

**ITEM NO** 48  
**APPLIC NO** P/2014/0859/F **Full** **DATE VALID** 10/16/14  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Brendan Carr **AGENT** O'Callaghan  
 Planning 9  
 Ballyscandal Road  
 Armagh  
 BT61 8BL  
 02837511714

**LOCATION** 65 Metres South of 43 Newry Road  
 Drumilly  
 Belleek.

**PROPOSAL** Retention of building for agricultural use.

<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>	
	0	0		0	0
			<b>Addresses</b>	<b>Signatures</b>	<b>Addresses</b> <b>Signatures</b>
			0	0	0

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.



Newry, Mourne and Down District Council  
Planning Office  
O'Hagan House  
Monaghan Row  
Newry  
BT35 8DL

### Delegated Application

Development Management Officer Report		
<b>Case Officer:</b> Gareth Murtagh		
<b>Application ID:</b> P/2014/0859/F		<b>Target Date:</b>
<b>Proposal:</b> Retention of building for agricultural use.		<b>Location:</b> 65 Metres South of 43 Newry Road Drumilly Belleek.
<b>Applicant Name and Address:</b> Brendan Carr		<b>Agent Name and Address:</b> O'Callaghan Planning 9 Ballyscandal Road Armagh BT61 8BL
<b>Date of last Neighbour Notification:</b>		29th October 2014
<b>Date of Press Advertisement:</b>		19th November 2014
<b>ES Requested:</b> No		
<b>Consultations:</b>		
<b>Consultation Type</b>	<b>Consultee</b>	<b>Response</b>
<b>Representations:</b>		
Letters of Support	None Received	
Letters of Objection	None Received	
Petitions and signatures	No Petitions Received	
Number of Petitions of Objection and signatures	No Petitions Received	
<b>Summary of Issues:</b> Site has been the subject of a number of previous applications and enforcement cases, the current application seeks to retain the building for use as an agricultural barn,		

## Site Visit Report

### Site Location Plan:



**Date of Site Visit: November 26<sup>th</sup> 2015**

### Characteristics of the Site and Area

#### 1.0 Characteristics of Site

1.1 The site consists of a shed situated to the rear of No. 43 Newry Road, it is just under 6 metres in height and has two roller shutter doors, the submitted floorplan shows it arranged internally into several pens with a loft in one corner. The shed is constructed out of a block wall finished in a smooth render on its lower level, with the upper level and roof finished in green cladding panels.





1.2 The site is not visible from Newry Road due to the setback, it is visible from Mountain Road to the west from which the dwelling and shed appear together in the same field of view. On the day of the site visit a lorry was observed parked in front of the shed.

1.3 Retention of the shed as a domestic garage and store was sought by application P/2010/1330/F, this was refused on February 15th 2012, a subsequent application to retain it as an agricultural machinery store was refused as no need for such a use had been demonstrated, a subsequent appeal to the PAC was dismissed. An enforcement notice requiring the demolition of the shed has been served.

## 2.0 Characteristics of Area

2.1 The site is located in a rural area approximately 2 miles west of Camlough, it is located in a hollow in the landscape which the Camlough Road passes through in a series of sharp turns.

2.2 The dwelling at No. 43 was first granted Outline Permission for a replacement dwelling under P/2003/1277, with subsequent approval under P/2004/1054. The dwelling constructed did not comply with these approvals and an enforcement case was opened resulting in an application to retain the dwelling, P/2007/0585 which was approved. An application to remove the demolition condition from this approval, P/2008/1294/F was refused.

2.3 Other Development in the vicinity of the site consists of another dwelling with a shed, that is smaller than that of the current application to the east of the site A short distance to the west is the Mountain House Bar.

2.4 The application seeks Full Permission to retain the shed for use as an agricultural building.

## 3.0 Description of Proposal

3.1 Application seeks Full Permission to retain the shed for use as an agricultural building. The application is accompanied by information stating that the applicant owns a small herd of beef cattle, currently 14 animals.

## Planning Assessment of Policy and Other Material Considerations

### 4.0 Strategic Planning Policy Statement

4.1 The SPPS provides a framework for the preparation of new Local Development Plans by Councils. In relation to agricultural buildings it restates the existing planning policy.

#### 5.0 Banbridge/Newry and Mourne Area Plan 2015

5.1 The site is located with the rural area; no other provisions of the plan are relevant.

#### 6.0 Consultations

6.1 DARD advises that the holding has not been in existence for at least 6 years and no Single Farm Payment has been claimed in that time, it states that the business is classed as CAT3 or hobby farm.

6.2 Transport NI has no objections to the proposal.

#### 7.0 PPS21 Policy CTY 12 Agricultural Buildings

7.1 The site has been the subject of a number of planning applications and enforcement cases over the last decade, the planning appeal related to the use of the shed and yard as an agricultural machinery business, the applicant now claims that this use has ceased and it is used as an agricultural store. Inspections of the site by enforcement officers have obtained photographs of feeders, hay bales and tractors within the shed.

7.2 In order to be acceptable under the policy the farm holding must be active and established for at least 6 years, there have been a number of appeal judgements in which appellants have been able to demonstrate that land was in farming use as part of a different farm holding for the requisite period of time.

7.3 The information submitted by the applicant shows that the farm holding consists of two fields adjacent to the dwelling house; these appear to be largely overgrown and rocky. Other supporting evidence states that there were a total of 10 cattle as part of the herd when the application had been submitted however by December 2014 these had been sold and replaced with 14 cattle. It is also claimed that the FBID was granted over six years ago and the lands were part of a historic farm holding and that the applicant was in the process of having his farm resurveyed by DARD.

7.4 DARD's most recent response dated August 25th 2015 stated that the FBID has not been in existence for at least 6 years and no Single Farm Payment has been claimed in that time, it is also stated that the business was just a Category 3 or hobby farm. The applicant has referred to a number of previous appeal judgements where permission was granted despite the FBID not being in existence for the requisite time, however in all of these cases the appellants were able to demonstrate that the lands in question had been farmed for a length of time in excess of 6 years. The applicant has stated on the P1C form that "this is a historic farm holding," however no documentary evidence has been provided to show how long the lands were farmed for. In the previous appeal the applicant made no reference to any agricultural activities being carried out implying that the use of the lands for this purpose had ceased.

7.5 While CTY 12 refers to a farm holding rather than a farm business as in CTY 10, in the previous cases referred to by the applicant the lands had been part of active holdings whereas in this case there appears to have been a gap in farming activity of indeterminate length. This means that the holding is not established in terms of policy, there does not appear to have been

any agricultural activity performed on the lands in question during the time covered by the enforcement cases and no evidence was ever provided by the applicant.

7.6 The policy also lists a number of criterion which agricultural buildings must comply with, the proposal appears to comply with these as it is of a scale which would be appropriate for the size of the holding, it is of an appropriate character and scale for the location, is not visually prominent due to its setback from the main road, there are no issues of natural or built heritage and no amenity issues as there are no nearby neighbours.

7.7 The policy also lists additional criteria in cases where a new building is proposed, the building predates the creation of the current FBID and it is unauthorised, policy does not necessarily prevent the construction of an agricultural building to serve a newly established holding, however in the cases referred to by the applicant it was demonstrated that the holding in question had been continuously farmed for the requisite period of time.

#### 8.0 Conclusions and Recommendation

8.1 The proposal is situated on an area of ground which has been used for non-agricultural uses for several years with no evidence of farming activity having taken place. The application is the applicant's third attempt to regularise the shed which is the subject of ongoing enforcement action. The agricultural operations appear to have started relatively recently and are of such a small scale that it is categorised as a hobby farm by DARD, in addition there is no evidence that the lands that make up the current holding were ever used for agriculture during this time. The use of the term "historic farm holding" on the P1C form suggests that there was a lengthy period of time during which no agricultural operations were carried out.

8.2 Therefore the proposal fails the requirements of CTY 12 in that it is not proposed on a historic holding and refusal is recommended.

#### Neighbour Notification Checked

Yes

#### Summary of Recommendation

The proposal is to retain a building for agricultural use, however the FBID has not been in existence for the requisite period and no evidence has been provided to show that the lands have been used for agriculture for that time. The previous intention to use the building either as a domestic store or for agricultural machinery repairs suggests that no such use was occurring.

#### Conditions/Reasons for Refusal:

##### Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.

#### Case Officer Signature:

Date:

#### Appointed Officer Signature:

Date:

Newry, Mourne and Down Council  
O'Hagan House  
Monaghan Row  
Newry  
BT35 8DJ

20<sup>th</sup> September 2016

Dear Sir / Madam,

**Reference:** P/2014/0859/F  
**Applicant:** Brendan Carr  
**Proposal:** Retention of building for agricultural use.  
**Site Location:** 65 Metres South of 43 Newry Road, Drumilly, Belleek.

1. I refer to the above planning application, which is to be discussed at the Council's planning committee meeting on 28<sup>th</sup> September 2016.
2. The application was previously included on a "delegated list", with a recommendation to refuse. Additional information was submitted thereafter, and the planning officer's professional report was updated, albeit with a significant omission insofar as the consideration of the application made absolutely no reference to the applicant's fallback position nor to the existence of agricultural permitted development rights. The Council placed absolute emphasis upon its perception that these lands have not been used for agricultural purposes for the last six years and the farm is purportedly not established.

#### **Reason for Refusal**

3. The solitary reason for refusal states that:

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.

4. The Council has accepted that the holding is currently active and therefore the only issue is the applicant's failure to demonstrate that the holding has been active for more than 6 years. However, in this particular context the history of the holding need not necessarily be a determining issue.
5. Additionally, it is highly relevant that the only lawful use of this land is "agriculture". Since there has never been a change in the use of the land, it must be recognised as an agricultural holding and should automatically be recognised as being more than 6 years old.

#### **Agricultural Permitted Development Entitlements**

6. I believe that insufficient weight has been given to planning legislation in arriving at the recommendation to refuse permission, because under Part 7 of the Planning (General Development) Order (NI) 2015, the applicant is entitled to avail of the same permitted development rights as any other farmer. The relevant legislation is not conditional upon an applicant having a 6 year old farm business ID, whereas the relevant planning policy carries such an inference. In short, the applicant has a valid fallback position that could see him erect a building of identical dimensions, at this precise location, in the event of this application failing. This is similar to the "Moses" case previously cited in supporting documentation, however it is apparent that insufficient weight has been attributed to same, hence the need to review this application. Put simply, it would be nonsensical to refuse permission when an applicant could simply proceed to carry out this development in the future, without even requiring planning permission.
7. The Council's senior planning enforcement officer has previously agreed with me that a landowner may be able to avail of agricultural permitted development rights despite a farm business not being six years old (established) or active (see letter Appendix 5). This has significant ramifications for the current application because the applicant's fallback position has not been acknowledged within this application.
8. I have appended a total of four emails sent to various planning officers dealing with this case, and I must inform the Council that not one response has been received, while the issue has not even been addressed in the planning report that shows how the issue was purportedly considered in the course of determining the application. The lack of response to my emails and the failure to address the pertinent issue within the planning report makes the current refusal recommendation un-safe and un-sound.





### Scope for Deviating from Planning Policy

9. The relevant planning policy indicates that it is not possible to permit proposals for agricultural development unless an applicant's farm business is active and established. However, the policy cannot be interpreted as if it were an immutable rule with a single meaning. Of course, planning authorities can disapply planning policies where circumstances allow, provided the reasons for so doing are made clear. In relation to proposals involving agricultural development, it is important to recognise that the existing policy does not make provision for an individual starting a new farm business. However, planning authorities can look at this on a case by case basis. Indeed, the supporting statement that accompanied this application highlighted no less than four similar planning approvals and planning appeal decisions that would support the approval of this application. It would appear that insufficient weight has been attached to this information.

### "Other Evidence of Active Farming"

10. This application is being determined on the basis that the applicant's farm business ID number is not 6 years old, and insufficient evidence has been provided to demonstrate active farming throughout that period (as a means of showing the longevity of the business). However, agricultural operations include "maintaining land in good agricultural and environmental condition". This applicant has undertaken a programme of agricultural improvements for a period in excess of 6 years, and these operations (verified by means of accompanying aerial photographs) are sufficient to verify the longevity of the applicant's farm holding. Attached google imagery shows the field marked A. on aerial photography dated 22/05/10 is in poor agricultural condition having been recently harvested for silage. The next available image taken 23/06/15 shows grass growing on the same field following silage cutting in the spring. This is undertaken annually and the land is ploughed and reseeded every 3 – 4 years. Mr Carr has provided evidence to prove this activity in the form of invoices from his agricultural contractor. (please see attached).
11. The applicant's personal and domestic circumstances have taken a serious downturn, due in part to the stress associated with an enforcement notice directing him to remove this unauthorised shed. I would be grateful, in these circumstances, for a brief adjournment, to see if the applicant can obtain further documentary evidence to verify



**RTPI**  
Chartered Town Planners



his farming operations including maintaining the land in good agricultural and environmental condition.

12. In previous submissions, information was provided to show how current planning policy was not designed to facilitate those just starting out farming. Because the policy was not designed to cater for these scenarios it should not automatically be assumed that such an eventuality is automatically presumed against. It is perfectly legitimate to attach as much or as little weight to planning policy as one sees fit, and the fact that the policy does not neatly address this scenario would appear to be a reason for departing from the policy in this case. Some of the precedents cited in support of the proposal would appear to stand precisely on all fours with the proposal. However, the planning report indicates that in all those cases there was evidence to show that at least the lands had been farmed by a third party in the past. In this case, an affidavit can be submitted to substantiate this fact, and the only reason that DARD has not mapped the land is that Single Farm Payments have never been claimed for its farming in the past.

#### **Environment Minister's position on this matter**

13. The Environment Minister drafted a letter to an MLA on 14<sup>th</sup> August 2013 (see appendix 4), reiterating a legal principle that, where appropriate, planning policy can be outweighed by other material considerations such as the need to accommodate livestock/animal welfare, farming equipment or farm produce. He urged flexibility in the application of policy to support the operational needs of a farm enterprise and expressed concern that if policy forced farmers to sell livestock due to there being no suitable buildings on the holding, it would be contrary to the objectives of PPS 21. In allowing the appeal referred to above (2013/A0066) the PAC stated "As the Minister does not differentiate between planning applications for buildings that are submitted prior to their erection or those that seek retrospective consent for their retention, his advice applies to the current proposal. His advice should likewise apply to this proposal". That being the case, there is no reason why the advice should not be applied to this case.
14. On the basis of the above information, the Council is respectfully requested to reconsider this proposal and refer it to the Council's Planning Committee for discussion.
15. I trust that this information satisfactorily outlines the background to the case and sets out the merits of the proposal in sufficient detail. However, in the event that you





require additional information or further clarification, please do not hesitate to contact the undersigned.

Yours faithfully,

.....  
**Colin O'Callaghan**  
Chartered Town Planner  
Bsc Hons Dip TP MRTPI



## APPENDIX 1

### PRECEDENTS

The planning report indicates that there is no precedent value arising from a number of other planning approvals granted in similar circumstances (the planning officer feels the cases are not comparable because all of those cases involved other parties previously farming the land, thereby adding to the longevity of the holdings in question). However, the reality is that the actual determining principles that were applied to those cases ought to be pertinent to this case also.

**K/2012/0509/F** – The DOE granted permission for the retention of farm buildings despite the Business not being the requisite 6 years old. The "group recommendation" was formulated on the basis that the "Department accepts that for new farm businesses it is necessary to develop holding facilities for DARD compliance".

(APPLICANT IS ESTABLISHING FARM & DOES NOT HAVE NECESSARY 6 YRS REQUIRED BY CTT 12. HOWEVER DEPT ACCEPTS THAT FOR NEW FARM BUSINESSES IT IS NECESSARY TO DEVELOP HOLDING FACILITIES (SPEEDS ETC FOR DARD COMPLIANCE OR BALANCE THEREFORE DOE ACCEPTS THESE ARE NECESSARY FOR EFFICIENT USE OF HOLDINGS.



**RTPI**  
Chartered Town Planners



**PAC 2013/A0066** – The PAC granted permission for the retention of sheds on the basis that it appeared to stand on all fours with the Department's approval referred to above

However, there is no other persuasive evidence to show that the appellant's lands at Carragh Road were part of a farm holding prior to 31 December 2009.

9. The appellant cited a raft of planning and other government policy that encourages the facilitation of development necessary to achieve the objectives of not only PPS 21 but also other economic and agricultural strategy. The Ministerial Statement on the review of PPS 21, published on 16 July 2013 advocated more opportunity and flexibility in the application of PPS 21. However, the Minister did not propose any relaxation of the policy requirement that the agricultural holding be established for at least 6 years. The aforementioned Minister's letter of 14 August 2013 reiterates the established legal principle that, where appropriate, planning policy can be outweighed by other material considerations such as the need to accommodate livestock/animal welfare, farming equipment or farm produce. He urged flexibility in the application of policy to support the operational needs of a farm enterprise and expressed concern that if policy forced farmers to sell livestock due to there being no suitable buildings on the holding, it would be contrary to the objectives of PPS 21. As the Minister does not differentiate between planning applications for buildings that are submitted prior to their erection or those that seek retrospective consent for their retention, his advice applies to the current proposal.
  
12. Reference was made to the grant of planning permission for retention of replacement farm buildings near Clogher (K/2012/0509/F) where the applicant's holding had been active and established for just over three years. In considering whether the cases are distinguishable, the following combination of factors is persuasive:

- The Case Officer accepted that the appellant was *“essentially starting a farm business which would be impossible to do without some form of farm buildings. I do not believe that the spirit or intent of this policy is to restrict new or young farmers who are setting up agricultural businesses from building agricultural sheds for a period of 6 years. The proposal will be necessary for the efficient use of the farm, as the applicant has no other farm buildings”*. Whilst he recommended that the proposal be refused, the Development Control Group concluded that, despite the proposal not meeting the terms of Policy CTY 12 as regards the farm business being established for at least 6 years, the Department accepts that for new farm buildings it is necessary to develop holding facilities for DARD compliance. Therefore, on balance, it acceded that the buildings were necessary for the efficient use of the holding; and
13. The Department did not say that it had misapplied policy in the Clogher case, made a bad decision or that one poor decision does not justify the setting aside of policy requirements. In this particular evidential context where are no distinguishing factors between the two cases, the Department's inconsistency in the interpretation and application of policy is unfair to the appellant. On this basis it has not sustained its reason for refusal.



**RTPI**  
Chartered Town Planner



## APPENDIX 2

Google earth images of holding dated 2010 and 2015

### APPENDIX 3

SELECTION OF UNANSWERED EMAILED COMMUNICATION TO THE COUNCIL



## APPENDIX 4

MLA letter from Minister dated August 2013



**RTPI**  
Chartered Town Planner



## APPENDIX 5

Letter from senior planner to Mr Carr.

## APPENDIX 6

Farm Survey Map – Not verified, because applicant does not claim Single Farm Payment

CARR FARM SURVEY NUMBER 2/048/065 FIELDS 2 AND 3

FIELD NO	TOTAL AREA	LAND TYPE	INEL FEATS	MAX EL AREA	CHANGE TYPE	FLD STATUS	HEATHER IND	TOWNLAND
2/048/065/2	0.349	SDA	-		0 DELETED	VERIFIED	-	DRUMILLY
2/048/065/3	0.238	SDA	-		0 DELETED	VERIFIED	-	DRUMILLY



Date Taken: 22/5/10.



Google Earth



Date Taken: 28/6/15.



feet 2000  
meters 700

Google Earth

**Colin O'Callaghan**

**From:** Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>  
**Sent:** 25 July 2016 18:23  
**To:** gareth.murtagh@nmandd.org  
**Cc:** pat.rooney@nmandd.org  
**Subject:** P/2014/0859/F Farm Shed at Newry Road, Belleeks

Hi Gareth,

I am just enquiring if you have had an opportunity to discuss this case with Mr David Watson yet, as per your previous communication.

I noted from the planning report that there was still no consideration therein of the issue of fallback and the applicant's permitted development entitlements.

Additionally, David Watson appeared to believe that your case was that the proposal would not be PD because it had not been demonstrated that the development was "reasonably necessary for the purposes of agriculture". David was not sure on this point, and to be fair to him he was only trying to recollect an earlier conversation. I would be grateful for an opportunity to discuss these issues with you because it would appear that the application will be progressed to a Committee meeting, needlessly in my opinion as I believe that if you would outline your concerns to me then at least I could address them, rather than having to rely upon second hand information from David Watson.

I look forward to hearing from you,

Regards,

**Colin O'Callaghan**  
**Chartered Town Planner**  
**BSc Hons Dip TP MRTPI**

O'Callaghan Planning  
Unit 1  
10 Monaghan Court  
Monaghan Street  
Newry  
BT35 6BH

T. 028 30835700  
m. 07734806045

[www.ocallaghanplanning.co.uk](http://www.ocallaghanplanning.co.uk)

[www.facebook.com/Ocallaghanplanning](https://www.facebook.com/Ocallaghanplanning)



**Colin**

**From:** Colin <Colin@ocallaghanplanning.co.uk>  
**Sent:** Monday, July 4, 2016 6:17 PM  
**To:** 'gareth.murtagh@nmandd.org'  
**Subject:** P/2014/0859/F 43 Newry Road Belleeks

Hi Gareth,

I think it is yourself that's dealing with this application.

I was speaking to David Watson recently and the subject of permitted development rights came up. David was of the view that, in principle, this landowner would have agricultural permitted development rights. However, in the course of a recent conversation he indicated that development management were not satisfied the building is reasonably necessary for the purposes of agriculture. I was unaware of this concern, and was surprised that it had arisen. Would it be possible to get a quick chat with yourself to ascertain the basis for the Council's continued opposition to this proposal?

I am assuming that the application is to be recommended for refusal again, indeed this may already have occurred.

I noted that an addendum to the case officer report has been posted on the planning portal, however I saw no reference to the issue of permitted development rights. I think this, and the issue of fallback, is highly relevant, hence I would be grateful for an opportunity to discuss the application with you...

Regards,

**Colin O'Callaghan**  
Chartered Town Planner  
Bsc Hons Dip TP MRTPI

O'Callaghan Planning  
Unit 1, 10 Monaghan Court  
Monaghan Street  
Newry  
BT35 6AG

Tel. 028 3083 5700  
Mob. 07734806045

[www.ocallaghanplanning.co.uk](http://www.ocallaghanplanning.co.uk)

<https://www.facebook.com/OCallaghanPlanning>



This email (and all attachments) is for the sole use of the intended recipient(s) and may contain privileged and/or proprietary information. Any unauthorised review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender by reply e-mail and destroy all copies of the original message.



**Colin O'Callaghan**

**From:** Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>  
**Sent:** 09 May 2016 17:49  
**To:** gareth.murtagh@nmandd.org  
**Cc:** pat.rooney@nmandd.org; david.watson@nmandd.org  
**Subject:** P'/2014/0859/F Farm shed at Newry Road, Belleeks

Hi Gareth,

You will note the above planning application appeared on today's delegated list. It has been recommended for refusal, because the farm holding has not been established for 6 years.

I had previously raised the issue of a fallback position for the applicant, whereby, if he was forced to remove this shed, agricultural permitted developments would allow him to erect a new building of the same dimensions, at the same location. I felt this should have been given weight as a material consideration in the determination of this planning application however I have not saw any reference to this in the planning report. Perhaps you could revert to me with your thoughts on this matter?

I had discussed this issue, in general, with your Mr David Watson, in the course of a conversation that was not specific to this proposal.

The important thing was that Mr Watson recognised that agricultural PD rights can be exercised where a business is not 6 years old. In that respect, this proposal could have been assessed in the same manner as planning appeal 2002/E005, wherein it was determined that

Even if the enforcement notice were upheld and the slurry tank were removed, the appellant would have the right to re-erect it immediately in the same place. Accordingly, the Commission finds that confirming the notice would serve no useful purpose. It concludes that the appeal on Ground (a) should succeed and that planning permission should be granted.

In light of that determination, which was previously brought to the Council's attention, can you please confirm whether or not you would be available to meet with me to discuss this case before the application proceeds to a formal Committee meeting?

Regards,

**Colin O'Callaghan**  
**Chartered Town Planner**  
**BSc Hons Dip TP MRTPI**

O'Callaghan Planning  
Unit 1  
10 Monaghan Court  
Monaghan Street  
Newry  
BT35 6BH

T. 028 30835700  
m. 07734806045

[www.ocallaghanplanning.co.uk](http://www.ocallaghanplanning.co.uk)

[www.facebook.com/Ocallaghanplanning](https://www.facebook.com/Ocallaghanplanning)

**Colin O'Callaghan**

**From:** Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>  
**Sent:** 04 April 2016 10:53  
**To:** 'david.watson@nmandd.org'  
**Subject:** RE: P/2008/0171CA 43 Newry Road Belleeks

Hi David,

When considering legal action will you please note the applicant's personal circumstances – the anxiety and stress associated with the unauthorised business led to the collapse of the applicant's marriage and the break up of the family.

- Also, can you give me an indication as to whether or not you would accept my argument regarding fallback in this case (I don't know if the matter was ever brought to the Department/ Council's attention beforehand, and in any case since the applicant did not have a farm map, the Department/Council would not have known that the small building in the adjacent field belonged to the applicant and thus it would not have known that this, combined with the house, could have facilitated the engagement of permitted development rights...

Finally, could I ask if it would be appropriate to refrain from legal application pending the determination of the current planning application and any possible planning appeal?

I would be happy to take a run up and discuss with you for ten minutes if you had the time.

Thanks for coming back so quickly also.

Regards,

Colin

**From:** david.watson@nmandd.org [mailto:david.watson@nmandd.org]  
**Sent:** 04 April 2016 10:01  
**To:** Colin  
**Subject:** Re: P/2008/0171CA 43 Newry Road Belleeks

Colin,

We have an enforcement case on this one. An Enforcement Notice was served some time ago, we are considering legal action.

David

**From:** "Colin" <Colin@ocallaghanplanning.co.uk>  
**To:** <david.watson@nmandd.org>,  
**Date:** 03/04/2016 14:05  
**Subject:** P/2008/0171CA 43 Newry Road Belleeks

Hi David,

I hope you have had a nice easter break. Unfortunately for me I have had to start back early!

From the office of the  
Minister of the Environment



Department of the  
**Environment**

www.doeni.gov.uk

158

Mervyn Storey MLA  
mervynstoreymla@gmail.com

DoE Private Office  
8<sup>th</sup> Floor  
Goodwood House  
44 - 58 May Street  
Town Parks  
BELFAST  
BT1 4NN

Telephone: 028 902 56019

Email: private.office@doeni.gov.uk

Your reference:

Our reference: COR/681/2013

14 August 2013

Dear Mervyn

Thank you for your e-mail dated 10 July to Minister Attwood regarding concerns raised by local farmers in relation to my Department's interpretation of Policy CTY 12 'Agricultural Buildings' of PPS 21. In relation to the comments you enclose with your email I would make the following points.

CTY12 states that planning permission will be granted for a development on an active and established agricultural or forestry holding where it is demonstrated that it is necessary for the efficient use of the agricultural holding or forestry enterprise. Paragraph 5.56 of the Justification and Amplification to CTY12 states that for the purposes of the policy the determining criteria for an active and established business will be that set out under Policy CTY10. Policy CTY10 requires that the farm business is currently active and has been established 6 years. It is therefore clear that the determining criteria for an active and established farm business for the purposes of CTY12 should be the same as that set out in policy CTY10, including the 6 year criteria.

The Department, in dealing with applications for planning permission, shall have regard to the development plan, so far as material to the application, and to any other material considerations. These considerations include the provisions of planning policy statements and any other considerations relating to the use and development of land. The weighing up of all these factors and the weight to be afforded to each is matter for the decision-maker who must have regard to the individual circumstances of the case. **It is established in law that planning policy may be set aside where other material considerations indicate that this is appropriate. Provided the reasons for setting aside the policy are properly documented and the decision is not perverse then the Department is entitled to act in this way.**

**My Department has previously indicated that the needs of accommodating livestock, farming equipment or farm produce are important material considerations that should be taken into account when determining whether permission should be granted. The correspondence attached to your E-mail already identifies instances where the**

Department has taken such factors on board and exercised flexibility in order to assist young farmers entering the industry.

The operation of policy CTY12 was addressed through training undertaken as part of the ongoing operational review into PPS21. This training emphasised the need for appropriate flexibility in how the policy is applied in order to support the operational needs of a farm enterprise. It advised that considerations of animal welfare should be taken into account in determining whether planning permission should be granted and specifically highlighted the example of a young farmer taking on a holding with no buildings. I am concerned by the statement that policy CTY12 is now being applied more stringently by my Department. I would be grateful if you could please revert to the authors of the attachment to provide examples that I may investigate further.

I am concerned by the statement that the current policy is forcing some farmers to sell livestock due to their being no suitable buildings available within the farm holding. It would be wrong if the policy was being applied in such a way as in my view that would be contrary to the objectives of PPS21 which include facilitating development necessary to achieve a sustainable rural economy. I would therefore be grateful if you could please advise me of these examples so that I may investigate this matter further.

In relation to your concerns regarding the application of criterion (a), I would advise that the test in the policy is that the development must be necessary for the efficient use of the agricultural holding. It is not a test of absolute need but is instead aimed at facilitating that development which is necessary for the efficient operation of the farm business. As identified in the enclosure with your E-mail this must be assessed on a case by case basis, taking into account the individual requirements of the farm business.

I do not accept that the policy fails to consider the practical requirements of a farm in relation to the siting of new sheds. While the policy seeks to direct new development to locate beside existing farm buildings it also allows for an alternate site away from the existing farm building provided there are no other sites available at another group of buildings on the holding, and where the new building is essential for the efficient functioning of the business or there are demonstrable health and safety reasons for locating away from existing buildings.

I am strongly supportive of the agricultural sector and my Department has been active in eliminating unnecessary red tape to support agriculture in these challenging economic times. Recently announced changes to the agricultural 'permitted development' rights increase the range of agricultural development that no longer needs planning permission. The changes mean farmers will be able to construct buildings up to 500 square metres without the need for a planning application (the equivalent of over 5,000 square feet) subject to certain criteria.

I hope this letter clarifies the position of the Department with respect to the operation of CTY12. I would be grateful if you could please request the authors of the document to provide further details in relation to the points raised above so that I may investigate this matter further and take appropriate action.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mark Durkan". The signature is fluid and cursive, with a prominent initial "M".

**MARK H DURKAN MLA**  
**Minister of the Environment**

BT35 7JP

Manborough Rd  
Central Way  
Tamnafiglassan  
Craigavon  
BT64 1AD

161

Please contact:  
Direct Line:Planning Enforcement  
02838320185

Dear Mr Brendan Carr

**Nature: Operational Development Enforcement Notice EN/2009/0286 and  
Material Change of Use Enforcement Notice EN/2009/0694**

**Location: Rear of 43 Newry Road, Drumilly, Belleek, Newry, BT35 7JP**

Thank you for letter dated 16<sup>th</sup> July 2014 about the above and I apologise for the delay in responding to your query.

In response to the first point of your letter I would advise that permitted development rights for farmers are set out in Part 6 of the Planning (General Development) Order (Northern Ireland) 1993 (as amended) (GDO). All farmers are entitled to avail of the permitted development rights set out in Part 6 of this Order.

In response to the second point of your letter I would advise that this shed is not considered to be agricultural permitted development. This has already been conveyed to you in a letter from us dated 27<sup>th</sup> November 2013. The building would not comply with criteria (d) of part 6 of the GDO as the existing dwelling and the small agricultural shed you refer to are not considered to be a group of principal farm buildings given their physical separation. In any case, following on from a site inspection, the agricultural shed you refer to appears not to be used for agricultural purposes, is abandoned and in state of disrepair.

It is not considered there is a fallback position in this case. This shed was not originally constructed for the purposes of agriculture and if it were to be used for the purposes of agriculture it is not considered permitted development.

I have already advised you in a letter dated 11 July 2014 that the notices are now effective on the site and I have explained why the Department has not pursued prosecution for non-compliance with the notices. Once again I would reiterate there are no time limits for the Department to initiate court proceedings whilst the breach of planning control continues. I advise it is an offence to not comply with an enforcement notice that has taken effect.

If these notices are not complied with in the next 28 days the Department will have

<b>ITEM NO</b>	49			
<b>APPLIC NO</b>	P/2015/0095/F	Full	<b>DATE VALID</b>	2/4/15
<b>COUNCIL OPINION</b>	REFUSAL			
<b>APPLICANT</b>	Mrs Geraldine Fearon C/o Agent	<b>AGENT</b>	ERES Limited Mourne House 41-43 Downshire Road Newry BT34 1EE NA	
<b>LOCATION</b>	140m North-East of No. 61 Foughilletra Road Foughill Etra Jonesborough Armagh BT35 8JE			
<b>PROPOSAL</b>	Erection of farm dwelling and garage			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	0	0	0	0
	<b>Addresses Signatures</b>		<b>Addresses Signatures</b>	

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15
- 2 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.
- 3 The proposal is contrary to the Strategic Planning Policy Statement and Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm.
- 4 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.
- 5 The proposal is contrary to the Strategic Planning Policy Statement and policy NH6 of Planning Policy Statement 2 Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference: P/2015/0095/F**

**Date Received: 04.02.2015**

**Proposal: Full permission for the erection of a farm dwelling and garage**

**Location:** 140m North-East of No. 61 Foughilletra Road, Jonesborough, Armagh, BT35 8JE. South East of Council area approximately 1.7KM from Meigh.

**Site Characteristics & Area Characteristics:**

The site as defined in red on the site location plan takes in a large existing private laneway with the site then spanning over 2 agricultural fields at the top of the laneway. The fields, irregular in shape, contain rough grass, whin hedging and dry stone walls to the boundaries. The site sits at quite an elevated level and is surrounded by agricultural land and a number of domestic/agricultural properties adjacent to and immediately south of the site. The area is rural in character and the surrounding land form can be described as undulating. The site is located within the Ring of Gullion AONB.

**Site History:**

N/A

**Planning Policies & Material Considerations:**

Banbridge Newry and Mourne Area Plan 2015  
Strategic Planning Policy Statement for Northern Ireland  
Planning Policy Statement 21  
Planning Policy Statement 3 / DCAN 15  
Planning Policy Statement 2

**Consultations:**

Rivers Agency – no objections, developer is advised to appoint a competent professional to carry out their own assessment of flood risk due to a small part of the development located on the Surface Water Flood Map.

Environmental Health – no objections although advises dwelling should be moved at least 75m from farm dwellings.

Transport NI – no objections if the information on the Traffic Statement is correct.

NI Water – Generic



DARDNI – DARD number has been in existence for at least 6 years and SFP has been claimed in this period.

### **Objections & Representations**

6 Neighbours Notified and application advertised on 18.02.2015. No objections or representations received.

### **Consideration and Assessment:**

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015

The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for farm dwellings following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015. The site lies within the Rural Area/AONB as designated in the Banbridge Newry and Mourne Area Plan 2015. Whilst permission in this area is restrictive the Plan does not make any specific objections and points towards the retained Planning Policy Statements for decision making in rural areas.

### **PPS3 – Access, Movement & Parking & DCAN15 – Vehicular Access**

Transport NI originally recommended this application for refusal as it was proposed to intensify the use of the lane and site splays of 2.4m x 70m could not be provided. Subsequently Transport NI responded with no objections with regard to this policy, subject to the Traffic Statement being an accurate and true reflection of the traffic pattern at this location. The Traffic Statement firstly relates to 4 dwellings using the lane, which according to the statement accounts for 40 movements a day. However on receipt of the agent's map showing each property identified for the purposes of the Traffic Statement the actual amount of dwellings occupied on the lane equates to 3. This therefore, according to the Traffic Statement, would then amount to a total of 30 movements for dwellings on the laneway. The Traffic Statement states there are two businesses with a combined total of 12 employees and the cumulative total of movements for the businesses combined which includes customers is 132 per day. This information has not been verified. Finally the Traffic Statement accounts for the movements of landowners around the laneway to 40 movements a day. The total movements per day on this lane are 202 and an additional dwelling at 10 movements would cause an increase at 4.95% which is under the 5% threshold.

However given the large volumes of traffic for the lane documented within the Traffic Statement I undertook a traffic survey at lunchtime, which according to the Traffic Statement should be one of the busiest times on the lane as 12 employees leave the premises for lunch and return again after. During this period there were 2 movements noted. Transport NI also conducted a traffic survey on 2 different occasions for half an hour each and noted a combined total of 4 movements. When you consider the Traffic Statement to depict a busy rural laneway with 202 movements a day the figures attained from all the surveys certainly point to a much lower volume of traffic on average. Therefore it is my assessment that the actual traffic movements on this laneway are much lower than 202 which would mean

another dwelling would bring this beyond the 5% increase threshold and as a consequence result in intensification of an existing access.

I revert to Transport NI's original consultation response and contend the proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15

The proposal is also contrary Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.

#### PPS21 – Sustainable Development in the Countryside

Policy CTY1 restricts new development in the countryside, but makes an exception for farm dwellings which are acceptable if in accordance with policy CTY10. DARD NI has confirmed the Business ID submitted with the application has been in existence for more than 6 years and has claimed subsidies during this period. This satisfies the requirements of CTY 10 (a).

Having completed a history search on all the land identified on the farm maps I am satisfied no development opportunities have been sold off from the holding since 25<sup>th</sup> November 2008. The proposal is in compliance with (b) of CTY10

Part (c) of CTY 10 requires the new building to be visually linked or sited to cluster with an established group of buildings on the farm. The proposal has not been sited to cluster with or visually linked to existing buildings on the farm and as such fails this policy criterion.

In terms of policy CTY13 the design of the dwelling is a traditional 1.5 storey dwelling with a 7.5m ridge height. The sunroom and porch are both finished in natural stone with the remainder of the walls finished in smooth render. The chimneys have been located internally and on the ridge and the windows have the correct vertical emphasis. In general the design is in keeping with what would be traditionally found in the area. The siting of the dwelling is some 45m set back from the private lane and considering the natural vegetation is unlikely to cause a significantly greater visual impact. However the proposal fails criterion (g) as it is not visually linked or sited to cluster with an existing group of buildings on the farm and consequently fails policy CTY13. With regard to policy CTY14 it is not considered that the proposal would result in build up when the separation distance is considered and ribbon development is not an issue for this site. Environmental Health were consulted in relation to the sewage arrangements and have responded with no objections. Any approval notice would contain a negative condition for the applicant to provide the Council with the consent to discharge before work commences. The proposal is in general compliance with CTY16. Environmental Health has recommended the dwelling be moved at least 75m from the nearby farm due to the potential to cause public health nuisances from odour, noise and pests. This would be dealt with by way of informative to any potential decision notice.

## Planning Policy Statement 2

Policy NH6 is applicable as the proposal is within the Ring of Gullion AONB. As the proposal fails to fully meet the policy requirements of acceptable development in the countryside under policy CTY1 of PPS21 the siting of the proposal is unsympathetic to the special character of the AONB in general and to the particular locality. There is no specific conservation or heritage features in the immediate area and the proposal respects local architectural styles, design, materials, boundary features and colour. The proposal fails this policy criteria.

### **Recommendation:**

Refusal

### **Refusal Reasons**

1. The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15

2. The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.

3. The proposal is contrary to the Strategic Planning Policy Statement and policy NH6 of Planning Policy Statement 2 Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

4. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.

5. The proposal is contrary to the Strategic Planning Policy Statement and Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm.

**Case Officer:**

**Authorised Officer:**

<b>ITEM NO</b>	<b>50</b>				
<b>APPLIC NO</b>	P/2015/0136/F	Full	<b>DATE VALID</b>	1/30/15	
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>				
<b>APPLICANT</b>	Mr L Magennis	<b>AGENT</b>	O'Callaghan Planning Unit 1 Monaghan Court, Newry BT35 6BH 02837511714		
<b>LOCATION</b>	43 Forkhill Road Ellisholding Newry.				
<b>PROPOSAL</b>	Use of existing first floor offices for Class A (2) Use (Financial and Professional Services)				
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>	
	0	0		0	0
			<b>Addresses</b>	<b>Signatures</b>	<b>Addresses</b>
			<b>Signatures</b>		
			0	0	0 0

1. 1. The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.
2. 2. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:**

P/2015/0136/F

**Date Received:**

19.02.2015

**Proposal:**

Use of existing first floor offices for Class A (2) Use (Financial and Professional Services).

**Location:**

The site is located at 43 Forkhill Road, approx. 2 miles SW of Newry City Centre.

**Site Characteristics & Area Characteristics:**

The site is a commercial yard located North of Newtowncloghogue. At the Northern section of the yard is a large building which houses a window business and an exhaust business. A car sales business is located to the south. The site is located in a rural area which has become under significant development pressure for commercial activity within the site itself and in the immediate vicinity.



Image 1 – Application Site

**Site History:**

- P/2013/0064/F - Retention of change of use of part of vehicle workshop to business for manufacture and supply of windows and doors. 43 Forkhill Road, Newry. Permission granted on 22.08.2013.
- P/2013/0140/F-Retention of and change of use of land for car sales. 43a Forkhill Road, Newry. Under consideration.
- LA07/2015/0579/F-Proposed retention of existing buildings for the retail selling of household fuel and vehicle fuel and fuel pump. Permission refused on 05.05.2016.

Refusal reasons:

1. The proposal is contrary to Paragraph 6.279 of the Strategic Planning Policy Statement in that the proposal seeks to carry out the retail sale of fuels in a countryside location and it is not one of the types of retailing considered appropriate in a rural area.
  2. The proposal is contrary to the Policy PED 3 of the Department of the Environment's Planning Policy Statement 4, Planning and Economic Development, in that the development does not involve the utilisation of existing, authorised buildings on the site.
- P/2012/0175/CA-Change of use to car wash, vehicle fuel sales and ancillary shed. 43 Forkhill Road, Newry. Court action being pursued.
  - P/2009/0013/CA - Use of part of commercial yard for car sales and installation of ancillary workshop and office buildings.43a Forkhill Road, Newry. Court action being pursued.

**Planning Policies& Material Considerations:**

This planning application has been assessed under the Banbridge, Newry and Mourne Area Plan 2015, the Strategic Planning Policy Statement (SPPS) for Northern Ireland and Planning Policy Statement 21, Sustainable Development in the Countryside.

**Consultations:**

The consultation responses are outlined below:

- Transport NI – 27.05.2016 content subject to conditions.
- Newry Mourne and Down District Council Environmental Health Department – No objections. (5 August 2016).

**Objections & Representations**

Three neighbour notifications were issued on 04 August 2015 and the application was advertised in the local press on 04 March 2015. No representations were received.

**Consideration and Assessment:**

### **Banbridge Newry and Mourne Area Plan 2015**

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside the settlement limits of Newry City and Newtowncloghogue as illustrated on map 3/01. There are no specific policies in the Plan relevant to the determination of the application which directs the decision maker to the operational policies of the SPPS.

### **Strategic Planning Policy Statement (SPPS) for Northern Ireland.**

In this instance the proposal is change of use to Class A2 offices. Class A2 offices is defined in the Planning (Use Classes) Order (Northern Ireland) 2015 - "*Class A2 - Financial, professional and other services use for the provision of services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public including— (a) financial services; or (b) professional services.*" The definition specifically refers to Class A2 as providing services to visiting members of the public in shopping areas. A shopping area is not defined in the legislation although as a rule of thumb I would consider town centres to fit the definition of shopping areas. Therefore the relevant section of the SPPS which is applicable to this application is Town Centres and Retailing. Paragraph 6.273 states planning authorities must adopt a town centre first approach for retail and main town centre uses. In this instance the proposal falls within the category of main town centre uses. The application site as outlined above is outwith the settlement limit of the nearby village of Newtowncloghogue and Newry City and thus contrary to the thrust of this policy. There is no policy support in the SPPS for the proposed development in a countryside location, therefore refusal is recommended.

### **Recommendation:**

Refusal

### **Refusal Reasons:**

1. The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.
2. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.

<p><b>Case Officer Signature:</b></p>
<p><b>Date:</b>13th September 2016</p>
<p><b>Authorised Officer Signature:</b></p>
<p><b>Date:</b></p>

Newry, Mourne and Down Council  
O'Hagan House  
Monaghan Row  
Newry  
BT35 8DJ

21<sup>st</sup> September 2016

Dear Sir / Madam,

**Your Ref:** P/2015/0136/F  
**Location:** 43 Forkhill Road, Ellisholding, Newry  
**Proposal:** Use of existing first floor offices for class A(2) use (Financial and Professional services)

1. The above planning application has been recommended for refusal and it is to be presented to the Council's planning committee on 28<sup>th</sup> September 2016. The reasons for refusal are set out as follows:

The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.

The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.

2. I believe that a number of important considerations have been overlooked or given insufficient weight in the assessment of the proposal, hence this request for re-consideration. I would also point out that the Council's failure to display the professional planning report on the planning portal has also impacted adversely upon my ability to address the actual refusal recommendation in full.



**RTPI**  
Chartered Town Planners





### **Delays experienced in processing the application**

3. At the outset, I must emphasise the considerable delay that has affected this application. The application involved a minor change of use of a small part of an existing building. There had been a previous enforcement case undertaken in respect of this use, and the landowner ultimately complied with the planning authority's enforcement team. However, the speed and vigour with which the enforcement case progressed have not been replicated in the handling of the present application.
4. This application was preceded by an earlier, unsuccessful, application. However, it was considered that the planning policy context had changed considerably since the date of the previous case, hence the submission of this application.
5. Around eight months after this application was submitted, the Strategic Planning Policy Statement was published.
6. It is clear that the Council considers the SPPS should be applied to each individual planning application throughout the open countryside. This issue will be addressed in due course. However, it is respectfully contended that the Council should exercise flexibility in the handling of this case, and recognise that had the application been processed in a timely manner the SPPS would not have been a material consideration. The Council is empowered to take such a course of action, as a matter of practice.

### **Initial Rationale behind Submission of Application**

7. After the last application was refused on this site, it became apparent that the local planning authority had exercised the provisions of Policy CTY 4 of PPS 21 in granting permission for the change of use from a commercial unit to a day nursery at Unit 7/8 Cloghogue Business Park, Forkhill Road, Newry (P/2013/0578/F, approved on 16<sup>th</sup> January 2014).
8. Like this site, the approved development referred to is located in the open countryside, within an established business park. The professional planning report P/2013/0578/F outlines the Department's rationale for the approval. It is notable that the Department did not feel the need to assess the original building's suitability. In the event that suitability would be a consideration under this proposal, this submission has outlined how there is no defined typology of building that is suitable for conversion (which



explains why the Department did not deem it necessary to carry out such an appraisal within the above mentioned approval).

9. In the above case appropriateness was a consideration, however the Department found that the proposed use was appropriate since it involved a community facility that would serve the local rural population. Notwithstanding that this proposal may not necessarily be considered equitable on that basis, appropriateness falls to be determined on a case by case basis. The DC group recommendation noted that "this application proposes a change of use from a commercial unit to a day nursery within an existing business park. This is considered acceptable in this location".
10. The precedent value of the above application is significant. In planning terms, while precedent is frequently cited as a reason to oppose a proposal (in cases where repeat decisions would undermine a particular asset, feature, policy or strategy), conversely, the granting of a planning approval can frequently generate a legitimate public expectation that where such circumstances prevail then planning permission may subsequently be granted for the same reasons. Refusal to grant permission for a proposal under circumstances similar to those which allowed another approval to be granted is generally considered administratively unfair, and in this case it is contended that the approval granted in Cloghoge Business Park lends substantial weight to my assertion that Policy CTY 4 contains the appropriate justification for this proposal. On that basis, the application could have been approved long before the SPPS was first published, and the Council's delay in processing the application has unfairly prejudiced this applicant.

#### **Weight to be attributed to a planning policy**

11. There appears to be a common perception in this Council that where the SPPS does not explicitly mention a specific type of development, then there is in fact no provision for that type of development. However, planning policy does not need to be adhered to slavishly, particularly where planning authorities' wider goals are not compromised. In this respect, the *Lamont* judicial review is particularly relevant. Therein, it was stated that:

"Of course, the Planning Service need not 'slavishly' follow the policy. The policy is one of many under the Planning Policy Statement 21 which focuses on sustainable development in the countryside. Within PPS21 a number of like



**RTPI**  
Chartered Town Planners



situations are grouped together, for example, proposals for dwellings on farms. The policy indicates the preferred approach to these like cases in order to achieve the broader social and environmental goals relating to development in the countryside. However, the policy itself, and much case law on this and similar issues, acknowledges that no policy can take into account the myriad considerations that may arise in individual fact scenarios that arise in the broad policy area. No planning policy can anticipate the personal, environmental, logistical etc. circumstances of all the individual planning applications made under the policy that need to be considered. However, what is contained in the policy, which cannot be ignored is the thrust of the desired result of the policy”.

“In short compass, the policy should be adhered to where possible. It can and should be disapplied in circumstances where there is good reason to do so for example if strict adherence to the policy would damage some other important interest unacceptably and a balance needs to be struck. It is entirely lawful for the department to choose to disapply or modify a policy. The key test for when a department can be said to have lawfully disapplied a policy is found in *EC Gransden + Co. Ltd and Falkbridge Ltd. v Secretary of State for the Environment*:

... It seems to me, first of all, that any policy, if it is to be a policy which is a proper policy for planning purposes, must envisage that in exceptional circumstances the minister has the right to depart from that policy. If the situation was otherwise it would not be a statement of policy but something seeking to go beyond that and, bearing in mind the terms of section 29 of the Town and country Planning Act of 1971, it would be an improper attempt to curtail the discretion which is provided by the Act, which indicates that in determining planning applications regard is not only to be had to the provisions of the development plan so far as material, but also to any other material considerations.”

#### SPPS

12. I would emphasise the fact that while the SPPS superseded PPS 5, it is an overarching, strategic framework document. It does not set out prescriptive tests, unlike other Planning Policy Statements, and its provisions have not been intended for application on



**RTPI**  
Chartered Town Planners



a case by case basis, pending the adoption of Local Development Plans. The SPPS does not detail the limitations to the types of development that will be acceptable in the open countryside nor does it set out an exhaustive list of typologies (or indeed policy requirements to be complied with). Instead, and until such times as a Plan Strategy for the Newry, Mourne and Down Council area has been adopted, a transitional period will operate. Within this period, in instances where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy.

13. While the SPPS is less prescriptive than PPS 5 in terms of retailing in the open countryside, PPS 5 is not a "retained Policy". Within PPS 21, which has been retained, there is no operational presumption against small scale office use in the open countryside, when it comes to proposals involving the conversion of established buildings, particularly those located wholly within the confines of long established rural enterprises. Consequently, the SPPS' relative silence in relation to particular form of development means that greater weight should automatically be attributed to the retained policy (i.e. Policy CTY 4 of PPS 21).
14. Although PPS 1 is no longer a retained Policy, subsequent to the publication of the SPPS, its presumption in favour of development has also been retained within the SPPS. This is confirmed in the SPPS' paragraph 3.8, where it is stated that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted unless the proposed development will cause demonstrable harm to interests of acknowledged importance. Consequently, where there is doubt in relation to any issue, or an apparent gap in policy coverage, the balance must be tipped in favour of an applicant.
15. In this particular case, the SPPS is silent in relation to this proposal, whereas Policy CTY 4 of PPS 21 does not preclude this type of development. Therefore, any doubts surrounding the SPPS' perceived lack of support for this specific proposal need not be given determining weight as a material consideration in the determination of this planning application.
16. Critically, the SPPS "does not seek to promote any one of the three pillars of sustainable development over the other. In practice, the relevance of, and weight to be given to social, economic and environmental considerations is a matter of planning judgement in any given case".



**RTPI**  
Chartered Town Planners



17. The SPPS is relevant to retailing insofar as it directs retail uses to town centres, while it states that “the development of inappropriate retail facilities in the open countryside must be resisted”.
18. The refusal reason states that the proposal is contrary to para. 6.273 of the SPPS. However, this simply states that “planning authorities must adopt a town centre first approach for retail and main town centre uses”. This does not equate to a moratorium on small office development, within an existing commercial complex in the open countryside.
19. The reason for refusal indicates that the proposal is not a “type of development considered appropriate in a rural area”. Equally, it is not prescribed as an inappropriate form of development in a rural area. In this respect, the SPPS would appear to be silent, or less prescriptive, than the retained Policy (CTY 4 of PPS 21) and thus that policy’s permissive provisions can justifiably be engaged to approve this proposal, in the same manner this policy formed the justification for the approval of a commercial unit in a nearby commercial complex, (as detailed in this submission).
20. It follows that since the Policy is not prescriptive, what should be considered appropriate must be determined on a case by case basis.
21. At the heart of this matter is the supposition that the countryside is not an appropriate location for unfettered urban uses. However, this proposal does not fall into that category because it is located within an existing commercial building that is surrounded by other commercial / waste operations, and the use of the premises could also be further controlled by way of condition, to prevent the sale of convenience goods or similar, as necessary.
22. Additional safeguards could be imposed if necessary, to prevent the future subdivision of the premises, or the change to another use falling within the same categorisation (to prevent the premises from changing to an unfettered use in the future).
23. The proposal is contained wholly within an existing / established building. It would have no impact whatsoever upon the vitality and viability of the nearest settlement’s town centre, and it has not caused nor is it likely to cause a change to the rural character of this area of countryside.



24. Pragmatic approaches to the determination of complex planning applications recognise the limitations of assessing a proposal against a single policy, or attributing determining weight to a single policy owing to some purported shortcoming in respect thereof. A well-established principle in planning practice dictates that it is not necessary to slavishly follow or adhere to a single policy and an application can often succeed due to a combination of factors.

#### **Rural Brownfield Development / Previously Developed Land**

25. In land use planning, special dispensation is frequently given in the consideration of proposals involving brownfield development in urban areas, because this is a more sustainable form of development. Unfortunately, planning publications do not extend such provisions into the consideration of proposals involving the re-use of previously developed land in the open countryside.
26. The Council has a duty to secure the orderly development of land in urban and rural areas, and to promote the rural economy. Notwithstanding this proposal's small scale, there are clearly economic benefits to be accrued through the approval of this application. Importantly, approval of the application would not prejudice the rural amenity of this area of countryside. Attached to this submission is an example of a senior planning manager taking a decisive action and approving an application despite the failure to comply with planning policy.
27. It would not be in the public interest for the subject building to lie vacant or not to be used to its full potential. The scale of the development is modest and it is not unreasonable to suggest a use that can be contained wholly within an existing building, which will, in turn secure its maintenance and upkeep. In these circumstances I believe that approval of the application can be justified without fear of establishing a precedent that would force the approval of other applications that are purportedly contrary to planning policy.

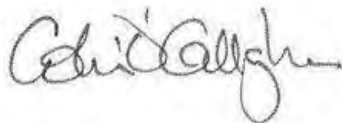


**RTPI**  
Chartered Town Planners



28. In the event that you require any additional information, please do not hesitate to contact me.

Yours Faithfully,



**Colin O'Callaghan**  
Chartered Town Planner  
BSc Hons Dip TP MRTPI



**APPENDIX 1**

AREA PLANNING MANAGER'S CONSIDERATION OF APPLICATION P/2010/0537/F





**PLANNING (NI) ORDER 1991  
APPLICATIONS FOR PLANNING PERMISSION**

**ITEM NO** 17  
**APPLIC NO** P/2014/0894/F Full **DATE VALID** 10/29/14  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Hilary McCamley 3 Whinnbloom Villas Mayobridge  
**AGENT** B Dinsmore RIBA 24a Duke Street Warrenpoint BT34 3JY 02841753698  
**LOCATION** Lands fronting Mayvale Court Newry Road Mayobridge (to the rear of 3 Whinnbloom Villas (off Chapel Hill Road) and adjacent and north-east of 8 Mayvale Court)  
**PROPOSAL** Erection of dwelling  
**REPRESENTATIONS** **OBJ Letters** 0 **SUP Letters** 0 **OBJ Petitions** 1 **SUP Petitions** 0  
**Addresses Signatures** 14 14 **Addresses Signatures** 0 0

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, will have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.



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

**Referral to committee:** Application recommended for refusal

**Application Reference:** P/2014/0894/F

**Date Received:** 30.01.14

**Proposal:** Erection of dwelling

**Location:** Lands fronting Mayvale Court, Newry Road, Mayobridge (to the rear of 3 Whinbloom Villas (off Chapel Hill Road) and adjacent and north-east of 8 Mayvale Court)

**Site Characteristics & Area Characteristics:**

The application site comprises of a rear garden (0.022ha) of No. 3 Whinnbloom Villas fronting onto an existing residential development of Mayvale Court which is located within the development limits of Mayobridge. Ground at the site slopes down from the rear of No.3 from SE to NW with boundaries defined by ranch fencing (NE) with fence and shrubs along the S and W boundaries.

**Site History:**

**Application Site:** P/2014/0231/O - Site for dwelling. Fronting Mayvale Court and to the rear of No.3 Whinnbloom Villas, Mayobridge. Refusal 06.06.14

(Reason: The proposal is contrary to Policy QD 1 (Criteria a, c, & h) and Policy QD 2 of the Department's Planning Policy Statement 7: Quality Residential Environments, Policy LC1 (Criteria b) of the Department's Addendum to PPS7 : Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, would have inadequate separation distance from existing dwellings and would not provide sufficient rear private amenity space.)

**Adjacent and immediately N of site: P2013/0207/RM** -, Erection of dwelling. To the front of Mayvale Court and to the rear of No.2 Whinbloom Villas, Mayobridge

### **Planning Policies & Material Considerations:**

**Policy/ Guidance Considered - SPPS, PPS3, PPS6, PPS7, PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, PPS8, PPS12, DCAN8, DCAN 15, Parking Standards, Creating Places, PSRNI (DES2)**

**Area Plan** - Site is within the development limits of Mayobridge on unzoned land. The principle of the proposal is not contrary to the adopted area plan

**PPS3 and PPS6:** TransportNI (03.12.14) and NIEA (18.12.14) in their consultation response have raised no objections

### **SPPS, PPS7 (QD1): Criteria a, c, f, h and PSRNI: DES 2**

Planning approval has been granted for individual sites to the rear gardens of No. 1 and 2 Whinnbloom fronting and accessing onto Mayvale (P/2013/0207/RM) whilst this establishes a degree of precedent this proposal must be considered on its own merits.

The site in comparison to the other two is not as deep and is significantly smaller (0.022ha) than the plot sides immediately to the N (Rear of No. 2 Whinnbloom: 0.0431ha and rear of No.01 Whinnbloom: 0.039ha) thus any development at the site will be squeezed in and will not respect the surrounding context of development.

Separation distances between the site and the neighbouring development range from a minimum of 5m to a maximum 10m. The inadequate separation distance is observed between the site and Nos. 3 Whinnbloom (10m), No.8 Whinnbloom (7m) 8 Mayvale (6.5m) and the proposed dwelling immediately to the north thus causing resultant adverse amenity issues between properties. Whilst 'Creating Places' indicate a minimum separation of 10m with an enhanced separation distance recommended on sloping sites (to which this should apply) proposals fall short of requirements and thus the site is unable to absorb development without adverse impact. Plots to the N of the site are much larger and deeper that issues with this regard are not as consequential.

As a sloping site extensive levels of excavation or fill is likely to be required in order to create a level platform with development appearing visually intrusive in the street scheme resulting in the loss of amenity to surrounding properties. Works required in order to develop the site will include the removal of existing trees/ shrubs which currently soften the visual impact of the rear garden area, the loss of existing landscaping features will expose the site and harden its visual appearance, therefore development will be unable to adequately integrate into its surroundings without adverse visual impact.

Development within such a constrained site will cause a loss of amenity to surrounding properties due to overshadowing, overbearing impact on the street scheme and loss of daylight. The position of the access and driveway immediately beside the proposed dwelling will also cause a loss of privacy and nuisance to the neighbouring property.

Whilst open space provision can be adequately achieved for both the existing (110.5 sqm) and the proposed dwelling (83sqm) it is questionable how useable and private these areas are given the inadequate separation distances, with each area of amenity space experiencing loss of privacy and overlooking between properties.

Due to the constrained nature of the site no provision can be made for future arrangements within the site for e.g. to extend the property or provide ancillary buildings such as a garage, shed etc. As well as this the shape of the site means it cannot respect the building line established by the adjacent approvals.

Whilst two in-curtilage parking spaces have been shown within the scheme (these currently meet the recommended dimensions of spaces as per guidance of 'Parking Standards') the position of the drive/ parking areas is tight to the boundary of the neighbouring dwelling and given level difference it is difficult to ascertain how this could be achieved without encroachment on the neighbouring boundary and therefore may compromise the capability of achieve adequate parking standards

#### **SPPS and Addendum to PPS7 – Safeguarding the Character of Established Residential Areas: LC1**

The application fails to meet all the criteria of QD1 of PPS7 as well as that of LC1. Whilst there is not necessarily a difficulty in terms of density with adding an additional dwelling on this site as the dwellings at Mayvale Court are built on smaller plots. The nature of the constrained plot size and depth marks this apart from the neighbouring development (i.e houses to the north) and thus development at this location will require the removal of existing and established vegetation, building at this location cannot comply with the established building line set by approvals immediately adjacent and north accompanied with insufficient separation distances raise amenity issues and overall development at this location will harm the overall character and environmental quality of the area as there would be insufficient separation distance between the house and existing dwellings.

#### **PPS12 - Housing in Settlements**

The proposal fails the first planning control principle in that the increase in density cannot be achieved without town cramming. Proposed development will clearly erode local character, environmental quality and residential amenity by squeezing a house into a plot and placing it too close to existing dwellings with an inevitable adverse impact to amenity as a result.

**Consultations:**

NIEA (18.12.14) – No concerns

Environmental Health (16.12.14) – No objection in principle

TransportNI (03.12.14) – No objection

NIW (11.12.104) – No objections, generic response

**Objections & Representations**

13 Neighbour notifications, date advertised 09.11.14 and readvertised 09.12.14  
(Amended address)

**Objections:**

7 Mayvale Court (21.08.15)

Issues: Access point from site will cross onto a private shared drive

Residents of 1,3, 4,5, 7, 8 and 9 Mayvale Court, 14 signatures (11.12.14)

Issues: Traffic from new dwelling will encroach onto a private road and there will be no consent given to trespass onto this private road, access from a concealed entrance onto the only safe play area for children of Mayvale Court, extra traffic and congestion, duration of build heavy machinery moving through Mayvale Court negative impact on impact to character and quality of life resultant in health and safety inhibiting access to own homes

*Access onto the private drive is outside the red line of the application site as well as the ownership and control of the applicant. The agent was made aware of this via telephone call on 13.10.15 and responded by email on 16.10.15 the agent has advised that DRD Roads Service (i.e. TransportNI) hold a bond on the whole of the road which will shortly be adopted. Disputes over landownership lie outside the remit of the Council and within a legal jurisdiction. TransportNI have raised no concerns with regard to road safety. Whilst residents have concerns during the build with respect to additional traffic and health/safety issues any impact is likely to be experienced on a temporary basis and the developer will have statutory obligations with regard to health and safety which lie outside the remit of the Planning Authority's control.*

**Consideration and Assessment:**

Overall proposals fail policy tests with regard to the Strategic Planning Policy Statement for Northern Ireland, PPS7 (QD1), PSRNI:DES 2, PPS7 (Addendum: Safeguarding the Character of Established Residential Areas) and PPS12 in that as a rear garden within an existing housing development is of insufficient size and depth to accommodate a new dwelling along with ancillary works will have an adverse visual impact on the street scheme. Development will result in the loss of established vegetation, has insufficient separation distances from surrounding dwellings and will cause adverse amenity issues for the future occupier as well as neighbouring properties due to loss of privacy and overlooking as well as having an overbearing impact, overshadowing and loss of daylight to surrounding properties.

Objections submitted have been considered however concerns raised lie outside the remit of the Planning Authority.

For the reasons outlined above it is recommended to refuse the application.

**Recommendation:**

Refusal

**Refusal Reasons/ Conditions:**

*The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, would have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.*



Dwelling to rear of No. 1 Whinnbloom



Dwelling to rear of No. 1 Whinnbloom and adjacent site to rear of No. 2 Whinnbloom (foundations)



Proposed site and end of cul-de-sac of Mayvale



Site adjacent and N of application site





Site adjacent and N of application site (Site to right of photo)



Site adjacent and N of application site, application site to rear of No. 3 Whinnbloom (undeveloped rear garden) and No. 8 Mayvale



Application site and W boundary



Application site, W boundary and No. 8 Mayvale



Rear garden of No. 3 Whinnbloom and application site



Rear garden of No. 3 Whinnbloom and application site



W boundary of site, No. 8 Mayvale (to right of photo)



Foundations in site immediately adjacent and north (note level differences)



Rear gardens of 2 and 3, development adjacent and north of site



Application site (existing rear garden of No. 3)

DSC02261

DSC02262



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E

DSC02266



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E (Plots to rear of 1 and 2 Whinnbloom visible)



Dwelling to rear of no. 1 Whinnbloom

DSC02270





Window view from No. 8 Mayvale



Rear garden of No. 3 Whinnbloom



Rear garden of No. 3 Whinnbloom



Rear garden of No. 3 Whinnbloom with established vegetation (Mayvale to NW)



Boundary to No. 8 Mayvale

## REPRESENTATION AGAINST RECOMMENDATION TO REFUSE

This representation is made under the Newry Mourne & Down District Council Planning Committee operating protocol dated May 2016 in relation to an application which has been recommended for refusal by Planning Services.

**Application Reference:** P/2014/0894/F

**Application Date:** 29<sup>th</sup> October 2014

**Site Location** Land Fronting onto Mayvale Court, Newry Road,  
Mayobridge (to the rear of No. 3 Whinbloom Villas,  
Chapel Hill Road)

**Proposal:** Erection of a Detached Dwelling

From the Case Officers report the reasons for refusal are as follows:

### ***Refusal Reasons:***

- 1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, will have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.*

It should be noted that my initial representation dated 5<sup>th</sup> May 2016 was submitted without the benefit of a Planners Professional Report which subsequently appeared on Planweb on 23<sup>rd</sup> June 2016. That representation stands. However I have taken the opportunity at the end of this representation to address specific issues raised in the Planners Professional Report.

### **1. Strategic Planning Policy Statement for Northern Ireland September 2015**

The proposal is in keeping with Strategic Planning Policy Statement for Northern Ireland (e.g.) sub-section 6.136 of housing in settlement states:

**“6.136** The policy approach must be to facilitate an adequate and available supply of quality housing to meet the needs of everyone; promote more sustainable housing development within existing urban areas; and the provision of mixed housing development with homes in a range of sizes and tenures. This approach to housing will support the need to maximise the

use of existing infrastructure and services, and the creation of more balanced sustainable communities.”

Sub section 6.137 goes on to discuss increased housing density, sustainability, good design and balances communities. All of which this application conforms to.

## **2. Policy QD1 (Criteria a, c, f and h) of Planning Policy Statement (PPS) 7.**

This proposal is not contrary to criteria a, c, f and h, of Planning Policy Statement 7.

- a. Mayvale Court is a development of four pairs of semi-detached dwellings and two detached dwellings (1 no. partly built). The proposal occupies the remaining gap site and completes this development around an adopted road. The proposal is wholly appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance in as much as the proposed dwelling is of similar size and finish to its neighbours.
- c. There is no public open space within the current development! Adequate private open space is in accordance with statutory requirements. Indeed, the site is larger and has more private amenity space than-any of the dwellings in Mayvale Court, with two exceptions. This is part of this particular settlement character. Additional planted areas are indicated on the block plan to soften the visual impact and assist with its integration.
- f. The proposal fully meets parking provision standards.
- h. The design and layout and orientation of the proposal have been carefully considered to minimise effect on existing properties. There is no overlooking, there is no loss of light, no overshadowing, noise or any other disturbance.

The proposal therefore conforms in full to all criteria referred to under PPS7 : Quality Residential Environments.

## **3. Addendum to PPS7 : Safeguarding The Character of Established Residential Areas**

Policy LC1 provides that Planning Permission will be granted for the infill of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD1 of PPS7 are met. Planning Services have queried four of these criteria which I believe I have demonstrated compliance with above. Planning applications must satisfy three further criteria under Policy LC1.

- a. Density: I do not believe 1 no. additional dwelling will increase density significantly.

- b. Pattern of development: This proposal is fully in keeping with the overall character and environmental quality of this established residential area.
- c. Size: the dwelling area is in accordance with Annex A.

### **Principle 1 of PPS12 : Housing in Settlements**

I fail to understand how this application does not comply with principle 1 which promotes increased density in locations which benefit from high accessibility and public transport facilities.

Great care has been taken to ensure that local character, environmental quality and amenity are not significantly eroded. Rather its form, shape, massing and layout will respect those of adjacent housing and safeguard the privacy of existing residents.

### **Specific Response to issues raised in Professional Planners Report under SPPS Addendum to PPS7 – Safeguarding the Character of established Residential areas**

1. The Planner is incorrect in his claim in relation to site size. The proposed site is larger than plots 2, 3, 4, 5, 6 & 8 Mayvale Court and the site of the detached dwelling at no. 11. The proposal is not therefore 'squeezed'.
2. - The minimum separation distance between application site and no. 3 Whinbloom is 10m.  
 - The application site is also below no. 3.  
 - There is no No. 8 Whinbloom?  
 - The minimum separation distance 'between gables' between application site and No. 8 Mayvale is approximately 7m.  
 - Proposed dwelling to the North is gable on.

I do not accept the Planners separation distance argument.

3. The Planner discussed levels of excavation being unacceptable. This will be no greater than the site to the north as the photograph attached demonstrates. In terms of visual impact the proposal provides for replacement trees and shrubs to retain a soft visual impact.
4. I fail to see how the proposal will cause any loss of amenity to surrounding properties due to overshadowing, overbearing impact on the street scheme, or, loss of daylight. The access to driveway is no different to those already in existence and conforms with Transport NI standards.
5. The Planner recognizes the fact that private open space, (83 sq m), is more than adequately catered for. – Yet asserts that the dwelling is squeezed! -

6. Site constraints are no different from neighbouring properties in Mayvale Court. Ancillary shed would be very easily accommodated. – There is no building line! –
7. Parking provision will be accommodated by lowering this section of the site to the same as the site to the north.

### Conclusion

Attached is a 1 : 1250 ACE Map of Mayvale Court including the proposed dwelling in context with all of its neighbours. This layout demonstrates how the proposal

- Respects the context of the area.
- Has adequate separation distance from existing dwellings.
- Will not result in loss of amenity through loss of privacy.
- Will not overlook, overshadow, or cause loss of sunlight to any other dwellings.

In the Development Officers Professional Planning Report for the adjoining site under P/2013/0207/RM the Planning Officer noted that she had concerns about the scale of the proposal and amenity space on the site. However, she also considered that the proposal would not have any negative impact on the neighbouring dwelling in terms of overlooking. On balance she saw fit to approve. The proposed dwelling under this application is smaller in scale. The site on which the dwelling, to the north at no. 11 sits is even smaller with less amenity space. Planning Services also saw fit to approve this dwelling.

Finally,	Transport NI	-	No objection
	NIEA	-	No Concerns
	Environmental Health	-	No objection
	NIW	-	No objection

I request on behalf of the applicant that the Planning Committee overturn Planning Services recommendation.

SIGNED:




---

**BERNARD DINSMORE**  
*Chartered Architect*

21 SEPTEMBER 2016



Level difference can be accommodated by minimal cutting as demonstrated by foundations of part built property to the north.



# ACEmap® Single

Printed: 04/05/2016 Customer Ref:

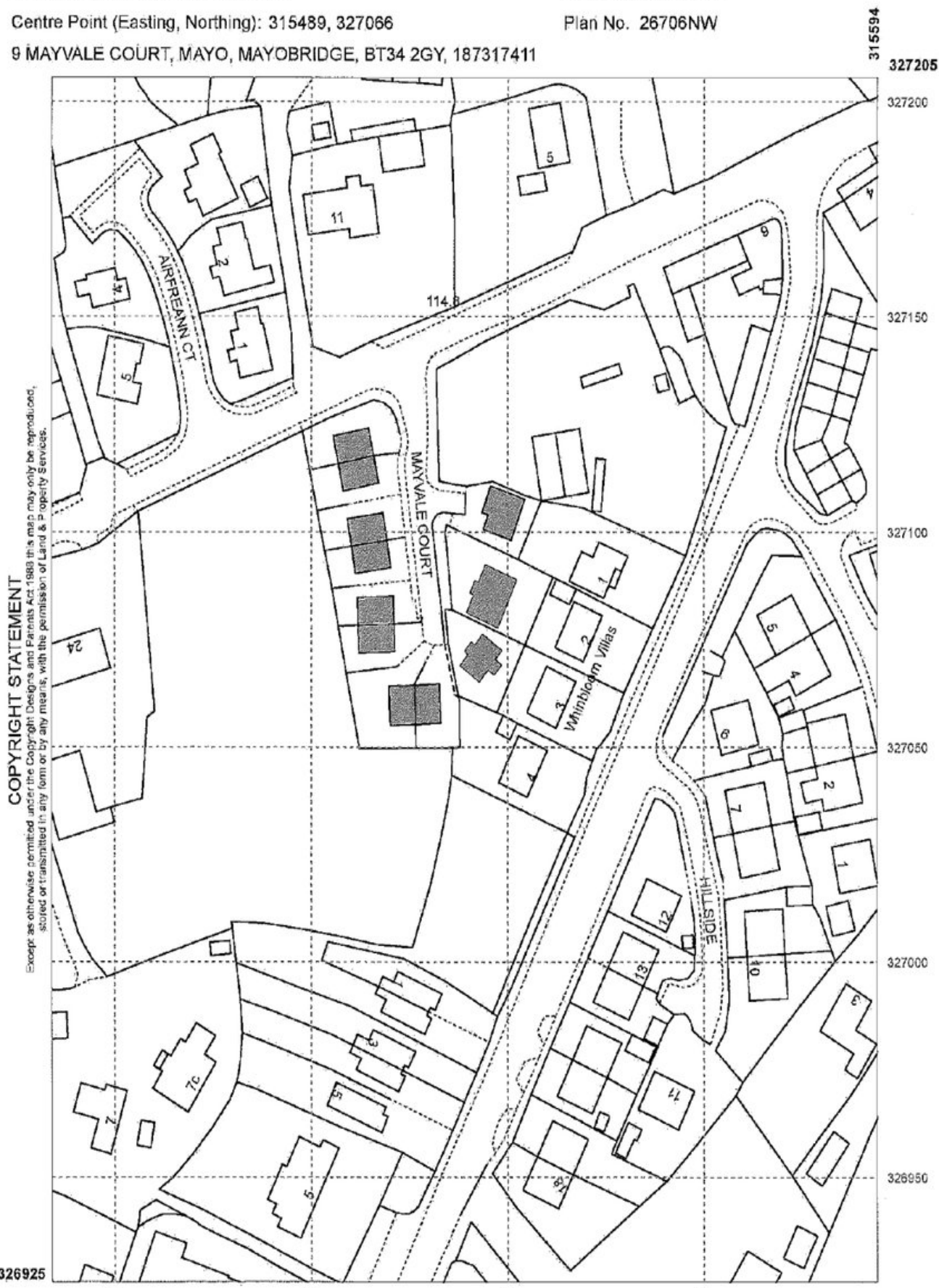
Centre Point (Easting, Northing): 315489, 327066

9 MAYVALE COURT, MAYO, MAYOBRIDGE, BT34 2GY, 187317411

Scale: 1:1,250

Order no. ORD24598

Plan No. 26706NW



Every care has been taken to ensure accuracy in the compilation of this map at the time of publication. Land & Property Services cannot, however, accept responsibility for errors or omissions and when such are brought to our attention, the amendment of any future publication as appropriate shall be entirely at our discretion. Ordnance Survey of Northern Ireland and ACEmap® are registered Trademarks of Department of Finance and Personnel.



# NILGA EVENTS

205

## Planning in Councils 'Refresher' Series for Councillors

### ADVANCE NOTICE

**NILGA is running a short series of training events for elected members on key issues.**

#### 1. Elected Members and the Planning Committee

25th October 2016, Craigavon Civic Centre 10.00am—12.30pm

#### 2. The Councillor Role in the Development Plan Process

22nd November 2016, Glenavon Hotel Cookstown, 10.00am—12.30pm

#### 3. Councillors and the Planning Appeals Commission

13th December 2016, Antrim Civic Centre 10.00am—12.30pm

#### 4. *Working with Developers and Agents*

*Date and venue tbc, 2017*

'Earlybird' booking forms for the first three events are attached.

Detailed agendas will be issued closer to the event dates.

A booking form for event 4 will follow once a date and venue has been confirmed.

These **FREE** events are open to ALL Elected Members and Officers, but numbers are limited to **5 places per council for each event** so we would ask councils to advise us in advance of those hoping to attend. NILGA will try to accommodate all enquiries.

Councils should complete the booking forms on the reverse and return them to Fiona Douglas at the NILGA office by emailing [f.douglas@nilga.org](mailto:f.douglas@nilga.org), by the closing date given on each form.

# 1. Elected Members and the Planning Committee

## Craigavon Civic Centre

### 10.00am 25th October 2016

## BOOKING FORM

**PLEASE NOTE:**

Places at this event are limited so early booking is recommended.

Contact name of person responsible for bookings \_\_\_\_\_

Council: \_\_\_\_\_

Email: \_\_\_\_\_

Contact telephone number: \_\_\_\_\_

**Council nominations**

Full Name	Position	Dietary / Special requirements

**Please return by 11th October , to [f.douglas@nilga.org](mailto:f.douglas@nilga.org)**

**Northern Ireland Local Government Association**  
**Bradford Court, Upper Galwally, Castlereagh, BT8 6RB**  
**tel: 028 9079 8972    web: [www.nilga.org](http://www.nilga.org)    twitter: @NI\_LGA**

*NILGA - the voice of local government*

Disclaimer: The Northern Ireland Local Government Association (NILGA) endeavours to ensure that the information contained within our Website, Policies and other communications is up to date and correct. We do not, however, make any representation that the information will be accurate, current, complete, uninterrupted or error free or that any information or other material accessible from or related to NILGA is free of viruses or other harmful components. NILGA accepts no responsibility for any erroneous information placed by or on behalf of any user or any loss by any person or user resulting from such information.

## 2. The Councillor Role in the Development Plan Process

### Glenavon Hotel, Cookstown

### 10.00am, 22nd November 2016

### **BOOKING FORM**

PLEASE NOTE:

Places at this event are limited so early booking is recommended.

Contact name of person responsible for bookings \_\_\_\_\_

Council: \_\_\_\_\_

Email: \_\_\_\_\_

Contact telephone number: \_\_\_\_\_

Council nominations

Full Name	Position	Dietary / Special requirements

**Please return by 8th November , to [f.douglas@nilga.org](mailto:f.douglas@nilga.org)**

Northern Ireland Local Government Association  
 Bradford Court, Upper Galwally, Castlereagh, BT8 6RB  
 tel: 028 9079 8972    web: [www.nilga.org](http://www.nilga.org)    twitter: @NI\_LGA

*NILGA - the voice of local government*

Disclaimer: The Northern Ireland Local Government Association (NILGA) endeavours to ensure that the information contained within our Website, Policies and other communications is up to date and correct. We do not, however, make any representation that the information will be accurate, current, complete, uninterrupted or error free or that any information or other material accessible from or related to NILGA is free of viruses or other harmful components. NILGA accepts no responsibility for any erroneous information placed by or on behalf of any user or any loss by any person or user resulting from such information.

### 3. Councillors and the Planning Appeals Commission Antrim Civic Centre 10.00am 13th December 2016

## BOOKING FORM

PLEASE NOTE:

Places at this event are limited so early booking is recommended.

Contact name of person responsible for bookings \_\_\_\_\_

Council: \_\_\_\_\_

Email: \_\_\_\_\_

Contact telephone number: \_\_\_\_\_

Council nominations

Full Name	Position	Dietary / Special requirements

**Please return by 29th November , to [f.douglas@nilga.org](mailto:f.douglas@nilga.org)**

**Northern Ireland Local Government Association  
Bradford Court, Upper Galwally, Castlereagh, BT8 6RB  
tel: 028 9079 8972 web: [www.nilga.org](http://www.nilga.org) twitter: @NI\_LGA**

*NILGA - the voice of local government*

Disclaimer: The Northern Ireland Local Government Association (NILGA) endeavours to ensure that the information contained within our Website, Policies and other communications is up to date and correct. We do not, however, make any representation that the information will be accurate, current, complete, uninterrupted or error free or that any information or other material accessible from or related to NILGA is free of viruses or other harmful components. NILGA accepts no responsibility for any erroneous information placed by or on behalf of any user or any loss by any person or user resulting from such information.

## Newry, Mourne & Down District Council – August 2016

209

### 1. Live Applications

MONTH 2016	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	138	1,389	436
May	121	1,335	455
June	162	1,178	418
July	106	1,147	425
August	131	1,089	405

### 2. Live Applications by length of time in system

Month 2016	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	583	370	222	66	148	<b>1,389</b>
May	549	331	222	86	147	<b>1,335</b>
June	511	249	195	77	146	<b>1,178</b>
July	501	221	196	78	151	<b>1,147</b>
August	480	204	162	99	144	<b>1,089</b>

### 3. Live applications per Case Officer

Month 2016	Average number of Applications per Case Officer
April	58
May	56
June	47
July	46
August	44

## Newry, Mourne & Down District Council – August 2016

210

### 4. Decisions issued per month

#### Decisions Issued

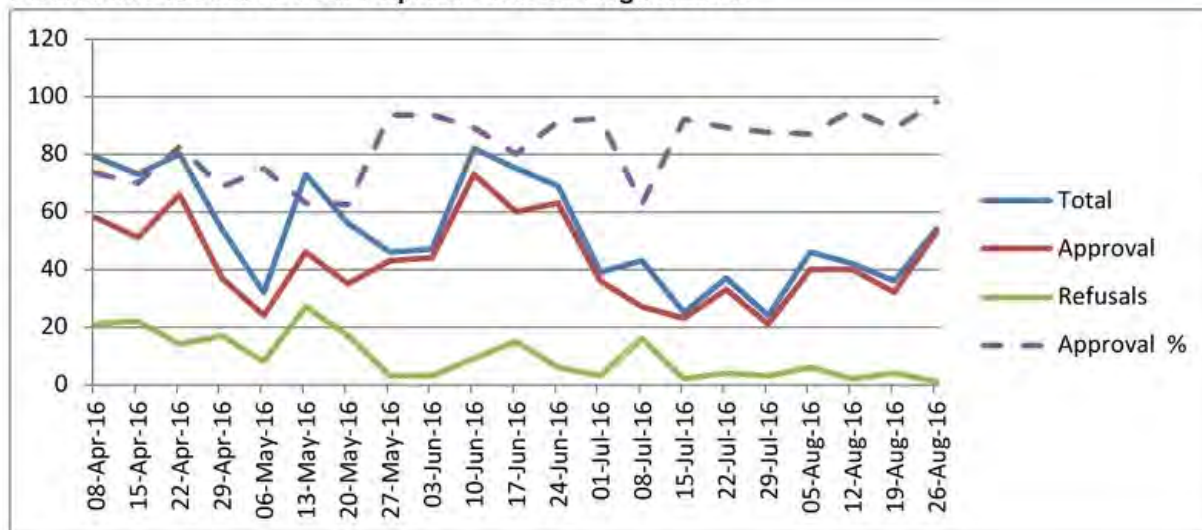
Month 2016	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	168	163
May	174	169
June	298	273
July	141	114
August	180	162

### 5. Decisions Issued YTD

Month 2016	Number of Decisions Issued	Average processing Time	Breakdown of Decisions	
April	168	35.52 weeks	Approvals (156)	93%
			Refusals (12)	7%
May	342	33 weeks	Approvals (324)	95%
			Refusals (18)	5%
June	640	34 weeks	Approvals (587)	92%
			Refusals (53)	8%
July	781	33.4 weeks	Approvals (115)	82%
			Refusals (26)	18%
August	961	37.67	Approvals (170)	94%
			Refusals (10)	6%

## Newry, Mourne & Down District Council – August 2016

**DECISIONS ISSUED FROM 1 April 2016 to 31 August 2016**



### 6. Enforcement

#### Live cases

Month 2016	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+yrs	Total
<b>April</b>	185	119	97	56	23	78	<b>558</b>
<b>May</b>	190	113	101	58	24	77	<b>563</b>
<b>June</b>	217	119	104	56	27	79	<b>602</b>
<b>July</b>	220	117	94	64	28	77	<b>600</b>
<b>August</b>	231	125	87	72	32	75	<b>622</b>



## Newry, Mourne & Down District Council – August 2016

212

### 7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/ Deferred for future meeting
13 April 2016	14	11	3
27 April 2016	10	5	5
11 May 2016	15	13	2
26 May 2016	17	12	5
8 June 2016	13	9	4
29 June 2016	35	25	10
6 July 2016	22	9	13*
3 August 2016	27	14	13
10 August 2016	4	2	2
31 August 2016	12	10	2
<b>Totals</b>	<b>169</b>	<b>110</b>	<b>59</b>

\*2 Applications called in by DfI

### 8. Appeals

Area	Number of current appeals
Newry & Mourne	13
Down	4
<b>TOTAL</b>	<b>17</b>

## Newry, Mourne & Down District Council – August 2016

213

### 9. Statutory Targets Performance Data

Statutory targets monthly update to April to June 2016 (unvalidated management information)

Newry, Mourne and Down

	Major applications (target of 30 weeks)			Local applications (target of 15 weeks)			Cases concluded (target of 39 weeks)		
	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 30 weeks	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 15 weeks	Number brought to conclusion <sup>3</sup>	"70%" conclusion time <sup>3</sup>	% of cases concluded within 39 weeks
April	3	42.6	33.3%	164	31.0	18.9%	13	37.2	69.2%
May	2	149.3	0.0%	168	25.5	23.8%	31	92.5	45.2%
June	4	68.9	0.0%	285	27.0	22.5%	2	0.0	0.0%
July	1	159.2	0.0%	133	22.4	36.8%	25	83.4	44.0%
August	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Sept	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Oct	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Nov	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Dec	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Jan	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Feb	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Mar	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
<b>Year to date</b>	<b>10</b>	<b>109.6</b>	<b>10.0%</b>	<b>753</b>	<b>26.8</b>	<b>24.4%</b>	<b>71</b>	<b>78.7</b>	<b>47.9%</b>

Source: NI Planning Portal

#### Note

1. CLUDS, TPOS, NMCS and PADS/PANs have been excluded from all applications figures
2. The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn. The median is used for the average processing time as any extreme values have the potential to inflate the mean, leading to a result that may not be considered as "typical".
3. The time taken to conclude an enforcement case is calculated from the date on which the complaint is received to the earliest date of the following: a notice is issued; proceedings commence; a planning application is received; or a case is closed. The value at 70% is determined by sorting data from its lowest to highest values and then taking the data point at the 70th percentile of the sequence.

## Record of meetings between Planning Officers and Public Representatives

214

DATE OF MEETING	PLANNING OFFICER'S NAME/S	PUBLIC REPRESENTATIVE'S NAME
8/01/2016	A McKay, P Rooney, D Watson	Seán Rogers MLA, Cllr Willie Clarke, Cllr Mark Murnin
12/01/2016	P Rooney, M Keane	Cllr Stephen Burns
14/01/16	A McKay	Margaret Ritchie MLA
20/01/2016	P Rooney	Cllr Cadogan Enright
25/01/2016	D Watson	Margaret Ritchie MLA
27/01/16	M Keane	Seán Rogers MLA
17/02/16	Jacqui McParland	Declan McAteer
19/02/16	Jacqui McParland	Jarlath Tinnelly
22/02/16	Jacqui McParland	Michael Ruane
22/02/16	Jacqui McParland	Gillian Fitzpatrick
24/02/16	David Watson	Seán Rogers MLA
25/02/16	Andrew Hay, James King	Seán Rogers MLA
25/02/2016	Annette McAlarney	Seán Rogers MLA
25/02/16	Anthony McKay	Margaret Ritchie MLA
26/02/16	M Keane	Cllr McGrath
15/03/16	J McParland	Cllr M Ruane
16/03/2016	J McParland	Sean Rogers
25/03/16	A Davidson	Cllr Taylor
30/03/16	J McParland	Seán Rogers MLA
5/4/16	A McKay	Seán Rogers MLA
8/4/16	A McKay	Margaret Ritchie MLA
12/04/2016	Annette McAlarney	Cllr Curran
14/04/2016	J McParland	Cllr Declan McAteer
25/04/2016	J McParland	Cllr Tinnelly
27/04/2016	J McParland	Cllr Tinnelly
28/04/2016	Annette McAlarney	Cllr Burgess
29/04/2016	Annette McAlarney	Cllr McGrath
18/05/2016	Annette McAlarney	Cllr Curran
23/05/2016	A McKay	Cllr Ó Gribín
10/6/16	P Rooney & J McParland	Carla Lockhart MLA
14/06/2016	J McParland	Cllr Quinn
14/06/2016	J McParland A McKay P Rooney	Cllr Tinnelly
15/6/16	P Rooney	Cllr G Fitzpatrick
15/06/2016	P Rooney A McKay	Harold McKee MLA, J Tinnelly & G Fitzpatrick
16/06/2016	J McParland	Cllr Quinn
20/06/2016	Clare Miskelly	Cllr Dermot Curran
21/06/2016	J McParland	Cllr Taylor
21/06/2016	J McParland	Cllr Hanna
27/06/2016	J McParland	Cllr Tinnelly

## Record of meetings between Planning Officers and Public Representatives

215

30/06/2016	A McKay	Margaret Ritchie MP
4/07/2016	Andrew Hay	Jim Shannon MP
08/07/2016	J McParland	Cllr Quinn Cllr Doran
14/07/2016	P Rooney	Cllr W Clarke
21/07/2016	Anthony McKay	Margaret Ritchie MP
26/7/2016	J McParland	Sean Doran
27/07/2016	J McParland	J Tinnelly
08/08/2016	J McParland	J Tinnelly
8/08/16	A Hay M Keane	Colin McGrath MLA
11/08/16	Andrew Hay	Cllr Walker Cllr Curran
25/08/16	Anthony McKay	Cllr O'Gribin
30/08/16	Pat Rooney	Cllr Ruane

**Current Appeals****216****AUTHORITY**      **Newry, Mourne and Down**

<b>ITEM NO</b>	<b>1</b>		
<b>Planning Ref:</b>	R/2015/0089/F	<b>PAC Ref:</b>	2015/A0150
<b>APPELLANT</b>	Rob Jennings		
<b>LOCATION</b>	Land 200m North Of 97 Crossgar Road Saintfield		
<b>PROPOSAL</b>	Restoration and extension dwelling (Amended access details received).		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>03/11/2015</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

<b>ITEM NO</b>	<b>2</b>		
<b>Planning Ref:</b>	P/2014/0578/F	<b>PAC Ref:</b>	2015/A0178
<b>APPELLANT</b>	Mr Shane Quinn		
<b>LOCATION</b>	Adjacent And South West Of No.56 Drumalt Road Dorsey Cullyhanna		
<b>PROPOSAL</b>	Erection of domestic shed and associated hardstanding, access provision and site works with associated change of use of agricultural lands to domestic purposes (and access via existing laneway immediately north of No. 56 Drumalt Road. with extended section)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>16/12/2015</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

**Current Appeals****217**

<b>ITEM NO</b>	<b>3</b>		
<b>Planning Ref:</b>	P/2014/0303/O	<b>PAC Ref:</b>	2016/A0005
<b>APPELLANT LOCATION</b>	Michael Horner Adjacent To And North Of 36 Belmont Road Kilkeel		
<b>PROPOSAL</b>	<sup>Newrv</sup> Erection of Infill Dwelling and Detached Garage		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>05/04/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

---

<b>ITEM NO</b>	<b>4</b>		
<b>Planning Ref:</b>	R/2013/0347/F	<b>PAC Ref:</b>	2016/A0010
<b>APPELLANT LOCATION</b>	Mr & Mrs Peter O'Hare Adjacent 15 Blacks Lane Glasdrumman Ballynahinch (Amended Address)		
<b>PROPOSAL</b>	Proposed general purpose agricultural/forestry shed and part retrospective access arrangements, foundation and hard standing area.		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>07/04/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

---

**Current Appeals****218**

<b>ITEM NO</b>	<b>5</b>		
<b>Planning Ref:</b>	P/2015/0097/F	<b>PAC Ref:</b>	2016/A0011
<b>APPELLANT LOCATION</b>	Carlingford Lough Pilots Ltd Adjacent To 92 Greencastle Pier Road Greencastle		
<b>PROPOSAL</b>	Kilkeel Retention of existing office		

<b>APPEAL TYPE</b>	Plg Conditions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>08/04/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

---

<b>ITEM NO</b>	<b>6</b>		
<b>Planning Ref:</b>	P/2014/0853/F	<b>PAC Ref:</b>	2016/A0041
<b>APPELLANT LOCATION</b>	S Meade To The Immediate North And East Of 16 Rostrevor Road Hilltown.		
<b>PROPOSAL</b>	Retention of two light industrial units, erection of three light industrial units.		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	<b>01/07/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

---

**Current Appeals****219**

**ITEM NO** 7  
**Planning Ref:** P/2015/0103/F **PAC Ref:** 2016/A0048  
**APPELLANT** Mr Joe O'Hare  
**LOCATION** Between 47 And 47a Ballintemple Road  
 Ballintemple  
 Newry  
**PROPOSAL** Retention of existing agricultural building and access

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Written Reps with Site Visit** **Date Appeal Lodged** 31/05/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**ITEM NO** 8  
**Planning Ref:** P/2015/0121/O **PAC Ref:** 2016/A0058  
**APPELLANT** Mr O Slane  
**LOCATION** Land 30m North West Of 1 Tullyet Road  
 Newtownhamilton  
**PROPOSAL** Proposed site for infill dwelling and detached garage.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Written Reps with Site Visit** **Date Appeal Lodged** 17/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---



**Current Appeals****220**

**ITEM NO** 9  
**Planning Ref:** P/2015/0210/F **PAC Ref:** 2016/A0063  
**APPELLANT** Mr Brendan McNamee  
**LOCATION** Immediately North East And Opposite No.62  
 Carran Rd  
 Crossmanlen  
**PROPOSAL** Retention of metal fence, gates, granite piers and granite kerbs to front  
 boundary of property

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Written Reps with Site Visit** **Date Appeal Lodged** 20/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**ITEM NO** 10  
**Planning Ref:** LA07/2015/0286/C **PAC Ref:** 2016/A0066  
**APPELLANT** Ms Edel Rooney  
**LOCATION** Site Approximately 20 Metres South West Of 10 Head Road  
 Moyad  
 Annalong  
**PROPOSAL** Site for dwelling with detached garage (gap site)

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Informal Hearing** **Date Appeal Lodged** 24/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**Current Appeals****221**

**ITEM NO** 11  
**Planning Ref:** LA07/2015/0292/C **PAC Ref:** 2016/A0071  
**APPELLANT** Mr Thomas W Meaney  
**LOCATION** 40m North West Of 55 Magheralone Road  
 Ballynahinch  
**PROPOSAL** Proposed new infill dwelling and garage

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 28/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**ITEM NO** 12  
**Planning Ref:** P/2015/0236/F **PAC Ref:** 2016/A0073  
**APPELLANT** Mr Francis McGuinness  
**LOCATION** Lands To The Rear Of No 41 Newtown Road  
 Killeen  
**PROPOSAL** <sup>Newrv</sup> Extension to existing dwelling curtilage and erection of domestic garage.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 28/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**Current Appeals**

222

**ITEM NO** 13  
**Planning Ref:** P/2015/0221/F **PAC Ref:** 2016/A0074  
**APPELLANT** Mr Francis McGuinness  
**LOCATION** Adjacent And South Of No 41 Newtown Road  
 Killeen  
**PROPOSAL** <sup>Newry</sup>  
 Erection of Vehicle Maintenance Shed and retention of existing yard for  
 the storage of vehicles.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 28/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 14  
**Planning Ref:** P/2014/1049/O **PAC Ref:** 2016/A0077  
**APPELLANT** Tracy McKenzie  
**LOCATION** Adjacent And N Of No.9A Corcreechy Road Newry BT34 1LR  
**PROPOSAL** Site for dwelling and garage (infill)

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Written Reps with Site Visit** **Date Appeal Lodged** 30/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**Current Appeals**

223

**ITEM NO** 15  
**Planning Ref:** LA07/2015/0342/C **PAC Ref:** 2016/A0084  
**APPELLANT** Patsy Malone  
**LOCATION** Approximately 110 Metres North East Of 151 Ballydugan Road  
 Downpatrick  
**PROPOSAL** Replacement dwelling

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 14/07/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**ITEM NO** 16  
**Planning Ref:** LA07/2015/0542/F **PAC Ref:** 2016/A0094  
**APPELLANT** Mr R L Annett  
**LOCATION** 150 Metres Southwest Of No 20 Council Road  
 Kilkeel  
 RT34 ANP  
**PROPOSAL** Agricultural Building, yard and access from Council Road

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 09/08/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**Current Appeals****224**

**ITEM NO** 17  
**Planning Ref:** LA07/2016/0556/C **PAC Ref:** 2016/A0095  
**APPELLANT** J & J McKibbin  
**LOCATION** 40m Southeast Of 181 Moyad Road  
 Kilkeel  
 RT34 4HI  
**PROPOSAL** Site for dwelling and garage

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 10/08/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---

**ITEM NO** 18  
**Planning Ref:** LA07/2015/0455/F **PAC Ref:** 2016/A0106  
**APPELLANT** Fergal O'Hanlon  
**LOCATION** 15 Kearney Crescent  
 Whitecross  
 Armagh  
**PROPOSAL** Retention of part boundary walls piers and railings

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 22/08/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

---



# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

<b>Appeal Reference:</b>	2015/A0247
<b>Appeal by:</b>	James and John McKibben
<b>Appeal against:</b>	The non-determination of an application for full planning permission
<b>Proposed Development:</b>	Dwelling and Garage
<b>Location:</b>	85m NE of Moyad Road, Kilkeel
<b>Planning Authority:</b>	Newry Mourne and Down District Council
<b>Application Reference:</b>	LA07/2016/0048/F
<b>Procedure:</b>	Written representations
<b>Decision by:</b>	Commissioner J.B. Martin dated 25 July 2016

## Decision

1. The appeal is allowed and full planning permission is granted subject to the 3 conditions set out below.

## Reasoning

2. Article 20 of the Planning (General Development Procedure) Order (NI) 2015 states the Council shall determine the application within 8 weeks beginning from when the application was received by the Council. The application was submitted to the Council 11 January 2016 and the appeal against its non determination within the subsequent 8 week period was made by the appellant under the provisions of Section 60 of the Planning Act (NI) 2015 (the Act).
3. In its letter of response to lodgement of the appeal the Council informed the Commission it had no objections to any aspect of the appeal proposal, subject to the following matters being covered by conditions:-
  - (1) The time period for commencement of the proposed development.
  - (2) The provision of access visibility splays.
  - (3) The gradient of the access.
  - (4) A consent to discharge effluent and
  - (5) Landscaping of the site boundaries.
4. Given the Council's stated position I have only its proposed conditions to consider.

5. The 5 year period for commencement of the proposed development is the standard requirement of Section 61 of the Act. In regard to visibility splays, drawing No.2 referred to by the Council, shows acceptable splays of 4.5m by 90m as 'existing', and therefore their retention should be conditioned. Provision of satisfactory access gradients is a matter properly controlled by the provisions of the 1993 Roads (NI) Order and does not require a planning condition.
6. Policy CTY 16 does not suggest that a planning condition is required to secure the submission of an application for consent to discharge effluent under the Water (NI) Order 1999. The Council have not pointed to any problems regarding effluent discharge that might result in an application being denied by the Northern Ireland Environment Agency (NIEA). In such circumstances, as the Justification and Amplification text to CTY 16 indicates, it is for the NIEA, rather than the planning authority, to control this particular aspect of the proposed development under provisions in the Water (NI) Order 1999. In the interests of visual amenity a condition is required to secure the planting which is proposed on the site boundaries.

### Conditions

- (1) The scheme of planting as set out on the proposed site plan dated December 2015 shall be carried out during the first planting season after the dwelling is occupied. Trees or shrubs dying, removed or becoming seriously damaged within 5 years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Council gives written consent to any variation.
- (2) The existing visibility splays of 4.5m by 90m at the access to the site, as shown on the proposed site plan dated December 2015, shall be permanently retained.
- (3) The development shall be begun before the expiration of 5 years from the date of this permission.

This decision relates to the 1/2500 scale site location map; the 1/500 scale site plan and the 1/100 scale elevation and floor plans.

**COMMISSIONER J.B. Martin**

**List of Documents**

Planning Authority	Letter of Response' dated 19 April 2016
Appellant	Statement of Case and Comments





# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

228

---

<b>Appeal Reference:</b>	2015/A0246
<b>Appeal by:</b>	Mr Eamon Clerkin
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Retirement Dwelling on Farm
<b>Location:</b>	285m East of 127 Kilbroney Road, Rostrevor
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	P/2014/0296/O
<b>Procedure:</b>	Written Representations with Accompanied Site Visit on 6 July 2016
<b>Decision by:</b>	Commissioner Mark Watson, dated 3 August 2016

---

## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is the principle of development.
3. The Banbridge, Newry & Mourne Area Plan 2015 (BNMAP) is the statutory local development plan for the proposal. In it, the site lies in the countryside and to the west of a Site of Local Nature Conservation Importance (SLNCI). No objection has been raised in regard to the potential impacts on the Rostrevor River SLNCI and I consider that the development would not be liable to have an adverse effect on the nature conservation interests of the SLNCI. Policy CVN1 of BNMAP is met as is the plan read as a whole. BNMAP directs the reader to Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) for development proposals in the countryside. The site also lies in the Mourne Area of Outstanding Natural Beauty.
4. In respect of the appeal development there is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland *'Planning for Sustainable Development'* and those of PPS21. PPS21 remains the applicable policy context to consider the proposed development under.
5. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the

countryside in six cases. One of these cases is a dwelling on a farm in accordance with Policy CTY10. It follows that if the development complies with Policy CTY10 it will comply with Policy CTY1 of PPS21.

6. The site comprises a portion of an agricultural field situated approximately 260m to the east of the Kilbroney Road. It lies on the valley floor and is accessed off an existing stoned laneway. The site lies across the Cross River, a small river that runs into the Kilbroney/Rostrevor River to the east. The northern site boundary is defined by a line of mature hedge, whilst the remaining boundaries are undefined. A short distance to the west of the site lies a small wooden stable block. A derelict, stone structure lies approximately 70m to the west on the opposite side of the Cross River on higher ground. The site lies within a rural area with an undulating landform.
7. Policy CTY10 of PPS21 states that planning permission will be granted for a dwelling house on a farm subject to several criteria. Criterion (a) requires that *the* farm business (my emphasis) is currently active and has been established for at least 6 years. The holding comprises approximately 6.6 hectares of land, purchased by the Appellant in 2010. The land in question was previously owned by the Taylors, who let it in conacre to Messrs James and Aidan Rice. They claimed Single Farm Payment on the land under their own business ID number 649035 until June 2012. Details of their payment claims for 2009, 2010 and 2011 were provided.
8. It was confirmed that the Appellant has a farm business ID number (656278) but that it has not been established for 6 years. Further information confirmed that the Appellant was allocated this ID number in September 2011. The Appellant's documentary evidence pertaining to his own business ID number is dated April 2013 onwards. Whilst a farm map dated 11 August 2009 was submitted, this was in the Taylors' name and at that time the records indicate that the James and Aidan Rice were claiming single farm payment. Whilst the land has clearly been farmed for some time, remains in good agricultural condition, and I accept the Appellant is engaged in farming activity, the evidence is that until late 2011 the land was farmed under a separate farm business, that of James and Aidan Rice, even if they took the land in conacre from the Taylors. The subsequent creation of a new farm business ID number for the Appellant's business suggests that the land was at that point in essence subdivided from a separate farm business, that of James and Aidan Rice.
9. The Appellant's representative referred to Departmental advice from May 2010 which referred to buying an established farm business. That is not the situation in this case, where a new farm business has been created and the dwelling is sought under that particular business. In appeal decision 2014/A0116 at land 50m NE of 8 Killowen Village, Rostrevor, the Appellant was not a farmer but the case submitted effectively sought a dwelling under the adjacent farmer's business, which was found to be active and established for the requisite period. That case would not justify the appeal development, as although the land now belonging to the Appellant has been farmed for more than 6 years, the evidence does not demonstrate that this was done under the Appellant's own farm business for that period of time. I find that criterion (a) of Policy CTY10 is not met.

10. Criterion (b) of CTY10 requires that there have been no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. The Taylors' written statement says that prior to their selling the land, no sites were sold off. This only accounts for up to 2010 when the Appellant acquired the land. The Appellant supplied his own written statement that no sites have been sold off the farm since farm business number was bought, which evidence shows was September 2011.
11. The Council pointed to the planning permission granted on 13 March 2014 (ref. P/2013/0651/F) for a replacement dwelling on the holding. The application was submitted by Mr Frank Clerkin, the Appellant's brother. The Article 22 certificate that accompanied the application was also in Mr Frank Clerkin's name and indicated that the site in question was owned by Mr Frank Clerkin.
12. Paragraph 5.40 of PPS21 states that planning permission will not be granted for a dwelling under Policy CTY10 where a rural business has recently sold-off a development opportunity from the farm, such as a replacement dwelling. It goes on to state that for the purposes of Policy CTY10, 'sold-off' will mean any development opportunity disposed from the farm holding to any other person, including a member of the family. Irrespective of whatever arrangement may have taken place between the Appellant and his brother, the approved replacement dwelling site appears to belong to the Appellant's brother, not the Appellant. The farm business is in the sole name of the Appellant and the approved replacement site is shown as being within the Appellant's farm business on his farm map (Field 21). It therefore follows that the replacement dwelling site has been disposed from the holding within the last 10 years of the date of the application. The Appellant did not provide proof of land ownership in relation to the entirety of the holding, including the replacement dwelling site, to demonstrate otherwise. From the evidence provided I find that criterion (b) of CTY10 is not met.
13. Criterion (c) requires that the new building is visually linked for sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane. The access to the proposed dwelling would utilise the existing stoned laneway, thus this policy preference is met. In respect of the visual test element of the criterion, the stone derelict on the holding is not an established building for the purposes of this policy. The structure has four walls, but both gable peaks are missing. It has no roof and it cannot provide any meaningful form of storage or shelter as one would nominally expect a building to provide. Whilst it may have been sufficiently intact to meet the replacement criteria under Policy CTY3 of PPS21, for the purposes of CTY10 it cannot count as being an established building on the holding. In any event given its disposition in relation to the appeal site, the appeal dwelling would not be visually linked or sited to cluster with the derelict structure, or the new dwelling that would replace the derelict when the permission is implemented.
14. The other structure on the holding comprises a small wooden stable block. I am told this was erected approximately 4 or 5 years ago, although the Appellant did not recall precisely when. The structure is used most of the year for stabling horses, but during the lambing season it accommodates sheep and lambs. There is no planning permission for the building and no certificate of lawfulness of existing use or development to demonstrate that it has achieved immunity from enforcement action.

15. An argument was advanced that the structure would constitute agricultural permitted development as it was within 75m of the farm house. The farm house referred to is the derelict stone structure. The derelict is not a farm house but a derelict structure. The dwelling approved as its replacement has not been constructed. I am not persuaded that the structure could have benefitted from permitted development rights under Part 6 of the Planning (General Development) Order (NI) 1993, the legislation that would have applied at the time of construction. The structure was not designed for the purposes of agriculture and was not within 75m of the nearest part of a group of principal farm buildings. Similarly, the structure would not avail of permitted development rights under Part 7 of the Planning (General Permitted Development) Order (NI) 2015 for the same reasons and for the fact it would be the first building on the unit. As the building is unauthorised it cannot be counted an established building on the farm holding.
16. There are no established buildings on the farm holding for the proposed dwelling to cluster or be sited to group with. Criterion (c) of Policy CTY10 is not met. Policy CTY10 states that exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm and where there are either demonstrable health and safety reasons or verifiable plans to expand at the farm business at the existing building group. No arguments were presented under the exceptional test. The development does not comply with Policy CTY10 read as a whole.
17. As the development fails to comply with Policy CTY10 it also fails to meet Policy CTY1 of PPS21. There are no overriding reasons why the development is essential and could not be located in a settlement. The reason for refusal is sustained and determining. The appeal must fail.

This decision relates to the drawing entitled Site Plan & Location Plan numbered 2723sp Revision A dated 11 February 2015 submitted with the application.

**COMMISSIONER MARK WATSON**

### **List of Appearances**

Planning Authority:

Mrs L Grant (Newry, Mourne & Down District Council)

Mr P Smyth (Newry, Mourne & Down District Council)

Appellant:

Mr A Cole (Cole Partnership)

Mr E Clerkin (Appellant)

### **List of Documents**

Newry, Mourne & Down District Council:

'A' Planning Authority's Statement of Case & Appendices.

'B' Rebuttal Statement

'D' Post site visit evidence – email containing date of allocation of farm business  
ID number for Appellant

Appellant:

'C' Statement of Case & Appendices (Cole Partnership)



# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

233

---

<b>Appeal Reference:</b>	2016/A0005.
<b>Appeal by:</b>	Mr Michael Horner.
<b>Appeal against:</b>	The refusal of outline planning permission.
<b>Proposed Development:</b>	Infill Dwelling and detached Garage.
<b>Location:</b>	Adjacent to and north of 36 Belmont Road, Kilkeel.
<b>Planning Authority:</b>	Newry, Mourne & Down District Council.
<b>Application Reference:</b>	P/2014/0303/O
<b>Procedure:</b>	Written representations and accompanied site visit on 10 August 2016.
<b>Decision by:</b>	Commissioner Mark Watson, dated 24 August 2016.

---

## Decision

1. The appeal is dismissed.

## Claim for Costs

2. A claim for costs was made by Newry, Mourne & Down District Council against the Appellant. This claim is the subject of a separate decision.

## Reasons

3. The main issues in this appeal are:
  - The principle of development; and
  - its potential impacts on the visual amenity and rural character of part of the Mourne Area of Outstanding Natural Beauty (AONB).
4. The Banbridge, Newry & Mourne Area Plan 2015 (BNMAP) operates as the statutory local development plan for the proposal. In it, the site lies within the countryside. The BNMAP offers no specific policy or guidance in respect of the proposed single dwelling and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development.
5. The site comprises a portion of agricultural land on the western side of Belmont Road. It sits slightly above the level of the road along the frontage and slopes upwards steadily towards a hillock in the middle. The frontage is defined by a grassed bank and hedge. The northern and western boundaries are defined by a mature hedgeline, whilst the southern boundary is defined by a ranch style fence. The site lies adjacent and north of No. 36, a single storey dwelling with a yard and

outbuilding to its side and rear. To the south of No. 36 there is a dwelling under construction. It has reached the subfloor stage. There is a mobile home on land to the rear of No. 36. To the north of the site sits No. 38, a chalet bungalow. The site lies in a rural area with an undulating landform. It also lies within the Mourne AONB.

6. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. It follows that if the development complies with CTY8 it will comply with Policy CTY1 of PPS21.
7. Policy CTY8 of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Policy CTY8 states 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. The policy states that for its purposes, the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
8. The Appellant considered that the appeal site was such a gap site, falling within a substantial and continuously built up frontage comprising the approved site, No. 36, its outbuilding and No. 38. The approved dwelling to the south of No. 36 was constructed only to sub floor level at the time of the site visit. Whilst it was stated that it would be finished early next year I must judge the appeal site and surrounding environment as it stands at the time of making the appeal decision. Although development on the approved site has commenced, there is no building on the site, merely the footings and subfloor for one. It does not present as a building taken in the ordinary sense of the word and cannot count as a building within the frontage.
9. The outbuilding belonging to No. 36, despite its slightly higher ridge level, reads as being subordinate to and part of No. 36 given its overall design and position relative to the host dwelling. It does not present as being a separate building along the road frontage. Consequently there are only two buildings, Nos. 36 and 38, which have a frontage to Belmont Road. The appeal site cannot be considered to represent a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage. Given my conclusions elsewhere in this decision relating to integration and rural character, it also does not meet the other planning and environmental requirements element of the policy. The proposed development does not meet the exception under Policy CTY8 of PPS21. The site currently serves as an important visual gap between the existing dwellings, arising from its elevated topography and position on the curve in the road. Development of the site would result in the creation of ribbon development, comprised of No. 36, the appeal dwelling and No.

38 when viewed both directions travelling along this part of Belmont Road. The proposed development does not comply with Policy CTY8.

10. I was informed that a senior planning officer had told the Appellant's representative that if the foundations were laid for the approved dwelling south of No. 36, it would count as a building. Reference was also made to a previous DoE decision at Carrogs Road, Newry, where I am informed the Department accepted that an approved site with only foundations laid constituted a building for the purposes of Policy CTY8. Whilst anecdotal in nature, even if these matters were the case, I do not agree that in-situ foundations on site constitute a building for reasons already given elsewhere in this decision. Nor would it be in the public interest to perpetuate poor decision making. I note the Ministerial statement that included reference to Policy CTY8 but its contents would not persuade me that the objections to the development under this policy should be set aside.
11. As the development does not meet CTY8, it does not meet CTY1. There are no overriding reasons why the development is essential and could not be located in a settlement. The Council's first and second reasons for refusal are sustained.
12. Policy CTY13 of PPS21 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The site is elevated in nature and any dwelling on the site would require a substantial amount of cutting into the site, as shown on the illustrative sectional drawing accompanying the Appellant's Statement of Case. The extent of the excavation works required is indicative of the site's unsuitability for development. I am mindful of paragraph 5.64 of PPS21 which states that a new building that relies on significant earthworks, such as mounding or cut and fill for integration will be unacceptable. Given the elevated topography and despite the existing boundary vegetation, the site lacks sufficient enclosure to integrate a dwelling and garage, even one of the design suggested by the Appellant. Although longer distance views of the dwelling and garage travelling south on Belmont Road towards the site would be partly obscured by No. 38, this effect would diminish the closer one gets to the site and the development would nonetheless appear as a prominent feature in the landscape due to the site's elevated nature and position on the curve of the road. The appeal development would not visually integrate into the landscape, even if it would sit no higher in the landscape than No. 38 following the excavation process. This would not justify the development, which I find contrary to Policy CTY13 of PPS21. The third reason for refusal is sustained.
13. Policy CTY14 of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to or further erode the rural character of an area. Although the locality has experienced some degree of built development, the site serves as an important visual gap between existing buildings. Approval of the appeal dwelling would result in a consolidation of buildings along this part of Belmont Road, resulting in a suburban style build-up of development. It would also create ribbon development for reasons outlined earlier. The Council considered that the appeal dwelling would not respect the traditional pattern of development in the area. However, given the mixture of roadside dwellings and those set slightly back from the roadside in the immediate locality, I am not persuaded that a dwelling sited as suggested in the Appellant's illustrative layout would be at odds with this. Nonetheless, for the



reasons given above the development would still result in a further erosion of the rural character in this area. The development is contrary to CTY14 and the Council's reason for refusal is sustained to the extent specified.

14. Policy NH6 of Planning Policy Statement 2 – Natural Heritage (PPS2) states that planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and all of three criteria are met. The Council's objections fell under the first criterion; that the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality. Siting the dwelling on the appeal site would require cutting into the site in order to achieve any level of acceptable integration, an unacceptable solution in the first instance and even then it would still give rise to issues already addressed earlier in this decision. Although the scale of the proposed dwelling would not be objectionable, its siting is such that it would not be sympathetic to the special character of the Mourne AONB in general and of the particular locality given the resultant impacts of the development and harm to the rural character of the area. The development does not fully meet criterion (a) of Policy NH6 of PPS2 and given the critical nature of this deficiency, the policy read as a whole. The fifth reason for refusal is sustained.
15. Whilst the Appellant's representative sought a further opportunity to discuss the proposed development, the appeal decision must be based upon the evidence submitted during the process. The appeals process is not one which allows for further negotiation subsequent to the conclusion of proceedings, even if circumstances prevented the Appellant's representative from attending the site visit.
16. As the Council's reasons for refusal have been sustained to the extent specified and are determining, the appeal must fail.

This decision is based on the 1:2500 scale Site Location Plan numbered 01 submitted with the application.

**COMMISSIONER MARK WATSON**



**List of Appearances**

Planning Authority:- Mrs L Grant  
Ms O Rooney

**List of Documents**

Planning Authority:- 'A' Statement of Case & Appendices

Appellant:- 'B' Statement of Case & Appendices (J M Kearney,  
Architectural Design Service)



# Appeal Decision

Park House  
87/91 Great Victoria Street  
BELFAST  
BT2 7AG  
T: 028 9024 4710  
F: 028 9031 2536  
E: info@pacni.gov.uk

<b>Appeal Reference:</b>	2016/A0009
<b>Appeal by:</b>	Mr Declan Mc Parlan
<b>Subject of Appeal:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Dwelling and garage
<b>Location:</b>	Adjacent to No.63 Ballycoshone Road, Rathfriland
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	P/2014/0798/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 2 <sup>nd</sup> August 2016
<b>Decision by:</b>	Commissioner Julie de-Courcey, dated 8 <sup>th</sup> August 2016

## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside and its effect on the locality's character and appearance.
3. The site is outwith a Special Countryside Area as defined in the local development plan, Banbridge, Newry & Mourne Area Plan 2015. In the "*Countryside and Coast*" section of Volume 1 of the plan, it refers to Planning Policy Statement 21: '*Sustainable Development in the Countryside*' (PPS 21) as setting out planning policies for development in the countryside.
4. The Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' (SPPS), which came into effect in September 2015, is material to all decisions on individual planning applications and appeals. There is no conflict or change in policy direction between its provisions and those of PPS 21 in respect of the appeal proposal. It retains policy for the countryside within existing planning policy documents until a new plan strategy for the Council area has been adopted. Accordingly the operational requirements of the policies contained in PPS 21 are material to the assessment of this appeal.
5. The 1.4ha appeal site comprises the northern section of a field. The appellant's latest evidence indicated that the proposed buildings would be located in the site's south-western corner. The proposal is being considered on this basis.

6. The Council is content that the proposal complies with criteria (a) and (b) of Policy CTY 10 of PPS 21. However, it is considered to be inconsistent with criterion (c), which requires that the proposed buildings be visually linked or sited to cluster with an established group of buildings on the farm and, where practicable, access to the dwelling should be obtained from an existing lane.
7. On the opposite side of the road to the appeal site is a range of farm buildings with a concrete yard in the foreground. The proposed development would adjoin No.63 Ballycoshone Road, which is the dwelling associated with the farm business. The public road separates the farm buildings from the farm dwelling, which is set some 25m to the south-east. Criterion (c) refers to buildings on a farm as opposed to solely farm buildings. Albeit that No.63 Ballycoshone Road is a building on the farm, it does not read as part of the established group of buildings by virtue of separation distance and the intervening public road. The proposed buildings' curtilage would be undefined on two sides and the public road would separate them from the farm group. They would not cluster with the established group of buildings on the farm and form an integral part of it. Paragraph 5.41 of PPS 21 says that, when viewed from surrounding vantage points, a proposed dwelling must read as being visually interlinked with the established group of buildings on the farm with little appreciation of any physical separation that may exist between them. Whilst the proposed buildings would be seen in proximity to the farm group, the physical separation between them would be readily apparent. Therefore, the proposal does not satisfy this requirement.
8. Criterion (c) of Policy CTY 10 refers to exceptional circumstances where consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm. The appellant said that the proposed buildings' siting was dictated by flooding of the lands on the side of the road where the farm group is located. The River Bann runs approximately 80m to the west of it and an extract from the Rivers Agency flood map shows those buildings and more than half the holding's land east of the river and west of Ballycoshone Road to be within the present day floodplain. One of the appellant's photos shows the farmyard and part of the public road just north-east of its entrance as inundated with floodwater. In the round this evidence demonstrates health and safety reasons as to why the proposed development merits consideration under the exceptional provisions of Policy CTY 10.
9. The Department of Agriculture and Rural Development's 2013 Scheme Map is based on aerial photos of lands within the farm business. They refer to townlands, not road names. There does not appear to be another group of buildings on the farm or out-farm. However, this evidence is dated and the appellant did not engage with the policy requirement that an alternative site will be considered provided there are other sites available at another group of buildings on the farm or out-farm. On the basis of the evidence presented, the proposal does not come within the exceptional circumstances allowed for by Policy CTY 10.
10. The appellant considered that the proposed development is necessary to meet special personal or domestic circumstances in accordance with Policy CTY 6. The Council said that, by virtue of Article 59 (1) of the Planning Act (Northern Ireland) 2011, new evidence on this matter should not be admitted to the appeal process.

However, Article 59 (2) states that nothing in the preceding subsection affects any requirement or entitlement to have regard to any other material consideration. Special personal or domestic circumstances are such a material consideration. As the Council has had the opportunity to comment on the appellant's evidence thereon there is no prejudice to it in me considering the issue.

11. Policy CTY 6 of PPS 21 says that, subject to satisfying two criteria, planning permission for a dwelling in the countryside will be granted for the long-term needs of the applicant, where there are compelling, and site-specific reasons for this related to his personal or domestic circumstances. The appellant said that within the last few years a neighbour's child attending a birthday party at the family home chased a ball through their gates and was killed in a road traffic accident. Consequently the family feel that they can no longer live there and need to move back home to be beside parents at No. 63 Ballycoshone Road. This evidence is not indicative of a compelling and site-specific need for the proposed development, that it is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused. Accordingly, the proposal does not comply with Policy CTY 6.
12. Policy CTY 8 of PPS 21 says that planning permission will be refused for a building which creates or adds to a ribbon. From static and transient views, the proposed buildings would be seen side-by-side with No. 63 Ballycoshone Road, each dwelling served by a separate entrance. This would create a ribbon of development, which would be detrimental to the countryside's character, appearance and amenity.
13. The Council considered that the proposal would not satisfy the requirements of criteria (a), (b) and (c) of Policy CTY 13 of PPS 21. A post and wire fence defines both the roadside boundary of the site's south-western corner and its common boundary with No. 63 Ballycoshone Road. From the south-western extent of the Council's defined critical view, vegetation on the site's north-eastern and south-eastern boundaries would not provide enclosure for the proposed buildings. They would be seen to occupy a roadside plot cut out of a larger field. Whilst planting could be used to define their curtilage, this would take time to establish and mature in order to provide a suitable degree of enclosure. Nearing the site, the buildings would increasingly be seen against the sky and would be poorly integrated and prominent. The appeal site has a road frontage of approximately 90m and a hedgerow on top of a roadside bank would screen views of the proposed buildings from the opposite approach until the point where it finishes. From this point, the backdrop of No. 63 Ballycoshone Road would not provide satisfactory integration and they would be prominent due to the lack of enclosure.
14. With regard to Policy CTY 14 of PPS 21, the Council considered the proposal to be at odds with criteria (a), (b) and (d). For reasons already set out, the proposed buildings would be unduly prominent in the landscape and would create a ribbon of development contrary to criteria (a) and (d). The Council described Nos. 61 and 63 Ballycoshone Road as incongruous in the landscape. Nevertheless they are part of the context against which the proposal's impact on rural character must be assessed. On the approach from the south-west, the farm group is seen to the west of Ballycoshone Road and the appeal site forms a visual break between it and No. 63. The proposed buildings would erode this gap. The resultant line of

development, moreover when seen in the cumulative context of No.61 Ballycoshone Road, would result in a suburban style of build-up and further erode the area's rural character contrary to criterion (b).

15. The appellant referred to an instance of development that he considered to be at odds with Policies CTY 1, CTY 8, CTY 10, CTY 13 and CTY 14. Other than the planning application reference number only a photo was supplied to corroborate this contention. As the decision was made in 2013, that the site is now within the jurisdiction of another planning authority and the intervening statutory change in weight to the provisions of the development plan, are not distinguishing considerations. The photo shows a dwelling of low elevation with swathes of vegetation in the foreground and taller buildings to the rear, seemingly on higher ground. On the basis of the information supplied, I cannot determine whether there was inconsistency in the application of Policies CTY 1, CTY 8 and CTY 10 between that site and the appeal proposal. The Council said that issues of integration and rural character were assessed and found acceptable. The submitted evidence is not persuasive that Policies CTY 13 and CTY 14 have been applied in an inconsistent manner.
16. As the proposal is not one of the types of development that is acceptable in principle in the countryside and there are no overriding reasons why it is essential and could not be located in a settlement, it is contrary to Policy CTY 1 of PPS 21. Therefore, all four of the Council's reasons for refusal are sustained.

This decision is based on the Site Location Map at scale 1:2,500.

**COMMISSIONER JULIE DE-COURCEY**

**List of Documents**

- |                     |     |                                |
|---------------------|-----|--------------------------------|
| Planning Authority: | "A" | Statement of Case & appendices |
|                     | "B" | Rebuttal                       |
| Appellant:          | "C" | Statement of Case              |
|                     | "D" | Rebuttal                       |