

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

ITEM NO	3			
APPLIC NO	LA07/2015/1171/F	Full	DATE VALID	11/11/15
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr J Hughes C/O OHare Associates Architectural Consultants Ltd		AGENT	O'Hare Associates The Masters House Abbey Yard Newry BT34 2EG 02830251919
LOCATION	30m North East of No 6 Main Street Camlough Newry Co Down			
PROPOSAL	Proposed two storey dwelling and detached garage (Renewal of current approval P/2010/0629/F			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- The proposal is contrary to the SPPS and Policy FLD1 of revised Planning Policy Statement 15; Planning and Flood Risk, in that the site lies within the floodplain of the Camlough River and the proposal does not meet any of the exceptions to the policy.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2015/1171/F

Date Received: 10/11/2015

Proposal: Proposed two storey dwelling and detached garage (Renewal of current approval P/2010/0629/F).

Location: 30m NE of no. 6 Main Street, Camlough, Newry, Co Down.

Site Characteristics & Area Characteristics:

Access to the site is achieved via the existing driveway to no. 6 Main Street, Camlough. Along the access there is a small bridge which crosses over the Camlough River. The access and bridge was approved under application P/2004/0092/F. The site is currently an open green field. No works had commenced on the previous approval at the time of inspection. Along the NE boundary of the site lies Camlough river corridor, south of the site no. 6 (2storey dwelling) with the eastern boundary defined by mature hedge with randomly dispersed trees.

Site History:

*P/2004/0092/F- New vehicular access to dwelling- approval- 11th April 2007
P/2004/1762/O- site for 2 storey dwelling- approval 7th Sept 2007
P/2010/0629/F- 2 storey dwelling in substitution of P/2004/1762/O- approval 16th Nov 2010*

Planning Policies & Material Considerations:

The proposal is for a renewal application, the only material change in policy since the granting of the previous approval P/2010/0629/F is the introduction of the SPSS and the revised PPS 15.

The site is located within the settlement limits of Camlough and within an Area of Archaeological Potential. Along the NE boundary of the site lies Camlough river corridor Local Landscape Policy Area as defined in the Banbridge, Newry and Mourne Area Plan 2015.

From the DARD strategic flood maps and consultation with Rivers Agency it has been established that the site lies within a 1 in 100 yr fluvial flood plain and the site is also within the draft inundation area of the Camlough Lake Reservoir.

Consultations:

TransportNI- No objection subject to conditions

Environmental Health- No objections in principle- consent to discharge required

NIW- statutory response

Rivers Agency- site lies within the 1 in 100 yr fluvial flood plain. Rivers agency would consider that this proposal is contrary to PPS 15 FLD 1.

FLD 5- Development in Proximity to Reservoirs applies and the proposed development is within the draft inundation area of the Camlough Lake reservoir.

NIEA Historic Monuments Unit- content with the proposal

NIEA Water Management Unit- no comments, standard conditions and informatives.

Objections & Representations

No. of neighbours notified= 11

Advertised= 16.11.2015

No. of representations received=0

Consideration and Assessment:

The proposal for renewal is for the same application site, site layout and dwelling/garage as approved under P/2010/0629/F. The policy context in terms of PPS 3, PPS 6, PPS 7, Ad PPS7 and PPS 12 has remained the same as that previously considered and therefore the renewal of the proposal requires no further consideration than that previously given.

However, as stated above the site lies within a 1 in 100 fluvial flood plain and also within the draft inundation area of the Camlough Lake. Having considered the history application, it must be noted that the original approval P/2004/1762/O was granted in Sept 2007 after the introduction of PPS 15- Planning and Flood Risk in June 2006 (now superseded by revised PPS 15) but prior to the introduction of the Strategic flood maps in Nov 2008. Therefore, PPS15 would have been a material consideration in determining the outline approval. This outline approval was substituted in Nov 2010 under P/2010/0629/F. During the processing of the full application Rivers Agency were not consulted. Having spoken to Rivers Agency directly, they advised that this would have been a time when they did not comment on applications for single dwellings.

The proposal is for the renewal of the previous application P/2010/0629/F. Since the granting of the previous approval there has been a number of changes in Policy which are material to our consideration.

In relation to the flood risk associated with this development the SPPS states that 'development in flood plains should be avoided where possible, not only because of the high flood risk and the increased risk of flooding elsewhere, but also because piecemeal reduction of the floodplains will gradually undermine their functionality.'

The revised PPS15 introduced in Sept 2013 seeks to manage development in a way proportionate and appropriate to the 4 main sources of flood risk, fluvial, coastal, surface water and water impoundment (reservoir) breach or failure.

Rivers Agency flood hazard map has identified that the site lies within the 1 in 100 yr fluvial flood plain and within the draft inundation area of Camlough Lake.

There are a number of exceptions in which planning permission will be granted within a flood risk area outlined within Policy FLD 1 of revised PPS 15. Having applied the exceptions test to this proposal, it is not considered that the development constitutes an exception to the policy.

The SPPS reinforces that land raising, which involves permanently elevating a site to an acceptable level above the flood plain in order to facilitate development will not be acceptable within the fluvial flood plain, where the displacement of flood water would be likely to cause flooding elsewhere.

Revised PPS 15 introduced a new Policy FLD 5- Development in close proximity to Reservoirs. Rivers Agency has stated that the development is within the draft inundation area of the reservoir. Under FLD 5 new development will only be permitted within a potential flood inundation area if it can demonstrate the condition, management and maintenance regime is appropriate to provide sufficient assurance regarding reservoir safety so as to enable development to proceed, is accompanied by a risk assessment and there are suitable measures to manage and mitigate flood risk.

The inundation maps that affect the site are currently in draft form they have not been finalised nor are they available to the public and legislation has not been formally enacted in relation to the Reservoirs Bill. Whilst not ignoring the potential impact that inundation will have on the site it is not considered justifiable to refuse permission on the grounds of prematurity in this case. The proposal is within the settlement limit where there is presumption in favour of development and the proposal in itself is not so substantial that the effect would be so significant. It is considered sufficient to attach an informative to highlight the concerns to the applicant.

Having considered the history and the above policy it considered that the proposal is contrary to the SPPS and FLD 1 of revised PPS 15.

Recommendation:

Refusal

Refusal Reasons/ Conditions:

The proposal is contrary to Policy FLD1 of revised Planning Policy Statement 15; Planning and Flood Risk, in that the site lies within the floodplain of the Camlough River and the proposal does not meet any of the exceptions to the policy.



23rd December 2016

Joanne McVeigh
Planning Department
Newry, Mourne & Down Council
Monaghan Row
Newry
Co. Down

Dear Joanne

**Re: Renewal of planning permission for new dwelling 30m N.E. of 6 Main Street
Camlough for Mr. J. Hughes**
Ref: - LA07/2015/1171/F

I am writing to you on behalf of Mr James Hughes in respect of planning application LA07/2015/1171/F for the renewal of planning permission for a dwelling 30 metres northeast of 6 Main Street Camlough.

I understand that the planning authority has queried whether the changes proposed to the detail of this planning application (as a consequence of a consultation with Rivers Agency) means that it can be no longer considered as a renewal of an extant planning permission.

This application was made in accordance with Article 3 (5) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 which provides for the renewal of a planning permission where the development has not yet been begun and the time limit is not expired.

It is not stated within the meaning of the legislation what the content of the application should be but does say that it should be made in writing and give sufficient information to identify the previous grant of planning permission and any condition in question.

It does not state anywhere that should there be a change in the material circumstances of the case that the proposal could not be changed.

If this is considered by the planning authority to be a repeat application then it is not explicit in Development Practice Note 16 that the application will be refused should changes arise during the application process. It is for the Council to assess whether the change is significant.



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At any time during the processing of any application the Council can in accordance with Article 3(6) the council or, as the case may be, the Department may by direction in writing addressed to the applicant require such further information as may be specified in the direction to enable it to determine any application.

In this case the Council saw fit to consult with Rivers Agency despite the history of approval for a dwelling.

While I understand that this is a change in established practice the applicant should be afforded the opportunity to address this by means of justification and/or alteration to the detail of the application as long as the detail of the proposal is not significantly changed.

I do not believe that the amended scheme is a significant departure from the previous submission for the following reasons:

- The red line of the application site is not changed;
- The application remains for a single dwelling and the means of access to the public road is not changed; and
- Alterations to the scheme were in response to comments from Rivers Agency confirming any buildings should be located outside the extent of the flood plain. The changes to the design were as a response to the consultation process which is standard practice within the application process.

It is my contention that the Council should deal with the application on the basis of the amended proposal.

The Council has provided no justification as to why the changes are significant and inadmissible and I would respectfully request that the Council proceed on the basis of the drawings submitted.

Trusting this is satisfactory.

Yours Faithfully


Anthony O'Hare



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ITEM NO	17				
APPLIC NO	LA07/2016/1042/F	Full	DATE VALID	8/4/16	
COUNCIL OPINION APPROVAL					
APPLICANT	Mr & Mrs T. Hannaway 18 Milltown Road Lislea Newry BT35 9UF	AGENT	John O'Hagan 6 Woodville Gate Lurgan BT66 6SR 07799477142		
LOCATION	18 Milltown Road Lislea Newry BT35 9UF				
PROPOSAL	Two storey kitchen and bedroom extension to gable of dwelling				
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions	
	0	0		0	0
			Addresses Signatures Addresses Signatures		
			0	0	0



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**Newry, Mourne
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District Council

Application Reference: LA07/2016/1042/F

Date Received: 10th August 2016

Proposal: Two storey kitchen and bedroom extension to gable of dwelling

Location: The site address is 18 Milltown Road, Lislea. It is located outside the development limits of Lislea and approximately kilometres west of the small settlement of Lislea as defined by the Banbridge / Newry and Mourne Area Plan 2015.

Site Characteristics & Area Characteristics:

The site is occupied by a two storey detached dwelling. The external walls of the dwelling are painted roughcast render, with white PVC windows, doors and rainwater goods and a brown concrete, profiled roof covering. The boundaries of the site are well defined with a block wall along the southern and western boundaries. A river runs around the remainder of the site along the northern and eastern boundaries.

The site is positioned next to a fork junction on Milltown Road, with dwellings surrounding the site to the north, west and south.

Site History:

There is no recent, relevant site history.

Planning Policies & Material Considerations:

Banbridge / Newry and Mourne Area Plan 2015.

Strategic Planning Policy Statement (SPPS).

PPS7: (Addendum) Residential Extensions and Alterations.

(Revised) Planning Policy Statement 15 – Planning and Flood Risk.

DCAN 12: Planning Control for Hazardous Substances Gas Pipelines.

Consultations:

Rivers Agency – No objection, informatives included. (13/12/2016)
NI Gas Co Ltd - No objection. (09/12/2016)

Objections & Representations

There were six neighbour notification sent out. This application was advertised in the local press. There were no representations received.

Consideration and Assessment:

- (a) The proposal involves the construction of a two storey extension to the side of the existing dwelling. The scale of the proposed development is sympathetic to the existing dwelling and it will not detract from the appearance of the surrounding area. The extension will become an integral part of the existing dwelling both functionally and visually and has been designed to complement the host building with all finishes to match those existing on site. It will remain subordinate to the existing dwelling and will not dominate the wider surroundings.
- (b) The proposed two storey side extension will extend 3.6 metres from the side elevation of the existing dwelling and will measure 5 metres in width. New windows are to be provided at ground floor along SE and SW elevations and one new window will be provided at first floor level on the SW elevation. There will be no overlooking issued to address into neighbouring properties. Further there are no overshadowing / loss of light issues to address. I am therefore content that the proposal does not unduly affect the privacy or amenity of neighbouring residents.
- (c) As a result of the proposed works there will be no loss of trees or landscape features which contribute significantly to the local environment quality.
- (d) Sufficient space remains within the curtilage of the dwelling for normal domestic activities including the parking and manoeuvring of vehicles.

(Revised) Planning Policy Statement 15 – Planning and Flood Risk, is applied to the proposal given the site is affected by pluvial surface water flood zones. In their consultation response, Rivers Agency confirms that a Drainage Assessment is not required by policy and they have no objection to the proposed development from a drainage and flood risk perspective.

As the site is included within a buffer zone for a gas pipeline, consultation was initiated with GNI (UK) Ltd who confirm in their response that the proposed development falls outside the seven metre wayleave zone on either side of the pipeline and it will therefore not compromise the safety and integrity of the pipeline in this location.

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.

Informatives:

1. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
2. This approval does not dispense with the necessity of obtaining the permission of the owners of adjacent dwellings for the removal of or building on the party wall or boundary whether or not defined.
3. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.
4. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.
5. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
6. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
7. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.

8. Where an undesignated watercourse flows through or adjacent to a development site, it is strongly advised that a working strip of appropriate width is retained to, in future, enable riparian landowners to fulfil their statutory obligations/responsibilities.

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

ITEM NO	10			
APPLIC NO	LA07/2016/0693/F	Full	DATE VALID	5/23/16
COUNCIL OPINION	REFUSAL			
APPLICANT	Kevin Murphy 23 Cullyhanna Road Tullyallen Newtownhamilton Armagh BT35 0JB		AGENT	ERES Limited Mourne House 41-43 Downshire Road Newry BT34 1EE 028302501335

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

LOCATION 120m North-West of No. 105 Blaney Road
Tullyard
Crossmaglen
Armagh
BT35 9AT

PROPOSAL Erection of Agricultural Shed and Slurry Tank

REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions		
	0	1		0	0	0
			Addresses Signatures		Addresses Signatures	
			0	0	0	0

- The proposal is contrary to the SPPS and Policies CTY 1 and CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:
 - it has not been demonstrated that the development is on an active and established agricultural holding;
 - it is not necessary for the efficient use of the active and established agricultural holding;
 - the development, if permitted, would not visually integrate into the local landscape without the provision of additional landscaping;

The proposal is contrary to the SPPS and policies CTY1 and CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that the applicant has not provided sufficient information to confirm that:

 - the design and materials to be used are sympathetic to the locality and adjacent buildings; the proposal is sited beside existing farm or forestry buildings;

The proposal is contrary to policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that it has not been demonstrated that there are no alternative sites available at another group of buildings on the holding and

 - that health and safety reasons exist to justify an alternative site away from the existing farm (or forestry) buildings; and
 - that the alternative site away is essential for the efficient functioning of the business.

- 2 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 and 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 design of the proposed building is inappropriate for the site and its locality. and therefore would not visually integrate into the surrounding landscape.
- 3 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 and would therefore result in a detrimental change to (further erode) the rural character of the countryside.
- 4 Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further site specific evidence to confirm that all lands are within the farm business id was 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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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/0693/F

Date Received: 19.05.2016

Proposal: Erection of Agricultural Shed and Slurry Tank

**Location: 120m North-West of No. 105 Blaney Road Tullyard Crossmaglen
Armagh**

Site Characteristics & Area Characteristics:

The site is located on a parcel of agricultural land with the access from an existing shared laneway which accesses onto the Blaney Road. There was an existing agricultural track from the laneway which runs along the existing field boundary to the application site. The site is positioned between the corners of two fields. The lands to the west of the site rise quite steeply towards the Blaney Road and gradually rise to the east towards the existing lane. The boundaries of the site are largely undefined with the eastern boundary defined by a post and wire fence.

Site History:

No relevant site history.

Planning Policies & Material Considerations:

*The Strategic Planning Policy Statement (SPPS)
The Banbridge/Newry and Mourne Area Plan 2015
Planning Policy Statement 2
Planning Policy Statement 3
Planning Policy Statement 21*

Consultations:

DARD- see report below

NIEA WMU- no objections sub to condition

NIEA NED- additional info requested to enable as assessment of impacts on the ASSIs & biodiversity checklist regarding hedgerows, badgers and breeding birds.

TransportNI- request 1:500 scale plan

EH- no objections

Objections & Representations

No. of neighbours notified= 8

Advertise expiry= 24/6/16

No. of representations received= 0

Consideration and Assessment:

The proposal has been submitted for an agricultural building and slurry tank in the countryside area. The proposal is subject to the provisions contained within PPS 21. The proposed assessment is to be set against the criteria of CTY 12 as referred to in CTY 1.

The applicant has supplied the following information within the P1c form.

The owner of the farm business and applicant is a Mr Kevin Murphy and he resides at 23 Cullyhanna Road. The farm business maps refer to Messers Kevin & Peter Murphy, 23 Cullyhanna Road. The applicant has a farm business ID 620798 and makes a single payment claim to DARD.

The lands are primarily used for cattle. The site has been chosen as it represents an out farm from the applicant's main holding, where there is a need to provide a slurry tank and animal shelter. The site has been selected as it represents the only suitable part of this out farm, which is more than 75m away from neighbouring dwellings, while also respecting the character of the area by ensuring that the proposed building will be easily assimilated into the landscape and will not have a detrimental impact on the area.

Further to consultation with DARD the Council can ascertain that the farm business has been active and established for more than the required 6 yr period.

It is noted that the applicant is only part owner of the established farm business.

The agent has provided a supporting statement to detail the applicants reasoning as to why the proposal is necessary for the efficient use of the agricultural holding. The reasons as follows;

- *Isolation unit for quarantine of animals, condition of the applicants membership with AFBI cattle health scheme for which he is a member is having such an isolation facility;*
- *Wintering of animals, storage of feedstock and medicines;*
- *Separation distance between the main holding and the lands at Blaney Rd, unreasonable to transfer livestock between sites for shelter, treatment and calving for reasons such as animal welfare and work hours and expenditure which in turn reduce the efficiency of the business.*

The separation distance outlined by the agent between the two holdings is approx. 10 miles. I do acknowledge a large portion of the holding is positioned along the lands at Blaney Road where the agent states there is no existing building only a cattle crush to the rear of no. 105. The agent has provided photographs of an existing building at the holding on Cullyhanna Road. He states that 'the facilities are fully utilised. The existing facilities are not big enough in respect of the total land available to our client. It is therefore necessary to expand the facilities to ensure that the existing herd is able to expand in direct correlation to the farm lands'. Who owns the building next to the one which was shown in the photographs?

With regards to the existing herd, records have been provided which show 64 animal movements off the holding covering a period 2010-2015. It would appear 18 animals are still held within the applicant Kevin's books. The agent was asked to confirm that this was the case.

Having completed a history search of the farm lands, it was noted a parcel of land exists at 21 Drummond Road, Newry (4 fields). The agent was asked to provide details of such lands and if any farm buildings exist at this location. The agent in response states that the lands are owned by the applicant and not the nearby buildings. Having completed a history search of such lands it would appear that an application for an extension to a dwelling (possible replacement opportunity) exists on site to a Mr Peter Murphy. The farm business ID to which the application seeks approval is registered to Messers Peter and Kevin Murphy. It is my understanding that any buildings on these lands and under the ownership of Mr Peter Murphy or Kevin Murphy fall within the category existing buildings of the farm holding and should therefore be included as part of our assessment. Having inspected the site, only a dwelling exists on these lands and a small cattle pen. Given the existing works to the cattle pen and the position of the metal beams this would suggest the owner's intention on erecting a small shed. This type of development would require planning permission.

Although there is only one building at this location at present, this would represent another building on the farm which is positioned close to the proposal. It is felt that if the council were of the opinion to accept the reasoning stated by the applicants agent, was critical to the efficient functioning of the business then the lands at this location would represent a more suitable location to group a new building with.

The agent was advised that from initial group discussion of the case that the group was not satisfied that the case of need in relation to the efficient functioning of the business and health and safety reasons exist to warrant a new building on an alternative site away from the existing buildings on the holding.

Following this the agent provided a letter from the Ulster Farmers Union in support of the proposal. They state, that Mr Murphy has a beef enterprise with half of his stock located at the lands at Blaney Road. With almost half of his holding at Blaney Road it is essential that Mr Murphy has this facility for his farming enterprise at this site.

The proposed use of this farm building is for an isolation unit at various times of the year, but also as a shelter and inspection facility for his stock and storage facility for animal bedding, feedstock and medicines to service half of his herd at this location. Mr Murphy must every day carry out routine general health inspections of his stock, and continually throughout the year needs to carry out essential routine treatments. This ranges from lameness monitoring and foot care, administering of prescribed medicines such as external and internal parasite control, vaccinations, lungworm

control, ear tagging etc. It is therefore vital that Mr Murphy has proper facilities for looking after the stock kept on the adjacent lands allowing him to carry out these inspections and operations when necessary. It was also stated that, it is not efficient or practical for Mr Murphy to continue to transport stock kept at the lands at Blaney Road to the principle farm buildings, 10 miles away, every time he has to carry out routine inspections, routine operations or isolate a sick or injured animal.

The agent has also provided an appeal decision in support of the case, which was for the retention of an existing building as an animal isolation unit within the Banbridge area in 2012. The applicant in this case had an active and established farm business. There was a split in the holding with 8.44 hec located 6 miles away from the main farm. The Department and DARD at the time both unreservedly accepted that an animal isolation unit was required for the efficient functioning of the farm in general and the Department also accepted that the outfarm was a suitable location for the isolation unit. The issue in dispute was whether the appeal building is necessary for the isolation unit or whether this facility could be accommodated within the existing adjoining building (piggery). The PAC concluded that the piggery in its present form was not suitable for isolating or safely containing large animals. However, could be altered and adapted in line with the policy trust. The UFU in the case stated that a herd of approximately 50 animals is kept on the outfarm and given the distance to the principle farm buildings, it would be neither practical, efficient or at times in compliance with DARD animal welfare regulations for the appellant to transport stock kept at the outfarm lands to the main farm buildings whenever shelter, routine health inspection/treatment and assistance with calving is required. The PAC in their final conclusion accepted that a second building was necessary for the efficiency of the agricultural holding; to provide both an isolation unit and shelter for older stock when animals do not have to be isolated. It is also noted the appeal building was sited within an existing yard with a cattle crush and piggery.

In this particular case the UFU state that half of Mr Murphys herd is located on the outfarm, this would amount to 9 animals, significantly less than 50 animals as referred to in the above appeal. The Planning Department of the Council would accept an animal isolation unit is required at times on any farm holding but as previously confirmed by DARD the isolation unit does not need to be sited away from the main buildings. The need for an agricultural shed for the stated reasons at this location is not considered as an exception to this policy.

The proposal is for a large agricultural shed/underground tank with a height of 7.5 metres, 18 metres in length and with a width of 9 metres.

The proposed size and scale of the shed is typical to that generally found in the rural area and similar to other agricultural buildings. I would have concerns with the proposed design of the building with an industrial type roller shutter door opening and the cladding to the upper walls. This design/finish is not in character with other agricultural buildings and would not be appropriate to the rural location.

The building is to be sited approx. 120 metres back from the existing laneway. It was noted at the time of inspection that an agricultural access to the site had been formed as there was no alternate way to gain access to these lands. The site is to be taken from the corner of two fields. It will require the removal of a small section of hedge and an existing gate. The building is to be sited in on relatively flat piece of land with the lands rising steeply in a westerly direction towards the Blaney Road and more gradually in the east towards the lane. The proposal has no established

natural boundaries with the existing 2 boundaries defined by post wire fencing and an agricultural gate (small section of hedge).

The proposal is not considered to be a prominent feature in the landscape when viewed from the Blaney Road. This is ensured by the existing natural topography surrounding the site and its position set back from the road. However policy states that the assessment of integration will be judged from critical views along shared private laneways. When viewed from the laneway the proposal will be a prominent feature in the landscape. The site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape.

The proposal will rely on the use of new landscaping.

Throughout the processing of the application, additional information requests from TransportNI and NIEA are outstanding.

As there is insufficient information to undertake an assessment of impacts on the Tullyard ASSI, Drumlougher Lough ASSI, Lurgan Lough ASSI and Loughaveely ASSI, the proposal is deemed contrary to Policy NH 3 of PPS 2. Planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to habitat network or special interest of the ASSIs and this has not been demonstrated.

The agent was also asked to provide additional site specific evidence to confirm that the fields listed by DARD as 9& 10 are within the farm business Id.

Recommendation:

Refusal

The proposal is contrary to the SPPS and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:

-it has not been demonstrated that the development is on an active and established agricultural holding;

-it is not necessary for the efficient use of the active and established agricultural holding; and

-the development, if permitted, would not visually integrate into the local landscape without the provision of additional landscaping;

The proposal is contrary to the SPPS and Policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that the applicant has not provided sufficient information to confirm that:

-the design and materials to be used are sympathetic to the locality and adjacent buildings;

-the proposal is sited beside existing farm or forestry buildings;

The proposal is contrary to the SPPS and Policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that it has not been

demonstrated that there are no alternative sites available at another group of buildings on the holding and

-that health and safety reasons exist to justify an alternative site away from the existing farm buildings; and

-that the alternative site away is essential for the efficient functioning of the business.

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 and 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 design of the proposed building is inappropriate for the site and its locality.

and therefore would not visually integrate into the surrounding landscape.

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

Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further site specific evidence to confirm that all lands are within the farm business id was 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.

.....
.....

Planning Ref: LA07/2016/0693/F

Proposal: Erection of Agricultural Shed and Slurry Tank

Location: 120m North-West of No. 105 Blaney Road Tullyard Crossmaglen Armagh

This application is for an agricultural building on an agricultural holding which is essentially split between two main locations. The majority of the farm land (25 acres) is centred around the principal farm buildings on Cullyhanna Road, with another 20 acres located on lands around the application site at Blaney Road, which is more than 10 miles away from the principle group of buildings.

This represents an isolated farming unit, divorced from the main farming unit.

This application is not only for a shed for use as an isolation unit, **but also as a shelter and inspection facility for cattle and storage facility for animal bedding, feedstock and medicines to service Mr Murphy's herd at this location.**

The welfare of an animal includes its physical and mental state and it is considered that good animal welfare implies both fitness and a sense of well-being.

The subject lands of this application site have always been part of the family farm however, portions were divided up following the passing of our client's parent. Mr Murphy subsequently purchased these lands from his sister, consolidating the holding. He has always been in charge of farming these lands. They have therefore not yet been added to the official farm maps, but will be in March. DAERA have already confirmed by way of a supporting letter and stamped map that these lands have been added to our client's holding (details attached). It is concerning therefore that the Planning Authority are ignoring this advice.

Ms Cheryll Herdman, a senior officer in the Ulster Farmers Union sent a supporting letter to the Case Officer outlining the necessity and indeed the serious health and safety issues and our client's responsibilities to his animals. She has stated "With any farming enterprise the emphasis is to ensure that animals are healthy and free from disease at all times. Beef farming involves a range of animal husbandry procedures to maintain and enhance animal health, welfare and production and ultimately the profitability of the enterprise. Mr. Murphy must every day carry out routine general health inspections of his stock, and continually throughout the year needs to carry out essential routine treatments. This ranges from lameness monitoring and foot care, administering of prescribed medicines such as external and internal parasite control, vaccinations, lungworm control, ear tagging etc. It is therefore vital that Mr. Murphy has proper facilities for looking after the stock kept on the adjacent lands allowing him to carry out these inspections and operations when necessary.

It must be stressed here that Mr. Murphy does not have any other farm building at this location and this proposed building is needed to be adjacent to these lands with almost half of his holding at Blaney Road. It is not efficient or practical for Mr. Murphy to continue to transport stock kept at the lands at Blaney Road to the principle farm buildings, 10 miles away, every time he has to carry out routine inspections, routine operations or isolate a sick or injured animal.

Efficient cattle management requires both experience and the observance of high standards of care. Unless management and handling are done well, the welfare of the cattle cannot be adequately protected. Under the Welfare of Farmed Animals Regulations (Northern Ireland) 2012 a person responsible for a farmed animal is responsible for meeting the legal obligations for animal welfare. Our member must, under the welfare legislation, take all reasonable steps to ensure that he does not cause any unnecessary pain, suffering, injury or distress to his animals.

There are situations where DAERA consider cattle unfit to be transported and state that animals should not be transported when they are unable to move independently without pain, have a severe open wound, are heavily pregnant or have given birth within the previous seven days. This is further enforced by the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended). It is therefore essential that Mr. Murphy has this proposed facility adjacent to his lands at Blaney Road to ensure the welfare of his animals is protected.

The relationship between an animal and its environment is crucial to its welfare. Most cattle are required to cope with regularly changing climatic conditions and, occasionally, with more severe and extreme events. However persons in charge of animals have a legal obligation to ensure that animals in their care have a suitable environment, which the animal is able to exhibit normal behaviour patterns and any need it has to be housed with, or apart from other animals.

With regard to the proposed use of as an isolation facility, DAERA recommend that it is good practice to have isolation facilities but also permit that while animals are not being isolated it is possible to use the facility for other purposes.

DAERA has published the "Code of Practice 2012" under the Welfare of Animals Act (Northern Ireland) 2011 for farmers. This document clearly states that "*action should be taken immediately if any cattle are injured or appear ill or distressed*" and "*stock-keepers should have a procedure for isolating and caring for sick or injured animals. Isolation pens should be an essential component of any cattle unit and they should have an entrance that is wide enough for an animal to be easily herded into the pen. When moving sick or injured cattle to the isolation pens, it should be ensured that unnecessary suffering does not occur*". It is therefore essential that this isolation facility is located adjacent to the lands where stock is present.

(Welfare of Farmed Animals Regulations (Northern Ireland) 2012 states at: Schedule 1 paragraph 6 – Where necessary, sick or injured animals shall be isolated in suitable accommodation with, where appropriate, dry comfortable bedding.”

The Case Officer has suggested an alternative site which is located 4 miles away from the proposed site. At this location there is an existing dwelling and cattle crush. It must be stressed that there are only 4 acres of land at this location which drop sharply away from the existing dwelling. There is no group of existing agricultural buildings at this location. It is perplexing how this could be seen as a more appropriate site. How could any farm be expected to load and move animal continually away from 20 acres to a small 4 acre holding, along 4 miles of unclassified roads? It would not be efficient, or indeed safe to carry out this practice.

Policy CTY12 is very clear on what constitutes an exceptional case stating “Exceptionally, consideration may be given to an alternative site away from existing farm or forestry buildings, provided there are no other sites available at another group of buildings on the holding, and where:

- it is essential for the efficient functioning of the business;

or • there are demonstrable health and safety reasons.

In this current case the only group of existing buildings is located more than 10 miles away from this 20 acre holding. This application actually falls within both exemptions. The existing buildings at Cullyhanna Road are all fully utilised. **Even if they weren't all in use, this would not detract from the fact that the separation distance of more than 10 miles could not in any way be seen as an efficient or safe manner in which to transport animals in daily farming practice.**

Essentially these lands cannot be used in the winter months due to Mr Murphy's responsibilities to his animals.

This Council should be being seen to help farmers instead of acting in an unfair manner, restricting the growth of this family business and potentially jeopardising the safety of Mr Murphy's animals.

The site was identified as it represented the most suitable location on this 20 acre holding which was more than 75m away from all neighbouring dwellings to ensure that no neighbours would be adversely affected by the building. This is reflected in the fact that there are no objections to this application.

The design of this proposal is not atypical of modern agricultural building throughout Northern Ireland and the site is not visible from the public road. All of the dwellings surrounding the site lie in

an elevated position, with the site essentially nestled into the landscape with the backdrop of the rising landform. The properties surrounding the site are in fact much more prominent than this proposed site.

I previously sent details to the Case Officer of an appeal which was allowed in similar circumstances, where the separation distance between two main units of farm holding were only 6 miles as opposed to our client's 10 mile separation. In her report the Commissioner stated "it would be neither practical, efficient or at times in compliance with DARD animal welfare regulations for the Appellant to transport stock kept at the Lisnagade Road lands to Reservoir Road whenever shelter, routine health inspections/treatments and assistance with calving is required."

In her report the Case Officer dismisses the appeal stating "half of Mr Murphy's herd are located on the outfarm, this would amount to 9 animals, significantly less than 50 animals referred to in this appeal". The Case Officer is incorrect in her comments on the number of cattle on the existing holding. The correct total is 55 cattle and not 18. This was confirmed in an email sent to the Planning Authority on 2nd December 2016, whereby up to date cattle numbers were provided. Details attached. As such, the appeal present must therefore be relevant to this case. It is simply not reasonable to cherry pick appeals to suit a certain mind set.

In this instance there is insurmountable evidence against this recommendation and the Council is asked therefore to overturn this decision

HERD LIST

To: KEVIN MURPHY
23 CULLYHANNA ROAD
TULLYVALLAN
NEWTOWNHAMILTON
NEWRY
BT35 0JB

Department of Agriculture, Environment and Rural Affairs
Divisional Veterinary Office
GLENREE HOUSE
UNIT 2, SPRINGHILL ROAD
CARNBANE INDUSTRIAL ESTATE
CARNBANE
NEWRY
BT35 6EF
0300 200 7840

Herd No. 244057

Date 2/12/2016

Herd Status: FQE,OTF

Total Animals: 26

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
UK 9 244691 0014 5	DW	LIM	M	10/11/2014	29/09/2015	Y	M , , , VDM , FQ
UK 9 244691 0024 1	DW	LIM	M	16/11/2014	29/09/2015	Y	M , , , VDM , FQ
UK 9 244794 0038 7	D	LIM	M	14/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244794 0041 3	D	LIM	M	20/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244794 0043 5	D	LIM	M	21/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244794 0045 7	D	SIM	M	19/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244794 0047 2	D	CH	M	20/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244691 0047 3	DW	LIM	M	10/01/2016	12/09/2016	Y	M , , , VDP , FQ
UK 9 244794 0048 3	D	LIM	M	19/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244691 0048 4	R	LIM	M	10/01/2016	12/09/2016	Y	M , , , VDP , FQ
UK 9 244691 0049 5	R	LIM	M	10/01/2016	12/09/2016	Y	M , , , VDP , FQ
UK 9 244794 0050 5	D	SIM	M	18/05/2016	01/11/2016	Y	M , , , VDP , FQ
UK 9 244691 0054 3	D	LIM	M	12/01/2016	12/09/2016	Y	M , , , VDP , FQ

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MA85
02/12/2016
1

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
UK 9 244691 0055 4	D	SIM	M	15/01/2016	12/09/2016	Y	M , , ,VDP ,FQ
UK 9 244794 0056 4	D	LIM	M	17/05/2016	01/11/2016	Y	M , , ,VDP ,FQ
UK 9 244691 0056 5	DW	SIM	M	09/01/2016	12/09/2016	Y	M , , ,VDP ,FQ
UK 9 244794 0058 6	D	CH	M	11/05/2016	01/11/2016	Y	M , , ,VDP ,FQ
UK 9 244794 0063 4	D	CH	M	03/09/2016	01/11/2016	Y	M , , ,VDP ,FQ
UK 9 244794 0069 3	R	LIM	M	07/09/2016	01/11/2016	Y	M , , ,VDP ,FQ
UK 9 244613 0077 1	R	LIM	M	28/04/2016	20/09/2016	17	M , , ,VDP ,LMN ,FQP
UK 9 244342 0465 5	R	LIM	M	23/03/2016	01/10/2016	Y	M ,TB , ,VDM ,FQ
UK 9 240948 0575 7	B	LIM	M	16/04/2016	01/10/2016	28	M , , ,VDP ,FQP
UK 9 242044 1169 1	W	CH	M	29/02/2016	01/10/2016	Y	M , , ,VDP ,FQ
UK 9 570161 1663 1	DW	CH	M	12/11/2014	30/07/2015	Y	M , , ,VDM ,FQ
UK 9 570161 1675 6	DW	CH	M	16/11/2014	30/07/2015	Y	M , , ,VDM ,FQ
UK 9 470433 2132 5	B	LIM	M	14/11/2014	30/07/2015	Y	M , , ,VDM ,FQ

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NEWRY , BT35 6EF , 0300 200 7840

MA85
02/12/2016
2

HERD LIST

To: MR PETER JOHN MURPHY
23 CULLYHANNA ROAD
TULLYVALLAN
NEWTOWNHAMILTON
NEWRY CO DOWN
BT35 OJB

Department of Agriculture, Environment and Rural Affairs
Divisional Veterinary Office
GLENREE HOUSE
UNIT 2, SPRINGHILL ROAD
CARNBANE INDUSTRIAL ESTATE
CARNBANE
NEWRY
BT35 6EF
0300 200 7840

Herd No. 241363

Date 2/12/2016

Herd Status: FQE,OTF

Total Animals: 29

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
UK 9 241363 0183 1	R	LIM	F	20/06/2004	20/06/2004	Y	O72 , , ,VDM ,FQ
UK 9 241363 0225 1	R	LIM	F	09/06/2009	09/06/2009	Y	O72 , , ,VDM ,FQ
UK 9 241363 0226 2	R	LIM	F	14/06/2009	14/06/2009	Y	O72 , , ,VDM ,FQ
UK 9 241363 0240 2	R	LIM	F	20/02/2012	20/02/2012	Y	O48 , , ,VDM ,FQ
UK 9 241363 0241 3	R	LIM	F	28/02/2012	28/02/2012	Y	O48 , , ,VDM ,FQ
UK 9 241363 0253 1	R	LIM	F	25/08/2015	25/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0254 2	R	LIM	F	20/08/2015	20/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0255 3	R	LIM	F	26/08/2015	26/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0256 4	R	LIM	M	02/09/2015	02/09/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0261 2	R	LIM	M	12/05/2016	12/05/2016	Y	M , , ,VDP ,FQ
UK 9 241363 0262 3	R	LIM	F	21/06/2016	21/06/2016	Y	M , , ,VDP ,FQ
UK 9 241363 0263 4	R	LIM	M	23/06/2016	23/06/2016	Y	M , , ,VDP ,FQ
UK 9 102451 0353 1	BR	CH	F	08/10/2015	11/06/2016	Y	M , , ,VDM ,FQ ,LMN

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MA85
02/12/2016
1

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
UK 9 100448 1605 3	B	LIM	F	04/05/2015	11/06/2016	Y	M , , ,VDM ,FQ ,LMN
UK 9 242568 2610 3	RW	HER	F	12/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2611 4	RW	HER	M	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2612 5	RW	HER	F	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2613 6	RW	MB	M	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 240183 2964 1	B	LIM	M	01/07/2016	28/07/2016	Y	M , , ,VDP ,FQ
UK 9 240183 2965 2	B	LIM	M	02/07/2016	28/07/2016	Y	M , , ,VDP ,FQ
UK 9 240148 3337 3	BW	HER	M	04/06/2016	27/06/2016	Y	M , , ,VDP ,FQ ,LMN
UK 9 240148 3346 5	RW	HER	F	08/08/2016	10/09/2016	Y	M , , ,VDP ,FQ ,LMN
UK 9 240148 3347 6	RW	HER	F	08/08/2016	10/09/2016	Y	M , , ,VDP ,FQ ,LMN
UK 9 240148 3348 7	RW	HER	M	17/08/2016	10/09/2016	Y	M , , ,VDP ,LMN ,FQ
UK 9 240148 3350 2	BW	HER	M	16/09/2016	18/11/2016	Y	M , , ,VDP ,FQ
UK 9 183682 4087 2	RW	HER	F	28/12/2015	18/10/2016	45	M , , ,LMN ,FQP ,LMN
UK 9 243573 4163 4	BW	HER	M	15/07/2016	03/08/2016	Y	M , , ,VDP ,FQ
UK 9 243573 4167 1	BW	HER	M	22/07/2016	03/08/2016	Y	M , , ,VDP ,FQ
UK 9 243573 4170 4	BW	HER	M	26/07/2016	03/08/2016	Y	M , , ,VDP ,FQ

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NEWRY , BT35 6EF , 0300 200 7840

MA85
02/12/2016
2

HERD LIST

To: MR PETER JOHN MURPHY
23 CULLYHANNA ROAD
TULLYVALLAN
NEWTOWNHAMILTON
NEWRY CO DOWN
BT35 OJB

Department of Agriculture, Environment and Rural Affairs
Divisional Veterinary Office
GLENREE HOUSE
UNIT 2, SPRINGHILL ROAD
CARNBANE INDUSTRIAL ESTATE
CARNBANE
NEWRY
BT35 6EF
0300 200 7840

Herd No. 241363

Date 2/12/2016

Herd Status: FQE,OTF

Total Animals: 29

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
Date of last progeny	Date statuses applied						
UK 9 241363 0183 1 (PROG-23/06/2016)	R	LIM	F	20/06/2004	20/06/2004	Y	O72 , , ,VDM ,FQ
UK 9 241363 0225 1 (PROG-02/09/2015)	R	LIM	F	09/06/2009	09/06/2009	Y	O72 , , ,VDM ,FQ
UK 9 241363 0226 2 (PROG-21/06/2016)	R	LIM	F	14/06/2009	14/06/2009	Y	O72 , , ,VDM ,FQ
UK 9 241363 0240 2 (PROG-12/05/2016)	R	LIM	F	20/02/2012	20/02/2012	Y	O48 , , ,VDM ,FQ
UK 9 241363 0241 3 (PROG-26/08/2015)	R	LIM	F	28/02/2012	28/02/2012	Y	O48 , , ,VDM ,FQ

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DVO CONTACT: NEWRY , GLENREE HOUSE , UNIT 2, SPRINGHILL ROAD , CARNBANE INDUSTRIAL ESTATE , CARNBANE ,
NEWRY , BT35 6EF , 0300 200 7840

MC413
02/12/2016
1

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statuses
Date of last progeny	Date statuses applied						
UK 9 241363 0253 1 (PROG-NONE)	R	LIM	F	25/08/2015	25/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0254 2 (PROG-NONE)	R	LIM	F	20/08/2015	20/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0255 3 (PROG-NONE)	R	LIM	F	26/08/2015	26/08/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0256 4	R	LIM	M	02/09/2015	02/09/2015	Y	M , , ,VDM ,FQ
UK 9 241363 0261 2	R	LIM	M	12/05/2016	12/05/2016	Y	M , , ,VDP ,FQ
UK 9 241363 0262 3 (PROG-NONE)	R	LIM	F	21/06/2016	21/06/2016	Y	M , , ,VDP ,FQ
UK 9 241363 0263 4	R	LIM	M	23/06/2016	23/06/2016	Y	M , , ,VDP ,FQ
UK 9 102451 0353 1 (PROG-NONE)	BR	CH	F	08/10/2015	11/06/2016	Y	M , , ,VDM ,FQ ,LMN
UK 9 100448 1605 3 (PROG-NONE)	B	LIM	F	04/05/2015	11/06/2016	Y	M , , ,VDM ,FQ ,LMN
UK 9 242568 2610 3 (PROG-NONE)	RW	HER	F	12/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2611 4	RW	HER	M	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2612 5 (PROG-NONE)	RW	HER	F	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 242568 2613 6	RW	MB	M	22/08/2016	12/10/2016	Y	M , , ,VDP ,FQ
UK 9 240183 2964 1	B	LIM	M	01/07/2016	28/07/2016	Y	M , , ,VDP ,FQ
UK 9 240183 2965 2	B	LIM	M	02/07/2016	28/07/2016	Y	M , , ,VDP ,FQ

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DVO CONTACT: NEWRY , GLENREE HOUSE , UNIT 2, SPRINGHILL ROAD , CARNBANE INDUSTRIAL ESTATE , CARNBANE ,
NEWRY , BT35 6EF , 0300 200 7840

MC413
02/12/2016
2

Animal No.	Colour	Breed	Sex	D.O.B.	Moved-In	FQAS	Statures
Date of last progeny	Date statuses applied						
UK 9 240148 3337 3	BW	HER	M	04/06/2016	27/06/2016	Y	M , , , VDP , FQ , LMN
UK 9 240148 3346 5 (PROG-NONE)	RW	HER	F	08/08/2016	10/09/2016	Y	M , , , VDP , FQ , LMN
UK 9 240148 3347 6 (PROG-NONE)	RW	HER	F	08/08/2016	10/09/2016	Y	M , , , VDP , FQ , LMN
UK 9 240148 3348 7	RW	HER	M	17/08/2016	10/09/2016	Y	M , , , VDP , LMN , FQ
UK 9 240148 3350 2	BW	HER	M	16/09/2016	18/11/2016	Y	M , , , VDP , FQ
UK 9 183682 4087 2 (PROG-NONE)	RW	HER	F	28/12/2015	18/10/2016	45	M , , , LMN , FQP , LMN
UK 9 243573 4163 4	BW	HER	M	15/07/2016	03/08/2016	Y	M , , , VDP , FQ
UK 9 243573 4167 1	BW	HER	M	22/07/2016	03/08/2016	Y	M , , , VDP , FQ
UK 9 243573 4170 4	BW	HER	M	26/07/2016	03/08/2016	Y	M , , , VDP , FQ

----- End of Report -----

DAERA Direct
CSB Newry



Department of
**Agriculture, Environment
and Rural Affairs**

www.daera-ni.gov.uk

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KEVIN + PETER MURPHY
23 CULLYHANNA ROAD
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NEWTOWNHAMILTON
NEWRY BT35 0JB

DAERA Direct
Glenree House
Carnbane Industrial Estate
Newry, BT35 6EF
Telephone: 0300 200 7840
Fax: 028 30253 222
E mail : DAERADirect.Newry@daera-ni.gov.uk

TO WHOM IT MAY CONCERN

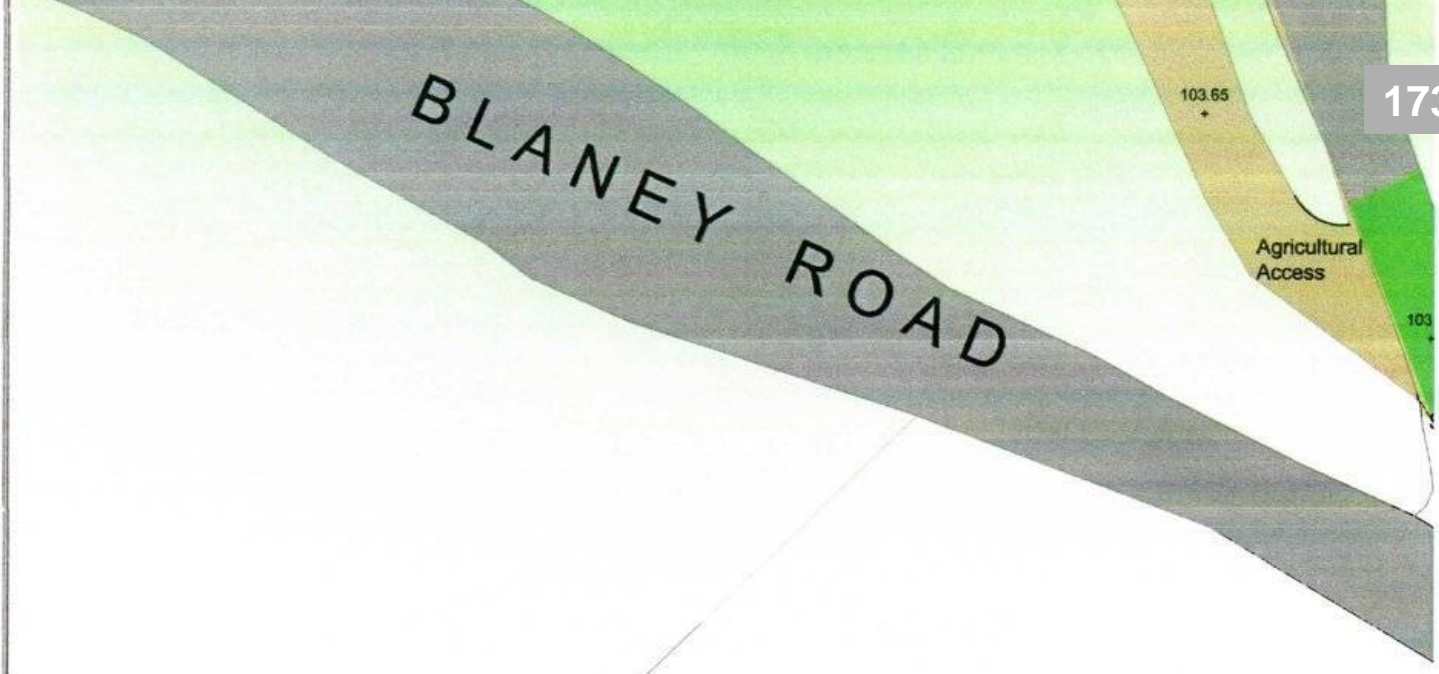
Please see attached document 2016 Field Data

This will confirm that Farm Business 620798 owned by the above named is current using fields 2/055/068/9 and 2/055/068/10 for agricultural purposes.

Margaret Hughes
Administrative Officer

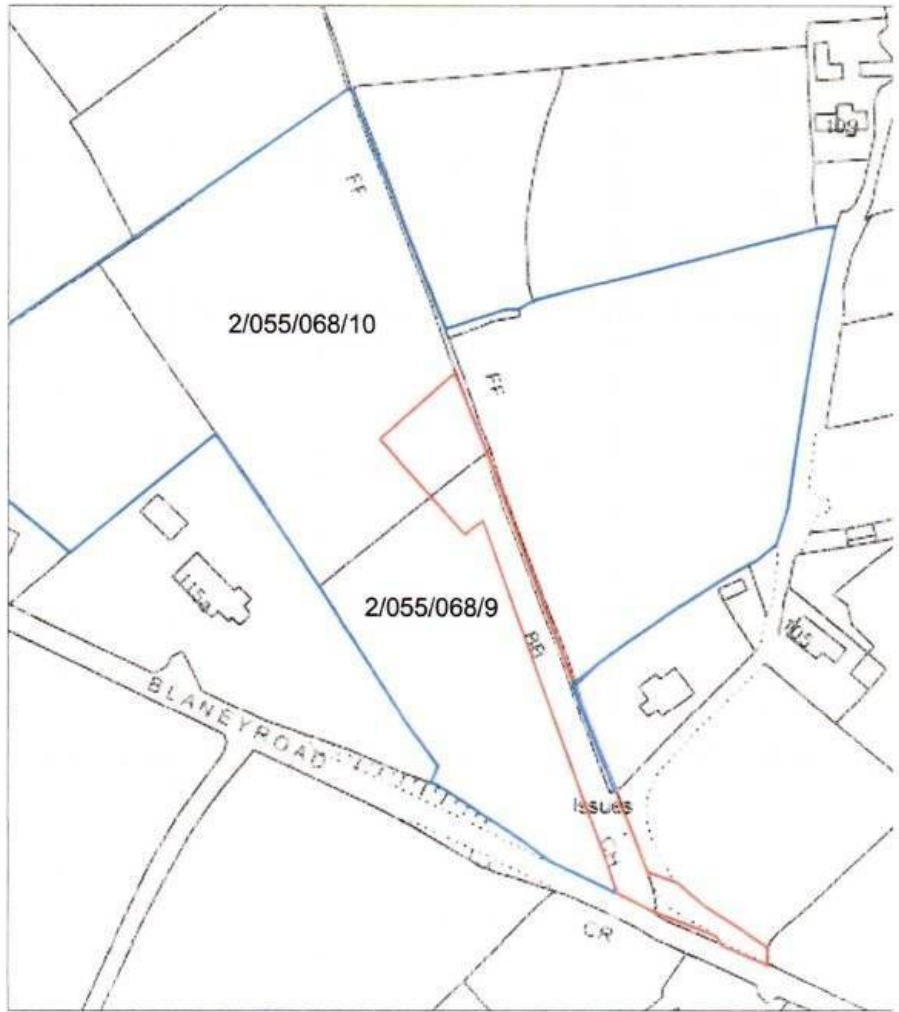
If you are deaf or have a hearing difficulty you can
contact the Department via the Next Generation Text
Relay Service by dialling 18001 + telephone number.





Proposed Site Layout

Scale 1:500



DAERA CSB NEWRY			3
COUNTER	POST	FAX	
RECEIVED - 2 DEC 2016			
PROCESSED			
CIS HUK	DATE 2/12/2016		
APHIS	DATE		

Site Location Plan

Scale 1:2500



ULSTER FARMERS' UNION

Established 1918

Clarke Black
Chief Executive

Area Planning Office
Newry, Mourne & Down Council
Monaghan Row
Newry
BT35 8DJ
N. Ireland

8th November 2016

Planning Ref: LA07/2016/0693/F
FAO: Ms. Joanne McVeigh

Dear Ms. McVeigh,

Re: Proposed Erection of Agricultural Shed and Slurry Tank, 120m North-West of No. 105 Blaney Road Tullyard Crossmaglen Armagh BT35 9AT

The Ulster Farmers' Union is writing in support of our member, Mr. Kevin Murphy, in relation to the above planning application for the erection of agricultural shed and slurry tank on his farm holding. It is our understanding that the Department of Agriculture, Environment and Rural Affairs (DAERA) has already confirmed that this business is both an active and established farm business.

The Ulster Farmers' Union would ask that the following is taken into consideration when establishing whether this proposal is necessary for the efficient use of the agricultural holding.

- Our member, Mr. Kevin Murphy farms a total of 45 acres. His holding is split into 2 main land areas. There is 25 acres around the principal farm buildings on Cullyhanna Road where Mr. Murphy resides and the remainder (20 acres) located on lands around the application site at Blaney Road. The only farm buildings are at Cullyhanna Road except for a small cattle crush close to the application site. The farm buildings at Cullyhanna Road are 10 miles away from the lands at Blaney Road.

475 Antrim Road, Belfast BT15 3DA
Tel: 028 90 370222
Fax: 028 90 371231

Email: info@ufuhq.com
Website: www.ufuni.org

- Mr. Murphy has a beef enterprise with half of his stock located at the lands at Blaney Road. With almost half of his holding at Blaney Road it is essential that Mr. Murphy has this facility for his farming enterprise at this site. The proposed use of this farm building is for an isolation unit at various times in the year, but also as a shelter and inspection facility for his stock and storage facility for animal bedding, feedstock and medicines to service half of his herd at this location.
- With any farming enterprise the emphasis is to ensure that animals are healthy and free from disease at all times. Beef farming involves a range of animal husbandry procedures to maintain and enhance animal health, welfare and production and ultimately the profitability of the enterprise. Mr. Murphy must every day carry out routine general health inspections of his stock, and continually throughout the year needs to carry out essential routine treatments. This ranges from lameness monitoring and foot care, administering of prescribed medicines such as external and internal parasite control, vaccinations, lungworm control, ear tagging etc. It is therefore vital that Mr. Murphy has proper facilities for looking after the stock kept on the adjacent lands allowing him to carry out these inspections and operations when necessary.
- It must be stressed here that Mr. Murphy does not have any other farm building at this location and this proposed building is needed to be adjacent to these lands with almost half of his holding at Blaney Road. It is not efficient or practical for Mr. Murphy to continue to transport stock kept at the lands at Blaney Road to the principle farm buildings, 10 miles away, every time he has to carry out routine inspections, routine operations or isolate a sick or injured animal. Efficient cattle management requires both experience and the observance of high standards of care. Unless management and handling are done well, the welfare of the cattle cannot be adequately protected. Under the Welfare of Farmed Animals Regulations (Northern Ireland) 2012 a person responsible for a farmed animal is responsible for meeting the legal obligations for animal welfare. Our member must, under the welfare legislation, take all reasonable steps to ensure that he does not cause any unnecessary pain, suffering, injury or distress to his animals.

There are situations where DAERA consider cattle unfit to be transported and state that animals should not be transported when they are unable to move independently without pain, have a severe open wound, are heavily pregnant or have given birth within the previous seven days. This is further enforced by the Welfare of Animals (Transport) Regulations (Northern Ireland) 2006 (as amended). It is therefore essential that Mr. Murphy has this proposed facility adjacent to his lands at Blaney Road to ensure the welfare of his animals is protected.

The relationship between an animal and its environment is crucial to its welfare. Most cattle are required to cope with regularly changing climatic conditions and, occasionally, with more severe and extreme events. However persons in charge of animals have a legal obligation to ensure that animals in their care have a suitable



ULSTER FARMERS' UNION

Established 1918

environment, which the animal is able to exhibit normal behaviour patterns and any need it has to be housed with, or apart from other animals.

- With regard to the proposed use of as an isolation facility, DAERA recommend that it is good practice to have isolation facilities but also permit that while animals are not being isolated it is possible to use the facility for other purposes.

DAERA has published the "Code of Practice 2012" under the Welfare of Animals Act (Northern Ireland) 2011 for farmers. This document clearly states that "*action should be taken immediately if any cattle are injured or appear ill or distressed*" and "*stock-keepers should have a procedure for isolating and caring for sick or injured animals. Isolation pens should be an essential component of any cattle unit and they should have an entrance that is wide enough for an animal to be easily herded into the pen. When moving sick or injured cattle to the isolation pens, it should be ensured that unnecessary suffering does not occur*". It is therefore essential that this isolation facility is located adjacent to the lands where stock is present.

(Welfare of Farmed Animals Regulations (Northern Ireland) 2012 states at:

Schedule 1 paragraph 6 – Where necessary, sick or injured animals shall be isolated in suitable accommodation with, where appropriate, dry comfortable bedding.

The Ulster Farmers' Union believe that this proposed farm building is necessary for the efficient use of the agricultural holding given that Mr. Murphy currently has no agricultural shed at Blaney road to services almost half of the total lands/stock of his farm business. This proposed facility adjacent to the lands owned at Blaney Road means that Mr. Murphy does not have to continually transport stock 10 miles each way to the home farm and risk causing unnecessary distress to the animals and cost to the farm business.

I thank you for your time on this matter.

Yours sincerely,

pp *D. Gerby*

Cheryl Herdman.
Senior Technical Officer

475 Antrim Road, Belfast BT15 3DA
Tel: 028 90 370222
Fax: 028 90 371231

Email: info@ufuhq.com
Website: www.ufuni.org

ITEM NO	18				
APPLIC NO	LA07/2016/1045/F	Full	DATE VALID	8/4/16	
COUNCIL OPINION	REFUSAL				
APPLICANT	Mr & Mrs A. Quinn 32 Aughanduff Road Mullaghbawn Newry BT35 9YD		AGENT	Marcus Bingham 9 Tullyquilly Road Rathfriland BT34 5LR	
					028 4063 8842
LOCATION	32 Aughanduff Road Mullaghbawn Newry BT35 9YD				
PROPOSAL	Demolition of existing dwelling and outbuildings and erection of new replacement dwelling and detached garage				
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions	
	0	0			0
			Addresses Signatures		Addresses Signatures
			0	0	0 0

1 The proposal is contrary to the SPPS and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside as the dwelling which it is proposed to be replaced is vernacular and makes an important contribution to the heritage, appearance and character of the locality and is capable of being made structurally sound and improved.



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agus an Dúin**

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/1045/F

Date Received: 02.08.2016

Proposal: Demolition of existing dwelling and outbuildings and erection of new replacement dwelling and detached garage

Location: 32 Aughanduff Road Mullaghbawn Newry BT35 9YD

Site Characteristics & Area Characteristics:

The site is located along the Aughanduff Road. There is an existing two storey dwelling sited close to the roadside. The dwelling is of an old traditional style with a small rounded roofed shed to the front forming part of the roadside boundary. The dwelling is of a stone construction with a natural slate roof and brick chimneys. Access to the dwelling is via an existing vehicular access to the northern corner of the site.

The proposal is for a replacement dwelling into the adjoining agricultural field. The natural topography of the land rises steeply in a westerly direction. The boundary with the dwelling south of the site is defined by a rendered wall. This dwelling and site are sited approx. 2 metres above the proposed site.

Site History:

No planning history for this particular site.

Planning Policies & Material Considerations:

The site is located within the countryside and An Area of Outstanding Natural Beauty as defined in the Banbridge, Newry and Mourne Area Plan 2015.

SPPS

PPS 21

Consultations:

TransportNI- request plan

NIEA WMU- no objections

NIEA NH- concerns regarding bats, badgers and wild birds- biodiversity checklist to be requested/possible surveys

NIW- statutory

Objections & Representations

No. of neighbours notified= 4

Advertise expiry= 9/9/16

No. of representations received=0

Consideration and Assessment:

The site is located within the countryside therefore the provisions of PPS 21 apply to this particular case.

It is the applicant's intention to replace the existing two storey traditional dwelling with a single storey chalet bungalow.

The building is considered to have a number of vernacular qualities and is vernacular in design. The dwelling is not listed but is vernacular and makes an important contribution to the heritage, appearance and character of the locality.

The policy seeks to help retain vernacular houses and promote their sympathetic renovation and continued use rather than replacement. The policy states that planning permission will only be granted where it is demonstrated that it is not reasonable capable of being made structurally sound or otherwise improved. The onus is on the agent to demonstrate the above and no evidence has been submitted since our request on the 8th Sept 2016.

If the principle of replacement was to be accepted, the proposed off site location and increase in the residential curtilage would be acceptable as it would result in access and amenity benefits. The curtilage should be reduced to the lower portion of the site to aid the integration of the dwelling on site.

The proposal as stated above is to replace the existing two storey dwelling with a single storey chalet bungalow. Having considered the overall size of the new dwelling the proposal would not have a visual impact significantly greater than the existing.

The dwelling creates a good solid to void ratio with the windows having a vertical emphasis. The proposal is linear and simple in form with a small front storm porch. The roof is pitched and to be finished in a black slate. The walls are to be a smooth render with a natural stone to dress the porch. Having considered the design and the surrounding builds the proposal is appropriate to its rural setting.

The proposal seeks to demolish the existing dwelling and provide a new entrance in its location. As the existing dwelling is currently occupied the proposal will not result in any intensification to the access arrangements.

It is noted that TransportNI have requested amendments regarding, sightlines, septic tank location mini 10m from road edge, drainage and gradient details at the access point.

Having considered the above I am of the opinion the proposed dwelling could not be considered as a prominent feature in the landscape given the surrounding development. This is also ensured by the natural boundaries and topography surrounding the site. The proposal involves up to 2 metres of excavation which is quite substantial however the applicant intends on grading the lands and constructing a retaining wall around 0.6 metres in height which is considered acceptable. The design of the dwelling as discussed above is in my opinion appropriate of the site and its locality.

The proposal is for a replacement dwelling and therefore will not be visually linked or sited to cluster with an established group of buildings on a farm.

The proposal will not result in build up as it would replace the existing dwelling. The dwelling and associated works will not cause a detrimental change to, or further erode the rural character of the surrounding area.

NIEA Natural Heritage note records that the application site has masonry structures, trees and hedgerow habitat occurring within or adjacent to the application site and has the potential to support a variety of species including but not limited to bats, badgers and wild birds which may be affected by this application.

If the Council is mindful of accepting the principle of replacement a biodiversity checklist should be complete and forwarded to NIEA for further consultation.

Recommendation:
Refusal- contrary to SPPS & CTY 3 of PPS 21

The proposal is contrary to the SPPS Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside as the dwelling which it is proposed to be replaced is vernacular and makes an important contribution to the heritage, appearance and character of the locality and is capable of being made structurally sound and improved.

.....
.....

MARCUS BINGHAM MCIAT

ARCHITECTURAL DESIGN SERVICES

9 TULLYQUILLY ROAD
RATHFRILAND
NEWRY
BT34 5LR

Tele: 028 4063 8842
Mob: 07780 937420
Email: marcus@adsni.net



Your Ref: LA07/2016/1045/F

9th January 2017

FAO Ms Joanne McVeigh

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

Dear Sir / Madam

Demolition Of Existing Dwelling And Outbuilds And Erection Of New Replacement Dwelling
And Detached Garage On 32 Aughanduff Road, Mullaghbawn, Newry, BT35 9YD,
For Mr & Mrs Aidan Quinn

We refer to the above and enclose the following in support of this Planning application:

Drawing Numbers

EX/01	Plans as existing
EX/02	Elevations as existing
EX/SM/01	Existing site map
EX/LS/01	Existing longitudinal road section
EX/CS/01	Existing cross section

Our client has asked us to write on his behalf with an explanation as to why he has lodged an application for a new dwelling as opposed to an extension of the old.

The existing dwelling dates back to the 1800s, is of stone construction with a slated roof, rainwater goods and white PVC windows (side hung).

The layout comprises of:

Ground floor – Living room and kitchen/dining
Upper level – 2 No bedrooms and 1 bathroom

There is an adjoining outbuilding connected to the dwelling and a round roof small stone barn adjacent to the roadway.

The Aughanduff Road is within the Ring of Gullion in rural South Armagh. It is located at the foot of Aughanduff mountains.

Presently there are some 27 modern style dwellings on the Aughanduff Road, therefore a precedent for new-build has already been established.

Our clients are recently married and have just started a family. As such they are entitled to a standard of living afforded to all.

The dwelling in question (32 Aughanduff Road) in which they live falls far short of what could be termed as acceptable.

A new dwelling is absolutely essential on this site for the following reasons:

Walls are built directly off the clay with no foundations.

Surface water from the mountain behind has been running down against the foot of the walls and over the years has resulted in rising dampness in walls and also under the floors. The rear ground level is not only high but an extremely steep gradient and has a rock presence behind the dwelling.

Access to this dwelling is very substandard. The dwelling is some 6.5 metres from the edge of the roadway and just at the edge of the access to the road gradient dips sharply leaving it impossible to widen or improve this entrance.

In addition the relationship between the road and the adjoining proposed site is such that an access would be virtually impossible to provide. (See existing site cross section drawing number EX/CS/01) and existing longitudinal road section EX/LS/01).

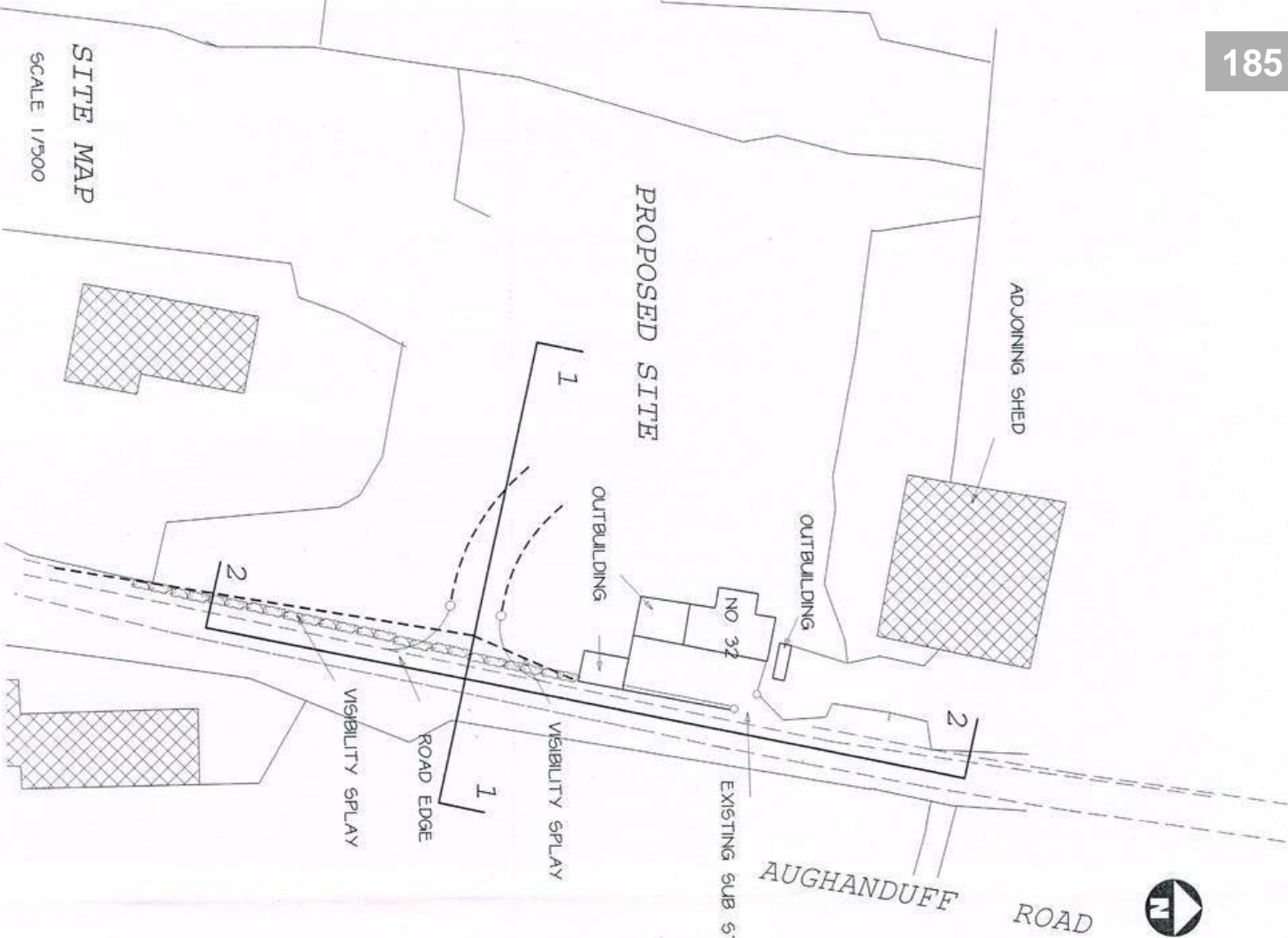
The attached Google Street views are helpful.

The family have been born and reared in this location. Mr Quinn's family home is adjacent and he helps on the family farm.

We would hope your Department will look favourably on this information as our clients are living in poor conditions and need new accommodation.

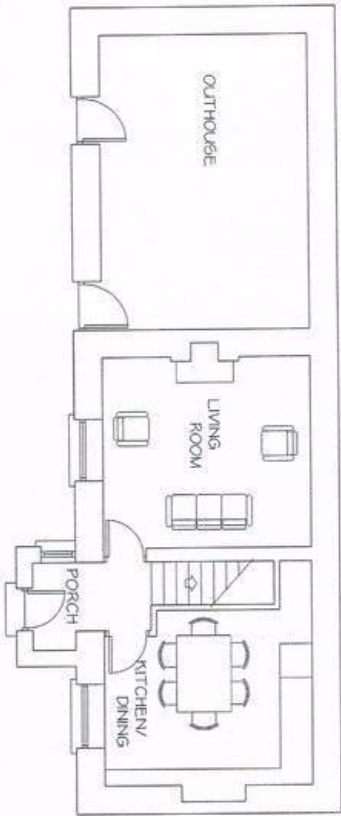
Yours sincerely

Marcus Bingham MCIAT

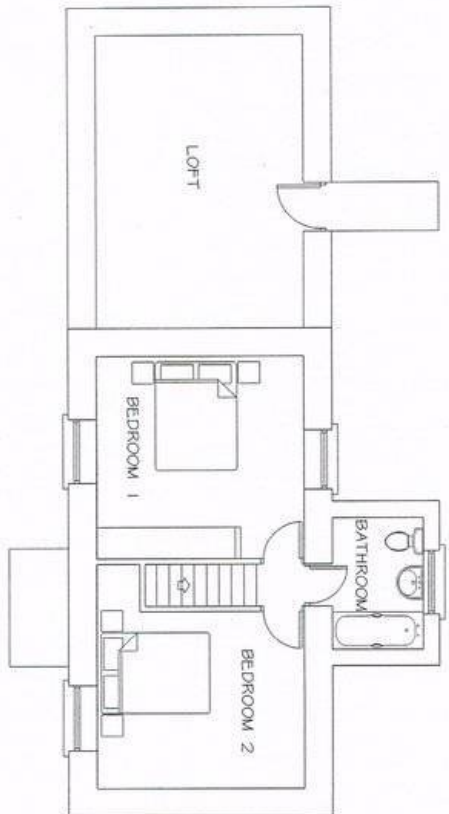


EXISTING SITE MAP

JOB TITLE MR AND MRS A QUINN 32 AUGHANDUFF ROAD MULLAGHAW NEWRY BT35 9YD PLANS AND SECTION AS EXISTING		DRG NO EX/SM/01	
REVISIONS DSN DATE	SCALES 1 / 500	M. C. I. A. T. 	
MARCUS BINGHAM MCIAT INCORPORATING S.M. SATHI 3D DESIGN 9 TULLYQUILLY ROAD RATHFRILAND, MEMBER OF THE CHARTERED INSTITUTE OF ARCHITECTURAL TECHNOLOGISTS TELEPHONE: 028 406 38842 : MOBILE 07780937420 : EMAIL MARCUS@SBSAQUINN.NET			



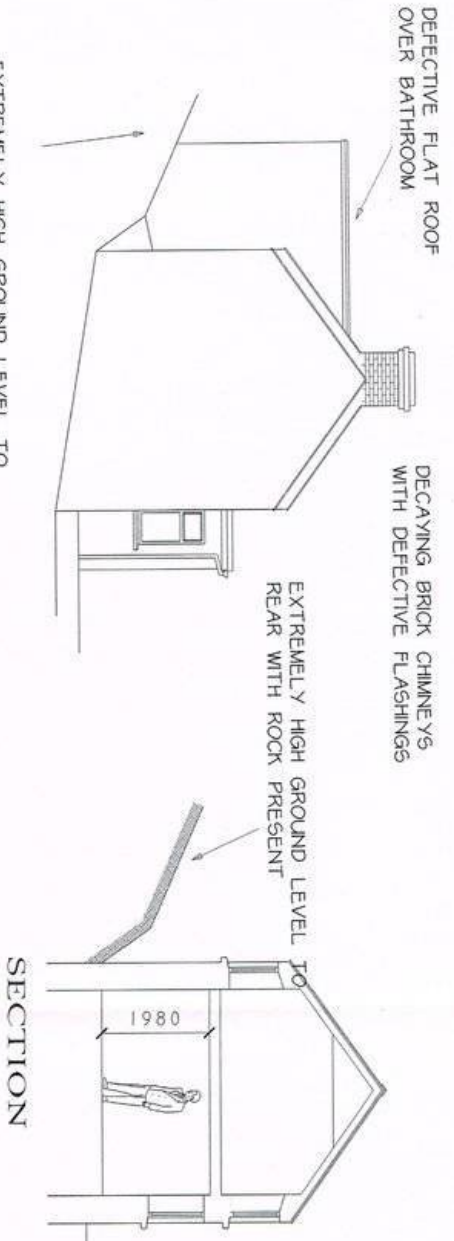
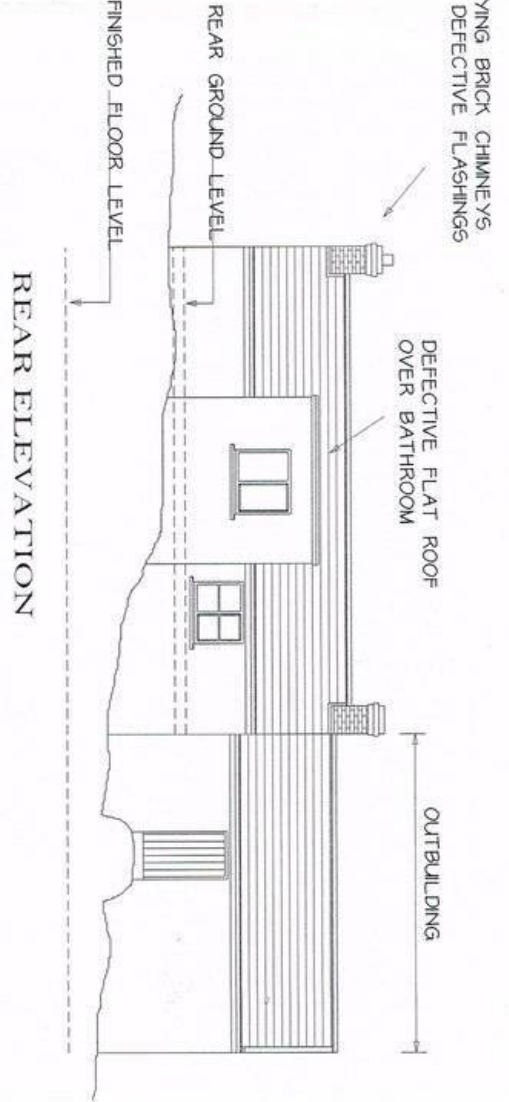
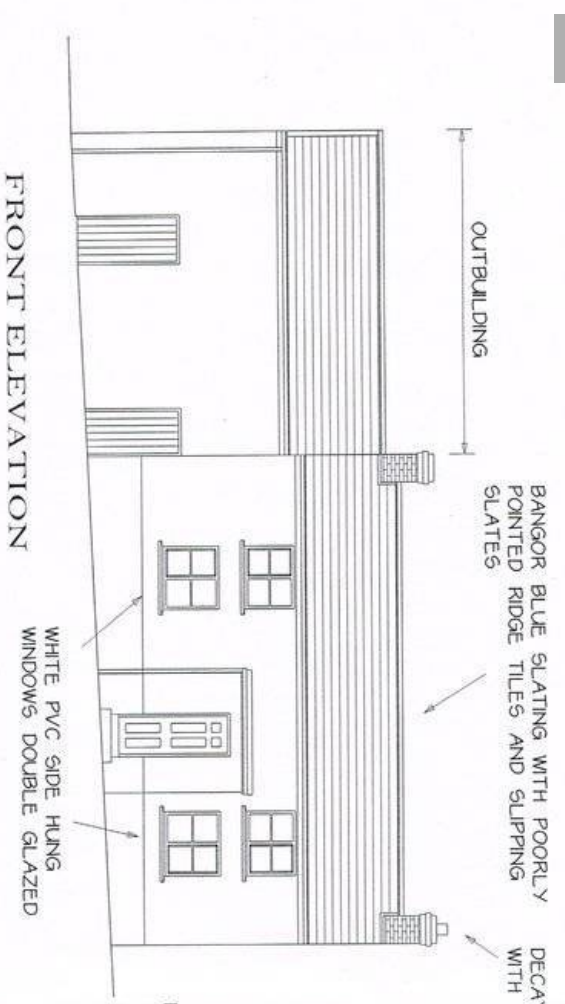
GROUND FLOOR PLAN



PLAN AT UPPER LEVEL

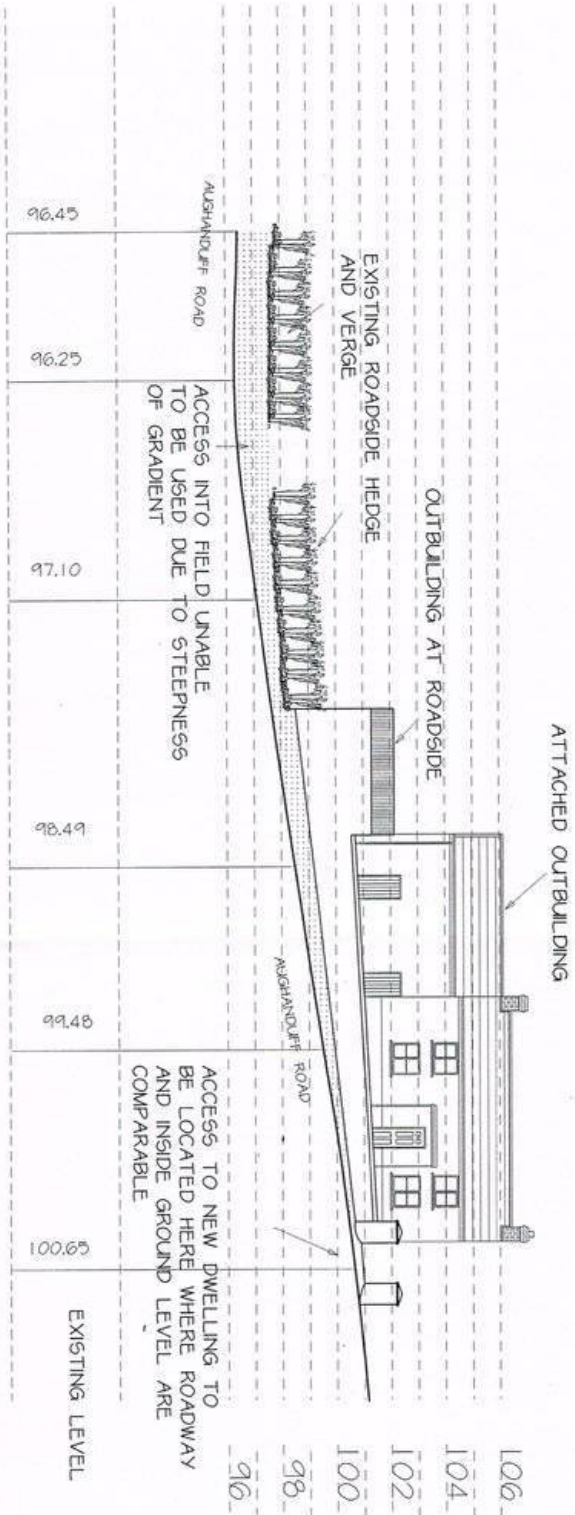
PLANS AS EXISTING

JOB TITLE MR AND MRS AIDAN QUINN 32 AUGHANDUFF ROAD MULLAGHBAWN NEWRY BT35 9YD PLANS AS EXISTING		DRG NO EX/01	
REVISIONS DRN DATE	SCALES 1/100	M. C. I. A. T.	
MARCUS BINGHAM MCJAT (INCORPORATING SAM SMITH 3D DESIGN) 9 TULLYQUALLY ROAD RATHFRILAND, MEMBER OF THE CHARTERED INSTITUTE OF ARCHITECTURAL TECHNOLOGISTS TELEPHONE 028 406 38942 : MOBILE 07780937420 : EMAIL MARCUS@BISPLUNET			




ELEVATIONS AND SECTION AS EXISTING

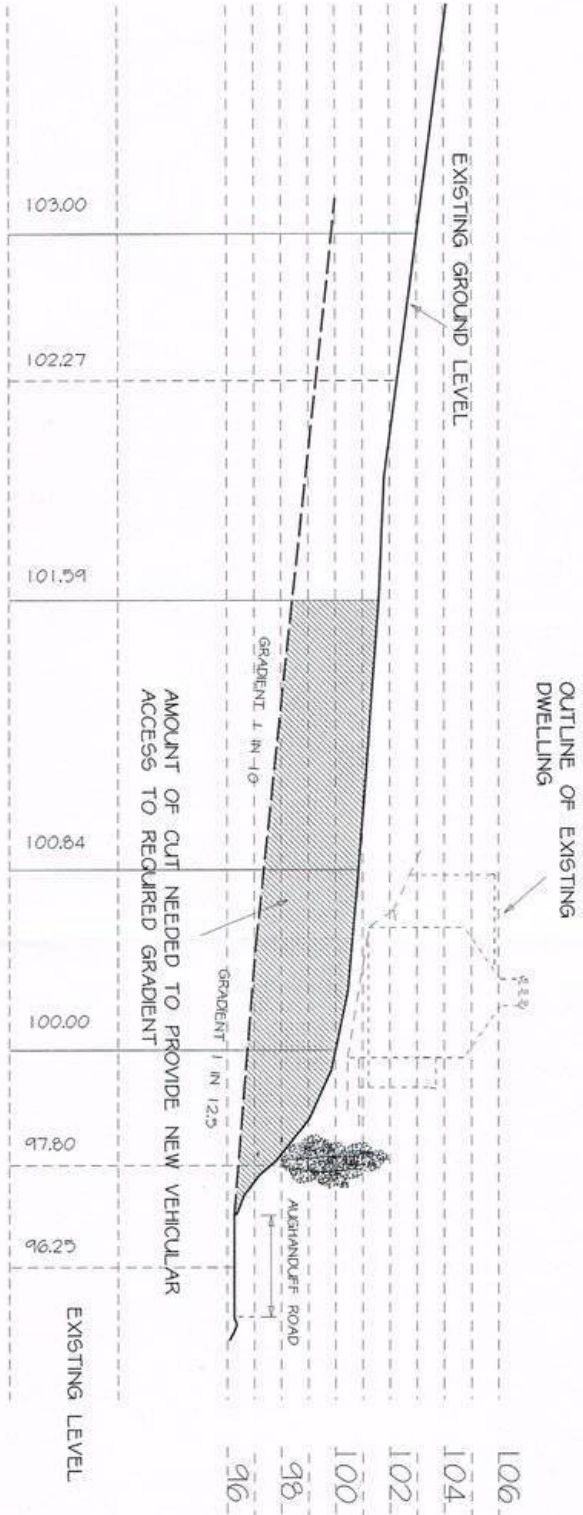
<p>JOB TITLE</p> <p>MR AND MRS AIDAN QUINN</p> <p>32 AUGHANDUFF ROAD MULLAGHBAWN NEWRY BT35 9YD</p> <p>ELEVATIONS AND SECTION AS EXISTING</p>		<p>DRG NO</p> <p>EX/02</p>							
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<p>MARCUS BINGHAM MCJAT (INCORPORATING SAM SMITH 3D DESIGN)</p> <p>9 TULLYQUILLY ROAD RATHFRILAND MEMBER OF THE CHARTERED INSTITUTE OF ARCHITECTURAL TECHNOLOGISTS</p> <p>TELEPHONE 028 405 38842 : MOBILE 07780937420 : EMAIL MR@CUB@BDSM1.NET</p>									



EXISTING LONGITUDINAL ROAD SECTION 2 - 2


EXISTING LONGITUDINAL ROAD SECTION

<p>JOB TITLE MR AND MRS A QUINN 32 AUGHANDUFF ROAD MULLAGHAWN NEWRY BT35 9YD PLANS AND SECTION AS EXISTING</p>		<p>DRG NO EX/LS/01</p>							
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DRN	DATE	SCALES							
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<p>MARCUS BINGHAM MCAT INCORPORATING SAM SMITH 3D DESIGN 9 TULLYQUALLY ROAD RATHFRIL AND MEWER OF THE CHARTERED INSTITUTE OF ARCHITECTURAL TECHNOLOGISTS TELEPHONE 028 406 38942 : MOBILE 07780937420 : EMAIL MR@CUSD@DSL.NE.T</p>									



EXISTING SITE CROSS SECTION 1 - 1

EXISTING SITE CROSS SECTION

JOB TITLE MR AND MRS A QUINN 32 AUGHANDUFF ROAD MULLAGHBAWN NEWRY BT35 9YD PLANS AND SECTION AS EXISTING		DRN DATE		SCALES 1/200		PRG. NO EX/CS/01	
REVISIONS		M. C. I. A. T.				M. C. I. A. T.	
MARCUS BINGHAM MCIAT (INCORPORATING SAM SMITH 3D DESIGN) 9 TULLYQUILLY ROAD RATHFRILAND MEMBER OF THE CHARTERED INSTITUTE OF ARCHITECTURAL TECHNOLOGISTS TELEPHONE 028 406 38842 : MOBILE 07780937420 : EMAIL marcus@bosoni.net							

ITEM NO	21			
APPLIC NO	LA07/2016/1591/O	Outline	DATE VALID	12/1/16
COUNCIL OPINION	APPROVAL			
APPLICANT	Camlough Community Association 4 Maryville Camlough Newry BT35 7JQ	AGENT	Francis McShane 2 Old Road Camlough Newry BT35 7JW 02830838379	
LOCATION	Lands accessed immediately south of No.2 Quarter Road Camlough and including lands to the rear of 2-20 Carrick Meadow to the rear of 17-35 Main Street and to the rear of No.3A Chapel Road. (Site locally known as the 10 acre field Camlough).			
PROPOSAL	Community Centre			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	2	0	0	0
			Addresses	Signatures
			0	0 0 0



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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/1591/O

Date Received: 28.11.16

Proposal: Community Centre

Location: Lands accessed immediately south of No.2 Quarter Road Camlough and including lands to the rear of 2-20 Carrick Meadow to the rear of 17-35 Main Street and to the rear of No.3A Chapel Road. (Site locally known as the 10 acre field Camlough).

Site Characteristics & Area Characteristics:

The site itself consists of agricultural grazing land which rises steeply to the west. The site is bounded by the Camlough River to the south with residential housing to the north in Carrick Meadow and the housing development of Oliver Plunkett Park to the east. The surrounding area is predominantly residential. By way of development plan definition, the site is located within the settlement development limit of Camlough on lands zoned for Community Use (CL 09).

Site History:

LA07/2016/0244/PAN- Pre Application Notice for this planning application.

Planning Policies & Material Considerations:

SPPS – Strategic Planning Policy Statement for Northern Ireland

Banbridge Newry and Mourne Area Plan 2015

PPS 2 – Planning and Nature Conservation

PPS 3 – Access, Movement and Parking / DCAN 15

PPS 15 – (Revised) Planning and Flood Risk

Consultations:

Environmental Health Office – No objections on 16.12.16
NI Water - No objections, subject to informatives on 19.12.16
Transportni – Awaiting information.

Rivers Agency – Awaiting response.

Objections & Representations

One letter of objection has been received on this scheme, however this objection was formally withdrawn on 4th January 2017.

Consideration and Assessment:**SPPS – Strategic Planning Policy Statement for Northern Ireland**

Under Paragraph 5.72, it is stated that, Planning Authorities should be guided by the principle that sustainable development should be permitted, having regard to the local development plan and all other material considerations, unless the proposed development will cause harm to interests of acknowledged importance. In such cases the Planning Authority has power to refuse planning permission. Having had regard to all material considerations as well as the prevailing Development Plan for the area (see next section) it is considered by the Planning Department that this development proposal for a Community Centre should be permitted and there would be no harm caused to interests of acknowledged importance.

Banbridge Newry and Mourne Area Plan 2015

The proposed site is located on lands zoned for Community Use (CL 09). Under this zoning, the key site requirement states that, The site is reserved only for a community centre to serve the settlement. This proposal is clearly in compliance with this zoning and key site requirement and effectively the zoning of this site equates to an outline approval already in that the principle has already been accepted on the site. The proposal also complies with Policy SMT 2 Development on Zoned Land.

The prevailing Development Plan, also contains Policy ECU 1 – Education, Health, Community and Cultural Uses. ECU 1 states that planning permission will be granted for education, health, community and cultural uses within settlement development

limits provided that five listed criteria are met. This proposal is considered to comply with the five listed criteria under this policy in that:

There is no significant detrimental impact on amenity or diversity;

The proposal does not prejudice the comprehensive development of surrounding lands, particularly on zoned sites;

The proposals are in keeping with the size and character of the settlement and its surroundings;

No additional infrastructure is required by the developer and

There are satisfactory access, parking and sewage disposal arrangements.

PPS 2 – Planning and Nature Conservation

This proposal has been considered against this policy statement and it is considered that the proposal is fully in compliance with this. No conservation constraints have been identified on this site. It should be noted that the Camlough ASSI and the Camlough Quarry ASSI are approximately 2.5 km away from the proposed site, however it is considered that this represents a significant distance and would not warrant a change of opinion. The Camlough River does run along the southern boundary of the site, however this does not flow into the two above mentioned designations, as it flows from Camlough to Bessbrook and then onto Newry. Thus, there is no hydrological connection between the proposed site and the ASSIs. Overall, natural heritage issues have been considered as part of this assessment and the Planning Department are satisfied that this proposal is acceptable in relation to nature conservation. Comment was made by a third party on this application, raising comments on nature conservation and these comments have been fully considered. Conditions shall be attached to ensure that existing mature trees, scrub and hedgerows are maintained where practicable, to ensure no negative impacts on the adjacent watercourse and if appropriate, mitigation measures/ negative conditions may also be applied to ensure no negative impact on nature conservation as a result of this development.

PPS 3 – Access, Movement and Parking / DCAN 15

Transportni have been consulted on this application and have requested a transport assessment form and a scaled drawing showing visibility splays. These have recently been submitted by the Agent and the Planning Department are awaiting a response from Transportni. It is considered by the Planning Department that access, movement and parking arrangements for the proposed site will be dealt with via a negative condition on any outline approval to be dealt with at reserved matters stage.

PPS 15 – (Revised) Planning and Flood Risk

Given the close proximity of the Camlough River, Rivers Agency have been consulted on this planning application. To date, Rivers Agency has still not responded to the Planning Department. However, an evaluation of the Rivers Agency flood risk maps shows that the site is subject to no serious flooding issues and is neither in a flood plain nor an area of inundation. The maps show that the site may be subject to some surface water flooding however it is considered that this is not a significant issue and would not warrant any further investigation. If Rivers Agency do raise any issues in their comment then it is envisaged that this will be dealt with via an appropriate negative condition or informative.

Residential Amenity

The surrounding residential properties have also been considered in this assessment. It is felt that there will be no adverse impact on these properties and matters such as siting, design, external appearance, access and landscaping shall be approved in writing with the Planning Authority at reserved matters stage and a condition will be applied to this effect. This will allow the Planning Department to consider in detail the proposed development of the site at the reserved matters stage. It should also be noted that none of the residential properties objected to this outline application. An objection was received from another third part (not a local resident). This objection was not based on the principle of the actual proposal but on the procedure of lodging the application. As noted above, this objection was formally withdrawn in early January 2017.

Recommendation

The Planning Department recommends that this outline application should be approved subject to appropriate conditions and informatives. Matters of details with regards to the proposal shall be approved in writing by the Planning Authority at the reserved matters stage. The proposal fully complies with all relevant planning policy and if implemented will significantly benefit the local community.

Case Officer

Authorised Officer

ITEM NO 22
APPLIC NO P/2011/0802/F **Full** **DATE VALID** 9/6/11
COUNCIL OPINION REFUSAL
APPLICANT Mr K Agnew 9 Drummond Road **AGENT** Henry Murray 37c
 Newry 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 and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposed development fails to comply with PPS 18 Renewable Energy.
- 2 The proposal is contrary to 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.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2011/0802/F

Date Received: 07th 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 14th 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 12th 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.

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 2015 and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposed development fails to comply with PPS18 Renewable Energy.
2. The proposal is contrary to 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.

ITEM NO	28			
APPLIC NO	P/2015/0173/F	Full	DATE VALID	3/3/15
COUNCIL OPINION	REFUSAL			
APPLICANT	Don Travers 8 Spelga Gardens Rathfriland Bt34 5QW		AGENT	Martin Bailie 44 Bavan Road Mayobridge BT34 2HS 30851910
LOCATION	100m south of 51 Ballymoyer Road Newtownhamilton			
PROPOSAL	Change of house type			
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 for Northern Ireland and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to The Strategic Planning Policy for Northern Ireland 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 Ballymoyer Road.
- 3 The proposal is contrary to The Strategic Planning Policy for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and add to a ribbon of development which 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: P/2015/0173/F

Date Received: 03.03.2015

Proposal: The proposal seeks Full Permission for a change of house type from that previously approved under planning reference P/2006/1376/RM. The changes include natural stone added to the porch and sunroom and marginal increases to the porch width and ridge height. Velux windows have also been proposed on the rear elevation of the dwelling and the siting and access of the proposed dwelling has been modified.

Location: As described on the application form, 100m South of No.51 Ballymoyer Road. The site lies approximately 0.75km south of the small settlement limit for Ballymoyer in rural South Armagh towards the North West of the District.

Site Characteristics & Area Characteristics:

The site as defined in red on the site location plan takes a rectangular shaped roadside portion of an agricultural field. Building work up to sub floor level was evident on site during my visit. The area around the building work has been cleared and beyond this the majority remains unmaintained. Natural screening can be found on the boundaries of the field with the Eastern boundary remaining undefined. The topography of the site remains relatively flat although slightly below road level. The land falls quite steeply further east from the site in the remaining portions of the field. The area is located in rural countryside and whilst development pressure is gradually increasing along this road there still is a strong rural character in the immediate area.

Site History:

P/2003/0798/O

Site for dwelling and garage

100 metres south of No.51 Ballymoyer Road Newtownhamilton

Permission Granted: 31.07.2003

P/2006/1376/RM

Erection of dwelling and garage

100m South of No 51 Ballymoyer Road, Newtownhamilton

Permission Granted: 06.07.2007

Planning Policies & Material Considerations:

Banbridge Newry and Mourne Area Plan 2015

Strategic Planning Policy Statement
 Planning Policy Statement 21
 Planning Policy Statement 3 / Development Control Advice Note 15
 Building on Tradition

Consultations:

Transport NI – Original consultation response outlines conditions to be attached to any approval. This consultation response confirms by way of conditions the access gradient and that site splays etc shall commence prior to the commencement of any other development in accordance with the proposed site layout.

Email received on 14/12/2015 from Transport NI confirmed sight lines had not been fully constructed in accordance with the approved plans (P/2006/1376/RM). In particular, the sight line to the north had not been properly constructed which according to Transport NI would cause a danger to traffic emerging from the access and would have road safety implications for traffic on the Ballymoyer Road.

Objections & Representations

1 Dwelling notified on 30.11.2015 and 15.04.2015
 Application Advertised on 18.03.2015
 No objections or representations received.

Consideration and Assessment:

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015
 The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for single dwellings following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS / BNMAP 2015. The site lies within the Rural Area as designated in the Banbridge Newry and Mourne Area Plan 2015. There are no objections with regard to the Area Plan.

Principle of Development

The Outline application was approved on 31.07.2003 with the standard time conditions attached and the Reserved Matters application P/2006/1376/RM was approved on 06.07.2007, also with the standard time condition attached. The greater time frame applies and therefore the proposed scheme should have commenced before 06.07.2009 which includes adhering to all conditions as instructed prior to commencement of development, then commencing development in accordance with the approved plans to secure the permission and keep the permission live. As this application is for a change of house type the agent contends that the previous permission was successfully commenced to remain live and therefore this application is to make a design change to a live permission. In assessing this application for the acceptability of the changes the starting point is to confirm commencement of the previous application.

A pre commencement condition (No.2) from the previous RM application P/2006/1376/RM states 'The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to

the commencement of any works or other development hereby permitted. The reason for this condition was to ensure there is satisfactory means of access in the interests of road safety and the convenience of road users. As underlined above this condition should have been implemented in full before the commencement of any other works permitted. An email from Transport NI which has been scanned on to the public portal, received on 14/12/2015 has confirmed sight lines had not been fully constructed in accordance with the approved plans (P/2006/1376/RM). In particular, the sight line to the north had not been properly constructed which according to Transport NI would cause a danger to traffic emerging from the access and would have road safety implications for traffic on the Ballymoyer Road. This condition has not been removed and remains a condition describing work that must be completed prior to the commencement of development. As this has not been adhered to in full the works that have been started on site cannot be described as authorised.

Notwithstanding the fact the pre commencement condition has not been adhered to, the works on site which include development up to sub floor level are not located in accordance with the approved plans. A siting condition and curtilage restriction was attached to the Outline approval by way of condition. The dwelling as proposed and the development as constructed is not completely located within the siting restriction condition and the curtilage restriction has not been adhered to in full. In addition to this the sub floor has been constructed approximately 9.5m south from the original approval and approximately 4m east of the original approval. Discrepancies also exist with regard to the site boundaries when compared to the original approval. Submissions received have been considered however it is the opinion of the Council that when you consider the accumulation of the above failures to implement the previously approved development correctly, the site cannot be considered to have a live permission implemented in accordance with the approved plans. This application will therefore be considered as a new dwelling against prevailing planning policy.

With regard to policy CTY1 of Planning Policy Statement 21 the proposal does not meet any of the exceptions listed for housing development. The proposal also does not have any over-riding reasons why this particular development is essential and could not be located in a settlement. As a consequence, the proposal is contrary to policy CTY1 of PPS21.

In terms of CTY 8 / CTY 14 the proposal is considered to add to ribbon development. No.51 and the agricultural buildings immediately south west of this dwelling share a common frontage with the proposed site and therefore the proposed dwelling, if permitted would extend the line of ribbon south along the Ballymoyer Road. The proposed dwelling would contribute to build up when considered with the development in the area north of the site and therefore also fails this criterion of policy CTY14. The design of the dwelling is considered acceptable due to its simplistic form and traditional features. The natural screening of the site is such that the proposal is unlikely to cause a significant detrimental impact on visual amenity in the area and is considered to adequately integrate into the site and surrounding landscape. This satisfies the policy requirements of policy CTY13. Any approval would be negatively conditioned to ensure consent to discharge is obtained, prior to commencement of development. This safe guards the policy requirements of policy CTY 16.

Recommendation:

Refusal

Refusal Reasons:

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

2. The proposal is contrary to The Strategic Planning Policy for Northern Ireland 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 Ballymoyer Road.

3. The proposal is contrary to The Strategic Planning Policy for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and add to a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.

Case Officer:**Authorised Officer:**

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

11th January 2017

Dear Sir / Madam,

Ref. **P/2015/0173/F**
100m south of 51 Ballymoyer Road Newtownhamilton
Change of house type

1. I refer to the above planning application, which has been recommended for refusal on the basis of purported lack of "need" for this development in the open countryside; the purported addition to a ribbon of development; and the purported creation of a suburban-style build-up of development at this rural location.
2. This application has been made on foot of a number of previous planning approvals on this site (approval of reserved matters was granted in 2006 and outline permission was granted in 2006). The key issues to be resolved are:
 - whether development lawfully commenced or not;
 - whether differences between the approved development and the executed works are material; and
 - whether the differences between the site works executed and the approved development are fatal to the survival of the earlier planning approval.
3. The case officer report indicates that there are two key issues within the debate as to whether or not development did in fact commence on this site:
 - Whether a pre-commencement condition pertaining to access was executed; and
 - Whether the works undertaken were in accordance with the approved development.



RTPI
Chartered Town Planner



PRE-COMMENCEMENT CONDITION (construction of access and sight lines)

4. The appearance of this as an issue of concern runs contrary to discussions previously held with the relevant planning officials, wherein it was indicated that the Council was not “hung up” on the issue of the construction of the access prior to the commencement of development.
5. Notwithstanding, the planning report raises this issue, and it is detailed therein as follows:

“An email from Transport NI which has been scanned on to the public portal, received on 14/12/2015 has confirmed sight lines had not been fully constructed in accordance with the approved plans (P/2006/1376/RM). In particular, the sight line to the north had not been properly constructed which according to Transport NI would cause a danger to traffic emerging from the access and would have road safety implications for traffic on the Ballymoyer Road. This condition has not been removed and remains a condition describing work that must be completed prior to the commencement of development. As this has not been adhered to in full the works that have been started on site cannot be described as authorised.”

6. Evidently the Council is of the view that the sight line to the north has not been properly constructed. However, I would respectfully draw the Council’s attention to condition 3 of the reserved matters approval. This stated that:

the area within the visibility splays shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway before the development hereby permitted is occupied.

7. Although the preceding condition indicated that the access, including sight lines, had to be provided in accordance with the approved plans prior to the commencement of development, the fact that a later timescale was established under the subsequent condition cannot be ignored. It is illogical and entirely unreasonable to penalise an applicant for failing to undertake the clearance of sight lines prior to commencement when the same planning approval indicated that this action could be undertaken at a later date (prior to the occupation of the dwelling). In situations like this, clearly an applicant ought to be afforded the benefit of the doubt, given the overarching

presumption in favour of development (unless the development would impact on an interest of acknowledged importance). Clearly, the public interest would not be best served in penalising an applicant due to incoherent sequencing laid out in a planning approval notice. One would rightfully question where is the harm in allowing an applicant to avail of the later date set out on the planning approval notice. If it was deemed that there is an obvious danger to road safety hereinafter, the Council clearly has the ability to take corrective action (since it could ensure that this permission is subject to a condition prohibiting further works until the relevant sight line is cleared, and by making sure to avoid the insertion of a further condition of the same nature albeit set to a different timescale).

8. In planning case law, a key test is whether a breach of this nature runs to the heart of a matter. Clearly, road safety will almost always be recognised as running to the heart of a planning permission. However, one is entitled to ask: if the clearance of the sight line, prior to the commencement of development, ran to the heart of the permission, why did the same permission also indicate that the sight lines had to be cleared by the later date (prior to the occupation of the dwelling). Notwithstanding that condition 3 has not actually been breached, the nature of the alleged breach (condition 2) would be an important consideration, as would the Council's ability to take planning enforcement action or its ability to bring the "breach" back into line. Clearly the Council can ensure this aspect of the development can be brought back into line, hence the argument that the public interest would not be best served through the withholding of this permission on the basis that the previous permission has purportedly expired. Since breaches of planning control (particularly those that do not run to the heart of the matter) are not always fatal to the survival of a planning permission, the works undertaken on site cannot be easily dismissed.
9. The planning report referred to submissions previously received, indicating that weight cannot be given to the arguments made therein due to the accumulation of the purported "failures to implement the approved development correctly". However, the Council has yet to address the issue of incoherent sequencing in the timescales set for construction of access/sightlines, and the later date set for clearance of sight lines alone. In that context, it is respectfully contended that there has been no breach of condition 3. Consequently, the accumulation of "failings" identified in the planning report is limited to the one single issue, and the extent of the deviations from the approved details is likewise not so significant.



10. The “pre-commencement” condition featured on the reserved matters approval, but not on a preceding outline planning permission. This is not consistent with best practice. Furthermore, it is administratively unfair that planning permissions in Newry and Mourne would be subject to a pre-commencement condition of this nature, whereas permissions granted in Armagh District were typically approved on the proviso that the access and sight lines would be constructed prior to the occupation of the approved development. That degree of inconsistency pertained at a time when the same area planning office was responsible for determining planning applications in Armagh, Banbridge, Craigavon and Newry and Mourne Districts. Subsequent to the transfer of planning powers to local authorities in NI, Armagh, Banbridge and Craigavon Council and Newry, Mourne and Down Councils have continued to apply different practices with respect to the imposition of planning conditions of this nature. However, it is noteworthy that this practice has received one recent planning approval (LA07/2015/1185/F), sequenced to ensure that access and sight lines are constructed prior to the occupation of a dwelling, whereas many others remain conditional upon the construction of access/sight lines prior to commencement but the majority of these permissions continue to specify that the visibility splays alone must be undertaken prior to the occupation of a dwelling.

4. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with the approved drawing No. 08 REV 1 date stamped 27 July 2016, prior to the occupation of the dwelling. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter. The gradient of the access shall not exceed 8% (1 in 12.5) over the first 5m outside the road boundary.

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

11. As referred to above, the preceding extract relates to Condition 4 of planning approval LA07/2015/1185/F. In light of the fact that this recent permission was granted subject to a condition that required the execution of the pertinent works by the later date (prior to the occupation of the dwelling) it appears unreasonable to hold fast to the principle that the sight lines to the applicant’s dwelling ought to have been cleared pre-commencement.



12. Given the same planning office applied more stringent conditions pertaining to the construction of this access and the clearance of these sight lines than it routinely did throughout Armagh, Banbridge and Craigavon areas, at the time of the pertinent approval, there is clearly an argument that it would be administratively unfair to penalise this applicant owing to more stringent requirements attached to his planning approval than others', while it would likewise be administratively unfair to penalise this applicant for not clearing his sight lines when current applicants in this District are being afforded an opportunity to undertake such work at a later date (i.e. prior to occupation).
13. In light of the foregoing, the assessment of this application should have been limited to the discrepancy between the position of the approved footprint and the position of the foundations that have been laid at the site.

POSITION OF FOUNDATIONS

14. It is clear that a pragmatic attitude towards the assessment of proposals of this nature permeates in Armagh, Banbridge and Craigavon Council, in contrast to the treatment meted out to applicants in Newry, Mourne and Down. For example, a recent approval (LA08/2016/0575/F) was granted albeit foundations laid in conjunction with a previous approval were deemed erroneous (and albeit the margin of error was limited to 2 metres in that case). The following extract sums up that Council's analysis of this issue:

Principle of Development

With regard to PPS21, policy CTY 1 does not need to be assessed as the principle of a dwelling on this site is established by the previous live approval. The proposals will therefore be assessed against the design and integration policies, CTY 13 and CTY 14.

Officers have noted that the original application O/2003/0688/RM was not constructed in accordance with the approved plans, as the foundations have been laid approximately 2m east of the approved siting.

I am of the opinion that the applicant attempted (by the building of foundations) to keep the permission alive. The amended siting of the dwelling will have little or no impact on the amenities of adjoining properties or no greater visual impact when viewed from the wider area. For all of these reasons, I am of the opinion that the differences are not so material as to consider the permission as not having been implemented.

15. Likewise, another application in Armagh area (O/2014/0510/F) was decided in the last year, also in similar circumstances. The degree of overlap between approved and “as laid” foundations was remarkably similar to the current case. That application was justified on the following basis:

The current planning application was submitted 28-10-14. The reserved matters approval granted under O/2008/0034/RM expired on 07-14-10. Building Control has confirmed that a foundation inspection was carried out on site on 16-12-09 which met the requirements of the building regulations. However the foundations that have been constructed differ from the reserved matters approval.

The main issue in question is whether the commencement of the development which is not in accordance with the approved drawings, has implemented the permission previously granted. If it is considered that the permission has been implemented, then significant weight can be given to the previous planning approval. However if it is not considered that the previous permission has been implemented and has in fact expired, then the proposal must meet with one of the exceptions set out in Planning Policy Statement 21.

Legal advice is as follows

‘if the foundations have been constructed in a manner contrary to the approved plans, or conditions and the differences are material, then Council can take the view that the development on site is unauthorised’

The critical issue in this case is whether the differences to the approved plans are material in planning terms, the proposed design and the footprint of the dwelling are identical to those which were granted under reserved matters approval. Furthermore, there is a certain degree of overlap with the foundations as approved. The dwelling has been slightly re-orientated on the site and set back between 7 to 3 metres on the site. The proposed dwelling has also been moved further away from the existing dwelling at No 16 Tullyneagh Road. In granting planning permission on this site, there was the expectation that there would be a dwelling on this site at some point in the future. I am of the opinion that the applicant attempted (by building the foundations) to keep the permission alive. The amended siting of the dwelling will have little or no impact on the amenities of adjoining properties or no greater visual impact when viewed from the

16. In that case the degree of error was approximately 7 metres. A sketch has been enclosed at Appendix 1, showing the degree of overlap between the “as laid” foundations and the approved floor plans. In that instance, Armagh, Banbridge and Craigavon Council sought legal advice on the issue of commencement. The advice received was laid out in the planning report (see above). Given the similarities between both proposals, it is respectfully contended that the same legal principles that underpinned the approval of that application ought to pertain to this assessment also.

Materiality of changes undertaken on site

17. In assessing this application, one is obliged to ask whether the approved development would be materially different from the development undertaken. In the first instance, there are two possible solutions to this dilemma: either instruct the applicant to revert to the previous approval, or to grant permission for the alternative development hereby permitted. A common misconception is that a negative determination must be arrived at where the changes that have occurred are more than de-minimis. However, the recent approval in Armagh, Banbridge and Craigavon Council referred to in this submission (O/2014/0510/F) illustrates that this is not always the case (therein, a previous application for a non-material change under "de minimis" procedures was refused, whereas legal advice later received indicated that approval could be granted for subsequent development even though the differences strayed beyond "de minimis" tolerances).
18. In this case, the change in position would not make the dwelling any more prominent or conspicuous in the landscape. There would be no difference in the cumulative impact, while the fact that the applicant has not secured any advantage by moving the position of the foundations must be taken into account. It must also be recognised that this particular amendment would not allow for the creation of another development opportunity (e.g. an infill site on the frontage) where none would have existed otherwise. If there was no debate over whether or not development had commenced on this site, it is contended that there would be no concern that the now proposed development would be materially different than the previous approval. This is the true benchmark for an assessment of that nature. While the Council might argue that the applicant ought to have paid for the submission of a formal planning application to amend the position of the house, at the time of the earlier works or in advance thereof, no advantage has been gained in this respect given the submission of this application.
19. The fact that this application is not retrospective in its truest sense lends credence to the suggestion that this case should be recognised as an opportunity to bring errant site works back under planning control rather than looking at this issue afresh and judging this as a new planning application on greenfield site.
20. Concerns, in this regard, have been articulated in the Council's planning report. Therein the case officer noted that the dwelling as proposed and the development as constructed are not completely located within the siting restriction applied to the

- original approval, while the curtilage restriction has purportedly not been adhered to in full.
21. Whereas the planning report indicates that the sub floor has been constructed approximately 9.5m south and 4 metres east of the original approval it is submitted that the actual discrepancy is not in fact as great as this. In any case, even assuming this (worst-case) scenario, it cannot be ignored that there is a substantial degree of overlap between the approved and the as laid foundations. In this respect, when assessing the issue of commencement, it is necessary to recognise that the development was not actually completed incorrectly, which could potentially have carried greater consequences. Since development has remained in its infancy, the remedies could have been to revert back to the previous approval (if this solution would be unacceptable / inappropriate) or to endorse this adjustment.
 22. Development is recognised as having begun at the earliest date upon which material operations commenced. Irrespective of an erroneous sub-floor plan, because development was never substantially completed, a breach of planning control cannot be deemed to have occurred, certainly not one that should be enforced against. In this respect, the issue of expediency (in pursuing planning enforcement action) must be given due consideration. Because development has not come “out of the ground” proper, much less become substantially complete, there would be no reasonable grounds for taking planning enforcement action now. Accordingly, the public interest would not be best served if this applicant was denied the opportunity to revert to the previous approval or to construct the dwelling as currently proposed.
 23. The planning report noted that “discrepancies also exist with regard to the site boundaries when compared to the original approval”. However, the purported discrepancy relates to the temporary erection of a stock-proof fence that was used to prevent livestock from straying into a building site and to minimise the loss of agricultural land (given the uncertainty surrounding completion of the dwelling). Even if the temporary fence in question was a permanent feature, one must ask whether this would materially affect the dwelling’s ability to integrate into the surrounding landscape. If the answer is negative, it must be recognised that the difference is immaterial. In this regard, it is noteworthy that the Council recognises this proposal will not be any less integrated than the approved development and that it complies with the requirements of Policy CTY 13 of PPS 21. It is notable that the Council has no concerns in relation to this Policy, whereas Policies CTY 8 and CTY 14 were deemed not to have



been complied with despite their predecessors being complied with. Since the difference between the two proposals is immaterial in terms of boundaries / enclosure / integration, it must be recognised that even if the temporary fence was a permanent feature it does not make the site less well integrated than the approved development and in this respect such an amendment would not be fatal to the survival of the preceding planning permission.

Ribbon Development / Suburban style Build-up of Development

24. It appears entirely opportunistic that the current proposal is to be refused under these grounds. While the Policy in place now differs from the policy that was in place at the time of the previous approval, the standard test of these issues has not evolved or changed materially in the intervening period. No changes are known to have occurred on the ground, in the surrounding area, between the date of the previous approval and now, which otherwise ought to be taken into consideration (for the purposes of ascertaining whether this proposal will have a cumulative effect that would be any different to that envisaged at the time of the previous approval). Even if such was true, the planning report contains no evidence of a change in circumstances in this regard, between the date of the previous approval and now. It is recognised that a more permissive policy for “infill” development has emerged in the intervening period, and it is appreciated that if (in the event the current site works are disregarded as immaterial) the approval of this application would create an opportunity for the development of up to two “infill” sites where no opportunity would be available otherwise, refusal on the grounds of ribbon development / suburbanisation could be justified. Since this is not the case, there is no valid reason why the proposal should be refused on these grounds given the previous approval on the site.

Other Relevant Information

25. It is pertinent that the applicant’s agent wrote to the relevant planning authority on 15th September 2008, seeking clarification as to the works required to be undertaken to commence development. On 26th September 2008 he received a reply indicating that “generally speaking the construction of an access or the layout of foundations, provided they are in accordance with the approved plans, would be sufficient to indicate that development had begun”.



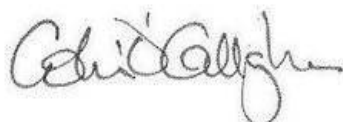
26. Even if it was held in this case that the foundations must be disregarded because they are incorrectly sited, consideration must be given to the status of the earlier works undertaken (the construction of the access in particular). In this respect, consideration must be given to the fact that the access was constructed in accordance with the approved plans (and any debate regarding the provision of sight lines does not have to be determining owing to the conflicting timescales apportioned for such action). If it can then be recognised that the access was constructed in accordance with the approved plan, then weight must likewise be given to the advice formally tendered by the local planning office in response to the applicant's agent's written query regarding the issue of commencement. In these circumstances, it is reasonable to deduce that if the applicant and his agent followed the advice set out in the communication received from the DOE the planning permission would have been saved. Accordingly, it would be administratively unfair to withhold planning permission now on the basis that some other action, not identified in the official response to a formal query, was not undertaken. In such an eventuality, much would fall back upon the construction of the access. This operation could be regarded as having saved the applicant's permission and he could have the option still of removing the foundations and reverting back to the approved development if this application is unsuccessful. That "fallback" position ought to have been given the appropriate level of weight in the assessment of this proposal.

Conclusion

27. While the determination of this application is likely to carry implications for other applications in this District, the Council is mandated, indeed legislated, to apportion as much or as little weight to the above considerations as it sees fit. Clearly, this Council has the ability to show clemency, as it has recently done in the case of Mr Peter Collins, who received planning approval for a replacement dwelling at Ballymartin (LA07/2016/0716/F) despite previous permissions lapsing and the dwelling to be replaced having been demolished many years ago. In that case, substantial weight was apportioned to the site's planning history. Indeed, I have included within Appendix 3, the DOE's rationale for approving one of the previous applications on the site (when the earlier permission had lapsed and the dwelling to be replaced had been demolished previously). Following suit here would not damage an interest of acknowledged importance, unless the characteristics of the site are considered to have changed significantly in the intervening period, or some other issue of acknowledged importance are considered to have arisen. If there had been an expectation of a dwelling on a site, particularly where a site has transformed to a building site and there is no prospect of a

return to agricultural land, there is no overriding reason why a previous permission cannot be honoured, especially where there is a prospect of bringing alleged discrepancies back into line or where there is no material difference between what has previously been approved and what is now proposed. Accordingly, the Council is hereby, respectfully, requested to approve this planning application.

Yours faithfully,



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



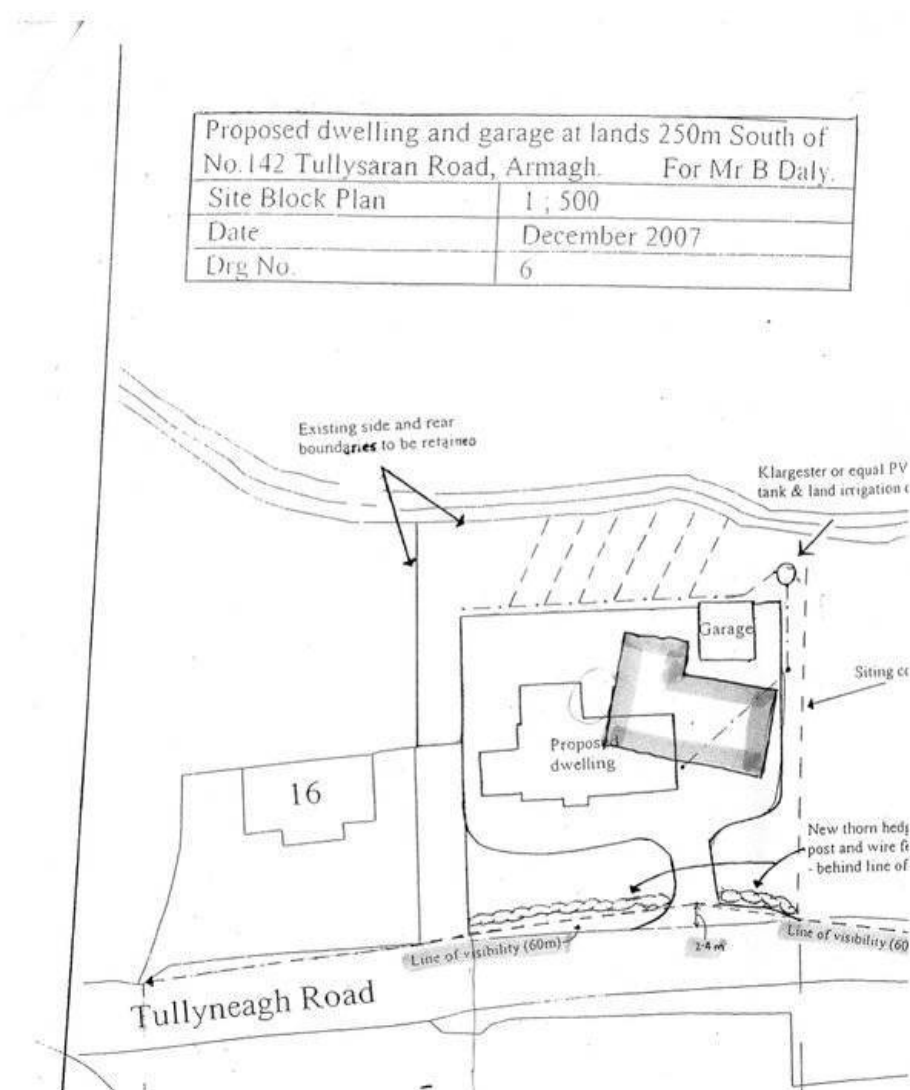
RTPI
Chartered Town Planner



APPENDIX 1

Overlay showing the position of the approved and the "as laid" foundation plans. The degree of overlap is considered to be consistent in each of the cases.

Planning Application O/2014/0510/F – Approved by Armagh, Banbridge and Craigavon Council, in remarkably similar circumstances. In that case, the Council initially held reservations due to the discrepancy between the "as excavated" and the approved foundation trenches. ABC Council sought legal advice on the subject but was content to grant a new consent nonetheless:

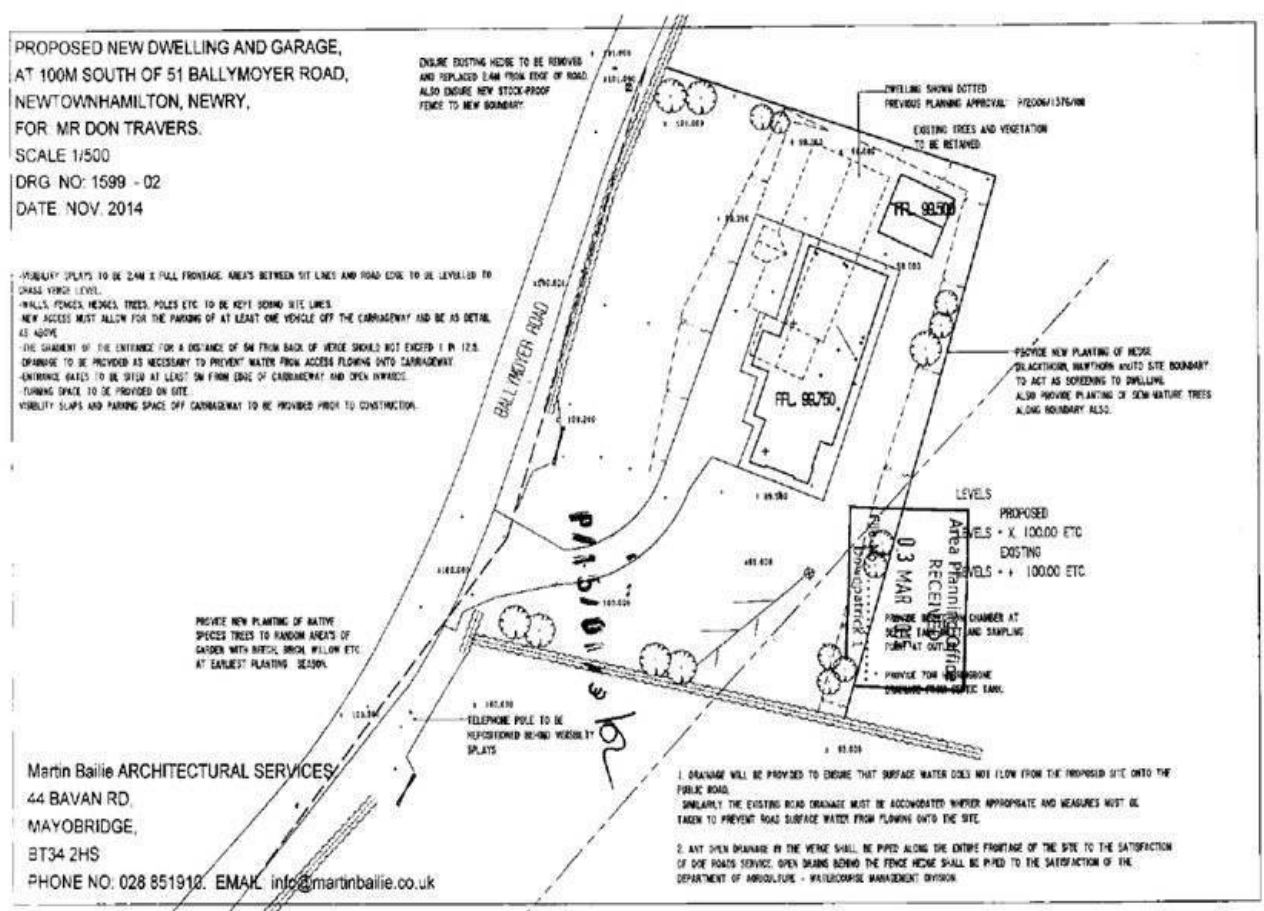




APPENDIX 2

Current proposal:

Approved site layout plan shown dotted, while the as laid floor plan is shown in a solid line. The current proposal is consistent with the "as laid" foundation plan.



APPENDIX 3

DOE justification for approval of application P/2006/1603/O – which in turn influenced Newry, Mourne and Down Council's decision to approve planning application LA07/2016/0716/F (Main Road, Ballymartin, as referred to in this submission).



Divisional Planning Office

Marlborough House
Central Way
Craigavon
Co. Armagh
BT64 1AD

P/2006/1613/0

Replacement Dwelling at Main Road, Ballymartin for Mr G Coulter

I have reviewed this case and am of the opinion that in this particular case it would be appropriate to grant permission for a dwelling.

I have reached this conclusion for the following reasons:

- a strict reading of current policy would indicate that this should be refused permission as there is no dwelling to be replaced. However, the purpose of policy is to give guidance and as the applicant has indicated all particular and peculiar circumstances cannot be covered as exceptions – this is a matter of judgement.
- The dwelling was removed in the public interest and permission granted and renewed for the replacement. The presence of a dwelling was not in these circumstances an issue and had the owner been timely in renewing his permission, the Department would not now need to make a judgement on the issue. The application was received in August 2006 and the previous approval expired in May 2002.
- The site remains within the AONB and accesses onto the MTR. However, PPS21 has now removed the status of greenbelt/CPA.

Given that the circumstances of this application have not changed since the dwelling was demolished. I feel that it would be perverse to now refuse the replacement simply because a renewal of permission had been **missed** in 2002.

IAN McALLISTER
Divisional Planning Manager

4 August 2010



Tel. 101 (NI only) Tel. (028) 9151 3101 Fax. (028) 3832 0004
Email. craigavon.planning@doeni.gov.uk
Web. www.planningni.gov.uk



ITEM NO	D1			
APPLIC NO	P/2010/1212/F	Full	DATE VALID	10/1/10
COUNCIL OPINION	REFUSAL			
APPLICANT	Edward Markey 38 Carrivekenny Road Newry BT35 7BN		AGENT	Johnross MacMahon 111 Camlough Road Newry BT35 7EE 028 30837502

LOCATION 450m from 38 Carrivekenny Road
Bessbrook
Newry

PROPOSAL 225KW wind turbine on a 30 metre Mast.

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

- 1 Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details for Environmental Health 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..
- 2 The proposal is contrary to the Strategic Planning Policy Statement and the Department's Planning Policy Statement 2: Natural Heritage Policy NH2, in that development would, if permitted, harm bats, which are protected under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended).
- 3 The proposal is contrary to the Strategic Planning Policy Statement and the Department's Planning Policy Statement 18: Renewable Energy, Policy RE1, in that development would, if permitted, result in an unacceptable adverse impact on biodiversity and nature conservation interests.
- 4 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.



Comhairle Ceantair
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agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2010/1212/F

Date Received: 01.10.2010

Proposal: Application seeks FPP for a wind turbine with a height of 30 metres to the rotor hub and a rotor radius of 13.5 metres.

Location: The site is located approximately 1.2 miles South West from Newry City on the side of Camlough Mountain in the Ring of Gullion AONB of South Armagh.

Site Characteristics & Area Characteristics:

Site is a grazing field located on the side of Camlough Mountain, it is located in a very remote area approximately a mile above Carrivekeeney Road. There are no dwellings within the vicinity of the site. As it is on a mountainside the site slopes sharply up towards the west along the rise of the mountain. The field around the site is bounded by mature vegetation. The site is located in the Rural area, the mountainside location results in the area being extremely isolated with a strong rural character and there is little development pressure. It is located within an AONB but outside the Zone A. There is a broadcast station at Ballinliss Forest to the south east of the site on the ridgeline running along the top of the mountain. There are three large towers all probably in excess of 30 metres in height, these are very prominent in the landscape when they are visible.

Site History:

N/A

Planning Policies & Material Considerations:

Strategic Planning Policy Statement for Northern Ireland

Banbridge Newry and Mourne Area Plan 2015.

Planning Policy Statement 2 Natural Heritage

Planning Policy Statement 3 Access, Movement and Parking

Planning Policy Statement 18: Renewable Energy, Supplementary Planning
Guidance: Wind Energy Development in Northern Ireland's Landscapes

PPS 21: Sustainable Development in the Countryside,

DCAN 15: Vehicular Access Standards

Consultations:

Belfast International Airport - No objection
Ofcom Northern Ireland – no objection raised
National Air Traffic Services – not back
CAA – Site Liaison Gateway – No objection
Env Health Newry and Mourne District Council – further information requested
UK Crown Bodies - D.I.O. Safeguarding - No objection
Arqiva Services Limited - No objection
P.S.N.I. Information And Communications Services – further information required
Natural Heritage – Refusal contrary to RE1 of PPS18 and NH2 of PPS2.
Foyle Carlingford & Irish Lights Commission – acceptable in policy terms

Objections & Representations

No neighbours notified and no objections or representations received. Application advertised on 22.10.2010

Consideration and Assessment:

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015
The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for wind turbines following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS18 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS / BNMAP 2015. The site lies within the Rural Area/AONB as designated in the Banbridge Newry and Mourne Area Plan 2015. There are no objections with regard to the Area Plan.

PPS2: Natural Heritage. Policy NH 2 is applicable for this application due to Bat activity in the immediate area. NIEA consider that the proposal is likely to cause harm to bats. Bats are a European Protected Species under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) and are subject to a strict level of protection. Consequently this application is contrary to Policy NH 2 of PPS 2. As the application site is located within the AONB policy NH 6 is also applicable. However the siting and scale of the turbine is not thought to have a severe detrimental impact on the AONB and it would respect / conserve features of importance.

PPS21: CTY1 (Development in the Countryside) - See consideration of PPS18

PPS18: RE 1 (Renewable Energy Development)

a) Public safety, human health or residential amenity;

No issues in relation to shadow flicker and there is sufficient fall distance for a turbine of this size. Environmental Health have requested further clarification to make a full assessment on the of the predicted noise impact of the turbine. This information was previously requested but not received.

b) Visual amenity and landscape character;

The site is located on relatively steep landscape on the side of Camlough Mountain. Whilst the site is elevated the views of the turbine are expected over a large distance and given the back drop that exists from the mountain it is anticipated that the visual intrusion that is expected with a wind turbine will not be to an unacceptable level.

c) Biodiversity, nature conservation or built heritage interests;

NIEA have serious concerns with regard to Bats and have in fact recommended the proposal for refusal. The proposal will not have a detrimental impact on nature conservation or built heritage.

d) Local natural resources such as air quality and water quality;

No likely impact

e) Public access to the countryside;

There is no public access at this site as surrounding lands are private.

Wind Energy Development

(i) That the development will not have an unacceptable impact on visual amenity or landscape character;

The site is located on relatively steep landscape on the side of Camlough Mountain. Whilst the site is elevated the views of the turbine are expected over a large distance and given the back drop that exists from the mountain it is anticipated that the visual intrusion that is expected with a wind turbine will not be to an unacceptable level.

(ii) that the development has taken into consideration the cumulative impact of existing wind turbines;

There are no existing/approved wind turbines in the vicinity of the site.

(iii) that the development will not create a significant risk of landslide or bog burst;

The risk of landslide or bog burst at this location is not significant.

(iv) that no part of the development will give rise to unacceptable electromagnetic interference to communications installations;

No objections have been raised by consultees in relation to interference to communication systems. However it is noted that not all consultees have returned.

(v) that no part of the development will have an unacceptable impact on roads, rail or aviation safety;

Belfast International Airport have no objections; proposals will not adversely impact on road, rail or aviation safety.

(vi) that the development will not cause significant harm to the safety or amenity of any sensitive receptors

Shadow Flicker is not considered to be an issue for this application however Environmental Health has asked for further clarification on the noise impact assessment which remains outstanding from the agent.

(vii) that above-ground redundant plant (including turbines), buildings and associated infrastructure shall be removed and the site restored to an agreed standard appropriate to its location.

A planning condition could be attached to control this.

The proposal is contrary to (a) (c) and (vi) of policy RE1 as documented above. It is noted that the agent was contacted on 22nd July 2014 by letter giving 2 weeks to respond to the comments from Environmental Health. It was also pointed out in this letter that the application would be determined on the basis of the information that is already available if the information was not forthcoming. Following a subsequent phone call with the agent he confirmed he wanted to pursue with the application as submitted.

Recommendation:

Refusal

Refusal Reasons

1. Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details for Environmental Health 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..

2. The proposal is contrary to the Strategic Planning Policy Statement and the Department's Planning Policy Statement 2: Natural Heritage Policy NH2, in that development would, if permitted, harm bats, which are protected under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended).

3. The proposal is contrary to the Strategic Planning Policy Statement and the Department's Planning Policy Statement 18: Renewable Energy, Policy RE1, in that development would, if permitted, result in an unacceptable adverse impact on biodiversity and nature conservation interests.

4. 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.

Case Officer:

Authorised Officer:

ITEM NO **D3**

APPLIC NO P/2012/0901/F **Full** **DATE VALID** 11/23/12

COUNCIL OPINION **REFUSAL**

APPLICANT Tom Cull 10 Keady Road **AGENT** John Ross
 Newtownhamilton
 BT35 0ET
 McMahon 111n
 Camlough Road
 Newry
 BT35 7EE
 02830837502

LOCATION 620 metres south of 10 Keady Road
 Newtownhamilton
 BT35 0ET

PROPOSAL Erection of 250 kw wind turbine with 29 rotor diameter on 30m mast (Noise Assessment Received)

REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	14	0	0	0
			Addresses Signatures	
			0	0 0 0

- 1 The proposal is contrary to the Strategic Planning Policy Statement, Policy CTY 1 of PPS 21 and Policy RE1 of the Department's Planning Policy Statement 18 'Renewable Energy' and associated Best Practice Guidance in that an appropriate noise assessment has not been submitted to demonstrate what noise impact the proposed turbine would have on receptors in the surrounding area, and it is the opinion of the Department that this information is material to the determination of this application.
- 2 Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details for Environmental Health 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
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**Newry, Mourne
and Down**
District Council

Application Reference: P/2012/0901/F

Date Received: 23.11.2012

Proposal: Erection of 250 kw wind turbine with 29 rotor diameter on 30m mast

Location: Site is approx. 0.7 miles NW from the centre of Newtownhamilton located on elevated ground to the SW of Keady Road. The site is located within the South Armagh area of the district.

Site Characteristics & Area Characteristics:

Site is approx. 0.7 miles NW from the centre of Newtownhamilton located on elevated ground to the SW of Keady Road. The location of the proposed turbine is accessed via an agricultural lane from Keady Road which runs in a SW direction before opening out onto an existing agricultural field.

Site History:

N/A

Planning Policies & Material Considerations:

Strategic Planning Policy Statement for Northern Ireland

Banbridge Newry and Mourne Area Plan 2015.

Planning Policy Statement 2 Natural Heritage

Planning Policy Statement 3 Access, Movement and Parking

Planning Policy Statement 18: Renewable Energy, Supplementary Planning Guidance: Wind Energy Development in Northern Irelands Landscapes

PPS 21: Sustainable Development in the Countryside,

DCAN 15: Vehicular Access Standards

Consultations:

N.I Water – Windfarms – No objection

Belfast International Airport - No objection

Ofcom Northern Ireland – no objection raised

National Air Traffic Services – no objection

Env Health Newry and Mourne District Council – further information requested

UK Crown Bodies - D.I.O. Safeguarding - No objection
 Arqiva Services Limited - No objection
 The Joint Radio Company - No objection
 P.S.N.I. Information And Communications Services - No objection
 Natural Heritage – No objection
 CAA - Directorate of Airspace Policy – Considered no comment necessary
 DETI Energy Branch - No objection
 DETI - Geological Survey (NI) – considered no comment necessary
 Foyle Carlingford & Irish Lights Commission – acceptable in policy terms
 NIE – Enniskillen – considered no comment necessary
 Northern Ireland Tourist Board – considered no comment necessary
 Royal Society for the Protection of Birds – Headqu - No objection
 Protecting Historic Monuments - No objection
 UK Crown Bodies - D.I.O. - No objection
 Transport NI - Downpatrick Office – acceptable in policy terms.

Objections & Representations

No neighbours initially notified. All objectors then notified following receipt of objection. Application was advertised in the press on 14/12/2012.

Objections from: Mr and Mrs P Johnston, 44 Tullygeasy Rd, A and L Johnston, 6 Dungormley, Mr and Mrs T. Johnston, 54 Tullygeasy Rd, M and L Dickson, 12 Dungormley, S and J Johnston, 4 Dungormley, G and O Oliver, 60 Tullygeasy Rd and 46 Tullygeasy Rd, Mr Des O'Keefe 37 Tullygeasy Road.

Issues Raised: Application not advertised, no neighbour notification, noise, devaluation of property, risk to health, unsightly and visible, interference with tv/radio signals, impact on wildlife, shadow flicker

Issues Considered:

- Application was advertised in 5 local newspapers 4th December 2012
- No neighbours within 90m of the application site. However were objectors have raised that they have not been notified this has been completed
- Environmental health in their comments dated 22/01/13 advise they have concerns regarding potential noise and have requested a noise assessment report is provided
- Devaluation of property is not a planning consideration
- Consultees have raised no concerns regarding interference with tv/telecommunication systems
- NIEA have no objections to the proposal.
- Assessment of shadow flicker considered in report, no likely impact to residential properties
- Assessment of visual impact considered in report
- No known associated health risks however noise and impact on health and well being have been taken into account by environmental health in their response

Consideration and Assessment:

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015
The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for wind turbines following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS18 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS / BNMAP 2015. The site lies within the Rural Area as designated in the Banbridge Newry and Mourne Area Plan 2015. There are no objections with regard to the Area Plan.

PPS2 (Natural Heritage) policy NH5 is applicable. - RSPB in comments dated 20/12/12 have no objection and NIEA Heritage in their latest response confirm they have no objections to the proposal.

PPS3: Roads have advised that they have no objections

PPS21: CTY1 (Development in the Countryside) - See consideration of PPS18

PPS18: RE 1 (Renewable Energy Development)

a) Public safety, human health or residential amenity;

The proposed turbine is located over 350m away from the nearest neighbour at 43 Tullygeasy Road and over 300m away from the Keady or Tullygeasy Road leaving sufficient distance away from nearest sensitive receptors or the public highway to cause safety concerns.

Environmental Health have asked the applicant to specify the source data for the Vestas V29 (P/2011/0031/F) that has been used in the cumulative assessment. Whilst this has been requested it from the agent, it has not been received.

No issues in relation to shadow flicker and there is sufficient fall distance for a turbine of this size.

b) Visual amenity and landscape character;

The site is located in the Carrigatuke Hills Landscape Character Area as identified in the supplementary guidance to PPS18. This area has been branded as having an overall medium sensitivity with regards to wind turbine development. The site is set back from the public road amongst an undulated landscape which established native species hedge along field boundaries. Although an elevated site, views of the proposed turbine are limited from Tullygeasy Road because of its distance back from the road and surrounding natural topography. Main views are from the Keady Road from this perspective the turbine is set against a simple and string horizontal landform.

There is an approval for a wind turbine at P/2011/0031 approx 1.3 km SW of the proposed development however due to the separation distance of these turbines they are not visually linked from the Tullygeasy or Keady Road, however there may

be fleeting views from the Monaghan Road looking North however views are likely to be minimal.

c) Biodiversity, nature conservation or built heritage interests;

NIEA Monuments (18/12/12) and RSPB (20/12/12) have raised no objections. NIEA Natural Heritage also has no objections to the proposal.

d) Local natural resources such as air quality and water quality;

No likely impact

e) Public access to the countryside;

There is no public access at this site as surrounding lands are private.

Wind Energy Development

(i) That the development will not have an unacceptable impact on visual amenity or landscape character;

The proposed turbine is set well back from public road against a general horizontal form, along with the white metallic finish of the turbine will reduce its visual intrusiveness within the local landscape.

(ii) that the development has taken into consideration the cumulative impact of existing wind turbines;

Within the area of the site there is 1 existing approval for a wind turbine (reference P/2011/0031 /F) to the SW of the application site. There will be some fleeting views from Monaghan Road of the proposed and the approved turbine however both are well separated avoiding an undesired proliferation of turbines within the landscape

(iii) that the development will not create a significant risk of landslide or bog burst;

The risk of landslide or bog burst at this location is not significant.

(iv) that no part of the development will give rise to unacceptable electromagnetic interference to communications installations;

No objections have been raised by consultees in relation to interference to communication systems

(v) that no part of the development will have an unacceptable impact on roads, rail or aviation safety;

Belfast International Airport have no objections; proposals will not adversely impact on road, rail or aviation safety.

(vi) that the development will not cause significant harm to the safety or amenity of any sensitive receptors

There are no residential dwellings with the vicinity of the turbine therefore there is no issue regarding shadow flicker, there is sufficient fall distance from properties within the area and the public road that there is unlikely to be a significant harm to the

safety and amenity. Environmental Health however has asked for further clarification on the noise impact assessment which remains outstanding from the agent.

(vii) that above-ground redundant plant (including turbines), buildings and associated infrastructure shall be removed and the site restored to an agreed standard appropriate to its location.

A planning condition could be attached to control this.

The proposal is contrary to (a) and (vi) of policy RE1 as documented above. It is noted that the agent was contacted on 7th November 2016 by letter giving 2 weeks to respond to the comments from Environmental Health. It was also pointed out in this letter that the application would be determined on the basis of the information that is already available if the information was not forthcoming. Following a subsequent phone call with the agent he confirmed he wanted to pursue with the application as submitted.

Recommendation:

Refusal

Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy RE1 of the Department's Planning Policy Statement 18 'Renewable Energy' and associated Best Practice Guidance in that an appropriate noise assessment has not been submitted to demonstrate what noise impact the proposed turbine would have on receptors in the surrounding area, and it is the opinion of the Department that this information is material to the determination of this application.

2. 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.

3. 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.

Case Officer:

Authorised Officer:

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

ITEM NO	4			
APPLIC NO	LA07/2015/1264/F	Full	DATE VALID	11/25/15
COUNCIL OPINION	REFUSAL			
APPLICANT	Malachy Rodgers 160 Head Road Ballymartin Kilkeel BT344XH		AGENT	12 Leestone Road Kilkeel BT344NW
				02841762730
LOCATION	Adjacent to No. 38 Stewarts Road Annalong Kilkeel County Down			
PROPOSAL	Reorientation of previously approved dwelling REF: No P/2006/2278 which is for dwelling and detached garage in traditional construction with dark tiled roof and white finished walls externally.			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, 'Sustainable Development in the Countryside,' in that there are no overriding reasons why this development is essential in this rural location and the previous planning approval has expired.



Comhairle Ceantair
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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2015/1264/F

Date Received: 25th November 2015

Proposal: Reorientation of previously approved dwelling Ref: P/2006/2278/RM (dwelling and detached garage).

Location: The site is adjacent and north of No. 38 Stewarts Road, Kilkeel and is located approximately 1.5Km from the western development limit of Annalong and falls within the Mournes AONB.

Site Characteristics & Area Characteristics:

The site contains the foundations of a dwelling. It would appear that the foundations laid are not in accordance with the relevant approval P/2006/2278/RM as it has been rotated 90° anti-clockwise so the dwelling now faces Stewarts Road, additionally the approved access has not been provided.

Site History:

Application site

- P/2006/2278/RM – Dwelling and Garage - Approval
- P/2003/0617/O – Dwelling and Garage - Approval.

Adjacent and south of site (now No. 38A)

- P/2014/0064/F Retention of dwelling and garage with black tiled roof and white finished walls approval 5/1/2015, application invited by Planning Department following alleged breach of planning control in that the dwelling was rotated to face Stewarts Road and not built in accordance with the approved plans of P/2005/2414/RM.
- P/2005/2412/RM – Dwelling and Garage -Approval
- P/2002/1405/O –Dwelling and Garage - Approval

It is worth noting that the same applicant submitted all of the above applications.

No. 38a to the south (P/2014/0064/F) for the retention of a dwelling which was not built in accordance with the approved plans and the current application, also not built in accordance with the approved plans shows an apparent disregard for the planning controls in this AONB, approval was granted for these dwellings to have the gable

facing Stewarts Road, instead both dwellings have been constructed/foundations laid with the full front elevation facing Stewarts Road.

Planning Policies & Material Considerations:

- Planning Act (NI) 2011
- Planning (NI) Order 1991 (which was in force when the decision was issued and will relate to the time limit of the permission)
- Strategic Planning Policy Statement (SPPS)
- Banbridge / Newry and Mourne Area Plan 2015
- PPS 2 Natural Heritage
- PPS 3 Access, Movement and Parking
- PPS 21 Sustainable Development in the Countryside
- 'Building on Tradition' a sustainable design guide for Northern Ireland.
- Relevant Planning History
- Planning Case Law including: Hart Aggregates Ltd v Hartlepool BC (2005) and F.G Whitley and Sons V Secretary of State for Wales (1992)
- Planning Appeal Reference 2015/A0193 which is a recent appeal decision where similar issues were under consideration.

Consultations:

Transport NI - No objections, several standard conditions attached. The first condition is reflective of that which was attached to the previous reserved matters application citing that prior to commencement the vehicular access shall be provided in accordance with the proposed plans.

'The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No. 02 bearing the date stamp 25 Nov 2015, prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

NI Water – standard response

Environmental Health – standard response

Objections & Representations

5No. neighbours notified on 18th March 2016 and advertised in Mourne observer on 8th December 2015. No representations or objections received.

Background:

During a telephone call with the agent, James Cunningham, he explained that when the owner and the contractor went on site to begin construction, the fence in the field was not as indicated on the map leaving the site wider to accommodate the dwelling to face the road rather than gable end towards the road therefore they marked out the dwelling in a different position than that approved. Mr Cunningham confirmed that the access arrangement has been in place

The planning office is not in any dispute that the required sight splays are **available**, the issue for this application is that the vehicular access was not provided prior to the commencement of development.

Consideration and Assessment:

Planning history P/2006/2278/RM which expired on 14/01/2010 is a material consideration and should be given appropriate weight in the overall consideration of this proposal

There are two separate elements to this proposal.

1. The reorientation/amended design of the dwelling; is the revised orientation of the dwelling acceptable
2. Whether the access was constructed prior to the commencement of development of the dwelling

1. Is the revised orientation of the dwelling acceptable?

The main difference between the approved dwelling and the dwelling as built is the rotation of the dwelling on its existing footprint by 90° in an anti clockwise direction. The revised siting does not raise any concerns in visual amenity terms and it is considered that its new orientation is generally in keeping with pattern of the area, i.e. fronting onto Stewarts Road like No.38a. Given the separation distances, there are no concerns with the potential loss of amenity on nearby properties, including in particular No. 38a located to the south. The design, scale and siting of the garage is also considered acceptable.

I am satisfied that the plans as submitted are an accurate reflection of what exists on the ground. I am also satisfied that the changes to the siting, design and appearance to that which was previously approved is acceptable for the site and the locality and in compliance with policies CTY 13 Integration and Design of Buildings in the Countryside of PPS 21 and policy NH 6 (AONB) of PPS 2 Natural Heritage. A condition can be applied regarding the re-siting of existing BT poles to ensure that policy AMP 2 Access to Public roads of PPS 3 Access Movement and Parking is also complied with.

2. Was the access constructed prior to the commencement of the development?

The outline permission P/2003/0617/O included condition at No 8 which states:

8. A scale plan at 1:500 shall be submitted as part of the reserved matters application showing the access to be constructed in accordance with the attached form RS1.

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

When one reads the 'attached RS1 form' referred to in condition No. 8 it contains the following text:

VISIBILITY SPLAYS

The area within the visibility splays shall be cleared to provide a level surface no higher than 250 mm above the level of the adjoining carriageway and shall be retained and kept clear thereafter. Any pole or column materially affecting visibility must also be removed. No work shall commence on site until the visibility splays have been provided. (underlining my emphasis)

The reserved matters application P/2006/2278/RM contained the following condition:

2. The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, **prior to the commencement of any works or other development hereby permitted.**

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

The wording of this condition makes it clear that development of any type is forbidden until the visibility splays have been provided.

Clearly the condition attached on the reserved matters application is no more onerous than that attached to the outline permission.



It is clear from the site inspection, aerial images and Google streetview images that the access works are still not in place in 2016.



Google streetview October 2008. The site looks much the same today. Whilst the visibility splays are clearly 'available' the access has not been constructed and the 3rd laneway to serve the new dwelling has not been provided.

Planning Case Law to be considered including:

- ***F.G Whitely and Sons v Secretary of State for Wales and Clwyd Co. Council (1992)*** which produced the Whitley principles being:
 - i. the developer has done everything practicable to meet the condition;
 - ii. approval has subsequently been given so that unauthorised work carried out within the time limits was made lawful;
 - iii. the planning authority has agreed that development could start without complying with the relevant conditions; or
 - iv. the condition had been complied with but the procedural formalities, such as written notification of the planning authority's approval, had not been completed before work started.
- ***Hart Aggregates Ltd v Hartlepool BC (2005)*** – conditions that go to the 'heart' of the permission.
- ***Bedford BC v The Secretary of State for C and LG and Alexander Stanislaw Murzyn (2008)*** – gave prominence to the actual wording of conditions precedent (pre-commencement) and whether by not complying with them prior to the development being carried out resulted in a breach of condition or unlawful development/implementation.
- ***Greyfort Properties Ltd v SSCLG (2010)*** – A true condition precedent must both prohibit development without compliance with it and must also go to the heart of the permission.

The test to be applied in relation to this application in terms of confirming if the works which have taken place represent commencement of development is:

1. the wording of the specific conditions imposed on the decision notice;
2. whether the condition goes to the 'heart' of the permission;
3. whether the work which has been carried out relates to the permission granted under P/2006/2278/RM ; and
4. whether work has been carried out within the stipulated time frame.

I will consider each of these issues in order:

1. Wording of the condition

The wording on condition No. 2 of the reserved matters application is quite clear in that it tells the reader that the vehicular access including visibility splays shall be provided prior to the commencement of any works or other development permitted. This is a repeat of the wording contained in the RS1 form referred to in condition No. 8 of the outline application.

2. Does the condition go to the heart of the approval

Transport NI has confirmed in numerous planning appeals that conditions relating to roads safety go to the heart of decisions. The requirement relating to the provision of the visibility splays prior to commencement of development was attached to the outline permission and repeated on the reserved matters application. There can be no doubt as to what was required to officially commence this development.

3. Does the work carried out relate to approval P/2006/2278/RM

The dwelling: the dwelling has been rotated a full 90° anti clockwise to that approved under P/2006/2278/RM. The approved house was 62m from the edge of the road, the dwelling on site is 68m from the edge of the road. As such I don't believe any of the structural walls have been built on the approved footprint. Additionally the single garage has been moved 4m south and 1m east from the approved position within the site however the garage does not appear to have been started.

The access: There is an existing access lane serving No 38 and a second lane running parallel serving No. 38a. The approved plans show a third access lane beside the existing lanes and splays of 60m x 2.4m. A site inspection has confirmed that the approved access has not been constructed. This is also evident on Google Streetview images and images from the Spatial NI Aerial images used by the planning department. There is a gap in the hedge where the access should be but the access has not been provided as required by the outline and reserved matters applications.

4. Was the work carried out before the permission P/2006/2278/RM expired on 14/1/2010

No evidence has been submitted to show that the vehicular access was in place before P/2006/2278/RM expired. Recent site inspections and images from Spatial NI and Google Streetview confirm the vehicular access (including the third laneway) has not been provided.

Whilst it is recognised that the works so far completed may fall with the meaning of 'development' as per section 23 of the Planning Act (NI) 2011 (and Article 11 (1) of the Planning (NI) Order 1991), the actual 'work' and its relationship with the approved planning application does not constitute a material start of the dwelling approved under P/2006/2278/RM. On the basis of the *Bedford BC v The Secretary of State for C and LG and Alexander Stanislaw Murzyn (2008)* case, a material start to P/2006/2278/RM has not been demonstrated as the works undertaken were done without the pre-commencement condition being met. The outcome of *Greyfort Properties Ltd v SSCLG (2010)* highlighted the need that a true condition precedent must both prohibit development without compliance with it and must also go to the heart of the permission. Condition 2 on the reserved matters application is a 'true' condition precedent that goes to the heart of the decision issued.

Recommendation:

There is no doubt that the required splays are indeed available but critically the vehicular access has not been provided prior to commencement of the development.

Under the *Greyfort Properties* ruling, a true condition precedent must both prohibit development without compliance with it and it must go to the heart of the permission.

I consider that there is a significant amount of case law (as detailed in my consideration) to recommend refusal of this application.

Note – no garage plans provided with application.

Refusal

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, 'Sustainable Development in the Countryside,' in that there are no overriding reasons why this development is essential in this rural location and the previous planning approval has expired.

Case Officer Signature	
Date	
Appointed Officer Signature	
Date	

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

11th January 2017

Dear Sir / Madam,

Ref: LA07/2015/1264/F

**Adjacent to No. 38 Stewarts Road Annalong, Kilkeel, County Down
Reorientation of previously approved dwelling REF: No P/2006/2278 which is for
dwelling and detached garage in traditional construction with dark tiled roof and
white finished walls externally.**

1. The above planning application has been recommended for refusal owing to the purported lack of "need" for this development in this area of open countryside. The application involves a number of relatively minor adjustments to a previous approval, albeit the changes could potentially be construed as straying beyond what is normally termed "de minimis".
2. There is a long history of planning approvals on this site. The pertinent planning application dated back to 2006, whereinafter the global property market collapsed. In light of such uncertainty, work ceased on many developments locally and regionally, and like many others, this applicant attempted to take action to preserve his planning approval in perpetuity, so that works could re-commence when the financial situation improved.
3. Previous communications received from the Council indicated that two key issues had arisen:
 - The Council finds it determining that a pre-commencement condition, pertaining to the construction of the access to the site, prior to the execution of any other development, has not been discharged; and
 - The position of the foundations are not consistent with the previous planning approval in terms of their orientation.



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4. As of 13.30 this afternoon, the planning report pertaining to this file had not been uploaded onto the planning portal. Hence, it has proven impossible to attempt to get to the heart of the Council's assessment of the application. Accordingly, this submission has concentrated on the two issues outlined above.

Pre Commencement Condition

5. The Council earlier indicated that a pre-commencement condition pertaining to the construction of the access to the site, prior to the execution of any other development, has not been discharged. On that basis the Council would no doubt opine that any subsequent work was unauthorised.
6. It is significant that the pre-commencement condition in question did not feature on the preceding Reserved Matters submission. Normally, where a condition runs to the heart of a matter it ought to feature on an original / outline planning approval and it should not be applied at reserved matters stage.
7. The outline planning approval simply stated that at reserved matters stage a detailed plan was required to be provided, showing the access designed in accordance with the standards laid out on an accompanying form RS 1. Clearly, at that point there was no expectation that permission would be conditional upon the construction of an access and the clearance of sight lines prior to the commencement of development.
8. Inappropriately, the planning authority applied two additional conditions at reserved matters stage. One specified that the access, including visibility splays and any forward sight line, had to be constructed prior to the commencement of development. However, a later condition stipulated that the sight lines had to be cleared prior to the occupation of the dwelling. This condition was clearly less onerous, given this element of the approved development was not required to be undertaken as early in the process as the preceding condition indicated. Given the incoherent sequencing and conflicting nature of these conditions, it is contended that the latter date ought to have applied for this purpose.
9. In this case, sight lines had in fact been provided prior to the commencement of development. However, rather than construct a new access, the applicant relied upon the (temporary) use of an established access adjacent to the site. Therefore the failure

- to construct the access in accordance with the approved plans, prior to the commencement of development, did not prejudice road safety.
10. If sight lines were expected to be cleared prior to the occupation of the dwelling, one would question the necessity of constructing an access in accordance with the approved plans prior to the commencement of development. Since both actions would have went hand in hand, it is reasonable to assume that there would have been no harm in ensuring the access was constructed prior to the occupation of the dwelling.
 11. While it is commonly held that development commenced in breach of a pre-commencement condition (that runs to the heart of a planning permission) is unauthorised, a common sense view must be taken. Clearly, there is an argument that road safety is paramount. However, given works remained in their infancy, and given the applicant relied upon the temporary use of an adjacent (full-standard) access for the duration of construction works, his (in)actions did not prejudice road safety.
 12. It would be illogical and entirely unreasonable to penalise an applicant for failing to construct his access prior to the commencement of development when he was technically required to clear his sight lines prior to the occupation of the dwelling (in this case one could argue where is the sense in having an access at the outset when there is no requirement to provide a sight line for this until the house is occupied).
 13. In situations like this, clearly an applicant ought to be afforded the benefit of the doubt, given the overarching presumption in favour of development (unless the development would impact on an interest of acknowledged importance). While road safety is clearly an interest of acknowledged importance, it has not been prejudiced since temporary workers access the site through the adjacent property throughout the duration of construction works. Clearly, the public interest would not be best served in penalising this applicant for these minor transgressions.
 14. If it was deemed that there is an obvious danger to road safety hereinafter, I can hereby confirm that the access to the dwelling has now been laid out on the ground (this can be seen in Appendix 4, and it is important to note that sight lines have been in place from the outset). Therefore, approval of this application would not perpetuate any purported breach of road safety.

15. Now that it has been established that road safety was not in fact prejudiced by the failure to construct the access prior to the commencement of development, and we have established that the pre-commencement condition should not have been attached to the reserved matters at all (we have also established that the two actions of constructing the access and the clearance of sight lines were not even properly sequenced) it is necessary to look at other aspects of this issue.
 16. The “pre-commencement” condition featured on the reserved matters approval, but not on a preceding outline planning permission. This is not consistent with best practice.
 17. Furthermore, it is administratively unfair that planning permissions in Newry and Mourne would be subject to a pre-commencement condition of this nature, whereas permissions granted in Armagh District were typically approved on the proviso that the access and sight lines would be constructed prior to the occupation of the approved development. That degree of inconsistency pertained at a time when the same area planning office was responsible for determining planning applications in Armagh, Banbridge, Craigavon and Newry and Mourne Districts. Subsequent to the transfer of planning powers to local authorities in NI, Armagh, Banbridge and Craigavon Council and Newry, Mourne and Down Councils have continued to apply different practices with respect to the imposition of planning conditions of this nature. However, it is noteworthy that this practice has received one recent planning approval (LA07/2015/1185/F), sequenced to ensure that access and sight lines are constructed prior to the occupation of a dwelling (see below). Clearly the same degree of latitude should be afforded to this applicant.
4. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with the approved drawing No. 08 REV 1 date stamped 27 July 2016, prior to the occupation of the dwelling. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter. The gradient of the access shall not exceed 8% (1 in 12.5) over the first 5m outside the road boundary.

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

18. Given the same planning office applied more stringent conditions pertaining to the construction of this access and the clearance of these sight lines, than it routinely did throughout Armagh, Banbridge and Craigavon areas, at the time of the pertinent approval, there is clearly an argument that it would be administratively unfair to penalise this applicant owing to more stringent requirements attached to his planning approval than others', while it would likewise be administratively unfair to penalise this applicant for not constructing his access pre-commencement while current applicants in this District are being afforded an opportunity to undertake such work at a later date (i.e. prior to occupation).
19. In short, since breaches of planning control (particularly those that do not run to the heart of the matter) are not always fatal to the survival of a planning permission, the failure to construct the access to the dwelling in accordance with the timescale set out on the reserved matters approval notice is not determining, and the assessment of this application should have been limited to the discrepancy between the position of the approved footprint relative to the position of the foundations that have been laid at the site.

POSITION OF FOUNDATIONS

20. It is clear that a pragmatic attitude towards the assessment of proposals of this nature permeates in Armagh, Banbridge and Craigavon Council, in contrast to the treatment meted out to applicants in Newry, Mourne and Down. For example, a recent approval (LA08/2016/0575/F) was granted in Armagh area whereby foundations laid in conjunction with a previous approval were deemed erroneous (and albeit the margin of error was limited to 2 metres in that case). The following extract sums up that Council's analysis of this issue (see overleaf):



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Principle of Development

With regard to PPS21, policy CTY 1 does not need to be assessed as the principle of a dwelling on this site is established by the previous live approval. The proposals will therefore be assessed against the design and integration policies, CTY 13 and CTY 14.

Officers have noted that the original application O/2003/0688/RM was not constructed in accordance with the approved plans, as the foundations have been laid approximately 2m east of the approved siting.

I am of the opinion that the applicant attempted (by the building of foundations) to keep the permission alive. The amended siting of the dwelling will have little or no impact on the amenities of adjoining properties or no greater visual impact when viewed from the wider area. For all of these reasons, I am of the opinion that the differences are not so material as to consider the permission as not having been implemented.

21. Likewise, another application in Armagh area (O/2014/0510/F) was decided in the last year, also in similar circumstances. The degree of overlap between approved and "as laid" foundations was remarkably similar to the current case. That application was justified on the following basis (see overleaf):



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The current planning application was submitted 28-10-14. The reserved matters approval granted under O/2008/0034/RM expired on 07-14-10. Building Control has confirmed that a foundation inspection was carried out on site on 16-12-09 which met the requirements of the building regulations. However the foundations that have been constructed differ from the reserved matters approval.

The main issue in question is whether the commencement of the development which is not in accordance with the approved drawings, has implemented the permission previously granted. If it is considered that the permission has been implemented, then significant weight can be given to the previous planning approval. However if it is not considered that the previous permission has been implemented and has in fact expired, then the proposal must meet with one of the exceptions set out in Planning Policy Statement 21.

Legal advice is as follows

'if the foundations have been constructed in a manner contrary to the approved plans, or conditions and the differences are material, then Council can take the view that the development on site is unauthorised'

The critical issue in this case is whether the differences to the approved plans are material in planning terms, the proposed design and the footprint of the dwelling are identical to those which were granted under reserved matters approval. Furthermore, there is a certain degree of overlap with the foundations as approved. The dwelling has been slightly re-orientated on the site and set back between 7 to 3 metres on the site. The proposed dwelling has also been moved further away from the existing dwelling at No 16 Tullyneagh Road. In granting planning permission on this site, there was the expectation that there would be a dwelling on this site at some point in the future. I am of the opinion that the applicant attempted (by building the foundations) to keep the permission alive. The amended siting of the dwelling will have little or no impact on the amenities of adjoining properties or no greater visual impact when viewed from the

22. In that case the degree of error was approximately 7 metres. A sketch has been enclosed at Appendix 1, showing the degree of overlap between the "as laid" foundations and the approved floor plans. In that instance, Armagh, Banbridge and Craigavon Council sought legal advice on the issue of commencement. The advice received was laid out in the planning report (see above). Given the similarities between both proposals, it is respectfully contended that the same legal principles that underpinned the approval of that application ought to pertain to this assessment also.

Materiality of changes undertaken on site

23. In assessing this application, one is obliged to ask whether the approved development would be materially different from the development undertaken. Appendix 2 contains a graphic illustrating the extent in overlap between the existing and the approved site layout plans (the approved footprint has been shown in red line).
24. In the first instance, there are two possible solutions to this dilemma: either instruct the applicant to revert to the previous approval, or to grant permission for the alternative development hereby permitted.
25. A common misconception is that a negative determination must be arrived at where the changes that have occurred are more than de-minimis. The recent approval in Armagh, Banbridge and Craigavon Council referred to in this submission (O/2014/0510/F) confirms that this is not always the case (therein, a previous application for a non-material change / minor amendment, under "de minimis" procedures was declined, whereas legal advice later received indicated that approval could be granted for subsequent development even though the differences strayed beyond "de minimis" tolerances).
26. In this case, the dwelling's foundations have been merely rotated on the site. There is a substantial degree of overlap between the present foundations and the approved floor plan. In actual fact, the amendment is regarded as a positive development since it minimises the potential for overlooking of an adjacent property. Similarly, the change in orientation would not make the dwelling any more prominent or conspicuous in the landscape. There would be no difference in the cumulative impact. The fact that the applicant has not secured any advantage by moving the orientation of the foundations must also be taken into account.
27. It is contended that if there was no debate over whether or not development had commenced on this site, there would be no concern that the current proposal would be materially different than the previous approval. This is the true benchmark for an assessment of that nature, and it is noteworthy that the Council has no planning or environmental objections to the current proposal.
28. While the Council might argue that the applicant ought to have applied for a "minor amendment" or paid for the submission of a formal planning application to amend the



- position of the house at the time of the earlier works or in advance thereof, no advantage has been gained in this respect given the submission of this application.
29. The fact that this application is not retrospective in its truest sense lends credence to the suggestion that this proposal should be recognised as a genuine opportunity to bring errant site works back under planning control rather than looking at this issue afresh and judging this as a new planning application.
30. Development is recognised as having begun at the earliest date upon which material operations commenced. Irrespective of an erroneous foundation plan, because development was never substantially completed a breach of planning control cannot be deemed to have occurred. In this respect, the issue of expediency (in pursuing planning enforcement action) must be given due consideration. Because development has not come “out of the ground” proper, much less become substantially complete, there would be no reasonable grounds for taking planning enforcement action now. All that is required is corrective action, potentially including the reversal of any alleged unauthorised deviations, or alternatively this application could be endorsed. Clearly, it would be difficult to argue that either of these options would not be in the public interest.

Conclusion

31. While the determination of this application is likely to carry implications for other applications, the Council is mandated, indeed legislated, to apportion as much or as little weight to the above considerations as it sees fit. Clearly, this Council has the ability to show clemency, as it has recently done in the case of Mr Peter Collins, who received planning approval for a replacement dwelling at Ballymartin (LA07/2016/0716/F) despite previous permissions lapsing and the dwelling to be replaced having been demolished many years ago. In that case, substantial weight was apportioned to the site’s planning history. Indeed, I have included within Appendix 3, the DOE’s rationale for approving one of the previous applications on the site (when the earlier permission had lapsed and the dwelling to be replaced had been demolished previously). Following suit would not damage an interest of acknowledged importance, unless the characteristics of a site had changed significantly in the intervening period, or some other issue of acknowledged importance had arisen. If there had been an expectation of a dwelling on a site, particularly where a site has transformed to a building site and there is no prospect of a return to agricultural land, there is no overriding reason why a

previous permission cannot be honoured, especially where there is a prospect of bringing alleged discrepancies back into line or where there is no material difference between what has previously been approved and what is now proposed. Accordingly, the Council is hereby, respectfully, requested to approve this planning application.

Yours Faithfully,

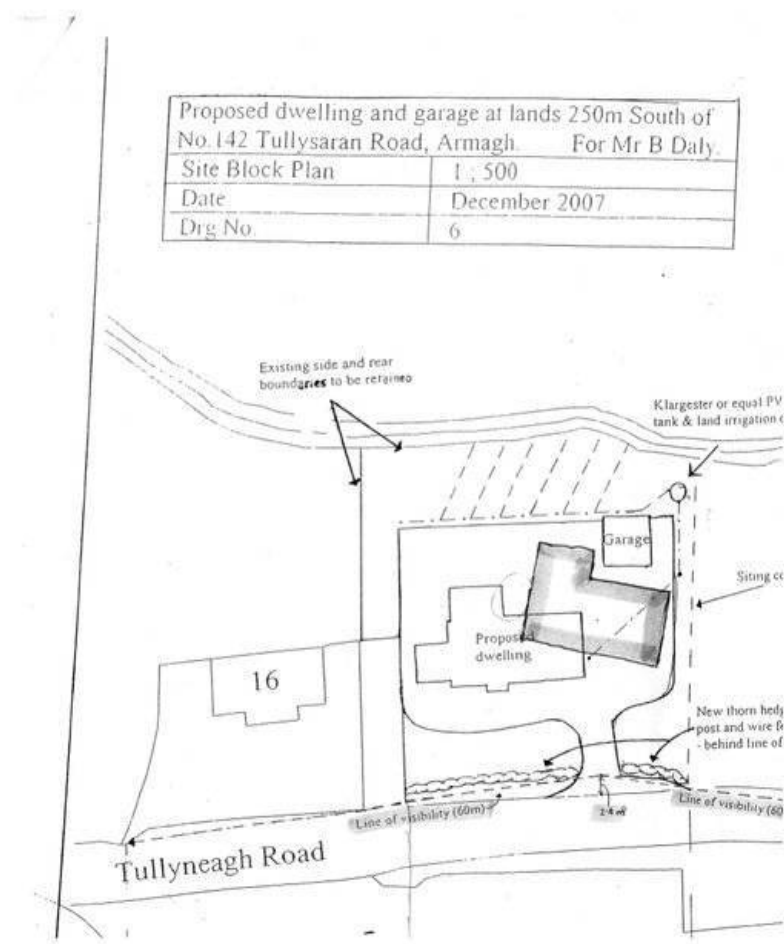


Colin O'Callaghan
Chartered Town Planner
BSc Hons Dip TP MRTPI

APPENDIX 1

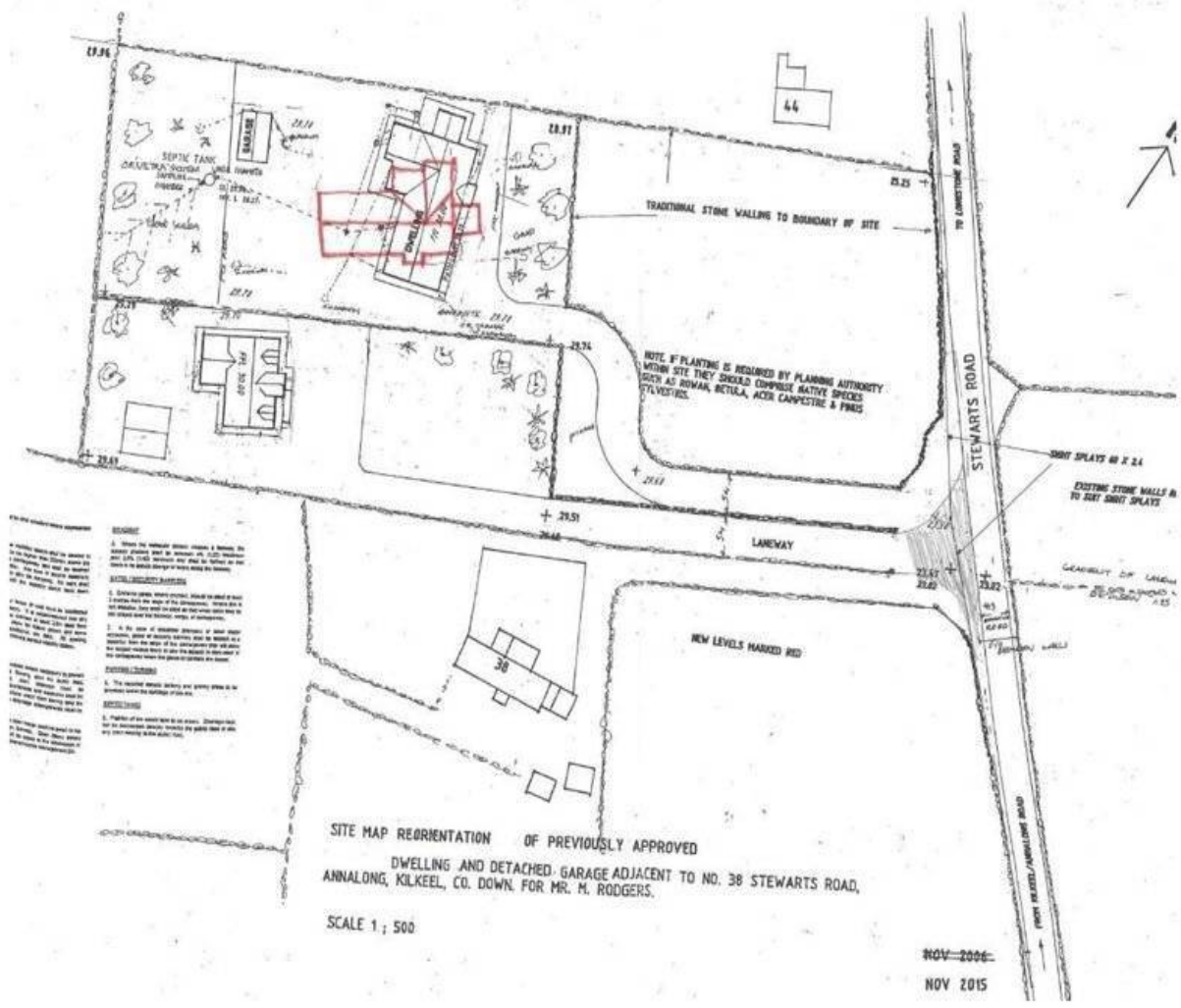
Planning Application O/2014/0510/F – Approved by Armagh, Banbridge and Craigavon Council, in remarkably similar circumstances. In that case, the Council initially held reservations due to the discrepancy between the “as excavated” and the approved foundation trenches. ABC Council sought legal advice on the subject but was content to grant a new consent nonetheless

The following overlay shows the position of the approved and the “as laid” foundation plans. The degree of overlap is considered to be generally consistent in that case and the current proposal.



APPENDIX 2

This image illustrates the substantial degree of overlap between the foundations that were excavated and those that were previously approved (approved is outlined in red). The adjustments on the ground have improved the relationship with the adjacent property and would not make the proposal any less well integrated with its surroundings than the original permission.



APPENDIX 3

DOE justification for approval of application P/2006/1603/O – which in turn influenced Newry, Mourne and Down Council's decision to approve planning application LA07/2016/0716/F (Main Road, Ballymartin, as referred to in this submission).



Divisional Planning Office

Marlborough House
Central Way
Craigavon
Co Armagh
BT64 1AD

P/2006/1613/0

Replacement Dwelling at Main Road, Ballymartin for Mr G Coulter

I have reviewed this case and am of the opinion that in this particular case it would be appropriate to grant permission for a dwelling.

I have reached this conclusion for the following reasons:

- a strict reading of current policy would indicate that this should be refused permission as there is no dwelling to be replaced. However, the purpose of policy is to give guidance and as the applicant has indicated all particular and peculiar circumstances cannot be covered as exceptions – this is a matter of judgement.
- The dwelling was removed in the public interest and permission granted and renewed for the replacement. The presence of a dwelling was not in these circumstances an issue and had the owner been timely in renewing his permission, the Department would not now need to make a judgement on the issue. The application was received in August 2006 and the previous approval expired in May 2002.
- The site remains within the AONB and accesses onto the MTR. However, PPS21 has now removed the status of greenbelt/CPA.

Given that the circumstances of this application have not changed since the dwelling was demolished. I feel that it would be perverse to now refuse the replacement simply because a renewal of permission had **been missed in 2002**.

IAN McALLISTER
Divisional Planning Manager

4 August 2010



APPENDIX 4

(overleaf)

Photographic evidence showing vehicular access now in place







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

ITEM NO	5			
APPLIC NO	LA07/2016/0075/F	Full	DATE VALID	1/18/16
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr D Haughian 7 Grove Road Moneydarragh Annalong BT34 4XB		AGENT	Brian Fearon 10 Fullerton Road Newry BT34 2BB 07732364991
LOCATION	Site at 120m South East of No 7 Grove Road Moneydarragh Annalong Co Down			
PROPOSAL	Proposed change of house type for that previously approved under P/2007/0530/RM			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, 'Sustainable Development in the Countryside,' in that there are no overriding reasons why this development is essential in this rural location , as the previous planning approval has expired.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference:

LA07/2016/0075/F

Date Received:

18/01/2016

Proposal:

Proposed Change of house type for that previously approved under P/2007/0530/RM

Location: 120 metres south east of no.7 Grove Road, Moneydarragh, Annalong.

Site Characteristics & Area Characteristics:

Located 1.1 miles west of Annalong, the site is along Grove Road, a relatively narrow rural road leading from the Kilkeel Road to Longstone Road. Surrounding land uses comprise a mixture of agricultural and single housing, with a cluster of agricultural sheds located some 120m north east of the site. Opposite and 75m north west, sits No. 8, a derelict traditional building, with a number of dwellings set behind along Turlough's Hill, including No.3 which is grade B2 listed. No. 7 Grove Road, 120 metres north west and closest to the site, comprises a two storey thatched style character property with associated detached agricultural sheds.

The site itself, the southern portion of a larger field, is 0.22hectares, triangular in form and enjoys surrounding views of the Mournes to the north and north east and views of the sea further south. Existing boundaries are defined along three edges; by bramble hedgerow along the east and south and by an existing dry stone wall with hedgerow set in behind along the western and roadside boundary. The northern boundary is currently undefined, with ranch style fencing forming a boundary to the further north, between No.7 and the upper area of the field.

**Site History:**

Outline Planning Permission for a site for a dwelling was previously refused on the upper and adjoining site to this application, under application reference P/2004/0216/O as the proposal was contrary to Policies SP6, HOU8, DES6 and DES7 of the Department's Planning Strategy for Rural Northern Ireland.

Outline Planning Permission was simultaneously granted for a site for a dwelling on the lower portion of the field and subject site by virtue of planning application reference P/2004/0218/O on 14th July 2004.

A subsequent reserve matters application was received within the conditioned time frame following this approval for the erection of a single storey dwelling under application reference P/2007/0530/RM, which was approved on 8th February 2008.

Planning Policies & Material Considerations:

The planning policies material to the consideration of the proposal include:

- Strategic Planning Policy Statement (SPPS)
- Banbridge / Newry and Mourne Area Plan 2015
- PPS 2 Natural Heritage
- PPS 3 Access, Movement and Parking
- PPS 21 Sustainable Development in the Countryside
- 'Building on Tradition' a sustainable design guide for Northern Ireland.
- Relevant Planning History
- Planning Case Law including: Hart Aggregates Ltd v Hartlepool BC (2005) and F.G Whitley and Sons V Secretary of State for Wales (1992)
- Planning Appeal Reference 2015/A0193

Consultations and Responses:

- **NI Transport** – No objections to the proposal, subject to conditions being met which are detailed further below;
- **NI Water** - No objections to the proposal, generic response received;
- **Environmental Health** – No objections in principle as per submission the development is connected to public sewerage system.

Objections & Representations

2 Neighbour notifications issued 24th March 2016 (expired 04/04/2016)

No responses received.

Consideration and Assessment:

Para 3.8 of the SPPS states that *“the guiding principles for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.”* In practice, 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.

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 located out with settlement limits as identified in the Banbridge / Newry and Mourne Area Plan 2015 in a rural area that falls within the Mourne AONB designation. Under PPS2 Policy NH6, planning permission will only be granted for new development within an AONB where it is of an appropriate design, size and scale for the locality and all the policy criteria listed under policy NH6 are met. The principle of development in this case, has already been established under planning application reference P/2004/0218/O. The details proposed will be assessed against the merits of NH6 and PPS21 CTY 13 and CTY14 of provided the criteria against PPS21 CTY1 are met.

Planning History

The principle of development on this site was established initially under outline application reference P/2004/0218/O, for a site for a dwelling, which was approved on 14/07/2004. The subsequent Reserved Matters application (reference P/2007/0530/RM) was approved thereafter for the erection of a single storey dwelling on 08/02/2008. Condition 3 on the outline approval and Condition 1 on the Reserved Matters approval required that the development should be begun by the later date of either five years from the grant of outline permission or two years from the reserved matters approval. Therefore in this scenario, the latest date on which development could be lawfully commenced was 08/02/2010.

In addition to the above time conditions, a pre-commencement condition was attached to the Reserved Matters approval (following on from condition 15 on the outline approval) by virtue of condition 3, which states: *“The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development hereby permitted. Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.”*

The above condition is required to be carried out prior to the commencement of any works or other development. As is standard practice in processing planning applications, a site inspection was carried out 22nd April 2016. During this inspection, it was evident that the above pre-commencement condition was not in place, with no access constructed to the site nor visibility splays in place, with the roadside boundary dry stone wall and hedging existing in what appeared to be their original form with an informal agricultural access gate to the site. Pictures from this site inspection are included below.



Clarification was sought from Transport NI on this matter and whether this pre-commencement condition had been carried out. Verbal confirmation was received on 28/04/2016 that the access has not been constructed in accordance with the approved Reserved Matters Plans, with the replication of this pre-commencement condition on the current change of house type application. In addition, during site inspection, it was evident that foundations had been dug. Upon measuring the position of these foundations against the approved site layout plan, they appear to be approximately 8 metres further North West of the approved position. The footprint of the foundations dug appears to match the approved layout.

Confirmation was sought from the Council's Building Control Department as to whether these had been formally inspected and signed off. Building Control records confirm that the foundations had been inspected by Building Control on 04/02/2010 and were deemed satisfactory. Given that this was completed without completion of the pre-commencement condition and that no attempt was made to form the access or visibility splays until May 2016, the planning permission therefore lapsed on 08/02/2010.



Prior to assessing any further detail in this application, the agent was advised of the above position by telephone on 04/05/2016. The agent confirmed that the above was a genuine oversight and in an effort to try and remedy this, the applicant has since cleared the site boundary dry stone walls and lined out the splays as shown below. The agent also states if this condition were made clear to the applicant at an earlier stage, it would have been duly adhered to. The conditions are clearly set out in the planning decision notice and there is an onus is on the agent and or applicant to carefully read their decision notice. Additionally, a significant amount of time has lapsed as these should have been completed by 08/02/2010 in order to keep the permission active. I note that the attempt to remedy the above was carried out in a very speedy manner as soon as the above was realised. Photos to this effect were submitted by the agent on 05/05/2016, some of which are included below.



Some case law is of relevance to the consideration of this pre-commencement condition. It was decided in F.G Whitley and Sons V Secretary of State for Wales (1992) that where works have begun without a pre-commencement condition being fully discharged, those works would not constitute a lawful implementation of the permission to prevent it lapsing and would result in unauthorised development.

In the case of R (on the application of Hart Aggregates Ltd) v Hartlepool BC (2005) the court ruled that the Whitley principle does not apply to all pre-commencement conditions, but only to those which “go to the heart of the permission.” Condition 3 in this case relates to the issue of road safety.

A recent appeal case which was dismissed by the Planning Appeals Commission is relevant by comparison to this scenario (appeal reference 2015/A0193.) This appeal contested the implementation of previous planning permission as access to the site was not provided prior to the commencement to works on the site. In this case, the Council asked Transport NI for their expert advice on as to whether such a condition was necessary with regards to road safety. Their response in this case included the following statement: *“Following further consideration of this application, TNI would agree that the condition does go to the heart of the application and a disregard of this could compromise road safety.”*

Road safety is a material consideration not only after a building is occupied, but also during the construction stages, where there are a wide range and frequency of vehicles visiting the site. In the above case, the Council agreed with Transport NI that the poor visibility to the access would prejudice road safety if not remedied and that the condition requiring this to be done prior to any other development was fundamental, thus going to the heart of the overall permission.

In this current application, Transport NI in their consultation response dated 12 April 2016, have added the pre-commencement condition as follows to this current application for a change of house type:

“The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with drawing No. 02 bearing the date stamp 12 Jan 2016, prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

This pre-commencement condition relates to the same access previously approved under P/2007/0530/RM. The use of this pre-commencement condition on the current application confirms that the previous pre-commencement condition was never complied with. From the Council’s position, this case is similar in some regards to the above appeal case. The advice given by TNI in this example stands in this current application in that the issue of road safety and therefore the pre-commencement condition 3 previously attached goes to the heart of the approval. Whilst an appreciation is given to the specific actions in this case to remedy the breach, the Council cannot assess a permission which has lapsed.

In conclusion therefore and for the reasons discussed above, it is deemed that the application fails to meet the policy test of PPS21 CTY 1 in that there are no overriding reasons for this development in the countryside given the previous planning permission has now lapsed. This is also contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS.)

Recommendation: Refusal

Reasons for refusal:

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, 'Sustainable Development in the Countryside,' in that there are no overriding reasons why this development is essential in this rural location, as the previous planning approval has expired.

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

b r i a n f e a r o n
c h a r t e r e d a r c h i t e c t

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SPEAKING RIGHTS 18.01.17

Site is located 120m south east of 7 Grove Road, Moneydarragh, Annalong, Co.Down
LA07/2016/0075

**Change of Housetype for dwelling previously approved under
P/2007/0530/RM [approved 08.02.08] and P/2004/0218/O [approved
14.07.04]**

Reason for Refusal:

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY 1 of Planning Policy Statement 21, 'Sustainable Development in the Countryside,' in that there are no overriding reasons why this development is essential in this rural location , as the previous planning approval has expired.

As highlighted already in the planning report a genuine mistake and oversight on the applicants behalf was made which the applicant immediately tried to remedy by putting the required sightsplays as per planning conditions in place.
[see photo]



b r i a n f e a r o n
c h a r t e r e d a r c h i t e c t

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The crux is that for all intents and purposes a dwelling house could and should be located on this site.

The client believed they were following the correct protocol in gaining outline and reserved matters planning approval and subsequently making a full building control plan application. Foundations were put in place and duly signed off as approved at building controls 1st site inspection.

[and as confirmed in the case officers report].

One could also ask the question if development had not begun why is a council representative on site to inspect foundations and confirm same. Therein lies the further confusion in the crossover between planning and building control and the assessment of site development.

Alongside this the applicant has obviously been out substantial monies in endeavouring to keep this application "live" and I can only confirm in hindsight if he had have known that a site splay condition was to be enforced the splays would have been put in place at the same time as the dwelling foundations.

I concur that road safety [as part of the case officers report] can also be at the "**heart of the application**" as remarked by Transport NI, but as the photos show this is essentially a quiet country road with little traffic.

2no. existing accesses already serve the site and it is a locale where everyone would be aware of what is taking place and who is carrying it out. I don't think in essence road safety would seriously be in jeopardy in this particular location in a self contained site.

brian fearon
chartered architect

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In this regard we should observe these applications on a case by case or site by site basis.

The issue of site commencement has always been a grey area and this is the root of the problem and therefore mistakes or oversights are commonly made.

I attach a letter from Planning Department dated September 2008 outlining at that time what constituted site development.
as quoted it states:

*"NO DEFINITIVE RULING CAN BE GIVEN WITH REGARD TO WHEN DEVELOPMENT HAS COMMENCED, AS SO MUCH WILL DEPEND ON THE FACTS OF EACH CASE. HOWEVER, DEVELOPMENT SHALL BE TAKEN TO BE BEGUN ON THE EARLIEST DATE ON WHICH ANY MATERIAL OPERATION COMPRISED IN THE DEVELOPMENT BEGINS TO BE CARRIED OUT. GENERALLY SPEAKING THE CONSTRUCTION OF AN ACCESS **OR** THE LAYOUT OF FOUNDATIONS...WOULD BE SUFFICIENT TO INDICATE THE DEVELOPMENT HAS BEGUN."*

brian fearon
chartered architect

Your Ref:

Our Ref:

FOI 19415

Being dealt with by:

Date:

26 September 2008

Mr Martin J Baillie MCIAT
Martin Baillie Architectural Services Limited
92 Newry Street
Rathfriland
Newry
BT34 5PY



Divisional Planning Office

Marlborough House
Central Way
Craigavon
BT64 1AD

Dear Mr Baillie

Thank you for your letter of 15 September 2008 requesting information about the commencement of development in relation to planning permission.

Every new planning permission is deemed to be subjected to a condition that development shall be commenced within five years or such other period as the planning authority may expressly impose. An outline planning permission has two timescales and the consent will require the submission of a further planning application for the approval of reserved matters within 3 years. Once the last of the reserved matters has been approved, there is usually a two year period within which the development must commence.

No definitive ruling can be given with regard to when development is commenced, as so much will depend on the facts of each case. However, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Generally speaking the construction of an access or the layout of foundations, provided they are in accordance with the approved plans, would be sufficient to indicate that development had begun.

You should therefore satisfy yourself that a material start has been made in accordance with the above prior to the expiration of your planning permission.

I hope this is helpful.

Yours sincerely

IAN McALLISTER
For Divisional Planning Manager

brian fearon
chartered architect

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No definitive ruling can be given with regard to when development is commenced, as so much will depend on the facts of each case. However, development shall be taken to be begun on the earliest date on which any material operation comprised in the development begins to be carried out. Generally speaking the construction of an access or the layout of foundations, provided they are in accordance with the approved plans, would be sufficient to indicate that development had begun.

Reserved matters for this application was approved February 2008 and therefore logic would state that this statement would apply.

In summary I would request the refusal be overturned as a genuine oversight on the applicants behalf. The site has been in this family for decades and has been kept aside to pass onto their siblings in good faith.

The reality at present is that through a misunderstanding of a planning condition the site may become entirely defunct and undeveloped which is a harsh decision to take.

I attach the current change of housetype scheme which I believe would add to the quality of the built environment in this area.



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

ITEM NO	6			
APPLIC NO	LA07/2016/0091/F	Full	DATE VALID	1/21/16
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr Peter Clarke 14 Upper Dromore Road Warrenpoint BT34 3PW		AGENT	Cole Partnership 12a Duke Street Warrenpoint BT34 3JY 028417 53679
LOCATION	To the front of no 14 Upper Dromore Road and between Nos. 12 and 16 Upper Dromore Road Warrenpoint BT34 3PW			
PROPOSAL	Proposed dwelling with amendments to access for 14 and 14a Upper Dromore Road, Warrenpoint			
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 (SPPS) and Planning Policy Statement 7 'Quality Residential Environments' Policy QD1 in that it has not been shown:

(a) That the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas;

(c) that adequate provision is made for public and private open space and landscaped areas as an integral part of the development;

(h) that the design and layout will not cause / create unacceptable adverse impacts on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance;

2 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 7 (Addendum) 'Safeguarding the Character of Established Residential Areas' policy LC1 in that:

(a) The proposed density is significantly higher than that found in the established residential area;

(b) The pattern of development would not be in keeping with the overall character and environmental quality of the established residential character area;
And if approved, the development would therefore erode the local character, environmental quality and residential amenity of the established residential area.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference:

LA07/2016/0091/F

Date Received:

21/01/2016

Proposal:

Proposed dwelling with amendments to access for No. 14 & 14A

Location:

The site is located 0.4 miles from Warrenpoint Town Centre, within an established residential area within the settlement limit of Warrenpoint. The site itself comprises the front garden area of No. 14 Upper Dromore Road and is located between No's 12 & 16 Upper Dromore Road.

Site Characteristics & Area Characteristics:

Surrounding dwellings vary in character, though are predominantly detached. The proposed site is the front garden of No.14, a split level detached dwelling. Set behind this is No.14A, a large two storey red brick property with its primary elevation to the south. The site also lies between No's 12; a modest detached single storey bungalow set back from the road in line with No.14A and No.16 a detached split level property which follows the settlement pattern of number 14. The site itself measuring 0.027 hectares slopes steeply to the south west. There are currently two access points off the Upper Dromore Road, one servicing number 14A to the south of the site and one servicing number 14 in the north east area of the curtilage. The rising topography of the land along Upper Dromore Road appears to have resulted in this variation of housing styles in terms of scale and character.



Site History:

LA07/2016/0063/F - To front of No.12 and between 10 and 14 Upper Dromore Road Warrenpoint, proposed dwelling – permission granted 20/05/2016

P/2012/0512/O

- P/2002/0123/F - Rear of no 14 Dromore Road, Warrenpoint, Permission granted
- P/2000/1751/O – To the rear of 14 Upper Dromore Road, site for dwelling, permission granted
- P/2000/0870/O - To the rear of 14 Upper Dromore Road, Site for dwelling, application withdrawn
- P/1983/0246 – 16 Upper Dromore Road, extension and improvements to dwelling , permission granted
- P/1981/0737 – Proposed erection of a wall, permission granted
- P/1977/0353 – Upper Dromore Road, Proposed bungalow, permission granted

Planning Policies & Material Considerations:

- Strategic Planning Policy Statement for Northern Ireland 2015(SPPS): Planning for Sustainable Development
- Banbridge / Newry and Mourne Area Plan 2015
- PPS 3 Access, Movement and Parking
- PPS 7 Quality Residential Environments
- PPS 12 Housing in Settlements
- 'Creating Places: Achieving Quality in Residential Environments.'
- Development Control Advice Note (DCAN 8) 'Housing in Existing Urban Areas.'

Consultations:

- **Transport NI** – No objections, with conditions attached
- **NI Water** – No objections, with informatives
- **Environmental Health** – No objections , with informatives

Objections & Representations

8 Neighbour notified issued 16th May 2016

No responses received.

Consideration and Assessment:

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

The site is located within the development limits of Warrenpoint / Burren as identified by the Banbridge / Newry and Mourne Area Plan (BNMAP) 2015. The site is designated as whiteland within the BNMAP and is not specifically zoned.

Planning Policy Statement 7 'Quality Residential Environments'

PPS7 states that planning permission will only be granted for a new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. The design and layout of residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area.

Furthermore, PPS QD1 states: *"In established residential areas, proposals for housing development will not be permitted where they would result in unacceptable damage to the local character, environmental quality or residential amenity of these areas."*

All proposals for residential development will be expected to confirm to all of the following criteria listed under PPS 7 QD1:

(a) The development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surface areas;

The proposed development would result in a loss of valued open garden space which is characteristic of the surrounding residential area. Currently, No. 14 has approximately 766.5 square metres of private open garden space to the front. No's 16, 18 and 20 follow this pattern and No's 12, 10 and 8 albeit with their front amenity space decreasing respectively, in line with the curve of the road. If this proposal were to be developed, the front amenity space of No. 14 would be reduced significantly, to approximately 130 square metres. This is not considered to be respectful of the surrounding context, nor appropriate to the character of the area.

The site slopes steeply to the north, rising by 3.2 metres from the roadside towards the rear curtilage of the site. The proposed plans include sections through the site, with at least 3 metres cut and fill required to integrate the dwelling into the site so as to not obstruct upon existing No.14. This is a significant amount of digging required against the natural contours of the site to support the proposed dwelling and is not considered appropriate to the topography of the site.



It is noted that a recent outline approval has been granted for a dwelling to the front of the adjacent No.12 on 9th March 2015 (Planning application reference P/2014/0512/O) and subsequent full approval granted on 20th May 2016 (application reference LA07/2016/0063/F.) The depth of plot size however on this site is

much greater than the subject site at 27metres, with only 16.5 metres depth of plot on the subject site. The Case Officer in their assessment of this outline application, felt that the proposal did not meet the policy requirements of PPS7 in that it would detract from the overall settlement pattern of the immediate area and would be 'garden grabbing.' Despite this, approval was granted based on the existence of No.14A (approved under application P/2002/0123/F), which the Case Officer felt had similar siting to the proposed development at No.12. I would argue however that this was a poor planning decision and No.14A was approved prior to the publication of the Addendum to PPS7 'Safeguarding the Character of Established Residential Areas,' published in March 2008 which provides additional planning policy provisions on the protection of local character, environmental quality and residential amenity within established residential areas and help protect such areas from further erosion of their character. A previous poor planning decision in my opinion does not constitute grounds for approving a current proposal, a view which the Planning Appeals Commission has supported. With this in mind, it is considered that the proposal would not respect the surrounding context and is inappropriate in this established residential area. If approved, it would further erode the character of the area which should be protected.

(b) Features of the archaeological and built heritage, and landscape features are identified and, where appropriate, protected and integrated in a suitable manner into the overall design and layout of the development;

There are no features of archaeological significance within or adjacent to the site.

(c) Adequate provision is made for public and private space and landscaped areas as an integral part of the development. Where appropriate, planted areas or discrete groups of trees will be required along site boundaries in order to

soften the visual impact of the development and assist in its integration with the surrounding area;

'Creating Places' gives guidance as to the level of private amenity space that should be provided for new dwellings. With the close proximity to No. 14, this proposal provides inadequate provision of useable private amenity space behind the building line, with an area of less than 70 square metres. I

(d) Adequate provision is made for necessary local neighbourhood facilities, to be provided by the developer as an integral part of the development;

This is a small scale proposal and is within walking distance of Warrenpoint Town Centre.

(e) Movement pattern is provided that supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way, provides adequate and convenient access to public transport and incorporates traffic calming measures;

The proposed dwelling is to use an existing private driveway off Upper Dromore Road which is currently used by No.14. As a result of this, an alteration to the existing access to No.14A is proposed to accommodate access to No. 14. There will be low level access to the dwelling from the existing hard surface driveway, forming part of the approach. This surface will facilitate wheelchair movement and manoeuvring. There is pedestrian access provided to both side and rear garden areas of the proposed dwelling

(f) Adequate and appropriate provision is made for parking;

2 car parking spaces are provided to the front of the dwelling, which is acceptable in terms of the guidance in section 20 of 'Creating Places: Achieving quality in residential environments.'

(g)The design of the development draws upon the best local traditions of form, materials and detailing; proposed schedule of finishes includes; smooth plaster with white painted finish, white double glazed PVC windows with grey straps, black PVC rainwater goods, and black concrete roof tiles.

(h)The design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance;

A layout plan which displays the contours of the site shows 2.1metres from the ridge line of the proposed dwelling to eye level if standing on the ground floor of No.14, causing no issue of overlooking from the new dwelling to those existing. However, the proposed dwelling is to be sited below and in front of no. 14A, with 7.85metres separation distance between the two dwellings. This arrangement would give rise to issues of overlooking upon the private amenity space of No14.

Number 16 is presently screened by mature trees. The side elevation of the proposed dwelling will be positioned approximately 9 metres from the existing front garden of No. 16. The proposed floor plans on this side include only two windows, both at upper level to include a hallway window and en-suite window. Given the positioning of the dwelling, there would be no detrimental impact upon the property of No.16 in terms of loss of light or overshadowing internally, though the building block would have an impact upon the enjoyment of the private amenity space to the

front. The above applies also to existing number 12 to the south, which is set back from the proposed dwelling. Nonetheless, no objections have been received from the relevant neighbouring properties. Opposite and across from the site lies No.1 Meadowlands, a storey and a half detached property with the ground floor screened from the road by dense hedgerow. Beside this, No.25 Upper Dromore Road, a modest detached bungalow is sited at an angle with its gable fronting towards the road. It is considered that there is a reasonable space between the proposed development and these two properties to avoid any unacceptable adverse effect.

(i) The development is designed to deter crime and promote personal safety.

The applicant would be encouraged to incorporate sensible security measures during the development process.

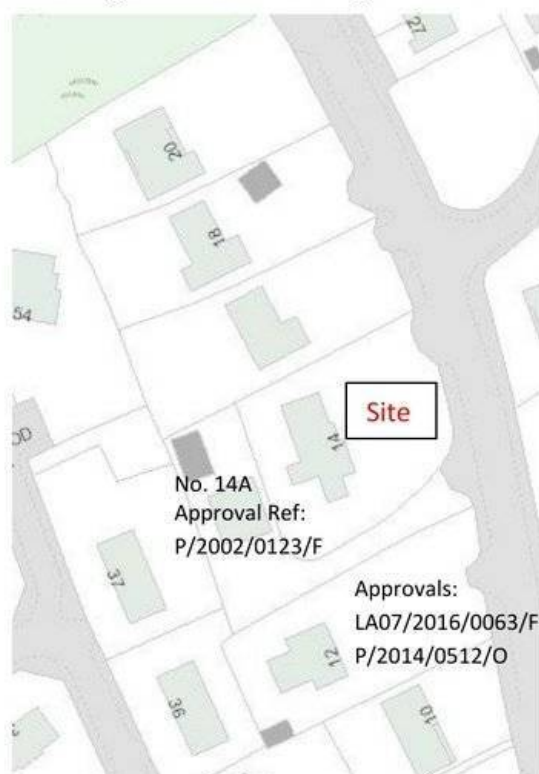
Addendum to PPS 7 'Safeguarding the Character of Established Residential Areas'

The second Addendum to PPS 7 provides additional provisions to help protect areas of established residential character, environmental quality and local amenity. In this assessment, Policy LC1 'Protecting Local Character, Environmental Quality and Residential Amenity' applies:

*"In established residential areas, planning permission will only be granted for the infilling of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD1 of PPS 7 **and** all the additional criteria below are met:"*

(a)The proposed density is not significantly higher than that found in the established residential area;

When considering an increase in housing density in an established residential area, great care must be taken to not unacceptably harm local character, environmental quality or amenity of the area. In assessing this, both the site specific and immediate surrounding area must be considered. At present, this comprises low density development, with two dwellings maximum per plot, with predominately detached dwellings which have generous front amenity space. To develop the proposed



dwelling, would increase the density found in the existing area, arguably not significantly but enough in this specific case to result in over-development of the plot.

(b) The pattern of development is in keeping with the overall character and environmental quality of the established residential area;

The rising topography of the land along Upper Dromore Road appears to have resulted in a variation of housing styles in terms of scale and character. Nonetheless, numbers 12 to 20 follow an established settlement pattern with relatively large plots and a semi-detached dwelling sited towards the middle of the plot, with a large front amenity space towards the road. The topography and

existing landscape together with this settlement pattern has resulted in a high quality residential area. As briefly mentioned, there have been some previous planning decisions which have compromised this existing settlement pattern, including the approval of No.14a and development to the front of No.12. Arguably, it is therefore even more important to protect the character from further erosion through development.

The proposal includes the development of a dwelling in what is currently the front garden of No. 14. Although an approval has been made on the adjacent site as discussed earlier in this assessment, the proposed site differs in terms of existing plot size and density, topography and character. The proposed development would significantly alter the existing settlement pattern and result in the intensification of this site. In terms of amenity space, the development would encroach upon the existing No.14, leaving only 3.2 metres distance between the rear boundary of the proposal and No.14 (the adjacent approval leaves 9.5metres between the rear boundary of the new development and the existing No.12, highlighting the differences in these two plots.) In addition, the proposal would leave only 6.5 metres to the front which does not fit in with the character of the surrounding front gardens. Furthermore, Para 4.7 of PPS7 reinforces that features that undermine the overall character of an area should not be replicated or used as a precedent. In this instance, the adjacent approvals are not comparable nor do they necessitate grounds to continue this pattern.

The supplementary guidance of DCAN 8 'Housing in Existing Urban Areas' makes clear that 'town cramming' or other inappropriate developments which would adversely affect established residential character and amenity will be resisted. It is my opinion that the proposal is inappropriate in the context of the site and surrounding area. If approved, it would detrimentally change the existing settlement pattern and would not be in keeping with the overall character and environmental quality of the established residential area.

(c) All dwelling units and apartments are built to a size not less than those set out in Annex A.

The proposed dwelling exceeds the minimum design standards of 80/85square metres for a 4-person /3-bedroom house type.

Recommendation: Refusal

Reasons for refusal:

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 7 'Quality Residential Environments' Policy QD1 in that it has not been shown:
 - (a) That the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas;

(c) that adequate provision is made for public and private open space and landscaped areas as an integral part of the development;

(h) that the design and layout will not cause / create unacceptable adverse impacts on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance;

2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Planning Policy Statement 7 (Addendum) 'Safeguarding the Character of Established Residential Areas' policy LC1 in that:

(a) The proposed density is significantly higher than that found in the established residential area;

(b) The pattern of development would not be in keeping with the overall character and environmental quality of the established residential character area;

And if approved, the development would therefore erode the local character, environmental quality and residential amenity of the established residential area.

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



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference:

LA07/2016/0091/F

Date Received:

21/01/2016

Proposal:

Proposed dwelling with amendments to access for 14 and 14A

Location:

To the front of No.14 Upper Dromore Road & between No's 12 & 16 Upper Dromore Road, Warrenpoint, BT34 3PW

Addendum to Case Officer's Report

Following recommendation for refusal and prior to this application being presented to the Planning Committee, the agent submitted some additional points to be considered prior to a decision being made on this application. This submission also requests a meeting to discuss the application.

Points 1 to 3 and 7 raise queries over the measurements provided in the Case Officers report in relation to site area and amenity space to the front and rear of the proposed dwelling. The site area was taken from the P1 form as per question 3 as provided by the agent. The areas given in relation to amenity space are approximate as stated and are included as part of the analysis around loss of valued garden space and inadequate provision of useable private amenity space. The overall opinion in this regard still remains.

Points 4 and 8 contest the point made on issues of overlooking. This Para in the Case Officers report should read *"this arrangement would give rise to issues of overlooking upon the private amenity space of the **proposed dwelling**"* rather than "No.14." This error has been acknowledged however the issue of overlooking remains;

Points 5 and 9 relate to the density of the proposed development. The increase in density as stated is considered enough to result in over-development of the plot;

Points 6 and 10 relate to the design and pattern of development. The Case Officer's Report notes comparisons to the development at No.12, pointing out that the depth of plot size on this site is much greater than the subject site and that this proposal was approved prior to the current Addendum to PPS7, which provides additional provisions to protect the local character, environmental quality and residential amenity of established residential areas.

Given the above and following consideration of the additional points raised in this submission, the original recommendation as outlined in the Case Officer's Report remains the same.

Recommendation

The proposal is contrary to the SPPS, PPS7 QD1 and the Addendum to PPS7 Policy LC1 and as such, should be refused.

The Planning Department however are happy to facilitate a meeting to discuss the above issues with the agent and or applicant further, should this be required.

Case Officer Signature:
Date:
Appointed Officer Signature:
Date:

ITEM NO	D4			
APPLIC NO	P/2014/0214/F	Full	DATE VALID	3/4/14
COUNCIL OPINION	APPROVAL			
APPLICANT	McKinley Contracts Unit 7 Milltown Industrial Estate Warrenpoint BT34 3FN	AGENT	Cole Partnership 12A Duke Street Warrenpoint BT34 3JY 02841753679	
LOCATION	Lands to the rear of No's 13 15 and 17 Forth Road and 10 metres north west of No's 7 - 13 Rathmore Clonallon Road Warrenpoint			
PROPOSAL	Erection of 7 No. dwellings - 3 blocks of semi detached and 1 detached dwelling. (amended drawings)			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	12	1	0	0
	Addresses Signatures		Addresses Signatures	
	0	0	0	0



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0214/F

Date Received: 04.03.2014

Proposal: Erection of 7 No. dwellings - 3 blocks of semi detached and 1 detached dwelling.(amended drawings)

Location: Lands to the rear of No's 13, 15 and 17 Forth Road and 10 metres north west of No's 7 - 13 Rathmore Clonallon Road

Site Characteristics & Area Characteristics:

This application site is located in Warrenpoint and is land locked by dwellings along Rathmore, Clonallen Road, Forth Road and Well Road. It measures approximately 100 metres in length, 80 metres in width and slopes from west to east approximately 7 metres. The site currently comprises a disused and overgrown area of grassland surrounded by trees with some also located within the site, particularly around the rath in the northern corner. Clonallen Stream flows in a southerly direction approximately 100 metres to the east of this site.

The western boundary of the site is defined by trees and runs along the rear gardens of Nos 7 and 9 Forth Road which sit elevated above the site. The north western boundary which runs along the rear gardens of Nos 13 and 15 Forth Road to where a disused walkway leads from the site to Forth Road is also treed.

The north eastern section of the site includes the rath and a grouping of trees. A derelict single storey building is situated close to the rath and is in a state of disrepair with vegetation growing over and inside it. The south eastern boundary is a close board fence which runs alongside the rear of Nos 5, 7, 9, 11 and 13 Rathmore. The curtilage of No 11 and 13 Rathmore are separated by a tarmaced area and this is where the proposed housing development will gain access.

This application site is located within the development limits of Warrenpoint/Burren. The area surrounding the site is residential in character with a predominance of detached two storey dwellings. The site lies in the Mournes Area of Outstanding

Natural Beauty and most of the site is whiteland as designated in the Banbridge, Newry and Mourne Area Plan 2015. A section of the site is designated as WB38 – “Rear of No 17 Forth Road” Local Landscape Policy Area (LLPA). The character of this zoning is defined by the historic monument of a Rath and the surrounding area providing the setting which includes the access laneway.

Site History:

P/2007/0850/O - Lands at and adjacent to (the rear) of No. 34 Well Road, Warrenpoint (between Nos 13, 15 & 17 Forth Road (to the north-west) and Nos 3-13 Rathmore (odd Nos., to the south), extending to the rear of Nos 7 & 9 Forth Road (to the south-west), Site for residential development – Refused 19.04.2013

Planning Policies & Material Considerations:

The Banbridge Newry and Mourne Area Plan 2015, The SPPS, Planning Policy Statement 2, Planning Policy Statement 3, Planning Policy Statement 6 and Planning Policy Statement 7 – including the addendum, Planning Policy Statement 12, together with all other material considerations.

Consultations:

Natural Heritage – No Objection subject to condition.

Protecting Historic Monuments/ NIEA – No Objection subject to conditions

Transport NI – Downpatrick – No objections subject to conditions

Water NI – No objections

Objections & Representations

Objections:

There have been 12 Objection letters from 7 different addresses and from Joe Lyness who is acting on behalf of one of the neighbouring residents and one comment of support for this type of housing in the local area.

The objections submitted raise the following issues:

The surrounding development is characterised by single storey dwellings. This proposal would be out of character by introducing two storey dwellings which will lead to loss of light, loss of privacy to existing resident's homes and gardens and overlooking. This includes personal medical information and how neighbouring residents maybe affected by this development. This will be assessed fully through the consideration of the proposal below against policy PPS 7 and Creating Places.

There are Badger Setts present – NIEA were consulted through the course of the application and raised no concerns about Badger Setts.

There is an ancient rath present. NIEA Monuments unit were consulted with an archaeological report for the site. The scheme has been amended as a result of the

report with sufficient distance included to move the development away from the rath and ensure adequate mitigation to protect this feature.

There are ash trees present. – These trees are proposed to be retained through this application.

Noise and fumes from traffic – This proposal is for 7 additional houses, in an established residential area located within a town. At present there are already numerous causes of fumes within the area. Environmental Health have no objections. In relation to traffic, this proposal will generate approximately 14 extra cars for the development as a whole. Transport NI are satisfied with the access arrangement provided and there are no road safety or traffic concerns.

There are concern about the trees and hedgerows on site. On neighbour has suggested that the applicant has lopped trees located within her boundary which overhang onto his land. This has then caused the tree to tilt towards the objectors dwelling. The 1:500 layout shows that the majority of trees and hedgerows are remaining. The lopping of trees between neighbouring land owners is a civil issue. The local authority may get involved if asked to do so under the High Hedges legislation however, this is not a Planning issue or consideration.

An issues was raised about levels and the possibility of gardens being unsecure due to them not being supported properly due to ground level differences. The plans have since been amended in this regard and ground levels are no longer an issue.

Consideration and Assessment:

Access

The proposal is making use of the existing vehicular access from Rathmore and extending this road to serve the proposed houses. There is also the provision of a 2m footpath which will serve the pedestrian access to the development. Transport NI have assessed the proposed roadway and footpath and will be adopting this extension to the existing infrastructure within the area.

Quality Design

This application will be assessed against PPS 7: Quality Residential Developments, DCAN 8 and Creating Places. The proposal represents a mixture of development already found within the established character of Rathmore. Within this development there are both semi-detached housing and two storey housing which is combined within this proposed development. While this proposal does represent a slight increase in the density of development, it is not to the detriment of the character of the area and when considered in context of the existing topography, the siting and scale of the proposal this would not have a detrimental impact on the surrounding context or streetscape of the existing development.

A Rath is present to the north east of the site. The agent has submitted an archaeological assessment and NIEA have been consulted with this information. It was as a result in this assessment that the proposed scheme was reduced to its

current numbers and the development was then moved away from the Rath. NIEA are now satisfied that the proposal will not have an adverse impact on the built heritage within the local area.

Adequate provision has been made for private open space in the form of rear amenity gardens which range from being approximately 64m sq to 150m sq. depending on the site. This is in keeping with the gardens spaces already found within the immediate Rathmore development. New planting is being proposed behind Number 11 Rathmore to protect this amenity and dwelling for any impact the proposed access road may have. The proposal also intends erect 1.5m close boarded fences to screen this property. The proposed landscaping to the rear of the proposed development to the dwelling along the Forth Road, will also retain the existing mature trees at this location.

The developer is to provide a 2m footpath link to the remaining development, which will aide pedestrian movement and meet the needs of the local people to provide adequate and convenient access to public transport that the rest of the development have access too.

There has been adequate provision of car parking made with each dwelling have 2 car parking spaces in curtilage and the availability of at least 3 on street car parking spaces available.

The proposed design of the dwellings are in keeping with the best local traditions within the area. The materials proposed are mostly finished in render which is found within the existing Rathmore development, there is the introduction of a grey cladding to the porch, which would not unduly affect the immediate character. The scale and form follow a more traditional design than the suburban house types present within the immediate area, however this is not out of keeping with local buildings traditions found within the wider area.

The proposed layout of the scheme has changed dramatically from the beginning of the application. The numbers of dwelling proposed on site has been reduced and there has been an amendment to the siting of dwellings also. Several of the neighbours to the rear along Forth Road have objected to the proposed development. It is worth noting that there is only one objection to the most recently amended scheme.

Character of Established Residential Area

This proposal when assessed against LC 1 of PPS 7, would not represent a significant change in the character of the existing residential area. The plot sizes of the proposal are in keeping with the semi-detached and detached dwellings already in existence within the Rathmore area. The dwellings fronting onto the Forth Road are on larger plots, however given that this proposal will be accessed through the Rathmore development, I believe it more appropriate to read this as an extension of this development rather than those large single plots on the Forth Road. This area at present is unkempt grassland and this proposal would not result in the loss of a large residential plot to be replaced by multiple smaller plots. This proposal complies with LC 1 of PPS 7.

Archaeology

Due to the presence of a Rath on site to the north east the agent was asked to submit an archaeological assessment for consideration. This was sent to NIEA Monuments Unit along with an amended scheme which incorporated the mitigating measures recommended by the report. NIEA returned their consultation with no objections subject to conditions. Therefore this proposal now complies with BH3 of PPS 6.

Nature and Conservation

Due to the amount of trees within the immediate area and the potential to have bat roosts within them, the applicant was asked to submit a Bat Survey which NIEA Natural Heritage have commented on and have no objections to the proposed development subject to conditions being attached on any approval thereafter.

Conclusion:

Given the above conclusions I am of the opinion that this proposal is not compliant with the policy provisions as outlined above.

Recommendation:

Approval

Conditions:

Standard Time Condition
Standard Private Street Conditions
Landscaping conditions