlands \(forestresearch.gov.uk\)](https://www.forestresearch.gov.uk/valuing-the-mental-health-benefits-of-woodlands)

It is recognised that not all trees are considered as requiring statutory protection and that there is a need to scrutinise and prioritise the protection of trees determined to be of greater value. This continues to be an evolving area of expertise. Native trees, for example, are thought to be more beneficial for biodiversity than non-native trees.⁷ Areas of ancient woodland are also extremely valuable natural assets which are of greater environmental benefit than younger trees.⁸

The importance of public bodies upholding and promoting their responsibilities to protect trees is further reinforced by the growing concerns in relation to the current state of Northern Ireland's trees and woodland areas. Northern Ireland is one of the least wooded areas in Europe⁹ and it has the lowest density of woodland coverage in the United Kingdom.¹⁰ It was also recently ranked the 12th worst out of 240 countries in terms of biodiversity loss.¹¹ Within the last Biodiversity Strategy¹² for Northern Ireland, it was highlighted that land use change and development has a major impact on biodiversity. The important role which planning controls and policy play in mitigating against biodiversity loss was also emphasised. Northern Ireland's comparatively low level of woodland cover and lack of biodiversity therefore reinforces how important it is for planning authorities to take proactive steps to protect the region's existing tree assets.

The planning system in Northern Ireland currently protects trees in three main ways:

1. Tree Preservation Orders

Tree Preservation Orders (TPOs) are statutory protections afforded to trees under the 2011 Act.¹³ The 2011 Act gives local councils the 'discretionary' power to make TPOs where they consider that it is 'expedient in the interests of amenity'. Whilst the making of new TPOs primarily sits under the remit of councils, the Department also retains the power to make them in certain circumstances. The 2011 Act is supplemented by The Planning (Trees) Regulations (Northern Ireland) 2015 (the 2015 Regulations) which set out the form which TPOs should take along with the procedures to be followed when making, confirming and revoking TPOs.¹⁴

A TPO can be applied to a single tree or a group of trees. Whilst the issuing of a TPO is discretionary, where one is made the planning authority has a duty to enforce it. If a tree is protected by a TPO it is necessary to apply for consent from the council or, in some circumstances, the Department before carrying out any felling or pruning work. Breach of a TPO is a criminal offence which can result in a fine of up to £100,000 on summary conviction or an unlimited fine on conviction on indictment.¹⁵

2. Conservation Areas

Conservation Areas are areas designated by planning authorities as having special architectural or historic interest. Trees located in conservation areas receive similar protection to those

⁷ [Biodiversity: why native woods are important - Woodland Trust](#)

⁸ [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁹ The Woodland Trust reports that Northern Ireland has just over 8.7% woodland cover [Our Work in Northern Ireland - Woodland Trust](#) compared to a European average of 40% - see [Woodland cover targets Detailed evidence report.pdf \(defra.gov.uk\)](#)

¹⁰ [State of the UK's Woods and Trees 2021 \(woodlandtrust.org.uk\)](#), pg.29

¹¹ [2021 NHM & RSPB study](#)

¹² The former Department of the Environment published a [Biodiversity Strategy for Northern Ireland](#) in July 2015 in compliance with The Wildlife and Natural Environment Act (Northern Ireland) 2011 (WANE). WANE places a duty on all public bodies to conserve biodiversity when exercising their functions ([s.1](#)).

¹³ [Planning Act \(Northern Ireland\) 2011, s.122 -124](#)

¹⁴ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015](#)

¹⁵ [Planning Act \(Northern Ireland\) 2011, s.126 \(1\)](#)

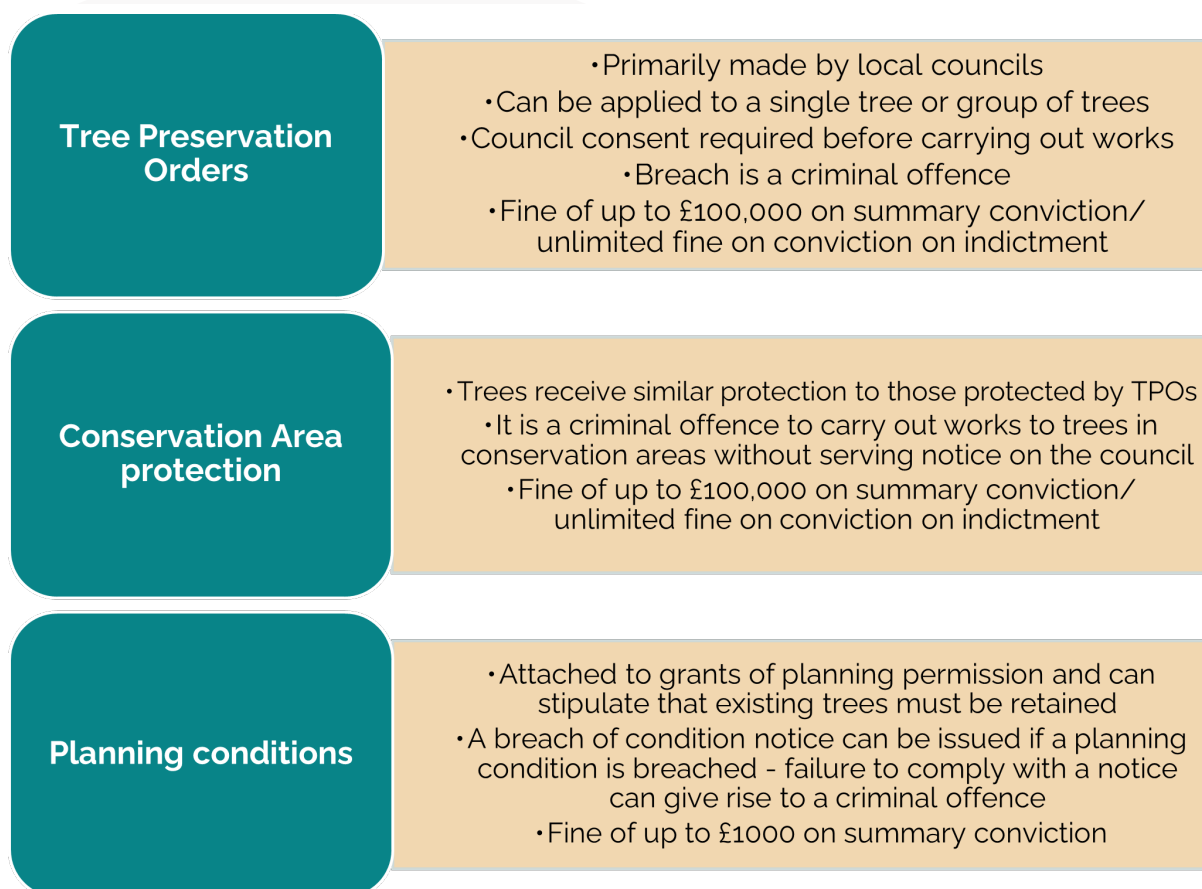
which are protected by TPOs. It is a criminal offence to carry out works to trees in conservation areas without first serving notice on the council or, in certain circumstances, the Department.¹⁶ If the council or the Department objects to any proposed works, it can make a formal TPO to protect the tree(s).

3. Planning Conditions

Trees can also be protected by planning conditions attached to grants of planning permission.¹⁷ A planning condition may, for example, stipulate that an existing tree or trees must be retained. Breach of a planning condition protecting trees is not a criminal offence. If a breach is identified a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice can however give rise to a criminal offence which is punishable by a fine of up to £1000 on summary conviction.¹⁸

It is notable there is a considerable penalty variation between breaches of TPOs and planning conditions, with the maximum fine for a breach of a TPO significantly higher than a breach of a planning condition notice. Given the differing levels of protection, planning authorities should carefully consider in each case whether a planning condition or TPO provides the most effective safeguard. It is not considered reasonable to use planning conditions as the means to secure long term protection of trees, where TPOs are available for this purpose.

Figure 3: The three main ways in which the Northern Ireland planning system protects trees



¹⁶ [Planning Act \(Northern Ireland\) 2011, s. 127 \(1-4\)](#)

¹⁷ [Planning Act \(Northern Ireland\) 2011, s.121](#)

¹⁸ [Planning Act \(Northern Ireland\) 2011, s.152](#)

Section 1:

Strategies, Policies and Procedures

1.1 The Councils

All eleven councils were asked to provide my Office with copies of the policies and procedures which they have in place to fulfil their duties to effectively promote, administer and enforce the protection of trees.

Whilst recognising the autonomy of each council to develop local policy, the responses highlighted several points of concern including an absence of strategies in some council areas and a lack of procedural guidance to underpin key functions. This section will set out my observations in respect of:

- (i) Local Development Plans;
- (ii) Strategies;
- (iii) Schemes of Delegation; and
- (iv) Procedural Guidance.

(i) Local Development Plans

The 2011 Act requires each council to prepare its own Local Development Plan (LDP).¹⁹ A council's LDP is intended to be a 15-year framework which sets out a vision for how the council area should look in the future in terms of the type and scale of development. The legislation requires each LDP to be made up of a Plan Strategy and a Local Policies Plan. Whilst it was originally anticipated that it would take approximately three years for councils to complete their LDPs, it is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.²⁰

It is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.

In its recent review of Planning in Northern Ireland, the Northern Ireland Audit Office (NIAO) commented on the lack of progress made in completing LDPs and made a recommendation in relation to reviewing timetables for completion and streamlining the remaining steps of the process.²¹

The Department has advised my Office that it is currently bringing forward a Planning Improvement Programme in conjunction with the councils, involving specific actions which seek to improve and streamline the current LDP process.

¹⁹ [Planning Act \(Northern Ireland\) 2011, Part 2](#)

²⁰ The former DOE's *Strategic Planning Policy for NI* (2015) set out an indicative timeframe for the completion of LDPs - [Strategic Planning Policy Statement for Northern Ireland \(SPPS\)](#) (infrastructure-ni.gov.uk), pg.30

²¹ [NIAO Report - Planning in NI.pdf](#) (niauditoffice.gov.uk) – see LDP recommendation on pg.26

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Most of the councils referred to their LDPs when providing copies of their policies and procedures to protect trees. Some of the councils shared copies of their draft Plan Strategies²² and I welcome the fact that most appear to be including information in relation to the protection of trees within these strategies. I consider that the LDPs present a good opportunity for councils to set out a long-term vision for how they will balance development with the need to protect trees and woodland within the council area. However, it is not possible to comment substantively on the effectiveness of the Plan Strategies as, to date, most have not been adopted by the councils.

It should also be noted that most of the councils also referred to using regional planning guidance to assist them in setting planning conditions to protect trees, which I will discuss further in section 1.2. A number of councils provided my Office with sample planning conditions used to protect trees.

I further note that councils have signalled their intent to bring forward Supplementary Planning Guidance as part of the LDP process. I welcome that Belfast City Council recently published 'Trees and Development' planning guidance to supplement policies in its LDP, to support its aims to 'protect, promote and preserve' trees.²³

(ii) Strategies**TREE AND WOODLAND STRATEGIES**

Alongside local plans, the development of Tree and Woodland Strategies are a way in which councils can set out across functions their long-term approach for managing the trees within their council area. Four councils currently have such strategies, or supporting policies, in place.²⁴ Whilst these strategies do not solely relate to the protection of trees, most contain some information in relation to the approaches which the councils are currently taking in this area. For example, one council stated that it only carries out tree works where necessary whilst another stated that it avoids the unnecessary removal or disfigurement of trees with 'amenity' or high wildlife value.

4 councils currently have tree strategies. 7 councils do not have tree strategies however 2 currently have draft tree strategies.

I note that Belfast City Council undertook considerable public consultation to inform its recently launched tree strategy and I welcome the level of detail it contains, as well as its commitment to protecting Belfast's tree population.

The remaining seven councils do not have tree strategies in place however two are currently working on draft tree strategies.²⁵ I would encourage the councils which do not currently have tree strategies in place to consider the benefits of developing one. I would also encourage councils which do have tree strategies to review their strategies to ensure they are comprehensive. The strategies should include the different functions of the council to ensure

²² Three councils have adopted their Plan Strategies since my initial enquiries – Fermanagh & Omagh District Council in March 23, Belfast City Council in May 23 and Lisburn & Castlereagh City in September 23.

²³ [Trees and Development \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk/trees-and-development)

²⁴ Ards and North Down Borough Council has published a [Tree and Woodland Strategy](#), Armagh City Banbridge & Craigavon Borough Council has published a [Tree Management Policy](#), Lisburn and Castlereagh City Council adopted a new [Tree and Woodland strategy](#) on 7 February 2023, Belfast City Council's [Tree Strategy](#) was launched on 5th October 2023.

²⁵ Newry Mourne and Down District Council stated that it was preparing a draft tree strategy which would be published for consultation. Causeway Coast and Glens Borough Council also provided me with a copy of its draft Tree Risk Management Plan.

priorities in this area are aligned. For example, the role of enforcement activity to remedy and prevent harm should be sufficiently valued in the context of protecting tree stock, biodiversity and public health.

I note that one council included the appointment of a Tree Officer as one of the proposed actions within its tree strategy and within their responses to my investigation proposal, six councils referred to having designated Tree Officers. The appointment of Tree Officers appears to be increasingly common across the councils with the aim to promote the protection of trees.

It is also critical that within their strategies councils consider how effectively they are communicating with the public in this important area. Ten of the eleven councils currently have dedicated tree preservation sections within their websites. Whilst it is encouraging that the majority of councils do provide online information in this area, it is concerning that one council does not and I would urge it to rectify this as soon as possible. Throughout this report I highlight several areas and make recommendations for increased availability of information to the public.

ENFORCEMENT STRATEGIES

An effective enforcement strategy is key to remedying, and indeed preventing, harm to trees already subject of protection through planning conditions, TPOs or location within a conservation area. A planning enforcement strategy sets out a council's enforcement objectives as well as how breaches of planning control are investigated. These strategies also outline how the investigation of enforcement complaints are prioritised.

All of the councils have Planning Enforcement Strategies

All of the local councils have planning enforcement strategies in place. They are very similar in content and, whilst none are specific to trees, all of the council strategies refer to TPO breaches when outlining enforcement priorities. It is notable that all of the councils give complaints about alleged TPO breaches the highest possible priority for investigation. I will however set out several significant concerns I have identified in respect of 'Enforcement Activity' later in this report within [Section 6](#).

(iii) Schemes of Delegation

Under the 2011 Act, it is a statutory requirement for councils to have schemes of delegation for planning.²⁶ Schemes of delegation outline which decisions are made by the Planning Committee and which are delegated to council officers.

There is variation across the councils in relation to how decisions around TPOs are made.

Whilst all of the local councils have developed their own schemes of delegation, there is some variation in relation to the decision-making mechanisms which councils are employing around TPOs. Some councils delegate all decision-making in this area to council officers whereas others require their Planning Committees to play a role in certain aspects of TPO decision-making.

²⁶ [Planning Act \(Northern Ireland\) 2011, s.31](#)

The wording of some of the schemes of delegation has however the potential to cause confusion. Of the three councils whose Planning Committees retain decision making functions for making TPOs, it is not clear from the schemes if the Planning Committees review *all* requests for TPOs or only those which council officers recommend are made.²⁷ It is also not clear how they would operate where there is a need to act quickly to protect trees. Open and transparent information about the process is necessary not only for Committee and council officers to ensure procedural compliance, but also to instil public confidence in the process.

It is also notable that, within their schemes of delegation, two councils refer to delegating functions which they do not possess. Both of these councils state that they delegate the revocation of TPOs to council officers however this runs contrary to the 2011 Act which does not extend this power to local councils. Whilst I note that the Department, in its 2022 Review of the Implementation of the 2011 Act, indicated that it intended to bring forward proposals to permit councils to vary or revoke TPOs, this is not currently enacted in law.²⁸

I would encourage all councils to review their schemes of delegation to ensure that they are satisfied that decision making processes on TPOs are given the appropriate priority. Councils should also ensure that their schemes are clear and accurate.

(iv) Procedural Guidance

The responses to my investigation proposal indicate that there is variation regarding the extent to which councils have developed procedural guidance to supplement the legislative framework around trees subject to TPOs and conservation area protection. Whilst it is correct that the governing statutory instruments set out the legal obligations the planning authorities must comply with, policies and procedures are necessary to outline the practical steps required to fulfil these duties. Procedural guidance helps to provide clarity and consistency in the process and supports good administration to help get decisions right.

Although some of the councils provided copies of procedural guidance documents, it is of concern that other councils do not appear to have developed any of their own procedural guidance. It is also worth highlighting that some of the guidance documents provided are outdated and contain inaccuracies. For example, a procedural document in place within one of the councils dates back to 2010 and contains incorrect references to the Department being the primary decision maker in relation to applications for works to protected trees. In another council, guidance which purports to demonstrate their procedures for dealing with applications for works to protected trees on council owned land fails to refer to the Department's decision-making role in these cases.

I consider this further evidence of why it is important that councils supplement the legislative framework in this area with up to date guidance and I strongly encourage all councils to take steps to implement detailed and accurate written procedures.

²⁷ For example, in response to an individual complaint made against a council to this Office, the council stated that 'a decision not to place a TPO does not have to go to the Planning Committee.' The wording of the Council's Scheme of Delegation could however be interpreted that *all* requests for TPOs are considered and determined by the Committee.

²⁸ [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](#) - p.66.

1.2 The Department

It is notable that in response to my queries some councils referred to a lack of regional support from the Department. One council referred to a lack of support in relation to tree preservation work, and another stated that there was a 'significant gap' in regional advice and guidance. Reference was also made to a loss of expertise and resource following the transfer of planning powers to local councils.

In response to my investigation proposal, the Department was asked to provide details of the guidance which it provides to support local councils in relation to the protection of trees. Some of the guidance relied upon by the Department as being available for councils is significantly outdated and does not reflect the transfer of planning powers to the councils.

This section will outline my observations in respect of the Department's:

- (i) Guidance specific to the protection of trees;
- (ii) Regional planning guidance and policies; and
- (iii) Enforcement Practice Notes.

(i) Guidance specific to the protection of trees

In response to asking what guidance is provided to councils, the Department provided two pieces of guidance which focus on the protection of trees. Both of these documents were issued by its predecessor department, the Department of the Environment (DOE):

- Tree Preservation Orders: A Guide to Protected Trees²⁹ (the 2011 guidance), and
- Trees and Development: A Guide to Best Practice³⁰ (the 2003 guidance).

The 2011 guidance is specific to TPOs and covers a number of areas including the criteria used to assess a potential TPO and how TPOs are processed. The 2003 guidance focuses on the value of trees and how they can be accommodated in the construction process. The following areas of concern have been identified in relation to these documents:

1. **The guidance is outdated** – neither of the documents have been updated to reflect the legislative and departmental changes which have occurred since their original publication. The 2011 guidance, for example, contains several inaccurate references to the now non-existent DOE having primary responsibility for making TPOs and processing applications for works to protected trees. It has not been updated to reflect the fact that these powers now sit primarily with the local councils.
2. **The guides are aimed at members of the public rather than the councils** – although the Department highlighted these documents as being guidance which they provide to support local councils, it is clear the guides are primarily written for members of the public³¹ and developers rather than councils. Given the intended reader is the general public, it is even more concerning that the information presented is inaccurate.

²⁹ [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

³⁰ [Trees and Development - A Guide to Best Practice \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

³¹ The 2011 guidance opens with the statement, 'This leaflet is intended to provide advice for tree owners, conservation groups and the general public on protected trees.'

The Department's failure to provide an updated guide, providing clear information on the current roles and duties of the Department and councils, has the potential to cause confusion. It may further risk creating a perception that it does not view the protection of trees as an area of priority within the planning system.

I note that both guides contain explanatory notes (dated 2019) that existing guidance within the documents will cease to have effect once the councils have adopted their Plan Strategies, yet only three councils have adopted their strategies to date. Adoption across the remaining councils is likely to take some time yet. Notwithstanding that the current guides may cease to have effect, I am of the view that given its oversight and monitoring remit, the Department should have a continued role to develop best practice guidance in this area to support councils.

I also note that the Department has not developed any internal procedural guidance specific to its own responsibilities and duties within the regime to supplement the legislative framework, for e.g., should the Department be asked to revoke or amend a TPO. Nor did it issue procedures by which a council must seek consent from the Department for works, an area of concern which I discuss further within [Section 4](#).

I encourage the Department to consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. A number of councils referred to participating in a council-wide Tree Forum or 'working group' following its establishment in 2017 until 2019 when meetings were postponed due to the COVID-19 pandemic and a redirection of resources. I have been advised that a meeting of this group has been recently reconvened. I welcome this development and consider that a regional Tree Forum with representatives from both the Department and the councils may be beneficial in strengthening relationships and knowledge sharing.

(ii) Regional planning guidance and policies

In addition to the 2003 and 2011 guides outlined, the Department also provided my Office with a number of wider regional guidance documents and policies in respect of land use and planning development. Most of the councils referred to using these guidance and policy statements to assist them in setting planning conditions to protect trees. It is worth noting that some of these documents will also cease to have effect once the councils adopt their Plan Strategies whereas others will remain in force.³²

³² Guidance which will cease to have effect:-

- [PPS 2: Natural Heritage \(infrastructure-ni.gov.uk\)](#) (2013)
- [Planning Policy Statement 6 \(PPS 6\): Planning, Archaeology and the Built Heritage \(infrastructure-ni.gov.uk\)](#) (1999)
- [PPS 6 Addendum: Areas of Townscape Character \(infrastructure-ni.gov.uk\)](#) (2005)

Guidance which will remain in force:-

- [best_practice_guidance_pps23.pdf \(infrastructure-ni.gov.uk\)](#) (2014)
- [Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside \(infrastructure-ni.gov.uk\)](#) (2012)
- [Creating Places - Achieving Quality in Residential Environments \(infrastructure-ni.gov.uk\)](#) (2000)

In responding to my investigation proposal, the Department also referred to the Strategic Planning Policy Statement³³ (SPPS) for Northern Ireland which aims to consolidate existing planning policies and provides further information in relation to the transitional arrangements which are in place pending councils adopting their Plan Strategies.

Whilst the wider regional guidance documents do refer to the need to protect trees and woodland areas, they are very broad in scope and do not go into the specifics of how trees can be protected. Similarly to the 2003 and 2011 guidance referred to above, the wider regional guidance documents are dated and, when read in isolation from the SPPS, they do not reflect the transfer of planning powers to the local councils.

(iii) Enforcement Practice Notes

The Department has also published four enforcement practice notes which are designed to guide planning officers through the enforcement process.³⁴ These practice notes deal primarily with procedural matters whilst also setting out good practice. They are not specific to the protection of trees but they do provide councils with general guidance which can be applied to the investigation of alleged tree protection breaches. Enforcement Practice Note 3 is particularly useful as it provides guidance in relation to the stages which councils should follow when carrying out enforcement investigations.³⁵ The guidance was developed in 2016 and I note there are no enforcement practice notes, or guidance issued, which outlines the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. I will discuss this issue further in [Section 4](#).

³³ [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\) \(2015\)](#)

³⁴ [Enforcement Practice Notes | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

³⁵ [Enforcement Practice Note 3 Investigative Approaches \(infrastructure-ni.gov.uk\)](#)

Section 1 Recommendations: Strategies, Policies and Procedures

Recommendation 1: All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.

Recommendation 2: Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their schemes of delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.

Recommendation 3: Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of planning conditions to best secure the long term protection of trees.

Recommendation 4: The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.

Recommendation 5: The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and supporting a regional Tree Forum. The Department and councils should also utilise the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.

Section 2: Tree Preservation Orders

The 2011 Act provides a discretionary power for councils to make a TPO to protect a specific tree or woodland from deliberate or wilful damage. Members of the public can submit requests for TPOs to their local councils. TPOs can also be initiated by the councils themselves and the Department has the power to make TPOs in consultation with the appropriate council.³⁶

From my enquiries I have established that across the region there are variations in how TPO records are maintained by councils, and the level of information is made available to the public. There are also variations in the processes to request a TPO and in the rates of requests received.

This section will set out my observations in respect of:

- TPO records (The Orders, Registers and Mapping);
- TPO requests and approval rates across the councils;
- Criteria for making TPOs; and
- Processes for requesting TPOs.

2.1 TPO records

THE ORDERS

It is imperative that councils make and maintain accurate TPO records so that they can easily identify protected trees to process applications for works, investigate potential breaches and monitor their overall approach to tree preservation.

The 2015 Regulations³⁷ set out the form that an Order must take. When a TPO is made it should include the following information:

- The total number of tree(s) protected by an order; and
- A map showing the precise location of the protected tree(s).

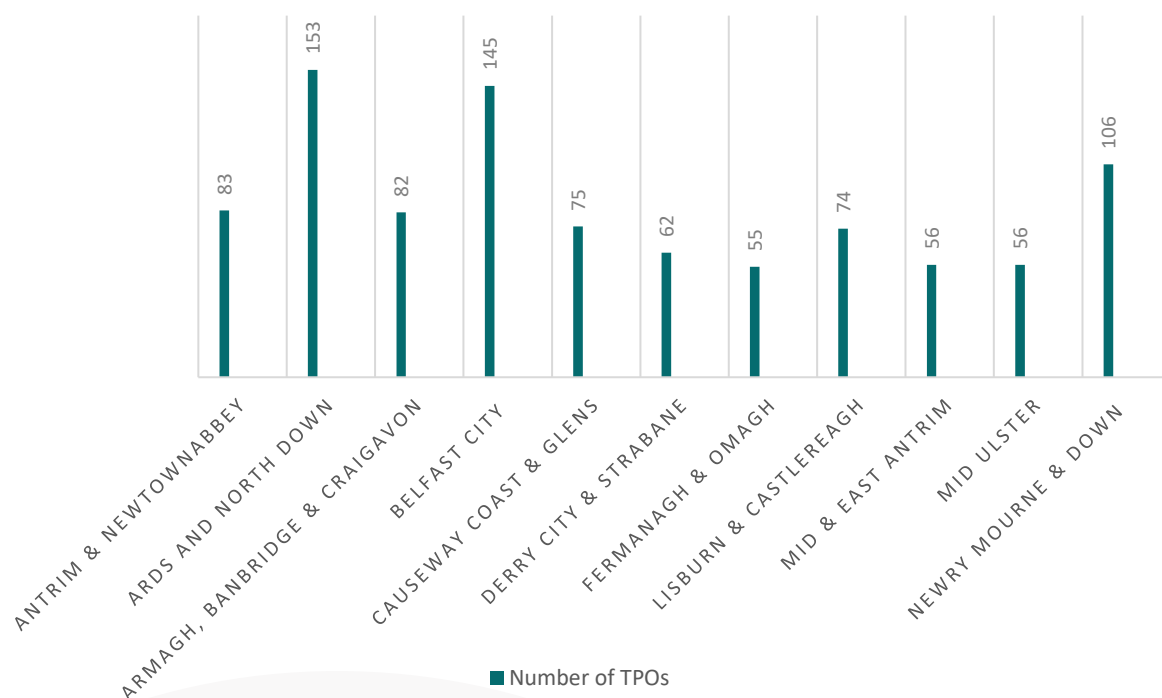
It is also good practice to regularly review the TPOs in place and evidence that the tree(s) still requires protection, for example, with an up-to-date health and condition survey.

I established from my enquiries that there were 947 TPOs in place throughout Northern Ireland in July 2022. The numbers varied across the councils, ranging from 55 in one council area to 153 in another.

³⁶ [Planning Act \(Northern Ireland\) 2011, s.124\(1\)](#)

³⁷ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015, S.2.](#)

Figure 4: The number of TPOs in place across the council areas in July 2022



As part of my investigation proposal, I also asked each of the councils to clarify how they maintain their TPO records. Most of the councils indicated that they maintain their records on their TPO registers. It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas.

The councils were also asked to confirm how often they review their TPO records. There was variation in the responses received with some councils appearing to be more proactive in their reviews than others.

- **One council did not refer to carrying out any reviews** of its TPO records.
- **Two councils** stated that they **only review individual TPO records upon receipt of specific requests** such as applications to carry out works.
- **Eight councils** indicated that they have **carried out wider, proactive reviews** of all of their TPO records however the majority of these reviews appear to have been one-off exercises rather than part of a rolling review programme.

Within their responses to my investigation proposal, two councils raised concerns in relation to whether some of the TPOs which they inherited from the former DOE were legally sound. It has been suggested that some inherited TPOs had not been confirmed by the DOE. One of the two councils advised it has now rectified the issues it identified, and the other council remains in the process of doing so. This highlights the importance of ensuring there is clear procedural guidance to follow in respect of making TPOs and that records are subject to regular review.

I am concerned that the issues identified by the two councils around inherited TPOs may be a wider problem and I am not satisfied this matter has been adequately addressed at a regional level. A failure to tackle this issue has the potential to negatively impact on the regulation of works to protected trees and taking enforcement action against breaches.

I would strongly encourage all councils to carry out detailed reviews of their TPO records to ensure that all TPOs in place remain valid. Councils should also ensure that their reviews of TPO records are not stand-alone exercises and that they form part of an ongoing programme of review and monitoring of their approach to tree preservation. Councils should support the regular review of records, and adequacy of information available, by carrying out site visits to check on the health of the protected trees, or indeed whether they have been subject of harm since the order was put in place.

TPO REGISTERS AND MAPPING

It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas. A council's TPO register must also be available for inspection by the public at all reasonable hours.³⁸ When responding to my investigation proposal, the majority of councils confirmed that they have physical TPO registers which can be made available for public inspection at their offices.

I also made enquiries to establish if councils had mapped the TPOs within their area and what information they make available online. It should be noted that the 2004 Environmental Information Regulations made it a statutory requirement for public authorities to progressively make environmental information that they hold available by electronic means which are easily accessible.³⁹ Accessibility of this information to the public is critical in making sure they are alert to the protections that are in place, both to ensure that they do not carry out unauthorised works and to support the reporting of breaches.

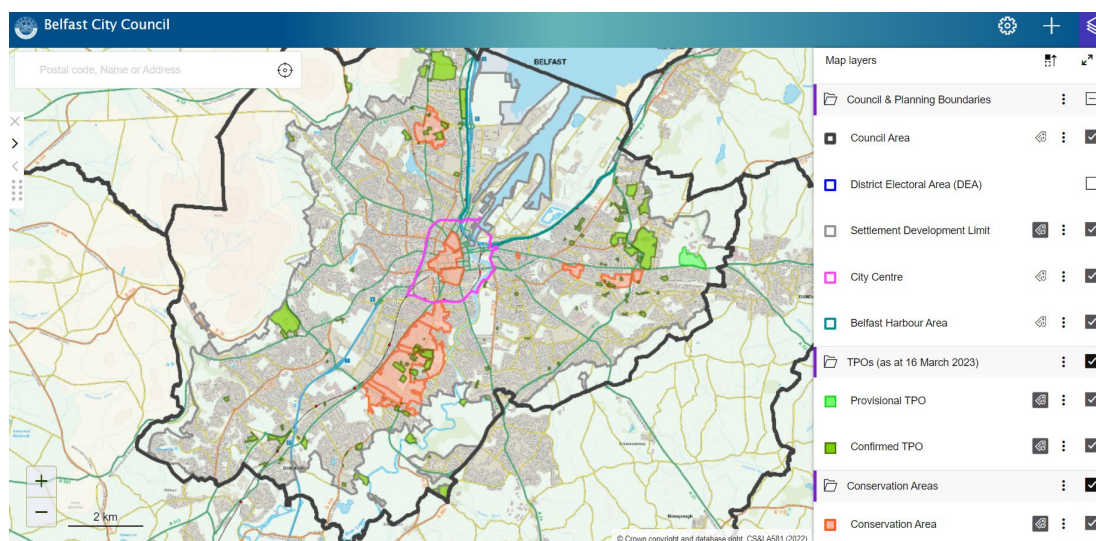
Nine out of the eleven councils have created interactive Geographic Information System (GIS) maps which display the locations of TPOs within their council areas. Six of these nine councils signpost to their maps within the tree preservation sections of their websites however the other three councils do not. Two out of these three councils advised my Office that they do not make their maps available to the public as they are for internal use only. Of the two councils which do not currently have GIS maps, one has advised that it hopes to develop one at some stage this year.

³⁸ It is a requirement under s.242 of the 2011 Act that councils keep a planning register(s). Most of the councils set out how their registers can be accessed within their Statements of Community Involvement.

³⁹ [The Environmental Information Regulations 2004, s.4 \(1\)](#)

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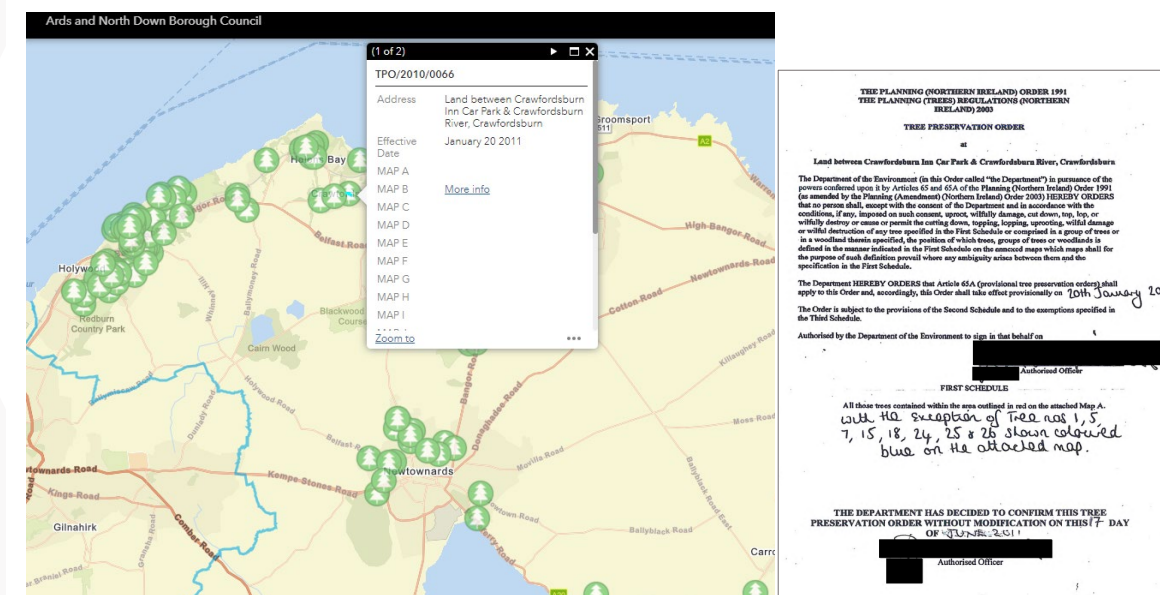
Figure 5: Belfast City Council's GIS Map (accessed 23/05/23)



There is also some variation across the councils in the information which they include within their interactive maps. Whilst all of the maps display the locations of TPOs within the council area, only three also highlight conservation areas.

I note however that only one council's map includes the facility to review the original documentation and maps associated with each TPO. The provision of this documentation online is an example of good practice. I am of the view that it would be beneficial for all councils to electronically map the TPOs within their area and provide online access to the TPO register and associated documentation.

Figure 6: Ards and North Down Borough Council's GIS Map (accessed 20/07/23)



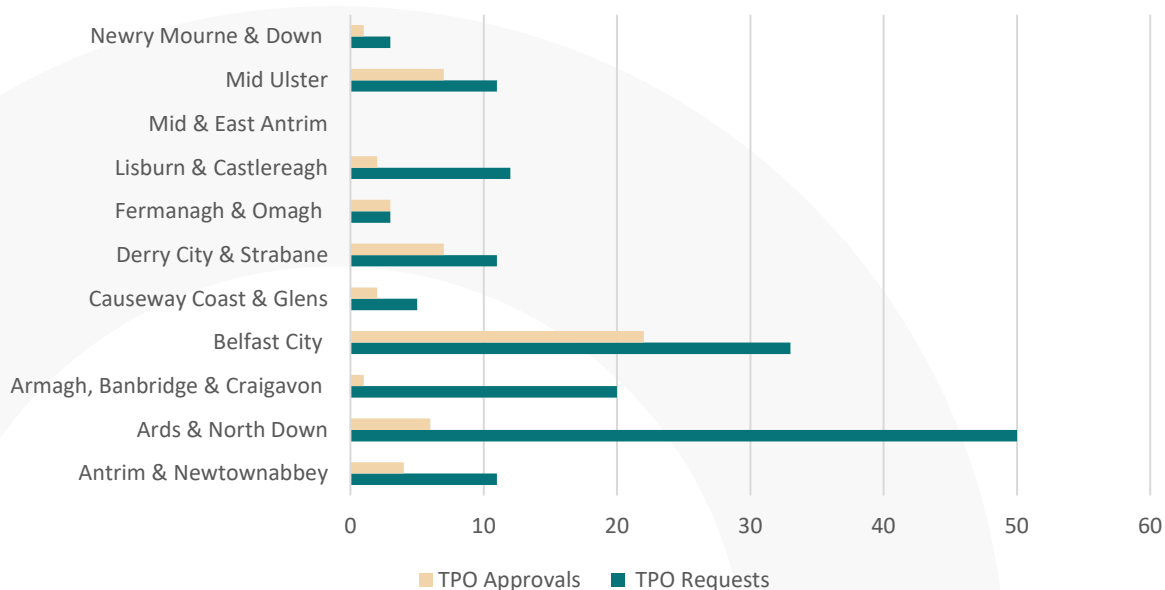
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I am further of the view that a regional map may also be beneficial. I have been advised by the Department that it has engaged with the Woodland Trust on this matter. Working with interested parties, the Department as the duty bearer should take the lead in developing a regional map which displays the locations of all TPOs in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

2.2 TPO requests and approval rates across the councils

There is variation across the councils regarding the number of TPO requests which are received; one council reported receiving 50 requests within the last three years whilst another council did not receive any. Differences have also been identified in relation to council approval rates for TPO requests ranging from 10% to 88%. Although variation across the councils is to be expected and not in itself a cause for concern, the level of variation may benefit from having increased scrutiny and guidance at regional level.

Figure 7: Council TPO requests and approvals over a 3-year period during 2019-2022



2.3 Criteria for making TPOs

The 2011 Act provides councils with the power to make TPOs where they feel it is 'in the interests of amenity'. The term 'amenity' is not defined in the legislation and the Department has not provided any recent guidance in relation to how it should be interpreted. The former DOE did however publish a list of criteria for assessing the merits of imposing TPOs as part of its 2011 guidance.⁴⁰

⁴⁰ See [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk), pg.4

Figure 8: Criteria published by the DOE in 2011 for assessing the merits of imposing TPOs

Within their responses to my investigation proposal, most of the councils referred to using this criteria when assessing whether or not to impose TPOs. Whilst the criteria remains valid, I note there is limited guidance provided about the factors to consider under each criterion. It may therefore be beneficial for councils to work together to further develop and document the methodology (including the potential use of valuation software⁴¹) that they use to assist in assessing the 'amenity' value of trees.

I consider that the Department also has an important role to play in providing further guidance for councils in relation to the definition of the term 'amenity' so that an appropriate methodology to assess trees is developed and applied by councils. When responding to the Department's Call for Evidence regarding its Review of the Implementation of the 2011 Planning Act, a number of councils highlighted the need for further guidance from the Department in relation to the term 'amenity'. In its response, the Department committed to considering whether there is a need for it to provide further guidance in relation to 'certain TPO terms'.⁴² The Department has not published any further guidance or provided an update in relation to its progress.

⁴¹ Some of the councils are already familiar with this type of software and methodology. In its 2022 study of Belfast's Urban Forest Belfast City Council, for example, made use of i-tree software & the CAVAT methodology – see [Belfast Technical Report \(treeconomics.co.uk\)](#)

⁴² [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](#), pg.65-66

2.4 Processes for Requesting TPOs

Some of the councils do not provide any information on their websites detailing the processes which should be followed by members of the public who wish to submit requests for TPOs. It is notable that the councils with no information on their websites about how to request a TPO are those which received the lowest number. Other councils do provide information however, in some cases, the detail provided is limited and does not outline the type of evidence which is required to support a request for a TPO. Only one of the councils has the facility for online submission of TPO requests via its own website and it is worth noting that this facility was only recently introduced.

None of the councils currently include any information within the TPO sections of their websites on the use of Northern Ireland's new planning portal for the online submission of TPO requests.⁴³ The new planning portal was launched by the Department in December 2022 and is currently being used by all of the councils apart from Mid Ulster. It has the functionality to accept online requests for TPOs. This development should help to standardise the TPO request process across the councils however it is disappointing that none of the councils have updated their websites to include information in relation to this new process. I would encourage all of the councils to review the content of their websites to ensure that clear and accurate information is being provided in relation to the processes which members of the public can follow when requesting TPOs. All methods for requesting TPOs, including the new online process, should be highlighted.

Councils should also ensure that, as well as dealing with requests from members of the public for TPOs, appropriate consideration is given to the initiation of TPO requests by council officers with responsibilities in this area. A proactive approach should be taken by councils to identifying trees which could benefit from protection and a strategy for identifying appropriate trees could be set out within a council's wider tree strategy.

⁴³ Northern Ireland's new planning portal launched on 5 December 2022. It replaces the old planning portal and is currently being used by 10 out of the 11 councils. Mid Ulster launched its own separate portal in June 2022.

Section 2 Recommendations: Tree Preservation Orders

Recommendation 6: Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.

Recommendation 7: All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.

Recommendation 8: The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

Recommendation 9: Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

Recommendation 10: In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.

Recommendation 11: All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.

Section 3: Applications for Works to Protected Trees

If a tree is protected by a TPO it is necessary to apply to the relevant council or, in certain circumstances, the Department for consent to carry out any felling or pruning work. The council or the Department has a range of options which are:

- grant full permission for the works;
- grant permission subject to conditions; or
- refuse consent.

There are however some exemptions to seeking consent, for example, it is not necessary to seek permission for works to trees which are dead or have become dangerous.⁴⁴ The owner must however ensure they have proof that the tree is dead or dangerous, and it is recommended that they make the relevant planning authority aware of the proposed works prior to them being carried out.

The process is also slightly different for trees located in conservation areas as notice of any proposed works must be served on the council or, in some cases, the Department; if the council or the Department objects to the proposed works, a TPO can be made to protect the tree(s).

I have identified examples of both good practice and concern in this area. This section will set out my observations in respect of:

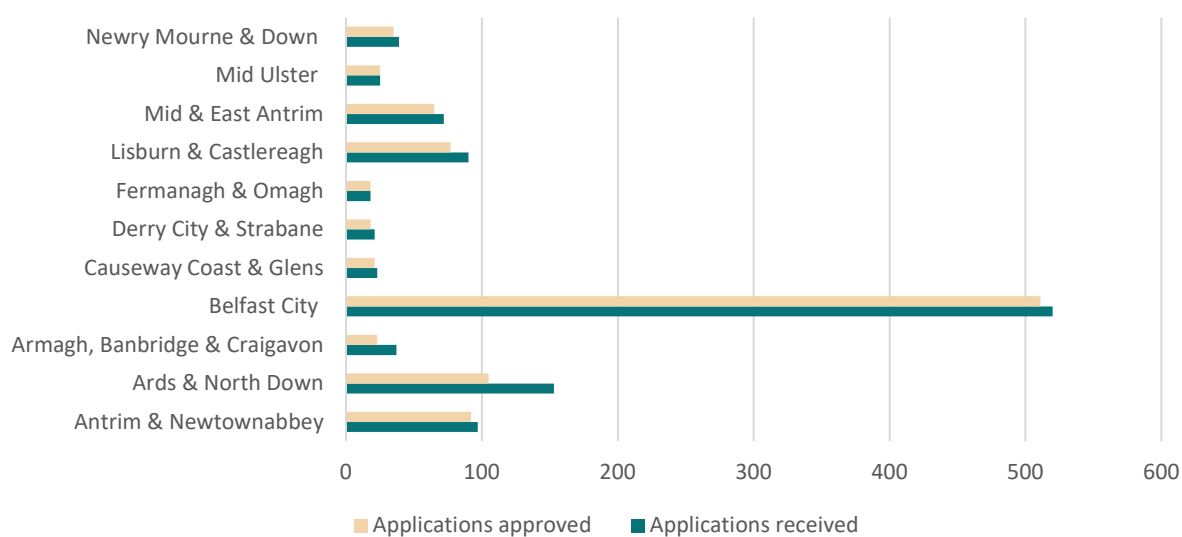
- Level of applications and approval rates across the councils;
- Processes for applying for works to protected trees;
- The use of independent evidence to support applications for works to protected trees; and
- Publication and notification procedures.

3.1 Level of applications and approval rates across the councils

There is variation across the councils in relation to the number of applications for works to protected trees which they are receiving with some councils receiving far greater numbers than others. One council reported receiving 520 applications within the last three years whereas another council received just 18. There is less disparity in relation to approval rates for these applications as these are high across the majority of the councils, ranging from 73% to 100%.

⁴⁴ [Planning Act \(Northern Ireland\) 2011, s.122 \(5\)](#)

Figure 9: Applications for works to protected trees which were received and approved by councils over a three-year period during 2019-2022



The following key trends have been identified from the figures reported by the councils over a three year period during 2019-22:

- **Four councils** reported **approval of all** of their decided applications.
- **Five councils** reported **approval of 90% and over** of their decided applications.
- The remaining **two councils** reported **approval of more than 70%** of their decided applications.
- The **average approval rate** across the councils during this time period was **93%**.

3.2 Processes for applying for works to protected trees

Decision making on works to protected trees is a delegated function⁴⁵ which means that for the most part council officers, and not the planning committee, will grant or refuse the applications. Within the responses to my investigation proposal, the councils provided information in relation to how they process applications for works to protected trees. Further information was also obtained from the council websites. I have identified some concerns about the variation of the level of information made available to the public on the need to apply for works to protected trees and the accessibility of the process.

⁴⁵ 8 councils clearly state within their schemes of delegations that this is a delegated function. The other 3 councils don't directly comment within their schemes of delegation.

Whilst most of the councils provide information on their websites detailing the processes which members of the public should follow when submitting applications for works to protected trees⁴⁶ some councils provide more detail than others. For example, some provide information in relation to the different procedures which apply dependent upon whether a tree is protected by a TPO or located within a conservation area whereas others do not highlight any differences. It is disappointing to note that two councils do not publish any information on their websites in respect of this matter.

Nine of the councils have developed their own application forms which applicants are required to complete when applying to carry out works to protected trees, however only seven councils make these forms available online. Furthermore, only two councils currently have facilities on their websites for online submission. Whilst it is encouraging that these councils have this facility, it is surprising that none of the other councils provide this as an option. It is also notable that only one council website directs applicants to the new planning portal which has the functionality to accept online applications for works to protected trees.

3.3 The use of independent evidence to support applications for works to protected trees

Concerns have also been raised with my Office in relation to councils approving applications for works to protected trees (including the felling of trees) without independent evidence to support the need for the works. Evidence to support an application could include for example, an arboricultural report assessing the health and condition of a tree, if reported to be of risk to the public or surrounding property.

The responses to my investigation proposal indicate that there is variation in the approaches being taken by the councils in this area.

- **Two councils** indicated that they **always require independent evidence** in support of applications for works to protected trees.
- **Two councils** stated that **they require independent evidence in the majority of cases**.
- The remaining **seven councils did not address** this within their responses to my investigation proposal.

⁴⁶ 9 of the 11 councils provide information on their websites in relation to submitting applications for works to protected trees.

A review of the different application forms for works which are currently being used by the councils provides some further insight into the varied approaches being taken.

- **Five** of the application forms list the circumstances in which independent evidence **'must be provided'**.
- **One** application form lists the circumstances in which independent evidence should **'usually'** be provided.
- **One** application form states that independent evidence **'may be requested'**.
- **One** application form states that independent evidence is **'strongly encouraged'**.
- One application form **does not make any reference** to independent evidence.

Whilst the information available indicates that there may be some variation in the approaches councils are taking to the use of independent evidence, it has not been possible to reach any firm conclusions in relation to how the councils are acting in practice. It is my view that the councils need to review and provide clarity in relation to the circumstances in which they require independent evidence to be provided in support of applications for work to protected trees. Councils should also clarify whether the onus to provide independent evidence is always placed on the applicant or whether there are situations in which the councils themselves will obtain their own independent evidence whilst assessing applications.

Given the lack of clarity about the gathering and use of independent evidence to support applications, the high approval rates for works are a matter of concern. In my view, works to protected trees should be fully supported by independent evidence to ensure it is in the wider public interest.

3.4 Publication and notification procedures

PUBLICATION

Whilst I note that there is no statutory requirement to publish pending or concluded applications for works, I would encourage councils to explore the potential of making this information publicly available in an accessible format. It is common practice for local authorities in England to publish applications for works to protected trees via their online planning registers.⁴⁷ This enables members of the public to view copies of application forms, supporting evidence and details of decisions. If local councils published similar information, it might serve to increase transparency around decision making in this area.

⁴⁷ Of a sample of 10 local authorities in England, 9 published applications for works on their online planning registers. It is worth noting that s.12 of the [The Town and Country Planning \(Tree Preservation\)\(England\) Regulations 2012](#) places a duty on local authorities to keep planning registers which include 'details of every application under an order and of the authority's decision'. The former Ministry of Housing, Communities and Local Government published guidance in 2014 which encouraged local authorities to make their registers available online: [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#) (para 77).

NIPSO OWN INITIATIVE: Strengthening Our Roots

I welcome the recent motion⁴⁸ passed by Ards and North Down Council 'for transparency and in response to growing public interest' for regular reports to be made to the Planning Committee to include:

- The number of applications for works to protected trees;
- Whether granted or refused; and
- The basis for the decision making.

Consideration was also to be given by the Council to uploading these details to the planning portal or its website to ensure public access. I note reports have since been submitted to the Planning Committee and are available on the website⁴⁹, however navigating access is difficult. The details do not appear to have been uploaded on the planning portal. The reports also do not outline the basis for the decision made.

I note that none of the other councils publish any details of pending or concluded applications for works to protected trees.

NOTIFICATION

It is also notable that none of the councils have processes in place for notifying local residents of pending applications for works to protected trees. Whilst it is a statutory requirement to notify any affected persons of the making of a TPO, there is no statutory requirement to notify affected persons of proposed works to protected trees.⁵⁰ Councils should explore whether it would be possible to introduce community notification procedures for residents likely to be affected by proposed works to protected trees. In England, whilst there is no statutory notification procedure for proposed works to protected trees, the government has issued guidance which recommends that local authorities consider displaying site notices or notifying affected residents where they are likely to be affected by an application or where there is likely to be significant public interest.⁵¹

Notifying local residents of proposed works which are likely to impact upon them could increase transparency and bolster community engagement in the application process. There has been considerable criticism of the lack of community engagement in Northern Ireland's planning system⁵² and the Department itself has recognised that reform is required.⁵³ The Department potentially has a role to play in producing best practice guidance for councils around notification procedures.

⁴⁸ [Ards & North Down Planning Committee Minutes, 1 March 2022](#)

⁴⁹ [Planning Committee \(06/12/2022\) \(ardsandnorthdown.gov.uk\), p77-78. Planning Committee \(07/03/2023\) \(ardsandnorthdown.gov.uk\), p52-53.](#)

⁵⁰ [s.3 of the 2015 Regulations](#) places an obligation on councils to notify interested persons of the making of a TPO and allow a 28 day period during which objections and representations can be submitted.

⁵¹ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#), para 77.

⁵² In its 2022 report, the Open Government Network was critical of the NI planning system's lack of meaningful engagement with local communities, describing it as a system which 'has evolved to prioritise efficiency and growth above community needs or environmental sustainability' (pg.5) [NIOGN-OLG-REPORT.pdf \(opengovernment.org.uk\)](#).

⁵³ In its 2022 report, the DFI's Planning Engagement Partnership set out 8 recommendations to enhance the quality and depth of community engagement in both local and regional planning – see [Planning Your Place: Getting Involved - March 2022 \(infrastructure-ni.gov.uk\)](#).

Section 3 Recommendations: Applications for Works to Protected Trees

Recommendation 12: Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

Recommendation 13: Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.

Recommendation 14: Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.

Recommendation 15: Councils should explore the potential to publish details of applications for works to protected trees in an accessible format.

Recommendation 16: Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

Recommendation 17: The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).

Section 4: Protected Trees on Council Owned Land

If a protected tree is located on council owned land, this can result in a situation where the council itself is the applicant in a tree works request or suspected of a tree protection breach. It is crucial that cases where the council is in this position are dealt with transparently and that conflicts of interest are avoided or adequately managed. The processes and decision making in these cases must also be perceived as fair to ensure that public confidence is not negatively impacted.

I have identified a number of concerns in respect of:

- Cases in which the council is the applicant in a tree works request; and
- Cases in which the council is suspected of a breach of tree protection.

4.1 Cases in which the council is the applicant in a tree works request

If a council wishes to carry out work to a protected tree on land which it owns, it must seek consent from the Department rather than approving an application for works itself. This is a statutory requirement under Regulation 10 of the Planning General Regulations (Northern Ireland) 2015 which states that councils cannot seek consent from themselves.⁵⁴

The responses to my investigation proposal highlighted that there is variation across the councils in relation to their awareness and interpretation of Regulation 10. Whilst some councils do appear to be aware of the need to refer, others seem to have been either unaware of or not applying Regulation 10 correctly.

- **One council does not appear to be aware of Regulation 10** and advised that it refers applications for works to protected trees on council owned land to its own senior officers or the Planning Committee.
- **Two councils** were aware of Regulation 10 but their responses to my proposal indicate that they are **not applying it correctly in practice**. One of these councils incorrectly referred to the fact that Regulation 10 only applies if a protected tree is located within a conservation area.
- **Six councils** do seem to have the **correct understanding** of the implications of Regulation 10. However, it is notable that one council stated that it only recently became aware of Regulation 10 when the Department highlighted it in connection with a high-profile case in which the council was seeking to remove a number of trees within a conservation area on council owned land.
- **Two councils did not address the approach** which they take to Regulation 10 within their responses to my investigation proposal.

⁵⁴ Regulation 10 states - *Where an interested council is seeking a consent of a council under Parts 3, 4 (except chapters 1 and 2 of that Part) or 5 (except sections 157 to 163) of the 2011 Act other than planning permission to develop land or a consent to display an advertisement pursuant to regulations made under section 130 and that council is itself the council by whom such consent would be given, it shall make an application for such consent to the Department.* [The Planning General Regulations \(Northern Ireland\) 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

This variation in council approaches is concerning and supports the need for the Department to provide clarity. It further demonstrates the importance, as outlined in [Section 1](#), of having clear procedural guidance that underpins the legislative framework. The Department should work with the councils on developing clear procedural guidance in relation to the processes which councils should follow when they wish to carry out works to protected trees on their own land.

4.2 Cases in which the council is suspected of a breach of tree protection

The councils were also asked to clarify whether they followed any different processes if the council itself was suspected of involvement in a tree protection breach. Whilst a number of the councils did not clearly address this within their responses to my investigation proposal, amongst those that did, the majority referred to following the same processes regardless of who was suspected of the breach. Only two of the councils made reference to referring enforcement cases involving the council to the Department.

- **Six councils** stated that they **follow the same processes** regardless of who is suspected of the breach.
- **Two councils** made reference to **referring these cases to the Department** however it was notable that only one of these councils indicated that this was common practice; the other council suggested that referral to the Department was optional.
- **Three councils did not clearly address** this issue within their responses.

Whilst there is no statutory requirement for enforcement cases involving the councils to be referred to the Department, I recognise and support the introduction of a mechanism to investigate these cases to manage potential conflicts of interest, whether real or perceived. I consider that there is a need for the Department to explore with the councils how best independent investigation of a reported or suspected breach by councils of tree preservation could be achieved. There is also the need for the Department to consider and set out the procedures to be followed where the Department is suspected of a breach, and how to introduce a mechanism to manage conflict of interests in such circumstances.

Section 4 Recommendations: Protected Trees on Council Owned Land

Recommendation 18: The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.

Recommendation 19: The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision making process.

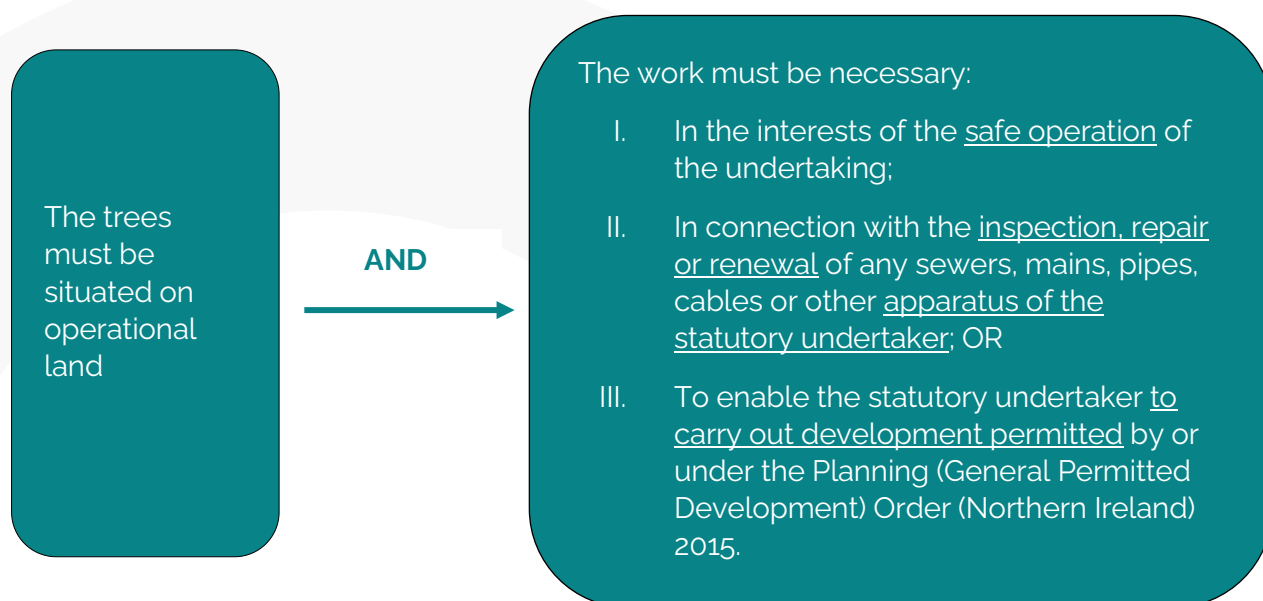
Section 5: Statutory Undertakers

Statutory undertakers are bodies and organisations which have been given statutory powers to carry out certain public functions. Examples include transport providers and utility companies.⁵⁵ Concerns have been raised with my Office in relation to statutory undertakers removing protected trees and the oversight of their actions.

5.1 Statutory undertakers: the legislation

There are legislative provisions which enable statutory undertakers to remove protected trees without consent in certain circumstances. Schedule 3 of the 2015 Regulations enables statutory undertakers to carry out works to protected trees without council consent in specific circumstances. The trees must be situated on operational land and the work must be necessary for either safety reasons, in connection with the inspection, repair or renewal of apparatus or to enable a statutory undertaker to carry out permitted development.⁵⁶

Figure 10: The circumstances in which statutory undertakers can carry out work to protected trees without consent



⁵⁵ s.250 of the 2011 Planning Act provides a definition of a statutory undertaker - [Planning Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

⁵⁶ [2015 Regulations – Sch 3, s.2\(b\) \(i\)-\(iii\)](#)

Whilst the legislative framework sets out the circumstances in which statutory bodies can act, I am concerned there may be a lack of guidance between statutory undertakers and planning authorities to underpin this important area. I consider that effective engagement in this matter is critical as the work carried out by statutory undertakers is often significant in scale with the potential to adversely impact on the biodiversity of an area and public confidence. For example, it was reported that Translink proposed to remove 141 trees, including some protected trees, at Carnalea train station, Bangor for safety reasons.⁵⁷ There is therefore an onus on public bodies to examine and consult on how they can best carry out work which may necessitate the removal of trees and how any harmful impact may be mitigated.

5.2 Guidance and monitoring

I note that the Department has not issued any guidance for statutory undertakers in relation to how the Schedule 3 exemptions should be interpreted. Whilst I recognise that there are situations in which statutory undertakers are justified in removing protected trees, I consider that there is a need for direction from the Department in relation to best practice in this area. It is notable that guidance has been issued in other jurisdictions. In England, the former Ministry of Housing, Communities and Local Government included guidance on exceptions for tree works carried out by statutory undertakers within its 2014 guidance document on tree protection. This guidance is fairly brief but it does advise statutory undertakers to liaise with local authorities prior to carrying out any work to protected trees.⁵⁸

The Department should also consider whether it could play a role in the oversight and monitoring of the activities of statutory undertakers in relation to the removal of protected trees across the region.

5.3 Engagement and co-operation

Councils also have a role to play in ensuring that they engage with statutory undertakers in relation to tree protection issues. It is unclear to what extent engagement and co-operation takes place, in particular where a statutory undertaker considers consent is not required for works, and I would encourage the councils and statutory undertakers to consider how it can be better facilitated. I welcome the fact that Belfast City Council has set out a number of actions aimed at increasing co-operation with utilities providers within its tree strategy. The actions put forward include the setting up of engagement workshops, the provision of training and the implementation of a tree charter.⁵⁹ This type of co-operation is to be encouraged as it provides councils with a good opportunity to promote the importance of tree protection to statutory undertakers.

⁵⁷ [Reaction to the removal of 141 trees in Carnalea \(greenparty.org\)](https://www.greenparty.org.uk/news/2018/07/18/141-trees-removed-in-bangor)

⁵⁸ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/318884/Tree_Preservation_Orders_and_trees_in_conservation_areas.pdf) – para 85

⁵⁹ [Belfast City Council Tree Strategy - Utilities Cooperation](#)

Section 5 Recommendations: Statutory Undertakers

Recommendation 20: The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations.

Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.

Recommendation 21: Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

Section 6: Enforcement Activity

Planning authorities have a duty to investigate reports of alleged breaches of planning control and take formal enforcement action where it is appropriate to do so. Under the 2011 Act, local councils have primary responsibility for planning enforcement within their council areas. The Department retains certain reserve enforcement powers and is also responsible for monitoring the performance of the councils.

It is important to note that the powers available to planning authorities to take enforcement action are discretionary, and where a breach is established, the authority must consider whether it is 'expedient' to take formal action. Whilst 'expediency' in planning is not defined, the concept is described within departmental guidance as a test of whether the activity is '*causing unacceptable harm to the environment and/or public amenity, having regards to the provisions of the local development plan and to any other material considerations*'.⁶⁰

Taking enforcement action which is proportionate to the seriousness of the breach, including the extent of the harm caused, is central to the effectiveness and credibility of the planning system. Whilst planning enforcement is intended to be remedial rather than punitive, it is critical that it is robust in its response and that the interests of the environment and the public are not marginalised. It is also important to highlight that unlike some other breaches of planning control, where unauthorised works to protected trees are carried out, including removal, it is not possible for the breach to be fully rectified.

It is of note that over recent years, a number of local authorities in Great Britain, have pursued significant prosecutorial action in respect of breaches of tree protection. This has included considering how the offenders (landowners and contractors) benefited from the proceeds of the crime, as well as the harm caused by the planning breach.⁶¹ In contrast if enforcement is not taken seriously by local councils, or is perceived as not being taken seriously, both the effectiveness and public confidence in the planning system is undermined.

Concerns were raised with my Office that local councils appear to be reluctant to take enforcement action where tree protection breaches have been identified. I requested that all eleven councils provide relevant data on the action taken over a three year period in respect of reported tree protection breaches. This section will set out my observations and recommendations in respect of:

- Council enforcement powers in tree protection cases;
- Recent trends in tree protection enforcement cases;
- Cases closed as 'Not Expedient';
- Council enforcement strategies and procedures; and
- Monitoring of Tree Protection Enforcement Activity by the Department.

⁶⁰ [Enforcement Practice Note 1 Introduction to Planning Enforcement \(infrastructure-ni.gov.uk\)](#)

⁶¹ See [Landowner and contractor fined £255,000 for tree destruction | Enfield Council](#) and [Homeowner Fined Under Proceeds Of Crime Act For Cutting Back Tree - Timms Solicitors \(timms-law.com\)](#)

6.1 Council enforcement powers in tree protection cases

The councils have various strong enforcement powers available to them under the 2011 Act and this section will briefly outline the main enforcement powers which can be used in tree protection cases.⁶²

TPOs

Councils can pursue prosecutions against individuals found to be in breach of TPOs. Contravention of a TPO by undertaking unauthorised works is identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence which is punishable by a fine of up to £100,000 on summary conviction or an unlimited fine on indictment.

Councils also have the responsibility to enforce measures, subject to a TPO, for the landowner to replace trees by planting a tree or trees of a specified size and species. Where this is not complied with within the specified period, councils have the power to enter onto land to replant trees subject of the TPO and recover costs.

CONSERVATION AREA PROTECTION

Councils can also pursue prosecutions for breaches of conservation area protections. Breach of a conservation area protection by undertaking unauthorised works is also identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence punishable by the same penalties which apply to TPO breaches.

Councils also have the responsibility to serve a notice on a landowner to replant a tree or trees of an appropriate size and species in the same space in a conservation area.

PLANNING CONDITIONS

Breach of a planning condition which protects trees is not a criminal offence in itself. If a breach has been identified, a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice is a criminal offence which is punishable by a fine of up to £1000 on summary conviction.

6.2 Recent trends in tree protection enforcement cases

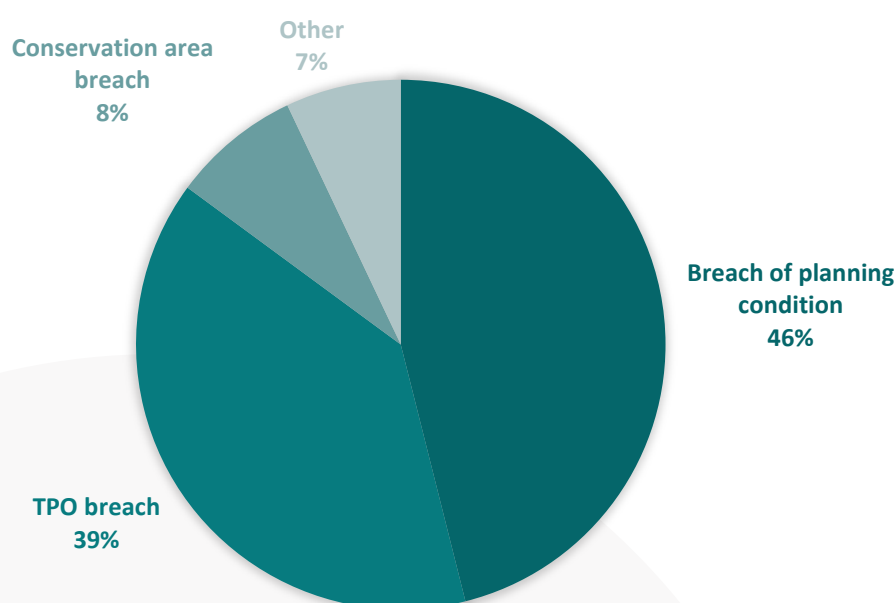
The responses to my investigation proposal highlighted a number of trends in relation to the type and outcome of tree protection enforcement cases which were reported to the councils over a three year period, during 2019-2022. It should be noted that this data is not available centrally and had to be collated from each of the councils individually.

⁶² [Planning Act \(Northern Ireland\) 2011, s.126, 127, 152, 164, 166 & 167](#)

TYPES OF CASES

From the data provided to my Office, it was identified that 369 tree protection breaches were reported to the councils over the three year period. The most commonly reported breaches were in relation to alleged contraventions of planning conditions with 170 reported in total. 144 of the cases which were reported related to alleged breaches of TPOs and 29 were in relation to alleged breaches of conservation area protections.

Figure 11: Breakdown of type of tree protection cases opened by councils over the three-year period during 2019-2022



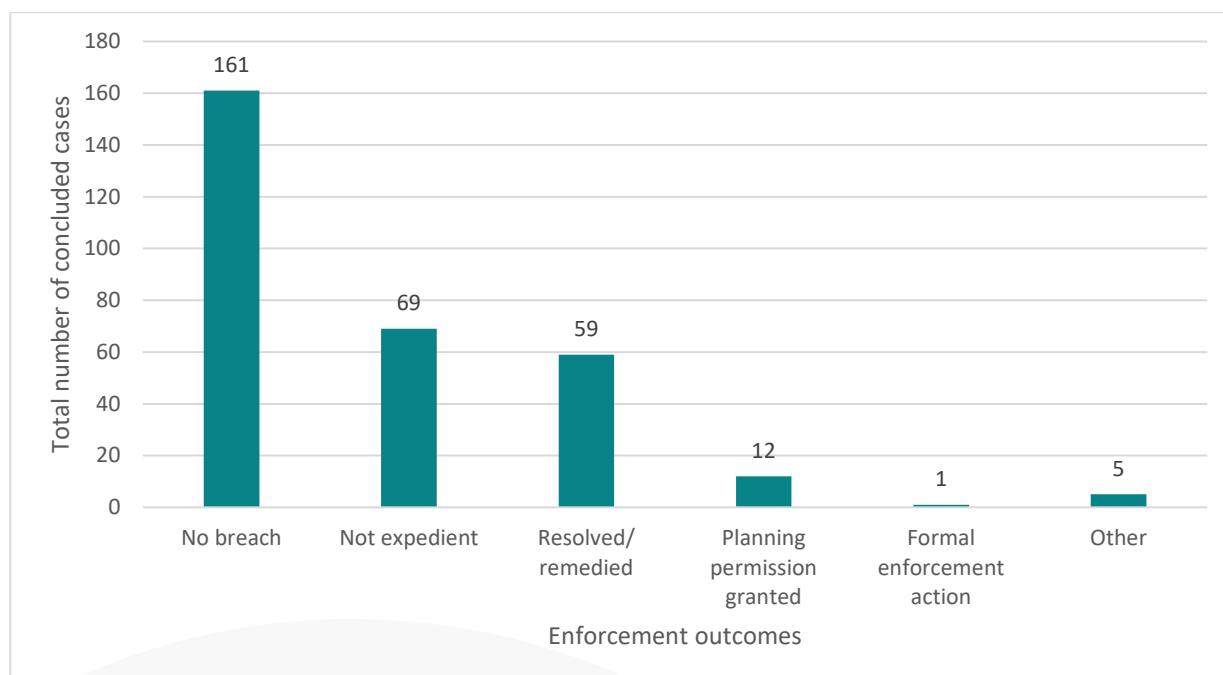
OUTCOMES

The most frequently reported outcome in tree protection enforcement cases was a finding of no breach which was reported in 52% of cases. The second most common outcome which was reported in 22% of cases was a conclusion that it would not be 'expedient' to investigate the alleged breach any further. This was followed closely by 18% of cases which were classified as remedied or resolved.

Formal enforcement action⁶³ was only reported to have been taken in one case (a breach of condition notice was issued) and none of the councils have pursued any prosecutions within a three year period. The fact that only one council has taken formal enforcement action has the potential to support concerns about the approach of councils in this area, however this cannot be determined without review of the casework.

⁶³ The issuing of an Enforcement Notice or the service of a Breach of Conditions Notice. Failure to comply with either constitutes an offence.

Figure 12: Breakdown of council enforcement outcomes in tree protection cases over a three-year period during 2019-2022



6.3 Cases closed as 'Not Expedient'

When considering the overall outcome trends, it is worth noting that nearly one fifth of the overall number of tree protection cases were closed as 'not expedient', with percentage variation between the type of breaches reported.

Over a three year period:

- 15% of reported planning conditions breaches;
- 22% of reported TPO breaches; and
- 42% of reported conservation area breaches resulted in a 'not expedient' outcome.

This area is of particular interest, as having determined this category of outcome, it is indicative the council has established a breach but having applied the expediency test has decided not to take further action. The level of tree protection cases determined as 'not expedient' appears to sit somewhat at odds with the priority outwardly stated by councils to be given to the protection of trees. I consider that it would be valuable for the Department and councils to examine the recorded considerations and develop an analysis of whether the reasoning is in keeping with best practice in enforcement guidance and council priorities.

Furthermore, given the 'direct offence' nature of TPO and conservation area breaches, it would be useful to establish the extent to which 'expediency' should be applied and whether there are repeat issues that could be identified and acted upon. For example, whether the maintenance of records including identifying that orders had not been confirmed by the DOE (as outlined in [Section 2](#)), or a potential lack of public knowledge about the processes to apply for works to trees (as outlined in [Section 3](#)) are repeat factors.

I also consider that it would be valuable to include analysis of the small number of 'other' outcomes, in which various descriptions of outcomes were presented. It was concerning that in one reported TPO breach, the closure category of 'immune' was used when this is not an outcome that is applicable to a 'direct offence'.

There is also a notable variation across the councils in relation to the proportion of cases with the outcome 'not expedient'. One council reached this outcome in 38% of its cases whereas 3 others reported a significantly smaller proportion of 'not expedient' outcomes at just 12%. Given this level of variation I recommend that when examining the recorded reasoning and overall analysis for 'not expedient' outcomes, that the Department and councils consider whether there are differences in council approaches to apply the expediency test.

The analysis of 'not expedient' and 'other' outcomes in reported breaches of tree protection cases may also contribute to work recommended by the NIAO in the area of planning enforcement. Within its 2022 review of planning in Northern Ireland, the NIAO examined overall trends in all enforcement cases across Northern Ireland between 2015-2020.⁶⁴ It noted a substantial variation in percentages of outcome type across councils (including non-expedient cases) and recommended that the Department and the councils carry out further investigations to ensure that enforcement cases are being processed consistently in Northern Ireland.

6.4 Council enforcement strategies and procedures

As outlined in [Section 1](#), all councils have planning enforcement strategies in place and have the autonomy to set local priorities. In addition to identifying areas of concern from the data provided on enforcement activity, I note several issues that require further consideration in respect of council enforcement strategies and procedures, specific to tree protection and wider enforcement policy and practice.

FACTORS TO BE TAKEN INTO ACCOUNT WHEN ASSESSING EXPEDIENCY

Expediency is a key concept within planning enforcement as councils only take enforcement action when they consider that it is expedient to do so. Within the enforcement strategies reviewed by my Office, it is noted that some of the councils refer to factors taken into account when assessing expediency, whereas others do not. I would encourage all councils to review their strategies to ensure clear information is provided on the expediency test, including the range of factors taken into account when assessing whether or not to take enforcement action.

⁶⁴ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\), p.32-34](#)

SIGN OFF PROCEDURES FOR 'NOT EXPEDIENT' DECISIONS

None of the councils include any detail within their enforcement strategies in relation to their sign off procedures for 'not expedient' decisions. It is not clear if senior or other verifying council officers are involved in signing off or reviewing these decisions. Given the level of discretion in this area, I would encourage all councils to consider whether there is sufficient oversight of 'not expedient' decisions within their strategies and procedures.

Although not specific to breaches of tree protection, it is of note that I reported earlier this year on an enforcement planning case in which I found that the council did not document full and accurate reasons on why it did not consider it expedient to take enforcement action which I considered was maladministration.⁶⁵

TREE SPECIFIC ENFORCEMENT POLICIES

The local council enforcement strategies are broad in scope and cover all areas of planning enforcement. I note that some local authorities in England have implemented enforcement policies specific to tree protection to supplement the main council planning enforcement strategy and I would encourage local councils to consider whether it may be beneficial to implement similar policies.

REPORTING TREE PROTECTION BREACHES

Despite having these significant enforcement powers to protect trees, I note that only five of the councils reference within their tree preservation sections that it is a criminal offence to carry out works to protected trees without consent, whereas others do not make any reference to the consequences of breaches. Furthermore, none of the councils publish any information within the tree preservation sections of their websites regarding the processes which members of the public should follow when reporting suspected tree protection breaches. Whilst most of the councils do publish information in relation to the reporting of general planning breaches within the planning enforcement sections of their websites, I consider that it is important to also include or signpost this information within the tree preservation sections of their websites.

I also note that the new planning portal has the functionality to accept online planning enforcement complaints⁶⁶ and some councils do refer to this within the planning enforcement sections of their websites. I would encourage all of the councils to ensure that they highlight or signpost this functionality within the tree preservation sections of their websites.

⁶⁵ [NIPSO s44 Investigation Report ref 202002188 – 30 March 2023](#)

⁶⁶ [Northern Ireland Public Register \(planningsystemni.gov.uk\)](#)

6.5 Monitoring of Tree Protection Enforcement Activity by the Department

As part of its oversight and monitoring role, the Department currently publishes quarterly and annual statistical bulletins which contain data in relation to a number of aspects of planning including the following data on enforcement cases⁶⁷:

- The number of enforcement cases opened by councils;
- The number of enforcement cases closed by councils;
- The number of enforcement cases concluded by councils;
- Enforcement case conclusion times;
- The percentage of enforcement cases closed by councils within 39 weeks; and
- The number of court actions taken by councils (including a breakdown of prosecutions and convictions).

This data is broken down by council area and, whilst it is useful for identifying broad overall trends, it is limited by the fact that it is not broken down by types of enforcement case. The Department do not collate or publish enforcement data which is specific to tree protection cases. I note that an Assembly Question seeking to establish regional enforcement figures on reported tree protection breaches was not answered, as the figures were available only at council level.⁶⁸

The Department should consider routinely collating and publishing enforcement data which is specific to tree protection cases. As well as making it easier for the Department to carry out its monitoring role, the availability of this data may also serve to increase public confidence that enforcement in this area is being taken seriously.

⁶⁷ [Planning activity statistics | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

⁶⁸ See AQW6798/12-22 - [Written Questions Search Results \(niassembly.gov.uk\)](#)

Section 6 Recommendations: Enforcement Activity

Recommendation 22: The Department and councils should examine the reported tree protection breaches closed as 'not expedient' and 'other', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

Recommendation 23: Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for 'not expedient' decisions are robust.

Recommendation 24: Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

Recommendation 25: Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.

Recommendation 26: The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.



Northern Ireland
Public Services
Ombudsman

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ITEM 9

Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	23 October 2023
File Reference	
Legislation	
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: N/A
Subject	Proposal for Design Awards
Attachments	

Background

Some members may recall that the Committee sent letters of congratulations (via the then Chair) to a local architectural firm based in Newtownards, and another architect, back in 2018.

At that time the architectural firm, BGA Architects Ltd, based in Newtownards, won an RSUA Design Award and an RIBA Regional Award in the category of Contemporary for a dwelling/site know as Maison Wedge, located off the Ballydorn Road, Killinchy. This dwelling was recently used in filming of the crime drama Bloodlands with James Nesbitt.

Another RSUA Design Award winner in our Borough relates to a barn conversion, designed by Micah T Jones Architect, at The Brae, Ballygowan. This barn conversion featured on Grand Designs a number of years ago.

Not Applicable

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At that time there was some discussion around the Council presenting a design award to developers in respect of well designed development within our Borough, however, the idea was never progressed.

Further to some developers making enquiries, some research has been carried out by officers concerning other councils making such awards, with examples being reviewed from Dumfries and Galloway and Argyll and Bute councils.

Members can see examples here:

[Dumfries and Galloway Council Design Awards 2023 - Dumfries and Galloway Council \(dumgal.gov.uk\)](https://www.dumgal.gov.uk)

[Design Awards 2022 | Argyll and Bute Council \(argyll-bute.gov.uk\)](https://www.argyll-bute.gov.uk)

[Sefton Design Awards 2023](https://www.sefton.gov.uk)

The reviewed Council Design Awards aim to recognise, promote and celebrate examples of exceptional design and sustainability across the whole of the respective Planning Areas. Each category is open to residential, commercial, community etc., and also to renovations. The categories represent different ways in which good design can be interpreted or be successful, as follows:

- Sustainable Design
- Aesthetic Design
- Community – Led Regeneration
- Built Heritage
- Design for under £100k

Another example is from Sefton Council which states that it is committed to achieving high quality design within the borough's built environment, and presents awards across a number of categories as follows:

- Best heritage scheme
- Best small housing scheme (under 10 houses)
- Best individual new house
- Best large housing scheme (10 houses or over)
- Best conversion scheme (any use)
- Best commercial scheme
- Best home extension
- Best affordable housing scheme
- Best public building
- Best public art or public realm scheme
- Best sustainable/climate change resistant scheme

It is proposed that the Planning Committee considers such an award scheme, which could invite applications for developments completed between April 2015 and end of

Not Applicable

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2023, in the likes of the categories set out above. Judging could be undertaken by a mix of elected members and planning officers, with recommendations being presented to full Committee for decision. It is envisaged that an award, such as that presented as long service award, could be presented, alongside lunch in the Mayor's parlour for the successful candidates. Appropriate budgeting through the upcoming estimates process could include awards, and officers could work up application forms for launch of the scheme in January 2024, for presentation in April 2024.

RECOMMENDATION

It is recommended that Council considers the report and:

- a. approves the introduction of a Council Design Awards scheme for 2024, agreeing the categories as appropriate, and that could be repeated every four years, subject to rates setting process;
- b. approves officers to work up an appropriate application process for Members' approval;
- c. agrees appropriate members and officers to form the judging panel at a later date.

Unclassified

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ITEM 10**Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	07 November 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	23 October 2023
File Reference	
Legislation	
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: N/A
Subject	Update on Regional Planning Improvement Programme (RPIP)
Attachments	Item 10a - Report to SOLACE from Heads of Planning Item 10b - Joint Work Programme Item 10c - RPIP Overview September 2023 Item 10d - RPIP Governance Arrangements

Background

Following publication of a report by the Northern Ireland Audit Office on Planning in Northern Ireland in February 2022, the Public Accounts Committee met in February and March 2022 to consider its contents. It published its own Report on Planning in Northern Ireland shortly after, making 12 recommendations relating to the following:

- The establishment of an independent Commission;
- Streamlining of the Local Development Plan process;
- Transparency;
- Engagement;

Not Applicable

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- The financial sustainability of the planning system; and
- The culture of those operating and engaging in the planning system.

In the absence of a functioning Executive, no updates have been provided to a successor Public Accounts Committee; however, work is continuing on what is known as the 'Regional Planning Improvement Programme'.

A report is attached as Item 10a which was prepared by Heads of Planning in local government and presented to SOLACE recently. It sets out an update on the work undertaken to date.

A copy of the NI Audit Office's Report is available [here](#)

A copy of the Public Accounts Committee Report is available [here](#)

Members can read further information on the Planning Improvement Programme on the Department for Infrastructure's website here [Planning Improvement Programme | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

RECOMMENDATION

It is recommended that Council notes the content of this report and attachments.

1.0	Purpose of Report or Summary of Main Issues
1.1	This report provides an update on the work undertaken as part of the Regional Planning Improvement Programme (RPIP) including the joint work programme agreed between Solace NI and the Department for infrastructure (DfI), and the work of the Interim Regional Commission.
2.0	Recommendation
2.1	That the contents of the report are noted.
3.0	Main Report
	<p><u>Background</u></p> <p>In early 2022, two reviews of the NI Planning system were published:</p> <ul style="list-style-type: none"> • The Department for Infrastructure’s review of the Implementation of the Planning Act (Northern Ireland) 2011 • The Northern Ireland Audit Office’s review of the NI Planning System. <p>In March 2022, the NI Assembly Public Accounts Committee (PAC) published its Report on Planning in NI. This report made 12 recommendations relating to the establishment of an independent Commission, streamlining the LDP process, transparency, engagement, the oversight role of the Department, quality of applications, review of past decisions, the financial sustainability of the planning system and importantly, the culture of those operating and engaging in the planning system.</p> <p>DfI was required to provide a formal response to the PAC report within 8 weeks of its publication (i.e. by 19 May 2022), whilst the PAC recommendations also required that an update be given to the successor Public Accounts Committee on the improvements made in six months’ time (i.e by 24 September 2022). As there is currently no functioning Executive, there is no successor PAC in place for DfI to either provide a formal response to the report or a 6-month update on actions taken. Therefore, no such responses have been provided.</p> <p><u>Joint Work Programme</u></p> <p>A number of workshops were held by DfI between April and June 2022 to formulate the beginning of a potential plan or approach to address the issues identified in the recently published reports.</p> <p>Acknowledging the absence of a PAC, DfI has rightly recognised a need to progress actions to address the failings of the planning system in NI. DfI progressed an initial workplan or “starter for ten” based on the earlier prioritisation work and provided this to Solace NI for further comment and input, in September 2022.</p> <p>Following further meetings between Solace NI and DfI representatives in October and November, a further focus group was convened in December 2022, comprising representatives from DfI, Solace NI and Heads of Planning (HoP) (with Belfast, Derry and Strabane, Antrim and Newtownabbey and Fermanagh and Omagh Councils represented).</p> <p>The remaining actions were brought before a Heads of Planning meeting in January 2023 where it was decided that the actions assigned to local authorities should be taken forward through the existing governance structures of the Development Plan, Development Management and Enforcement working groups. This would enable all local authorities to participate and contribute to the work. Heads of Planning also identified a number of mentors for each workstream, to support the Chairs of the working groups.</p> <p>The most up to date work programme is attached at Appendix 1. In summary, there are 5 main themes:</p>

1. Legislation – led by DfI
2. Development Plans – jointly led by DfI and Councils through the existing Development Plan working group, mentored by HoP from Belfast and Antrim and Newtownabbey Councils
3. Development Management – led by Councils through the existing Development Management and Enforcement working groups, mentored by HoP from Lisburn and Castlereagh and Causeway Coast and Glens Councils
4. Performance – led by Councils through a task and finish group including, Belfast, Derry and Strabane, Armagh, Banbridge and Craigavon, Lisburn and Castlereagh and Fermanagh and Omagh Councils
5. Community Engagement – led by DfI through Community Places

The focus group convened in December 2022 has now been formally constituted as a Programme Board and updates on the actions identified in the workstreams are reported to the Programme Board (having been considered by DfI and HoP / Solace NI).

At August 2023, 13 of the 40 identified actions had agreed to be closed by the Programme Board. 5 actions were the subject of high or medium delays, with 20 were on course for completion within the agreed timescales (2 action updates were to be confirmed). Further details are provided in **Appendix 2**.

The governance arrangements for the Regional Planning Improvement work are set out in **Appendix 3**.

Interim Regional Commission (IRC)

A key recommendation of the PAC report was that a Regional Planning Commission should be established, and the previous Minister endorsed this approach. To advance the Planning Improvement agenda, DfI confirmed in February 2023 that it was progressing the formation of a Regional Planning Commission on an interim basis (in the absence of a Minister), to drive forward changes to make the planning system fit for purpose. DfI advised that Rosemary Thomas, former Chief Planner for Wales, would be the independent Chair to this interim Regional Planning Commission, and that the group would include a range of stakeholders:

- Department for Infrastructure
- Royal Town Planning Institute
- NI Chamber of Commerce
- CBI
- Community Places
- Rural Community Network
- NI Environment Link
- Friends of the Earth NI
- Solace NI (Planning representative – Alison McCullough)
- Heads of Planning Chair

There have been three meetings of the IRC, on 24 February, 11 May and 7 September 2023. Each meeting has included an update on the work programme, and there has been general discussion on some of the issues identified through the programme. At the most recent meeting in September, the Interim Commission agreed that further work was needed to articulate its role, work programme and areas of focus. The arrangements for this work are yet to be organised.

	<p><u>Conclusion</u></p> <p>There has been significant activity on the Regional Planning Improvement work programme since its inception in mid 2022. Further work and focus is needed, in order to ensure that the work programme addresses the fundamental issues identified in the NI Audit Office and Public Accounts Committee reports, and that identified actions lead to improved processes and outcomes. It will be crucial that the reflection of the Interim Regional Commission on its role and work programme support and provides focus for the improvements and culture change required across the planning system.</p> <p>Local Government is currently considering how work on the Regional Planning Improvement Programme is resourced, as officers from many Councils are being asked to undertake work on the programme in addition to their substantive roles.</p>
6.0	Appendices – Documents Attached
	<p>Appendix 1 – Regional Planning Improvement Programme agreed work programme</p> <p>Appendix 2 – Regional Planning Improvement Programme update</p> <p>Appendix 3 – Regional Planning Improvement Governance structure</p>

Joint Planning Improvement Work Programme

July 2023

	Dfl Led Actions
	Local Government Led Actions
	Joint working

Quarter Dates	
Q1	April - June
Q2	July - September
Q3	October - December
Q4	January - March

Joint Dfl and Council Planning Improvement Work Programme			
Action Ref	Action	Indicative completion date	Action Lead
GOVERNANCE – Dfl Lead Dfl Work Stream Lead - Kathryn McFerran			
1	Establish project board, work streams and regional commission, if appropriate (latter subject to separate Ministerial consideration)	Q3 2022-2023	C McEvoy (Dfl)
POLICY & LEGISLATION - Dfl Lead Dfl Work Stream Lead - Kathryn McFerran			
2	Prepare amendments to the Planning (General Development Procedure) Order (NI) 2015 to provide statutory validation checklists.	Q1 2023-2024	N Jamieson (Dfl)
3	Councils to prepare validation checklists and work with developers to prepare them for changes.		LG Action Owner
4	Amendment to Planning (Fees) Regulations (NI) 2015 - inflationary uplift.	Q4 2022-2023	I Kennedy (Dfl)

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5	<p>Review of Planning (Local Development Plan) Regulations 2015 to include:</p> <ol style="list-style-type: none"> 1. The number and role of consultation bodies (2(1)) 2. The duration of consultation periods 11(3); 16(2); 18(2); 3. Timetable, Publicity and notification requirements 4. Requirements in relation to making available documentation. 5. Submission of plan documentation 	Q4 2023-2024 for policy development Consultation on regs to follow	<ol style="list-style-type: none"> 1. Danielle Rush (DfI) 2. LG Action Owner - MEABC lead Council S Adams
6	<p>Planning (Development Management) Regulations (NI) 2015</p> <ol style="list-style-type: none"> 1. Review development categories & classes thresholds (including BESS) 2. Revoke mandatory pre-determination hearings (PDH) 3. Consideration of option for in-person and online/electronic PACC public engagement 	Q4 2023-2024	N Jamieson (DfI)
7	<p>Planning (General Development Procedure) Order (NI) 2015:</p> <ol style="list-style-type: none"> 1. Consider late submission of information. 2. Consider statutory consultation timeframes etc 	Q2 2023-2024	N Jamieson (DfI)
<p>LOCAL DEVELOPMENT PLAN - DfI & Local Government Lead Jointly</p> <p>DfI Work Stream Lead - Alistair Beggs</p> <p>Local Government Work Stream Leads - Keith Sutherland & Sharon Mossman</p>			
8	Review LDP timetables and consider whether remaining steps of LDP process could be further streamlined		S Wilkin (DfI)
9	Identify and prioritise DPPN guidance to be reviewed in light of learning from Independent Examinations to date including DPPN 06 'Soundness'	Q4 2023-2024	<ol style="list-style-type: none"> 1. Robert. Newell (DfI) 2. ABC lead Council Helen Stoops
10	Provision of training for statutory consultees focussing on their role in the plan-making process at PS and LPP stage, including the need to adequately resource role.	Q2 2023-2024	<ol style="list-style-type: none"> 1. Michelle Bamford (DfI) 2. LG Action Owner – ANBC Sharon Mossman

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11	Consider wider roles and responsibilities of Departments, Councils & PAC to establish shared understanding of how all parties currently exercise their responsibilities under the legislation and how this could change to support the more effective operation of the LDP processes.	Q2 2024-25	1. S Wilkin (DfI) 2. LG Action Owner - ANBC lead Council S Mossman
12	Explore potential value Statements of Common Ground may support in the promotion of consensus between parties	Q3 2023-2024	1. Robert Newell (DfI) 2. LG LDP Mentors K Sutherland and S Mossman
13	Provide clarity on the process/ approach / timescale for bringing forward updated regional spatial strategy (RDS) /regional planning policy (SPPS)	Q3 2023-2024	1. Joy Hargie & S Wilkin (DfI) 2. LG Action Owner – BCC D O’Kane
14	Seek memorandum of understanding with PAC, Councils to address mutually agreed roles & responsibilities of participants during IE process;	Q2 2023-2024	1. S Wilkin (DfI) 2. LG Action Owners – BCC/ANBC D O’Kane & S Mossman
15	Explore how IE programme can provide more flexibility to allow for proposed policy changes to be agreed and consulted upon within the scope of the IE processes.	Q2 2023-2024	1. S Wilkin (DfI) 2. LG Action Owner - BCC / ANBC lead Councils K Sutherland and S Mossman
16	Review approach to sharing with the relevant Council the non-binding IE Report made to the Department (current fact check approach is two week prior to issuing direction)	Q2 2023-2024	1. Andrew Wilson (DfI) 2. LG Action Owner – BCC Lead Council D O’Kane
17	Review guidance and clarify the Department’s approach to specifying modifications within an adoption direction to consider the wider implications and potential processes.	Q3 2023-2024	1. Robert Newell (DfI) 2. LG Action Owner - BCC lead Council D O’Kane

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18	Review guidance to clarify the required steps a Council must take following receipt of adoption direction including considerations in relation to implications or further consultation / assessment (i.e.SA/HRA etc)	Q3 2023-2024	1. Robert Newell (Dfl) 2. LG Action Owner – BCC/ANBC lead Councils K Sutherland & Sharon Mossman
DEVELOPMENT MANAGEMENT – Local Government Lead			
Local Government Work Stream Leads - Ed Baker & Denise Dixon			
19	Review Dfl's approach to transport assessments, drawing in appropriate stakeholders and including an analysis of resource requirements	Q3 2022-2023	Dfl Roads
20	Urgent clarification from DAERA on the appropriateness of ammonia (and nitrogen) thresholds in making planning decisions	Q3 2022-2023	B Gorman (Dfl)
21	Clarification/decisions regarding Dfl's oversight role	Q4 2023-2024	S Symington (Dfl)
22	Promote a proactive and consistent approach to planning for development within the long term regional constraint caused by the lack of adequate sewage infrastructure, in both the local development plan and development management processes.	Q2 2023-2024	S Wilkin (Dfl) & S Symington (Dfl)
23	Review policy approach to clarify call-in criteria	Q3 2023-2024	S Symington (Dfl)
24	Streamline the internal call-in notification process	Q1 2023-2024	A Nelson (Dfl)
25	Review need for demolition consent application consultations to streamline process.	Q4 2023-2024	N Jamieson (Dfl)
26	Review of notification directions	Q3 2023-2024	N Jamieson (Dfl)
27	Review PAD processes and consider need for any Regional advice / good practice	Q1 2023-2024	LG Action Owner
28	Each council to review Development Management processes and practices with a view to improving performance		LG Action Owner

29	Review of record keeping for regionally significant and major applications	Q3 2022-2023	1. G Walker (Dfl) 2. LG Action Owner
30	Development Management systems analysis 1. Data to demonstrate factors contributing to delays or negative outcomes 2. Consideration of empirical evidence provided 3. Ascertain reasons for increased consultations and re-consultations 4. Process mapping to establish blockages / delays 5. Solutions proposed to address identified issues	Q2 2023-2024	1. F McGrady (Dfl) 2. LG Action Owner
31	Review transparency and probity around Department's decision-making (MOR response)	Q2 2023-2024	G Walker (Dfl)
32	Scope the challenges and opportunities around securing the long term financial sustainability of the planning service/function at local government level in two-tier planning system.	TBC	TBC
PERFORMANCE – Local Government Lead			
Local Government Work Stream Leads - D Mulligan, C Hughes & P McDermott			
33	Review of performance related issues highlighted in NIAO / PAC reports, Business as Usual actions and performance frameworks in other jurisdictions	Q2 2023-2024	LG Action Owner
34	Finalisation of performance framework for reporting 24/25	Q4 2023-2024	LG Action Owner
35	Dfl to consider how performance framework information for local authorities will be collated and reported.	Q4 2023-2024	1. F McGrady (Dfl) 2. LG Action Owner
36	Statutory consultees to review their resource requirements against workloads	Q2 2023-2024	F McGrady (Dfl)
37	Dashboard to be created for Regionally Significant Applications	Q4 2022-2023	A Beggs (Dfl)
ENGAGEMENT - Dfl, facilitated by Community Places			
Dfl Work Stream Lead – Kathryn McFerran			

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38	Assist with improving accessibility to the LDP process and other place-shaping processes through better integration of community engagement activity, planning communications and learning about planning	Q4 2022-2023	Community Places S Wilkin (DfI)
39	Consider how to improve pre-application community engagement for regionally significant and major applications	Q3 2023-2024	PEP C McKinney
40	Raise the profile of community engagement by developing a community engagement awareness campaign and good practice standards	Q3 2023-2024	PEP C McKinney

Interim Regional Planning Commission

Planning Improvement Tracker Overview

September 2023

1. Planning Improvement Project Board

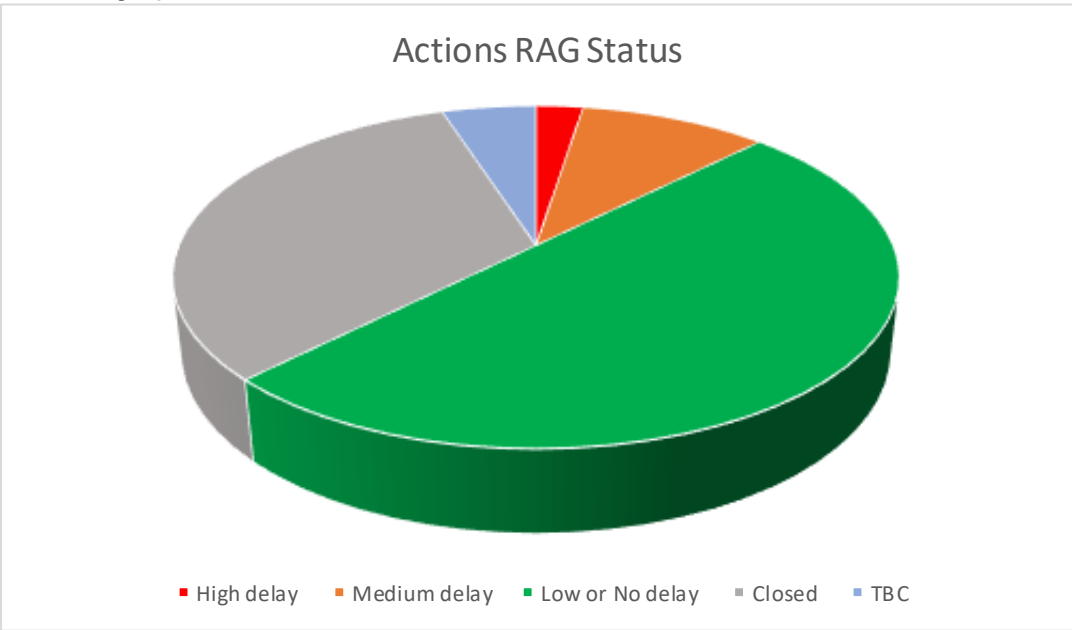
The Planning Improvement Project Board acts as a key link supporting local government reporting to SOLACE and central government reporting within DfI, as well as to monitor progress of the joint Planning Improvement Programme and discuss interdependencies / risks.

At the most recent meeting on 23 August, the PIP Board agreed to close 7 actions which are summarised in Annex 2 below, along with the actions which were previously closed.

2. Joint Work Programme

The joint PIP work programme was endorsed by SOLACE on 5 May 2023. The DfI Permanent Secretary issued a letter to Council Chief Executives and Heads of Planning on 26 July 2023 confirming the governance arrangements, roles and responsibilities and reporting mechanisms and encouraging ongoing co-operation and support for the delivery of the PIP programme.

The infographic below reflects the current RAG status of each action as at 23 August.



R.A.G Status 23 Aug 2023		No. of Actions
High Delay		1
Medium Delay		4
No Delay		20
Closed		13
TBC		2
Total		40

Further details of the red and amber actions are provided in the table in Annex 1.

Planning Improvement Programme – Action Update Summary

THEMES

<p style="text-align: center;">Policy & Legislation</p> <ul style="list-style-type: none"> • Validation Checklist – working to complete necessary steps with partners to put in place amends to the Order in Autumn 23. • LDP Regs – Discussions ongoing with LDP WG. • DM Regs – Aiming for Autumn 23 public consultation. • GPDO – Position paper developed on late submission of information. Second paper under peer review in Dfl. 	<p style="text-align: center;">Development Management</p> <ul style="list-style-type: none"> • Actions being taken forward through DM WG. • Oversight role – Principles document and paper under development. • Sewage capacity issues – Draft letter under consideration (involving DAERA / NIW). • Internal Dfl Call in notification process – actions have been put in place to streamline process. • Call in criteria – Draft paper under development. • Notification directions – Draft paper under consideration. • Demolition consent applications – Pilot under final consideration with an LPA. • Development management systems analysis – this ‘cornerstone’ action is being scoped by LG to determine methodology and resource requirement. • Financial sustainability – consideration of costings/analysis to date and scoping of work needed.
<p style="text-align: center;">Local Development Plans</p> <ul style="list-style-type: none"> • Actions being taken forward through a joint working group. • Action leads assigned and draft action delivery document issued. • Training for statutory consultees 11 October • Scoping and drafting of papers initiated. 	<p style="text-align: center;">Community Engagement</p> <ul style="list-style-type: none"> • Work ongoing with PEP, research with support of University students and partners. • Collaboration with CP
<p style="text-align: center;">Performance</p> <ul style="list-style-type: none"> • Actions being taken forward through task and finish group. • Initial work underway by LG to develop a performance framework – paper to be drafted for consideration. • Stat consultee Group – Work ongoing to monitor, support and improve this aspect of the planning process. 	

Annex 1: Actions with a Medium or High delay as at August 23

PIP WP Ref.	Action Description	Indicative Completion Date	Action Owner	Update
2	Prepare amendments to the Planning (General Development Procedure) Order (NI) 2015 to provide statutory validation checklists.	Q1 2023-24	DfI	<ul style="list-style-type: none"> Working to complete necessary steps with partners to put in place amends to the Order in the Autumn.
14	Seek memorandum of understanding with Planning Appeals Commission, Councils to address mutually agreed roles & responsibilities of participants during IE process.	Q2 2023-24	DfI & LG	<ul style="list-style-type: none"> Meeting with Planning Appeals Commission requested. DfI to provide feedback on Planning Appeals Commission discussion.
16	Review approach to sharing with the relevant Council the non-binding IE Report made to the Department (current fact check approach is two week prior to issuing direction)	Q2 2023-24	DfI & LG	<ul style="list-style-type: none"> Position Paper to be developed following discussions between LG and DfI.
22	Promote a proactive and consistent approach to planning for development within the long term regional constraint caused by the lack of adequate sewage infrastructure, in both the local development plan and development management processes.	Q1 2023-24	DfI	<ul style="list-style-type: none"> Proposed outcome/product is a joint central govt (DAERA / DfI / NIW) letter to LG reinforcing the message that the regional planning system must collectively respond to this regional constraint in a consistent and sustainable way. DAERA and NIW input awaited.
30	Development Management systems analysis 1. Data to demonstrate factors contributing to delays or negative outcomes 2. Consideration of empirical evidence provided 3. Ascertain reasons for increased consultations and re-consultations 4. Process mapping to establish blockages / delays 5. Solutions proposed to address identified issues	Q2 2023-24	DfI & LG	DfI element of work complete May 2023 LG element update; <ul style="list-style-type: none"> Actions relating to data and consideration of empirical evidence are complete. Work to understand increased consultations and re-consultations along with process mapping and solutions has not been undertaken, and will not be complete by Q2 2023/24. Resources have been identified as an issue in taking this forward – will be discussed by SOLACE. Discussion is required as to resources / facilitation to progress this crucial piece of work that will feed into other reviews of legislation.

Annex 2: Actions Closed to date

PIP WP Ref.	Completed Actions	Action Owner	Closure Date
1	Establish project board, work streams and interim regional commission.	DfI	March 23
19	Review DfI's approach to transport assessments, drawing in appropriate stakeholders and including an analysis of resource requirements.	DfI	March 23
20	Urgent clarification from DAERA on the appropriateness of ammonia (and nitrogen) thresholds in making planning decisions.	DfI	March 23
4	Amendment to Planning (Fees) Regulations (NI) 2015 - inflationary uplift	DfI	May 23
37	Dashboard to be created for Regionally Significant Applications	DfI	May 23
31	Review transparency and probity around Department's decision-making (MOR response)	DfI	July 23
36	Consultees to review their resource requirements against workloads	DfI	August 23
24	Streamline the internal call-in notification process	DfI	August 23
38	Assist with improving accessibility to the LDP process and other place-shaping processes through better integration of community engagement activity, planning communications and learning about planning	CP & DfI	CP element closed May 23 DfI element closed August 23
28	Each council to review Development Management processes and practices with a view to improving performance.	LG	August 23
33	Review of performance related issues highlighted in NIAO/PAC reports, Business as Usual actions and performance frameworks in other jurisdictions.	LG	August 23
27	Review PAD processes and consider need for any Regional advice / good practice.	DfI & LG	DfI element closed March 23 LG element closed August 23
29	Review of record keeping for regionally significant and major applications	DfI & LG	DfI element closed May 23 LG element closed August 23

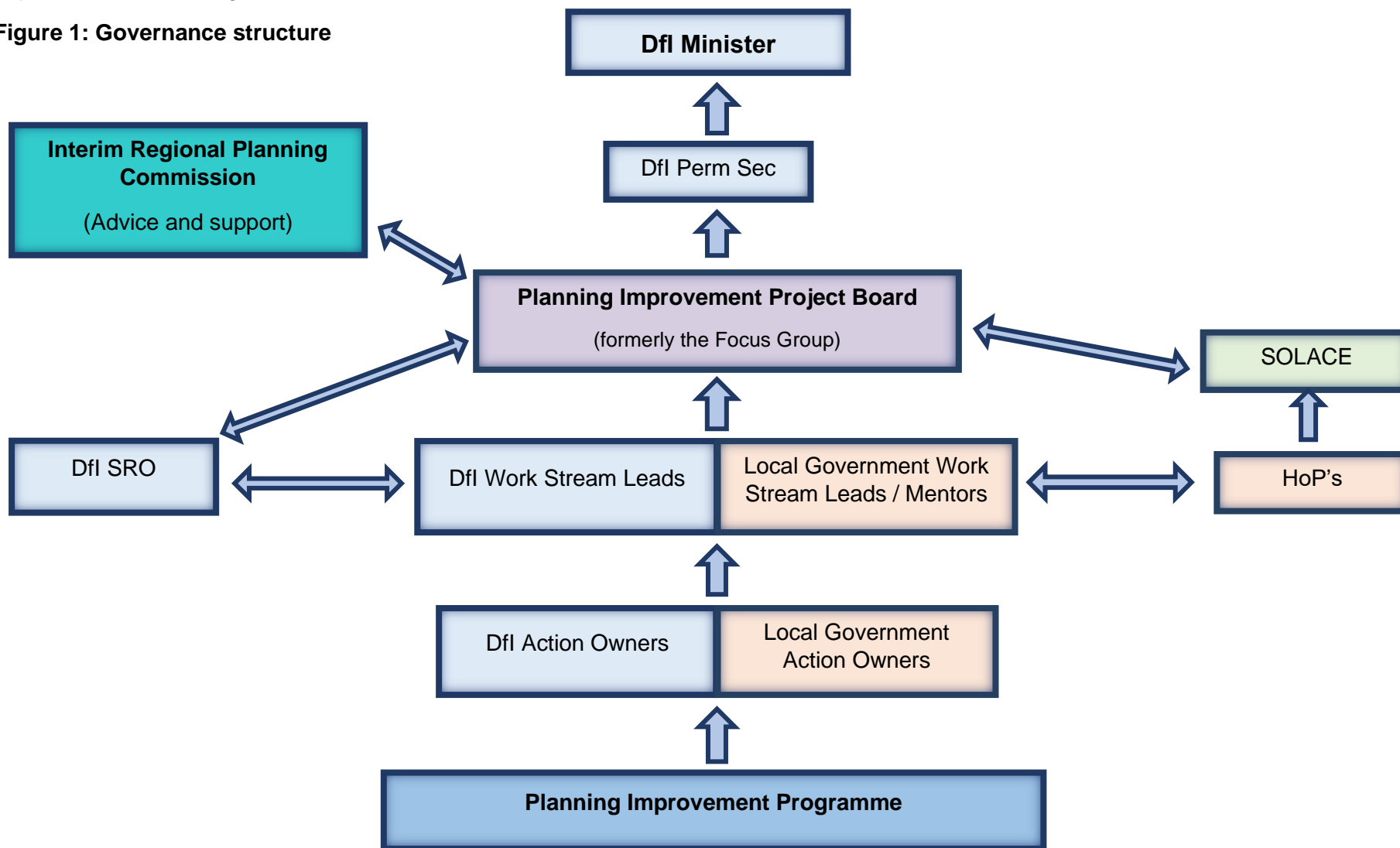
Annex 3: Acronyms

Acronyms	
PIP	Planning Improvement Programme
Dfi	Department for Infrastructure
LG	Local Government
LDP	Local Development Plan
CP	Community Places
SC	Statutory Consultees
PAD	Pre Application Discussion
DM	Development Management
GDPO	General Development Procedure Order
PEP	Planning Engagement Partnership
SOLACE	Society of Local Authority Chief Executives
WG	Working Group
LPA	Local Planning Authority
DAERA	Department of Agriculture, Environment & Rural Affairs
NIW	Northern Ireland Water
TBC	To be confirmed
MOR	Memorandum of Response
NIAO	Norther Ireland Audit Office
PAC	Public Accounts Committee
SPG	Strategic Planning Group
IE	Independent Examination

Annex B: Planning Improvement Programme: Governance Structure and Roles & Responsibilities

The purpose of this Annex is to describe the intended governance structure, arrangements, and roles & responsibilities for the Joint Planning Improvement Work Programme.

Figure 1: Governance structure



Governance roles and responsibilities

Below is an overview of the governance arrangements, roles and responsibilities:

1. **The Minister** has overall responsibility for the Planning Improvement Programme. Reporting to the Minister will be through the **DfI Permanent Secretary**.
2. **The Interim Regional Planning Commission** is a small, representative group of experts / advisors, designed to reflect key stakeholders' interests. The group will be expected to use their expertise, skills and experience to constructively review, identify improvements, advise & support, and promote further accountability in planning in Northern Ireland. It is independently chaired, and the secretariat is provided by the RTPI. It will receive update reports from workstream leads, following their consideration by the Planning Improvement Project Board.
3. **The Planning Improvement Project Board** (formerly the Focus Group) provides assurance on the Joint Planning Improvement Programme to the Minister, via a number of workstreams. The Board supports joint ownership and shared project oversight and reporting. It is chaired jointly by DfI SRO/SOLACE representative; its membership comprises representatives from DfI and Local Government who will provide updates on all work stream progress on behalf of the work stream leads.
4. **The DfI SRO** has overall responsibility for the successful delivery of the Planning Improvement Programme within DfI. They are responsible for ensuring that the project meets its objectives and delivers the projected benefits.
5. **SOLACE** (Society of Local Authority Chief Executives) will be responsible for providing overall accountability on Local Government Planning Improvement actions.
6. **Heads of Planning** are responsible for ensuring that each local authority feeds into the overall Joint Planning Improvement Programme and perform an oversight role to workstream leads/mentors.
7. **Local Government Workstream Leads / Mentors**. The workstreams that Local Government have a lead role in are Development Management, Performance and Development Plans (jointly with DfI).

The Local Government Workstreams Leads/Mentors will report to the Heads of Planning. Progress reports will be provided to the Project Board and Local Government Workstream Leads/Mentors will be directly responsible for ensuring listed actions are progressed within identified timescales, reporting on all actions within their workstream whether being actioned by Central or Local Government.

They will also report to SOLACE, via the Heads of Planning, on the local government elements of their workstreams.

8. **Local Government Action Owners** are the designated people within Local Government taking forward the actions identified on the Joint Planning Improvement Programme.

They will report to the Central and Local Government Workstream Leads.

- 9. Dfl Workstream Leads** The workstreams that Dfl has a lead role in are Policy & Legislation, Engagement and Development Plans (jointly with Councils).

The Dfl Workstream Leads will report to the Project Board and are directly responsible for ensuring listed actions are progressed within identified timescales, reporting on all actions within their workstream whether being actioned by central or local government.

They will also report to the Dfl SRO on the central government elements of their workstreams.

- 10. Dfl Action Owners** are the designated people within central government taking forward the actions identified on the Joint Planning Improvement Programme.

The actions being led by Dfl will be collated & reported to the Central and Local Government Workstreams Leads and Dfl SRO before being presented to the Project Board.