

<b>ITEM NO</b>	<b>3</b>			
<b>APPLIC NO</b>	LA07/2015/0402/F	Full	<b>DATE VALID</b>	01/06/2015
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Mr Glyn Mitchell O'Hagan Construction Ltd 63 Newry Road Rathfriland BT34 5AL		<b>AGENT</b>	
<b>LOCATION</b>	Opp and 25m E of No 16 Chancellors Hall Chancellors Road Newry Co Down			NA
<b>PROPOSAL</b>	Proposed erection of dwelling			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	1	0	0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0

- 1 The proposal is contrary to Policy QD1 of the Department of the Environment's Planning Policy Statement 7, Quality Residential Environments, criterion (a), in that, it has not been demonstrated that the proposal respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, massing and appearance of buildings and structures and criteria (H), in that, the proposal would, if permitted, unacceptably adversely affect the amenity of adjoining residents by reason of overlooking and dominance.
- 2 The proposal is contrary to Policy LC1 of the Addendum to Planning Policy Statement 7 on Safeguarding the Character of Residential Areas, criterion (b), in that the proposal does not respect the existing settlement pattern in the area.
- 3 The proposal is contrary to Paragraph 6.137 of the Strategic Planning Policy Statement for Northern Ireland (bullet point 1 increased housing density without town cramming), in that the form, scale, massing and layout of the proposal does not respect the local character of the area and does not safeguard the amenity of local residents.



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an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**

District Council

**Application Reference: LA07/2015/0402/F**

**Date Received: June 1<sup>st</sup> 2015**

**Proposal: Erection of two storey dwelling**

**Location:** Opposite and 25m east of 16 Chancellor's Hall, Chancellors Road, Newry

**Site Characteristics & Area Characteristics:**

The site is an area of vacant ground located close to the entrance to the Chancellors Hall housing development. The site slopes sharply down as it moves away from the estate road within the development, the ground level dropping from 58.288 adjacent to the road to 54.3 at the rear boundary. Most of the site is a banked slope covered in grass; it is currently surrounded by a temporary fence. Part of the site has been included in the various historical approvals for the development of Chancellors Hall as an area of open ground adjacent to the access road.

The surrounding area is residential; the remainder of Chancellors Hall lies to the west and north of the site, to its east and south is Heslip's Court which is currently under development. The greater part of the site has been included in the approvals for this development, as either a dwelling or area of amenity space

The latest version of this application seeks Full Planning Permission for the construction of a two storey detached dwelling that will be constructed on an area of ground created by artificially infilling the ground up to the same level in Chancellor's Hall, retaining walls of up to 2.1 metres in height will be constructed around the site boundary into Heslip's Lane. The dwelling will have a ridge height of 7.6 metres above ground level.



#### Site Layout Plan

All drainage around houses to be 100mm dia pipes with a consistence fall of 1 in 40 and ensure that the first MIs are within 12.0m of the main sewers.

No high walls to the front of any of the houses facing onto the development road with the boundaries defined by a pin kerb. Where retaining wall are required between houses ensure that they are no higher than 0.6m

## ADDITIONAL

Since the initial site visit on October 7<sup>th</sup> 2015, construction of Heslip's Lane has been completed and the dwellings in it are now occupied, and a new row of dwellings has been constructed in Chancellor's Hall immediately to the north of Heslip's Court.

It is also noted that a retaining wall has been constructed and the site has been infilled with material since the date of the submission of this application. This matter has been referred to the Planning Department's Enforcement Section for investigation.

## Site History:

The site has been the subject of a number of planning applications for the development of Heslip's Court, most recently P/2014/0099/F. An excerpt from the approved site layout plan is provided below.



**Planning Policies & Material Considerations:**

- Strategic Planning Policy Statement
- Banbridge/Newry and Mourne Area Plan 2015
- Planning Policy Statement 7 Quality Residential Environments.
- Planning Policy Statement 7 (Addendum) Safeguarding the Character of Established Residential Areas

**Consultations:**

**Transport NI** No objections

**Objections & Representations**

An objection has been received from a person who has not disclosed their address, the issues raised include overlooking, overshadowing, overdevelopment and loss of amenity space.

## **Consideration and Assessment:**

### **Strategic Planning Policy Statement**

The SPPS provides strategic guidance for the preparation of new Local Development Plans by Councils, the site is in an approved residential development and therefore Housing in Settlements paragraphs 6.133 to 6.147 fall to be considered as part of this assessment.

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

The site straddles the boundaries between zonings NY 24 (Chancellors Hall) and 26 (Heslips Court) in the area plan. Both are identified as committed housing zonings and no KSR's are included.

### **PPS7 Quality in Residential Developments Policy QD1**

The policy sets out a number of criteria which proposals for new residential developments must comply with, criterion (a) requires that the development must respect the character and scale of surrounding buildings, in this case the context is provided by the two surrounding developments which consist of two storey semi-detached dwellings.

The proposal, as submitted, involves the creation of two retaining walls of 2.1 metres in height on the southern and eastern boundaries of the site facing into Heslips' Court. As noted above, these have been constructed and the site has been infilled, without the benefit of planning approval. These face into the rear gardens of the dwellings, limiting their amenity space and creating an unattractive residential environment, due to their layout, scale, massing and appearance and resulting dominance. The proposal is therefore contrary to Criterion (a) in that, it has not been demonstrated that the proposal respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, massing and appearance of buildings and structures.

Following contact with the agent during the early stages of the application when a number of planning issues were raised by the Planning Authority about overlooking and dominance, amended plans were submitted. The amended design omits windows on the rear elevation, this appears to be an attempt to minimise overlooking of the gardens of the dwellings in Heslip Court, however this is insufficient to overcome this issue of overlooking from the amenity space of the proposal down into the properties in Heslip Court which are situated at a lower level as well as into the recently constructed dwellings in Chancellors Hall where the proposed dwelling is sited one metre from the boundaries of at least two of these properties. It is also considered that the proposal is contrary to criteria H in terms of dominance with the proposed two storey dwelling sited in very close proximity to adjacent dwellings and the accompanying difference in levels between the proposal and the houses in Heslip Court.

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

It is considered that this proposal is contrary to the Paragraph 6.137 of the Strategic Planning Policy Statement for Northern Ireland (bullet point 1 increased housing density without town cramming), in that the form, scale, massing and layout of the proposal does not respect the local character of the area and does not safeguard the amenity of local residents.

### **PPS7 Addendum on Safeguarding the Character of Existing Residential Areas Policy LC1**

Criterion (b) of this policy requires that development proposals be in keeping with the overall character and environmental quality of the established residential area. In this case the majority of the site was developed as part of Heslips' Court. The proposal intends to change the existing development pattern through an engineering operation and the construction of inappropriate retaining walls and the raising of existing ground levels. The proposed sites would then read with Chancellor's Hall. It is considered that the proposal would erode the local character and environmental quality and would not respect the existing housing pattern, in attempting to artificially create a site to accommodate an additional dwelling it is effectively an instance of town cramming or of garden grabbing, a practice which policy seeks to discourage..

It is considered that this proposal, as a result, would create unacceptable damage to the local character, environmental quality and residential amenity of the established residential area. It is also considered that this would not be sensitive in design terms to people living in the existing neighbourhood nor would it be in harmony with the area.

### **Recommendation:**

The proposal, as submitted was for a two storey dwelling on a site to be created, largely, through the construction of retaining walls and the raising of the ground level of an adjacent development. The proposal description does not reflect the current position on the site due to the fact that, as noted above, the walls have been constructed and the site has been infilled, without the benefit of planning approval.

The proposal, as submitted, would not respect the settlement pattern as it effectively involves the creation of a site through the infilling of ground and the use of retaining walls which will create an unattractive residential environment for the neighbouring residents, the presence of a two storey dwelling at a significantly higher site level . Therefore, in light of the above consideration, refusal is recommended.

### **Refusal Reasons/ Conditions:**

1. The proposal is contrary to Policy QD1 of the Department of the Environment's Planning Policy Statement 7, Quality Residential Environments, criterion (a), in that, it has not been demonstrated that the proposal respects the surrounding context and is appropriate to the character

and topography of the site in terms of layout, scale, massing and appearance of buildings and structures and criteria (H), in that, the proposal would, if permitted, unacceptably adversely affect the amenity of adjoining residents by reason of overlooking and dominance.

2. The proposal is contrary to Policy LC1 of the Addendum to Planning Policy Statement 7 on Safeguarding the Character of Residential Areas, criterion (b), in that the proposal does not respect the existing settlement pattern in the area.
3. The proposal is contrary to Paragraph 6.137 of the Strategic Planning Policy Statement for Northern Ireland (bullet point 1 increased housing density without town cramming), in that the form, scale, massing and layout of the proposal does not respect the local character of the area and does not safeguard the amenity of local residents.

**Case Officer**

**Authorised Officer**

**APPLICANT'S RESPONSE TO RECOMMENDED REFUSAL REASONS**

LA07/2015/0402/F

PROPOSED ERECTION OF DWELLING

OPPOSITE AND 25M E OF NO 16 CHANCELLORS HALL, CHANCELLORS ROAD, NEWRY, CO DOWN

There are three recommended refusal reasons:

- 1. The proposal is contrary to Policy QD1 of the Department of the Environment's Planning Policy Statement 7, Quality Residential Environments, criterion (a), in that, it has not been demonstrated that the proposal respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, massing and appearance of buildings and structures and criteria (h), in that, the proposal would, if permitted, unacceptably adversely affect the amenity of adjoining residents by reason of overlooking and dominance.***

The rear of the adjoining properties are already overlooked. There is a direct and unscreened view into their rear windows and back gardens from the road serving the Chancellors Hall housing development:

**Figure 1: The Application Site and View into the Rear of Dwellings at Heslips Court**



As this viewpoint is near to the main entrance of Chancellors Hall from Chancellors Road, there is a substantial amount of passing traffic – almost all of the residents of Chancellors Hall pass and have a clear view into the back of these houses.



**APPLICANT'S RESPONSE TO RECOMMENDED REFUSAL REASONS**

LA07/2015/0402/F

PROPOSED ERECTION OF DWELLING

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The application seeks permission to erect a dwelling and provide landscaping in the raised area of land in the foreground of the above photograph. This will screen the adjoining properties from passing traffic on Chancellor's Road.

The proposed dwelling has also specifically been designed with no upper floor windows in its side or rear elevation and with planting and a fence provided along the shared boundary with 8 and 9 Heslips Court that will prevent any overlooking from ground floor windows:

**Figure 2: Proposed Elevations – Note No First Floor Windows in Southern or Eastern Elevation**



When the proposed dwelling and landscaping are completed on the site, there will therefore be significantly less overlooking of the adjoining properties than there is now.

**APPLICANT'S RESPONSE TO RECOMMENDED REFUSAL REASONS**

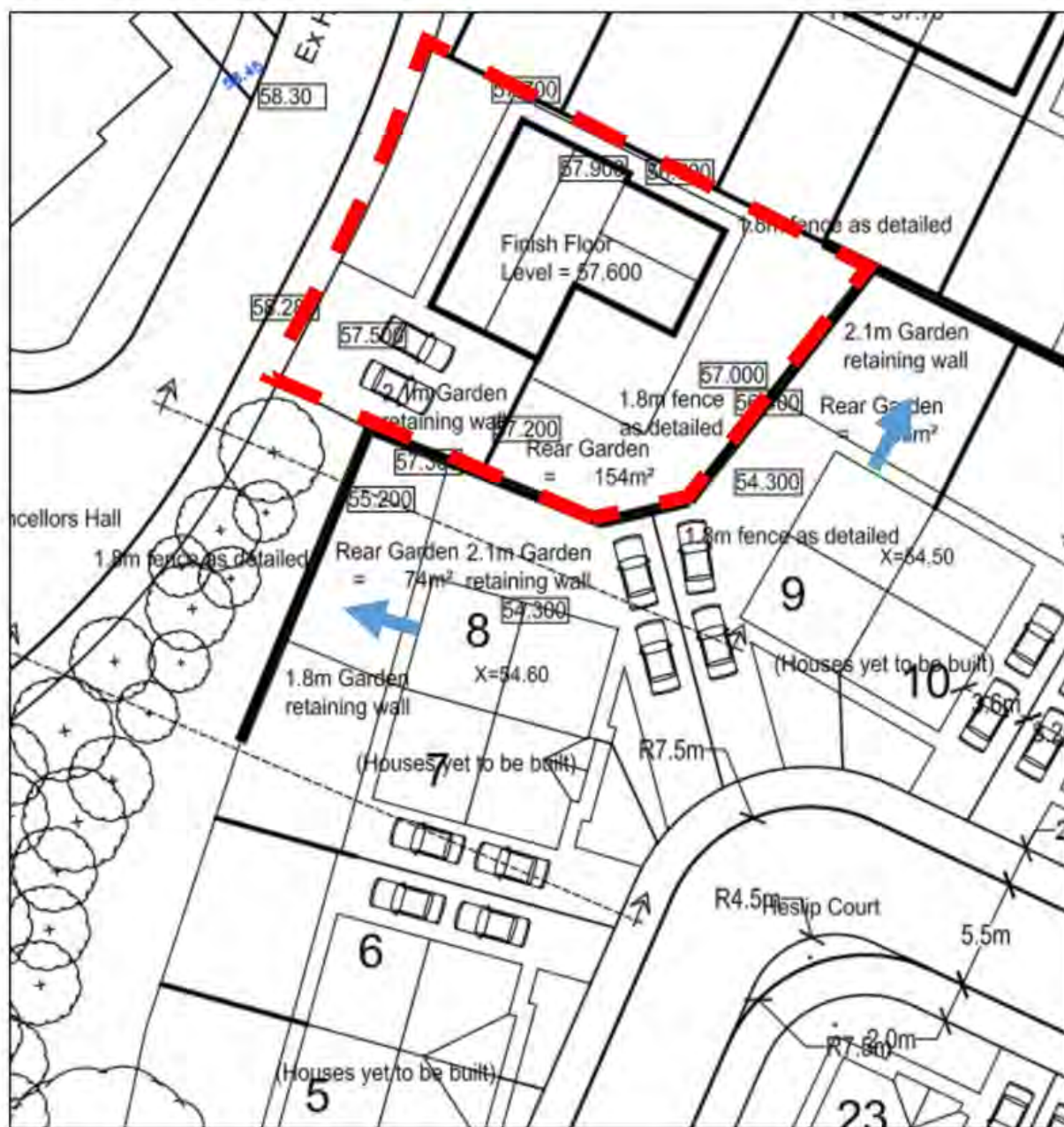
LA07/2015/0402/F

PROPOSED ERECTION OF DWELLING

OPPOSITE AND 25M E OF NO 16 CHANCELLORS HALL, CHANCELLORS ROAD, NEWRY, CO DOWN

The application site is also orientated to the side of both neighbouring dwellings at 8 and 9 Heslips Court and therefore won't impinge on their view from their main habitable rooms or out over their respective gardens. It will therefore have no adverse impact on their amenity due to over dominance:

**Figure 3: Proposed Layout**



**APPLICANT'S RESPONSE TO RECOMMENDED REFUSAL REASONS**

LA07/2015/0402/F

PROPOSED ERECTION OF DWELLING

OPPOSITE AND 25M E OF NO 16 CHANCELLORS HALL, CHANCELLORS ROAD, NEWRY, CO DOWN

- 2. *The proposal is contrary to Policy LC1 of the Addendum to Planning Policy Statement 7 on Safeguarding the Character of Residential Areas, criterion (b), in that the proposal does not respect the existing settlement pattern in the area.***

The planner's committee report explains that this refusal relates to the raising of land and the retaining wall that forms part of the proposed development. This work has already been completed, as can be seen in the above photograph, and the adjoining houses and gardens have already been sold, leaving the application site as vacant land.

Chancellors Hall sits at a higher level than the adjoining Heslips Court and a retaining wall was approved as part of the development in this general location to account for this change in level.

Although the proposed retaining wall has been erected slightly higher at 2.1m and in a different location to that approved, this makes no material difference to the relationship of Heslips Court with Chancellors Hall – regardless of this proposal, the two existing housing developments will always be at different levels and there will always be a retaining wall required to account for this change in level.

The proposal does not change this fact and therefore has no impact whatsoever on the character of the area. The second recommended refusal reason should not be sustained.

- 3. *The proposal is contrary to Paragraph 6.137 of the Strategic Planning Policy Statement for Northern Ireland (bullet point 1 increased housing density without town cramming), in that the form, scale, massing and layout of the proposal does not respect the local character of the area and does not safeguard the amenity of local residents.***

Amenity is discussed above. In terms of character, the proposal will deliver an improvement to the local character compared to that approved on the site. The application site is currently an area of left-over undeveloped land between the Chancellors Hall and Heslips Court developments, and in a prominent location near the entrance of the Chancellors Hall Development.

The first image below (Figure 4) shows the approved development without the proposal, the second (Figure 5) shows the proposal on the main access road into Chancellors Hall. This demonstrates that, without the proposal in place, most of the traffic entering the development will look straight into the

**APPLICANT'S RESPONSE TO RECOMMENDED REFUSAL REASONS**

LA07/2015/0402/F

PROPOSED ERECTION OF DWELLING

OPPOSITE AND 25M E OF NO 16 CHANCELLORS HALL, CHANCELLORS ROAD, NEWRY, CO DOWN

rear of the approved terrace of development. This has an untidy and unattractive appearance at an important viewpoint into the development:

**Figure 4: View Entering Chancellors Hall – As Approved**

The proposal will substantially screen the rear of the approved units and create a much tidier and more attractive entrance feature to Chancellors Hall:

**Figure 5: View Entering Chancellors Hall – As Proposed**

<b>ITEM NO</b>	<b>5</b>		
<b>APPLIC NO</b>	LA07/2015/1123/LBC	Listed Buildi	<b>DATE VALID</b> 29/10/2015
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>		
<b>APPLICANT</b>	Quayside Propoeties Ltd C/O Mr Paul Walsh Unit 17 CIDO Business Park Lurgan Craigavon BT35 6HZ	<b>AGENT</b>	DSC Architects Ltd 46 Avenue Road Lurgan Craigavon BT66 7BD  NA

**LOCATION** 2-3 Sugarhouse Quay  
Lisdrumgullion  
Newry  
BT35 6HZ

**PROPOSAL** Demolition of remaining parts of building for health and safety reasons

<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>		<b>SUP Letters</b>		<b>OBJ Petitions</b>		<b>SUP Petitions</b>	
	1	0	0	0	Addresses	Signatures	Addresses	Signatures
					0	0	0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy BH14 of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage and the Newry Conservation Area Booklet in that the building makes a material contribution to the character of the Newry Conservation Area and no exceptional reason has been demonstrated which, in the judgement of the Department, justifies its demolition.
- 2 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy BH10 of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the building is listed under Section 80 of the Planning Act (NI) 2011 and no exceptional reason has been demonstrated which would justify its demolition.



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**Newry, Mourne  
and Down**  
District Council

**Application Reference:**

LA07/2015/1123/LBC

**Date Received:**

29/10/2015

**Proposal:**

Demolition of remaining parts of buildings for health and safety reasons

**Location:**

2-3 Sugarhouse Quay, Lisdrumgullion, Newry, BT35 6HZ

**Site Characteristics & Area Characteristics:**

No. 2-3 Sugarhouse Quay comprises a partially demolished former warehouse which is Grade B2 listed, located within the Newry Conservation Area. The building forms part of an original complex of buildings originating back to the late 18<sup>th</sup> Century, which were developed to service the adjoining canal. Most of the existing buildings are 19<sup>th</sup> Century and this is the most extensive warehouse complex to survive in Newry. At the time of site inspection, it is evident that the building is currently in disrepair, with the site boarded up along Sugarhouse Quay. It sits adjacent to a number of buildings in operation, including a Funeral Directors and Printing premises, along Sugarhouse Quay, with the rear touching an additional warehouse building which is listed, currently home to a tyre repair business.





### Site History:

Planning permission and Listed Building Consent have previously been granted on this site as detailed below. The agent advises that minimal works have been carried out in regards to P/2005 /1506/F –no formal evidence to demonstrate this or Certificate of Lawfulness has been received and therefore the status of this approval is questionable.

<u>P/2005/1507/LB</u>	Demolition and making safe of part of the existing structure along with the conversion of the remainder of the fabric and the replacement of the demolished structure with new development to include ground floor retail units and 22 apartments – Permission Granted 08/02/2008 (Expiry 08/02/2013.)
<u>P/2005/1506/F</u>	Demolition and making safe of part of the existing structure along with the conversion of the remainder of the fabric and the replacement of the demolished structure with new development to include ground floor retail units and 19 apartments – Permission Granted 08/02/2008 (Expiry 08/02/2013.)
<u>P/2001/1400/Q</u>	Apartments, Pre-Application enquiry, non-committal
<u>P/1988/4092</u>	Kiosk Substation, Permitted Development
<u>P/1988/4068</u>	Kiosk Substation, Permitted Development
<u>P/1987/0010</u>	Extension to bakery, Permission Granted

### Planning Policies & Material Considerations:

- Strategic Planning Policy Statement (SPPS)
- Banbridge / Newry and Mourne Area Plan 2015
- PPS6 ' Planning, Archaeology and the Built Heritage'
- Newry Conservation Area Booklet

### Consultations:

#### Historic Environment Division: Historic Buildings

An initial response dated 25<sup>th</sup> May 2016 advised the proposal has an adverse impact on the building under Policy BH8 of PPS6 and does not comply with Policy BH10 of PPS6. The report submitted by the structural engineer focuses on the building's current condition as a consequence of an on-going disregard. HED did not consider

this to be a legitimate validation for demolition under BH10 of PPS6. As a result, it was requested that a Conservation qualified Structural Engineer should ascertain the specifics of the structural condition and explore routes to conservation. A Visual Inspection Report, prepared by Albert Fry Associates was subsequently submitted for consideration. A further response from HB was received on 30<sup>th</sup> January 2017, stating that they consider the proposal still fails to comply with BH10 of PPS6, in addition to Para 6.15 of the SPPS. The concluding remarks that it may be possible to retain *“the front and gable walls of the NW block to eaves level and the other three blocks to their uppermost existing floor level”* is considered to be unacceptable as HED would wish to see as much of the existing building retained as possible. It its current form therefore, HED: HB considers the proposal to remain contrary to Policy BH10 Demolition of a Listed Building and 6.22-6.27 of PPS6.

#### Historic Environment Division: Historic Monuments

In an initial consultation response dated 25<sup>th</sup> May 2016, Historic Monuments has started they would be content subject to conditions for the agreement and implementation of a developer funded programme of archaeological works, including an industrial archaeological survey to identify and record any industrial archaeological remains in advance of any construction, or to provide their preservation in situ, as per Policy BH4 of PPS6. Following the above comments from Historic Buildings, a further response has been received on 22 March 2017 from HM stating that they too would welcome maximum retention and reuse of the fabric within the application site and the concerns of HB should be satisfactorily addressed. Were this to be the case, HM advise that an approval should be conditional on the agreement and implementation of a developer funded programme of archaeological works, including an industrial archaeological survey

#### **Objections & Representations:**

- 21 Neighbour notifications have been issued 12/04/16 (expiry date 26/04/16)
- The application was advertised in 5 local papers (statutory expiry date 04/12/2015)
- 1 objection has been received from the Ulster Architectural Heritage Society with summary points as follows:
  - o UAHS object on the basis that the proposal is contrary to the SPPS and PPS6
  - o UAHS questions the extent to which the original structural engineer's report was heritage-led and carried out by a conservation engineer.
  - o Where there are issues around the safety of the site, investigation should be evidenced that heritage-led solutions have been fully considered.
  - o UAHS believes that the partial demolition in 2003 was unauthorised and that the building should previously have been the subject of enforcement.
  - o The building's current condition UAHS points out has come about due to a lack of care and maintenance and reminds the owner of their duty of care to the listed building in this regard.



**Consideration and Assessment:**

According to the SPPS, proposed development which accords with the development plan should be approved and development which conflicts with an up-to-date plan should be refused, unless material considerations indicate otherwise.

The subject building which is Grade B2 listed (HB16/26/072) holds the following designations under the BNMAP 2015: Newry Conservation Area (NYCA01,) Area of Archaeological Potential (AAP01,) Local Landscape Policy Area (NY 114,) Townscape Heritage Initiative (THI00,) Newry City Centre (NY75,) Newry Development Limit (NY01.)

This application proposes to demolish the remaining parts of the existing buildings for health and safety reasons. Para 6.16 of the SPPS outlines that proposals for the total demolition of a listed building or any significant part of it must not be permitted unless there are exceptional reasons why it cannot be retained in its original or a reasonably modified form. Where consent to demolish a listed building is granted, this should normally be conditional on prior agreement for the redevelopment of the site and appropriate arrangements for recording the building prior to its demolition.

The policy provisions of PPS6 'Planning, Archaeology and the Built Heritage' have been retained through the SPPS and are the main criteria against which to assess this proposal. Policy BH10 considers the demolition of a listed building and replicates the view of the SPPS in that there must be exceptional reasons as to why the building cannot be retained in its original or a reasonably modified form. Where exceptionally, consent is granted for demolition, this will normally be conditional on prior agreement for the redevelopment of the site and appropriate arrangements for recording the building before its demolition.

Policy BH14 deals with demolition in a Conservation Area and operates a presumption in favour of retaining any building which makes a positive contribution to the character or appearance of a Conservation Area. Similarly with BH10, where exceptionally, demolition is permitted, full detailed plans about proposed development for the site is required to accompany conservation area consent applications.

The reasons behind this proposal claim that the remaining structure is deemed to be unsafe and the carrying out of stabilising works is impossible due to health and safety risks. The agent has cooperated with our request to provide an additional engineer's report provided by a qualified Conservation Structural Engineer. HED:HB as outlined above, having seen this report, remain of the opinion that as much of the existing fabric should be retained. Furthermore, the agent was advised that the proposal in its current form fails to meet PPS6 and SPPS, without accompanying proposals to re-develop the site.

A request was made by the agent for an onsite meeting with HED and planning, however it was not felt this was merited, without any proposals for redeveloping the

site. In sympathy with the current scenario, the agent was offered the opportunity to submit an application with proposals to redevelop the site, to be assessed in parallel with this current application which we would hold until this was submitted. At this point, having seen the proposed plans, the Planning Department would then revisit the merits of arranging an on-site meeting to agree on an overall solution and prioritise the processing of this application.

A response from the agent was received advising that unfortunately it took so long for the previous proposals to be approved that by the time planning permission was granted in 2008 the scheme was no longer commercially viable. The response states also that limited works were commenced in 2013 (no certificate of lawfulness or evidence has been submitted to demonstrate this,) and the approved scheme is still not economic and there is no prospect that it will be completed in the foreseeable future. It adds that alternative proposals which may have been considered are also not viable due to the restrictions imposed by the existing buildings and the considerable costs associated with underpinning and stabilising the remaining structure. Nevertheless, the applicant feels that the risk that parts of the building could collapse onto adjacent properties is considerable and that some degree of demolition needs to be undertaken urgently for health and safety reasons. The agent notes that this has now been recommended by two structural engineers, one of whom is an accredited Conservation Engineer. The agent states that the current situation leaves our client in an impossible position whereby they cannot obtain approval to carry out the necessary demolition without agreeing to undertake redevelopment but cannot undertake this redevelopment as it not economically possible to do so.

Internal checks with our Building Control Department confirm that an inspection on the roof structure was carried out on 01/07/2003. This decision was closed, following inspection. Having assessed all of the information on file and together with the statutory responses from Historic Environment Division, I agree that the proposal does not meet the requirements of the PPS6 polices BH10 and BH14 in addition to the SPPS. The offer to hold this application to allow for a redevelopment proposal has been turned down. Whilst I sympathise with the current scenario, the matter of economic viability is not a material planning consideration and I agree with UAHS and HED that a degree of neglect has resulted in this situation.

**Recommendation:** Refusal

**Reasons for refusal:**

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy BH10 of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the building is listed under Section 80 of the Planning Act (NI) 2011 and no exceptional reason has been demonstrated which would justify its demolition.

2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS), Policy BH14 of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage and the Newry Conservation Area Booklet in that the building makes a material contribution to the character of the Newry Conservation Area and no exceptional reason has been demonstrated which, in the judgement of the Department, justifies its demolition.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

<b>ITEM NO</b>	7			
<b>APPLIC NO</b>	LA07/2016/0325/F	<b>Full</b>	<b>DATE VALID</b>	10/03/2016
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>			
<b>APPLICANT</b>	L Jay Properties 43 The Slopes Portadown BT63 5NT	<b>AGENT</b>	McAdam Stewart Architects Banbridge Enterprise Centre Scarva Road Banbridge BT32 3QD 02840623444	
<b>LOCATION</b>	Site adjacent to and north of number 42 Carquillan Hilltown Newry BT34 5UG			
<b>PROPOSAL</b>	Erection of 18 number dwellings consisting of 4 No. single storey detached and 12 No. 2 storey semi-detached dwellings and associated siteworks			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	9	0	0	0
	<b>Addresses Signatures Addresses Signatures</b>			
	0	0	0	0



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**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0325/F

**Date Received:** 7<sup>th</sup> March 2016

**Proposal:** Erection of 18 number dwellings consisting of 4 No. single storey detached and 12 No. 2 storey semi-detached dwellings and associated siteworks

**Location:** Site adjacent to and north of number 42 Carquillan, Hilltown, Newry, BT34 5UG

**Site Characteristics & Area Characteristics:**

The site is a rectangular piece of agricultural land enclosed on two sides by existing development at Carquillan. The existing dwellings are detached and most are two storey. They are all finished in red brick with a brown tiled roof and white PVC windows. The site slopes generally from south to north towards agricultural land beyond, and Hilltown Sale Yard. It is currently used for grazing and also some informal recreational use as there is a set of goal posts present. There are retaining structures along the southern boundary as the adjoining development sits at a higher level. There are two potential access points from turning heads in Carquillan. It is proposed to use the one to the eastern side which would require the removal of a hedge. The northern boundary of the site is undefined on the ground.



Proposed entrance to site



Looking south into site



Within site

The site is within the development limit of Hilltown, as defined on the Banbridge, Newry and Mourne Area Plan 2015. It is located towards the NW of the settlement and is part of a larger site zoned for housing (HN13). It is within the Mournes and Slieve Croob Area of Outstanding Natural Beauty. The main land uses in the area are residential and agriculture.

#### **Site History:**

There have been no previous planning applications on this part of the site.

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

- The NI Regional Development Strategy 2035
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015
- PPS2 – Natural Heritage
- PPS3 – Access, Movement & Parking
- DCAN15 – Vehicular Access Standards
- Parking Standards
- PPS6 – Planning, Archaeology and the Built Heritage
- PPS7 – Quality Residential Environments – Policy QD 1
- Addendum to PPS7 – Safeguarding the Character of Established Residential Areas
- PPS8 – Open Space, Sport and Outdoor Recreation
- DCAN8 – Housing in Existing Urban Areas
- PPS12 – Housing in Settlements
- PPS15 – Planning and Flood Risk
- A Planning Strategy for Rural Northern Ireland (Policies DES2 & SP18)
- Creating Places
- Living Places Urban Stewardship and Design Guide

#### **Consultations:**

TransportNI – Revised road design is acceptable and plans for the road to be adopted have been determined. Conditions provided.

NI Water – Public water supply and foul and surface water sewers available with capacity to serve the development.

Environmental Health – No objections provided public sewerage system is used.

NIEA – Standard advice on sewerage and drainage. Low risk of land contamination – conditions supplied. Site is close to Area of Archaeological Potential, but no archaeological objections.

Rivers Agency – Drainage Assessment was required in accordance with policy FLD3. Revised document received 2<sup>nd</sup> March 2017 is acceptable.

NI Housing Executive – Has identified a projected need of 15 social units for the town and supports the provision of 8 of these units on this site, plus three wheelchair units. The design of the units has been amended to comply with DfC space standards.

### Objections & Representations:

The application was advertised in local newspapers on 25<sup>th</sup> March 2016 and final amendments to the scheme were re-advertised on 10<sup>th</sup> March 2017. 11 neighbouring properties were notified on 1<sup>st</sup> April 2016 and 24<sup>th</sup> February 2017 as required under Article 8 (1) (b) of the Planning (General Development Procedure) Order (Northern Ireland) 2015.

Objections were received from the owners of six neighbouring properties all but one of which adjoin the site, as shown on the map below. Some of these were copies of the same letter. As there are objections from six different addresses, the application must be determined by the Planning Committee.



The main issues raised in multiple objections were to the zoning of this site for housing including social housing, development not in keeping with the character or density of the estate, impacts on a public right of way, insufficient parking, access road not wide enough and unsuitable for construction traffic, drainage issues have not been addressed, demand for social and private housing has not been proven, privacy and daylighting issues.

The land was zoned for housing (including a portion of social housing) through a statutory development plan process concluded in 2013 and in which the public had the opportunity to make representations. It is not for the Council to now review the nature of this process through processing of the current planning application. Section 6 (4) of the Planning Act (Northern Ireland) 2011 states that the application must be determined in accordance with the plan unless material considerations indicate otherwise. While the points raised by objectors are material considerations, they are not considered to override the provisions of the adopted plan.

While the proposal represents an increase in density from the originally constructed estate, this is in line with the Key Site Requirements of the Area Plan. The design and finishes of the dwellings have been amended to better reflect the character of the existing estate, e.g. through the use of red brick.

The agent has stated that there is no public right of way on the site and no such easement is shown on the Council's mapping system. If the application is approved, an informative will be attached advising that the permission does not alter or extinguish any existing right of way on the lands.

TransportNI has repeatedly confirmed that they are content with the proposed access arrangement and road layout in terms of road safety. As construction traffic travelling to other phases of the estate used the same access road, this is not envisaged to be a difficulty. It is acceptable under planning policy to provide both in-curtilage and on-street parking and the total of 60 spaces provided is in excess of the policy requirements.

A Drainage Assessment was requested in accordance with PPS15. After several revisions, this has now been agreed by Rivers Agency. It demonstrates that storm water can safely be discharged into the NI Water network.

The Housing Executive is the authoritative body with regard to social housing need and has identified a need of 15 units in Hilltown until 2021. They are supporting the provision of part of this need on this site in accordance with the plan zoning. It is not for the Council to suggest alternative sites where this can be realised, as proposed by the objectors. There is no requirement to demonstrate need for private housing on an urban zoned site.

The dwellings have been designed to prevent adverse impacts on the privacy and amenity of neighbouring properties and this is aided by the topography of the site as the new dwellings will sit well below the level of the existing dwellings to the south. This, along with the site's position relative to the sun path will ensure that existing dwellings do not experience significant loss of light.

In addition, individual objectors raised the following specific issues:



The owner of No. 14 had concerns about the proximity of the nearest new dwelling, loss of privacy and levels/drainage. The design of this dwelling has now been amended to single storey with no first floor windows, levels have been adjusted and the Drainage Assessment including discharge to existing NI Water storm drains has been agreed by Rivers Agency.

The owner of No. 21 stated that the land dampens noise pollution from the sale yard and that this is the only safe green area for the children to play. Any recreational use is not formalised and the land remains primarily agricultural. As it is zoned for housing in the adopted plan, these concerns cannot be given determining weight. Any changes in the level of noise pollution can be investigated by Environmental Health.

The owners of No. 42 had agreed to purchase part of the land within the site adjacent to their house, but this had been delayed by a legal issue over a right of way. Land ownership issues are separate from the planning process and a pending sale of part of the land would not stop the developer applying for housing on the site. They were also concerned that a house may be erected on the narrow access strip to the east of their property. This was never part of the application before the Council as the land is not within the red line boundary. They raised concern about cars using this entrance point, but again, there is no provision for this in the application and all traffic will use the eastern entrance point.

Having considered the concerns raised by the objectors in detail, relevant issues have been addressed in the detailed plans and other issues raised cannot be given determining weight.

### **Consideration and Assessment:**

The proposal fell within the threshold of Category 10 (b) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. On 12<sup>th</sup> October 2016 the Council determined that there would be no likely significant environmental effects and an Environmental Statement would not be required.

RG8 of the RDS aims to manage housing growth to achieve sustainable patterns of residential development. It aims to provide more high quality accessible housing within existing urban areas without causing unacceptable damage to the local character and environmental quality or residential amenity of these areas. The SPSS sets out core planning principles to be employed in the quest to achieve sustainable development. Of particular relevance to this application are the aim of supporting good design and positive place making while preserving and improving the built and natural environment.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the settlement limit of Hilltown on the above Plan, and is zoned for housing (part of a larger zoning). There are 2 Key Site Requirements. A minimum of 15 dwellings are to be provided for social housing and

the density is to be between 25 and 30 dwellings per hectare. The developer proposed to provide 8 social units in this phase of the development. It was later proposed by NIHE that there would be 3 wheelchair units for identified complex needs cases on the social housing waiting list. This site comprises 52% of the overall zoning of 1.11Ha. 8 social units would equate to 53% of the overall social housing requirement of 15 units. A condition will be imposed to ensure that a minimum of 8 units are for social housing let by a registered Housing Association in accordance with the Area Plan. The mix provided by NIHE counts the wheelchair units on top of the original requirement of 8 units, increasing the total to 11. However, to condition the provision of 11 units would go beyond the requirements of the Area Plan and may impact on the viability of the development. Therefore the condition will refer to a minimum of 8 social units incorporating the mix provided by the Housing Executive. The remaining units can be provided in a later phase on land to the north, subject to housing need at that time. With regard to density, the existing development at Carquillan contains larger detached houses at a rate of 16 dwellings per hectare. However, smaller social housing units will generally have a higher density, hence the Plan's requirement for 25 – 30 dwellings per hectare. The proposed scheme has a housing density of 29 dwellings per hectare, within the range specified by the Area Plan. As there is a specific density requirement in the Plan, it should be accorded greater weight than the provisions of policy LC1 of the Addendum to PPS7.

Planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. The revised design and finishes of the buildings is in keeping with their surrounding context at Carquillan and there is a mix of detached and semi-detached units. The dwellings will be arranged in a u-shape around the access road. The scheme takes account of the characteristics of the site with regard to access, levels and overall layout. There are no known archaeological, built heritage or landscape features that would be adversely affected by the proposal. An average of 89 sq.m of private amenity space is provided at each dwelling, in excess of the requirement of 70 sq.m in *Creating Places*. No public open space is required under policy OS2 of PPS8 due to the small scale of the scheme. Given the small scale of the scheme, the developer should not be required to provide any local neighbourhood facilities as part of the development. The site is within walking distance of public transport and local services. A rumble strip is to be installed as a traffic calming measure at the entrance to the site. The design and layout will not create conflict with adjacent land uses and there will be no unacceptable amenity impact on surrounding dwellings as a result of overlooking or loss of light. The topography of the site will help to preserve privacy for existing dwellings as the new dwellings along the southern side of the site will sit around 5 metres lower than the adjoining buildings to the south. The change in levels can be accommodated by a sloped bank along most of this boundary with a retaining wall only required in the curtilage of site 8. A planting belt is proposed along the western boundary at the edge of the development limit. A detailed scheme for this planting can be required by condition. The layout will provide informal surveillance of the public road in the centre of the site and will prevent public access to the rear of existing and proposed dwellings, helping to deter crime and promote personal safety. The development relates satisfactorily to its townscape setting. The unit sizes comply with the minimum space standards in Annex A of the Addendum to PPS7 and the Housing Executive is now satisfied with the design of the social housing units including 3 wheelchair units. This will ensure the provision of a quality

and sustainable residential environment in compliance with the requirements of policy QD1 of PPS7.

The access proposals are in accordance with the requirements of PPS3 and DCAN15 and TransportNI have no objections. They are content with the narrower entrance to the development of 4.8m width, which then widens to 6m within the site. This is standard for a shared surface layout (*Creating Places* paragraph 19.06). Therefore objections in this regard cannot be sustained on road safety grounds. A plan of the road to be adopted has been determined by TransportNI and appropriate conditions will be attached. As the first part of the access is existing, there is no need to condition the provision of visibility splays. A total of 60 car parking spaces will be provided in-curtilage and on-street as permitted by policy AMP7 and this meets the requirements of *Parking Standards*.

NI Water advised that public water supply and foul and surface water sewers were available with capacity to serve 18 units. A condition should be imposed to ensure that development does not commence until the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted, in the interest of public health. Due to the size of the site, a Drainage Assessment was required under policy FLD3 of PPS15. This should demonstrate adequate measures to mitigate the flood risk to the proposed development and development elsewhere. The revised Drainage Assessment received on 2<sup>nd</sup> March 2017 has been found to meet these requirements by Rivers Agency.

**Recommendation:** Approval

**Conditions:**

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

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

2. No development shall take place until a scheme of mature tree and shrub planting for a 3 metre wide strip on the western boundary of the site and a programme of works, have been approved by the Council. The planting shall be undertaken during the first available planting season after commencement of development and shall be carried out in accordance with the approved details.

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

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

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

4. Provision shall be made and permanently retained, within the approved development, for a minimum of 8 No. social housing units. This minimum requirement shall be delivered by an arrangement with a Registered Social Landlord (RSL) ie. Northern Ireland Housing Executive (NIHE) or a registered housing association. These units shall consist of up to:

- 5 No. 3 person 2 bed units
- 3 No. 5 person 3 bed units
- 3 No. 3 person 2 bed wheelchair units

Full details of the mix opted for, from the above, shall be submitted to and agreed by the Council prior to the occupation of any of the dwellings hereby approved.

Reason: To meet the Key Site Requirement for Social Housing provision as listed in Zoning HN13 of the Banbridge / Newry and Mourne Area Plan 2015 and ensure its long term delivery.

5. No development should take place on site until the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted.

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

6. Each building shall be provided with such sanitary pipework, foul drainage and rain water drainage as may be necessary for the hygienic and adequate disposal of foul water and rain water separately from that building. The drainage system should also be designed to minimise the risk of wrongly connecting the sewage system to the rain water drainage system, once the buildings are occupied.

Reason: In order to decrease the risk of the incorrect diversion of sewage to drains carrying rain/surface water to a waterway.

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

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

8. After completing any remediation works required under condition 7 and prior to occupation of the development, a verification report shall be submitted in writing and agreed with the Council. This report should be completed by competent persons in accordance with the Model Procedures for the

Management of Land Contamination (CLR11). The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

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

9. **The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.**

The Council hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 15 bearing the date stamp 3 February 2017.

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

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

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

11. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, no buildings, walls or fences shall be erected, nor hedges nor formal rows of trees grown in service strips determined for adoption and no planting other than grass, flowers or shrubs with a shallow root system and a mature height of less than 500mm, shall be carried out in service strips determined for adoption.

Reason: To ensure adequate visibility in the interests of road safety and the convenience of road users and to prevent damage or obstruction to services.

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

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

13. The development hereby permitted shall not be commenced until any highway structure/retaining wall/culvert requiring Technical Approval, as specified in the Roads (NI) Order 1993, has been approved and constructed in accordance with BD2 Technical Approval of Highways Structures : Volume 1: Design Manual for Roads and Bridges.

Reason: To ensure that the structure is designed and constructed in accordance with BD2 Technical Approval of Highways Structures: Volume 1: Design Manual for Roads and Bridges.

14. The development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted and approved by Transport NI Street Lighting Section. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by Transport NI Street Lighting Section. These works will be carried out entirely at the developer's expense.

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

15. All appropriate road markings and associated signage within the development and on the public road shall be provided by the developer/applicant in accordance with the Department's specification (Design Manual for Roads & Bridges) and as directed by TransportNI Traffic Management Section prior to the development becoming occupied by residents.

Reason: In the interest of road safety and traffic progression.

16. The gradient of a private access should not exceed 8% for the first 5m outside the public road boundary and a maximum gradient of 10% thereafter.

Reason: In the interest of Road Safety.

17. The developer/applicant prior to the commencement of any road works shall provide a detailed programme of works and associated traffic management proposals to Transport NI for agreement in writing. The developer/applicant shall contact Transport NI Traffic Management prior to commencement of works on site to agree suitable positions for any existing road signage and traffic calming measures that will require being relocated as a result of this proposal.

Reason: To facilitate the free movement of roads users and the orderly progress of work in the interests of road safety.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

### planning meeting LA07/2016/0325/F - Item 26

In respect of the planning application outlined above we would like to request speaker rights on the 21<sup>st</sup> June 2017 – the aim of this request is to give us the chance to reinforce the points we have already made in writing. Either Shereen Lyness-Feenan or Andy McGivern, residents will speak at the meeting. We plan at the meeting to speak about the following things.

+++++

The Structure and Local Plan policies and proposals for the area in respect of the need for development in Hilltown whereby there is a substantial development (Lodge Meadows) empty that is similar in character to the proposed development and should be unitized where by an issue of oversupply of housing in Hilltown is evident. Empty properties which are vacant for a long period of time are detrimental socially, environmentally and economically. They can become a nuisance for those ... Empty properties which are vacant for a long period of time are detrimental socially, environmentally and economically. They can become a nuisance for those who live near them.

According to PPS12 section 28 of the preamble states that

- In order to complete the calculation of the amount of new housing required for the settlements within the plan area, it is necessary to take into account housing already constructed, existing housing approvals not yet constructed and housing where proposals have achieved a reasonable expectation of approval. This applies from the start of the period covered by the HGIs in the RDS (1st January 1999).

Planning Control Principle 1 as stated in PPS12 states

- When considering an increase in housing density in established residential areas, great care should be taken to ensure that local character, environmental quality and amenity are not significantly eroded and that the proposed density, together with the form, scale, massing and layout of the new development will respect that of adjacent housing and safeguard the privacy of existing residents and we believe this development does not support this principle.

Planning Control Principle 2

- Good Design
  - There should be no acceptance of ill-conceived designs which do not contribute to making places better for people and we contest this development will not contribute to making Carquillan a better place based on occupancy levels, increased traffic and the lack of off street parking
- The density of development proposed for a site in relation to the Banbridge/Newry & Morune Area Plan 2015 -

- The effect of an application on highway safety in that we context that there is no safe access and that traffic from the development would be e significantly hazardous to drivers or pedestrians in the current development
- The impact of a proposal on local amenities and the character of the neighborhood in that the proposed development is out of character with Carquillan and will subsequently have a negative impact thus there off.
- The design of the development, lack of parking, increased traffic through the existing development
- The impact upon neighbors in terms of noise, overlooking, overshadowing and overbearing impacting on mature houses in Carquillan.

Finally according to the NORTHERN IRELAND EMPTY HOMES STRATEGY AND ACTION PLAN 2013 – 2018 the NIHE should consider the following

- 7. Empty Homes Initiatives
  - Reduce the number of empty homes by 4% over next 5 years or take action on 120 empty homes each year;
  - Identify list of (at least 10) potential pilot properties (ex NIHE in areas of housing need);
  - Transfers to Housing Associations to refurbish and let;
  - Identify funding streams with key stakeholders;
  - Department and Housing Executive

Thanks

Darren Feenan on behalf of the above



Supporting statement for planning committee meeting on 21<sup>st</sup> June 2017 in respect of application ref LA07/2015/0325/F.

Proposed development of 18 residential units at lands adjacent to and north of 42 Carquillan, Hilltown, Newry BT34 5UG.

We would respectively request that the committee consider the following points during their deliberations:

1. The applicant supports the recommendation for approval of the above application.
2. The proposed development is located on lands identified as suitable for housing and fully in accordance with the criteria as set out in the extant area plan.
3. Throughout the evaluation process the applicant has demonstrated willingness to work constructively with the case officer to address the departments concerns and those of the objectors. References to the use of the land for amenity purposes are erroneous as it is privately owned and as such should not be accessed for this purpose.
4. Examples of changes made during the process of the application include (not exclusively)the following.  
The exterior finish of the dwellings were amended from render to facing brick.  
The unit on site 18 was amended to remove the first floor accommodation and to move it further away from the common boundary with number 14.
5. Roads issues.  
TNI have deemed that the existing road network is adequate to serve the additional housing units generated by the zoned land.  
The access to this site across the frontage of number 14 was reserved during the construction of the existing portion of the site.  
The new road layout was approved by TNI and private street determination drawings approved accordingly.
6. Drainage issues.  
The new development is served by public, adopted foul and storm systems. Storm run-off from all areas of hard standing and roof areas is collected into the storm drainage system. The area of green field run-off has been reduced by the development therefore reducing the loading of existing drainage ditches.
7. Social housing.  
There has been an established need for social housing in the area as identified in the area plan. The housing association has looked at other options in Hilltown but none have been deemed to be suitable.

<b>ITEM NO</b>	<b>16</b>			
<b>APPLIC NO</b>	LA07/2016/1568/O	Outline	<b>DATE VALID</b>	21/11/2016
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	David Downey 29a Drumantine Hill Newry BT34 1TN		<b>AGENT</b>	Anthony Mackle 12 Fem Heights Newry BT34 2NT 075 2533 1552
<b>LOCATION</b>	Immediately opposite and west of 75 Foughilletra Road Meigh Newry			
<b>PROPOSAL</b>	Site for "off-site" replacement dwelling.			
<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>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0
<b>1</b>	The proposal is contrary to the Strategic Planning Policy Statement of Northern Ireland 2015 (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed replacement dwelling is not sited within the established curtilage of the existing dwelling and it has not been shown that the alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.			
<b>2</b>	The proposal is contrary to the Strategic Planning Policy Statement of Northern Ireland 2015 (SPPS) and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Foughilletra Road.			
<b>3</b>	The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that a new building on this site would be a prominent feature in the landscape; the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; and the proposed building relies primarily on the use of new landscaping for integration.			
<b>4</b>	The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that a new dwelling on this site would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to further erode the rural character of the countryside			



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/1568/F

**Date Received:** 28<sup>th</sup> November 2016

**Proposal:** Site for "off-site" replacement dwelling.

**Location:** Immediately opposite and west of 75 Faughilletra Road, Meigh, Newry.

**Site Characteristics & Area Characteristics:**

The site consists of two parcels with Faughilletra Road separating them. The portion of the site on the west side of Faughilletra Road is a low lying field with frontage to the road defined by a stone wall with other boundaries defined by overgrown vegetation and/ or timber post and wire fencing and the railway line running to the rear of the site. Immediately south of this portion of the site is a large site occupied by a single storey dwelling with an agricultural field to the front (east).

The portion of the site on the east side of Faughilletra Road is occupied by a single storey dwelling (dwelling to be replaced). There is a rise in the land within this site from the road verge gradually increasing NW to SE across the site resulting in the dwelling being elevated above the road. Agricultural fields lie to the front and rear of the dwelling on site with further agricultural fields extending to the north. Access to the site is provided from the road via an agricultural gate. Immediately adjoining the site to the west is a two storey, unoccupied dwelling and detached garage.

The surrounding area is rural in character with dwellings further north along Faughlittera Road and Lower Faughilletra Road and a high number of dwellings south of the application site moving along Faughilletra Road.

**Site History:**

<i>P/2001/0785/O</i>	<i>Site for dwelling</i>	<i>Lands opposite and south of entrance to No. 75, Foughilletra Road, Meigh, Newry</i>	<i>Permission Refused</i>
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<i>P/2001/0783/O</i>	<i>Site for dwelling</i>	<i>Lands opposite entrance to No. 75, Foughilletra Road, Meigh, Newry</i>	<i>Permission Refused</i>
<i>P/2004/0629/O</i>	<i>Site for dwelling and garage</i>	<i>Land opposite entrance to No. 75 Foughilletra Road, Meigh, Newry.</i>	<i>Appeal Dismissed</i>
<i>P/2004/2287/F</i>	<i>Extension and renovation to dwelling</i>	<i>5A Faughilletra Road, Jonesborough, Co Armagh</i>	<i>Permission Granted</i>
<i>P/2008/0028/O</i>	<i>Site for replacement dwelling</i>	<i>75 Faughilletra Road, Meigh, Newry</i>	<i>Permission Granted</i>

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

The Strategic Planning Policy statement for Northern Ireland (SPPS), Planning Policy Statement 2 – Natural Heritage, Planning policy Statement 3 – Access, Movement and Parking, Planning Policy Statement 21 – Sustainable Development in the Countryside.

#### **Consultations:**

There were three consultations issued for this proposal.

- Transport NI –further information requested (22/12/2016)
- NI Water – Generic response, no objection (09/12/2016)
- Rivers Agency – No objection (05/01/2017)

#### **Objections & Representations**

There was one neighbour notification issued and hand delivered to the property adjoining the application site. The planning application was advertised in the local press on 5<sup>th</sup> December 2016. There were no representations received.

#### **Consideration and Assessment:**

##### **Strategic Planning Policy Statement (SPPS)**

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge, Newry & Mourne Area Plan 2015. There are no specific policies in the Plan relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS, PPS3 and PPS21.

**PPS21 – Sustainable Development in the Countryside**

Policy CTY1 of PPS21 states there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to sustainable development. This includes replacement dwellings in accordance with Policy CTY3.

**CTY 3, CTY8, CTY13 and CTY 14**

The existing dwelling on site displays all the essential characteristics of a dwelling. It is therefore eligible for replacement under CTY 3.

The policy requires that the replacement dwelling should be sited within the curtilage of the approved dwelling and it should not have a significantly greater visual impact. This application is seeking an off-site replacement on a site approx.70 metres NW from the existing dwelling and on the opposite side of Faughilletra Road. The policy does permit an off-site replacement in instances where the curtilage of the existing dwelling is very restricted or it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

The agent has stated that the site on which the dwelling subject of this replacement application is both "too restrictive" and "that there are landscape benefits from relocating to the alternative site". The agent has indicated that the applicant intends to replace the two storey dwelling adjoining the application site to the west on the footprint of both these potential replacement dwellings at a later date but has also indicated in evidence submitted to the planning department that the intended replacement of both dwellings at this location would result in two elevated buildings side by side on a very prominent site and states that minimal vegetation with only skyline as a backdrop.

The site on which the dwelling to be replaced sits is approx. 256 sqm, measuring a maximum 103 metres in length and at its widest measures approx. 39 metres. The Planning Department consider that while the curtilage of the existing dwelling may need to be extended there is ample space within this portion of the site to accommodate a modest sized dwelling. Further, the applicant has demonstrated ownership and control of the land extending west from the existing dwelling on the Site Location Plan submitted as part of this application ensuring additional land is available to accommodate another modest sized dwelling should a replacement opportunity be sought in the future for the two storey dwelling to the west of the application site.

It is considered the proposed off-site location does not offer any landscape benefits to the site on which the dwelling subject to this application sits. The off-site location proposed, while it is low lying it lacks established boundaries to the north and south and has little vegetation to aid the integration of a new building. A new building on the off-site proposal would result in a greater visual impact than an onsite replacement. There are no heritage, access or amenity benefits demonstrated by an off-site replacement.

Policy CTY 8 – Ribbon Development outlines that planning permission will be refused for a building which creates or adds to a ribbon of development. The Planning Department considers that an “off-site” replacement dwelling within the application site on the west side of Faughilletra Road will add to a ribbon of development along this side of Faughilletra Road.

Policy CTY 13 of PPS 21 states planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of an appropriate design. It is considered the “off site” location proposed for siting a replacement dwelling lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for a new dwelling to integrate into the landscape. A new dwelling on this site would be a prominent feature in the landscape and would rely primarily on the use of new landscaping for integration. While planting could be used to define the curtilage of the site it would take time to establish and mature in order to provide a suitable degree of enclosure. The proposal is therefore considered contrary to criteria (a), (b) and (c) of Policy CTY 13.

Policy CTY 14 of PPS 21 states 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. As detailed above, a new dwelling on this site would be a prominent feature in the landscape due to the topography of the land and the lack of long established natural boundaries. The proposal is therefore considered to be contrary to criteria (a) Policy CTY 14.

PPS2 – Natural Heritage, NH6 it is considered a dwelling on the proposed off site location is not sympathetic with the locality of the Ring of Gullion AONB and it is anticipated that development of the site will detract from the visual quality of the area.

PPS 3 – Access, Movement and Parking - A consultation was issued to Transport NI for this proposal. They responded requesting a plan showing site lines achievable within the site outlined in red. The agent has indicated to the Planning Department that he was intending to meet Transport NI on site to discuss their requirements and would provide the requested information to fulfil Transport NI's requirements only upon approval of the principle of development. To date, no further information has been submitted to the planning Department to address Transport NI's request.

**Recommendation:**

Refusal

**Refusal Reasons:**

1. The proposal is contrary to the Strategic Planning Policy Statement of Northern Ireland 2015 (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed replacement dwelling is not sited within the established curtilage of the existing dwelling and it has not been shown that the alternative position

nearby would result in demonstrable landscape, heritage, access or amenity benefits.

2. The proposal is contrary to the Strategic Planning Policy Statement of Northern Ireland 2015 (SPPS) and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Faughilletra Road.
  
3. The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that a new building on this site would be a prominent feature in the landscape; the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; and the proposed building relies primarily on the use of new landscaping for integration.
  
4. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that a new dwelling on this site would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to further erode the rural character of the countryside.

<p><b>Case Officer Signature:</b></p> <p><b>Date:</b></p>
<p><b>Appointed Officer Signature:</b></p> <p><b>Date:</b></p>

## Speaking Rights Request

### Item No 16

#### **LA07/2016/1568/O – Erection of “off-site” Replacement dwelling opposite 75 Foughilletra Road, Meigh for Mr David Downey.**

The Planning Department has recommended the above application as a refusal for 4 reasons that can be summarised as follows;

1. The proposed dwelling is not sited within the established curtilage of the dwelling being replaced and no over-riding circumstances have provided to allow this.
2. The proposal would add to ribbon development along the Foughilletra Road.
3. The proposal would not integrate into the landscape as the site lacks long established natural boundaries to provide a suitable degree of enclosure.
4. The proposal would result in a prominent feature and would further erode the rural character of the area.

I shall address each reason in turn in the hope that the Committee sees it appropriate to overturn the Planning Departments recommendation.

#### **Over-riding circumstances to allow off site location.**

This has been extensively addressed in the design/access statement, the additional supporting statement and several correspondences submitted to the Department but can be summarised as follows.

The applicant has two replacement opportunities sitting side by side on this western side of the Foughilletra Road and his ultimate aim is to replace both, one within the curtilage and the other, this application on the proposed site. He would be reluctant to replace both side by side as given the restricted curtilage of both dwellings the resultant development would completely landlock the agricultural land to the rear which is in his ownership from an access on to the Foughilletra Road. Mr Downey is a successful business man who employs over 200 people in Newry but he is hoping to retire in the near future and wishes to reside at this site as it is his family farm and in the area that he grew up. A second application



would eventually be submitted to replace the other dwelling within the curtilage and this would be occupied by Mr Downey's son who would take over the family farm once again. This would leave the agricultural field to the south undeveloped thereby allowing agricultural access to the lands to the rear.

It is also believed from a landscape point of view it is better to develop only one dwelling to this side of the road as the alternative site is much better as it is low lying and has more than sufficient natural boundaries to aid integration. The replacement dwelling sits on rising ground and is not as good from an integration viewpoint as the alternative.

This is not a precedent as the Planning Department has allowed off site replacements in the recent past. At the Planning Committee meeting of 2<sup>nd</sup> March application LA07/2016/0854 was presented by the planners as a refusal for an off-site replacement on a site more than a mile from the dwelling being replaced but was overturned by the Committee. My client feels aggrieved that his application will be refused after this one was approved when from the evidence presented to the committee at the time showed that there was little landscape, heritage access or amenity benefits as required in CTY3. This is not the case in this application from the evidence submitted. There would appear to be a very liberal interpretation of the policy in that case and my client has no objection to the approval and is happy for the applicant in being successful if the same liberal interpretation can be considered on the merits of his application.

### Ribbon Development

We do not believe that the alternative site will create or add to ribbon development. There is only one occupied dwelling immediately south and adjacent to the preferred site and another approximately 180 metres to the north. The gap in between could accommodate up to 4 dwellings and is therefore too large to meet the test for infill as set out in CTY 8. (see map below)





### Lack of Integration/Prominence

It is not believed that this preferred location is either a prominent site or has insufficient natural boundaries to aid integration. The site is low lying and falls away from the road with mature natural vegetation to both side boundaries and to the rear. The photograph below shows the site as it is today and this vegetation is clearly evident.

The planning history on the site is also relevant and material in this case. Planning permission was refused in 2005 on the site on the grounds of integration and prematurity which was prevalent at the time because of the emerging Newry, Mourne and Banbridge

Area Plan. (Ref: P/2004/0629/O – Refused July 2005). The applicant however appealed this decision (Appeal Ref: 2005/A730) and although the Appeal was ultimately dismissed the then Departments case on integration was not sustained and the Appeal fell on prematurity alone. This is a material consideration of significant weight that must be taken into consideration when determining the application. Policy in respect to integration and prominence has not significantly change since this appeal and no further development has taken place in the immediate locality. The site itself has remained untouched other than the vegetation within the site has matured more since the appeal decision.



<b>ITEM NO</b>	<b>17</b>			
<b>APPLIC NO</b>	LA07/2016/1694/O	Outline	<b>DATE VALID</b>	22/12/2016
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Bernard Hannaway 26 Ayalogue Road Newry		<b>AGENT</b>	Feargal Carolan 40 Larchmount Newry BT35 6TX 07732119785

**LOCATION** 90m SE of No 53 Ballintemple Road Newry

**PROPOSAL** Proposed replacement dwelling with detached 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</b>	<b>Signatures</b>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling and all external structural walls are not substantially intact.



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**Newry, Mourne  
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District Council

**Application Reference:** LA07/2016/1694/O

**Date Received:** 22.12.2016

**Proposal:** Site for replacement dwelling with detached garage

**Location:** 90m SE of No 53 Ballintemple Road, Newry. Approximately 1.4 miles NW of Meigh in the South Armagh Countryside / AONB

**Site Characteristics & Area Characteristics:**

The site as defined in red takes in an agricultural field with a ruined structure located in the eastern portion of the field. The field abuts the public road with an existing access connecting the structure to the public road. The area is rural in character and is located just East of Ballintemple Wood in the AONB.

**Site History:**

LA07/2017/0105/O

Lands 110m SE of No. 53 Ballintemple Road, Killeavy

Proposed tourist camping site consisting of 6 No. touring caravan spaces, 6 No. glamping pods, shower/toilets/utilities building, children's play area and ancillary work:

Under consideration

P/1987/0487

Ballintemple road

Site for bungalow

Withdrawn: 09.10.1987

**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

Planning Policy Statement 2

**Consultations:**

Transport NI – no objections providing it is a genuine replacement.

NI Water – No objections

Rivers Agency – No objections

**Objections & Representations**

No neighbours qualified for a neighbour notification.

Application advertised on 11.01.2017

No objections or representations received.

**Consideration and Assessment:**

The site lies within the Ring of Gullion Area of Outstanding Natural Beauty / Rural Area as designated in the Banbridge Newry and Mourne Area Plan 2015. There are no objections with regard to the Area Plan provided the proposal complies with prevailing planning policies.

**PPS21 – Sustainable Development in the Countryside**

Policy CTY1 restricts new development in the countryside, but makes an exception for replacement dwellings which are acceptable if in accordance with policy CTY3.

The policy requires as a minimum all external structural walls to be substantially intact and that the building to be replaced exhibits the essential characteristics of a dwelling. The external walls of the proposed dwelling are not substantially in tact with at least one wall completely missing and others left at a very low level and the structure does not exhibit any essential characteristics of a dwelling. The proposal therefore fails the policy requirements of CTY1 and CTY3.

A condition would be added to any decision notice that before commencement a copy of the consent to discharge will be agreed by the Council. The proposal is in compliance with CTY16.

With regard to Planning Policy Statement 2 Natural Heritage, policy NH6 is applicable as the site is within the AONB. The siting of the proposed dwelling will be sympathetic to the locality and there are no adverse impacts on existing heritage in the area and the design of the dwelling would be considered at RM stage (if approved).

PPS3 – Access, Movement & Parking & DCAN15 – Vehicular Access Standards  
Transport NI was consulted with regards to this policy criteria and has responded with no objections if this is a genuine replacement opportunity. As the proposal fails the policy criteria for a dwelling it was not considered expedient to pursue a refusal reason with regard to PPS3 as any over turn would confirm Transport NI's original response.

**Recommendation:**

Refusal

**Reasons:**

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling and all external structural walls are not substantially intact.

**Case Officer:****Authorised Officer:**



<b>ITEM NO</b>	<b>20</b>			
<b>APPLIC NO</b>	LA07/2017/0117/O	Outline	<b>DATE VALID</b>	26/01/2016
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Martin and Christina McCullough 157 Castlewellan Road Cabra BT34 5HF	<b>AGENT</b>	Architectural Services 31 Yellow Road Hilltown BT34 5UD 07834467502	
<b>LOCATION</b>	Approx 60m South East of No. 29 Convent Road Islandmoyle Cabra Co Down BT34 5EU			
<b>PROPOSAL</b>	Erection of one and a half storey dwelling and detached domestic double garage			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	0	3		0
			<b>Addresses</b>	<b>Signatures</b>
			0	0 0 0

- The proposal is contrary to Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.



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**Newry, Mourne  
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District Council

**Application Reference:** LA07/2017/0117/O

**Date Received:** 26<sup>th</sup> January 2017

**Proposal:** Erection of one and half storey dwelling and detached domestic double garage

**Location:** Approx 60m SE of No 29 Convent Road, Cabra

**Site Characteristics & Area Characteristics:**

The site is located along the minor Convent Road, Cabra. It is comprised of a portion of agricultural land, currently used for grazing sheep. The site is accessed via a private lane which slopes steadily upwards from the public road, through an area of mature trees. The site is defined by those mature trees along the western boundary, with the remaining boundaries defined by post and wire fencing with mature hedgerows. The highest portion of the site is at the western boundary from where the site then falls steadily towards the east.

As described above the site is elevated above road level but screened from the public road by the mature trees present in the portion of intervening land between the site and the public road. Long distance views are obtained when travelling from the north along Convent Road, from where the site benefits from the backdrop of the mature trees.

The surrounding landscape is typically undulating and predominantly used for agricultural, however, there are a number of single dwellings dispersed throughout the area.

**Site History:**

There is no previous history on the site

**Planning Policies & Material Considerations:**

In assessment of this proposal regard shall be given to the Strategic Planning Policy Statement (SPPS), Ards and Down Area Plan 2015, PPS 3, and 21 (CTY 1, 6, 13 and 14), in addition, to the history and any other material consideration.

The application was advertised in the local press on 15<sup>th</sup> February 2017.

The following neighbours were notified of the proposal on 01.02.17

24, 26 and 29 Convent Road, Cabra.

3 letter of support have been received from local Councillors – McGrath and Trainor.

### **Consultations:**

In assessment of the proposal consultations were carried out with NIEA Water Management Unit, Northern Ireland Water (NIW), Transport NI and Historic Environment Division, no objections have been presented.

### **Objections & Representations**

No objections or representations have been received.

### **Consideration and Assessment:**

Planning Policy Statement 21 (PPS21) 'Sustainable Development in the Countryside' provides the relevant planning policy context for the proposed development. Policy CTY1 thereof indicates that there are types of development acceptable in principle in the countryside. A dwelling based on the personal and domestic circumstance of the applicant will be granted provided the criteria of Policy CTY 6 are met.

The applicants have stated that their reasons for choosing this site relate to the health and wellbeing of their daughter Olivia, stating that due to her recently diagnosed medical condition, Olivia requires a location which is removed from the public road, farm machinery and animals at which she currently resides. The applicants have also considered a number of alternatives i.e. an extension to their existing dwelling, renting or purchasing another dwelling, a mobile home and putting measures in place to create a safer environment at their current home – all have been discounted for various reasons.

It is considered however, that their existing residence could be secured with fencing and a separate access and egress from the farm could be created, if not currently existing.

Having assessed the above, it is considered that insufficient evidence has been provided which would justify a dwelling at this location and on this basis a recommendation to refuse will be put forward.

It is important to note, however, that the proposed site is deemed acceptable in terms of integration and a suitably designed dwelling could be accommodated if conditioned to be single storey and sited adjacent to the mature boundary to the west of the site.

**Recommendation:** Refusal

**Refusal Reason**

The proposal is contrary to Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.

Signed .....

Date .....

Signed .....

Date .....

<b>ITEM NO</b>	<b>22</b>			
<b>APPLIC NO</b>	LA07/2017/0172/F	Full	<b>DATE VALID</b>	03/02/2017
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>			
<b>APPLICANT</b>	SCS 62A Drumlough Road Rathfriland BT34 5DP		<b>AGENT</b>	Kevin Cartin Architects Ltd Unit 5 Belmont Office Park 232 - 240 Belmont Road Belfast BT4 2AW 028 90769755
<b>LOCATION</b>	Lindsay's Hill Approx 60 Metres South East of 53-55 North Street Newry BT34 1DD			
<b>PROPOSAL</b>	Renewal of Extant Planning Approval Ref. P/2011/0340/F for residential development of 14 units (of social housing) with new access road from St Clare's Avenue			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	19	0	0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0



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**Newry, Mourne  
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District Council

**Application Reference:** LA07/2017/0172/F

**Date Received:** 3<sup>rd</sup> February 2017

**Proposal:** Renewal of Extant Planning Approval Ref. P/2011/0340/F for residential development of 14 units (of social housing) with new access road from St Clare's Avenue

**Location:** Lindsay's Hill Approx. 60 Metres South East of 53-55 North Street, Newry, BT34 1DD

**Site Characteristics & Area Characteristics:**

The site consists of the full length of roadway on St. Clare's Avenue and a portion of steeply sloping overgrown land to the north of Lindsay's Hill pedestrian walkway. The land slopes steeply from east to west and is enclosed by surrounding development. It has suffered from illegal dumping, particularly at the eastern end adjacent to St. Patrick's Avenue. The southern edge of the site is marked by a high stone wall along the edge of Lindsay's Hill which is heavily graffitied. There are residential units to the south and west of the site and a park and children's playground to the east. Part of the site has been cleared and foundations dug.



The site is unzoned land within the development limit of Newry City as defined on the Banbridge, Newry and Mourne Area Plan 2015. It is just to the east of the city centre and within the Newry Conservation Area. It is also within an Area of Archaeological Potential and the access runs through an Area of Townscape Character. The local landscape is dominated by steep slopes and retaining structures with housing set at different levels on the slope. The main land uses present are residential, recreation and some commercial uses.

### **Site History:**

Outline planning permission was granted on 24.05.2010 for a housing development on this site under application P/2008/1329/O. The outline approval was conditional upon a maximum of nine units being provided (as TransportNI had stated that this was the maximum that could be allowed without triggering the need to improve the junction of St. Clare's Avenue and High Street, through which the site is accessed).

Full Planning Permission was granted on 08.02.2012 under application P/2011/0340/F for a housing development of 14 units. The houses were to a high conservation area specification, but as they had limited parking provision, the approval was granted only on the basis that they were for social housing which would traditionally have a lower car ownership rate. The traffic that would be attracted to 14 social housing units was considered equivalent to the 9 private units previously approved.

An application (LA07/2015/0130/F) for non-compliance with the social housing occupancy condition was refused on 16.08.2016. It was argued that the high conservation area specification of the dwellings made the scheme unviable for a housing association to develop, but as private housing would have required a higher standard of car parking for which there was not sufficient room on the site, the application was refused under policy QD1 of PPS7.

A Housing Association is now willing to work with the developer to provide social housing on the site and the present application for renewal of the extant permission was made within 5 years of that approval. Therefore substantial weight will be given to the planning history of the site in determining this application.

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

- The NI Regional Development Strategy 2035
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015
- PPS3 – Access, Movement & Parking
- DCAN15 – Vehicular Access Standards
- Parking Standards
- PPS6 – Planning, Archaeology and the Built Heritage
- PPS7 – Quality Residential Environments – Policy QD 1
- Addendum to PPS7 – Safeguarding the Character of Established Residential Areas
- PPS8 – Open Space, Sport and Outdoor Recreation
- DCAN8 – Housing in Existing Urban Areas
- PPS12 – Housing in Settlements

- A Planning Strategy for Rural Northern Ireland (Policies DES2 & SP18)
- Creating Places
- Living Places Urban Stewardship and Design Guide
- Newry Conservation Area Booklet

### **Consultations:**

TransportNI – The proposed roadway has been determined under the previous application. No objections provided the street layout is in strict accordance with the previous approval.

NI Water – Water and sewerage capacity available

Environmental Health – No objections provided public sewerage is used; advice regarding air quality.

Loughs Agency – No objections provided storm water attenuation is provided before discharge to any watercourse.

Housing Executive – Supports the development of 14 social units on the site.

Historic Environment Division – No objections with regard to archaeology or listed buildings. Finishes should be conditioned as per the previous planning approval.

### **Objections & Representations:**

78 neighbouring properties were notified of the proposal on 15<sup>th</sup> February 2017 and the application was advertised in local newspapers on 24<sup>th</sup> February 2017. Twenty letters of objection were received, 18 of which were the same letter template, and another of which gave no address. One neighbour submitted a letter with a series of questions about the proposal. The case officer replied on 15<sup>th</sup> May 2017 with answers to these questions and no further correspondence was received.

The main points raised by multiple objectors were increase in traffic on St. Clare's Avenue, risk of anti-social behaviour, and that the applicant has not adhered to the conditions of the previous planning permission for archaeological monitoring. As the scheme has been previously approved and key consultees including TransportNI continue to have no objection to it, we cannot give weight to concerns regarding access. If anti-social behaviour arises it should be reported to the police, though the development of the site may actually help to limit vandalism, graffiti and dumping that has taken place on the site to date. Historic Environment Division have advised that archaeological testing was undertaken and there was limited archaeological potential. Therefore they have not recommended any further archaeology conditions.

Another objector raised the loss of amenity space and restricting access to the park. The site is not zoned amenity space and was previously approved for housing. There will be no restriction on access to the park as access will be maintained from St. Clare's Avenue to Lindsay's Hill. Granting planning permission will not affect this public right of way.

In summary, the issues raised by objectors have been considered, but cannot be given determining weight given the planning history of the site and the views of consultees.



**Consideration and Assessment:**

The proposal fell within the threshold of Category 10 (b) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. On 15<sup>th</sup> May 2017 the Council determined that there would be no likely significant environmental effects and an Environmental Statement would not be required.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the settlement limit of Newry City on the above Plan, and is unzoned. It is within the Newry Conservation Area and an Area of Archaeological Potential. The Housing Growth Indicators in the plan make provision for additional housing development on unzoned 'windfall sites' such as this. There are no specific policies in the Plan that are relevant to the determination of the application. It will be assessed against regional operational policy.

The principle of housing development on the site is established by the previous approval and is in accordance with strategic policy in the RDS and SPPS, as well as the Area Plan. There are no changes to the layout or the detailed plans. The layout of the buildings will not harm the amenity of neighbouring residents. The design and materials specified are of a high standard appropriate to the conservation area location of the site and the scheme takes account of the topography of the site by using a split level design. The external finishes should be conditioned as per the previous application to ensure that they are in keeping with the conservation area and the setting of nearby listed buildings. On this occasion there is no need to condition further archaeological surveillance as HED are content that there is limited archaeological potential based on previous surveys. The access road and bridge over Lindsay's Hill remain as previously approved and do not require to be re-determined. A condition should be imposed to state that the street layout should be as approved under P/2011/0340/F. Parking provision of one space per dwelling was previously considered acceptable on the basis that the units were for social housing with lower car ownership. A further condition will be imposed requiring that all 14 units are for social housing use. Areas of public and private amenity space are adequately landscaped and a 25 year landscape management and maintenance plan has been submitted, as previously approved. A condition should be added to require adherence to this plan.

Environmental Health raised the issue of Air Quality. The site is within a designated Air Quality Management Area (AQMA). This AQMA has been declared as the Council has identified that residents in this area may be exposed to air quality, which does not meet current air quality standards. They recommended that the applicant should review the design of this proposal to ensure that the emissions of the pollutants PM10 and NO2 are minimised. Such steps may include the provision of energy efficiency measures within the development, which exceeds those which would be statutorily required and the use of renewable energy systems.

Furthermore, the location for this proposed development lies within one of the Council's Smoke Control Areas. These dwellings, if approved, would have to ensure that any fuel used for heating complies with the Council's Smoke Control Order for this area. As the scheme is exactly as previously approved, it was not felt that

additional work on energy efficiency measures should be required as part of the planning application, however, the advice will be included as an informative for further consideration by the developer.

NI Water advised that public water supply and foul sewer were available with capacity to serve the development. A condition should be imposed to ensure that development does not commence until the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted, in the interest of public health. Loughs agency has also recommended a condition regarding storm water attenuation if it is to be discharged to a watercourse.

**Recommendation:** Approval

**Conditions:**

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

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

2. The dwellings hereby approved shall be occupied only by a person or persons who have been selected from the Northern Ireland Housing Executive housing waiting list.

Reason: To service social housing need in Newry City, and in the interests of roads safety.

3. Notwithstanding the detailing on the approved plans, the dwellings shall be constructed as follows:

The chimney stacks shall be located on the centre of the ridges, with two clay pots, from the Hanson Red Bank Range or an equivalent (agreed in advance with the Council), and a traditional corbel detailing around the top; All roofs shall have a natural slate covering; All front doors shall have four plain panels, retained by bolection mouldings and be of timber construction with a plain fanlight and a painted opaque finish avoiding the use of stains or varnishes; All rainwater goods shall be cast aluminium, round profile, painted black; All eaves and verges shall be clipped and tight avoiding the use of box eaves and bargeboard; All windows shall be timber with a painted white finish avoiding the use of stains or varnishes; All window cills should have a 100mm leading edge; Dwellings shall have be finished in smooth render painted in a colour scheme to be agreed in advance with the Council; All rooflights shall be from the Velux Conservation Range or an equivalent (agreed in advance with the Council) and be fitted flush with the roofline; All retaining walls and the proposed new bridge shall be faced in coursed granite rubble.

Reason: To ensure that the form, materials and detailing of the development respect the characteristic form of the Newry Conservation Area.

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

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

5. All hard and soft landscape works shall be carried out in accordance with the approved landscape plan (Drawing No. 09) which was received on 31st May 2017 and the appropriate British Standard or other recognised Codes of Practise. The works shall be carried out prior to the occupation of any part of the development.

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

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

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

7. The open space and amenity areas indicated on the stamped approved Drawing No. 09 date stamped 31 May 2017 shall be managed and maintained in accordance with the Landscape Management Plan (Drawing No. 10) received on 31 May 2017. Any changes or alterations to the approved landscape management arrangements shall be submitted to and agreed in writing by the Council.

Reason: To ensure successful establishment and ongoing management and maintenance of the open space and amenity areas in the interests of visual and residential amenity.

8. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no extension or enlargement (including alteration to roofs) shall be made to the dwellinghouses hereby permitted without the grant of a separate planning permission from the Council.

Reason: The further extension of these dwellings requires detailed consideration to safeguard the amenities of the surrounding area.

- 9. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. The street layout shall be in strict accordance with the Private Streets Determination made under planning approval P/2011/0340/F which was approved on 8th February 2012.

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

- 10. No development should take place on site until the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted.

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

- 11. Each building shall be provided with such sanitary pipework, foul drainage and rain water drainage as may be necessary for the hygienic and adequate disposal of foul water and rain water separately from that building. The drainage system should also be designed to minimise the risk of wrongly connecting the sewage system to the rain water drainage system, once the buildings are occupied.

Reason: In order to decrease the risk of the incorrect diversion of sewage to drains carrying rain/surface water to a waterway.

- 12. Storm water from the development site should not be discharged to nearby watercourses unless first passed through pollution interception and flow attenuation measures.

Reason: To prevent pollution to surface waters which is detrimental to fisheries.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

<b>ITEM NO</b>	<b>25</b>			
<b>APPLIC NO</b>	LA07/2017/0490/F	Full	<b>DATE VALID</b>	29/03/2017
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Mr Sean Matthews 20 Leitrim Road Leitrim Hilltown BT34 5XS		<b>AGENT</b>	Martin Byrne 20 School Road Jerrettspass Newry BT34 1SX 028 3082 1593
<b>LOCATION</b>	To the rear and 25m East of No 20 Leitrim Road Hilltown BT34 5XS			
<b>PROPOSAL</b>	Erection of dwelling and garage due to special domestic circumstances			
<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>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0

- The proposal is contrary to Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.



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District Council

**Application Reference:** LA07/2017/0490/F

**Date Received:** 16<sup>th</sup> March 2017

**Proposal:** Erection of dwelling and garage due to special circumstances

**Location:** Land to the Rear and 25m East of No 20 Leitrim Road Hilltown

**Site Characteristics & Area Characteristics:**

The site is located along the minor Leitrim Road, Hilltown. It is comprised of a 'U' shaped portion of land which surrounds the existing dwelling at No 20 Leitrim Road. The site is comprised of garden area to the south, with agricultural land outside the curtilage and to the rear and to the north of No 20. It is noted that an unauthorised mobile home is positioned in the garden area to the south of the dwelling.

The site is elevated above road level and is screened from the public road by the strong boundary hedge to the south, the presence of the unauthorised mobile home and the boundary fencing to the rear of No 20.

The surrounding landscape is typically undulating and predominantly used for agricultural, however, there are a number of single dwellings dispersed throughout the area.

**Site History:**

Previous history on the site includes

P/1988/1194 – Site for dwelling – Refused

P/1983-0194 – Bungalow – Approved

P/1979/1361 – Bungalow – Approved

P/1978/0640 – Bungalow - Refused

**Planning Policies & Material Considerations:**

In assessment of this proposal regard shall be given to the Strategic Planning Policy Statement (SPPS), Ards and Down Area Plan 2015, PPS 3, and 21 (CTY 1, 6, 13 and 14), in addition, to the history and any other material consideration.

The application was advertised in the local press on 12<sup>th</sup>, 14<sup>th</sup> and 21<sup>st</sup> April 2017.

The following neighbours were notified of the proposal on 10.04.17

- 1, 3 and 5 New Line, Hilltown
- 22 and 24 Leitrim Road, Hilltown.

**Consultations:**

In assessment of the proposal consultations were carried out with NIEA Water Management Unit, Northern Ireland Water (NIW), and Environmental Health, no objections have been presented.

**Objections & Representations**

No objections or representations have been received.

**Consideration and Assessment:**

Planning Policy Statement 21 (PPS21) 'Sustainable Development in the Countryside' provides the relevant planning policy context for the proposed development. Policy CTY1 thereof indicates that there are types of development acceptable in principle in the countryside. A dwelling based on the personal and domestic circumstance of the applicant will be granted provided the criteria of Policy CTY 6 are met.

The applicant has stated that his reasons for choosing this site relate to the health and well being of his parents, stating that his parents would find it extremely difficult to manage day to day if he did not live close by. He has also considered an extension to the existing dwelling as an alternative solution, but has ruled this out as he finds this unsuitable given his own future family plans.

Having assessed the above, it is considered that insufficient evidence has been provided which would justify a dwelling at this location and on this basis a recommendation to refuse will be put forward.

**Recommendation: Refusal**

**Refusal Reason**

The proposal is contrary to Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.

Signed .....

Date .....

Signed .....

Date .....





**ITEM NO** 27

**APPLIC NO** P/2011/0802/F

Full **DATE VALID** 06/09/2011

**COUNCIL OPINION** REFUSAL

**APPLICANT** Mr K Agnew 9 Drummond Road  
Newry

**AGENT** Henry Murray 37c  
Claggan Road  
Cookstown  
BT80 9XJ  
07761231846

**LOCATION**

Lands approximately 550Metres south-east of No.9 Drummond Road Newry

**PROPOSAL**

Erection of wind turbine with a tower height of 40 metres and a rotor diameter of 29 metres (extending to a total height of 56 metres to tip) with a maximum output not exceeding 225kW, associated transformer / control room building (at 230 metres to north-west of turbine, connected by underground cable), site works and access provision. Access via existing agricultural laneway, off Drummond Road, from a point 50 metres west of No. 6 Drummond Road with extended section to serve turbine. Revised proposal date received 3 February 2014 showing an amended siting with accompanying Shadow Flicker Assessment and Amended Noise Impact Assessment

**REPRESENTATIONS**

OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
0	0	0	0
		Addresses	Signatures
		0	0 0 0

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 2015 and Policy CTY1 of Planning Policy statement 21 Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 2015 and Policy RE 1 of the Department's Planning Policy Statement 18 Renewable Energy in that the proposal would, if permitted, create an unacceptable impact on the visual amenity and landscape character of the area, by reason of its size and siting and would give rise to unacceptable electromagnetic interference to communications installations.



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**Newry, Mourne  
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District Council

**Application Reference: P/2011/0802/F**

**Date Received: 07<sup>th</sup> September 2011**

**Proposal:** Erection of wind turbine with a tower height of 40 metres and a rotor diameter of 29 metres (extending to a total height of 56 metres to tip) with a maximum output not exceeding 225kW, associated transformer / control room building (at 230 metres to north-west of turbine, connected by underground cable), site works and access provision. Access via existing agricultural laneway, off Drummond Road, from a point 50 metres west of No. 6 Drummond Road with extended section to serve turbine. Revised proposal date received 3 February 2014 showing an amended siting with accompanying Shadow Flicker Assessment and Amended Noise Impact Assessment

**Location:** Lands approximately 550 Metres south-east of No.9 Drummond Road Newry. The site is approximately 5 miles north west of Newry city centre and sits outside the settlement development limits as outlined by the Banbridge / Newry and Mourne Area Plan 2015.

**Site Characteristics & Area Characteristics:**

Site consists of a cut out of a grazing field located at the top of a hill above Drummond Road. The site is visible from the north and the south along the A28 Armagh to Newry Road, there are also views of it from along Drummond Road. There are a few mature trees/bushes in the vicinity of the site but there is no extensive screening.

The site is included in a rural area. The site is located on the top of a hill that marks one side of a small valley, at the bottom of the valley is a large farm complex owned by the applicant. Approximately 200 metres to the south west of the site there is an 11 metre high turbine approved under application P/2007/0501/F, this is owned by the occupier of a dwelling on the opposite side of the hill from the farm complex.

**Site History:**

There is no relevant planning history for this site.

**Planning Policies & Material Considerations:**

This planning application has been assessed under the Banbridge, Newry and Mourne Area Plan 2015, Strategic Planning Policy Statement (SPPS) for Northern Ireland, Planning Policy Statement 2 (PPS2) – Natural Heritage, Planning Policy Statement 3 (PPS3) Access, Movement and Parking, Planning Policy Statement 6 (PPS6) – Planning, Archaeology and The Built Heritage, Planning Policy Statement 18 (PPS18) – Renewable Energy, PPS18 Best Practise Guidance, Wind Energy Development in Northern Ireland' s Landscape, DCAN 15 – Vehicular Access Standards.

**Consultations:**

The following consultations were issues for this application:

- Environmental Health – No objection (17/11/2014)
- UK Crown Bodies - D.I.O. Safeguarding – No objection (07/08/2014)
- UK Crown Bodies - D.I.O. LMS – No objection (07/05/2014)
- British Telecom Radio Network Connection – Windfarm – Objection based on interference with point-to-point microwave radio links (30/04/2011)
- Belfast International Airport – No objection (12/03/2014)
- PSNI Headquarters – No objection (11/03/2014 and 01/11/2011)
- NIE - Windfarm Developments – No objection (07/03/2014)
- Arqiva Services Limited – No objection (06/03/2014)
- CAA - Directorate of Airspace Policy – No objection (05/03/2014)
- National Air Traffic Services - No objection (05/03/2014)
- DETI Energy Branch – No objection (04/03/2014)
- The Joint Radio Company – No objection (04/03/2014)
- NIEA Natural Heritage – No objection (13/11/2012)
- Transport NI – No objection (03/10/2011)

**Objections & Representations**

There were six neighbour notifications issued for this application. The application was advertised in the local press on 23rd September 2011 and again on 14<sup>th</sup> March 2014. No objections or representations were received.

**Consideration and Assessment:**

The proposal falls within Category 3(J) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015. Under Regulation 9 it was determined on 12<sup>th</sup> September 2011 that an Environmental Statement would not be required.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located outside settlement limits and is unzoned. There are no specific policies in the Plan that are relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS and the retained PPS18.

### PPS 18 Policy RE 1 Renewable Energy

Policy requires that new wind energy developments should not result in an unacceptable impact on visual amenity through such issues as the size, scale and massing of the turbines. There is also a requirement to take into account the cumulative impact of existing wind turbines in the area. From critical viewpoints the current proposal is of a size that would appear highly prominent in the area by reason of its size. The proposed turbine will have a significant visual impact on the landscape character of the Drummond Road and surrounding area. The agent had advised that the client would be willing to reduce the height of the proposed turbine to address the visual amenity issues however this piece of land facilitates open and extensive views and with the lack of topographical backdrop to the site the proposed wind turbine, even with a reduced height would create an unacceptable impact on the visual amenity and landscape character of the area by reason of size and siting of the turbine. While there is a 15 metre domestic wind turbine in close proximity to this proposed wind turbine it is determined that the potential cumulative impact would not warrant a refusal. It is therefore my opinion that the proposal be recommended as a refusal as it is contrary to RE 1 criterion (b). in that it would result in an unacceptable adverse impact on visual amenity and landscape character.

A shadow flicker assessment was requested from the agent in January 2014 due to two properties (No. 6 and 12 Drummond Road) falling within the potential shadow flicker area. A shadow flicker assessment was carried out and submitted in February 2014 which concluded that the proposed wind turbine would not cause shadow flicker in excess of the standard as outlined by PPS 18 Best Practise Guide.

Ofcom identified a BT fixed link who were subsequently consulted and responded advising that they have studied the wind turbine proposal with respect to problems with BT point-to-point microwave radio links. BT advises that the turbine will affect Tullyhappy Reservoir. BT therefore objected to any future development of this wind turbine as it may interfere with the existing BT radio links. BT ideally requires 100m minimum clearance from the blade tip to the link path.

This issue was raised with the agent and following discussions with BT in January 2015 he advised the Council, BT would be satisfied if the proposed turbines location was moved approx. 10 – 15 metres to the south west to overcome the interference issue with the exiting radio links. The agent was advised that a shift of the turbine 10 – 15 metres to the south west from where it has been proposed would require a whole new planning application. The agent wished to progress this application to a decision. It is therefore my opinion that the proposal be recommended as a refusal as it is contrary to RE 1 section (iv) in that it would give rise to unacceptable electromagnetic interference to communications installations or other telecommunication systems.

**Recommendation:**  
Refusal is recommended.

**Refusal Reasons**

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 2015 and Policy CTY1 of Planning Policy statement 21 – Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 2015 and Policy RE 1 of the Department's Planning Policy Statement 18 Renewable Energy in that the proposal would, if permitted, create an unacceptable impact on the visual amenity and landscape character of the area, by reason of its size and siting and would give rise to unacceptable electromagnetic interference to communications installations.

<b>Case Officer Signature:</b>
<b>Date:</b>
<b>Appointed Officer Signature:</b>
<b>Date:</b>

**ITEM NO** 28  
**APPLIC NO** P/2011/1034/LBC Listed Buildi **DATE VALID** 01/12/2011  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Ms. J Hughes C/O Agent **AGENT** Barry Owens  
 Consulting 38  
 Highfields Avenue  
 Newry  
 BT35  
 07867976610

**LOCATION** Lands at and adjacent to No.42 Dundalk Street  
 Newtownhamilton

**PROPOSAL** Retention of rear extension and alterations (with internal modifications) to existing listed public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear out-shot. Application being considered in conjunction with accompanying application for full planning permission, under File Ref. P/2011/1038/F.

<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>
			0	0	0 0

- The proposal is contrary to Strategic Planning Policy Statement and Policy BH8 of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the building is listed under Article B1 of the Planning Act (NI) Order 2011 and the extension/alterations have resulted in the loss and impairment of features of special interest and loss of the essential character.



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**Newry, Mourne  
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District Council

**Application Reference:** P/2011/1034/LBC

**Date Received:** 01.12.11

**Proposal:** Retention of rear extension and alterations (with internal modifications) to existing listed public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear out-shot. Application being considered in conjunction with accompanying application for full planning permission, under File Ref. P/2011/1038/F.

**Location:** Lands at and adjacent to No.42 Dundalk Street, Newtownhamilton

**Site Characteristics & Area Characteristics:**

The building comprises of an existing bar which is located at the end of a terrace but was once part of mid terrace arrangement before demolition of a listed building and adjoining properties adjacent and south.

**Site History:**

**P/2012/0149/F** - Retention of Car Park. Adjacent to no 50 Dundalk Street Newtownhamilton. Temporary planning permission granted at planning appeal.

**P/2012/0042/CA** - Unauthorised demolition and extension to a listed building. 42-44 Dundalk Street, Tullyvallon, Newtownhamilton. Enforcement - Court Action being pursued (Application site and former adjoining building)

**P/2011/1038/F** - Lands at and adjacent to No.42 Dundalk Street, Newtownhamilton. Retention of rear extension and alterations (with internal modifications) to existing public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear out-shot. Application being considered

in conjunction with accompanying application for Listed Building Consent, under File Ref. P/2011/1034/LBC. Current (Application Site)

**P/2011/0166/CA** - Unauthorised Car Park. Adjacent To 50 Dundalk Street Tullyvullan, Newtownhamilton, Armagh

**P/2011/0165/CA** - Unauthorised demolition and extension to a listed building. 42-44 Dundalk Street. Enforcement - Court Action being pursued (Application site and former adjoining building)

**P/2007/1508/O** - Lands between Nos. 44-50 Dundalk Street, Newtownhamilton. Site for residential development incorporating new access to Dundalk Street, relocation of on street parking and new service bay. Refusal (Application site)

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

**Banbridge/ Newry and Mourne Area Plan 2015:** Inside the development limits, area of archaeological potential with part of site within the town centre boundary

**SPPS and PPS6 (BH8)** - Comments from NIEA dated 28/02/13 advise that proposals are contrary to this policy and results in the loss and impairment of feature of special interest and loss of essential character.

**Consultations: NIEA Buildings (28.03.13)** - Contrary to BH8 of PPS6 in that work resulted in the loss and impairment of features of special interest and of the essential character.

### **Objections & Representations**

- 52 neighbours notified
- Advertised Dec 2011 and Feb 2013
- No objections received

### **Consideration and Assessment:**

As a listed building the extent of works already carried out at this location are deemed contrary to SPPS and PPS6, Policy BH 8 resulting in the permanent loss of character and destruction of a building of special interest, for this reason the application is recommended as a refusal.

**Recommendation:** Refusal

**Refusal Reasons:** The proposal is contrary to Strategic Planning Policy Statement and Policy BH8 of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the building is listed under Article 81 of the Planning Act (NI) Order 2011 and the extension/alterations have resulted in the loss and impairment of features of special interest and loss of the essential character.

**Case Officer:**

**Authorised Officer:**



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**ITEM NO** 29  
**APPLIC NO** P/2011/1038/F **Full** **DATE VALID** 01/12/2011  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Ms Jackie Hughes C/O Agent **AGENT** Barry Owens  
 Consulting 38  
 Highfields Avenue  
 Newry  
 BT35 8UG  
 07867976610

**LOCATION** Lands at and adjacent to No.42 Dundalk Street  
 Newtownhamilton

**PROPOSAL** Retention of rear extension and alterations (with internal modifications) to existing public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear out-shot. Application being considered in conjunction with accompanying application for Listed Building Consent, under File Ref. P/2011/1034/LBC.

<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>
			0	0 0 0

- The proposal is contrary to Strategic Planning Policy Statement, Policy HS1 of Planning Policy Statement 12: Housing in Settlements and Policy BH8 of Planning Policy Statement 6; Planning, Archaeology and the Built Heritage in that the building is listed under Article 81 of the Planning Act (NI) Order 2011 and the extension/alterations have resulted in the loss and impairment of features of special interest and loss of the essential character.



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**Newry, Mourne  
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District Council

**Application Reference:** P/2011/1038/F

**Date Received:** 01.12.11

**Proposal:** Retention of rear extension and alterations (with internal modifications) to existing public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear out-shot. Application being considered in conjunction with accompanying application for Listed Building Consent, under File Ref. P/2011/1034/LBC.

**Location:** Lands at and adjacent to No.42 Dundalk Street, Newtownhamilton

**Site Characteristics & Area Characteristics:**

The building comprises of an existing bar which is located at the end of a terrace but was once part of mid terrace arrangement before demolition of a listed building and adjoining properties adjacent and south.

**Site History:**

**P/2012/0149/F** - Retention of Car Park. Adjacent to no 50 Dundalk Street Newtownhamilton. Temporary planning permission granted at planning appeal.

**P/2012/0042/CA** - Unauthorised demolition and extension to a listed building. 42-44 Dundalk Street, Tullyvullan, Newtownhamilton. Enforcement - Court Action being pursued (Application site and former adjoining building)

**P/2011/1034/LBC** - Lands at and adjacent to No.42 Dundalk Street Newtownhamilton. Retention of rear extension and alterations (with internal modifications) to existing listed public house to include off-licence sales (with separate access to rear) and new toilets on ground floor; keg store, kitchen and ancillary storage in basement; conversion of first floor to provide liveable accommodation; external smoking area at ground floor level; internal and external circulation including disabled access provision; and with demolition of existing rear

out-shot. Application being considered in conjunction with accompanying application for full planning permission, under File Ref. P/2011/1038/F. Current (Application Site)

**P/2011/0166/CA** - Unauthorised Car Park. Adjacent To 50 Dundalk Street Tullyvallon, Newtownhamilton, Armagh

**P/2011/0165/CA** - Unauthorised demolition and extension to a listed building. 42-44 Dundalk Street, Tullyvallon, Newtownhamilton, Armagh. Enforcement - Court Action being pursued (Application site and former adjoining building)

**P/2007/1508/O** - Lands between Nos. 44-50 Dundalk Street, Newtownhamilton. Site for residential development incorporating new access to Dundalk Street, relocation of on street parking and new service bay. Refusal (Application site)

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

**Banbridge/ Newry and Mourne Area Plan 2015:** Inside the development limits, area of archaeological potential with part of site within the town centre boundary

**Policy and Other Guidance:** SPPS, PSRNI, PPS3, PPS6, PPS12, DCAN 7, DCAN11, DCAN 15, Parking Standards

**PPS3, DCAN 15 and Parking Standards:** Transport NI have no objections. There is sufficient on street parking within the vicinity

### **SPPS and PPS6 (BH4 and BH8):**

**BH4** - Comments (20/02/13) advise works have already been undertaken any potential archaeological remains are likely to have been damaged, NIEA have no further comment

**BH8** - Comments from NIEA dated 28/02/13 advise that proposals are contrary to this policy and results in the loss and impairment of feature of special interest and loss of essential character.

**DCAN 7:** Proposed land use is acceptable at this location as there are other public houses within the vicinity. Environmental health has raised no objections with regard to any potential noise disturbance and there is sufficient on street parking.

### **PSRNI (DES 2) and DCAN 11:**

Proposals are in keeping with surrounding land uses, there is no impact to amenity and public health has raised no concerns. Whilst the overall design is visually acceptable and provision has been made for those whose mobility is impaired. However works undertaken have nevertheless resulted in the loss of features of special interest and essential character (See NIEA Buildings comments dated 28/02/13).

**PPS12 (HS1):** Internal alteration has been carried at first floor level to accommodate living accommodation above the existing licensed premises however the unauthorised works to the listed building including external alteration to provide

staircase access to the rear are not in keeping with the host building and has adversely impacted on the original character of the building

#### **Consultations:**

**Transport NI (30.05.13)** - No objection

**NIEA Buildings (28.03.13)** - Contrary to BH8 of PPS6 in that work resulted in the loss and impairment of features of special interest and of the essential character.

**Environmental Health (25.02.13)** - No objection

**NIW (24.02.13)** - No surface water sewer with 20m of the proposals.

**NIEA Monuments (20.02.13)** – The proposed development is retrospective any potential archaeological remains will have been damaged/ destroyed

#### **Objections & Representations**

- 52 neighbours notified
- Advertised Dec 2011 and Feb 2013
- No objections received

#### **Consideration and Assessment:**

Whilst the proposed use at this location is acceptable within its urban context, no objections have been raised by third parties with respect to the impact to amenity on adjoining properties and environmental health have raised no concerns, from a visual perspective the overall development is acceptable. However as a listed building the extent of works already carried out at this location are deemed contrary to PPS6, Policy BH 8 and has resulted in the permanent loss of character and destruction of a building of special interest and for this reason the application is recommended as a refusal.

**Recommendation:** Refusal

#### **Refusal Reasons:**

The proposal is contrary to Strategic Planning Policy Statement, Policy HS1 of Planning Policy Statement 12: Housing in Settlements and Policy BH8 of Planning Policy Statement 6: Planning, Archaeology and the Built Heritage in that the building is listed under Article 81 of the Planning Act (NI) Order 2011 and the extension/alterations have resulted in the loss and impairment of features of special interest and loss of the essential character.

**Case Officer:**

**Authorised Officer:**

**RE : P/2011/1038/F & P/2011/1034/LBC - 42 Dundalk Street Newtownhamilton**

I am writing to request speaking rights at the forthcoming Council planning meeting next week for both of the above applications. It is my understanding that these applications are going forward with a recommendation to refuse.

As the agent for both applications (which were submitted in 2011), I would like to speak on behalf of the applicant, Ms Jackie Hughes regarding the works that were completed ; the rationale behind same ; the planning history regarding the site and the predicament that the applicant has been placed in by the actions of others ; potential ways to alleviate planning officials concerns regarding the proposals

I would be grateful if you would confirm that the Council is agreeable to this request.

Many thanks

Kind Regards

Barry

**P/2011/1038/F**

I am aware of the background to the application, and the property itself, having lived opposite for most of my life.

The demolition of the older part of the building, which I believe to be listed, was carried out by a previous owner.

When Mrs Hughes purchased the property she carried out extensive improvements to the bar. Whatever breaches of planning rules were flaunted in the past by other individuals, Mrs Hughes should be praised for rescuing the bar (Cosy Bar) which was close to collapse, and for her commitment to improving the look of and trade on Dundalk Street.

**An Comhairleoir Barra Ó Muirí**  
**Councillor Barra Ó Muirí**

☐ **Póca/Mobile:** [07547 306922](tel:07547306922)

☐ **Baile/Home:** [028 3086 1921](tel:02830861921)

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☐ **Twitter:** @barraomuirí

*Seolta ar luas na gaoithe ó m'iPad Air ☐*

## Council Newry, Mourne and Down

Date 21/06/2017

<b>ITEM NO</b>	<b>D1</b>			
<b>APPLIC NO</b>	P/2010/0968/F	Full	<b>DATE VALID</b>	02/08/2010
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Mr Seamus Donnelly C/O Agent		<b>AGENT</b>	Colleen McEntee 107a Blaney Road Crossmaglen Newry Co Down BT35 9HT 02830860698

**LOCATION** 236 Dublin Road, Newry

**PROPOSAL** Change of use of building from storage to class A1: shops (to include retention of amendments to building approved under planning ref: P/2005/2425/F).

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

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement's Town Centre and Retailing, Regional and Strategic Policy in that the proposal has not adopted a town centre first, sequential approach and retailing will be directed to town centres in order to prevent the development of inappropriate retail facilities in the countryside.
- 3 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.



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**Newry, Mourne  
and Down**  
District Council

**Application Reference:** P/2010/0968/F

**Date Received:** 02.08.10

**Proposal:** Change of use of building from storage to class A1: shops (to include retention of amendments to building approved under planning ref: P/2005/2425/F).

**Location:** 236 Dublin Road, Newry

**Site Characteristics & Area Characteristics:**

Site consists of a petrol filling station and associated outbuildings located adjacent to the former A1 Dublin Road.

**Site History:**

P/2013/0581/F Day Spa and Hair Salon. Unit 4 Donnelly's Service Station  
236 Dublin Road, Newry. Current. (Application site)

P/2013/0401/F: Extension and reconfiguration of petrol filling station premises.  
Donnelly's Service Station, 236 Dublin Road, Killeen, Newry. Granted. (Application site)

P/2013/0094/CA: Unauthorised change of use from storage building to retail,  
embroidery shop Donnelly's Filling Station, Dublin Road, Killeen, Newry

- Enforcement case opened 22.05.13
- Enforcement letter sent 13.04.14

P/2013/0093/CA: Unauthorised extension to building. 236 Dublin Rd

- Enforcement case opened 22.05.13
- Enforcement letter sent 23.04.14

P/2009/1211/F: 236 Dublin Road, Newry. Erection of store extension to existing  
tile/bathroom showroom. Granted (Adj and N of site: NE of building)



P/2005/2425/F: Proposed construction of storage unit. Adjacent to 240 Dublin Road, Killeen, Newry. Granted (Building on application site)

P/1985/1090: Extension to existing off licence to provide bureau of exchange. 236 Dublin Road. Granted

P/1985/0910: Donnellys Service Station. Granted

P/1983/0280: Change of use from shop and store to off licence. 236 Dublin Rd

P/1980/1051: Site for general purpose store. 236 Dublin Road. Granted

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

**Banbridge/ Newry and Mourne Area Plan 2015:** AONB Countryside

### **Planning Policy and Other Guidance:**

#### **SPPS and PPS2 (NH6)**

The building is located between the existing petrol filling station and a commercial unit. It could be argued that the rural character at this particular location has been eroded due to the concentration of commercial development within the immediate area, the building lies within a quasi-suburban area that the retention of such will not necessarily have a detrimental impact on the character of an area which has already changed. The design and siting of the building is reflective of the character of this part of the AONB and the immediate area, would not be unduly prominent or detrimental to visual amenity.

#### **PPS3, DCAN 15 and Parking Standards:**

Transport NI (Roads Service) has advised that amended plans is required showing satisfactory sightlines and parking/ turning within the site. There appears to be sufficient parking/ turning within the site and adequate sightlines that if amendments were provided this should hopefully overcome consultee concerns.

#### **SPPS and PPS21 (CTY1)**

The policy provides a list of non-residential uses which may be deemed acceptable within the countryside. CTY 1 specifically states that other types of development will be permitted where there are overriding reasons as to why the development is essential and could not be located within a settlement.

Given the commercial nature of proposals this type of development is better suited to an urban location and not an expected use within the open countryside. No overriding reasons have been presented as to why the development is essential at this rural location and could not be located elsewhere within a settlement. Therefore the development fails to meet CTY1 of PPS21

## **Retailing (SPPS)**

The policy emphasises that retailing should be directed towards town centres although consideration is given to appropriate retail facilities such as farm shops, crafts shops or shops to serve tourist/recreational facilities. Although this is not an extensive list it can however be inferred from such examples that to be an appropriate retail facility it should have a link to local, rural based activities. In this case there is no evidence to support the requirement for such retail use which meets specific local need and when adopting the sequential test of the SPPS there is no reason why such retail facilities could not have been facilitated within the town centre meeting the requirements of policy. On this basis the use of the building for retailing is not deemed to be an appropriate retailing facility within the countryside thus failing the policy tests of the SPPS. This is a position supported by decisions made by the Planning Appeals Commission in relation to retailing within the countryside. (2014/E0048 and 2016/A0139)

### **Consultations:**

Transport NI (Roads) (26.03.12) - Require amendments

Retail Unit (28.02.12) - No objection in principle

Environmental Health (03.09.10) – No objection

### **Objections & Representations**

3 neighbours notified

Advertised August 2010

No objections received

### **Consideration and Assessment:**

The existing building and its use is unlawful having not been constructed or used in accordance with planning permission that was originally granted under P/2005/2425/F for storage unit. The assessment of the application is on the basis of whether or not the application adheres to planning policy in relation to built development and use with the application failing to meet the requirements of planning policy as outlined above.

It should also be noted that an enforcement case remains live with regard to the application. Whilst the development and its use may be immune from enforcement this application is not a mechanism to demonstrate the established and lawful nature of the development or use at this location which can be done separately through a certificate of lawful development.

Overall the application fails to meet requirements of the SPPS and CTY1 of PPS21 and does not adhere to zoning provision for retailing within the current area plan and should therefore be refused.

**Recommendation:**

Refusal

**Refusal Reasons:**

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to the Strategic Planning Policy Statement's Town Centre and Retailing, Regional and Strategic Policy in that the proposal has not adopted a town centre first, sequential approach and retailing will be directed to town centres in order to prevent the development of inappropriate retail facilities in the countryside.
3. 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.

Case Officer

Authorised Officer

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

<b>ITEM NO</b>	<b>D4</b>			
<b>APPLIC NO</b>	P/2013/0581/F	Full	<b>DATE VALID</b>	05/08/2013
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Mr Seamus Donnelly Donnelly's Service Station 236 Dublin Road Killeen Newry BT35 8RL		<b>AGENT</b>	
<b>LOCATION</b>	Unit 4 Donnelly's Service Station 236 Dublin Road Newry			NA
<b>PROPOSAL</b>	Day Spa and Hair Salon			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	0	1	0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement's Town Centre and Retailing, Regional and Strategic Policy in that the proposal has not adopted a town centre first, sequential approach and retailing will be directed to town centres in order to prevent the development of inappropriate retail facilities in the countryside.
- 3 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.



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**Newry, Mourne  
and Down**  
District Council

**Application Reference:** P/2013/0581/F

**Date Received:** 05.08.13

**Proposal:** Day Spa and Hair Salon (retrospective permission)

**Location:** Unit 4, Donnellys Service Station, 236 Dublin Road, Newry

**Site Characteristics & Area Characteristics:**

Site comprises of an existing filling station complex with a two storey detached building where the existing day spa and hair dressers is located.

**Site History:**

P/2013/0401/F: Extension and reconfiguration of petrol filling station premises. Donnelly's Service Station, 236 Dublin Road, Killeen, Newry. Granted. (Application site)

P/2013/0094/CA: Unauthorised change of use from storage building to retail, embroidery shop Donnelly's Filling Station, Dublin Road, Killeen, Newry

- Enforcement case opened 22.05.13
- Enforcement letter sent 13.04.14

P/2013/0093/CA: Unauthorised extension to building. 236 Dublin Rd

- Enforcement case opened 22.05.13
- Enforcement letter sent 23.04.14

P/2010/0968/F: 236 Dublin Road, Newry. Change of use of building from storage to class A1: shops (to include retention of amendments to building approved under planning ref: P/2005/2425/F). Pending

P/2009/1211/F: 236 Dublin Road, Newry. Erection of store extension to existing tile/bathroom showroom. Granted (Adj and N of site: NE of building)

P/2005/2425/F: Proposed construction of storage unit. Adjacent to 240 Dublin Road, Killeen, Newry. Granted (Building on application site)

P/1985/1090: Extension to existing off licence to provide bureau of exchange. 236 Dublin Road. Granted

P/1985/0910: Donnellys Service Station. Granted

P/1983/0280: Change of use from shop and store to off licence. 236 Dublin Rd

P/1980/1051: Site for general purpose store. 236 Dublin Road. Granted

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

**Banbridge/ Newry and Mourne Area Plan 2015:** AONB Countryside

### **Planning Policy and Other Guidance:**

#### **SPPS and PPS2 (NH6)**

The building comprises of an extension to an existing unlawfully erected building between an existing petrol filling station and another commercial unit. Although sited within the AONB the rural character at this particular location has been eroded due to the concentration of commercial development within the immediate area, the building lies within a quasi-suburban area that the retention of such will not necessarily have a detrimental impact on the character of an area which has already changed. The design and siting of the building is reflective of the character of this part of the AONB, is not unduly prominent and is not detrimental to visual amenity.

#### **PPS3, DCAN 15 and Parking Standards:**

Transport NI (Roads Service) have no objection in principle. There is sufficient parking and turning within the site for vehicular traffic.

#### **SPPS and PPS21 (CTY1)**

The policy provides a list of non-residential uses which may be deemed acceptable within the countryside. CTY 1 specifically states that other types of development will be permitted where there are overriding reasons as to why the development is essential and could not be located within a settlement.

Given the commercial nature of proposals this type of development is better suited to an urban location and not an expected use within the open countryside. Whilst justification has been set out in correspondence dated the 17<sup>th</sup> September 2014 there is no overriding reason presented as to why the development is essential at this rural location and could not be located elsewhere within a settlement. Therefore the development fails to meet CTY1 of PPS21

#### **Retailing (SPPS)**

The policy emphasises that retailing should be directed towards town centres although consideration is given to appropriate retail facilities such as farm shops, crafts shops or shops to serve tourist/recreational facilities. Although this is not an extensive list it can however be inferred from such examples that to be an appropriate retail facility it should have a link to local, rural based activities.

The proposal is for a day spa and hairdressers which are not deemed an appropriate retailing facility within the open countryside. Whilst justification for such proposals has been set out in correspondence dated 17.09.14 the use does not fall within the exceptions of policy to be considered acceptable within the countryside.

The proposal is contrary to the SPPS and no special need has been demonstrated to justify relaxation of the strict planning controls in the countryside. The proposal should have been directed to the town centre, when adopting the sequential tests of the SPPS development must meet a specific local need that could not be met in the town centre. In considering the sequential test there is no reason why such a facility could not have been located within the town centre which is approximately 3.5 miles away (i.e. Newry).

On this basis the use of the building for retailing is not deemed to be an appropriate retailing facility within the countryside thus failing the policy tests of the SPPS. This is a position supported by decisions made by the Planning Appeals Commission in relation to retailing within the countryside. (2014/E0048 and 2016/A0139)

#### **Consultations:**

Transport NI (Roads Service) (06.11.13) - No objection

Environmental Health (21.10.13) - No objection

NIW (06.09.13) – Generic response

#### **Objections & Representations**

14 neighbour notifications

Advertised August 2013

No objections received

#### **Consideration and Assessment:**

The existing building formed an extension to an already existing building and use which was already unlawful. The current unit and its use have no planning permission and are subject to a live enforcement investigation.

The assessment of the application is on the basis of whether or not the application adheres to planning policy in relation to built development and use with the application failing to meet the requirements of planning policy as outlined above.

Overall the application fails to meet requirements of the SPPS, CTY1 of PPS21 and it does not adhere to zoning provision for retailing within the current area plan. On this basis it is recommended to refuse the application.

**Recommendation: Refusal****Refusal Reasons:**

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to the Strategic Planning Policy Statement's Town Centre and Retailing, Regional and Strategic Policy in that the proposal has not adopted a town centre first, sequential approach and retailing will be directed to town centres in order to prevent the development of inappropriate retail facilities in the countryside.
3. 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.

**Case Officer****Authorised Officer**



<b>ITEM NO</b>	<b>D2</b>			
<b>APPLIC NO</b>	P/2012/0712/F	Full	<b>DATE VALID</b>	04/09/2012
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Brendan Carragher 24 New Road Silverbridge Newry BT35 9PQ		<b>AGENT</b>	J A Murphy B.Sc.,M.I.C.E Chartered Engineer 43 New Road Silverbridge Newry BT35 9NB
				02830888214

**LOCATION** 24 New Road  
Silverbridge  
Newry  
BT35 9PQ

**PROPOSAL** Extension to Tyre Depot

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

- 1 The proposal is contrary to Paragraph 6.279 of the Strategic Planning Policy Statement in that the site lies outside the development limits as designated in the Banbridge, Newry and Mourne Area Plan 2015 and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside.
- 2 The proposal is contrary to the Banbridge, Newry and Mourne Area Plan 2015, the statutory plan for the area, in that the site lies outside any settlement limit and no exceptional circumstances have been demonstrated to justify why this proposal could not be located within lands designated for economic development uses in the city, main towns or villages in the Council area in accordance with the sustainability objectives of the plan.
- 3 The proposal is contrary to Paragraph 3.8 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) in that the proposal conflicts with an up to date development plan.
- 4 The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 5 The proposal is contrary to Policy PED 3 of the Department's Planning Policy Statement 4, Planning and Economic Development, in that the proposal would result in a major increase in the area of the site and the extension does not respect the scale of the existing buildings which will harm the rural character of the local area.
- 6 The proposal is contrary to Policy PED 9 of the Department's Planning Policy Statement 4, Planning and Economic Development, in that it has not been demonstrated that:
  - appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view; and
  - that there are satisfactory measures to assist integration into the landscape.



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**Newry, Mourne  
and Down**  
District Council

**Application Reference: P/2012/0712/F**

**Date Received: 10<sup>th</sup> Sept 2012**

**Proposal: Extension to tyre depot**

**Location: 24 New Road Silverbridge Newry BT35 9PQ**

**Site Characteristics & Area Characteristics:**

*The entire complex is located off the New Road and sited on the brow of a hill. To the north of the existing shed there is a single storey dwelling which is occupied and within the ownership of the applicant.*

*Immediately north of the application the Department had previously granted approval for a dwelling under P/2008/1220/RM.*

*It would appear from aerial photography that the dwelling approved had footings in place from as early as Sept 2010. The most recent aerial photography shows the footings being used an area for tyre storage. This area is outside the red line of the application site.*

*There are currently 2 sheds on the site. Both of the sheds at the time of inspection were being used for the storage, fitting and repair of tyres. The outside yard area was also being used for the storage of tyres. There was a small portcabin office within the yard just to the front of the shed doors. To the far end of the site there was an area being used to park staff vehicles and for the storage of more tyres. The front roadside boundary of the site around the informal parking area was defined by a timber ranch style fence approx. 1m in height. The boundary to the side of the shed and to the roadside was defined by a timber post and wire fence. The site lacks any existing natural screening along this boundary with the exception of one large tree in the corner.*

**Site History:**

**LA07/2017/0606/LDE- Tyre Depot- Approved- Immune from action**

**Planning Policies & Material Considerations:**

*The Strategic Planning Policy Statement (SPPS)  
The Banbridge/Newry and Mourne Area Plan 2015  
Planning Policy Statement 3  
Planning Policy Statement 4  
Planning Policy Statement 21*

**Consultations:**

**EH- no objections**

**TransportNI- no objections**

**NIW- statutory**

**Objections & Representations**

*No. of neighbours notified= 6*

*Advertised= 21/9/2012*

*No. of representations received= 0*

**Consideration and Assessment:**

*The agent had confirmed in his letter dated the 18<sup>th</sup> Jan 2013, that the business stores a large range of tyres, both new and part used and that they also do puncture repairs and fitting. There is both an industrial and retailing element to the business. The application site is within the countryside area as defined in the Banbridge, Newry and Mourne Area Plan 2015. In determining a planning application any proposed development must accord with the up to date development plan.*

*Banbridge, Newry and Mourne Area plan has identified lands and zoned such lands for economic development within the city and towns within the plan area.*

*The existing buildings and use as a tyre depot is within the countryside area. The business use has been regularised through the submission and issuing of the CLUD listed above. The use had occurred more than five years ago and therefore was immune from enforcement action, as set down in the timescales contained in Section 132 of the Planning Act (Northern Ireland) 2011. The business use in the countryside area was only accepted as the use is immune from any enforcement action.*

*Retailing proposals within the rural area must be in accordance with the SPPS. Paragraph 6.279 of the SPPS states, retailing should be directed to town centres and the development of inappropriate retail facilities in the countryside must be resisted. The proposal does not fall within any of the exceptions which may be considered appropriate outside of settlements.*

*The application is to be assessed under the provisions of PPS 4 and Policy PED 3, expansion of an established business in the countryside given the recent approved CIUD for the Tyre Depot business.*

*The expansion of an established economic development use in the countryside will be permitted where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise.*

*The proposal seeks to extend one of the existing sheds. The existing tyre depot has a floor area of approx. 194 sq metres. The proposed extension will create an additional 330 sq metres. The policy does not define percentage increases in floor*

area but does state that any new extension should respect the scale, design and materials of the original buildings. The proposal in terms of height, length and area does not respect the existing scale of the original buildings on the site. The existing shed is 5.6metres in height with a length of 13.5 metres. The proposed shed dimensions are to be 6.5 metres in height, 24.5 in length and 13.5 metres in width. The proposal also seeks to extend the existing site area. This extension is to the front and will extend towards the roadside. The front boundary is to be extended a maximum of 25metres towards the roadside. This increase lessens across the front boundary to a minimum point of an 11 metre increase. The large extension to the shed with the extension to the site area along the front boundary with the formal staff/customer parking area layout is more suitable to the urban area. The proposal would open up the site and further spoil the character of this countryside area. With regard to the impact on the amenity of the neighbouring dwellings in terms of problems arising from noise, smell and pollution, Environmental Health have been consulted as part of determining the application and returned with no objections to the proposal on such grounds. The closest property no. 24 is owned by the applicant.

The existing yard and proposed car parking area are both to be extended closer to the roadside. This will involve the creation of new boundaries through the middle of the both front fields either side of the access laneway. The site as it exists lacks appropriate boundary treatment and means of enclosure. The site is positioned approximately 10 metres above the adjacent road level and readily viewed travelling in both directions along the New Road. Given the size and scale of the extension both to the shed and yard area and the position of the site to the roadside and the lack of existing screening, the proposed development will be a prominent feature in the landscape. The proposed shed, it's associated outside storage and car parking area will rely heavily on new landscaping. The applicant has indicated new boundary treatment along the front boundaries. Given the position of the extension on the brow of the hill and the position of the new boundary further down the field, it is not felt that the proposed landscaping is sufficient to aid the integration of this proposal at this prominent position in the landscape.

### **Recommendation:**

### **Refusal**

### **Refusal reasons:**

1. The proposal is contrary to Paragraph 6.279 of the Strategic Planning Policy Statement in that the site lies outside the development limits of Newry as designated in the Banbridge/Newry and Mourne Area Plan 2015 and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside.



2. The proposal is contrary to the Banbridge Newry and Mourne Area Plan 2015, the statutory plan for the area, in that the site lies outside any settlement limit and no exceptional circumstances have been demonstrated to justify why this proposal could not be located within lands designated for economic development uses in the city, main towns or villages in the Council area in accordance with the sustainability objectives of the plan.
3. The proposal is contrary to Paragraph 3.8 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) in that the proposal conflicts with an up to date development plan.
4. The proposal is contrary to Policy PED 3 of the Department's Planning Policy Statement 4, Planning and Economic Development, in that the proposal would result in a major increase in the area of the site and the extension does not respect the scale of the existing buildings which will harm the rural character of the local area.
5. The proposal is contrary to Policy PED 9 of the Department's Planning Policy Statement 4, Planning and Economic Development, in that it has not been demonstrated that the proposal;

*- Appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view; and*

*- that there are satisfactory measures to assist integration into the landscape.*

6. The proposal is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

7. The proposal is contrary to the SPPS and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that:

*-the proposed building is a prominent feature in the landscape;*

*-the proposed site lacks long established natural boundaries/is unable to provide a suitable degree of enclosure for the building to integrate into the landscape;*

*-the proposed building relies primarily on the use of new landscaping for integration;*

*-the ancillary works do not integrate with their surroundings;*

*-the proposed building fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop*

*and therefore would not visually integrate into the surrounding landscape.*

8. The proposal is contrary to the SPPS and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:

*-the building would, if permitted, be unduly prominent in the landscape;*

*-the impact of ancillary works would damage rural character;*

*and would therefore result in a detrimental change to (further erode) the rural character of the countryside.*

.....

.....

**Proposed Extension to Tyre Depot at New Road, Silverbridge, Newry**

**for Mr. B. Carragher**

**Submission to Council on 21/06/2017**

**Planning ref; P/2012/0712/F**

**Date; 10<sup>th</sup>. September 2012**

- 1 Site map
- 2 Layout as Existing
- 3 Photo front of sheds
- 4 Photo directly opposite Sheds
- 5 Photo to road side
- 6 Inside larger shed
- 7 Inside smaller shed
- 8 Site from road - 110 metres away
- 9 Site from Eastern approach
- 10 Layout as Proposed
- 11 Elevations as originally proposed
- 12 Elevations as amended
- 13 Ace map showing sheds at no. 24 and no. 18
- 14 Photo of sheds at no. 18
- 15 Photo of shed at no. 24
- 16 2002 refusal
- 17 Map related to above.

This application came before the council on 3<sup>rd</sup>. August 2016 and the council agreed with the planners that they could not consider this application under policy PED 3 of PPS 4 until application for a CLUD has been made and approved. This has now been done and I have here Certificate of Lawfulness for the existing development. The development consists of the following (slides 1-8)

As can be seen, the existing sheds are inadequate and the work of fitting tyres to cars and tractors is being carried out in the open. A shed fit for purpose is proposed, so that the work can be done under cover. The new layout and proposed elevations are shown in slides 10 to 12. A reduction in overall height so that the eaves height is equal to the existing has already been conceded by the applicant.

The application has been considered under policy PED 3 of PPS 4 i.e. 'Expansion of Established Economic Development Use in the



Countryside.’

This policy allows expansion ‘where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise.’ Reverting to slide 10 we note that the increase in site area is not major. With regard to the appearance of the local area we draw your attention to the adjoining premises no 18. (slide 13). The farm sheds there are located slightly higher on the same ridge as the applicants shed and about 200 metres away. Their footprint area is 1243 sq. m. compared with a total footprint area of only 532 sq. m. proposed now and they are much taller. Both developments are shown in slides 14 and 15 and it is clear that our proposal will fit in with the local character.

I would point out that in 2002 the applicant sought to re-locate his business to the lower ground along the road and was refused planning permission. (slides 16 and 17)

PED 3 requires that ‘the new building should respect the scale, design and materials of the original building(s). It is our contention that we have done so and we are willing to accept any reasonable condition with regard to colour etc.

We therefore contend that our proposal meets the requirements of PED 3 taking the local conditions into account. However we also point out that under PED 3 a proposal that does not meet the requirements may be approved provided that the following conditions apply;

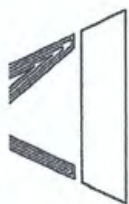
- 1 relocation of the enterprise is not possible for particular operational or employment reasons.
- 2 the proposal would make a significant contribution to the local economy.
- 3 the development would not undermine the rural character.

Relocation is out of the question for many reasons, but mostly to do with the logistics of taking all tractors from the area to say the industrial estates in Newry to have tyres fitted. The lack of the shed will have an adverse effect on the local economy if this enterprise has to close down with a loss of 5 jobs. The third issue has been dealt with above.

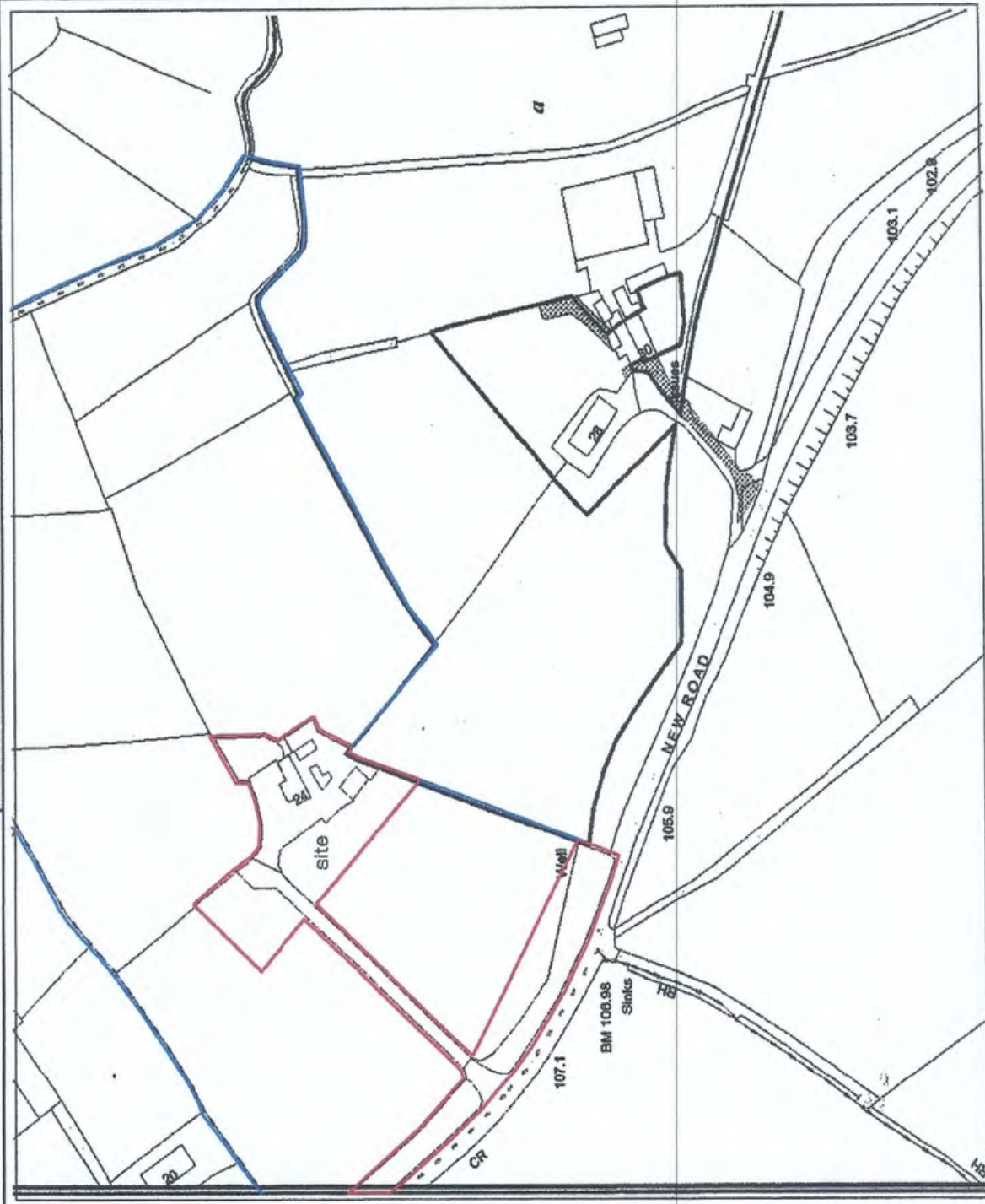
Finally there is a requirement that measures to aid integration into the landscape will be required. We have shown extensive boundary planting, but will be willing to provide more if you deem it necessary.

Councillors, it is my contention that you are entitled to approve this proposal under the present policy and I urge you to do so.

43, New Road.  
Silverbridge, Newry.  
Tel. 30 888214.



Scale: 1- 2500  
Date: July 2012



Site Location Map re Proposed Extension to Tyre Depo, at 24 New Road,  
Silverbridge, Newry for Mr. B. Carragher

①



LAYOUT AS EXISTING  
scale 1-500

Ex. levels shown '+':









5





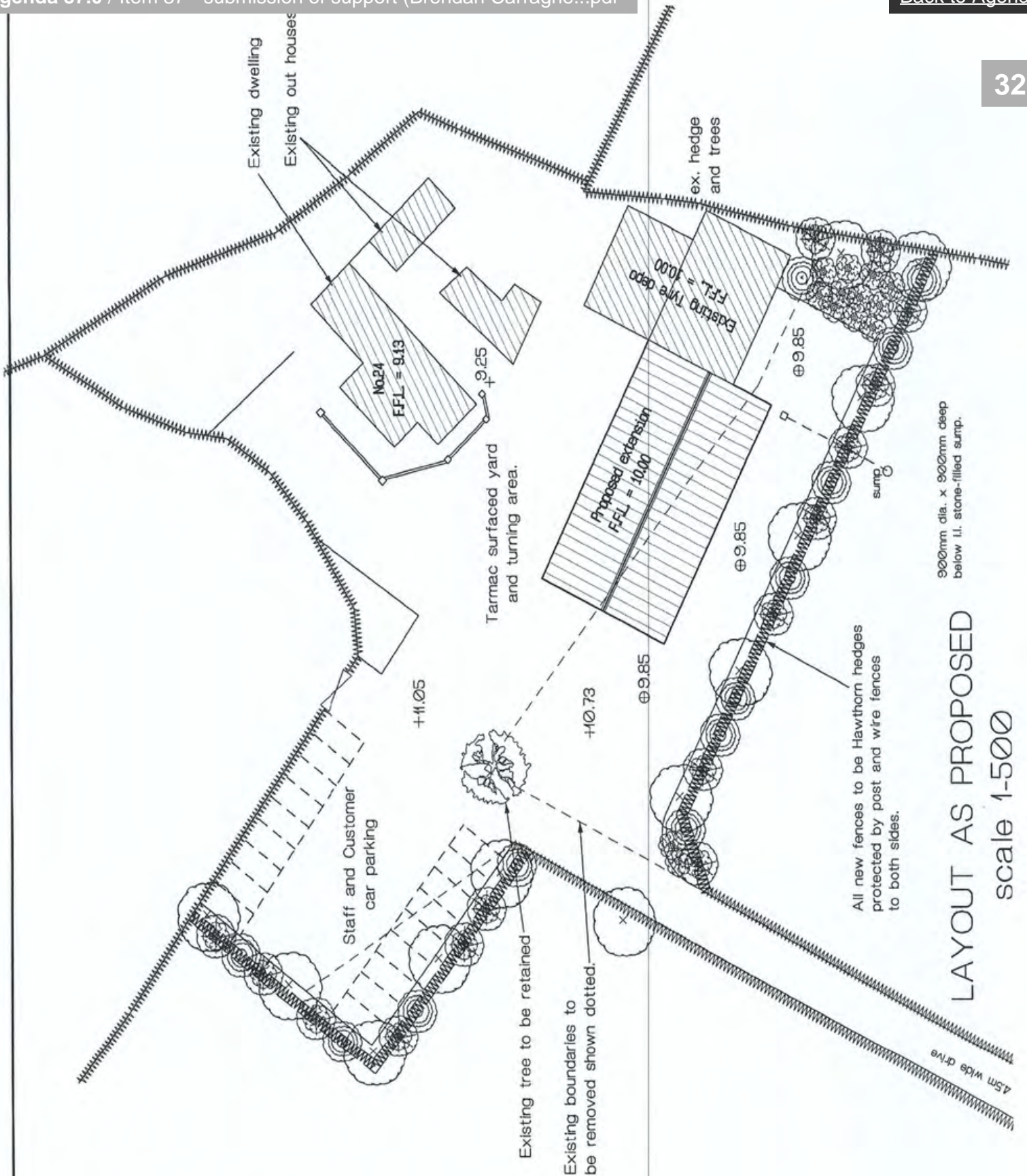






SITE.  
↑

6.



end:

ed @ 4m crs. min. in Spring growing seasonable soil.

part in Summer growing to a able soil.

@ 3m crs. in Summer growing to or well drained soil.

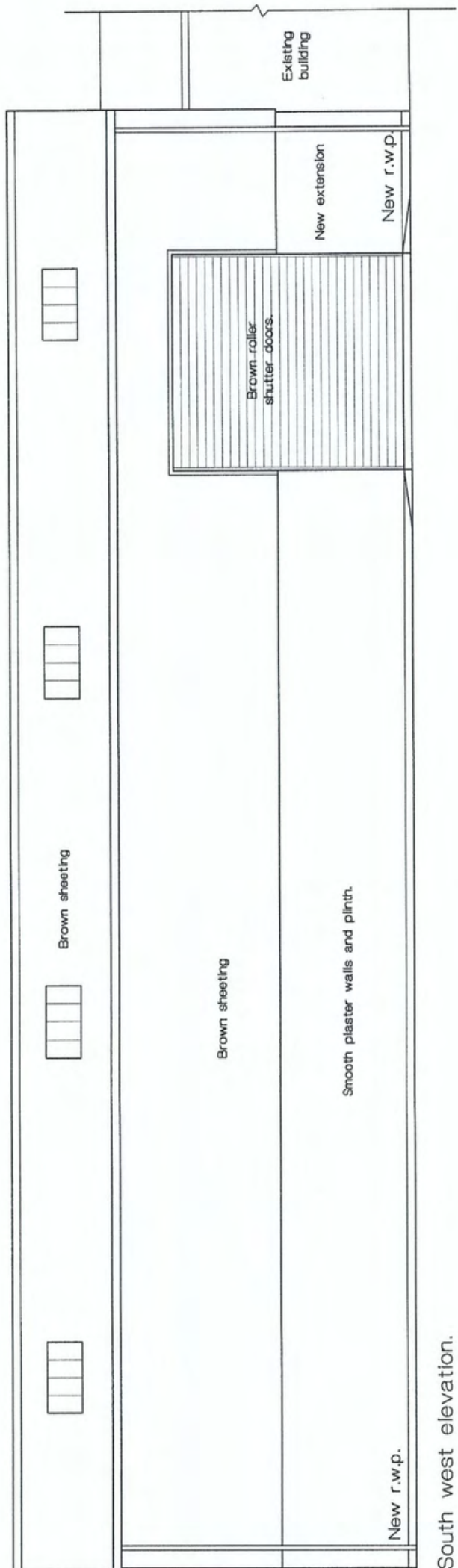
d 3m apart in Autumn growing seasonable soil.

Ex. levels shown '+'. Proposed levels shown '@'.

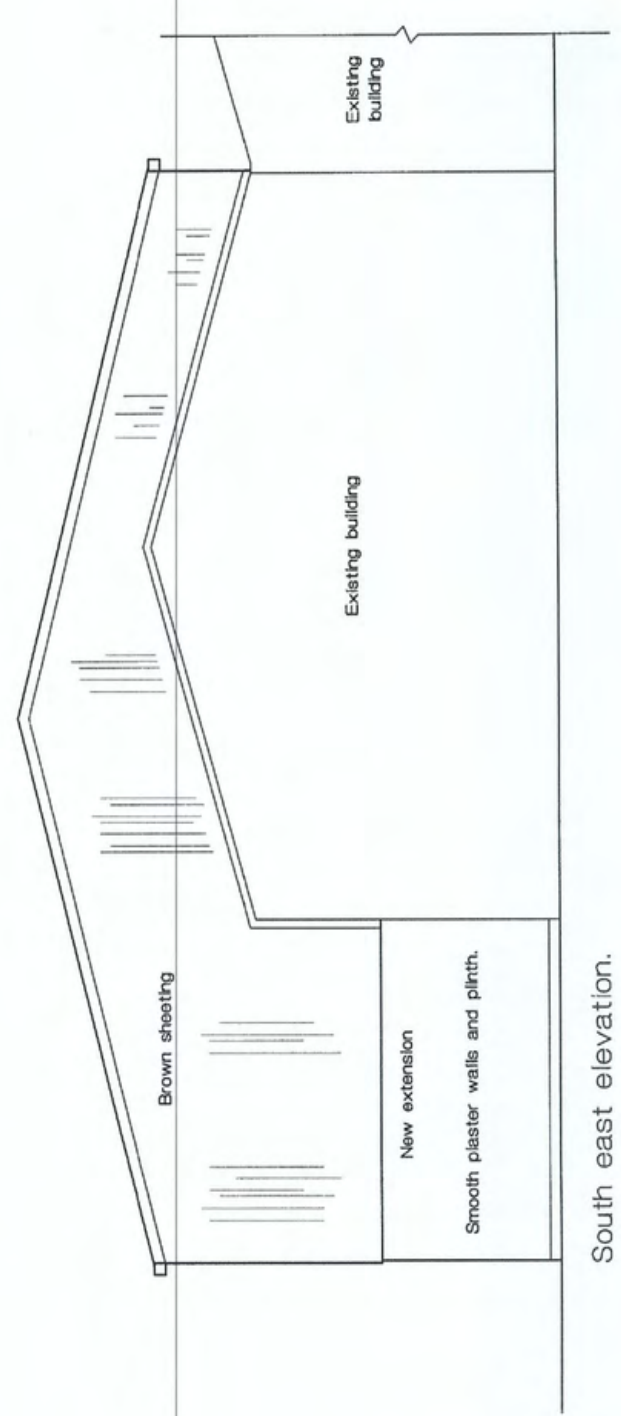
# LAYOUT AS PROPOSED

scale 1:500





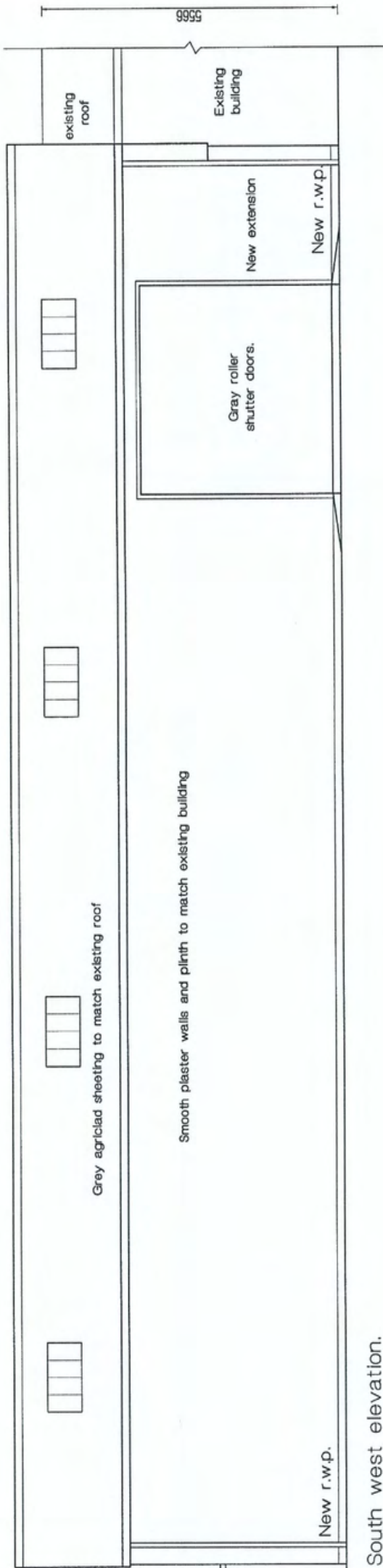
South west elevation.



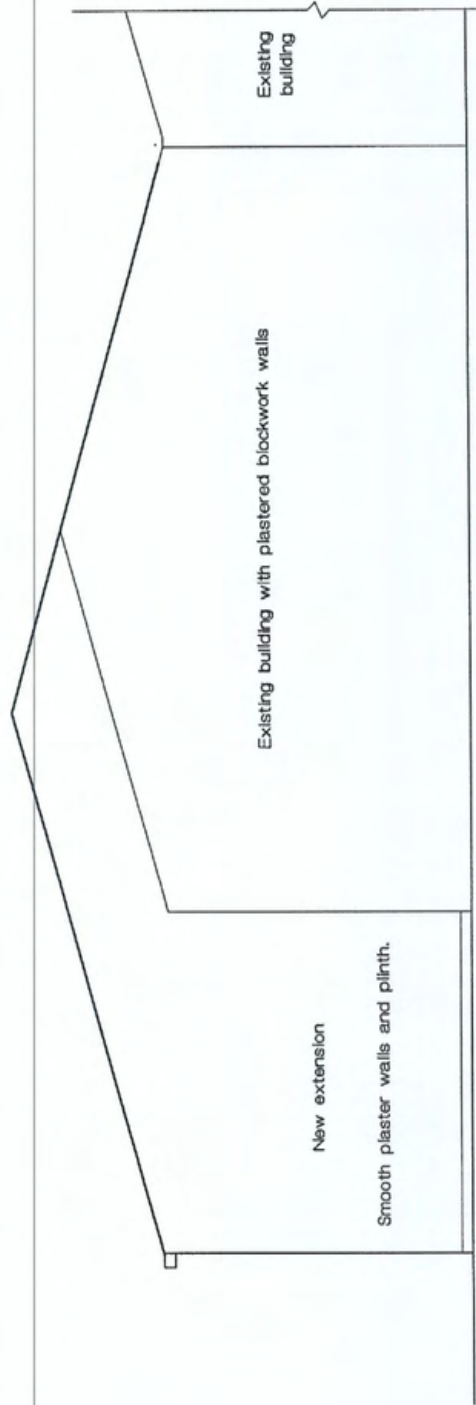
South east elevation.

ELEVATIONS  
 ORIGINAL PLANS  
 scale 1:100





South west elevation.



South east elevation.

ELEVATIONS  
AMENDED PLANS  
scale 1-100

12

# ACEmap® Single

Printed: 09/06/2017 Customer Ref: CARRAGHER B

Centre Point (Easting, Northing): 295122, 318191

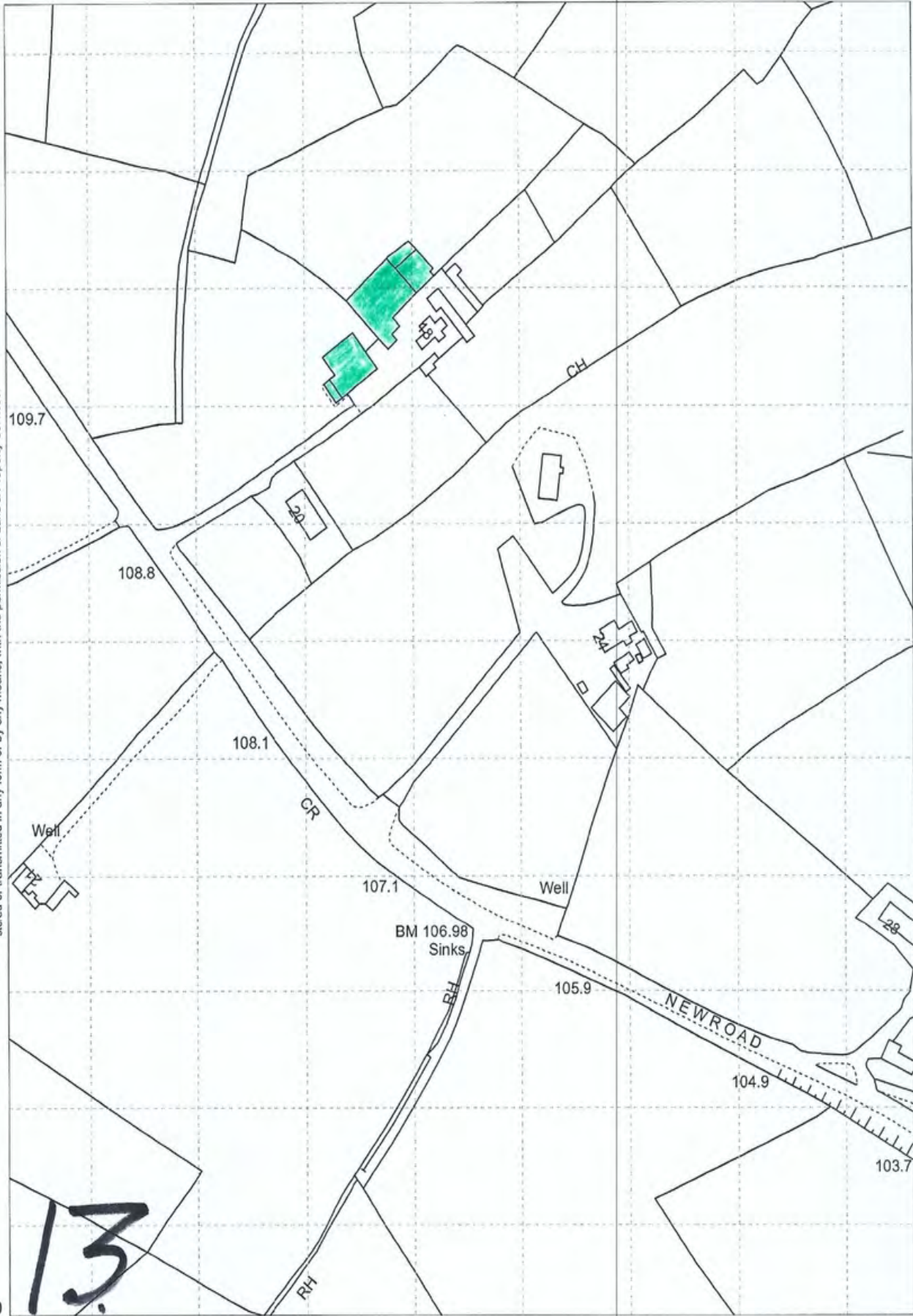
24 NEW ROAD

Scale: 1:2,500

Order no. ORD40947

Plan No. 27509SE

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295331  
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14.





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## REFUSAL OF OUTLINE PLANNING PERMISSION

### Planning (Northern Ireland) Order 1991

Application No: P/2002/2333/O

Date of Application: 18th December 2002

Site of Proposed Development: **Adjacent to and South East of No. 18 New Road, Silverbridge, Newry**

Description of Proposal: **Site for Fuel Filling Station with Car Repair facilities**

Applicant: Mr B Carragher

Address: 24 New Road

Silverbridge

Newry

BT35 9PQ

Agent: Mr J.A Murphy

Address: 43 New Road

Silverbridge

Newry

BT35 9NB

Drawing Ref: 01

In pursuance of its powers under the above-mentioned Order, the Department hereby

### REFUSES PLANNING PERMISSION

for the above-mentioned development in accordance with your application for the following reasons:

1. The proposal is contrary to Policy IC15 of the Department's Planning Strategy for Rural Northern Ireland in that the site lies in a countryside location and no exceptional circumstances have been demonstrated to justify a relaxation of the planning controls exercised in this area.

#### Informatives

1. This refusal notice relates to drawing No 01 which was received on 18th December 2002

Dated: 10th October 2003

Authorised Officer

Application No. P/2002/2333/O

DC1001MW

Headquarters Planning Office

16

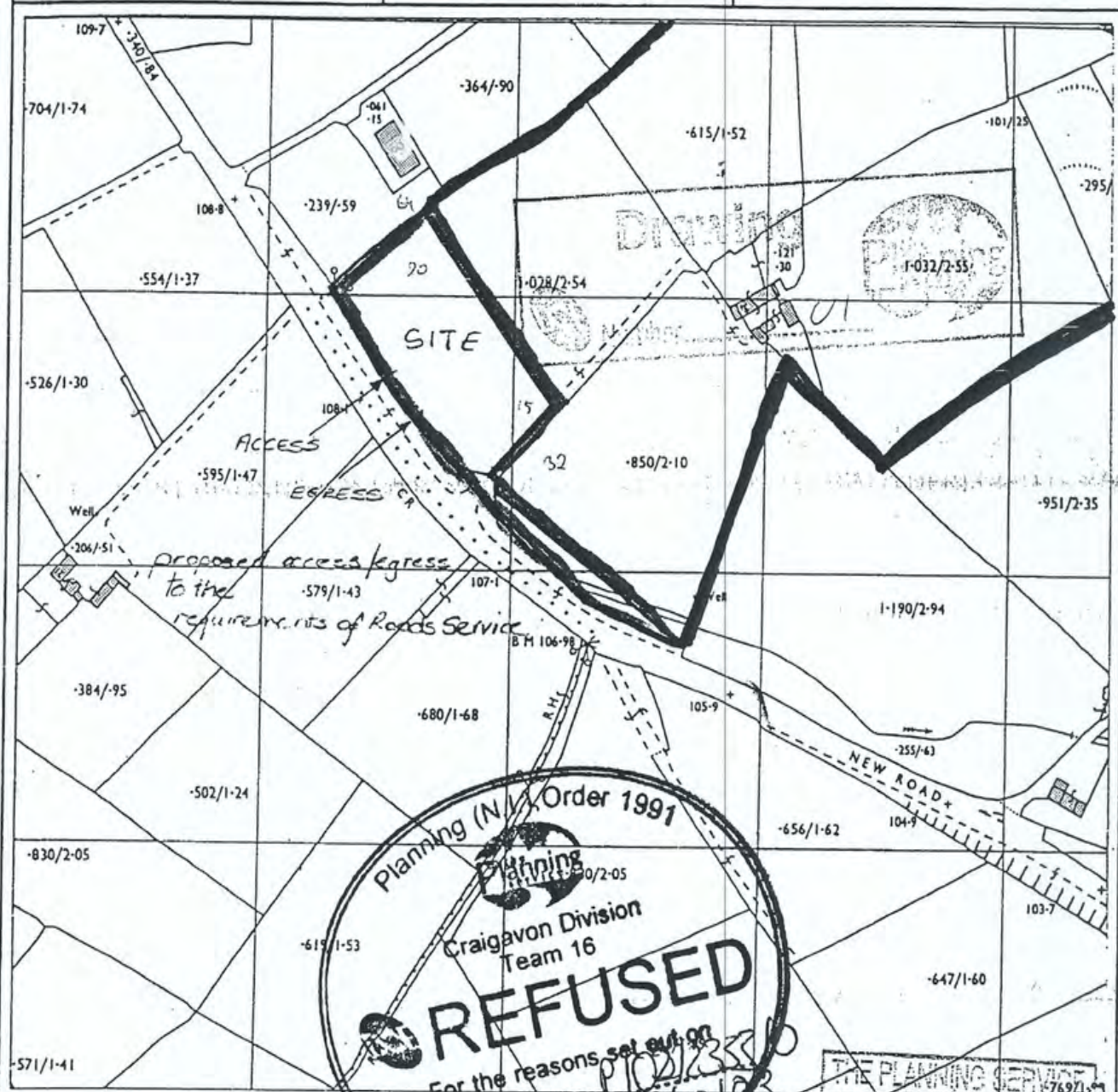
I.G 275-9SE

Scale: 1:2500.

Date: Nov 2002



J.A. Murphy. BSc. M.I.C.E.  
Chartered Engineer.  
43, New Road.  
Silverbridge, Newry.  
Tel. 30 888214.



*proposed access to the requirements of Roads Service*

Planning (N.I.) Order 1991  
Craigavon Division  
Team 16  
**REFUSED**  
For the reasons set out on  
Decision form No. P102/23580  
Date 10/10/03  
Site Location Map

THE PLANNING SERVICE  
18 DEC 2002  
FILE NO  
CRAIGAVON

Re: Proposed Development at New Road,  
Silverbridge, Newry for Mr. B. Carragher

17

**ITEM NO** D3  
**APPLIC NO** P/2012/0921/F Full **DATE VALID** 03/12/2012  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Bernadette Heaney c/o Agent **AGENT** Newline Architects  
48 Main Street  
Castledawson  
BT45 8AB  
028 79 468396

**LOCATION** 220M SE of 26 Shaughan Road  
Newtownhamilton  
BT35 7PF

**PROPOSAL** 1 No. 100KW Wind Turbine with a hub height of 30m (Amended Plans)

<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>	
	1	0		0	0
			<b>Addresses</b>	<b>Signatures</b>	<b>Addresses</b>
			0	0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement and Policy RE 1 of the Planning Policy Statement 18, Renewable Energy in that the development would, if permitted, have a seriously detrimental impact on the amenity of an Area of Outstanding Natural Beauty by reason of its cumulative impact with other turbines in the area and impact on adjoining residents by shadow flicker.
- 3 Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details regarding access were required to allow the Council to determine the application, and having not received sufficient information, the Council refuses this application as it is the opinion of the Council that this information is material to the determination of this application.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference: P/2012/0921/F**

**Date Received:** 03/02/2012

**Proposal:** 1 No. 100KW Wind Turbine with a hub height of 30m (Amended Plans)

**Location:** 220M SE of 26 Shaughan Road, Newtownhamilton

**Site Characteristics & Area Characteristics:**

The site is located in a remote rural area between Belleeks and Lislea. The nearest occupied dwelling is a farm complex to the North West. There is an operational wind turbine approx. 0.63km NE with two wind turbines approval approx. 0.5 km to the E and SE of the application site. Further NE there is another approval for a wind turbine next to the Local GAA Grounds along Shaughan road.

The site consists of an area in the centre of a grazing field located on the side of a mountain between Belleeks and Lislea. The field is bounded with post and wire fences with the occasional bush or tree. The site slopes moderately down to the west across its area, there is no planning history on the site itself.

**Site History:**

There is no relevant planning history for the application site.

**Planning Policies & Material Considerations:**

This planning application has been assessed under the Banbridge / Newry and Mourne Area Plan 2015, Strategic Planning Policy Statement (SPPS) for northern Ireland, Planning Policy Statement 2 (PPS2) – Natural Heritage, Planning Policy Statement 3 (PPS3) – Access, Movement and Parking, Planning Policy Statement 18 (PPS18) – Renewable Energy, PPS18 Best Practise Guidelines, Wind Energy Development in Northern Ireland's Landscape.

**Consultations:**

- Belfast International Airport –No objection.
- National Air Traffic Services- No objection.
- Environmental Health- No objection subject to conditions.
- Arqiva Services Limited – No objection.
- NIEA- further information requested.

- UK Crown Bodies – D.I.O LMS – No objection.
- UK Crown Bodies – D.I.O Safeguarding – No objection.
- P.S.N.I – No objection.

### **Objections & Representations**

There were four neighbour notifications issued 18<sup>th</sup> December 2012 and again on 10<sup>th</sup> October 2015 following amended plans. The application was advertised twice in the local press. There was one representation received concerned with the following issues.

- Noise – Environmental Health satisfied following submission of a Noise Impact Assessment. Conditions have been provided.
- Shadow flicker – a reason for refusal on this application.
- Ecology – NIEA consulted and a requirement to carry out a bat survey will be conditioned on any approval.
- Water – NIEA consulted and a condition will be added to any approval requiring an assessment with regards to groundwater.
- Landscape and visual – Visual Impact Assessment submitted to Council for review. Proposal refused on detrimental impact on the amenity of an Area of Outstanding Natural Beauty by reason of its cumulative impact with other turbines in the area
- Heritage – NIEA consulted no impact on any designated sites. The site is not included within any archaeological zoning.
- Access and site access – design and access statement not legislative requirement at the time the application was received.

### **Consideration and Assessment:**

The proposal falls within Category 3 (j) of Schedule 2 of the Planning (Environment Impact Assessment) Regulations (NI) 2015. It was determined that an Environmental Impact Assessment would not be required.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located outside settlement limits and is unzoned. There are no specific policies in the Plan that are relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS and the retained PPS18.

#### PPS 18 Policy RE 1 Renewable Energy

Policy requires that new wind energy developments should not result in an unacceptable impact on visual amenity through such issues as the size, scale and massing of the turbines. There is also a requirement to take into account the cumulative impact of existing wind turbines in the area.

The site is within Landscape Character Area 71 The Ring of Gullion. The Supplementary Planning Guidance (SPA) identifies that this area has a high

sensitivity to wind turbines because of its exposed nature and dispersed settlement pattern; the dangers of cumulative impacts of turbines are highlighted. This is especially pertinent given the presence of three other approved wind turbines (one constructed and in operation) in close proximity to the application site. There is a further approved wind turbine to the north of the site near a local GAA grounds. It is the combination of this proposal taking account the other approved wind turbines that will have a cumulative and unacceptable visual impact at this location.

The Council considers that the proposal fails to comply with the provisions of RE1 and SPG in that the proposal seeks to erect an additional wind turbine in an area identified as being of particular sensitivity to wind energy development. The proposed turbine will be set in front (W) of three approved wind turbines resulting in a detrimental visual impact to the landscape. Taking together with these approvals, this area will be dominated by a number of wind turbine developments within a short distance of each other.

In October 2014 the Planning Authority requested that the applicant submit a relevant noise impact assessment and shadow flicker assessment to address potential impacts upon neighbouring dwellings. No shadow flicker assessment has been provided to date. It is considered that the wind turbine is unacceptable at this location due to potential unacceptable adverse impact on residential amenity resulting from shadow flicker.

It is therefore the Council's opinion that the proposal be recommended as a refusal as it is contrary to RE 1 criterion (a) and (b) in that it would result in an unacceptable adverse impact on residential amenity, visual amenity and landscape character.

**Recommendation:**

Refusal

**Refusal Reasons/ Conditions:**

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 2015 and Policy CTY1 of Planning Policy statement 21 – Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policy RE 1 of the Planning Policy Statement 18, Renewable Energy in that the development would, if permitted, have a seriously detrimental impact on the amenity of an Area of Outstanding Natural Beauty by reason of its cumulative impact with other turbines in the area and impact on adjoining residents by shadow flicker.
3. Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details regarding access were required to allow the Council to determine the application, and having not received sufficient information, the Council refuses

this application as it is the opinion of the Council that this information is material to the determination of this application.



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STATUTORY RULES OF NORTHERN IRELAND

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**2017 No. 83**

**PLANNING**

**The Planning (Environmental Impact Assessment) Regulations  
(Northern Ireland) 2017**

*Made* - - - -

*11th May 2017*

*Coming into operation* -

*16th May 2017*

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- 
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The Department for Infrastructure is a Northern Ireland department designated<sup>(a)</sup> for the purposes of section 2(2) of the European Communities Act 1972<sup>(b)</sup> in relation to the environment.

The Department for Infrastructure makes the following Regulations in exercise of the powers conferred by section 2(2) of the European Communities Act 1972 and section 51 of the Planning Act (Northern Ireland) 2011<sup>(c)</sup>.

---

(a) S.I. 2008/301

(b) 1972 c.68 The enabling powers of section 2(2) were extended by virtue of the amendment of section 1(2) by section 1 of the European Economic Area Act 1993 (c.51)

(c) 2011 c.25 (N.I.)

## PART 1

### General

#### Citation and commencement

1. These Regulations may be cited as the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and come into operation on the 16th May 2017.

#### Interpretation

2.—(1) The Interpretation Act (Northern Ireland) 1954(a) applies to these Regulations as it applies to an Act of the Assembly.

(2) In these Regulations—

“the 2011 Act” means the Planning Act (Northern Ireland) 2011 and references to sections are references to sections in the Act;

“any other information” means any other substantive information relating to the environmental statement and provided by the applicant or the appellant as the case may be;

“any particular person” includes any non-governmental organisation promoting environmental protection;

“applicant” means an applicant (or prospective applicant) for the grant of a planning permission or subsequent consent;

“the Commission” means the Planning Appeals Commission;

“council” means a district council;

“the Department” means the Department for Infrastructure;

“the Directive” means Directive 2011/92/EU(b) of the European Parliament and of the Council of the 13 December 2011 on the assessment of the effects of certain public and private projects on the environment, as amended by Directive 2014/52/EU(c) of the European Parliament and of the Council of 16 April 2014;

“documents” includes photographs, drawings, maps and plans;

“EEA agreement” means the agreement on the European Economic Area signed at Oporto on 2 May 1992, together with the Protocol adjusting that agreement signed at Brussels on 17 March 1993, as modified or supplemented at the date of these Regulations;

“EEA State” means—

(a) a state that is a member state; or

(b) any other state which is a party to the EEA agreement;

“EIA application” means—

(a) an application for planning permission for EIA development; or

(b) a subsequent application in respect of EIA development;

“EIA development” means development which is—

(a) Schedule 1 development;

(b) Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location; or

(c) directed as such under regulation 3(1)(a);

(a) 1954 c.33 (N.I.)

(b) O.J. No. L26, 28.1.2012, p.1-21

(c) O.J. No. L124, 25.4.2014, p.1-18

“electronic communication” has the meaning assigned to it by section 4 of the Electronic Communications Act (Northern Ireland) 2001(a);

“environmental impact assessment” means the process described in regulation 5;

“environmental information” means the environmental statement, including any further information and any other information, any representations made by any body required by these Regulations to be consulted and any representations duly made by any other person about the likely environmental effects of the proposed development;

“environmental statement” has the meaning given to it by regulation 11;

“exempt development” means development in respect of which the Department has made a direction under regulation 3(1)(b) or 3(1)(c) or the Secretary of State has made a direction under regulation 62 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017(b);

“further information” has the meaning given to it in regulation 21(1);

“the General Development Procedure Order” means the Planning (General Development Procedure) Order (Northern Ireland) 2015(c);

“the General Regulations” means the Planning General Regulations (Northern Ireland) 2015(d);

“the land” means the land on which the development would be carried out or, in relation to development already carried out, has been carried out;

“local advertisement”, in relation to a notice, means—

- (a) by publication of the notice in at least one newspaper circulating in the locality in which the land to which the application or appeal relates is situated; and
- (b) by publication of the notice on a website maintained by or on behalf of the Department, council or the Commission;

“monitoring measure” means a condition requiring the monitoring of any significant adverse effects on the environment of the proposed development;

“Schedule 1 application” and “Schedule 2 application” mean an application for planning permission for Schedule 1 development and Schedule 2 development respectively;

“Schedule 1 development” means development, other than exempt development, of a description mentioned in Schedule 1;

“Schedule 2 development” means development, other than exempt development, of a description mentioned in column 1 of the table in Schedule 2 where—

- (a) any part of that development is to be carried out in a sensitive area; or
- (b) any applicable threshold or criterion in the corresponding part of column 2 of that table is respectively exceeded or met in relation to that development;

“scoping opinion” has the meaning given to it by regulation 8(1)(b);

“screening determination” has the meaning given to it by regulation 8(1)(a);

“selection criteria” means the criteria set out in Schedule 3;

“sensitive area” means any of the following—

- (a) an area of special scientific interest, that is to say, land so declared under Article 28 of the Environment (Northern Ireland) Order 2002(e);
- (b) an area of outstanding natural beauty, that is to say, an area so designated under Article 14(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985(f);

(a) 2001 c.9 (N.I.) (as amended by 2003 c.21)

(b) S.I. 2017 No. 571

(c) S.R. 2015 No. 72

(d) S.R. 2015 No. 39

(e) S.I. 2002/3153 (N.I. 7)

(f) S.I. 1985/170 (N.I. 1)

- (c) a National Park, that is to say, an area so designated under Article 12(1) of the Nature Conservation and Amenity Lands (Northern Ireland) Order 1985;
- (d) a property appearing on the World Heritage List kept under Article 11(2) of the 1972 UNESCO Convention for the Protection of the World Cultural and Natural Heritage<sup>(a)</sup>
- (e) a scheduled monument within the meaning of the Historic Monuments and Archaeological Objects (Northern Ireland) Order 1995<sup>(b)</sup>;
- (f) a European Site within the meaning of regulation 9 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995<sup>(c)</sup>.

“subsequent application” means an application for approval of a matter where the approval—

- (g) is required by or under a condition to which a planning permission is subject; and
- (h) must be obtained before all or part of the development permitted by the planning permission may be begun;

“subsequent consent” means consent granted pursuant to a subsequent application;

“Union legislation” means any enactment in the domestic legislation of Northern Ireland giving effect to an EU obligation.

(3) Subject to paragraph (4), expressions used both in these Regulations and in the 2011 Act have the same meaning for the purposes of these Regulations as they have for the purposes of the 2011 Act.

(4) Expressions used both in these Regulations and in the Directive (whether or not also used in the 2011 Act) have the same meaning for the purposes of these Regulations as they have for the purposes of the Directive.

(5) In these Regulations, and in relation to the use of electronic communications or electronic storage for any purpose of these Regulations which is capable of being effected electronically—

- (a) the expression “address” includes any number or address used for the purpose of such communications except that where these Regulations impose any obligation on any person to provide a name and address to any other person, the obligation shall not be fulfilled unless the person on whom it is imposed provides a postal address;
- (b) references to plans, notices or other documents or to copies of such things include references to such documents or copies of them in electronic form.

(6) Paragraphs (7) to (10) apply where an electronic communication is used by a person for the purpose of fulfilling any requirement in these Regulations to give or send any statement, notice or other document to any other person (“recipient”).

(7) The requirement shall (except on the case of service of a notice under regulation 34(2)) be taken to be fulfilled where the notice or other document transmitted by means of electronic communication is—

- (a) capable of being accessed by the recipient;
- (b) legible in all material respects; and
- (c) sufficiently permanent to be used for subsequent reference.

(8) In paragraph (7), “legible in all material respects” means that the information contained in the notice or document is available to the recipient to no lesser extent than it would be if sent or given by means of a document in printed form.

(9) Where the electronic communication is received by the recipient outside the recipient’s business hours, it shall be taken to have been received on the next working day; and for this purpose “working day” means a day which is not a Saturday, Sunday or a public holiday.

(10) A requirement in these Regulations that any application, notice or other document should be in writing is fulfilled where the document meets the criteria in paragraph (7).

(a) See Command Paper 9424

(b) S.I. 1995/1625 (N.I. 9)

(c) S.R. 1995 No. 380

**Directions**

3.—(1) The Department may direct that—

- (a) a particular development of a description described in column 1 of the table in Schedule 2 and which does not meet the conditions in sub-paragraphs (a) and (b) of the definition of “Schedule 2 development” is EIA development;
- (b) in accordance with Article 2.4 of the Directive (but without prejudice to Article 7 of the Directive), a particular proposed development specified in the direction is exempted from these Regulations where the application of the Regulations would result in adversely affecting the purpose of the development, provided the objectives of these Regulations are met; or
- (c) these Regulations do not apply in relation to a particular proposed development specified in the direction if the development comprises or forms part of a project having the response to civil emergencies as its sole purpose and the application of the Regulations would have an adverse effect on that purpose.

(2) Where a direction is made under paragraph (1), the Department shall send a copy of the direction to the council or councils in whose district the proposed development is to be situated.

(3) Where a direction is made under paragraph (1)(b), the Department shall—

- (a) make available to the public the information considered in making the direction and the reasons for making the direction;
- (b) consider whether another form of assessment would be appropriate; and
- (c) take such steps as are considered appropriate to bring the information obtained under the other form of assessment to the attention of the public.

**Prohibition on granting planning permission or subsequent consent without an environmental impact assessment**

4. A council, the Department or the Commission shall not grant planning permission or subsequent consent for EIA development unless an environmental impact assessment has been carried out in respect of that development.

**Environmental impact assessment**

5.—(1) An environmental impact assessment is a process consisting of—

- (a) the preparation of an environmental statement by the applicant;
- (b) any consultation, publication and notification required by, or by virtue of, these Regulations or any other enactment in respect of EIA development; and
- (c) the steps required under regulations 24 and 25.

(2) The environmental impact assessment shall identify, describe and assess in an appropriate manner, in the light of each individual case, the direct and indirect significant effects of the proposed development on the following factors—

- (a) population and human health;
- (b) biodiversity, with particular attention to species and habitats protected under Directive 92/43/EEC<sup>(a)</sup> and Directive 2009/147/EC<sup>(b)</sup>;
- (c) land, soil, water, air and climate;
- (d) material assets, cultural heritage and the landscape ; and
- (e) the interaction between the factors referred to in sub-paragraphs (a) to (d).

(a) O.J. No. L206, 22.7.92, p.7

(b) O.J. No. L20, 26.1.2010, p.7

(3) The effects referred to in paragraph (2) on the factors set out in that paragraph shall include—

- (a) the operational effects of the proposed development, where the proposed development will have operational effects; and
- (b) the expected effects deriving from the vulnerability of the proposed development to risks of major accidents or disasters that are relevant to the proposed development.

(4) The council, the Department or the Commission, as the case may be, shall ensure that it has, or has access as necessary to, sufficient expertise to examine the environmental statement.

#### **Confirmation that development is EIA development**

6.—(1) Subject to any direction made by the Department under regulation 3(1) or by the Secretary of State under regulation 62 of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017, the occurrence of an event mentioned in paragraph (2) shall determine for the purpose of these Regulations that a particular development is EIA development.

(2) The events are—

- (a) the submission by the applicant or appellant, in relation to that development, of a statement referred to by the applicant or appellant as an environmental statement for the purposes of these Regulations; or
- (b) the determination by the council or by the Department or, following a hearing by the Commission, confirmation by the council or by the Department, that the development is EIA development.

#### **Appeals under Section 58 or Section 60 of the 2011 Act**

7.—(1) Where an appeal is made to the Commission under section 58 or 60, the functions conferred on the council or on the Department by Part 3 to Part 8 of these Regulations shall be exercisable by the Commission in respect of that appeal.

(2) For the purpose of paragraph (1), regulation 15(4) shall have effect as if substituted by the following provision—

“(4) An appellant receiving a notification pursuant to paragraph (1) shall, within 4 weeks from the date of the determination, inform the Commission, in writing, that the appellant—

- (a) accepts the Commission’s determination and proposes to provide an environmental statement; or
- (b) does not accept the Commission’s determination.”

(3) For the purposes of paragraph (1), regulation 15(6) does not apply.

(4) For the purposes of paragraph (1), the words “and a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 or 60” contained in regulations 15(5), (8) and 21(3) shall not have effect.

## **PART 2**

### **Pre-Application Procedures**

#### **Pre-application determination as to need for environmental impact assessment and opinion as to content of environmental statement**

8.—(1) Subject to paragraphs (2) to (6), before applying for planning permission or subsequent consent, an applicant may request in writing the council or, as the case may be, the Department to—

- (a) make a determination as to whether a proposed development is or is not EIA development (a “screening determination”);



- (b) give an opinion as to the scope and level of detail of the information to be provided in the environmental statement to be submitted with an EIA application (a “scoping opinion”).

(2) A request for a scoping opinion may be made at the same time as a request for a screening determination.

(3) When making a request for a screening determination, an applicant shall, taking into account so far as relevant the selection criteria and the available results of other environmental assessments required under Union legislation (other than legislation implementing the requirements of the Directive), provide the following information—

- (a) a plan sufficient to identify the land;
- (b) a description of the development, including in particular—
  - (i) a description of the physical characteristics of the whole development and, where relevant, of demolition works;
  - (ii) a description of the location of the development, with particular regard to the environmental sensitivity of geographical areas likely to be affected;
- (c) a description of the aspects of the environment likely to be significantly affected by the development;
- (d) to the extent the information is available, a description of any likely significant effects of the development on the environment resulting from—
  - (i) the expected residues and emissions and the production of waste, where relevant; and
  - (ii) the use of natural resources, in particular soil, land, water and biodiversity.

(4) The applicant, when making a request for a screening determination, may also provide a description of any features of the proposed development or any measures envisaged to avoid or prevent what might otherwise have been significant adverse effects on the environment.

(5) A request for a scoping opinion in respect of an application for planning permission shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) a description of the nature and purpose of the proposed development, including its location and technical capacity; and
- (c) an explanation of the likely significant effects of the development on the environment.

(6) A request for a screening determination or scoping opinion in respect of a subsequent application shall be accompanied by—

- (a) a plan sufficient to identify the land;
- (b) sufficient information to enable the council or, as the case may be, the Department to identify any planning permission granted for the development in respect of which a subsequent application has been made; and
- (c) the information referred to in paragraph (3)(c) and (d), but only to the extent that this relates to the likely significant effects on the environment which were not identified at the time that the planning permission was granted.

(7) Where the council or, as the case may be, the Department has to make a screening determination, it shall take into account—

- (a) any information provided by the applicant;
- (b) where relevant, the results of other environmental assessments carried out pursuant to Union legislation other than legislation implementing the requirements of the Directive; and
- (c) such of the selection criteria as are relevant to the proposed development.

(8) Subject to paragraph (11), the council or, as the case may be, the Department shall inform the applicant, in writing, of its screening determination within 4 weeks from the date of receipt of the request, or within such longer period, not exceeding 90 days beginning with the date of receipt

of the request, as may be agreed in writing between the council or, as the case may be, the Department and the applicant.

(9) The Department shall send a copy of its screening determination to the council in whose district the proposed development is to be situated.

(10) Where the council or, as the case may be, the Department consider that due to exceptional circumstances relating to the nature, complexity, location or size of the proposed development it is not practicable for the council or, as the case may be, the Department to make a screening determination within the period specified in paragraph (8), the council or Department may extend that period by notice in writing to the applicant giving reasons for that conclusion and the date when the screening determination may be expected.

(11) Where the council or, as the case may be, the Department considers that it has not been provided with sufficient information to enable it to respond to a request for a screening determination or a scoping opinion, it shall notify the applicant in writing of the particular points on which additional information is required, and the period for making the screening determination or for giving a scoping opinion shall not commence until receipt of that additional information.

(12) Subject to paragraph (16), the council or, as the case may be, the Department shall not give a scoping opinion until it has consulted such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences, but shall respond to such a request within 6 weeks of receipt of that request or such longer period as may be agreed in writing with the applicant.

(13) The Department shall send a copy of its scoping opinion to the council in whose district the proposed development is to be situated.

(14) If, in response to a request for a screening determination, the council or, as the case may be, the Department determines that the proposed development is EIA development, it shall provide with the screening determination a written statement giving the main reasons for that conclusion with reference to the relevant selection criteria.

(15) If, in response to a request for a screening determination, the council or, as the case may be, the Department, determines that the proposed development is not EIA development, it shall provide with the screening determination a written statement giving the reasons for that conclusion with reference to the relevant selection criteria and, where proposed by the applicant, state any features of the development and measures envisaged to avoid or prevent, what might otherwise have been, significant adverse effects on the environment.

(16) Where the council or, as the case may be, the Department makes a screening determination and the applicant has also requested a scoping opinion, the council or, as the case may be, the Department shall respond to the request for the scoping opinion within 6 weeks of the date of issue of its screening determination under paragraph (14) or such longer period as may be agreed in writing with the applicant.

(17) In giving a scoping opinion, the council or, as the case may be, the Department shall take into account —

- (a) any information provided by the applicant about the proposed development;
- (b) the characteristics of the development;
- (c) the likely significant effects of the development on the environment; and
- (d) representations from the authorities consulted under paragraph (12).

(18) Where, following receipt of a scoping opinion under paragraph (16), an applicant wishes to proceed with the submission of an environmental statement, the applicant shall by notice in writing inform the council or, as the case may be, the Department to such effect within 4 weeks of the date of the scoping opinion.

(19) Where, following receipt of a screening determination under paragraph (14), the applicant wishes to proceed with the proposed development, the applicant shall by notice in writing inform the council or, as the case may be, the Department that the applicant either—

- (a) accepts the council's or, as the case may be, the Department's screening determination and proposes to provide an environmental statement; or
- (b) does not accept the council's or, as the case may be, the Department's screening determination and proposes to seek a hearing before the Commission.

(20) The notice referred to in paragraph (19) shall be served on the council or, as the case may be, the Department within 4 weeks of the date of the screening determination.

(21) Where the council or, as the case may be, the Department has given a scoping opinion or where it has received a statement under regulation 6(2)(a) it shall not be precluded from requiring further information in connection with any environmental statement that may be submitted.

## PART 3

### Preparation of Environmental Statements

#### **Procedure to facilitate preparation of environmental statements**

**9.—**(1) An applicant who intends to submit an environmental statement to a council or, as the case may be, the Department may give notice in writing of that intention to the council or the Department.

(2) A notice under paragraph (1) shall include, or be accompanied by, the information necessary to identify the land and the nature and purpose of the development, and shall indicate the main environmental consequences to which the person giving notice proposes to refer in the environmental statement.

(3) Where the council—

- (a) receives a notice under paragraph (1) or pursuant to regulation 8(18), (19)(a) or 15(4)(a); or
- (b) confirms a determination pursuant to regulation 15(7),

it shall notify—

- (i) any other council in the area in which the land to which the proposal relates is situated of the details of the proposed development; and
- (ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences,

of the name and address of the applicant and of the duty imposed on them by regulation 10(1) to make information available to the applicant; and

- (iii) inform the applicant in writing of the names and addresses of the bodies so notified.

(4) Where the Department—

- (a) receives a notice under paragraph (1) or pursuant to regulation 8(18), (19)(a), 15(4)(a) or 16(5); or
- (b) confirms a determination pursuant to regulation 15(7) or 16(8),

it shall notify—

- (i) the council or councils in whose district the proposed development is to be situated of the details of the proposed development; and
- (ii) such other authorities likely to be concerned by the proposed development by reason of their specific environmental responsibilities or local or regional competences,

of the name and address of the applicant and of the duty imposed on them by regulation 10(1) to make information available to the applicant; and

- (iii) inform the applicant in writing of the names and addresses of the bodies so notified.

**Provision of information**

**10.**—(1) Subject to paragraph (2), any body notified by the council or, as the case may be, the Department pursuant to regulation 9(3) or (4) shall, if requested by the person who intends to submit the environmental statement, or may without such request, enter into consultation with that person with a view to ascertaining whether the body has information in its possession which that person or they consider relevant to the preparation of the environmental statement, and shall make that information available to that person.

(2) Any body which receives a request for information under paragraph (1) shall treat it as a request for information under regulation 5(1) of the Environmental Information Regulations 2004(a).

**Environmental statements**

**11.**—(1) An EIA application shall be accompanied by an environmental statement for the purposes of these Regulations.

(2) An environmental statement is a statement which includes at least—

- (a) a description of the proposed development comprising information on the site, design, size and other relevant features of the development;
- (b) a description of the likely significant effects of the proposed development on the environment;
- (c) a description of any features of the proposed development, or measures envisaged in order to avoid, prevent or reduce and, if possible, offset likely significant adverse effects on the environment;
- (d) a description of the reasonable alternatives studied by the applicant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for the option chosen, taking into account the significant effects of the development on the environment;
- (e) a non-technical summary of the information referred to in sub-paragraphs (a) to (d); and
- (f) any information specified in Schedule 4 relevant to the specific characteristics of the particular development or type of development and to the environmental features likely to be significantly affected.

(3) To ensure the completeness and quality of the statement, the environmental statement shall—

- (a) be prepared by competent experts;
- (b) contain a statement by or on the behalf of the applicant setting out how the requirements of paragraph (3)(a) have been complied with;
- (c) where a scoping opinion has been issued in accordance with regulation 8, be based on the most recent scoping opinion issued (so far as the proposed development remains materially the same as the proposed development which was subject to that scoping opinion);
- (d) include the information reasonably required for reaching a reasoned conclusion on the significant effects of the development on the environment, taking into account current knowledge and methods of assessment; and
- (e) be prepared, taking into account other relevant environmental assessments required under Union legislation or some other provision of domestic legislation, with a view to avoiding duplication of assessment.

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(a) S.I. 2004/3391

## PART 4

### Procedures on Receipt of Application

#### **Application which appears to require determination as to need for environmental impact assessment**

**12.—**(1) Where it appears to the council or, as the case may be, the Department that an application for planning permission—

- (a) is a Schedule 1 application or a Schedule 2 application;
- (b) the development in question has not been the subject of a screening determination as to whether the development is or is not EIA development; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the council or, as the case may be, the Department shall make a screening determination as to whether the development is EIA development, and paragraphs (7), (8), (9), (10), (11), (14) and (15) of regulation 8 shall apply as if receipt of the application were a request made under paragraph (1)(a) of regulation 8.

(2) Where regulation 8(11) applies by virtue of this regulation, the council or, as the case may be, the Department shall, where necessary to ensure that the applicant has provided the information referred to in regulation 8(3), make a request for additional information before making a screening determination.

#### **Subsequent application where environmental information previously provided**

**13.—**(1) This regulation applies where it appears to the council or, as the case may be, the Department that—

- (a) an application which is before it for determination—
  - (i) is a subsequent application in relation to Schedule 1 development or Schedule 2 development;
  - (ii) has not itself been the subject of a screening determination as to whether the development is or is not EIA development; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations.

(2) Where it appears to the council or, as the case may be, the Department that the environmental information previously submitted in relation to the original application is adequate to assess the significant effects of the development on the environment, it shall take that information into consideration in its decision for subsequent consent.

(3) Where it appears to the council or, as the case may be, the Department that the environmental information already before it is not adequate to assess the significant effects of the development on the environment, it shall serve a notice seeking further information in accordance with regulation 21(1).

#### **Subsequent application where environmental information not previously provided**

**14.—**(1) Where it appears to the council or, as the case may be, the Department that—

- (a) an application—
  - (i) is a subsequent application in relation to Schedule 1 development or Schedule 2 development;

- (ii) has not itself been the subject of a screening determination as to whether the development is or is not EIA development; and
  - (iii) is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations; and
- (b) the original application was not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the council or, as the case may be, the Department shall make a screening determination as to whether the development to which the application relates is EIA development, and paragraphs (7), (8), (9), (10), (11), (14) and (15) of regulation 8 shall apply as if receipt of the application were a request made under paragraph (1)(a) of regulation 8.

(2) Where regulation 8(11) applies by virtue of this regulation, the council or, as the case may be, the Department shall, where necessary to ensure that the application has provided the information referred to in regulation 8(6), make a request for additional information before issuing a screening determination.

### **Application without an environmental statement**

**15.—(1)** Where an EIA application, including an application in respect of development which it has been determined is EIA development under regulation 12 or 14, is not accompanied by an environmental statement or a statement referred to by the applicant as an environmental statement for the purpose of these Regulations, the council or, as the case may be, the Department shall notify the applicant in writing that the submission of such a statement is required.

(2) Where notification is given by the Department under paragraph (1), it shall send a copy of the notification to the council or councils in whose district the proposed development is to be situated.

(3) The council or, as the case may be, the Department shall notify the applicant in accordance with paragraph (1) within 4 weeks from the date of receipt of the application or such longer period as may be agreed in writing with the applicant.

(4) An applicant receiving a notification pursuant to paragraph (1) shall, within 4 weeks from the date of the determination, inform the council or, as the case may be, the Department, in writing, that the applicant—

- (a) accepts the determination and proposes to provide an environmental statement; or
- (b) does not accept the determination and proposes to seek a hearing before the Commission.

(5) If the applicant does not inform the council or, as the case may be, the Department in writing in accordance with paragraph (4), the permission or subsequent consent sought shall be deemed to be refused at the end of the relevant 4 week period and a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 or 60.

(6) Where, following receipt of a notification pursuant to paragraph (1), an applicant proposes to seek a hearing before the Commission, the applicant shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.

(7) Where the council or, as the case may be, the Department determines or, following a hearing by the Commission, confirms that an environmental statement is required, the statement shall be submitted within 6 months from the date of determination or such extended period as may be agreed in writing between the applicant and the council or Department.

(8) If the applicant does not submit an environmental statement in accordance with paragraph (7), the application for planning permission or subsequent application shall be deemed to be refused and a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 or 60.

(9) Where, following a hearing by the Commission, the council or, as the case may be, the Department withdraws its determination that an environmental statement is required, the period within which the application for planning permission or subsequent application is to be determined shall be calculated from the date of notice to the applicant of the council's or Department's withdrawal.

### **Application referred to the Department under Section 29 without an environmental statement**

**16.—**(1) Where an application has been referred to the Department under section 29 for determination, and it appears to the Department that—

- (a) it is a Schedule 1 application or a Schedule 2 application;
- (b) the development in question—
  - (i) has not been the subject of a determination as to whether the development is or is not EIA development; or
  - (ii) in the case of a subsequent application, was the subject of a determination before planning permission was granted to the effect that it is not EIA development; and
- (c) the application is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations,

the Department shall make a screening determination as to whether the development is EIA development, and paragraphs (7), (8), (9), (10), (11), (14) and (15) of regulation 8 shall apply as if the referral of the application were a request made under paragraph (1)(a) of regulation 8.

(2) Where regulation 8(11) applies by virtue of paragraph (1) the Department shall, where necessary to ensure that the applicant has provided—

- (a) in the case of applications for planning permission, the information referred to in regulation 8(3); and
- (b) in the case of subsequent applications, the information referred to in regulation 8(6),

make a request for additional information before making a screening determination.

(3) Where the Department has determined that an application referred to it under section 29 for determination is an EIA application, but it is not accompanied by a statement referred to by the applicant as an environmental statement for the purposes of these Regulations, the Department shall notify the applicant in writing that the submission of an environmental statement is required, and shall send a copy of the notification to the council in whose district the proposed development is to be situated.

(4) The Department shall notify the applicant in accordance with paragraph (3) within 4 weeks from the date of referral of the application or such longer period as may be reasonably required.

(5) An application receiving a notification pursuant to paragraph (3) shall, within 4 weeks from the date of the determination, inform the Department, in writing, that the applicant—

- (a) accepts the determination and proposes to provide an environmental statement; or
- (b) does not accept the determination and proposes to seek a hearing before the Commission.

(6) If the applicant does not inform the Department in writing in accordance with paragraph (5), the permission or subsequent consent sought shall be deemed to be refused at the end of the relevant 4 week period.

(7) Where, following receipt of a notification pursuant to paragraph (3), an applicant proposes to seek a hearing before the Commission, the applicant shall by notice in writing inform the Commission to such effect within 4 weeks from the date of the notification.

(8) Where the Department determines or, following a hearing by the Commission, confirms that an environmental statement is required, the statement shall be submitted within 6 months from the date of determination or such extended period as may be agreed in writing between the applicant and the Department, and if not so submitted, the application for planning permission or subsequent application shall be deemed to be refused.

(9) Where, following a hearing by the Commission, the Department withdraws its determination that an environmental statement is required, the period within which the application for planning permission or subsequent application is to be determined shall be calculated from the date of notice to the applicant of the Department's withdrawal.

### **Extension of the period for council's or Department's decision on an application for planning permission or subsequent application**

17. Where an application for planning permission or subsequent application is an EIA application, Articles 12 and 20 of the General Development Procedure Order shall have effect as if—

- (a) in Article 12 for the reference to a period of 8 weeks from the date the application was received; and
- (b) in paragraph (2)(b) of Article 20 for the reference to a period of 8 weeks from the date the application was received,

there were substituted a reference to a period of 16 weeks; and

- (c) after paragraph (3)(b) of Article 20 there were inserted—
  - “(ba) the environmental statement required to be submitted in respect of the application has been submitted, together with the documents required to accompany that statement; and
  - (bb) in the case of an application falling within regulation 12(1) or 14(1) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 where the council or, as the case may be, the Department has requested further information in order to make a determination under regulation 12(3) or 14(3) of those Regulations, when that information was received; and
  - (bc) where evidence verifying information in the environmental statement has been requested, when that evidence was received; and”;
- (d) the date when an application is received for the purposes of Article 12 were the date when each of the events referred to in Article 20(3) (ba) to (bc) has occurred in relation to that application.

## **PART 5**

### **Publicity and Consultation**

#### **Publicity where an environmental statement is submitted**

18.—(1) Where an environmental statement is submitted the council or, as the case may be, the Department shall, when it receives the environmental statement publish a notice, by local advertisement, stating —

- (a) that an application for planning permission or a subsequent application has been made to the council or, as the case may be, the Department and is accompanied by an environmental statement;
- (b) the address or location and nature of the proposed development;
- (c) in the case of an application for planning permission, that the environmental statement is available for inspection free of charge and the times and places at which, and the means by which, it is available for inspection;
- (d) in the case of a subsequent application, that a copy of the planning permission and supporting documents for the development in respect of which the application has been made, may be inspected by members of the public at all reasonable hours at the relevant office of the council or, as the case may be, the Department;
- (e) details of a website maintained by or on behalf of the council or, as the case may be, the Department on which the environmental statement and other documents have been made available in accordance with paragraph (3);
- (f) a postal address (within the locality in which the land proposed to be developed is situated) at which copies of the environmental statement may be obtained from the



applicant in accordance with regulation 19(a), so long as stocks last, and if a charge is to be made for a copy, the amount of the charge; and

- (g) that any person wishing to make representations about the application should make them in writing to the council or, as the case may be, the Department, and the latest date by which representations should be made (being a date not less than 30 days from the date on which the notice is first published).

(2) Where the council or, as the case may be, the Department is aware of any particular person who is or is likely to be affected by, or has an interest in, the application for planning permission or subsequent application, and who is unlikely to become aware of it by means of a local advertisement, it shall send a notice in writing to such person containing the details set out in the notice under paragraph (1) and the address of the relevant office of the council or, as the case may be, the Department.

(3) The council or, as the case may be, the Department shall make the environmental statement available for inspection on a website maintained by it or on its behalf.

#### **Availability of copies of environmental statement**

**19.** An applicant who submits an environmental statement shall—

- (a) ensure that a reasonable number of copies of the statement are made available at the address given in the notice pursuant to regulation 18(1)(f); and
- (b) provide the council or, as the case may be, the Department with sufficient copies of it, or parts of it, to enable the council or, as the case may be, the Department to comply with regulation 20 and 3 additional copies.

#### **Consultation where environmental statement submitted**

**20.—(1)** Where the council receives an environmental statement in relation to a proposed development, it shall consult any other council and bodies mentioned in regulation 9(3) and inform them that they may make representations.

(2) Where the Department receives an environmental statement in relation to a proposed development, it shall consult the council in whose district the proposed development is to be situated and bodies mentioned in regulation 9(4) and inform them that they may make representations.

(3) The council or, as the case may be, the Department shall give not less than 30 days notice to any council and bodies consulted under paragraph (1) or (2) that environmental information is to be taken into account in determining the application for planning permission or subsequent application.

#### **Further information and evidence relating to environmental statement**

**21.—(1)** Where the applicant has submitted a statement which the applicant refers to as an environmental statement and the council or, as the case may be, the Department is of the opinion that, in order to satisfy the requirements of regulation 11(2), the statement should contain supplementary information which is directly relevant to reaching a reasoned conclusion on the significant effects of the development described in the application on the environment in order to be an environmental statement, it shall require the applicant, by notice in writing, to submit that supplementary information, and such information provided by the applicant is referred to in these Regulations as “further information”.

(2) The council or, as the case may be, the Department may, by notice in writing, require an applicant to produce such evidence as it may reasonably call for to verify any information in the environmental statement.

(3) On receipt of a notice under paragraphs (1) and (2) the applicant shall submit the further information or evidence within three months from the date of the notice or such extended period as may be agreed in writing between the applicant and the council or, as the case may be, the

Department and, if not so submitted, the application shall be deemed to be refused, and a deemed refusal by the council shall not give rise to an appeal to the Commission by virtue of section 58 or 60.

(4) Subject to paragraph (6), regulations 18 to 20 shall apply where such further information and any other information is received by the council or, as the case may be, the Department, as if references to “environmental statement” were references to “further information and any other information”.

(5) Subject to paragraph (6), where information is requested under paragraph (1) or any other information is received by the council or, as the case may be, the Department, it shall suspend determination of the application and shall not determine it before the expiry of the period of 30 days after the date on which notice of that information was published under regulation 18, or the expiry of the period of notice given to bodies consulted about that information under regulation 20, whichever is the latest.

(6) Paragraphs (4) and (5) shall not apply to further information and any other information provided for the purposes of a public local inquiry or hearing held under section 26(10) or (11) or section 29(6) or (7).

(7) Where a public local inquiry or hearing is to be held under section 26(10) or (11) or section 29(6) or (7) in relation to an EIA application, the Department shall, not less than 30 days before the inquiry or hearing is to be held, publish notice of it by local advertisement.

(8) Every notice published pursuant to paragraph (7) shall contain:

- (a) a clear statement of the date, time and place of the inquiry or hearing;
- (b) details of where and when copies of any information provided for the purposes of the inquiry or hearing may be inspected and, where practicable, copied by the public.

(9) Where a public local inquiry or hearing is to be held under section 26(10) or (11) or section 29(6) or (7) in relation to an EIA application, the Commission or, as the case may be, the person appointed by the Department shall, not less than 30 days before the inquiry or hearing is to be held, afford to any person who so requests a reasonable opportunity to inspect and, where practicable, take copies of any information provided for the purposes of the inquiry or hearing.

(10) For the purpose of paragraph (9), an opportunity is to be taken as having been afforded to a person where the person is notified of—

- (a) publication on the Commission’s website, or publication on a website accessible by the person appointed by the Department, of any information provided for the purposes of the inquiry or hearing;
- (b) the address of that website; and
- (c) the place on the website where that information may be accessed and how it may be accessed.

## **Charges**

**22.—**(1) A reasonable charge reflecting the cost of printing and distribution of an environmental statement, part of it, or further information or any other information may be made by the applicant in respect of copies made available under regulation 19(a).

(2) A body entering into consultation pursuant to regulation 10 may make a reasonable charge for the costs of making available to the applicant information in its possession.

## PART 6

### Coordination, Decision-making, Monitoring and Notification of Decisions

#### Coordination of assessments

**23.—**(1) Where, in relation to EIA development, there is, in addition to the requirement for an environmental impact assessment to be carried out in accordance with these Regulations, also a requirement to carry out a Habitats Regulations Assessment, the council or, as the case may be, the Department shall, where appropriate, ensure that the Habitats Regulations Assessment and the environmental impact assessment are coordinated.

(2) In this regulation a “Habitats Regulations Assessment” means an assessment under regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995.

#### Consideration of whether planning permission or subsequent consent should be granted

**24.—**(1) When determining an EIA application the council or, as the case may be, the Department shall—

- (a) examine the environmental information;
- (b) reach a reasoned conclusion on the significant effects of the proposed development on the environment, taking into account the examination referred to in sub-paragraph (a) and, where appropriate, its own supplementary examination;
- (c) integrate that reasoned conclusion into the decision as to whether planning permission or subsequent consent is to be granted; and
- (d) if planning permission or subsequent consent is to be granted, consider whether it is appropriate to attach conditions or impose monitoring measures.

(2) The reasoned conclusion referred to in paragraph (1) shall be up to date at the time that the decision as to whether planning permission or subsequent consent is to be granted; but that conclusion shall be taken to be up to date if, in the opinion of the council or, as the case may be, the Department, it addresses the significant effects that are likely to arise as a result of the development described in the EIA application.

(3) In cases where no statutory timescale is in place, the decision of the council or, as the case may be, the Department as to whether planning permission or subsequent consent is to be granted shall be taken within a reasonable period of time, taking into account the nature and complexity of the proposed development, from the date on which the council or, as the case may be, the Department has been provided with the environmental information.

#### Monitoring

**25.—**(1) When considering whether to impose a monitoring measure under regulation 24(1)(d), and the nature of any such monitoring measure, the council or, as the case may be, the Department shall consider—

- (a) whether monitoring measures are proportionate to the nature, location and size of the proposed development and the significance of its effects on the environment having regard in particular to the type of parameters to be monitored and the duration of the monitoring;
- (b) in order to avoid duplication of monitoring, whether monitoring arrangements required under Union legislation (other than legislation implementing the requirements of the Directive) or other legislation applicable in Northern Ireland are more appropriate than imposing a monitoring measure; and
- (c) if monitoring measures are considered appropriate, whether provision should be made to require appropriate remedial action.

(2) Where monitoring measures or measures envisaged to avoid, prevent or reduce and, if possible, offset significant adverse effects on the environment are required, the council or, as the case may be, the Department shall take steps to ensure that those measures are undertaken.

#### **Information to accompany decisions**

**26.**—(1) Where an EIA application is determined by a council or, as the case may be, the Department, it shall provide the applicant with the information specified in paragraph (2).

(2) The information is—

- (a) information regarding the right to challenge the validity of the decision and the procedures for doing so; and
- (b) if the decision is to grant planning permission or subsequent consent—
  - (i) the reasoned conclusion of the council or, as the case may be, the Department on the significant effects of the development on the environment, taking into account the results of the examination referred to in regulation 24(1)(a) and (b);
  - (ii) any conditions to which the decision is subject;
  - (iii) a description of any features of the development and any measures envisaged in order to avoid, prevent, reduce and, if possible, offset likely significant adverse effects on the environment; and
  - (iv) any monitoring measures considered appropriate by the council or, as the case may be, the Department; or
- (c) if the decision is to refuse planning permission or subsequent consent, the main reasons for the refusal.

#### **Duty to inform the public of decisions**

**27.**—(1) Where an EIA application is determined by a council or, as the case may be, the Department, it shall promptly—

- (a) inform the bodies mentioned in regulation 9(3)(b)(ii) or (4)(b)(ii), as appropriate, of the decision in writing;
- (b) inform the public of the decision by local advertisement or by such other means as are reasonable in the circumstances.

(2) Where an EIA is determined by the Department it shall also—

- (a) notify the council in whose district the proposed development is to be situated of its decision;
- (b) provide the council with a statement containing—
  - (i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
  - (ii) a summary of the results on the consultations undertaken and information gathered in respect of the application and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and
  - (iii) details of the matters referred to in regulation 26(2).

(3) Where, after environmental information has been taken into consideration, an EIA application is determined by the Commission, the Commission shall promptly—

- (a) notify the council in whose district the proposed development is to be situated of its decision; and
- (b) provide the council with a copy of a statement containing—

- (i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
- (ii) a summary of the results of the consultations undertaken and information gathered in respect of application and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and
- (iii) details of the matters referred to in regulation 26(2).

(4) The council shall, as soon as reasonably practicable after receipt of a notification from the Commission under paragraph (3), comply with paragraph (1) as if the decision so notified were a decision of the council.

## PART 7

### Development by a Council

#### Modifications where application is by a council

28. Where the council is also (or would be) the applicant (whether alone or jointly with any other person), these Regulations shall apply to an EIA application (or proposed application) subject to the following modifications—

- (a) regulations 8 and 9(1) to 9(3) shall not apply;
- (b) regulation 10(1) shall apply to any body from whom the council requests assistance as it applies to any body notified in accordance with regulation 9(3);
- (c) regulation 12 shall apply as if—
  - (i) the words “or, as the case may be, the Department” were omitted; and
  - (ii) the references to paragraph (8), (9), (10) and (11) of regulation 8 were omitted.
- (d) regulation 13 shall apply as if the words “or, as the case may be, the Department” were omitted;
- (e) regulation 14 shall apply as if—
  - (i) the words “or, as the case may be, the Department” were omitted; and
  - (ii) the reference to paragraphs (8), (9), (10) and (11) of regulation 8 were omitted;
- (f) regulation 15 shall not apply;
- (g) regulation 18 shall apply as if—
  - (i) for “Where an environmental statement is submitted the council or, as the case may be, the Department shall, when it receives the environmental statement”, there were substituted, “Where a council submits an environmental statement it shall”;
  - (ii) in paragraph (1)(a), (1)(c), (1)(d), (1)(f), (2) and (3) the words “or, as the case may be, the Department” were omitted;
  - (iii) in paragraph (1)(e) the words “from the applicant” were omitted.
- (h) paragraph (b) of regulation 19 shall not apply;
- (i) regulation 20 shall apply if—
  - (i) in paragraph (1) for the word “receives” there were substituted “submits”;
  - (ii) paragraph (2) were omitted;
  - (iii) in paragraph (3) the words “or, as the case may be, the Department” were omitted.

## PART 8

### Development with Significant Transboundary Effects

#### **Development in Northern Ireland likely to have significant effects on the environment in another EEA State**

29.—(1) Where a council becomes aware that an EIA application made to it is in respect of proposed development which is likely to have significant effects on the environment in another EEA State, the council shall immediately send to the Department a copy of the application and environmental statement and any documents submitted with the application.

(2) Where—

- (a) it comes to the attention of the Department that proposed development in Northern Ireland is the subject of an EIA application and is likely to have significant effects on the environment in another EEA State; or
- (b) another EEA State likely to be significantly affected by such development so requests, the Department shall—
  - (i) publish a notice in the Belfast Gazette giving the address of the proposed development, stating that it is accompanied by an environmental statement and that it is likely to have significant effects on the environment of another EEA State and giving an address at which additional information may be obtained;
  - (ii) send to the EEA State as soon as possible and no later than the date of publication of the notice referred to in sub-paragraph (b)(i), the particulars mentioned in paragraph (3) and, if relevant, the information referred to in paragraph (4); and
  - (iii) give the EEA State a reasonable time in which to indicate whether it wishes to participate in the procedure for which these Regulations provide.

(3) The particulars referred to in paragraph (2)(b)(ii) are—

- (a) a description of the development, together with any available information on its possible significant effect on the environment in another EEA State; and
- (b) information on the nature of the decision which may be taken.

(4) Where an EEA State indicates, in accordance with paragraph (2)(b)(iii), that it wishes to participate in the procedure for which these Regulations provide, the Department shall send to that EEA State—

- (a) a copy of the application concerned;
- (b) a copy of any planning permission relating to the development;
- (c) a copy of any environmental statement in respect of the development to which that application relates;
- (d) details of the authority responsible for deciding the application; and
- (e) relevant information regarding the procedure under these Regulations,

unless that information has already been provided to the EEA State earlier in accordance with paragraph (2)(b)(ii).

(5) The Department shall also ensure that the EEA State concerned is given an opportunity, before planning permission or subsequent consent for the development is granted, to forward to the Department, within a reasonable time, the opinions of its public and of the authorities referred to in Article 6.1 of the Directive on the information supplied.

(6) The Department shall—

- (a) enter into consultation with the EEA State concerned regarding, amongst other things, the potential significant effects of the development on the environment of that EEA State and the measures envisaged to reduce or eliminate such effects; and
- (b) determine, in agreement with the other EEA State, a reasonable period of time for the duration of the consultation period.

(7) Where an EEA State has been consulted in accordance with paragraph (6), on the determination of the application concerned, the Department shall inform the EEA State of the decision and shall forward to it the information referred to in regulation 26(2).

#### **Projects in another EEA State likely to have significant transboundary effects**

**30.**—(1) Where the Department receives from another EEA State pursuant to Article 7.1 or 7.2 of the Directive, information which the EEA State has gathered from the applicant of a proposed project in that EEA State which is likely to have significant effects on the environment in Northern Ireland, the Department shall in accordance with Article 7.4 of the Directive—

- (a) enter into consultations with that EEA State regarding, amongst other things, the potential significant effects of the proposed project on the environment in Northern Ireland and the measures envisaged to reduce or eliminate such effects and whether it wishes to participate in that EEA State's procedure; and
- (b) determine in agreement with that EEA State a reasonable period, before development consent for the project is granted, during which members of the public in Northern Ireland may submit to the competent authority in that EEA State representations pursuant to Article 7.3(b) of the Directive.

(2) The Department shall also—

- (a) arrange for the information referred to in paragraph (1) to be made available, within a reasonable time, both to the authorities in Northern Ireland which it considers are likely to be concerned by the project by reason of the specific environmental responsibilities or local or regional competences, and to the public concerned in Northern Ireland;
- (b) ensure that those authorities and the public concerned in Northern Ireland are given an opportunity before development consent for the project is granted, to forward to the competent authority in the relevant EEA State, within a reasonable time, their opinion on the information supplied; and
- (c) make available to the public concerned, in an appropriate manner, any information received from the competent authority of the relevant EEA State in order to comply with Article 9.2 of the Directive.

## **PART 9**

### **Unauthorised EIA Development**

#### **Interpretation of Part 9**

**31.** In this Part—

“deemed application” shall be construed in accordance with section 145(5);

“enforcement functions” means—

- (a) the issue of an enforcement notice under section 138 or section 139;
- (b) the issue of a planning contravention notice under section 133;
- (c) the issue of a temporary stop notice under section 135;
- (d) the issue of a stop notice under section 150 or section 151;
- (e) the service of a breach of conditions notice under section 152; and
- (f) an application to the court for an injunction under section 156.

“enforcement notice” means a notice issued under section 138 or section 139;

“ground (a) appeal” means an appeal under section 143, so far as brought on the ground mentioned in subsection (3)(a) of that section;

“regulation 34 notice” means a notice issued under regulation 34(2);

“unauthorised EIA development” means EIA development for which planning permission or subsequent consent has not been granted.

#### **Duty to ensure objectives of the Directive are met**

32. The council or, as the case may be, the Department shall consider the exercise of their enforcement functions in such a way as to secure compliance with the objectives and requirements of the Directive.

#### **Prohibition on the grant of planning permission or subsequent consent for unauthorised EIA development**

33. The Commission shall not grant planning permission or subsequent consent under section 145(1) in respect of unauthorised EIA development unless an environmental impact assessment has been carried out in respect of that development.

#### **Determination as to need for environmental statement, etc.**

34.—(1) Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise Schedule 1 development or Schedule 2 development, the council or, as the case may be, the Department shall, before an enforcement notice is issued—

- (a) take steps to obtain information about the development, having regard to the requirements of regulation 8(3) and the obligations under regulation 32, in order to inform a screening determination; and
- (b) make a screening determination and paragraphs (7), (14) and (15) of regulation 8 shall apply.

(2) Where it appears to the council or, as the case may be, the Department that the matters constituting the breach of planning control comprise or include EIA development, the council or, as the case may be, the Department shall serve with a copy of the enforcement notice a notice (“regulation 34 notice”) which shall—

- (a) include a copy of the screening determination required by paragraph (1)(b); and
- (b) require a person who gives notice of an appeal under section 143 to submit to the Commission with the notice sufficient copies of an environmental statement relating to that development to enable the Commission to comply with regulation 37.

(3) Where the council issues a regulation 34 notice it shall send a copy of the notice to—

- (a) the Commission;
- (b) any other council for the area in which the land to which the unauthorised EIA development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised EIA development by reason of their specific environmental responsibilities or local or regional competences; and
- (d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(4) Where the Department issues a regulation 34 notice it shall send a copy of the notice to—

- (a) the Commission,
- (b) the council or councils in the area in which the land to which the unauthorised EIA development relates is situated;
- (c) any other authorities likely to be concerned by the unauthorised EIA development by reason of their specific environmental responsibilities or local or regional competences; and



(d) any particular person of whom it is aware, who is likely to be affected by, or has an interest in, the regulation 34 notice.

(5) Where the council or, as the case may be, the Department serves the Commission with a copy of a regulation 34 notice it shall also provide it with a list of the other persons to whom, in accordance with paragraph (3) or (4), a copy of the notice has been or is to be sent.

(6) Where a person gives notice of appeal under section 143 and the council or, as the case may be, the Department has served on that person a regulation 34 notice with which they do not agree, that person may by notice in writing, within 4 weeks of the date of service of the enforcement notice, inform the council or, as the case may be, the Department that they propose to seek a hearing before the Commission.

(7) Where, in relation to paragraph (6), a person proposes to seek a hearing before the Commission, that person shall, by notice in writing, inform the Commission to such effect within 4 weeks of the service of the enforcement notice.

#### **Time period for submission of environmental statement**

35. Where the council or, as the case may be, the Department determines or, following a hearing by the Commission, confirms that an environmental statement is required, it shall be submitted to the Commission within 6 months from the date of the determination or such extended period as may be agreed in writing between the appellant and the Commission and if not so submitted the deemed application and the ground (a) appeal (if any) shall elapse at the end of that period.

#### **Provision of information**

36.—(1) Subject to paragraph (2), any person on whom a copy of regulation 34 notice is served pursuant to regulation 34(3)(b) to (d) or regulation 34(4)(b) to (d) (“the consultee”) shall, if requested by the person on whom the regulation 34 notice was served, or may without such request, enter into consultation with that person to determine whether the consultee has in their possession any information which that person or the consultee consider relevant to the preparation of an environmental statement and, if they have, the consultee shall make any such information available to that person.

(2) Regulations 10(2) and 22(2) shall apply to information under paragraph (1) as they apply to information under regulation 10(1).

#### **Procedure where the Commission receives an environmental statement**

37.—(1) Where the Commission receives an environmental statement, or a statement referred to by the appellant as an environmental statement, in connection with an enforcement appeal, it shall send a copy of the statement to the council or, as the case may be, the Department and to the bodies on whom a copy of the regulation 34 notice was served.

(2) The Commission shall give not less than 30 days notice to the council or, as the case may be, the Department and the bodies referred to in paragraph (1) that environmental information will be taken into consideration in determining the ground (a) appeal (if any) and inform them that they may make representations within this period.

#### **Further information and evidence respecting environmental statements**

38.—(1) Regulation 21(1) and (2) shall apply to statements provided in accordance with this Part with the following modifications—

- (a) where the Commission notifies the appellant under regulation 21(1), the appellant shall provide the further information within such period as the Commission may specify in the notice or such longer period as the Commission may allow;
- (b) if an appellant to whom a notice has been given under sub-paragraph (a) fails to provide the further information within the period specified or allows (as the case may be), the deemed application and the ground (a) appeal (if any) shall lapse at the end of that period.

(2) Regulations 37 and 39 shall apply in relation to further information received by the Commission in accordance with paragraph (1) as if references in those regulations to an environmental statement were references to the further information.

(3) The Commission shall send the council or, as the case may be, the Department a copy of any notice sent to the appellant under paragraph (1).

(4) Where the Department receives a notice under paragraph (3), it shall copy the notice to the council.

### **Publicity for environmental statements and decision making**

**39.**—(1) Where the Commission receives a copy of an environmental statement or a statement submitted by the appellant referred to as an environmental statement, either of which is accompanied by further information and any other information, in connection with an enforcement appeal it shall publish by local advertisement a notice stating—

- (a) the name of the appellant and that the appellant has appealed to the Commission against the enforcement notice;
- (b) the address or location of the land to which the notice related and the nature of the development;
- (c) sufficient information to enable any planning permission for the development to be identified;
- (d) that a copy of the environmental statement and further information and any other information may be inspected by members of the public at all reasonable hours;
- (e) an address in the locality at which the statement and further information and any other information may be inspected and the latest date it will be made available for inspection (being a date not less than 30 days from the date on which the notice is first published);
- (f) that any person wishing to make representations about any matter dealt with in the statement and further information and any other information should make them in writing and the latest date by which representations should be made (being a date not less than 30 days from the date on which the notice is first published); and
- (g) the address to which such representations are to be sent.

(2) Where an appeal is made to the Commission under section 143 in relation to an unauthorised EIA development, the functions conferred to on the council or on the Department by Part 6 shall be exercisable by the Commission in respect of that appeal.

### **Significant transboundary effects**

**40.** Regulation 29 shall apply to unauthorised EIA development as if—

- (a) for regulation 29(1) there were substituted—
  - “(1) Where, on the consideration of an appeal under section 143, the Commission is of the opinion that matters which are alleged to constitute the breach of planning control comprise or include EIA development and the development has or is likely to have significant effects on another EEA state, it shall notify the Department.”;
- (b) in regulation 29(2)(a) and (b)(i) the word “proposed” was omitted;
- (c) in regulation 29(4)(a) the words “ a copy of the application concerned” were replaced by the words “a description of the development concerned”; and
- (d) in regulation 29(4)(c) the words “that application” were replaced by the words “the deemed application under section 145(5)”.

## PART 10

### Permission in Enterprise and Simplified Planning Zones and Permission Granted by Development Orders

#### Restrictions on the grant of permission by simplified planning zone schemes and enterprise zone schemes

41. After the commencement of these Regulations—

- (a) the adoption of a simplified planning zone scheme under section 34 (or the alteration of such a scheme under section 37);
- (b) an order designating an enterprise zone under the Enterprise Zones (Northern Ireland) Order 1981(a) and the modification in relation to an approved enterprise zone under that Order,

shall not grant planning permission for—

- (i) Schedule 1 development; or
- (ii) Schedule 2 development unless the council or, as the case may be, the Department has made a determination that the development is not EIA development.

#### Development Orders

42. Subject to paragraph (2), a development order under section 32 made after the commencement of these Regulations shall not grant planning permission for—

- (a) Schedule 1 development; or
- (b) Schedule 2 development unless the council or, as the case may be, the Department has made a determination that the development is not EIA development.

## PART 11

### Miscellaneous

#### Objectivity and bias

43.—(1) The council or, as the case may be, the Department shall perform their duties under these Regulations in an objective manner and so as not to find themselves in a situation giving rise to a conflict of interest.

(2) Where the council or, as the case may be, the Department is (or would be) an applicant and it will also be responsible for determining its own application, the council or, as the case may be, the Department shall make appropriate administrative arrangements to ensure that there is a functional separation, when performing any duty under these Regulations, between the persons making the application and the persons responsible for determining that application.

#### Availability of information in relation to determinations, opinions, decisions, etc.

44.—(1) The council shall make available for public inspection at all reasonable hours at the place where a register pursuant to Article 24 of the General Development Procedure Order is kept, a copy of—

- (a) any determination or opinion given pursuant to regulation 8(1), 12(1), 14(1) or 16(1), notification under regulation 15(1) or 16(2), or determination confirmed or amended

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(a) S.I. 1981/607 (N.I. 15)

under regulation 45(2) together with the accompanying statement of reasons, the relevant request and the documents which accompanied it;

- (b) any environmental statement and further information and any other information received under these Regulations; and
- (c) where environmental information has been taken into consideration in determining an application for planning permission or subsequent application or appeal, a statement containing—
  - (i) the main reasons and considerations on which the decision was based including information about the arrangements taken to ensure the public had the opportunity to participate in the decision making procedures;
  - (ii) a summary of the results of the consultations undertaken and information gathered in respect of applications and how those results, in particular comments received from an EEA State pursuant to consultation under regulation 29, have been incorporated or otherwise addressed; and
  - (iii) details of the matters referred to in regulation 26(2).

(2) The council shall make available for public inspection at all reasonable hours at the place where a register pursuant to Article 26 of the General Development Procedure Order is kept, a copy of—

- (a) every regulation 34 notice served by the council or, as the case may be, the Department;
- (b) every determination made by the council or, as the case may be, the Department in accordance with regulation 34(2) or notice confirmed or amended under regulation 45(2) in respect of a deemed application under Part 8;
- (c) every environmental statement or additional information received by the council or, as the case may be, the Department by virtue of regulation 37(1); and
- (d) every notice received by the council or, as the case may be, the Department under regulation 38(3) or (4).

(3) A register kept pursuant to Article 27 of the General Development Procedure Order is kept, a copy of any direction given by the Department pursuant to regulation 3(1)(a) to (c), and any information obtained under regulation 3(2).

(4) Where the registers kept under this regulation are kept using electronic storage, the council may make the registers available for inspection by the public on a website maintained by the council for that purpose.

#### **Hearing by the Commission in relation to the council's or Department's determination**

**45.—**(1) Where a person seeks a hearing before the Commission under regulations 8(19), 15(4), 16(5) or 34(6) it shall afford that person the opportunity of appearing before and being heard by the Commission.

(2) Where a hearing is held, the council or, as the case may be, the Department shall consider the report of the Commission and may confirm, amend or withdraw its determination.

#### **Use of electronic communications**

**46.—**(1) Paragraph (2) applies where a person uses electronic communications to make an application under regulation 8, and except where a contrary intention appears, the applicant shall be taken to have agreed—

- (a) to the use of electronic communications for all purposes relating to the application which is capable of being effected using such communications;
- (b) that the address for the purpose of such communications is the address incorporated into, or otherwise logically associated with, the application;
- (c) that the person's deemed agreement under this paragraph shall subsist until the person gives notice in writing that the person wishes to revoke the agreement and such

withdrawal or revocation shall be final and shall take effect on a date specified by the person in the notice but not less than seven days after the date on which the notice is given.

(2) In paragraphs (3)(a), 5(a) and 6(a) of regulation 8 the requirement for the application to be accompanied by a plan sufficient to identify the land to which the application relates is satisfied where the applicant identifies the land on an electronic map provided by the council or, as the case may be, the Department and for this purpose a map is taken to be provided where the council or, as the case may be, the Department has published it on its website.

### **Application to the Crown**

**47.** These Regulations shall apply to the Crown to the full extent authorised or permitted by the constitutional laws of Northern Ireland.

### **Revocation, saving and transitional provisions**

**48.—**(1) Subject to paragraphs (2) to (4) the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015(a) (“the 2015 Regulations”) are revoked except for regulations 45(3) and (4).

(2) The 2015 Regulations continue to have effect as they did immediately before 16th May 2017 where before that date—

- (a) the applicant or, as the case may be, the appellant has submitted an environmental statement (within the meaning of the 2015 Regulations); or
- (b) the applicant has made a request under regulation 7(1)(b) of the 2015 Regulations for an opinion as to the information to be provided in the environmental statement.

(3) Parts 1 and 2 of the 2015 Regulations continue to have effect as they did immediately before 16th May 2017 in respect of—

- (a) a request for a determination under regulation 7(1)(a) of the 2015 Regulations made to the council or, as the case may be, the Department, before that date.
- (b) a determination by the council or, as the case may be, the Department where the process to make the determination was initiated before that date.

(4) Regulations 45(3) and (4) of the 2015 Regulations continue to have effect in respect of the matters specified in paragraph 2(a) to (c) of regulation 40 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2012.

Sealed with the Official Seal of the Department for Infrastructure on 11th May 2017



*Angus Kerr*  
A senior officer of the  
Department for Infrastructure

(a) S.R. 2015 No. 74

## SCHEDULE 1

Regulation 2(2)

Descriptions of development and applicable thresholds and criteria for the purpose of the definition of “Schedule 2 development”

**Interpretation**

In this Schedule—

“airport” means an airport which complies with the definition in the 1944 Chicago Convention setting up the International Civil Aviation Organisation (Annex 14)(a);

“express road” means a road which complies with the definition in the European Agreement on Main International Traffic Arteries of 15 November 1975(b);

“nuclear power station” and “other nuclear reactor” do not include an installation from the site of which all nuclear fuel and other radioactive contaminated materials have been permanently removed; and development for the purpose of dismantling or decommissioning a nuclear power station or other nuclear reactor shall not be treated as development of the description mentioned in paragraph 2(b) of this Schedule.

**Descriptions of development**

The carrying out of development to provide any of the following—

1. Crude-oil refineries (excluding undertakings manufacturing only lubricants from crude oil) and installations for the gasification and liquefaction of 500 tonnes or more of coal or bituminous shale per day;

2.

(a) Thermal power stations and other combustion installations with a heat output of 300 megawatts or more; and

(b) Nuclear power stations and other nuclear reactors (except research installations for the production and conversion of fissionable and fertile materials, whose maximum power does not exceed 1 kilowatt continuous thermal load).

3.

(a) Installations for the reprocessing of irradiated nuclear fuel.

(b) Installations designed—

(i) for the production or enrichment of nuclear fuel.

(ii) for the processing of irradiated nuclear fuel or high-level radioactive waste,

(iii) for the final disposal of irradiated nuclear fuel,

(iv) solely for the final disposal of radioactive waste,

(v) solely for the storage (planned for more than 10 years) of irradiated nuclear fuels or radioactive waste in a different site than the production site.

4.

(a) Integrated works for the initial smelting of cast-iron and steel;

(b) Installations for the production of non-ferrous crude metals from ore, concentrates or secondary raw materials by metallurgical, chemical or electrolytic processes.

5. Installations for the extraction of asbestos and for the processing and transformation of asbestos and products containing asbestos—

(a) See Command Paper 6614

(b) See Command Paper 6993

- (a) for asbestos–cement products, with an annual production of more than 20,000 tonnes of finished products;
- (b) for friction material, with an annual production of more than 50 tonnes of finished products; and
- (c) for other uses of asbestos, utilisation of more than 200 tonnes per year.

**6.** Integrated chemical installations, that is to say, installations for the manufacture on an industrial scale of substances using chemical conversion processes, in which several units are juxtaposed and are functionally linked to one another and which are—

- (a) for the production of base organic chemicals;
- (b) for the production of basic inorganic chemicals;
- (c) for the production of phosphorous–, nitrogen– or potassium–based fertilisers (simple or compound fertilisers);
- (d) for the production of basic plant health products and of biocides;
- (e) for the production of basic pharmaceutical products using a chemical or biological process;
- (f) for the production of explosives.

**7.**

- (a) Construction of lines for long–distance railway traffic and of airports with a basic runway length of 2,100 metres or more;
- (b) Construction of motorways and express roads;
- (c) Construction of a new road of four or more lanes, or realignment and/or widening of an existing road of two lanes or less so as to provide four or more lanes, where such new road, or realigned and/or widened section of road would be 10 kilometres or more in a continuous length.

**8.**

- (a) Inland waterways and ports for inland–waterway traffic which permit the passage of vessels of over 1,350 tonnes;
- (b) Trading ports, piers for loading and unloading connected to land and outside ports (excluding ferry piers) which can take vessels of over 1,350 tonnes.

**9.** Waste disposal installations for the incineration, chemical treatment (as defined in Annex I to Directive 2008/98/EC), of the European Parliament and of the Council on waste and repealing certain directives(a), under heading D9) or landfill of hazardous waste (as defined in regulation 6 of the Hazardous Waste Regulations (Northern Ireland) 2005)(b).

**10.** Waste disposal installations for the incineration or chemical treatment (as defined in Annex I to Directive 2008/98/EC under heading D9) of non-hazardous waste with a capacity exceeding 100 tonnes per day.

**11.** Groundwater abstraction or artificial groundwater recharge schemes where the annual volume of water abstracted or recharged is equivalent to or exceeds 10 million cubic metres.

**12.**

- (a) Works for the transfer of water resources, other than piped drinking water, between river basins where the transfer aims at preventing possible shortages of water and where the amount of water transferred exceeds 100 million cubic metres per year;
- (b) In all other cases, works for the transfer of water resources, other than piped drinking water, between river basins where the multi-annual average flow of the basin of

(a) O.J. No. L312, 22.11.08, p.3.

(b) S.R. 2005 No. 300

abstraction exceeds 2,000 million cubic metres per year and where the amount of water transferred exceeds 5% of this flow.

**13.** Waste water treatment plants with a capacity exceeding 150,000 population equivalent as defined in Article 2 point (6) of Directive 91/271/EEC<sup>(a)</sup>.

**14.** Extraction of petroleum and natural gas for commercial purposes where the amount extracted exceeds 500 tonnes per day in the case of petroleum and 500,000 cubic metres per day in the case of gas.

**15.** Dams and other installations designed for the holding back or permanent storage of water, where a new or additional amount of water held back or stored exceeds 10 million cubic metres.

**16.** Pipelines with a diameter of more than 800 millimetres and a length of more than 40 kilometres:

–for the transport of gas, oil or chemicals, or

–for the transport of carbon dioxide streams for the purposes of geological storage, including associated booster stations.

**17.** Installations for the intensive rearing of poultry or pigs with more than—

(a) 85,000 places for broilers or 60,000 places for hens;

(b) 3,000 places for production pigs (over 30 kg); or

(c) 900 places for sows.

**18.** Industrial plants for—

(a) the production of pulp from timber or similar fibrous materials;

(b) the production of paper and board with a production capacity exceeding 200 tonnes per day.

**19.** Quarries and open-cast mining where the surface of the site exceeds 25 hectares, or peat extraction where the surface of the site exceeds 150 hectares.

**20.** Construction of overhead electrical power lines with a voltage of 220 kV or more and a length of more than 15 kilometres.

**21.** Installations for storage of petroleum, petrochemical or chemical products with a capacity of 200,000 tonnes or more.

**22.** Storage sites pursuant to Directive 2009/31/EC of the European Parliament and of the Council of 23 April 2009 on the geological storage of carbon dioxide<sup>(b)</sup>.

**23.** Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations covered by this Schedule, or where the total yearly capture of carbon dioxide is 1.5 megatonnes or more.

**24.** Any change to or extension of development listed in this Schedule where such a change or extension itself meets the thresholds, if any, or description of development set out in this Schedule.

(a) O.J. No. L135, 30.5.91, p.40

(b) O.J. No. L140, 5.6.2009, p.114



## SCHEDULE 2

Regulation 2(2)

Descriptions of development and applicable thresholds and criteria for the purposes of the definition of “Schedule 2 development”

1. In the Table below—

“area of the works”, includes any area occupied by apparatus, equipment, machinery, materials, plant, spoil heaps or other facilities or stores required for construction or installation;

“floorspace”, means floorspace in a building or buildings;

“waterway” and “underground strata” have the meanings assigned to them by Article 2(2) of the Water (Northern Ireland) Order 1999(a).

2. The Table below sets out the descriptions of development and applicable thresholds and criteria for the purposes of classifying development as Schedule 2 development.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
The carrying out of development to provide any of the following—	
<b>1. Agriculture and aquaculture</b>	
(a) Projects for the use of uncultivated land or semi-natural areas for intensive agricultural purposes;	The area of the development exceeds 0.5 hectare.
(b) Water management projects for agriculture, including irrigation and land drainage projects;	The area of the works exceeds 1 hectare.
(c) Intensive livestock installations (unless included in Schedule 1);	The area of floorspace exceeds 500 square metres.
(d) Intensive fish farming;	The installation resulting from the development is designed to produce more than 10 tonnes of dead weight fish per year.
(e) Reclamation of land from the sea.	All development.
<b>2. Extractive industry</b>	
(a) Quarries, open-cast mining and peat extraction (unless included in Schedule 1);	All development (except the construction of buildings or other ancillary structures where the floorspace does not exceed 1,000 square metres).
(b) Underground mining;	
(c) Extraction of minerals by fluvial or marine dredging;	All development.
(d) Deep drillings, in particular—	(i) In relation to any type of drilling the area of the works exceeds 1 hectare; or (ii) in relation to geothermal drilling and drilling for the storage of nuclear waste material only, drilling is to be undertaken within 100 metres of any waterway or water in underground strata.
(i) geothermal drilling;	
(ii) drilling for the storage of nuclear waste material;	
(iii) drilling for water supplies; with the exception of drillings for investigating the stability of the soil;	

(a) S.I. 1999 No. 662 (N.I. 6) as amended by S.I. 2006 No. 3336 (N.I. 21)

<b>Column 1</b> <b>Description of development</b>	<b>Column 2</b> <b>Applicable thresholds and criteria</b>
(e) Surface industrial installations for the extraction of coal, petroleum, natural gas and ores, as well as bituminous shale.	The area of the development exceeds 0.5 hectare.
<b>3. Energy industry</b>	
(a) Industrial installations for the production of electricity, steam and hot water (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(b) Industrial installations for carrying gas, steam and hot water;	The area of the works exceeds 1 hectare.
(c) Transmission of electrical energy by overhead cables (unless included in Schedule 1);	<ul style="list-style-type: none"> <li>(i) The nominal voltage of the electric line exceeds 33kV; and</li> <li>(ii) the purpose of the line is the provision of a supply to more than one consumer;</li> <li>(iii) where the modification of an existing line is proposed, it is outside the tolerances specified in the Overhead Lines (Exemption) Regulations (Northern Ireland) 1992 (S.R. 1992 No. 118).</li> </ul>
<ul style="list-style-type: none"> <li>(d) Surface storage of natural gas;</li> <li>(e) Underground storage of combustible gases;</li> <li>(f) Surface storage of fossil fuels;</li> </ul>	<ul style="list-style-type: none"> <li>(i) the area of any building, deposit or structure exceeds 500 square metres; or</li> <li>(ii) a building, deposit or structure is to be sited within 100 metres of any waterway or water in underground strata.</li> </ul>
(g) Industrial briquetting of coal and lignite;	The area of floorspace exceeds 1,000 square metres.
(h) Installations for the processing and storage of radioactive waste (unless included in Schedule 1);	<ul style="list-style-type: none"> <li>(i) The area of floorspace exceeds 1,000 square metres; or</li> <li>(ii) the installation resulting from the development will require an authorisation or the variation of an authorisation under the Radioactive Substances Act 1993.</li> </ul>
(i) Installations for hydroelectric energy production;	The installation is designed to produce more than 0.5 megawatts.
(j) Installations for the harnessing of wind power for energy production (wind farms).	<ul style="list-style-type: none"> <li>(i) the development involves the installation of more than 2 turbines; or</li> <li>(ii) the hub height of any turbine or height of any other structure exceeds 15 metres.</li> </ul>

<b>Column 1</b> <b>Description of development</b>	<b>Column 2</b> <b>Applicable thresholds and criteria</b>
(k) Installations for the capture of carbon dioxide streams for the purposes of geological storage pursuant to Directive 2009/31/EC from installations not included in Schedule 1.	All development
<b>4. Production and processing of metals</b>	
<ul style="list-style-type: none"> <li>(a) Installations for the production of pig iron or steel (primary or secondary fusion) including continuous casting;</li> <li>(b) Installations for the processing of ferrous metals— <ul style="list-style-type: none"> <li>(i) hot-rolling mills;</li> <li>(ii) smitheries with hammers;</li> <li>(iii) application of protective fused metal coats.</li> </ul> </li> <li>(c) Ferrous metal foundries;</li> <li>(d) Installations for the smelting, including the alloyage, of non-ferrous metals, excluding precious metals, including recovered products (refining, foundry casting, etc.);</li> <li>(e) Installations for surface treatment of metals and plastic materials using an electrolytic or chemical process;</li> <li>(f) Manufacture and assembly of motor vehicles and manufacture of motor-vehicle engines;</li> <li>(g) Shipyards;</li> <li>(h) Installations for the construction and repair of aircraft;</li> <li>(i) Manufacture of railway equipment;</li> <li>(j) Swaging by explosives;</li> <li>(k) Installations for the roasting and sintering of metallic ores.</li> </ul>	The area of floorspace exceeds 1,000 square metres.
<b>5. Mineral industry</b>	
<ul style="list-style-type: none"> <li>(a) Coke ovens (dry coal distillation);</li> <li>(b) Installations for the manufacture of cement;</li> <li>(c) Installations for the production of asbestos and the manufacture of asbestos-based products (unless included in Schedule 1);</li> <li>(d) Installations for the manufacture of glass including glass fibre;</li> </ul>	The area of floorspace exceeds 1,000 square metres.

<b>Column 1</b> <b>Description of development</b>	<b>Column 2</b> <b>Applicable thresholds and criteria</b>
<ul style="list-style-type: none"> <li>(e) Installations for smelting mineral substances including the production of mineral fibres;</li> <li>(f) Manufacture of ceramic products by burning, in particular roofing tiles, bricks, refractory bricks, tiles, stoneware or porcelain.</li> </ul>	
<b>6. Chemical industry (unless included in Schedule 1)</b>	
<ul style="list-style-type: none"> <li>(a) Treatment of intermediate products and production of chemicals;</li> <li>(b) Production of pesticides and pharmaceutical products, paint and varnishes, elastomers and peroxides;</li> </ul>	The area of floorspace exceeds 1,000 square metres.
<ul style="list-style-type: none"> <li>(c) Storage facilities for petroleum, petrochemical and chemical products.</li> </ul>	<ul style="list-style-type: none"> <li>(i) The area of any building or structure exceeds 0.05 hectare; or</li> <li>(ii) more than 200 tonnes of petroleum, petrochemical or chemical products is to be stored at any one time.</li> </ul>
<b>7. Food industry</b>	
<ul style="list-style-type: none"> <li>(a) Manufacture of vegetable and animal oils and fats;</li> <li>(b) Packing and canning of animal and vegetable products;</li> <li>(c) Manufacture of dairy products;</li> <li>(d) Brewing and malting;</li> <li>(e) Confectionery and syrup manufacture;</li> <li>(f) Installations for the slaughter of animals;</li> <li>(g) Industrial starch manufacturing installations;</li> <li>(h) Fish-meal and fish-oil factories;</li> <li>(i) Sugar factories.</li> </ul>	The area of floorspace exceeds 1,000 square metres.
<b>8. Textile, leather, wood and paper industries</b>	
<ul style="list-style-type: none"> <li>(a) Industrial plants for the production of paper and board (unless included in Schedule 1);</li> <li>(b) Plants for the pre-treatment (operations such as washing, bleaching, mercerisation) or dyeing of fibres or textiles;</li> <li>(c) Plants for the tanning of hides and skins;</li> <li>(d) Cellulose-processing and production installations.</li> </ul>	The area of floorspace exceeds 1,000 square metres.

Column 1 Description of development	Column 2 Applicable thresholds and criteria
<b>9. Rubber industry</b>	
Manufacture and treatment of elastomer-based products.	The area of floorspace exceeds 1,000 square metres.
<b>10. Infrastructure projects</b>	
(a) Industrial estate development projects; (b) Urban development projects, including the construction of shopping centres and car parks; (c) Construction of intermodal transshipment facilities and of intermodal terminals (unless included in Schedule 1);	The area of the development exceeds 0.5 hectare.
(d) Construction of railways (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(e) Construction of airfields (unless included in Schedule 1);	(i) The development involves an extension to a runway; or (ii) the area of the works exceeds 1 hectare.
(f) Construction of roads (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(g) Construction of harbours and port installations, including fishing harbours (unless included in Schedule 1);	The area of the works exceeds 1 hectare.
(h) Inland-waterway construction (unless included in Schedule 1), canalisation and flood-relief works; (i) Dams and other installations designed to hold water or store it on a long-term basis (unless included in Schedule 1); (j) Tramways, elevated and underground railways, suspended lines or similar lines of a particular type, used exclusively or mainly for passenger transport;	The area of the works exceeds 1 hectare.
(k) Oil and gas pipeline installations and pipelines for the transport of carbon dioxide streams for the purposes of geological storage (unless included in Schedule 1); (l) Installations of long-distance aqueducts;	(i) The area of the works exceeds 1 hectare; or, (ii) in the case of a gas pipeline, the installation has a design operating pressure exceeding 7 bar gauge.
(m) Coastal work to combat erosion and maritime works capable of altering the coast through the construction, for	All development.

<b>Column 1</b> <b>Description of development</b>	<b>Column 2</b> <b>Applicable thresholds and criteria</b>
example, of dykes, moles, jetties and other sea defence works, excluding the maintenance and reconstruction of such works;	
(n) Ground water abstraction and artificial ground water recharge schemes (unless included in Schedule 1); (o) Works for the transfer of water resources between river basins (unless included in Schedule 1).	The area of the works exceeds 1 hectare.
<b>11. Other projects</b>	
(a) Permanent racing and test tracks for motorised vehicles;	The area of the development exceeds 1 hectare.
(b) Installations for the disposal of waste (unless included in Schedule 1):	(i) The disposal is by incineration; or (ii) the area of the development exceeds 0.5 hectare; or (iii) the installation is to be sited within 100 metres of any waterway or water in underground strata or, marine waters.
(c) Waste-water treatment plants (unless included in Schedule 1);	The area of the development exceeds 1,000 square metres.
(d) Sludge-deposition sites; (e) Storage of scrap iron, including scrap vehicles;	(i) The area of the deposit or storage exceeds 0.5 hectare; or (ii) a deposit is to be made or scrap stored within 100 metres of any waterway or water in underground strata or, marine waters.
(f) Test benches for engines, turbines or reactors; (g) Installations for the manufacture of artificial mineral fibres; (h) Installations for the recovery or destruction of explosive substances; (i) Knackers' yards.	The area of floorspace exceeds 1,000 square metres.
<b>12. Tourism and leisure</b>	
(a) Ski-runs, ski-lifts and cable-cars and associated developments;	(i) The area of the works exceeds 1 hectare; or (ii) the height of any building or other structure exceeds 15 metres.
(b) Marinas;	The area of the enclosed water surface exceeds 1,000 square metres.
(c) Holiday villages and hotel complexes outside urban areas and associated developments; (d) Theme parks;	The area of the development exceeds 0.5 hectare.
(e) Permanent camp sites and caravan	The area of the development exceeds 1 hectare.

Column 1 Description of development sites.	Column 2 Applicable thresholds and criteria																																																						
<p><b>13.</b></p> <p>(a) Any change to or extension of development of a description listed in paragraphs 1 to 12 of column 1 of this table, where that development is already authorised, executed or in the process of being executed.</p> <p>(b) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 22 of that Schedule) where that development is already authorised, executed or in the process of being executed.</p>	<p>The thresholds and criteria in the corresponding part of column 2 of this table applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment;</p> <p>The thresholds and criteria in column 2 of the paragraph of this table indicated below applied to the development as changed or extended are met or exceeded and in such a case the change or extension may have significant adverse effects on the environment.</p>																																																						
<p>(c) Development of a description mentioned in Schedule 1, undertaken exclusively or mainly for the development and testing of new methods or products and not used for</p>	<table border="1"> <thead> <tr> <th data-bbox="799 831 1086 898">Paragraph in Schedule 1</th> <th data-bbox="1091 831 1359 898">Paragraph of this table</th> </tr> </thead> <tbody> <tr><td>1</td><td>6 (a)</td></tr> <tr><td>2(a)</td><td>3 (a)</td></tr> <tr><td>2(b)</td><td>3 (h)</td></tr> <tr><td>3</td><td>3 (h)</td></tr> <tr><td>4</td><td>4</td></tr> <tr><td>5</td><td>5</td></tr> <tr><td>6</td><td>6 (a)</td></tr> <tr><td>7(a)</td><td>10 (d) (in relation to railways) or 10 (e) (in relation to airports)</td></tr> <tr><td>7(b) and (c)</td><td>10 (f)</td></tr> <tr><td>8(a)</td><td>10 (h)</td></tr> <tr><td>8(b)</td><td>10 (g)</td></tr> <tr><td>9</td><td>11 (b)</td></tr> <tr><td>10</td><td>11 (b)</td></tr> <tr><td>11</td><td>10 (n)</td></tr> <tr><td>12</td><td>10 (o)</td></tr> <tr><td>13</td><td>11 (c)</td></tr> <tr><td>14</td><td>2 (e)</td></tr> <tr><td>15</td><td>10 (i)</td></tr> <tr><td>16</td><td>10 (k)</td></tr> <tr><td>17</td><td>1 (c)</td></tr> <tr><td>18</td><td>8 (a)</td></tr> <tr><td>19</td><td>2 (a)</td></tr> <tr><td>20</td><td>3 (c)</td></tr> <tr><td>21</td><td>6 (c)</td></tr> <tr><td>23</td><td>3 (k)</td></tr> <tr><td>24</td><td>3 (k)</td></tr> </tbody> </table> <p>All development</p>	Paragraph in Schedule 1	Paragraph of this table	1	6 (a)	2(a)	3 (a)	2(b)	3 (h)	3	3 (h)	4	4	5	5	6	6 (a)	7(a)	10 (d) (in relation to railways) or 10 (e) (in relation to airports)	7(b) and (c)	10 (f)	8(a)	10 (h)	8(b)	10 (g)	9	11 (b)	10	11 (b)	11	10 (n)	12	10 (o)	13	11 (c)	14	2 (e)	15	10 (i)	16	10 (k)	17	1 (c)	18	8 (a)	19	2 (a)	20	3 (c)	21	6 (c)	23	3 (k)	24	3 (k)
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Column 1	Column 2
Description of development more than two years.	Applicable thresholds and criteria

### SCHEDULE 3

Regulation 2(2) definition of  
“selection criteria”

#### Selection criteria referred to in Article 4.3 of the Directive

##### 1. Characteristics of development

The characteristics of development shall be considered having regard, in particular, to—

- (a) the size and design of the whole development;
- (b) the cumulation with other existing development and/or approved development;
- (c) the use of natural resources, in particular land, soil, water and biodiversity;
- (d) the production of waste;
- (e) pollution and nuisances;
- (f) the risk of major accidents and/or disasters which are relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;
- (g) the risks to human health (for example due to water contamination or air pollution).

##### 2. Location of development

The environmental sensitivity of geographical areas likely to be affected by development shall be considered, with particular regard to—

- (a) the existing and approved land use;
- (b) the relative abundance, availability, quality and regenerative capacity of natural resources (including soil, land, water and biodiversity) in the area and its underground;
- (c) the absorption capacity of the natural environment, paying particular attention to the following areas—
  - (i) wetlands, riparian areas, river mouths;
  - (ii) coastal zones and the marine environment;
  - (iii) mountain and forest areas;
  - (iv) nature reserves and parks;
  - (v) areas classified or protected under national legislation and areas designated pursuant to Council Directive 92/43/EEC on the conservation of natural habitats and of wild fauna and flora<sup>(a)</sup> and Council Directive 2009/147/EC on the conservation of wild birds<sup>(b)</sup>;
  - (vi) areas in which there has already been a failure to meet the environmental quality standards laid down in Union legislation and relevant to the development, or in which it is considered that there is such a failure;
  - (vii) densely populated areas;
  - (viii) landscapes and sites of historical, cultural or archaeological significance.

(a) O.J. No. L20, 26.1.2010, p7

(b) O.J. No. L206, 22.7.92, p7



### 3. Characteristics of the potential impact

The likely significant effects of development on the environment shall be considered in relation to criteria set out under paragraphs 1 and 2 of this Schedule, with regard to the impact of the development on the factors specified in regulation 5(2), taking into account—

- (a) the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);
- (b) the nature of the impact;
- (c) the transboundary nature of the impact
- (d) the intensity and complexity of the impact;
- (e) the probability of the impact;
- (f) the expected onset, duration, frequency and reversibility of the impact;
- (g) the cumulation of the impact with the impact of other existing and/or approved development;
- (h) the possibility of effectively reducing the impact.

## SCHEDULE 4

Regulation 11(2)

### Matters for Inclusion in Environmental Statement

#### 1. Description of the development, including in particular—

- (a) a description of the location of the development;
- (b) a description of the physical characteristics of the whole development, including, where relevant, requisite demolition works, and the land-use requirements during the construction and operational phases;
- (c) a description of the main characteristics of the operational phase of the development (in particular any production processes), for instance, energy demand and energy used, nature and quantity of the materials and natural resources (including water, land, soil and biodiversity) used;
- (d) an estimate, by type and quantity, of expected residues and emissions (such as water, air, soil and subsoil pollution, noise, vibration, light, heat, radiation) and quantities and types of waste produced during the construction and operation phases.

2. A description of the reasonable alternatives (for example in terms of development design, technology, location, size and scale) studied by the applicant or appellant, which are relevant to the proposed development and its specific characteristics, and an indication of the main reasons for selecting the chosen option, including a comparison of the environmental effects.

3. A description of the relevant aspects of the current state of the environment (baseline scenario) and an outline of the likely evolution thereof without implementation of the development as far as natural changes from the baseline scenario can be assessed with reasonable effort on the basis of availability of environmental information and scientific knowledge.

4. A description of the factors specified in regulation 5(2) likely to be significantly affected by the development: population, human health, biodiversity (for example fauna and flora), land (for example land take), soil (for example organic matter, erosion, compaction, sealing), water (for example hydromorphological changes, quantity and quality), air, climate (for example greenhouse gas emissions, impacts relevant to adaptation), material assets, cultural heritage, including architectural and archaeological aspects, and landscape.

#### 5. A description of the likely significant effects of the development resulting from, inter alia:

- (a) the construction and existence of the development, including, where relevant, demolition works;

- (b) the use of natural resources, in particular land, soil, water and biodiversity, considering as far as possible the sustainable availability of these resources;
- (c) the emission of pollutants, noise, vibration, light, heat and radiation, the creation of nuisances, and the disposal and recovery of waste;
- (d) the risks to human health, cultural heritage or the environment (for example due to accidents or disasters);
- (e) the cumulation of effects with other existing and/or approved development, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources;
- (f) the impact of the development on climate (for example the nature and magnitude of greenhouse gas emissions) and the vulnerability of the development to climate change;
- (g) the technologies and the substances used.

The description of the likely significant effects on the factors specified in regulation 5(2) should cover the direct effects and any indirect, secondary, cumulative, transboundary, short-term, medium-term and long-term, permanent and temporary, positive and negative effects of the development. This description should take into account the environmental protection objectives established at Union or Member State level which are relevant to the development including in particular those established under Council Directive 92/43/EEC and Directive 2009/147/EC.

**6.** A description of the forecasting methods or evidence used to identify and assess the significant effects on the environment, including details of the difficulties (for example technical deficiencies or lack of knowledge) encountered compiling the required information and the main uncertainties involved.

**7.** A description of the measures envisaged to avoid, prevent, reduce or, if possible, offset any identified significant adverse effects on the environment and, where appropriate, of any proposed monitoring arrangements (for example the preparation of a post-development analysis). That description should explain the extent to which significant adverse effects on the environment are avoided, prevented, reduced or offset, and should cover both the construction and operational phases.

**8.** A description of the expected significant adverse effects of the development on the environment deriving from the vulnerability of the development to risks to major accidents and/or disasters which are relevant to the development concerned. Relevant information available and obtained through risk assessments pursuant to Union legislation such as Directive 2012/18/EU of the European Parliament and of the Council or Council Directive 2009/71/Euratom or relevant assessments carried out pursuant to national legislation may be used for this purpose provided that the requirements of the Directive are met. Where appropriate, this description should include measures envisaged to prevent or mitigate the significant adverse effects of such events on the environment and details of the preparedness for and proposed response to such emergencies.

**9.** A non-technical summary of the information provided under paragraphs 1 to 8.

**10.** A reference list detailing the sources used for the descriptions and assessments included in the Environmental Statement.

## EXPLANATORY NOTE

*(This note is not part of the Order)*

These Regulations revoke and replace the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015.

These Regulations implement, in respect of the planning system in Northern Ireland, Directive 2011/92/EU of the European Parliament and of the Council on the assessment of the effects of certain public and private projects on the environment (O.J. No. L26, 28.1.2012, p.1), as amended by Council Directive 2014/52/EU (O.J. No. L124, 25.04.2014, p.1) which came into operation on 15 May 2014.

Part 1 defines terms used in the Regulations, sets out the Department's power of direction, ensures that EIA development cannot be permitted without the consideration of environmental information, describes the environmental impact assessment process, sets out the matters that confirm that development is EIA development and provides that the Planning Appeals Commission (the Commission) can carry out council or Departmental functions in respect of appeals under section 58 or 60 of the 2011 Act.

Part 2 sets out pre-application procedures under which a developer can ask the council or Department to give a determination as to whether proposed development is EIA development or an opinion as to the information to be provided in an environmental statement.

Part 3 contains procedures to facilitate the preparation of environmental statements and the provision of information relevant to their preparation and sets out the minimum content and requirements when preparing an environmental statement.

Part 4 sets out procedures for dealing with applications on receipt by a council or the Department. These include those for determining whether or not the application is an EIA application, consideration of any environmental information previously provided, requiring an environmental statement to be provided and provisions for the Department to process EIA applications referred to it under section 29 of the 2011 Act without an environmental statement. The period for making a decision on planning applications or subsequent applications is extended for EIA applications.

Part 5 contains the publicity arrangements for environmental statements including the availability of copies, consultation requirements, the need for further information and evidence, and charges for the cost of printing and distributing the environmental statement.

Part 6 is new and ensures that, where the proposed development also requires a Habitats Regulations Assessment, the environmental impact assessment is coordinated with that assessment, sets out the procedures when considering whether planning permission or subsequent consent should be granted, specifies the factors to bear in mind when considering whether to impose monitoring measures, describes the information to accompany a decision and details the arrangements for informing the public of decisions.

Part 7 deals with development by a council, modifying the Regulations as appropriate.

Part 8 sets out transboundary procedures where development in Northern Ireland is likely either to affect other EEA states, or the reverse.

Part 9 contains the procedures for unauthorised development which is or appears to be EIA development.

Part 10 restricts the grant of planning permission under simplified planning zone and enterprise zone schemes and any development order made after the commencement of these Regulations.

Part 11 requires the council and the Department to perform their duties in an objective manner and avoid conflicts of interest, sets out the requirements to make information available for inspection, specifies the circumstances in which the Commission will allow people to appear before it and be heard, and the effect of the Commission's report on determinations. It also details how electronic communications will apply to applications, applies the Regulations to the Crown and revokes the 2015 Regulations with saving and transitional provisions.

Schedule 1 lists the developments for which environmental assessment is mandatory. Schedule 2 lists, with thresholds/criteria, development for which environmental assessment is required if it has significant environmental effects. Schedule 3 lists the selection criteria to be taken into account to determine whether a development listed in Schedule 2 should be subject to an environmental impact assessment. Schedule 4 lists matters for inclusion in an environmental statement. Schedule 5 lists the extent of the revocations imposed by these Regulations.

A Regulatory Impact Assessment has been prepared in relation to these Regulations. A copy may be obtained from the Department for Infrastructure, Planning Policy Division, Clarence Court, 10-18 Adelaide Street, Town Parks, Belfast BT2 8GB (Tel: 028 9054 0572) or accessed at <http://www.planningni.gov.uk>.

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## Newry, Mourne & Down District Council – May 2017

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### 1. Live Applications

MONTH 2017/18	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	129	1,075	293
May	149	1,058	281

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

Month 2017/18	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	590	192	77	72	144	1,075
May	585	192	76	65	140	1,058

### 3. Live applications per Case Officer

Month 2017/18	Average number of Applications per Case Officer
April	67
May	62

### 4. Decisions issued per month

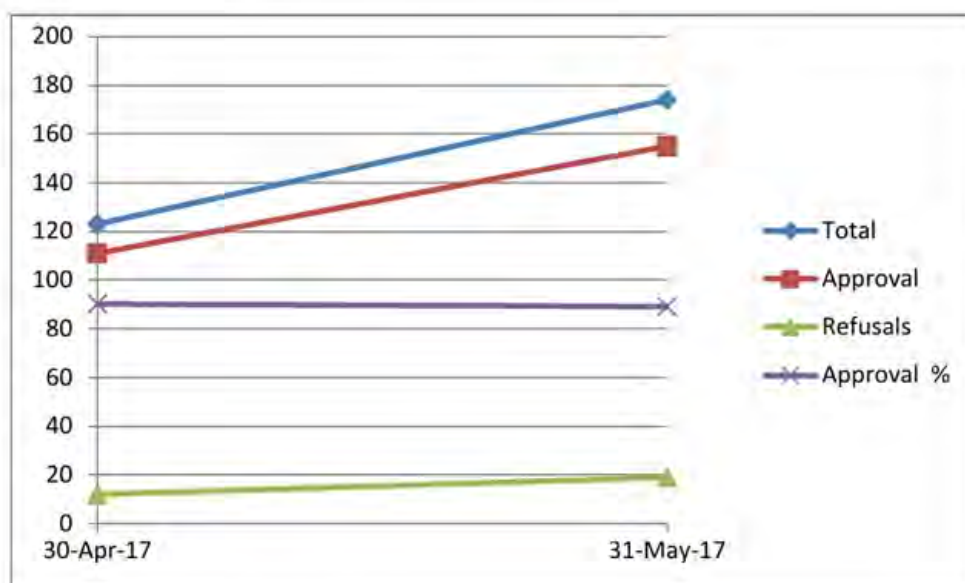
Month 2017/18	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	123	104
May	174	148

## Newry, Mourne & Down District Council – May 2017

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### 5. Decisions Issued YTD

Month 2017/18	Number of Decisions Issued (cumulative)	Breakdown of Decisions	
April	123	Approvals (111)	90%
		Refusals (12)	10%
May	297	Approvals (266)	90%
		Refusals (12)	10%



### 6. Enforcement Live cases

Month 2017/18	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+yrs	Total
April	292	126	95	87	55	83	738
May	286	137	89	91	53	85	741

### 7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/Deferred for future meeting
26 April 2017	26	19	7
24 May 2017	39	28	11
<b>Totals</b>	<b>65</b>	<b>47</b>	<b>18</b>

## Newry, Mourne & Down District Council – May 2017

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### 8. Appeals

#### Planning Appeal Commission Decisions issued during May 2017

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Other decisions
Newry & Mourne	25	4	1	3	
Down	10	2	1	1	
<b>TOTAL</b>	<b>35</b>	<b>6</b>	<b>2</b>	<b>4</b>	



## Statutory targets monthly update - up to April 2017 (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 received	Number decided/withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 30 weeks	Number received	Number decided/withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 15 weeks	Number opened	Number brought to conclusion <sup>3</sup>	"70%" conclusion time <sup>3</sup>	% of cases concluded within 39 weeks
April	0	1	91.8	0.0%	126	113	19.0	38.9%	37	20	64.2	60.0%
May	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
June	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
July	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
August	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
September	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
October	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
November	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
December	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
January	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
February	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
March	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
<b>Year to date</b>	<b>0</b>	<b>1</b>	<b>91.8</b>	<b>0.0%</b>	<b>126</b>	<b>113</b>	<b>19.0</b>	<b>38.9%</b>	<b>37</b>	<b>20</b>	<b>64.2</b>	<b>60.0%</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.

## Current Appeals

385

**AUTHORITY**      **Newry, Mourne and Down**

<b>ITEM NO</b>	<b>1</b>	<b>PAC Ref:</b>	<b>2016/A0005</b>
<b>Planning Ref:</b>	P/2014/0303/O	<b>DEA</b>	<b>The Mournes</b>
<b>APPELLANT LOCATION</b>	Michael Horner Adjacent To And North Of 36 Belmont Road Kilkeel		
<b>PROPOSAL</b>	<sup>Newry</sup> Erection of Infill Dwelling and Detached Garage		

<b>APPEAL TYPE</b>	Plg Refusal; permissions	<b>Date Appeal Lodged</b>	05/04/2016
<b>Appeal Procedure</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>PAC Ref:</b>	<b>2016/A0041</b>
<b>Planning Ref:</b>	P/2014/0853/F	<b>DEA</b>	<b>Crollieve</b>
<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>Date Appeal Lodged</b>	01/07/2016
<b>Appeal Procedure</b>	<b>Informal Hearing</b>		
<b>Date of Hearing</b>		<b>16/09/2016</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

386

<b>ITEM NO</b>	<b>3</b>	<b>PAC Ref:</b>	2016/A0135
<b>Planning Ref:</b>	P/2014/0649/O	<b>DEA</b>	The Mournes
<b>APPELLANT</b>	Mr Joseph Walls		
<b>LOCATION</b>	60 Metres East Of No.20 Sandbank Road Hilltown County Down BT34 5XU		
<b>PROPOSAL</b>	Site for Farm Dwelling (amended address)		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	13/10/2016
<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>			

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<b>ITEM NO</b>	<b>4</b>	<b>PAC Ref:</b>	2016/A0148
<b>Planning Ref:</b>	LA07/2015/0877/F	<b>DEA</b>	The Mournes
<b>APPELLANT</b>	Mr Diarmid Sloan		
<b>LOCATION</b>	10 Tullybrannigan Brae Newcastle BT33 0DG		
<b>PROPOSAL</b>	Roof space conversion, replacement roof and 2 storey extension		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	01/11/2016
<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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>5</b>		
<b>Planning Ref:</b>	P/2013/0938/F	<b>PAC Ref:</b>	2016/A0157
<b>APPELLANT</b>	John Morgan	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	220 Metres West Of 6 Tamary Road Mayobridge		
<b>PROPOSAL</b>	225 kw wind turbine with 30 metre mast and 29 metre rotor for electricity production		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	15/11/2016
<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>			

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<b>ITEM NO</b>	<b>6</b>		
<b>Planning Ref:</b>	LA07/2015/1244/F	<b>PAC Ref:</b>	2016/A0166
<b>APPELLANT</b>	Barney Mackin	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	19.3m North-East Of No27B Derrycraw Road Derrycraw		
<b>PROPOSAL</b>	<sup>Newly</sup> Erection of farm dwelling and garage		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	30/11/2016
<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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>7</b>		
<b>Planning Ref:</b>	LA07/2016/1041/C	<b>PAC Ref:</b>	2016/A0172
<b>APPELLANT</b>	Joseph O'Hare	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	Lands North Of And Adjacent To 53 Mayo Road Mayobridge		
<b>PROPOSAL</b>	Newly Dwelling and domestic garage on gap/infill site (amended address)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	05/12/2016
<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>			

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<b>ITEM NO</b>	<b>8</b>		
<b>Planning Ref:</b>	LA07/2016/0381/C	<b>PAC Ref:</b>	2016/A0185
<b>APPELLANT</b>	Mr Matt Burns	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	Opposite No. 107 Kilbroney Road Rostrevor		
<b>PROPOSAL</b>	Proposed farm retirement dwelling		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	15/12/2016
<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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>9</b>	<b>PAC Ref:</b>	2016/A0186
<b>Planning Ref:</b>	LA07/2015/1391/C	<b>DEA</b>	Crotlieve
<b>APPELLANT</b>	Mr Seamus McLoughlin		
<b>LOCATION</b>	70 Metres North West Of No.10 Mayo Road Mayobridge RT34 2HA		
<b>PROPOSAL</b>	Proposed dwelling on a farm		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	15/12/2016
<b>Appeal Procedure</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>			

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<b>ITEM NO</b>	<b>10</b>	<b>PAC Ref:</b>	2016/A0192
<b>Planning Ref:</b>	LA07/2016/0802/C	<b>DEA</b>	Crotlieve
<b>APPELLANT</b>	Darren O'Hagan		
<b>LOCATION</b>	60m NE Of 11a New Line Road Hilltown		
<b>PROPOSAL</b>	<sup>Newry</sup> Site for dwelling and detached garage		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	30/12/2016
<b>Appeal Procedure</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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>11</b>	<b>PAC Ref:</b>	2016/A0197
<b>Planning Ref:</b>	P/2014/0972/O	<b>DEA</b>	Crotlieve
<b>APPELLANT</b>	Edward Ryan		
<b>LOCATION</b>	15 Ryanstown Road Newry		
<b>PROPOSAL</b>	RT34 2NG Site for dwelling (additional information submitted)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	11/01/2017
<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>			

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<b>ITEM NO</b>	<b>12</b>	<b>PAC Ref:</b>	2016/A0201
<b>Planning Ref:</b>	LA07/2015/1217/C	<b>DEA</b>	Crotlieve
<b>APPELLANT</b>	Mr & Mrs Quinn		
<b>LOCATION</b>	Land Adjacent To And North East Of 20 Crohill Road Cobane		
<b>PROPOSAL</b>	Newry Site for replacement dwelling and garage (Off-site Replacement due to current proximity to public road.		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	18/01/2017
<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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>13</b>		
<b>Planning Ref:</b>	LA07/2016/0510/C	<b>PAC Ref:</b>	2016/A0204
<b>APPELLANT</b>	Robert Laurence Annett	<b>DEA</b>	The Mournes
<b>LOCATION</b>	Adjacent And West Of 60 Corcreaghan Road Kilkeel		
<b>PROPOSAL</b>	RT34 ASI Dwelling on a farm		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	23/01/2017
<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>14</b>		
<b>Planning Ref:</b>	LA07/2016/0826/C	<b>PAC Ref:</b>	2016/A0211
<b>APPELLANT</b>	Kevin Donaghy	<b>DEA</b>	Slieve Gullion
<b>LOCATION</b>	Lands To The West And Rear Of Nos 22 And 24 Ballynabee Road Maghernahely		
<b>PROPOSAL</b>	Reshrook Proposed erection of detached dwelling and garage		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	02/02/2017
<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

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<b>ITEM NO</b>	<b>15</b>		
<b>Planning Ref:</b>	LA07/2015/0647/C	<b>PAC Ref:</b>	2016/A0214
<b>APPELLANT</b>	PR Jennings	<b>DEA</b>	Rowallane
<b>LOCATION</b>	15m North Of 39 Listooder Road Crossgar		
<b>PROPOSAL</b>	Erection of farm dwelling (additional information received)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/02/2017
<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>			

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<b>ITEM NO</b>	<b>16</b>		
<b>Planning Ref:</b>	P/2014/0769/O	<b>PAC Ref:</b>	2016/A0215
<b>APPELLANT</b>	Mr Kevin Cunningham	<b>DEA</b>	The Mournes
<b>LOCATION</b>	210 Metres South Of No 36 Belmont Road Kilkeel RT34 A1 A		
<b>PROPOSAL</b>	Site for dwelling on a farm		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	10/02/2017
<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>			

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## Current Appeals

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<b>ITEM NO</b>	<b>17</b>	<b>PAC Ref:</b>	2016/A0217
<b>Planning Ref:</b>	LA07/2016/0732/C	<b>DEA</b>	Newry
<b>APPELLANT</b>	Mrs Mary Carr		
<b>LOCATION</b>	Lands To The Rear And South Of No. 6 Railway Road Meigh		
<b>PROPOSAL</b>	<sup>Killeavy</sup> Proposed erection of a farm dwelling		
<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	16/02/2017
<b>Appeal Procedure</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>			

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<b>ITEM NO</b>	<b>18</b>	<b>PAC Ref:</b>	2016/A0219
<b>Planning Ref:</b>	LA07/2016/0268/F	<b>DEA</b>	The Mournes
<b>APPELLANT</b>	J Graham And Sons		
<b>LOCATION</b>	Between 32 And 34 Eliza Close Newcastle		
<b>PROPOSAL</b>	Proposed storey and a half dwelling		
<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	17/02/2017
<b>Appeal Procedure</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>			

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## Current Appeals

394

<b>ITEM NO</b>	<b>19</b>		
<b>Planning Ref:</b>	LA07/2016/0365/C	<b>PAC Ref:</b>	2016/A0224
<b>APPELLANT</b>	Mr And Mrs McCluskey	<b>DEA</b>	Rowallane
<b>LOCATION</b>	Lands Between 1 Brae Road And 212 Belfast Road Ballynahinch		
<b>PROPOSAL</b>	2no proposed dwelling houses		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	27/02/2017
<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>			

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<b>ITEM NO</b>	<b>20</b>		
<b>Planning Ref:</b>	LA07/2015/1317/C	<b>PAC Ref:</b>	2016/A0225
<b>APPELLANT</b>	Paul And Dianne Kelly	<b>DEA</b>	Slieve Gullion
<b>LOCATION</b>	25m South Of 162 Tandragee Road Jerrettspass		
<b>PROPOSAL</b>	<sup>Newry</sup> 1 No. infill 1.5 storey dwelling and garage		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	27/02/2017
<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>			

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## Current Appeals

395

<b>ITEM NO</b>	<b>21</b>	<b>PAC Ref:</b>	2016/A0226
<b>Planning Ref:</b>	LA07/2016/0477/F	<b>DEA</b>	Slieve Gullion
<b>APPELLANT</b>	Mr Caolan Quinn		
<b>LOCATION</b>	50m South-east Of No. 106 Carrickgallogly Road Carrickgallogly		
<b>PROPOSAL</b>	<del>Belleek</del> Erection of dwelling		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	28/02/2017
<b>Appeal Procedure</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>			

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<b>ITEM NO</b>	<b>22</b>	<b>PAC Ref:</b>	2016/A0228
<b>Planning Ref:</b>	LA07/2016/0523/F	<b>DEA</b>	Newry
<b>APPELLANT</b>	Ms Naiomh Morgan		
<b>LOCATION</b>	Adjacent To No 13 Crieve Road Newry BT34 2JT		
<b>PROPOSAL</b>	Dwelling House		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	14/03/2017
<b>Appeal Procedure</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>			

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## Current Appeals

396

<b>ITEM NO</b>	<b>23</b>		
<b>Planning Ref:</b>	LA07/2016/0561/F	<b>PAC Ref:</b>	2016/A0238
<b>APPELLANT</b>	Mr & Mrs Samuel Duke	<b>DEA</b>	Rowallane
<b>LOCATION</b>	19 Inishbeg Killyleagh Downpatrick		
<b>PROPOSAL</b>	Extension to existing curtilage of dwelling. Retention of existing pigeon loft and construction of additional loft		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	16/03/2017
<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>			

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<b>ITEM NO</b>	<b>24</b>		
<b>Planning Ref:</b>	P/2014/0769/O	<b>PAC Ref:</b>	2016/AO125
<b>APPELLANT</b>	Mr Kevin Cunningham	<b>DEA</b>	The Mournes
<b>LOCATION</b>	210 Metres South Of No 36 Belmont Road Kilkeel RT34 41 A		
<b>PROPOSAL</b>	Site for dwelling on a farm		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/02/2017
<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>			

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## Current Appeals

397

<b>ITEM NO</b>	<b>25</b>		
<b>Planning Ref:</b>	P/2015/0147/LDP	<b>PAC Ref:</b>	2016//E0005
<b>APPELLANT</b>	Mr Gabriel McEvoy	<b>DEA</b>	Newry
<b>LOCATION</b>	14m South West Of No 255 Dublin Road Killeen		
<b>PROPOSAL</b>	Newry Erection of agricultural building and associated hardstanding area, including removal of existing stone wall to provide access from existing agricultural yard.		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	02/05/2017
<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>			

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<b>ITEM NO</b>	<b>26</b>		
<b>Planning Ref:</b>	LA07/2016/0396/L	<b>PAC Ref:</b>	2016/E0032LDC
<b>APPELLANT</b>	Michelle McGivern	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	26A Greenan Lough Road (on Lands Associated With 26 Greenan Lough Road)		
<b>PROPOSAL</b>	Dwelling of temporary construction within the curtilage of an existing dwelling		
<b>APPEAL TYPE</b>	Plg Conditions		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	15/11/2016
<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>			

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## Current Appeals

398

<b>ITEM NO</b>	<b>27</b>	<b>PAC Ref:</b>	2016-E0045
<b>Planning Ref:</b>	LA07/2015/0166/L	<b>DEA</b>	The Mournes
<b>APPELLANT</b>	Mr Ronald Sloan		
<b>LOCATION</b>	29 Leitrim Road Kilkeel		
<b>PROPOSAL</b>	A Certificate of Lawfulness confirming that the construction of the works undertaken were lawful under planning reference P/2009/0663/F and P/2009/1484/F, and therefore constitute a material start to the dwelling approved under reference P/2009/0663/F.		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	24/01/2017
<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>			

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<b>ITEM NO</b>	<b>28</b>	<b>PAC Ref:</b>	2017/A0002
<b>Planning Ref:</b>	LA07/2015/0429/F	<b>DEA</b>	Crotlieve
<b>APPELLANT</b>	Rory And Kerri Farrell		
<b>LOCATION</b>	Site 11 The Avenue Burren		
<b>PROPOSAL</b>	New two storey house with attached garage and associated external works		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	04/04/2017
<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>			

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## Current Appeals

399

<b>ITEM NO</b>	<b>29</b>		
<b>Planning Ref:</b>	LA07/2016/0150/C	<b>PAC Ref:</b>	2017/A0016
<b>APPELLANT</b>	Alan & Ronald Davidson	<b>DEA</b>	Croflieve
<b>LOCATION</b>	Adjacent And Immediately South Of No.17 Ardaragh Road Newry		
<b>PROPOSAL</b>	Co Down RT34 1NY Erection of managers dwelling and domestic garage		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	21/04/2017
<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>			

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<b>ITEM NO</b>	<b>30</b>		
<b>Planning Ref:</b>	LA07/2015/0093/F	<b>PAC Ref:</b>	2017/A0020
<b>APPELLANT</b>	Maurice Walsh	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	14A Belfast Road Dundrum Newcastle		
<b>PROPOSAL</b>	Change of use of existing shed from light industrial for storage and distribution associated with oyster/mussel farming. (retrospective)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	28/04/2017
<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>			

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## Current Appeals

400

**ITEM NO** 31  
**Planning Ref:** LA07/2016/1147/K **PAC Ref:** 2017/A0026  
**APPELLANT** Noel Ross **DEA** Rowallane  
**LOCATION** Between 1 Drumgiven Road And 37 Creevyargon Road  
 Ballynahinch  
**PROPOSAL** Infill site for 2 dwellings and associated domestic garages.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 08/05/2017  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

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**ITEM NO** 32  
**Planning Ref:** LA07/2016/0736/F **PAC Ref:** 2017/A0027  
**APPELLANT** Mr Noel Ritchie **DEA** Slieve Croob  
**LOCATION** To The Rear 102 Drumsnade Road  
 Drumaness  
 RT24 RN.I  
**PROPOSAL** Retrospective application for retention of timber frame domestic  
 dwelling on site of storage shed

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 09/05/2017  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

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## Current Appeals

401

<b>ITEM NO</b>	<b>33</b>	<b>PAC Ref:</b>	2017A0030
<b>Planning Ref:</b>	LA07/2016/0557/F	<b>DEA</b>	Slieve Gullion
<b>APPELLANT LOCATION</b>	Mr And Mrs Oliver Reavey 85 Newtown Road Camlough Newry		
<b>PROPOSAL</b>			

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	15/05/2017
<b>Appeal Procedure</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>			

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<b>ITEM NO</b>	<b>34</b>	<b>PAC Ref:</b>	2017/A0033
<b>Planning Ref:</b>	LA07/2017/0092/F	<b>DEA</b>	The Mournes
<b>APPELLANT LOCATION</b>	Mr Fintan McMullan 16 Mourne View Avenue Newcastle Newcastle		
<b>PROPOSAL</b>	Extension to front of dwelling (Retrospective)		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	22/05/2017
<b>Appeal Procedure</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>			

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## Current Appeals

402

<b>ITEM NO</b>	<b>35</b>		
<b>Planning Ref:</b>	LA07/2016/1296/C	<b>PAC Ref:</b>	2017/A009
<b>APPELLANT</b>	Mr And Mrs John Curran	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	Opposite 2 And 4 Magheralone Road Drumaness Rallvnahinch		
<b>PROPOSAL</b>	Proposed 1No. dwelling and garage with associated site works		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	11/04/2017
<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>			

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# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0184
<b>Appeal by:</b>	Ms Clare Ferris
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Dwelling
<b>Location:</b>	Between Nos 16 and 20 Lough Road, Crossgar
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	LA07/2015/1315/O
<b>Procedure:</b>	Written Representations with Commissioners Site Visit on 17 May 2017
<b>Decision by:</b>	Commissioner Pamela O'Donnell, dated 23 May 2017

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## Decision

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

## Reasoning

2. The main issue in the appeal is whether the proposal is acceptable in principle in the countryside.
3. The Planning Act (NI) 2015 requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. The Ards and Down Area Plan 2015 operates as the local development plan for the area where the appeal site is located. The site lies in the countryside, outside any settlement identified in the plan. The plan contains no material policies for the type of development proposed. There are, however, relevant regional policies as discussed below.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area and it retains certain existing planning policy statements. Amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21). Taking into account the transitional arrangements, the retained PPS21 provides the relevant policy context for the appeal proposal. Policy CTY1 thereof indicates that there are types of development acceptable in principle in the countryside. 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 a proposal satisfies Policy CTY8, it would also satisfy Policy CTY1.

5. Policy CTY8 of PPS21 is entitled Ribbon Development and it states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.32 indicates that ribbon development is detrimental to the character, appearance and amenity of the countryside. Though this type of development has been consistently opposed, policy goes on to say that an exception will be permitted. This exception relates to the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage, provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy defines a substantial and built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear.
6. The Council argue that the site does not represent a gap site within a substantial and continuously built up frontage and that the proposal would result in ribbon development. Their argument is that No 16 Lough Road does not have frontage to the road as, in their opinion, it is separated from the frontage by an agricultural field. They argue that the curtilage of No 16 is defined by the land between the dwelling and outbuildings to the rear while to the front it extends to a small immediate area defined by a few trees and a partially intact stone wall.
7. The appeal site is located along the Lough Road and between two dwellings at Nos 16 and 20 Lough Road. No 16 is a vacant dwelling with outbuildings to its rear. It is accessed via a laneway to its immediate south west. There are remnants of an old stone wall to the front of the dwelling, beside a tree, but this wall does not extend across the full elevation of the dwelling. I was told at the site visit that the wall never extended across the dwelling to separate it from the road and that there was once a path to the house that led to the front garden. The Appellant stated that she played in the front lawn as a child and that it was never used for agricultural purposes. This oral evidence was not disputed and in addition it is noted that the red line of a historical approval for a replacement dwelling on the site included the area to the front of the dwelling - (R/1999/0673/F).
8. On the ground there is no boundary feature to the front of No 16 that physically or functionally separates it from the road. The area to the front of No 16 reads as a front garden area associated with the vacant dwelling. There is no compelling evidence that this area is an agricultural field as argued by the Council. Accordingly, as the plot at No 16 shares a boundary with the road, No 16 has a frontage to the road. The appeal site is located between the buildings at Nos 16 and 20 Lough Road. The Council did not argue that the proposal failed to comply with any of the other policy requirements. Thus, in the evidential context before me, I find that the proposal satisfies the exceptional test and complies with Policy CTY8. Given that the proposal complies with Policy CTY8, it is also in accordance with Policy CTY1 of PPS21. The reason for refusal is not sustained.
9. Given the surrounding context, a ridge height restriction of no more than 6.35m from existing ground level would be appropriate and necessary in the interest of visual amenity. The suggested underbuild is accommodated within the specified height restriction. As there is a change in levels across the site, details of proposed and existing levels would be required as part of the reserved matters application. Visibility splays of 2.0m by 45m are necessary in the interest of road

safety and a landscaping plan would also be necessary in the interest of visual amenity.

### Conditions

1. Except as expressly provided for by Conditions 2 and 4 the following reserved matters shall be approved by the Planning Authority - the siting, design and external appearance of the dwelling and means of access thereto,
2. The ridge height of the dwelling shall not exceed 6.35m above the existing ground level at the lowest point within its footprint.
3. Any application for approval of reserved matters shall include plans indicating floor levels of the proposed dwelling in relation to existing and proposed ground levels, all in relation to an identified datum point on Lough Road.
4. Visibility splays of 2.0m by 45m shall be laid out in both directions at the access point before any building operations commence and shall be permanently retained thereafter.
5. No development shall take place until there has been submitted to and approved by the Planning Authority a landscaping scheme showing all new boundaries to be defined by timber post and wire fencing with trees and hedgerows provided along the boundaries and including the location, numbers, species and sizes of trees to be planted within the site. The scheme of planting as finally approved shall be carried out during the first planting season after the dwelling is occupied. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Planning Authority gives written consent to any variation.
6. Application for approval of the reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.
7. The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

This decision is based on the Site Location Map @ 1:2500 stamped refused by the Council on 29 September 2016.

**COMMISSIONER PAMELA O'DONNELL**

2016/A0184

406

**List of Appearances**

Planning Authority:- Ms C Cooney (Newry & Mourne District Council)

Appellant(s):-  
Mr G Tumulty (Agent)  
Ms C Ferris (Appellant)  
Mr P McKeag (Supporter)

**List of Documents**

Planning Authority:- "A" Statement of Case

Appellant(s):-  
"B" Statement of Case  
"C" Rebuttal



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0174
<b>Appeal by:</b>	Ms Sheena Gribben
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Site for dwelling and garage
<b>Location:</b>	60m south east of No.47 Castlewellan Road, Hilltown
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	LA07/2016/0731/O
<b>Procedure:</b>	Informal Hearing on 6 April 2017
<b>Decision by:</b>	Commissioner Brigid McGlinchey dated 2 May 2017

## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposed development would be acceptable in principle in the countryside and whether it would be an exception for the intensification of an access onto a protected route.
3. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan unless material considerations indicate otherwise. In the Banbridge Newry & Mourne Area Plan 2015 the appeal site is located in the rural area within the Mourne Area of Outstanding Natural Beauty with the proposed access to be taken from the B8 Castlewellan Road, an identified protected route. The Plan contains no specific policies or designations that are of assistance in the determination of this appeal. The relevant policy context is therefore provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 3: Access, Movement and Parking (PPS3), which are identified as retained policy documents by the Strategic Planning Policy Statement for NI (SPPS). This latter document indicates that any conflict between the SPPS and any retained policy will be resolved in the favour of the provisions of the SPPS. The document, Building on Tradition: A Sustainable Design Guide for the NI Countryside (BOT) provides supplementary planning guidance to PPS21. Though the appellant referred to PPS16: Tourism and PPS18: Renewable Energy, the policy provisions of these documents are not relevant to the determination of the appeal proposal.
4. Policy CTY1 of PPS21 lists a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. This includes a dwelling on a farm in accordance with Policy CTY10. This policy is expressed permissively stating that planning permission will be granted where three criteria are



- met. The planning authority accepts that the farm business is currently active and established for more than 6 years and that no development opportunities had been sold off from the farm holding to satisfy criteria (a) and (b). Its objection is that the proposal fails to comply with criterion (c) which requires that the new building be visually linked or sited to cluster with an established group of buildings on the farm. This requirement is reiterated in paragraph 6.73 of the SPPS. Criterion (c) goes on to state that where practicable, access to the dwelling should be obtained from an existing laneway.
5. Paragraph 5.41 of the amplification of Policy CTY10 advises that a new dwelling should be positioned sensitively with an established group of buildings on the farm, either to form an integral part of that particular building group, or when viewed from vantage points, it reads as being visually interlinked with those buildings, with little appreciation of any physical separation that may exist between them. It goes on to state that it is not acceptable to position a dwelling with buildings which are on a neighbouring farm holding. The established group of buildings on the farm associated with the farmhouse at No.50 Castlewellan Road is located close to the roadside. The appeal site is situated on the other side of the road on higher ground and accessed by an existing laneway. The site is separated by a distance of 240m from the farm buildings and consequently the proposed dwelling would not cluster with them. Though the site can be viewed in the context of the subject farm buildings from the long distance vantage points on Lower Ballyweeley Road and Ballycoshane Road as identified by the appellant, the extent of the physical separation is clearly apparent with the appeal site having a closer visual linkage with an adjacent non-associated farmstead. The BOT guidance document does not alter the thrust of the policy and highlights that a dwelling should be sited as close as possible to the existing cluster. I do not consider that the circumstances in appeal decision 2016/A0036 are comparable as the Commissioner in that case found that there was little appreciation of physical separation between that proposal and buildings on the associated farm holding.
  6. Criterion (c) goes on to state 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 a farm or out-farm and where there are demonstrable health and safety reasons or verifiable plans to expand the farm business at the existing building group. A number of health and safety concerns were presented by the appellant. A submitted letter from a veterinarian practitioner stated that a dwelling on land adjacent to the farm buildings would present a bio-security risk of potential cross contamination and that a shared entrance would be rendered inaccessible in the event of a disease outbreak such as foot and mouth disease. The subject buildings include the farm house with an outbuilding to the rear which consists of two separate units one of which is used as a domestic garage with the other used for animals. The appellant stated that the latter was used when ewes were lambing and when sheep needed inoculations or drenching. It was stated that an interconnected block of 5 buildings located further to the east and served by a separate access is no longer in use for cattle but is now used for housing sheep for similar purposes undertaken within the aforementioned smaller unit as well as for silage and storage of machinery.
  7. In considering the level and frequency of animal handling activities within the farm buildings at present, the veterinarian practitioner's advice appears to be overly cautious. Nonetheless, I consider that the configuration of the farm layout is such that if a dwelling was sited to the west of the farm house and the garage it would not be adjacent to buildings in use for housing animals. Notwithstanding the policy indication to use existing laneways where practicable, this would not preclude consideration of

proposals for other access arrangements. I am satisfied that a separate access at the field gate opening to the west of the farm house as suggested by the planning authority at the hearing would overcome the stated bio-security concerns regarding the use of the other two existing accesses to the farm. The Environmental Health consultation response referred to by the appellant advising that dwellings should be sited a minimum of 75m from existing farm complexes was in respect of a replacement dwelling sited beside a non-associated farm complex. I note however that the proposed site is within 75m of an adjacent unrelated farm stead. Whilst the appellant has indicated positioning the dwelling towards the centre of the site to increase the intervening distance from that farmstead, in so doing this would further increase the visual separation from the established group of buildings on the associated farm which would be contrary to the thrust of Policy CTY10 and the guidance contained in the BOT document. Though the appellant's fiancée is employed by Almac, I attach little weight to the stated bio-security concerns in respect of his employment as I witnessed him participating in farming activities on the day of my site visit. I am not persuaded that the health and safety arguments presented either individually or cumulatively merit the appeal proposal as an exception under criterion (c) of Policy CTY10. Considering all the matters raised I conclude that the proposal does not meet the requirements of Policy CTY10.

8. There is no evidence to suggest that the proposal falls into any of the other types of development that are listed as acceptable in principle in the countryside under Policy CTY1 of PPS21. Policy CTY1 indicates that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. Notwithstanding the appellant's arguments as to the integration qualities of the proposed site and its impact on the character of the area in comparison to a siting in proximity to the farm buildings, I do not consider that these outweigh the policy provisions of CTY1. I find that there is no policy support for the proposal in principle under PPS21. Accordingly, the planning authority's first reason for refusal under Policies CTY1 and CTY10 has been sustained.
9. Policy AMP3 of PPS3 requires that planning permission will only be granted for a development proposal involving direct access or the intensification of an existing access onto a protected route in a number of cases. One of these is a dwelling on a farm where it would meet the criteria for development and access cannot be reasonably obtained from an adjacent minor road. There is no minor road from which access could be taken to the appeal site and the proposed use of an existing access would not offend policy in its own right. However, as the appeal proposal is not acceptable in principle in the countryside in the first instance, the proposed intensification of the access would not represent an exception under Policy AMP3 of PPS3. The planning authority has sustained its second reason for refusal.

This decision is based on the Drawing 01 - 1:2500 scale Site location plan submitted with the planning application.

**COMMISSIONER BRIGID McGLINCHEY**

**List of Appearances**

Planning Authority:- L Grant

Appellant:- E Murphy, Agent  
S Gribben  
G McMahon, Fiancée of Appellant

**List of Documents**

Planning Authority:- C1 Statement of case + Appendices

Appellant:- A1 Statement of case + Appendices



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0173
<b>Appeal by:</b>	Mr George Kelly
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Dwelling and garage
<b>Location:</b>	Between No.54 & 54a Mill Road, Mullaghbawn, Newry
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	LA07/2016/0812/O
<b>Procedure:</b>	Hearing on 20 April 2017
<b>Decision by:</b>	Commissioner Brigid McGlinchey dated 15 May 2017

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the proposal is acceptable in principle in the countryside and its impact on the character of the surrounding landscape.
3. The Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan unless material considerations indicate otherwise. In the Banbridge Newry & Mourne Area Plan 2015 the appeal site is located in the rural area within the Ring of Gullion Area of Outstanding Natural Beauty (AONB). The Plan contains no specific policies or designations that are of assistance in the determination of this appeal. The relevant policy context is provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 2: Natural Heritage (PPS2).
4. Policy CTY1 of PPS21 identifies a range of types of development which in principle are considered to be acceptable in the countryside. One of these is a dwelling within an existing cluster of buildings in accordance with Policy CTY2a. Policy CTY2a indicates that planning permission will be granted for a dwelling at an existing cluster of development subject to six criteria being met. The appellant provided a satellite image showing the extent of the purported cluster which included a disused mill and four dwellings with associated garages. To the extent that there are four or more buildings within the defined area with at least three of them being dwellings, I find that the identified grouping complies with the first criterion of Policy CTY2a. However, based on my assessment of the disposition and visual relationship of the buildings when travelling in either direction along Mill Road, I find that the identified grouping does not appear as a single entity in the landscape. Consequently the second criterion is not met. Albeit that the disused mill is part of the industrial heritage of the area and buses may stop to allow passengers to see it, it is not open to the public. This evidence does not confirm that it is a hub or gathering point in the community. The junction of Mill Road with the Ballykeel Road is located 70m south of the junction of

Mill Road and the minor road leading to Maphoner Road. Given this separation distance, these junctions cannot be considered as being a staggered crossroads. I am reinforced in this assessment as there is no signage on the road to suggest that the road user is approaching a crossroads. Consequently there is no focal point to comply with the third criterion.

5. The other three criteria of Policy CTY2a relate to the detail of the site and the proposal. The fourth criterion requires that the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster. The appeal site is a flat roadside field that is defined by fencing on all four boundaries. The residential property at No.54a Mill Road lies to the south while a laneway leading to the dwelling at No.54 is situated to the north with the garden of that latter property partially abutting the appeal site to the west. Whilst I accept that the site is bounded on at least two sides by other development in the identified grouping, I find that in the absence of any boundary vegetation or other identified features this open site does not provide a suitable degree of enclosure. The fourth criterion is therefore not met.
6. The fifth criterion requires that the development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside. Whilst there is development in the vicinity of the appeal site, the area is characterised primarily by dispersed dwellings and rural ambience has been retained. The proposed buildings would be visually associated with Nos. 54 and 54a Mill Road and would create a linear form of development. For this reason, the proposal would not round off or consolidate development. I find that the proposal fails the fifth criterion. With respect to the sixth criterion, I am satisfied that subject to the siting of the dwelling within the southern part of the site and the positioning and orientation of windows on the proposed dwelling, there would be no potential for adverse impact on the residential amenity of No. 54. The sixth criterion can therefore be met. Nonetheless, as four of the six criteria are not met, I conclude that Policy CTY2a does not support the proposed development.
7. Another example of a type of development acceptable in principle in the countryside under Policy CTY1 is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. Policy CTY8 is entitled Ribbon Development and states that planning permission will be refused for a building which creates or adds to a ribbon of development. The policy however goes on to say that an exception will be permitted in the form of 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. The policy defines a substantial and built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear. Though the proposal was described as a gap/infill site in the P1 form that accompanied the planning application, the appellant presented no supporting arguments in his statement of case. When questioned at the hearing, he indicated that the appeal site did not lie within a substantial and built up frontage to qualify as a gap site under Policy CTY8.
8. The planning authority and the third party objected on the grounds that the proposal would create a ribbon of development. Paragraph 5.32 of the amplification of the Policy CTY8 indicates that ribbon development is detrimental to the character, appearance and amenity of the countryside. Paragraph 5.33 states that a ribbon does not have to have a continuous or uniform building line. It goes on to state that buildings sited back, staggered or at angles and with gaps between them can still

represent ribbon development if they have a common road frontage or they are visually linked. The proposal would visually connect with Nos. 54 and 54a Mill Road and create a ribbon of development when viewed from either approach along Mill road. In this regard, the objector's concern and the planning authority's second reason for refusal have been sustained. Policy CTY1 states that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. The appellant advanced no other arguments. I conclude that the proposal is not acceptable in principle in the countryside and the planning authority has sustained its first reason for refusal.

9. As the site is open to the road and lacks any long established natural boundaries to provide a suitable degree of enclosure, I consider that even a modest sized dwelling and garage would not visually integrate. When viewed from either direction along Mill Road, the presence of the other dwellings would not be sufficient to integrate the proposal. New substantial planting would be required to integrate the proposal. This would take some time to mature, and in the interim, such planting would not mitigate the visual impact of the proposal. I consider that the site fails to provide the necessary attributes to satisfy the integration requirements of Policy CTY13. The planning authority has sustained its third reason for refusal.
10. Policy CTY14 permits a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The policy identifies five criteria where a new building would be unacceptable. I have already found that the proposal would create a ribbon of development and is therefore unacceptable under criteria (d) of Policy CTY14. The proposal would result in a suburban style build-up of development when viewed with the existing grouping of buildings and is therefore also unacceptable under criterion (b). I conclude that the proposal would cause a detrimental change to the rural character of the area. The planning authority has sustained its third reason for refusal.
11. Policy NH6 of PPS2 sets out policy for new development proposals within AONBs. It states that planning permission will only be granted where the proposal is of an appropriate design, size and scale for the locality. Whilst this is an outline application and I do not have detailed drawings to consider, planning permission is sought for new development within the AONB. The policy in general relates to the protection of the character of the AONB and of the particular locality wherein the development is proposed. As concluded above, the proposal would extend ribbon development and it would result in suburban style build up within the Ring of Gullion AONB which would adversely affect its special character in general and the appearance of the local area. The proposal would therefore not comply with Policy NH6. The planning authority has sustained its fifth reason for refusal.

This decision is based on Drawing 01 – 1:2500 scale Site location map submitted with the planning application.

**COMMISSIONER BRIGID McGLINCHEY**

**List of Appearances**

Planning Authority:- G Murtagh

Appellant:- T Young, Collins & Collins  
G Kelly, Appellant  
A Kelly, Daughter of Appellant

Third Parties:- R Woods HQ Building & Design  
P McCoy  
R McCoy

**List of Documents**

Planning Authority:- C1 Statement of case + Appendices

Appellant:- A1 Statement of case + Appendix

Third Parties:- O1 Statement of case



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0140
<b>Appeal by:</b>	Frank King
<b>Appeal against:</b>	The refusal of planning permission
<b>Proposed Development:</b>	Retention of existing shed and hardstanding area for agricultural purposes
<b>Location:</b>	Lands to the rear of no 33 Flagstaff Road and associated farm complex, Newry (shed approx 45m to the west of existing dwelling with hardstanding extending approx 50m further west and 33m further north-west of shed)
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	P/2014/0670/F
<b>Procedure:</b>	Written representations with accompanied site visit on 22 <sup>nd</sup> March 2017.
<b>Decision by:</b>	Commissioner Mandy Jones dated 2 <sup>nd</sup> May 2017.

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## Decision

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

## Reasoning

2. The main issue in this appeal is whether the proposal is acceptable in principle in the countryside.
3. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations dictate otherwise. The appeal site is located within the countryside in the Banbridge, Newry and Mourne Area Plan 2015. It is within an AONB. However, there are no policies in the Plan of relevance to the appeal proposal.
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. The SPPS retains policies within existing planning policy documents until a new Plan Strategy for the whole council area has been adopted. It sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any retained policy under the transitional arrangements must be resolved in favour of the provisions of the SPPS. Paragraph 6.73 of the SPPS provides strategic policy for residential and non – residential development in the countryside. In respect of agricultural and



forestry development it states that provision should be made for development on an active and established ( for a minimum 6 years ) agricultural holding or forestry enterprise where the proposal is necessary for the efficient operation of the holding or enterprise. New buildings must be sited beside existing farm or forestry buildings on the holding or enterprise. This is broadly consistent with the policies contained within Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) regarding Agricultural and Forestry Development. Therefore, PPS 21 provides the policy context for this appeal.

5. The Council's first reason for refusal refers to Policy CTY 11 – Farm Diversification. However, the appeal relates to the retention of an existing shed for agricultural purposes and does not involve any proposals for farm diversification. The Council's reference to Policy CTY 11 is misplaced and cannot be sustained.
6. Within PPS 21, policy CTY 1 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is Agricultural and Forestry Development in accordance with Policy CTY 12. This policy states that planning permission will be granted for development on an active and established agricultural or forestry holding where all of a number of criteria are met. Paragraph 5.56 states that the determining criteria for an active and established business will be that set out under Policy CTY 10. This requires that the farm business is currently active and has been established for at least 6 years. The appellant's farm business ID number is 619136 and farm land maps indicate a holding of approximately 95 acres. The DARD consultation response dated 26<sup>th</sup> November 2014 confirms that the appellant's business has been in existence for more than 6 years.
7. In this case, the Planning Authority argue that the appeal proposal fails to comply with criterion (a) which requires that it is necessary for the efficient use of the agricultural holding; that the appellant has not provided sufficient information to confirm that there are no suitable existing buildings on the holding and that it has not been demonstrated that there are no alternative sites available at another group of buildings on the holding.
8. The appeal proposal seeks the retention of an agricultural shed. The area of the shed is approximately 19.8m x 9.750m and it has a ridge height of 6.5m. External finishes comprise of smooth concrete to the lower walls and the upper part is profiled metal cladding. There is a large door opening with a roller shutter door in the gable wall. It is orientated parallel to the Flagstaff Road and set back approximately 65m from the road. The shed sits immediately to the rear and west of a complex of farm buildings.
9. The existing farm buildings located on the Flagstaff Road are the only group of agricultural buildings on the appellant's extensive holding. The complex comprises the following buildings:
  - A Existing Dwelling House no 33 Flagstaff Road;
  - B Existing Dwelling House no 31 Flagstaff Road;
  - C Small Birthing shed and Horse Stables
  - D Agricultural Machinery Store

- E Underground slatted cow shed;
  - F Appeal building used for dry storage/animal bedding and calves;
  - G Existing poultry shed;
  - H Fuel Sales building (subject of appeal ref: 2016/A0139);
  - I Storage building.
10. The Council state that the shed and hard standing lie outside the farm holding. The shed sits directly to the west and rear of the existing complex. It is approximately 17m from the slatted cow shed and 15 m from the poultry shed opposite. I note that the DARD farm maps exclude all of the farm buildings. I consider that the appeal shed and hardstanding both visually and functionally are part of the overall farm complex.
11. I was told that the appellant operates a beef rearing and sheep rearing unit at the farming enterprise. His current herd list and the herd identification number for the holding is 242638. The appellant has completed many competency tests for the producing of Beef and Lamb and the holding is registered as an approved producer within the Beef and Lamb Quality Assurance scheme for Northern Ireland. The beef herd has continually increased in size from 26 to 30 cattle in 2016 and continues to grow. He intends to grow his herd numbers and additional space is required for calving.
12. The appellant argues that for him to remain part of his existing animal schemes and memberships it is essential that shelter facilities are provided at this holding for his livestock. The shed is to house his young calves separate from his other livestock in order to promote good husbandry and provide the required isolation areas. It is proposed to use this building for a variety of agricultural uses throughout the calendar year. Cattle are grazed within the lands and the shed is for shelter and as a storage facility for animal dry bedding. The shed has been designed for agricultural use and the existing drainage within the building is piped to the adjacent existing slatted underground tank. I was told that the shed was constructed with the aid of an agricultural grant received from DARD and the remaining funds from the appellant's farm account.
13. The appellant stated that the shed has been used over the last 4/5 years, throughout the year as follows;
- October – January: Storage of dry feed/large animal bedding hay/straw,
  - February – May : bedding and calving unit – slatted tanks are unsuitable for cows in calf,
  - May – September: building cleaned and used for isolation purposes for importing new livestock, animals held for 30 days before joining the herd.
14. The shed and the cattle slatted shed adjacent can accommodate 30 cattle and allow for expansion.
15. At my site visit it was evident that all of the agricultural buildings within the complex as listed above are fully utilised as described. The appeal shed housed a number of cattle, dry bedding and some agricultural machinery. I consider that there are no other suitable existing buildings on the holding which could be used as required by the appellant due to their limited size and volume. In any case, all

- other existing buildings are being used to full capacity. There are no other buildings on the existing holding with the exception of the appellant's own dwelling.
16. I am persuaded from the evidence presented and my observations on site that the agricultural shed is necessary for the efficient use of the agricultural holding and criterion (a) has been met. I accept that there are no suitable buildings on the holdings which can be used. As the shed is sited immediately to the rear and west of the farm complex, I consider that it also meets the policy test which requires it to be sited beside the existing farm buildings.
  17. Policy refers to exceptional circumstances where consideration may be given to an alternative site away from the existing farm buildings in certain circumstances and this was referred to in the Council's reason for refusal. As I have concluded that the shed is part of the existing complex it is unnecessary to provide justification for an alternative site.
  18. The Council argue that the existing building and hard standing area are currently in a commercial use as part of a fuel storage and distribution business and is not used for agricultural purposes. However, the appeal proposal is for the retention of an existing shed and hard standing area for agricultural purposes. Evidence presented was for an agricultural use only and at my site visit the shed and hardstanding were in agricultural use. Paragraph 5.55 states that all permissions granted under policy CTY 12 will be subject to a condition limiting the use of the building to agricultural use and I will attach such a condition.
  19. Although not referred to in their reason for refusal, the impact to amenity was raised in the Council's statement of case. I note that Environmental Health raised no issues in regard to amenity. The Council referred to potential noise and nuisance but no evidence was provided to substantiate this. I note that the existing dwellings which are part of the farm complex are separated from the appeal shed by other buildings in the farm complex.
  20. Accordingly, as I have found that the appeal proposal complies with Policy CTY 12, the Council's second reason for refusal has not been sustained.
  21. Planning Policy Statement 2, Natural Heritage, Policy NH 6 – Areas of Outstanding Natural Beauty states that planning permission for new development within an area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and a number of criteria are met.
  22. The Council argue that the appeal shed and hardstanding are suburban in form. The external finishes of concrete walls and profiled cladding are typical materials found on agricultural buildings. Its form and scale are also typically agricultural. It is sited within and to the rear of the existing agricultural yard and nestles with the other agricultural buildings which are of a similar scale. From the Flagstaff Road, views of the appeal shed are essentially screened by the existing farm complex. From the Barracric Road to the south the appeal shed is viewed in the distance, set within the backdrop of existing buildings of the farm complex and due to topography and intervening vegetation is barely discernible. I consider that the siting and scale is sympathetic to the character of the AONB and accordingly the Council's third reason for refusal has not been sustained.

23. Accordingly, as the Council's reasons for refusal have not been sustained the appeal is allowed.

**Condition**

- (1) The building and hardstanding shall be for agricultural use only and for no other purpose.

This decision approves the following:

- PAC 2; Drawing no. PL-01 Rev A; Site Location Plan, scale 1:2500 / Floor Plan and Elevations, scale 1:100, date stamped refused 10.10. 2016.

**COMMISSIONER MANDY JONES**

**2016/A0140**

**List of Documents**

**Planning Authority:** 'A' Statement of Case

**Appellant:** 'B' Statement of Case

**2016/A140****Appearances at the Site Visit****Newry, Mourne and Down  
Planning Authority:**

Ms Patricia Manley  
Ms Lara O'Hare

**Appellant:**

Mr Frank King  
Mr Stephen Hughes (ERS Limited).



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0139
<b>Appeal by:</b>	Frank King
<b>Appeal against:</b>	The refusal of planning permission
<b>Proposed Development:</b>	Retention of existing fuel sales business to include existing hard standing area and portacabin
<b>Location:</b>	33a Flagstaff Road, Fathom Lower, Newry.
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	P/2014/0678/F
<b>Procedure:</b>	Written representations with accompanied site visit on 22 <sup>nd</sup> March 2017.
<b>Decision by:</b>	Commissioner Mandy Jones dated 18 <sup>th</sup> May 2017.

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## Decision

1. The appeal is dismissed.

## Reasoning

2. The main issues in this appeal are whether the proposal is acceptable in principle in the countryside and its impact on visual amenity and rural character.
3. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations dictate otherwise. The appeal site is located within the open countryside in the Banbridge, Newry and Mourne Area Plan 2015. It is within an Area of Outstanding Natural Beauty. However, there are no policies in the Plan of relevance to the appeal proposal.
4. The 6<sup>th</sup> reason for refusal refers to the site falling outside the town centre boundary, retail area as designated in the Plan. As the plan makes no reference to retailing outside the designated town centre this reason for refusal cannot be sustained.
5. 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. The SPPS retains policies within existing planning policy documents until a new Plan Strategy for the whole council area has been adopted. It sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any retained policy under the transitional arrangements must be resolved in favour of the provisions of the

SPPS. Paragraph 6.73 of the SPPS provides strategic policy for residential and non – residential development in the countryside. In respect of Farm Diversification development it states that provision should be made for a farm diversification scheme where the farm business is currently active and established (for a minimum of 6 years) and, the proposal is to be run in conjunction with the agricultural operations of the farm. Proposals must involve the re-use or adaption of existing buildings, with new buildings only being acceptable in exceptional circumstances. This is broadly consistent with the policies contained within Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) regarding Farm Diversification. Therefore, PPS 21 provides the policy context for this appeal.

6. Within PPS 21, policy CTY 1 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is Farm Diversification proposals in accordance with Policy CTY 11. This policy states that planning permission will be granted for a farm diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm and a number of criteria are met. Paragraph 5.49 states that for the purposes of this policy the determining criteria for an active and established business will be that set out under Policy CTY 10. This requires that the farm business is currently active and has been established for at least 6 years. The appellant's farm business ID number is 619136 and farm land maps indicate a holding of approximately 95 acres. The DARD consultation response dated 26<sup>th</sup> November 2014 confirms that the appellant's business has been in existence for more than 6 years.
7. In consideration of a farm diversification case the Council argue that the appeal proposal is located outside the existing farm holding, operates separately from it and does not run in conjunction with any of the agricultural operations of the farm. It is also argued that the fuel sales business is inappropriate to its rural location and detracts from the visual appearance of the area.
8. The appeal proposal seeks the retention of a yard and fuel sales business known as Fathom Fuels. On the site is an existing portacabin which is approximately 9.1m x 2.970m and is being used as an office associated with the fuel sales. It is set back approximately 20m from the road and orientated parallel to the road. Immediately adjacent and north of this is a sales and storage area with 2 fuel pumps (one is white diesel and one is red diesel), gas tanks and bagged fuel. This is covered by a corrugated roof supported by a concrete wall and steel post. To the rear of the portacabin are large fuel storage tanks. An existing farm building is located to the eastern portion of the site which is being used for the storage of fuel (outside the application site) and the hardstanding is part of the overall commercial yard for storage and sales. The fuel sales business has its own vehicular access from the Flagstaff Road which is adjacent and north of the access to the adjacent farm complex.
9. Immediately to the south of the fuel sales business is the existing farm complex. This is the only group of agricultural buildings on the appellant's holding. An aerial photograph submitted of the overall farm complex indicates the following buildings:



- A Existing Dwelling House no 33 Flagstaff Road;
  - B Existing Dwelling House no 31 Flagstaff Road;
  - C Small Birthing shed and Horse Stables
  - D Agricultural Machinery Store
  - E Underground slatted cow shed;
  - F Building used for dry storage/animal bedding and calves (subject of appeal ref: 2016/0140);
  - G Existing poultry shed;
  - H Appeal Fuel Sales building;
  - I Storage building Ancillary to existing fuel sales building.
10. It was argued that the appellant already operates this commercial business in conjunction with his existing farm business. I was told that the appellant, as the main proprietor is actively involved in both his fuel sales business and his farm business - and this was undisputed. It was evident from my site visit that the adjacent farm complex is a working farm. I would agree with the appellant that policy provides no explanation of the requirement 'to be run in conjunction with the agricultural operations on the farm'. The proposed fuel sales is on land which forms part of the overall farm complex and directly adjoins land which will continue to be used for agricultural purposes in connection with the farm. In this evidential context I accept that the proposal would be run in conjunction with the agricultural operations on the farm and that this part of policy would be met.
11. Criterion (b) requires that the farm diversification proposal in terms of character and scale is appropriate to its location. Paragraph 5.47 states that this policy aims to promote forms of diversification that are sustainable in the countryside, including suitable tourism or agri – tourism schemes. It is important that the countryside is not spoilt by unfettered development of urban uses. Diversification proposals should be of a scale and nature appropriate for the location and be capable of satisfactory integration into the rural landscape.
12. This Area of Outstanding Natural Beauty is predominantly characterised by detached dwellings set within an agricultural and attractive mountainous landscape. The proposed use for commercial fuel sales, on this extensive hardstanding area which is partially road frontage is inappropriate and incompatible with the character of this rural area. The roadside presence of this sales and storage area incorporating fuel pumps, the external storage of fuels and the associated portacabin detracts from the visual appearance of this landscape. I consider that the existing fuel sales business on the site has already eroded the visual quality of the AONB. As such, I consider that the retention of this existing fuel sales business in terms of character and scale is not appropriate within this rural area and this criterion has not be met.
13. Policy states that proposals will only be acceptable where they involve the re use or adaptation of existing farm buildings. Exceptionally, a new building may be permitted where there is no existing building available to accommodate the proposed use, either because they are essential for the maintenance of the existing farm enterprise, are clearly unsuitable for adaption and re- use or cannot be adapted to meet the requirements of other statutory agencies. Where a new

building is justified it should be satisfactorily integrated with an existing group of buildings.

14. The proposal does not involve the reuse or adaptation of an existing building. The proposal involves the retention of the portacabin which is used for office space. The appellant claimed that the existing buildings on the farm (as listed above) would be unsuitable for adaptation as they are all fully utilised with either cattle or farm machinery and other machinery. It was claimed that they are all essential for the maintenance of the existing farm enterprise.
15. Immediately in front of the portacabin is an existing farm building referred to as building 'I' in the appellant's aerial photograph of the overall farm complex. The key denotes that it is currently being used as a 'storage building ancillary to the existing fuel sales building.' This building stores gas tanks, turf, coal, sticks etc. As this building is already being used for storage for the unauthorised fuel sales business it is obviously not essential for the maintenance of the existing farm enterprise. I have no evidence that it is unsuitable for adaptation and from site inspections I conclude that there is no reason why it could not be re-used and adapted. I conclude that as there is an existing building available on the farm to accommodate the proposed use, the proposed portacabin would not qualify as an exception under Policy CTY 11.
16. Although I have found that a farm diversification project could be run in conjunction with the agricultural operations on the farm I have found that this use for fuel sales and buildings is not appropriate to this rural location in terms of character and scale. The proposal would not constitute a farm diversification project in accordance with Policy CTY 11 of PPS 21.
17. Policy CTY 1 goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement.
18. The appellant argued that the site was previously used as a milk distributor called 'Fathom Dairies' from 1960's onwards which operated in conjunction with the existing agricultural business. It was operated by the appellant's mother and father and the appellant took over the family farm business and diversified into the current fuel sales business. Letters of support and confirmation of the previous existence of the business was included within the statement of case. However, there are no planning approvals for this previous dairy business which has now ceased. The fuel sales business represents a new use which I have found to be unacceptable in this rural location.
19. The appellant stated that without the extra income from the fuel business, the farm business would struggle to cope with the financial pressures of operating this large holding. Whilst I acknowledge this additional income stream from the fuel sales business it does not outweigh the detriments I have identified to rural character.
20. The appellants advanced no other case that the proposed development was essential. The Council's objection to the proposal in principle is well founded and its 1<sup>st</sup> and 2<sup>nd</sup> reason for refusal based on Policies CTY 1 and CTY 11 of PPS 21 have been sustained.

21. Para 6.279 of the SPPS states that Retailing will be directed to town centres, and the development of inappropriate retail facilities in the countryside must be resisted. However, as a general exception to the overall policy approach some retail facilities which may be considered outside of settlement limits include farm shops, craft shops and shops serving tourist or recreational facilities. The proposal is for fuel sales and related products. The retail sale of fuel and related products is not an appropriate retailing facility in the countryside and is not one of the exceptions which policy considers to be acceptable in the countryside. The proposal for fuel sales is contrary to the SPPS and no special need has been demonstrated to justify relaxation of the strict planning controls in the countryside. Accordingly, the Council's 4<sup>th</sup> reason for refusal has been sustained.
22. Within PPS 2, Policy NH6, Areas of Outstanding Natural Beauty states that planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and a number of criteria are met. Criteria (a) requires that the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural beauty in general. I have previously concluded that the fuel sales use and appearance of the buildings and yard are out of context and in compatible with this rural setting. They are not sympathetic to the character and appearance of the AONB and I concur with the Council. The 3<sup>rd</sup> reason for refusal has been sustained.
23. The Council raised Planning Policy Statement 4: Planning and Economic Development as a reason for refusal. However, the preamble of PPS 4 states that 'With the exception of a limited number of specific policy references, mainly relating to acceptable alternative uses, this PPS does not provide policy for *retail uses*, (my emphasis) financial, professional and other services, leisure or tourism.' As this proposal is for the retention of existing fuel sales business which constitutes retailing this planning policy statement does not apply and the Council's 7<sup>th</sup> reason for refusal is not sustained.
24. The Council argued that the proposed development would harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance. I note that Environmental Health in their consultation response dated 16<sup>th</sup> September 2014 raised no concerns in regard to amenity. Whilst the Council raised these concerns no evidence was provided to substantiate these claims. In this evidential context, the Council's 5<sup>th</sup> reason for refusal cannot be sustained.
25. The Council's objections to the proposal in principle based on Policies CTY 1 and CTY 11 of PPS 21, Policy NH 6 of PPS 2 and paragraph 6.279 of the SPPS are well founded and its first, second, third and fourth reasons for refusal, which I have sustained are determining and the appeal must fail.

This appeal relates to the following drawings:

PAC 1: Existing Site Plan, Floor Plan, elevations and Site Location Plan drg no. PL-01

**COMMISSIONER MANDY JONES**

**2016/A0139**

**List of Documents**

**Planning Authority:** 'A' Statement of Case

**Appellant:** 'B' Statement of Case

**2016/A139****Appearances at the Site Visit****Newry, Mourne and Down  
Planning Authority:**

Ms Patricia Manley  
Ms Lara O'Hare

**Appellant:**

Mr Frank King  
Mr Stephen Hughes (ERS Limited).



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0163
<b>Appeal by:</b>	Mrs M Dodds
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Proposed dwelling and garage
<b>Location:</b>	Lands 20m north-east of 65 Tollymore Road, Newcastle
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	R/2015/0078/O
<b>Procedure:</b>	Informal Hearing 25 April 2017
<b>Decision by:</b>	Commissioner Alistair Beggs dated 8 May 2017.

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issue in this appeal is whether the proposal is acceptable in principle in this countryside area.
3. The relevant local development plan is the *Ards and Down Area Plan 2015*. While the site is located within an Area of Outstanding Natural Beauty (AONB) there is no specific policy in the Plan material to this appeal. The site is also identified as being in a Countryside Protection Area (CPA), however, in the case of this CPA the provisions of *Planning Policy Statement 21 – Sustainable Development in the Countryside* (PPS21) take precedence over Plan's relevant policy provisions. The Plan also identifies part of the site (along its northern boundary) as being within the Burren River Corridor Local Landscape Policy Area and the Burren River Site of Local Nature Conservation Interest. There is though no indication that the proposal would be contrary to the Plan's associated policy provisions.
4. In relation to PPS21, its policy CTY1 specifies a range of types of development considered acceptable in principle in the countryside and that will contribute to the aims of sustainable development. The appellant contended that the proposal met two of these types of development. Firstly, that it would be a new dwelling in an existing cluster in accordance with Policy CTY2a. Secondly, that the proposal would be the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 8. As the *Strategic Planning Policy Statement for Northern Ireland 2015* (SPPS) does not introduce a

more stringent policy context in respect of such development PPS21 remains the relevant policy context under which to consider this appeal. As such, while the Council's only reason for refusal refers to both Policy CTY8 and the SPPS, I consider the issue of ribbon development under Policy CTY8.

5. While Policy CTY8 and its justification and amplification would have benefitted from better drafting it is capable of objective interpretation. This Policy is entitled '*Ribbon Development*' – and its opening statement is that "planning permission will be refused for a building which creates or adds to a ribbon of development". I disagree with the appellant's interpretation of this statement – that a building 'within the bookends' of an existing ribbon of development cannot add to that ribbon of development. An everyday interpretation of the word 'add' in the context of the statement would encompass an increase in the number of buildings within an existing ribbon. The appeal proposal therefore could not benefit from such an argument even if it were to be concluded that it was within a ribbon of development.
6. Despite its opening statement Policy CTY8 then goes on to make provision for an exception expressly allowing for the creation of ribbon development. As noted in a number of appeal decisions the principle of this exception is confusing and contradictory in the context of the Policy's opening statement. However, it remains a provision against which to assess the appeal proposal.
7. The Policy advises that an exception to its opening statement will be permitted for the development of a small gap site sufficient only to accommodate 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 (my emphasis) meets other planning and environmental requirements. It goes on to note that for the purposes of this policy a substantial and continuously built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear. Paragraph 5.33 of CTY8's justification and amplification indicates that a road frontage includes a footpath or private lane. Thus, to meet the definition of what a substantial and continuously built up frontage is, the relevant buildings must be along a road frontage. Such a frontage is set apart from other instances of ribbon development for the purposes of CTY8.
8. It is acknowledged that PPS21's Paragraph 5.33 also advises that buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked. However, this wording sets out a basis for establishing generally where a ribbon of development, which may or may not be perceived as having a common road frontage, either exists or may arise. It is not concerned with defining a substantial and continuously built up frontage.

9. In considering if the appeal site meets the policy exception the appellant focussed upon the buildings at Nos. 63 and 65 Tollymore Road to the south of the appeal site and an agricultural building to its north-east which all front onto the eastern side of the road. As No. 70 lies on the opposite side of the road from the appeal site it must be discounted from the assessment as it does not share the same road frontage.
10. When considering what a small gap site is for the purposes of the Policy, the Policy headnote's wording directs the reader to consider the existing development pattern along the frontage in terms of size, scale, siting and plot size. The following reference to other planning and environmental requirements is not related to that consideration. Thus, while they are part of the area's context, the presence of surface water flooding and the Burren River (and associated LLPA and SLNCI) between No 65 and the agricultural building are technical constraints on development rather than matters which assist in considering if the gap site meets the policy exception.
11. The Appellant contended that the Policy headnote, by referring to plot sizes etc, required the size of the gap to be calculated on the basis of the distance between curtilages. However, the justification and amplification in paragraph 5.34 (which is there to assist in interpreting the Policy) clearly refers to gaps between housing or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. It goes on to comment that the infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. Thus, it is the gap between buildings that requires to be assessed. Additionally, CTY8's wording logically requires a consideration of the whole gap not just the appeal site.
12. The distance between the buildings at No. 65 and the agricultural building is about 140m. This distance is sequentially inclusive of the appeal site with its road frontage of about 64 metres, the River Burren and the agricultural field leading up to the agricultural building.
13. As regards existing development, Nos. 63 and 65 have road frontages of about 53 meters and about 32 meters respectively - broadly reflective of other adjacent developments albeit that they are not along the same road frontage. As regards the agricultural building its road frontage and curtilage are plainly evident on the ground and they corresponds with what is shown on the plans attached to that building's planning approval. The red line and access sight lines as marked on the approved plans are therefore of little relevance in determining the extent of that building's curtilage. The agricultural building's road frontage is therefore in the region of 20 metres. Also, while there is planning permission for a farmhouse adjacent the agricultural building, as it is not built it is not part of the existing development pattern to be considered.



14. Taking account of the existing development pattern the gap between No. 65 and the agricultural building could clearly accommodate more than two buildings. Indeed the gap between the Burren River and the agricultural building itself, whether or not it could or would be developed, could reasonably accommodate two buildings. Accordingly, the appeal site is not part of a small gap between existing buildings and no infill opportunities therefore arise on it under Policy CTY8.
15. Despite the inter-visibility between, and the juxtaposition of No. 70 with Nos. 63 and 65, its position on the other side of the Tollymore Road means that it is not perceived as part of a ribbon of development with them. Given this, and bearing in mind paragraph 5.34 of PPS21, any dwelling on the appeal site would extend the existing ribbon of development, identified by the Department as comprising Nos. 63 and 65, into the important visual break between them and the agricultural building. It would to my mind also open up the opportunity for future infill development on the remaining gap to erode existing rural character.
16. There is no support for the appeal proposal under Policy CTY8.
17. Policy CTY2a states that planning permission will be granted for a dwelling at an existing cluster of development provided all of its six criteria are met. A cluster is not defined by the policy, but the first three criteria give an indication of its intended meaning. The first criterion requires the cluster of development to lie outside of a farm and to consist of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures. The second criterion indicates the cluster is to appear as a visual entity in the local landscape. The third criterion is that the cluster is to be associated with a focal point such as a social / community building / facility, or is located at a crossroads.
18. The appeal site lies at the junction of the Tollymore Road with Wild Forest Lane. In terms of the first two criteria a cluster of more than 4 dwellings appearing as a visual entity in the landscape, and outside of a farm, has grown up in this vicinity. In relation to the third criterion the examples of focal points referred to in it are not exhaustive. Nonetheless, they are suggestive that a cluster for the purposes of the policy should contain within it a significant point of interest or activity. The appellant in this case relied upon the bridge over the Burren River and the physical curvature and junction of the Tollymore Road and Wild Forest Lane in their localised context. However, while the area is pleasant, the combination of features in the cluster is insufficient to provide a focal point in terms of the third criterion of Policy CTY2a.
19. The Department considered that the proposal would also fail Policy CTY2a's fifth criterion as they judged that No. 65 formed the end of development at the eastern side of the road. However, the site would be absorbed into the existing cluster of dwellings by its juxtaposition with them and the containing influence of the river

and its associated vegetation. Nor would the appeal proposal by itself significantly alter the area's existing character or visually intrude into the open countryside.

20. While the proposal fails the third criterion of Policy CTY2a it must be considered if there is justification to set this aside. The appellant in this regard referred to appeals 2010/A0202 and 2015/A0160. Appeal 2010/A0202 was allowed even though the third criterion of Policy CTY2a was not met due to the site specific characteristics of that site. While that decision does not expressly mention Policy CTY8 the Commissioner's description of one of the compelling site specific characteristics was that it was a small gap site within an otherwise substantial and continuously built up frontage extending along a road. As the proposal in appeal 2015/A0160 complied with the particular elements of Policies CTY2a and CTY8 at dispute it is of no relevance to this current appeal. Neither of these appeals sits on all fours with this current appeal.
21. I have considered the overall intent of the policy, the meeting of other CTY2a criteria, the presumption in favour of sustainable development and the appeal site's setting and characteristics - including the limited agricultural use the site could be put to. However, in considering these matters in the round and the appellant's claim that the development would cause no harm I refer to my earlier conclusions on Policy CTY8. Given this, I am not persuaded that there is sufficient justification in this case to set aside the appeal proposal's failure to comply with the third criterion of Policy CTY2a. The 2011 Department of the Environment training presentation on PPS21, provided by the appellant, adds nothing to my consideration of the issue.
22. The appeal proposal is contrary to the provisions of both Policy CTY8 and CTY2a. As such it is not one of the types of development specified as being acceptable under Policy CTY1. Policy CTY1 also states that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. There was no persuasive evidence to demonstrate that the proposal is essential. The proposal is therefore also contrary to Policy CTY1.
23. The Council's reason for refusal is sustained.

This decision relates to the Site Survey, Location Map, Photographs & Site Analysis plan stamped refused by the planning authority on 29 September 2016.

**COMMISSIONER ALISTAIR BEGGS**

**2016/A0163****List of Attendance**

Council: Mr McKean

Appellant: Mr Stephens, Matrix Planning

**List of Documents**

Council: 'A' Statement of Case

Appellant: 'B' Statement of Case

<b>Report to:</b>	<b>Planning Committee</b>
<b>Subject:</b>	Newry, Mourne and Down Local Development Plan: Draft Timetable
<b>Date:</b>	21 June 2017
<b>Reporting Officer:</b>	Anthony McKay, Chief Planning Officer
<b>Contact Officer:</b>	Andrew Hay, Principal Planning Officer

### **Decisions Required**

Note the content of this report.

#### **1.0 Purpose & Background**

- 1.1 The purpose of this report is to provide members with a draft Timetable for the production of the Newry, Mourne and Down Local Development Plan (LDP). The draft Timetable was presented to the SPR Committee on 15/6/17 for agreement. The Planning Committee was invited to the SPR Committee on 11/5/17 in the consideration of the report on the draft Timetable. This Timetable details the key stages, actions, and timescales in the plan preparation process.
- 1.2 The publication of the Timetable will mark the formal commencement of the LDP preparation process.
- 1.3 Legislation, namely the Planning (Northern Ireland) Act 2011, requires the Council to produce and review such a Timetable when preparing and adopting a LDP.
- 1.4 The Timetable sets out the Council's programme for the production of the LDP and includes details of the key stages in the process. It will help ensure that the plan process is efficiently managed and key stakeholders such as consultation bodies and the Planning Appeals Commission (PAC) are kept informed and can manage their own resources to facilitate their involvement in the LDP process.
- 1.5 The Timetable contains indicative dates as well as actions for the various stages of the plan preparation process. A number of assessments are required to be carried out in the preparation of the LDP, including a Sustainability Appraisal, a Strategic Environmental Assessment, a Habitats Regulations Assessment, and an Equality Impact Assessment. These are factored into the various key stages in the Timetable.
- 1.6 The draft Timetable was presented to the SPR Committee on 15/6/17 for agreement on:
  - The Local Development Plan: Draft Timetable
  - That the Planning Department liaise with the PAC and other key stakeholders prior to submitting the draft Timetable to the Department for Infrastructure for its agreement.
  - That following agreement of the Timetable by the Department for Infrastructure, that it be made available and published in accordance with Regulation 8 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015

#### **2.0 Key Issues**

- 2.1 In accordance with Regulation 7 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015, the Timetable needs to be approved by resolution of the Council

prior to submission to the Department for Infrastructure (DfI) for its agreement.

- 2.2 The Planning Department will liaise with the PAC to ensure that there is scope and capacity within the PAC for it to undertake the two required Independent Examinations for the LDP. The Planning Department will also discuss the proposed timescales with the other key stakeholders, especially Transport NI and NIEA, to ensure that their inputs can meet with these timescales.
- 2.3 The Timetable meets the requirements of the Planning Act (Northern Ireland) 2011 and the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 which require the Council to prepare, and keep under review a Timetable for the preparation and adoption of its LDP.
- 2.4 Following agreement by DfI, the Timetable will be made available and published in accordance with Regulation 8 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015. A copy of the agreed Timetable will be made available for inspection at the Council's Planning Offices in Newry and Downpatrick, a public notice will be placed in local newspapers, and it will be published on the Council's website.
- 2.5 Meeting the Timetable is dependent upon Member support, adequate resourcing and risk management. The proposed Timetable is a challenging one, particularly given the new style of plan based on significant levels of public engagement. In the event that the LDP timetable slips and requires amendment, Council has the power under the Planning Act (Northern Ireland) 2011 to publish a revised Timetable. This will require the prior agreement of the DfI. Any amendments will need to be published and made available on the Council website.
- 2.6 To coincide with the publication of the Timetable, a Steering Group will be established. As referenced in the Council's 'Statement of Community Involvement: A guide to community engagement in the planning process' (SCI), the Steering Group will comprise elected members of the Council and Senior Council Officers. The membership and the terms of reference of the Steering Group have still to be determined by the Council. The Steering Group will be the high-level co-ordinating body that will oversee the management of the LDP.
- 2.7 Following publication of the Timetable, there will be engagement with members through a series of workshops. The workshops will be arranged around the various LDP topic areas. The workshops will provide an opportunity for members to become proactively involved in, and help frame the conversation as part of, the plan preparation process. The number and format of the workshops is currently under consideration.

### 3.0 **Recommendations**

- 3.1 Members are requested to note the content of this report.

### 4.0 **Resource Implications**

- 4.1 N/A

### 5.0 **Equality Assessment**

- 5.1 N/A

## 6 **Appendices**

- Appendix 1 – Local Development Plan: Draft Timetable



Comhairle Ceantair  
**an Iúir, Mhúrn  
agus an Dúin**

**Newry, Mourne  
and Down**

District Council

## **Local Development Plan: Draft Timetable**

**June 2017**

## Getting in Touch

Should you have a Development Plan query, you can contact the Development Plan Team in the Council's Planning Department in the following ways:

**By email** to: [planning@nmandd.org](mailto:planning@nmandd.org)

**By post** to: Development Plan Team  
Newry, Mourne and Down District Council  
Downpatrick Office  
Downshire Civic Centre  
Downshire Estate, Ardglass Rd  
Downpatrick BT30 6GQ

**By telephone** on: 0300 200 7830

This document can be downloaded from our website at [www.nmandd.org](http://www.nmandd.org) or requested via the postal address, email as above, or by telephone on 0300 013 2233.

To ensure equality of opportunity in accessing information, copies of this document in alternative formats are available on request. Where the exact request cannot be met we will ensure a reasonable alternative is provided.

If you have any queries regarding this document please contact us using the details above.

## **1.0 Introduction**

- 1.1 The purpose of Local Development Plan Timetable (Timetable) is to set out the key stages of and an indicative timescale for the production of Newry, Mourne and Down District Council's new Local Development Plan 2030 (LDP).
- 1.2 The Timetable will have to meet the legislative requirements of the Planning Act (Northern Ireland) 2011 and the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 and therefore must be approved by resolution of the Council and agreed with Central Government (i.e. Department for Infrastructure) in accordance with Regulation 7 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015.

## **2.0 Purpose of the Local Development Plan**

- 2.1 The purpose the Local Development Plan (LDP) is to inform the general public, statutory authorities, developers and other interested parties of the policy framework and land use proposals that will guide development decisions within the District up to 2030.
- 2.2 The new LDP will be prepared in the context of the Council's Corporate Plan and will take account of the Council's Community Plan to enable us to plan for the future of the District.
- 2.3 The LDP must also take account of the regional policy context set by the Northern Ireland Executive and Central Government Departments. This includes amongst others, the Programme for Government, Sustainable Development Strategy, Regional Development Strategy and Strategic Planning Policy Statement.
- 2.4 The Plan will be produced in two stages consisting of two separate documents which will shape development within our District in the period to 2030. The first stage will be a Plan Strategy followed by the Local Policies Plan.
- 2.5 Prior to the preparation of the Plan Strategy and Local Policies Plan the Council will identify the key issues in the plan area and will formulate a series of options for dealing with them. The information will be published as a Preferred Options Paper (POP) which will indicate the Council's preferred options for growth and development across the District and will form the basis for consulting with the public and stakeholders who will have an opportunity to put forward views and have an influence on the LDP from the outset.
- 2.6 The Plan Strategy will establish the strategic direction of the plan in order to provide a level of certainty on which to base key development decisions across the District as well as the necessary framework for the preparation of the Local Policies Plan. The Strategy will set the aims, objectives, overall growth strategy and associated strategic policies applicable to the Plan area.



- 2.7 Once the Plan Strategy is adopted a Local Policies Plan will be prepared which will be consistent with the Plan Strategy. In contrast to the Plan Strategy the Local Policies Plan will deal with site specific policies and proposals associated with settlement limits, lane use zonings and environmental designations required to deliver the Council's vision, objectives and strategic policies.
- 2.8 Once adopted this LDP will replace the current development plans for the District, produced by the Department for the Environment, namely the Ards and Down Area Plan 2015 (ADAP)(adopted March 2009) and Banbridge, Newry and Mourne Area Plan 2015 (BNMAP)(adopted October 2013).
- 2.9 The Council will undertake an ongoing Sustainability Appraisal (SA) throughout the life of the LDP. This will run in parallel to the preparation of the Preferred Options Paper, the Plan Strategy and the Local Policies Plan. The SA process aims to ensure that the policies and proposals contained within the LDP are socially, economically and environmentally sustainable. Relevant reports will be published at each of the key stages of the plan making process.

### 3.0 The Timetable

- 3.1 In accordance with Regulation 6 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Timetable contains indicative dates for the various stages of the plan preparation process, these are set out at Appendix 1. A brief outline of the key stages is set out below:
- **Preferred Options Paper (POP)** – The POP is a public consultation document which will set out the most significant planning issues currently affecting our District, as well as those likely to become relevant in the future. It will include the Council's preferred options to address them.
  - **Draft Plan Strategy** – The Plan Strategy is the first of two 'Development Plan Documents' in the LDP process. The draft Plan Strategy is a public consultation document which will set out in draft terms the proposed broad aims, objectives and the overall future growth strategy and associated generic planning policies applicable across the District.
  - **Independent Examination (IE)** – An IE will be held to determine the soundness of the draft Plan Strategy, taking into account a consideration of the representations and counter representations received during the draft Plan Strategy consultation period. After the IE, an Advisory Report of its findings and recommendations will be issued to the Department for Infrastructure (DfI).
  - **Adoption of the Plan Strategy** – Following the IE and any relevant direction from DfI, the Council will formally adopt the Plan Strategy.
  - **Draft Local Policies Plan** – The Local Policies Plan is the second of the 'Development Plan Documents' within the LDP process. The draft Local Policies Plan is a public consultation document and will contain the Council's detailed land use proposals for the District.
  - **Independent Examination (IE)** - An IE will be held to determine the soundness of the draft Local Policies Plan, taking into account a consideration of

the representations and counter representations received during the draft Local Policies Plan consultation period. After the IE, an Advisory Report of its findings and recommendations will be issued to DfI.

- **Adoption of the Local Policies Plan** - Following the IE and any relevant direction from DfI, the Council will formally adopt the Local Policies Plan.

3.2 The Council is also required to carry out a number of assessments in the preparation of the LDP. These include:

- **Sustainability Appraisal (SA)** - This will help the Council to assess the sustainability of the LDP proposals and how the plan will contribute to the achievement of sustainable development, especially with regard to social, economic and environmental factors. This is required in relation to both LDP documents.
- **Strategic Environmental Assessment (SEA)** – A procedure to follow that contributes to the integration of environmental considerations in the preparation and adoption of plans and programmes. It will be undertaken in relation to both LDP documents as an integral part of the SA process above. Prior to commencing an SEA an initial screening exercise will be undertaken at the POP stage to determine if the LDP requires a full SEA.
- **Habitats Regulation Assessment (HRA)** – This considers the potential impact of LDP policies and proposals on designated European nature conservation sites.
- **Equality Impact Assessment (EqIA)** – In line with the Council's Equality Scheme, an Equality Screening exercise will be undertaken at the POP stage to assess if the LDP is likely to have an impact on specific groups identified in section 75 of the Northern Ireland Act 1998. If required a full EqIA will be undertaken for both the Plan Strategy and Local Policies Plan.
- **Rural Proofing** – This is a process by which all major policies and strategies are assessed to determine whether they have a detrimental impact on rural areas. The Rural Needs Act (Northern Ireland) 2016 imposes a statutory duty on local councils to consider rural needs when developing, adopting, implementing or revising policies, strategies and plans and designing and delivering public services.

#### 4.0 Delivery of the Local Development Plan

- 4.1 There are a number of factors outside the Council's control that may impact on the delivery of the Council's LDP within the indicative timescales indicated. This can include input from statutory consultees, the duration of the Independent Examination and reporting period, subsequent consideration by DfI and the potential for legal challenge.
- 4.2 To help identify the full range of factors that may impact of the delivery of the LDP a Risk Management Log has been developed (see Appendix 1). The Risk Management

log not only highlights the risks but outlines how the Council will seek to mitigate the impact of these.

- 4.3 To further assist with the effective management of the timetable a range of steps and safeguards will be put in place to manage the LDP decision making process and provide early warning of potential time slippage. Such steps include:
- Papers presented to the relevant Council Committee on a regular basis regarding LDP matters, including key planning topics and findings as they emerge.
  - A Steering Group will be set up comprising elected Members of the Council and Senior Council Officers. This is the high level co-ordinating body that will ensure overview and strategic input on behalf of the whole community as well as planning professionals.
  - A Project Management Team will be established comprising senior Council Officers and representatives from the key statutory/government departments.
  - An Annual Monitoring Report will be produced to inform Members and the Department for Infrastructure on our progress in meeting the published timetable.

## **5.0 Review**

- 5.1 In the event that the LDP Timetable requires amendment, the Council has the power under the Planning Act (Northern Ireland) 2011 to publish a revised timetable. Any such amendments must be published and made available on the Council website.

## Appendix A Risk Management Log

	<b>Risk Description</b>	<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigating Action</b>
<b>1</b>	<b>Legal Challenge</b> <ul style="list-style-type: none"> <li>There may be a risk of legal challenge to the process undertaken for the LDP. This could impact on the work programme through the creation of additional work or delays to adoption.</li> </ul>	Very High	Likely	Long term delay (excess of 1 year) & possible major failure to prepare LDP	Ensure LDP production is compliant with planning legislation, regulations and guidance.
<b>2</b>	<b>Tests of Soundness</b> <ul style="list-style-type: none"> <li>There is a risk of the LDP documents being found unsound, resulting in major delays to the implementation of policies or an inability to adopt the LDP.</li> </ul>	Very High	Likely	Long term delay (excess of 1 year) & possible major failure to prepare LDP	Ensure robust evidence base to support decisions. On-going liaison with PAC and DfI.
<b>3</b>	<b>Delays associated with the Independent Examination Process</b> <ul style="list-style-type: none"> <li>The timescales associated with the soundness based IE are beyond the control of the Council.</li> </ul>	High	Likely	Significant delay (up to 1 year)	The Timetable provides forward notice of the Council's LDP programme to help inform resource requirements from DfI and the PAC. Early identification of any slippage in the Timetable.
<b>4</b>	<b>Staffing Issues</b> <ul style="list-style-type: none"> <li>Staff turnover, loss of experienced staff could impact on production.</li> <li>Limited size of Development Plan Team.</li> </ul>	High	Likely	Significant delay (up to 1 year)	Ensure sufficient staff resources with necessary experience and expertise are available for production of the LDP.
<b>5</b>	<b>Competing work priorities</b> <ul style="list-style-type: none"> <li>Given work pressures and demands on resources within the Planning Department, Development Plan Team staff could be redeployed to other planning duties and diverted away from the LDP programme.</li> </ul>	High	Likely	Significant delay (up to 1 year)	Corporate commitment to adequately resource the LDP work. Recognition that the LDP is a high priority.
<b>6</b>	<b>Consultancy/Specialist Input</b> <ul style="list-style-type: none"> <li>Elements of the plan will require specialist technical input in terms skills and expertise, and there is a risk that this cannot be progressed in house. This could impact on quality and soundness of the LDP documents.</li> </ul>	High	Likely	Significant delay (up to 1 year)	Scoping of work to identify specialist technical input (skills and expertise) required. Develop staff skills and competencies. Use of external consultants to support the Development Plan Team.

	<b>Risk Description</b>	<b>Risk</b>	<b>Likelihood</b>	<b>Impact</b>	<b>Mitigating Action</b>
<b>7</b>	<b>IT Failure/data disclosure</b> <ul style="list-style-type: none"> <li>Loss of data due to IT failure</li> <li>Disclosure of commercially sensitive data</li> </ul>	High	Likely	Significant delay (up to one year)	Ensure adequate storage capacity and systems in place to regularly backup data. Ensure robust security measures in place for LDP data.
<b>8</b>	<b>Financial Resources</b> <ul style="list-style-type: none"> <li>Sufficient financial resources are required to prepare LDP documents including for consultancy, consultation and the examination process.</li> </ul>	High	Likely	Significant delay (up to one year)	Ensure the Timetable informs the Council's short and medium term financial plan.
<b>9</b>	<b>Changes to Regional Policy/Legislation</b> <ul style="list-style-type: none"> <li>Any changes to policy or legislative framework could introduce delays</li> </ul>	Medium	Likely	Short term delay (months)	Carefully monitor changes to regional policy and legislation. Early and consistent engagement with central government and the PAC.
<b>10</b>	<b>Volume of work – LDP Programme too ambitious</b> <ul style="list-style-type: none"> <li>The scale and uncertainty of the content of the new LDP presents potential risks to its deliverability.</li> </ul>	Medium	Likely	Short term delay (months)	Robust scoping of work required. Sound project planning with realistic and flexible timescales. Careful monitoring of progress.
<b>11</b>	<b>Public Consultation Process</b> <ul style="list-style-type: none"> <li>The number and the nature of representations received during consultation are not predictable. It is possible that issues may arise in consultation that lead to longer response times by the Council and longer examination and reporting time.</li> </ul>	Medium	Likely	Short term delay (months)	The Timetable takes into account the likely time required to process responses to consultation.
<b>12</b>	<b>Consultee Involvement</b> <ul style="list-style-type: none"> <li>Consultees may be involved in multiple LDPs at the same time. They will need to be available to provide adequate input into the plan process at key stages.</li> </ul>	Medium	Likely	Short term delay (months)	The Timetable provides forward notice of the Council's LDP programme to help inform resource requirements within statutory partners. Liaise regularly with key stakeholders to minimise prospect of slippage.

## Appendix B LDP: Draft Timetable

<b>Newry, Mourne and Down District Council Local Development Plan: Draft Timetable</b>			
Local Development Plan process: key stages	Sustainability appraisal & other assessments	Indicative Timeframe	
<b>Stage 1 – Plan Preparation</b>	<b>Statement of Community Involvement (SCI) &amp; LDP Timetable</b>		
	Publication of Draft SCI 4 week public consultation	4 <sup>th</sup> Quarter 2016/17	
	Publication of SCI and LDP Timetable Agreed by Dfi	2 <sup>nd</sup> Quarter 2017/18	
	<b>Preferred Options Paper (POP)</b>		
	Stakeholder engagement	Invite comments from Consultation Body (NIEA) on draft SA (Inc SEA) Scoping Report	3 <sup>rd</sup> - 4 <sup>th</sup> Quarter 2017/18
	Publication of Preferred Options Paper Statutory public consultation (12 weeks)	Publication of SA Interim Report comprising Scoping Report and appraisal of alternative options Screening for HRA, EQIA and Rural Proofing	4 <sup>th</sup> Quarter 2017/18 (public consultation 4 <sup>th</sup> Quarter 2017/18 - 1 <sup>st</sup> Quarter 2018/19)
<b>Stage 2 – Plan Strategy</b>	<b>Plan Strategy</b>		
	Publication of draft Plan Strategy (PS) Statutory public consultation (8 weeks for representation & 8 weeks for Counter-representations)	Publication of SA Appraisal Report (Incorporating SEA) Publication of drafts of HRA, EQIA and Rural Proofing Assessment where relevant	4 <sup>th</sup> Quarter 2018/19 (public consultation 4 <sup>th</sup> Quarter 2018/19 – 1 <sup>st</sup> Quarter 2019/20)
	<b>Independent Examination (PAC Dependant)</b>		
	IE of Draft Strategy From submission of draft PS for IE, IE hearing, submission of IE Advisory Report to Dfi, to receipt of Binding Report/Direction from Dfi		2 <sup>nd</sup> – 4 <sup>th</sup> Quarter 2019/20
	Council considers Binding Report/Direction and revises PS accordingly	May require further consultation with statutory bodies	1 <sup>st</sup> Quarter 2020/2021
Adoption of Plan Strategy	Publication of SA Adoption Report (incorporating SEA) Publication of HRA, EQIA and RPA where relevant.	2 <sup>nd</sup> Quarter 2020/2021	

Local Policies Plan			
<b>Stage 3 – Local Policies Plan</b>	Statutory Stakeholder engagement. Councillor and community plan engagement on key issues	Invite comments from Consultation Body (NIEA) on draft SA (incorporating SEA) Scoping Report. Publication of SA Interim Report comprising Scoping Report and appraisal of alternative options.	<b>3<sup>rd</sup> – 4<sup>th</sup> Quarter 2020/21</b>
	<b>Publication of draft Local Policies Plan</b> Statutory public consultation (8 weeks for representation & 8 weeks for Counter-representations)	Publication of SA Appraisal Report (Incorporating SEA) Publication of drafts of HRA, EQIA and RPA where relevant.	<b>1<sup>st</sup> Quarter 2021/22</b> (public consultation 1 <sup>st</sup> -2 <sup>nd</sup> Quarter 2021/22)
	Independent Examination (PAC Dependant)		
	<b>IE of Draft Local Policies Plan</b> From submission of draft LPP for IE, IE hearing, submission of IE Advisory Report to DfI, to receipt of Binding Report/Direction from DfI.		<b>3<sup>rd</sup> Quarter 2021/22 – 1<sup>st</sup> Quarter 2022/23</b>
	Council considers Binding Report/Direction and revises LPP accordingly.		<b>2<sup>nd</sup> Quarter 2022/23</b>
<b>Adoption of Local Policies Plan</b>	Publication of SA Adoption Report (Incorporating SEA)	<b>3<sup>rd</sup> Quarter 2022/23</b>	
Monitoring and Review of LDP			
<b>Stage 4 – Monitor &amp; Review</b>	Prepare new timetable		<b>3<sup>rd</sup> Quarter 2022/23</b>
	<b>Monitoring and Review of LDP</b> annual monitoring five and ten year review	Monitoring of SA and other assessments.	Ongoing

Note:

- This is an indicative Timetable and may subject to change due to factors outside the Council's control.
- The indicative timescales refer to quarters of the financial year.
- Council must consult with PAC and any consultation bodies as necessary under Regulation 5<sup>1</sup>
- The Timetable must be approved by resolution of the Council before submission to DfI as required by Regulation 7.
- DfI has 4 weeks to agree the Timetable.

<sup>1</sup> The Planning (Local Development Plan) Regulations (Northern Ireland) 2015

<b>Report to:</b>	<b>Planning Committee</b>
<b>Subject:</b>	Newry, Mourne and Down Local Development Plan: Options for undertaking the LDP Sustainability Appraisal, incorporating Strategic Environmental Assessment.
<b>Date:</b>	21 June 2017
<b>Reporting Officer:</b>	Anthony McKay, Chief Planning Officer
<b>Contact Officer:</b>	Andrew Hay, Principal Planning Officer

### **Decisions Required**

Note the content of this report.

#### **1.0 Purpose & Background**

1.1 The purpose of this report is to outline the key options available for undertaking the Sustainability Appraisal (SA), incorporating the Strategic Environmental Assessment (SEA), of the Local Development Plan (LDP). The options were presented to the SPR Committee on 15/6/17, and agreement was sought on the preferred option. The Planning Committee was invited to the SPR Committee on 15/6/17 in the consideration of the report. The options are considered in the attached 'Options Paper' (see Appendix 1).

1.2 The Planning Act (NI) 2011 places a statutory duty on the Councils producing an LDP to undertake an SA. This appraisal examines the social, economic and environmental impacts of the LDP. It must be carried out for each of the development plan documents: the Plan Strategy and the Local Policies Plan.

1.3 Work on the LDP preparation is progressing through the evidence gathering stage, towards the preparation of the Preferred Options Paper. There is now a need to address the means of undertaking the required SA. Members will recall that a paper was previously presented to the SPR Committee in Dec 2015 which provided an overview of the SA process.

The 'Options Paper' was presented to the SPR Committee on 15/6/17 for agreement on the preferred option:

- Option 5: Engage the Shared Environmental Service (SES) to prepare the SA and take it through the entire LDP process.

#### **2.0 Key Issues and Conclusions**

2.1 The 'Options Paper' highlights 5 different options for the delivery of the SA and outlines the key positive and negative aspects associated with each:

Option 1 – Prepare the entire SA in-house;

Option 2 – Expand Council's Development Plan Team to incorporate this specialism;

Option 3 – Engage consultants to assist the Development Plan Team to prepare the SA in-house by providing independent advice and guidance during its production;



	<p>Option 4 – Engage consultants to prepare the SA and take it through the entire LDP process; or Option 5 – Engage the Shared Environmental Service (SES) to prepare the SA and take it through the entire LDP process.</p>
2.2	In conclusion the paper states that the most cost effective and advantageous option for the Council is Option 5: Engage the Shared Environmental Service (SES) to prepare the SA and take it through the entire LDP process.
3.0	<b><u>Recommendations</u></b>
3.1	Members are requested to note the content of this report.
4.0	<b><u>Resource Implications</u></b>
4.1	Details of all the options are contained within the 'Options Paper' (Appendix 1). The cost of the preferred Option 5 will be circa £50k spread over a number of years.
5.0	<b><u>Appendices</u></b>
	<ul style="list-style-type: none"> <li>• Appendix 1: LDP Sustainability Appraisal - Options for undertaking the LDP Sustainability Appraisal, incorporating Strategic Environmental Assessment.</li> </ul>



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

## **LDP Sustainability Appraisal**

Options for undertaking the LDP Sustainability Appraisal,  
incorporating Strategic Environmental Assessment

**June 2017**

## LDP Sustainability Appraisal

- **Options for undertaking the LDP Sustainability Appraisal, incorporating Strategic Environmental Assessment**

### 1.0 Purpose

- 1.1 The purpose of this paper is to outline the key options available for undertaking the Sustainability Appraisal (SA), incorporating Strategic Environmental Assessment (SEA) of the Local Development Plan (LDP) and to seek member views on the preferred option.

### 2.0 Legislative Background

- 2.1 The Planning Act (NI) 2011 places a statutory duty on Councils producing an LDP to undertake an SA.

### 3.0 Detail

- 3.1 The purpose of the SA Report is to present the findings of the appraisal and demonstrate that reasonable alternatives and any significant effects have been taken into account in developing the LDP through various stages. The SA Report should provide the context to the policy approach and LDP development, and provide an outline of the measures envisaged to meet the monitoring requirements.
- 3.2 The SA and resulting reports will form important elements of the "test of soundness" of the LDP as part of the evidence base for the draft LDP. Therefore this work, which is to be carried out in parallel with the LDP preparation. Must above all be transparent, robust and consistent.
- 3.3 There are 5 Options for consideration, as follows:

**Option 1** – Prepare the entire SA in-house;

**Option 2** – Expand Council Development Plan Team to incorporate this specialism;

**Option 3** – Engage consultants to assist the Development Plan Team to prepare the SA in-house by providing independent advice and guidance during its production;

**Option 4** – Engage consultants to prepare the SA and take it through the entire LDP process; or

**Option 5** – Engage the Shared Environmental Service (SES) to prepare the SA and take it through the entire LDP process.

### 4.0 Review of Options

**Option 1** – Prepare the entire SA in-house:

- 4.1 In this option the SA would be undertaken in-house entirely by the LDP team. The SA is a complex and wide ranging area of work that may be subject to particular public scrutiny and potential legal challenge. Given the current level of expertise among staff within the team, and the considerable amount of LDP work to be

undertaken, it is considered it would be extremely difficult and time consuming to develop the necessary skill set required for such a specialised area. Diverting staff resource to production of the SA would impact on the ability of the Development Plan Team to meet the LDP timetable and is highly likely to require the LDP timetable to be revised. In addition if not carried out to the highest standard the SA could be found to "unsound", resulting in the LDP process being delayed further.

4.2 **Option 2** – Expand Council's Development Plan Team to incorporate this specialism:

This option would have the benefit of securing a specialist officer within the Development Plan Team, thereby allowing staff to benefit from this knowledge. However the appointment would only be for a fixed term of up to 5 years. The officer would be expected to be at least a P01-P02 grade, at an annual cost to the Council of approx. £38-41K (includes NI and Pensions contributions). Over the lifespan of the LDP process this would equate to £190 – 205K. The expertise would then be lost following termination of the contract.

4.3 **Option 3** – Engage consultants to assist the Development Plan Team to prepare the SA in-house by providing independent advice and guidance during its production:

This option would involve the appointment of a consultant to provide an overseeing role, guidance and advice to the Development Plan Team. Alternatively, a council official from another local authority may perform this role, and act as a 'critical friend' to the Development Plan Team. Their role would be to ensure that the SA was in accordance with current regulations, and to provide guidance and advice at critical times in the process. In this option the SA Report would be undertaken entirely by the Development Plan Team.

Whilst the benefit of having a third party provide an overseeing and critical role is recognised it would be extremely difficult and time consuming to develop the necessary in-house skills set required for such a specialised area. A further disadvantage of this option is that the council official from another authority could, at any time in the process, become unavailable and this lies outside the Development Plan Team's control. Research into indicative costs highlights that this may cost from £25,000-£50,000, although this would be spread over a number of years.

4.4 **Option 4** – Engage consultants to prepare the SA and take it through the entire LDP process.

The benefit of this approach is that an experienced consultant would already have the required expertise, allowing the preparation of a "sound" SA Report. A disadvantage of this option is the lack of opportunity to develop staff in-house. A further disadvantage is the potential cost this option may involve. Causeway Coast and Glens Borough Council's Development Plan Team have indicated that this option may be upwards of £50,000 although this would be spread over a number of years.

- 4.5 **Option 5** – Engage the Shared Environmental Services (SES) to prepare the SA and take it through the entire LDP process:

SES was established in April 2015 to support Councils to meet their environmental responsibilities in connection with their role as planning authorities. Its centrally funded role is to carry out Habitats Regulations Assessments on behalf of Councils for Development Management and during the preparation of LDPs to assess and advise on impacts on European sites (Special Areas of Conservation and Special Protection Areas) and Ramsar Sites. The service is employed by Mid and East Antrim Borough Council and based in County Hall, Ballymena.

SES proposes to extend its services to now provide assistance to councils in the full preparation of their SAs. SES will provide a dedicated officer to work with Council's Development Plan Team. The service is designed to be responsive to the needs of each individual council, and could complement and build skills in-house. Although there would be a cost to Council for this service, SES has advised that it is not seeking to make a profit, only looking to provide a good value service which is reflected in its pricing. The cost of this option could be in the order of £50,000, again spread over a number of years.

#### 5.0 **Preferred Option**

It is considered that the least cost-effective option is Option 2. The most cost-effective and advantageous option is Option 5: Engage the Shared Environmental Services (SES) to prepare the SA and take it through the entire LDP process.

#### 6.0 **Recommendation**

- 6.1 It is recommended that Members note the contents of this paper and agree to the preferred Option 5 to engage SES to carry out the Sustainability Appraisal for Council's LDP.