



March 5th, 2018

Notice Of Meeting

You are invited to attend the Planning Committee Meeting to be held on **Wednesday, 7th March 2018** at **10:00 am** in the **Boardroom, Monaghan Row.**

The Members of the Planning Committee are:-

Chair: Councillor G Craig

Vice Chair: Councillor K Loughran

Members:	Councillor C Casey	Councillor W Clarke
	Councillor L Devlin	Councillor G Hanna
	Councillor V Harte	Councillor M Larkin
	Councillor J Macauley	Councillor D McAteer
	Councillor M Murnin	Councillor M Ruane

Agenda

1.0 Apologies

2.0 Declarations of Interest.

3.0 Declarations in relation to paragraph 19 of Planning Operating Protocol - Members to be present for the entire item.

- **Item No. 7** - LA07/2016/1261/0 - Mr Thomas Mageean was previously presented at the Planning Committee Meeting on Wednesday 10 January 2018. **Councillor Ruane** was not in attendance at the meeting.
- **Item No. 17** - P/2013/0242/F - MJM Group was previously presented at the Planning Committee Meeting on Wednesday 29 March 2017 - **Councillor Casey** withdrew for the discussion/decision on this item and **Councillor Devlin** was not in attendance at the meeting. **Councillor Clarke** left the Meeting at 12.10 pm and was not in attendance for discussion on this application.
- **Item No. 12** LA07/2016/0199/0 - Liam & Siobhan Boylan was previously presented at the Planning Committee Meeting on Wednesday 6 December 2017 - Members present were Craig, Loughran, Clarke, Devlin, Larkin, Macauley, Casey, Ruane, McAteer and Murnin. A site visit was also held on Wednesday 10 January and all above Members were present with the exception of **Councillor Macauley**. **Councillor Hanna** was also not present at the site meeting. **Councillor Clarke** was not present when this application was presented at the Planning Committee Meeting held on Wednesday 7 February 2018.

Minutes for Confirmation

4.0 Minutes of Planning Committee Meeting held on Wednesday 7 February 2018 (Attached)

 *Planning Mins 7 Feb 2018.pdf*

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For Discussion/Decision

5.0 Addendum list - planning applications with no requests for speaking rights/written submissions. (Attached).

 *Addendum list - 07-03-2018.pdf*


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Development Management - Planning Applications for determination

6.0 LA07/2017/0746/0 - Mrs Eileen Patterson - Dwelling on a farm - land east of and immediately adjacent to No. 10 Castleward Road, Strangford. (Case Officer report attached).

Rec: APPROVAL

- Addendum list


 *LA07-2017-0746-O Eileen Patterson.pdf*

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7.0 LA07/2016/1261/0 - Mr Thomas Mageean - proposed dwelling and garage - site abutting 20 Junction Road, Saintfield. (Case Officer report attached).

Rec: REFUSAL

- A request for speaking rights has been received from Sheila Curtin, agent, in support of the application. **(Submission attached).**

 *LA07-2017-1261-O Thomas Mageean.pdf*

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 *Item 7- submission of support.pdf*

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8.0 LA07/2017/1276/0 - Mr & Mrs S McCartan - land between 49 Cargagh Road and 56 Rocks Chapel Road, Lisnamore, Crossgar. (Case Officer report attached).

Rec: REFUSAL

- Addendum list

 *LA07-2017-1276-O Mr and Mrs S McCartan.pdf*

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9.0 LA07/2017/1551/0 - Mr & Mrs Hoey - Proposed infill opportunity for 2 dwellings under planning policy PPS21 - between 43 and 45 Darragh Road, Darragh Cross, Saintfield. (Case Officer report attached).

Rec: REFUSAL

- A request for speaking rights has been received from Hannah and Declan Hoey in support of the application. **(Submission attached).**

 *LA07-2017-1551-O Mrs and Mrs Hoey.pdf*

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 *Item 9 - submission of support (Hoey).pdf*

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10.0 LA07/2017/1588/F - Philip Young - 2 storey side extension to a dwelling to allow kitchen/dining/living area with lounge above - 77a Cahard Road, Ballynahinch. (Case Officer report

attached).

Rec: REFUSAL

- Addendum list

 *LA07-2017-1588-F Philip Young Esq.pdf*

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11.0 LA07/2017/1666/0 - Michael & Noleen Trainor - 2 infill dwellings - between 74 and 78 Clanmaghery Road, Tyrella, Downpatrick. (Case Officer report attached).

Rec: REFUSAL

- A request for speaking rights has been received from Gerry Tumelty, agent, in support of the application. **(Submission attached).**

 *LA07-2017-1666-O Michael and Noleen Trainor.pdf*

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 *Item 11 - submission of support (M & N Trainor).pdf*

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12.0 LA07/2016/0199/O - Liam & Siobhan Boylan - 15 new dwellings, 4750 sq mtrs (1.1 acres) of native tree planting, landscaping, walls, new estate road and ancillary development including regarding, with access from The Woodlands (Drainage Assessment received) - Land zoned for housing to the rear of nos. 68 - 132 Lower Dromore Road, Warrenpoing (Case officer report attached)

Rec: APPROVAL

- A request for speaking rights has been received from Patrick Thornton, objecting to the application. **(Submission attached).**
- A request for speaking rights has been received from Brendan Quinn, agent, in support of the application. **(Submission attached).**
- A request for speaking rights has been received from DEA Councillor M Carr, objecting to the application. **(Submission attached).**

 *LA07-2016-0199-O Liam and Siobhan Boylan.pdf*

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 *Item 12 - submission of objection from P Thornton (Boylan).pdf*

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 *Item 12 - submission of support (Boylan).pdf*

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 *Annex A Part A.pdf*

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 *Annex A Part B.pdf*

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13.0 LA07/2016/1092/F - Fitzpatrick SSAS - A lateral extension in a predominantly westerly direction to the existing quarry, the construction of a screening landform, followed by the deepening of the enlarged quarry floor and the provision of a holistic restoration concept for the entire mineral development site - Lands to the north and west of and the existing Leode Quarry, Leode Road, Hilltown, Newry, Co Down, BT34 5TJ The site is located approximately 2 miles west of Hilltown. (Case Officer report attached).

Rec: APPROVAL

- A request for speaking rights has been received from Mandy McClean, resident, in objection to the application. **(Submission attached).**
- A request for speaking rights has been received from Andrew Scurfield, agent, and Paul Fitzpatrick, Business Development Director, in support of the application. **(Submission attached).**
- A request for speaking rights has been received from DEA Councillor Gillian Fitzpatrick, in objection to the application. **(Submission attached).**

14.0 LA07/2017/1162/F - Brendan Kelly - proposed erection of domestic shed and hard standing area (Amended proposal and plans) - 91 Chancellors Road, Lisdrumliska, Newry. (Case Officer report attached).

Rec: APPROVAL

- Addendum list

15.0 LA07/2017/1559/F - EDB Constructions Ltd - demolition of

existing dwelling and provision of 9 No. 2 bedroom apartments and 1 No. 1 bedroom apartment (10 total) - 58 Armagh Road, Newry. (Case Officer report attached).

Rec: REFUSAL

- Councillor Ruane has requested that this application be removed from the schedule and presented at the next Planning Meeting.

 *LA07-2017-1559-F EDB Construction Ltd.pdf*

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16.0 LA07/2017/1707/F - Kevin Teggart Snr - erection of replacement dwelling with detached garage - approx 270m SE of 51 Ayallogue Road, Newry. (Case Officer report attached).

Rec: REFUSAL

- A request for speaking rights has been received from Colin O'Callaghan, agent, in support of the application. **(Submission attached)**.

 *LA07-2017-1707-F Kevin Teggart Senior.pdf*

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 *Item 16 - submission of support (Kevin Teggart).pdf*

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17.0 P/2013/0242/F - MJM Group Ltd - Proposed residential housing development of 200 no. units comprising 61 detached, 126 semi-detached, 13 townhouses (some with garages) improvements and widening of existing Watsons Road and Dorans Hill, introduction of new roundabout and Distributer Road, planting of acoustic barrier along Distributer Road, proposed landscaping, open space, car parking, site and access works. (Case officer report attached)

Rec: APPROVAL

- A request for speaking rights has been received from Desmond O'Loan, Watsons Road Residents Group, objecting to the application. **(Submission attached)**.
- A request for speaking rights has been received from Richard O'Toole, MBA Planning, in objection to the application. **(Submission attached)**.
- A request for speaking rights has been received from Mr Brian McConville, applicant, in support of the application. **(Submission attached)**.

 *P-2013-0242-F MJM Group Ltd.pdf*

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 *Item 17 - objection from Residents Group (Watsons Road).pdf*

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 *Item 17 - objection from MBA (Watsons Road).pdf*

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18.0 LA07/2017/1895/F - Brian & David Gallagher - erection of dwelling and detached garage, new landscaping and associated site works in compliance with PPS21-CTY6 - personal and domestic circumstances - approx. 55m SE of No. 6 Molly Road Lower, Jonesborough, Newry. (Case Officer report attached).

Rec: REFUSAL

- A request for speaking rights has been received from Stephen Hughes, agent, in support of the application.

(Submission forwarded under separate cover - this item is deemed to be exempt under paragraph 1 of Part 1 of Schedule 6 of the Local Government Act (NI) 2014 - information relating to an individual and the public may, by resolution, be excluded during this item of business).

LA07-2017-1895-F Brian and David Gallagher.pdf

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19.0 P/2014/0427/O - Joseph McGivern - Site for dwelling - to the rear and south of 2 Berkley Grove, Warrenpoint (Case officer report attached)

Rec: REFUSAL

- Addendum list - Councillor Loughran has asked that this application be removed from the addendum list and presented at the next Planning Committee Meeting.

P-2014-0427-O Joseph McGivern.pdf

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For Noting

20.0 February 2018 Planning Committee Performance Report. (Attached).

FEBRUARY 2018 Planning Committee Performance Report.pdf

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21.0 Record of meetings between Planning Officers and Public Representatives. (Attached).

Record of Meetings report.pdf

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22.0 February 2018 Appeals and Decisions. (Attached).

Planning Appeals and Decisions Feb 2018.pdf

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Invitees

Cllr Terry Andrews	terry.andrews@nmandd.org
Cllr Naomi Bailie	naomi.bailie@nmandd.org
Cllr Patrick Brown	patrick.brown@nmandd.org
Cllr Robert Burgess	robert.burgess@nmandd.org
Lorraine Burns	lorraine.burns@nmandd.org
Cllr Pete Byrne	pete.byrne@nmandd.org
Cllr Michael Carr	michael.carr@nmandd.org
Cllr charlie casey	charlie.casey@nmandd.org
Cllr William Clarke	william.clarke@nmandd.org
Cllr Garth Craig	garth.craig@nmandd.org
Cllr Dermot Curran	dermot.curran@nmandd.org
Ms Alice Curran	alice.curran@nmandd.org
Cllr Laura Devlin	laura.devlin@nmandd.org
Cllr Sean Doran	sean.doran@nmandd.org
Cllr Cadogan Enright	cadogan.enright@nmandd.org
Cllr Gillian Fitzpatrick	gillian.fitzpatrick@nmandd.org
Cllr Glyn Hanna	glyn.hanna@nmandd.org
Mr Liam Hannaway	liam.hannaway@nmandd.org
Cllr Valerie Harte	valerie.harte@nmandd.org
Cllr Harry Harvey	harry.harvey@nmandd.org
Cllr Terry Hearty	terry.hearty@nmandd.org
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Cllr Mickey Larkin	micky.larkin@nmandd.org
Cllr Kate Loughran	kate.loughran@nmandd.org
Cllr Jill Macauley	jill.macauley@nmandd.org
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Cllr Roisin Mulgrew	roisin.mulgrew@nmandd.org
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Cllr Barra O Muiri	barra.omuiri@nmandd.org
Cllr Brian Quinn	brian.quinn@nmandd.org
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Cllr John Rice	john.rice@nmandd.org
Cllr Michael Ruane	michael.ruane@nmandd.org

Cllr Michael Savage	michael.savage@nmandd.org
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Sarah Taggart	sarah-louise.taggart@nmandd.org
Cllr David Taylor	david.taylor@nmandd.org
Cllr Jarlath Tinnelly	jarlath.tinnelly@nmandd.org
Cllr John Trainor	john.trainor@nmandd.org
Suzanne Trainor	suzanne.trainor@nmandd.org
Cllr William Walker	william.walker@nmandd.org
Mrs Marie Ward	marie.ward@nmandd.org
Mr Adam Wilkinson	adam.wilkinson@nmandd.org

NEWRY, MOURNE & DOWN DISTRICT COUNCIL

Minutes of the Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 7 February 2018 at 10.00am in the Boardroom, District Council Offices, Monaghan Row, Newry

Chairperson: Councillor G Craig

Deputy Chairperson: Councillor K Loughran

In attendance: **(Committee Members)**

Councillor C Casey	Councillor J Macauley
Councillor L Devlin	Councillor M Murnin
Councillor G Hanna	Councillor D McAteer
Councillor V Harte	Councillor M Ruane
Councillor M Larkin	

(Officials)

Mr A McKay	Chief Planning Officer
Mr P Rooney	Principal Planning Officer
Ms A McAlarney	Senior Planning Officer
Mr A Davidson	Senior Planning Officer
Ms N Largey	Legal Advisor
Ms E McParland	Democratic Services Manager
Ms P Manley	Professional Technical Officer
Ms C McAteer	Democratic Services Manager
Ms P McKeever	Democratic Services Manager

P/010/2018: APOLOGIES AND CHAIRPERSON'S REMARKS

Apologies were received from Councillor Clarke

P/011/2018: DECLARATIONS OF INTEREST

Councillor Macauley declared an interest in **Item No. 9 – LA07/2017/1369/O** as Mrs McMaster was the agent for her farm business insurance.

P/012/2018: DECLARATIONS IN ACCORDANCE WITH PLANNING COMMITTEE PROTOCOL PARA. 19 – MEMBER TO BE PRESENT FOR ENTIRE ITEM

- **Item No. 12 LA07/2016/0199/0** was presented at the Planning Committee Meeting on Wednesday 6 December 2017 – Members present were Craig, Loughran, Clarke, Devlin, Larkin, Macauley, Casey, Ruane, McAteer and Murnin. A site visit was also held on Wednesday 10 January and all above Members were present with the **exception of Councillor Macauley who advised she would not be taking part in the discussion/decision on this application. Councillor Hanna also declared that he did not attend the site meeting and would not therefore be taking part in the discussion/decision.**
- **Item No. 18 LA07/2017/1322/0** was previously presented at the Planning Committee Meeting on Wednesday 6 December 2017 – Members present were Councillors Craig, Loughran, Clarke, Devlin, Larkin, Macauley, Casey, Ruane, McAteer and Murnin. A site visit was also held on Wednesday 10 January 2018 and all above Members were present with the **exception of Councillors Hanna, Ruane and Macauley who advised they would not be taking part in the discussion/decision on this application**
- **Item No. 28 P/2012/0743/F** was previously presented at the Planning Committee Meeting on Thursday 2 February 2017 – all Members were present i.e. Councillors Clarke, Macauley, Casey, Devlin, Harte, Loughran, Murnin, Craig, Hanna, Larkin, McAteer and Ruane **and were entitled to take part in the decision/discussion on this application**

P/013/2018: MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 10 JANUARY 2018

Read: Minutes of Planning Committee Meeting held on Wednesday 10 January 2018. **(Copy circulated)**

AGREED: On the proposal of Councillor Hanna, seconded by Councillor McAteer it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 10 January 2018 as a true and accurate record.

P/014/2018: ADDENDUM LIST

Read: Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 7 February 2018. **(Copy circulated)**

AGREED: On the proposal of Councillor Ruane seconded by Councillor McAteer it was agreed to approve the Officer Recommendation, as per the Development Management Officer Report, in respect of the following Planning Applications listed on the Addendum List for Wednesday 7 February 2018:

- **Item 10 – LA07/2017/1542/F** – Arthur O’Kane – Proposed erection of new fibre optic street cabinet for superfast broadband, cabinet dimensions 1300mm high x 1430 mm wide x 450mm deep – 40m SW of No. 1 Saul Mills Road, Saul, Downpatrick.
- **Item 11 – R/2014/0657/F** – Bluebuild Developments Ltd – Proposed residential comprising 11 No. dwellings (10 semi-detached and 1 bungalow) (amended proposal and landscaping details) –The Mourne Observer, The Roundabout, Castlewellan Road, Newcastle and lands adjacent to No. 10 Burren Park.
- **Item 20 – LA07/2017/1503/F** – Newry, Mourne and Down District Council – Retrospective and temporary replacement of existing metal fire escape staircase to the side of the Town Hall with new galvanized steel staircase with timber cladding and to include alterations to existing footpath and access road – Newry Town Hall, Bank Parade, Newry.
- **Item 21 – LA07/2017/1504/LBC** – Newry, Mourne and Down District Council – Retrospective and temporary replacement of existing metal fire escape staircase to the side of the Town Hall, Bank Parade, Newry.
- **Item 22 – R/2014/0627/F** – Newry Mourne and Down District Council – Change of use of 2 of the 3 existing vacant industrial warehouses to a community centre and indoor sports facility with changing rooms. External works to include children’s multi-play unit, additional on-site parking, tree maintenance and perimeter fencing, on lands at 29 Belfast Road, Saintfield.
- **Item 23 – LA07/2017/1720/F** – Newry, Mourne and Down District Council – Proposed storage building for storage of equipment by disabled users at Cranfield Beach – Ameracam Lane, Cranfield.
- **Item 24 – LA07/2017/1621/F** – NIHE South Region – Proposed single storey rear extension as well as new ramped access to the front of the dwelling – 47 Bearna Park, Meigh.
- **Item 26 – P/2005/1354/F** – Morgan Brothers Ltd – Erection of residential development and associated works (comprising 35 dwellings, with access provision of Forth Road, including 18 social housing units) – Lands at Forth Road, Warrenpoint (adjacent and North-East of 12 Forth Road adjacent and to the rear of Nos 13-28 Forth Avenue and opposite Nos. 13-21 Forth Road (extending North-Eastwards to rear of Nos 9-19 Smalls Road.
- **Item 27 – P/2005/1384/F** – Rossvale Developments – Erection of residential development and associated works (comprising 10

dwellings, with individual accesses off Smalls Road and Burren Road) – Lands fronting and at Burren Road and Smalls Road, Warrenpoint (opposite Conall Avenue, extending north-eastwards to opposite Woodbrook Park).

(Councillor Casey joined the meeting at 10.40am)

P/015/2018: APPLICATIONS FOR DETERMINATION

AGREED: On the advice of the Chief Planning Officer it was unanimously agreed to withdraw the following planning applications from the schedule:

- **Item 15 – LA07/2017/0976/F** – Stephen Campbell – Erection of two semi-detached dwellings with integrated garages, landscaping and associated site works – Lands to the rear of No. 26a – 28 Water Street Rostrevor – **withdrawn from the schedule at the request of Planning Officers**
- **Item 17 - LA07/2017/1186/F** - Wolfhill Developments Ltd - Change of use and conversion of part of former school building to provide a single detached dwelling including alterations and extensions and provision of an elevated walkway from Carrick Road - 4 Lurgancanty Road Clontifleece Warrenpoint – **withdrawn from the schedule at the request of Planning Officers to consider late information submitted.**
- **Item 25 – LA07/2017/1788/O** – Louise McKeever – infill site for dwelling and detached garage – Adjacent to and between Nos 3 and 5 Drumboy Road, Culloville, Crossmaglen – **the agent advised this application was being withdrawn from the planning process.**

The following applications were then determined by the Committee:

(1) LA07/2017/0821/0 – Mr C Kane

Location:

Adjacent and east of 196 Dundrum Road, Dromara

Proposal:

Proposed off-site replacement dwelling and garage

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Sam Hawthorne, Hawthorne Associates, Agent, and Mr C Kane, applicant, in support of the application.

Councillor Hanna proposed and Councillor McAteer seconded to defer Planning Application LA07/2017/0821/0 to allow the Applicant time to submit additional evidence to support the current location of the proposed site and for Planning Officers and the Applicant to explore alternative locations.

The proposal was put to a vote by way of a show of hands and voting was as follows:

FOR: 7
AGAINST: 3
ABSTENTIONS: 0

The proposal was declared carried.

AGREED: On the proposal of Councillor Hanna seconded by Councillor McAteer it was agreed to defer Planning Application LA07/2017/0821/0 to allow the Applicant time to submit additional evidence to support the current location of the proposed site and for Planning Officers and the Applicant to explore alternative locations and if the application continued to be a refusal it be brought back to Committee.

(Councillor Casey joined the meeting at 10.40am)

(2) LA07/2017/0909/0 – Mr R Carson

Location:

35m SW of 25 Dromara Road, Ballynahinch

Proposal:

Proposed dwelling and garage on a farm

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Sam Hawthorne, Hawthorne Associates, Agent, in support of the application.

Councillor Larkin proposed and Councillor Ruane seconded to accept the Planning Officer's recommendation in respect of Planning Application LA07/2017/0909/0. The proposal was put to a vote by way of a show of hands and voting was as follows:

FOR: 3
AGAINST: 6
ABSTENTIONS: 2

The proposal was declared lost.

AGREED: On the proposal of Councillor McAteer seconded by Councillor Macauley it was agreed to defer Planning Application LA07/2017/0909/O to allow Planning Officers to explore an alternative site using the existing access with consideration given to cost implications associated with this option, and also to explore an alternative access to the site.

It was also agreed that this Planning Application be brought back to Committee at a later date.

(3) LA07/2017/1021/F – Donna Rinnell

Location:

15 Leitrim Road, Castlewellan

Proposal:

2 storey extension to existing dwelling to accommodate a granny flat

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Gerry Tumelty, Agent, in support of the application.

AGREED: On the proposal of Councillor Larkin seconded by Councillor Hanna it was agreed to defer Planning Application LA07/2017/1021/F to allow Planning Officers and the agent/applicant to agree an acceptable design solution for the proposed extension including a reduction in the ridge height which would ensure that the proposed extension would be subordinate to the main dwelling.

(4) LA07/2017/1369/0 – Mr J McMaster

(Councillor Macauley withdrew from the meeting)

Location:

Opposite 15 Ballymaglave Road, Ballynahinch

Proposal:

Dwelling and detached garage for private use

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Mr John McCallister, representing the Agent, in support of the application.

Councillor Larkin proposed and Councillor Hanna seconded to issue a refusal as per the Management Development Officer report.

The proposal was put to a vote by way of a show of hands and voting was as follows:

FOR: 9
AGAINST: 0
ABSTENTIONS: 1

The proposal was declared carried.

AGREED: On the proposal of Councillor Larkin seconded by Councillor Hanna it was agreed to issue a refusal in respect of Planning Application LA07/2017/1369/O as per the Management Development Officer report.

(Break 11.45am – 12.00noon)

(Councillor Macauley re-joined the meeting)

(5) LA07/2017/1144/F – Mr and Mrs Conlon

Location:

Lands 150m south of No. 17 Limekiln Road, Camlough

Proposal:

Proposed off site replacement dwelling

Conclusion and Recommendation from Planning Official:

Refusal

AGREED: On the proposal of Councillor Hanna seconded by Councillor Devlin it was agreed to exclude the public and press from the Meeting during discussion on the following matter which related to exempt information by virtue of Paragraph 1 of Part 1 of Schedule 6 of the Local Government Act (Northern Ireland) 2014 – information relating to any individual.

Speaking rights:

Barry Gray, Agent, and Mr Conlon, Applicant in support of the application

AGREED: On the proposal of Councillor Macauley seconded by Councillor McAteer it was agreed to come out of closed session.

When the Committee came out of closed session the Chairperson reported the following decision had been taken:

AGREED: On the proposal of Councillor Larkin, seconded by Councillor McAteer, by 10 votes to one, and with no abstentions, to approve planning application LA07/2017/1144/F, contrary to Officer recommendation, subject to receipt of requested documentary evidence.

It was also agreed that Planning Officers be granted authority to impose any relevant conditions.

(6) LA07/2016/0199/0 – Liam and Siobhan Boylan

Location:

Land zoned for housing to the rear of numbers 68 to 132 Lower Dromore Road, Warrenpoint

Proposal:

15 new dwellings, 4750 square metres (1.1. acres) of native tree planting, landscaping walls, new estate road and ancillary development including re-grading, with access from The Woodlands (Drainage Assessment Received)

Conclusion and Recommendation from Planning Official:

Approval

(Councillors Macauley and Hanna withdrew from the meeting).

Speaking rights:

P Thornton in objection to the application.

Speaking rights:

DEA Councillor M Carr in objection to the application.

Speaking rights:

Brendan Quinn, Agent, in support of the application.

Discussion took place in relation to the current Area Development Plan and to a possible alternative access to the site other than via the Woodlands. However it was noted NI Housing Executive owned the strip of land which may provide an alternative access.

AGREED: On the proposal of Councillor McAteer seconded by Councillor Larkin it was agreed to defer Planning Application LA07/2016/0199/O to allow discussions to take place between the Applicant and NI Housing Executive who owned

an adjoining strip of land which may provide an alternative potential access to the site.

It was also agreed that all previous reports from Transport NI in relation to this Planning Application to be made available to the Planning Committee.

(Councillor Macauley and Hanna re-joined the meeting).

(Councillor Harte left the meeting).

(7) LA07/2016/1069/F – Jim Rocks

Location:

Mountain House, Drumilly, 37 Newry Road, Belleeks

Proposal:

Application to vary condition number 2 of planning permission reference P/2006/1110/RM. Condition 2 states that the dwelling hereby permitted shall be occupied only by Mr B Dooley and his dependants for life, following construction and occupation. The application seeks the variation of this condition to the dwelling hereby permitted shall be occupied only by the owner/manager or an employee of the adjacent Mountain House public house, following construction and occupation.

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Brendan Quinn, Agent, in support of the application.

AGREED: On the proposal of Councillor Larkin seconded by Councillor Hanna it was agreed to issue an approval in respect of Planning Application LA07/2016/1069/F contrary to the Management Development Officer Report on the basis that approval had been retained by the implementation of pre commencement conditions and also that approval be given for the variation of occupancy conditions.

It was also agreed that Planning Officers be granted authority to impose any relevant conditions and to issue the decision.

(Lunch 13.55 – 14.40)

(8) LA07/2017/0545/0 – Elaine Binks

Location:

No. 2 Belmont Lane, Ballyardle, Kilkeel

Proposal:

Site for dwelling

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Raymond Binks, father of the applicant, in support of the application.

Councillor Hanna proposed and Councillor Larkin seconded to issue a refusal in respect of Planning Application LA07/2017/0545/0 as per the Management Development Officer Report.

The proposal was put to a vote by way of a show of hands and voting was as follows:-

FOR: 6
AGAINST: 2
ABSTENTIONS: 1

The proposal was declared carried.

AGREED: On the proposal of Councillor Hanna seconded by Councillor Larkin it was agreed to issue a refusal in respect of Planning Application LA07/2017/0545/O as per the Management Development Officer Report.

(9) LA07/2017/1322/0 – Paul Hourican

(Councillors Hanna, Ruane and Macauley withdrew from the meeting as they were not at the site visit)

Location:

Land 20m SE of 24A Oldtown Road, Annalong

Proposal:

Infill dwelling, detached garage and associated site works

Conclusion and Recommendation from Planning Official:

Refusal

Speaking rights:

Barry Fletcher from FletcherArchitects, Agent, in support of the application.

Councillor Devlin proposed and Councillor Murnin seconded to issue an approval in respect of Planning Application LA07/2017/1322/O contrary to officer

recommendation on the basis that from a visual impact perspective the site was suitable for the proposed infill dwelling, detached garage and associated works.

The proposal was put to a vote by way of a show of hands and voting was as follows:-

FOR: 5
AGAINST: 2
ABSTENTIONS: 1

The proposal was declared carried.

AGREED: On the proposal of Councillor Devlin, seconded by Councillor Murnin it was agreed to issue an approval in respect of Planning Application LA07/2017/1322/O contrary to officer recommendation on the basis that from a visual impact perspective the site was suitable for the proposed infill dwelling, detached garage and associated works.

It was also agreed that Planning Officers be granted authority to impose any relevant conditions.

(Councillors Hanna, Ruane and Macauley re-joined the meeting).

(10) LA07/2017/1496/F – DFI Roads Southern

Location:

Approx 30m NW of 127 Belfast Road, Newry

Proposal:

Construction of new park and ride/share car park facility for 106 spaces

Conclusion and Recommendation from Planning Official:

Approval

Speaking rights:

Brian & Sharon Henning in objection to the application.

Speaking rights:

DEA Councillor David Taylor in objection to the application.

Speaking rights:

Ciaran McKenna, DFI Roads, in support of the application.

Councillor Larkin proposed and Councillor Murnin seconded to issue an approval in respect of Planning Application LA07/2017/1496/F as per officer recommendation on

the condition that DFI Roads put in place a Management Plan for the park and ride sites.

The proposal was put to a vote by way of a show of hands and voting was as follows:-

FOR: 9
AGAINST: 1
ABSTENTIONS: 0

The proposal was declared carried.

AGREED: On the proposal of Councillor Larkin seconded by Councillor Murnin it was agreed to issue an approval in respect of Planning Application LA07/2017/1496/F as per officer recommendation on the condition that DFI Roads put in place a Management Plan for the park and ride sites.

It was also agreed that Planning Officers be granted authority to impose any relevant conditions.

(Councillor Murnin left the meeting – 4.10 pm).

(11) P/2012/0743/F – Brian Cunningham

Location:

Valley Business Park, 48 Newtown Road, Rostrevor, BT34 3BZ

Proposal:

Part change of use to tourism park incorporating 10 No. touring caravan pitches, No. log cabins, 1 No. family tent pitching area, 1 No. single tent pitching area, male & female toilet blocks & shower facilities, entrance gatehouse, children's play area and kids play park, associated car parking and internal landscaping

Conclusion and Recommendation from Planning Official:

Approval

Speaking rights:

Tom Mulholland in objection to the application.

AGREED: On the proposal of Councillor McAteer seconded by Councillor Larkin it was agreed to issue an approval in respect of Planning Application P/2012/0743/F as per officer recommendation.

ABSTENTIONS: 0

FOR NOTING**P/016/2018: PLANNING COMMITTEE MEETING PERFORMANCE REPORT JANUARY 2018**

Read: Planning Committee Performance Report January 2018. **(Copy circulated)**

AGREED: It was agreed to note the Planning Committee Performance Report January 2018.

P/017/2018: MEETINGS BETWEEN PLANNING OFFICERS AND PUBLIC REPRESENTATIVES

Read: Record of Meetings between Planning Officers and Public Representatives 2017-2018. **(Copy circulated)**

AGREED: It was agreed to note the record of Meeting between Planning Officers and Public Representatives.

P/18/2018: APPEALS & DECISIONS

Read: Report re: Appeals and Decisions – January 2018. **(Copy circulated)**

AGREED: It was agreed to note the Appeals and Decisions January 2018

The Meeting concluded at 4.30pm.

For confirmation at the Planning Committee Meeting to be held on 7 March 2018.

Signed: _____ Chairperson

Signed: _____ Chief Executive

Item 5 – Addendum List

Addendum list - planning applications with no representations received or requests for speaking rights – Planning Committee Meeting on Wednesday 7 March 2018

The following planning applications listed on the agenda, have received no representations or requests for speaking rights. Unless a Member wishes to have these applications presented and discussed, the Planning Committee will be asked to approve the officer's recommendation and the applications will be taken as "read" without the need for a presentation. If a Member would like to have a presentation and discussion on any of the applications listed below they will be deferred to the next Committee Meeting for a full presentation:-

- **Item 6** - LA07/2017/0746/0 - Mrs Eileen Patterson - Dwelling on a farm - land east of and immediately adjacent to No. 10 Castleward Road, Strangford. **APPROVAL**
- **Item 8** - LA07/2017/1276/0 - Mr & Mrs S McCartan - land between 49 Cargagh Road and 56 Rocks Chapel Road, Lisnamore, Crossgar. **REFUSAL**
- **Item 10** - LA07/2017/1588/F - Philip Young - 2 storey side extension to a dwelling to allow kitchen/dining/living area with lounge above - 77a Cahard Road, Ballynahinch. **REFUSAL**
- **Item 14** - LA07/2017/1162/F - Brendan Kelly - proposed erection of domestic shed and hard standing area (Amended proposal and plans) - 91 Chancellors Road, Lisdrumliska, Newry. **APPROVAL**
- **Item 19** - P/2014/0427/O - Joseph McGivern - Site for dwelling - to the rear and south of 2 Berkley Grove, Warrenpoint. **REFUSAL**

ITEM NO	3			
APPLIC NO	LA07/2017/0746/O	Outline	DATE VALID	17/05/2017
COUNCIL OPINION	APPROVAL			
APPLICANT	Mrs Eileen Patterson 14 Mill Road Annacloy BT30 9AS		AGENT	Gary Patterson Architects Woodlea Studio 10 Castleward Road Strangford BT30 7LY
LOCATION	Land east of and immediately adjacent to No. 10 Castleward Road Strangford BT30 7LY			
PROPOSAL	Dwelling on a farm			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	
	0	0	0	
			Addresses	Signatures
			0	0
			SUP Petitions	
			0	
			Addresses	Signatures
			0	0



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Application Reference: LA07/2017/0746/O

Date Received: 17th May 2017

Proposal: Proposed Dwelling on a farm

Location: Lands East of and immediately adjacent to No 10 Castleward Road, Strangford.



Site Characteristics & Area Characteristics:

The site is comprised of a 1.53 hectare site which contains, an agricultural field, currently used for grazing sheep. The site abuts the public road and is defined here by a stone wall and post and wire fencing. The remaining boundaries are defined by mature vegetation with post and wire fencing. The site slopes gently upwards away from the public road in a south-easterly direction. Immediately adjacent the site lies No 10 Castleward Road, to the rear of which and within the site outlined in red there are this a derelict structure, which is screened from public view by No10 Castleward Road.

The site is visible on approach from the north-east along Castleward Road due to the open nature of the site.

Site History:

There is no previous history on this site for this type of application.

Planning Policies & Material Considerations:

I have assessed the proposal against the following relevant policies:

- Regional Development Strategy (RDS)
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Ards and Down Area Plan 2015
- Planning Policy Statement 3 – Access Movement and Parking
- Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage
- Planning Policy Statement 21 – Sustainable Development in the Countryside
- Building on Tradition

Ards & Down 2015 – the site is located within the open countryside outside any defined settlement area.

The site is in close proximity to two listed structures – A potato store and former Presbyterian Church.

Consultations:

Transport NI – No objections

NI Water - No objections

DARDNI – Confirmed 6 years active business but no SFP claims within last year.

HED – concerned proposal may impact listed buildings and request submission of more detailed information relating to massing, sight splays, boundary treatment, ridge height, finished floor levels.

Water Management Unit – Mo objections, Standard informatives apply

Objections & Representations

The following neighbouring properties were notified on 1st August 2016:

- 9, 10, 14 and 16 Castleward Road, Strangford.

The application was advertised in the local press on 10th August 2016.

There have been no representations received in relation to this application.

Consideration and Assessment:

The proposal seeks outline planning permission for a farm dwelling.

Under CTY1 of Policy PPS21 a dwelling on a farm will be permitted where it meets the criteria of CTY10, CTY 13, CTY14 and CTY16.

Under Policy CTY 10 of PPS21 a dwelling can be erected on a farm where it meets all the criteria.

The applicant has provided a DARD business ID. DAERA have been consulted and have confirmed that the farm business has been in existence for more than 6 years, however single farm payments or other allowances have not been claimed in the last year. The applicant has submitted information to support their claim that the business has been active for the last 6 years. The evidence shows that single farm payments were claimed in the years 2011-2014, however, from 2015, 3 hectares of eligible land are required to support a SFP claim. Movement documents have been provided for years 2015 – 2017 which primarily shows sale of stock from the farm, it is noted that stock was bought in May 2017 just prior to submission of the application. The evidence would suggest that the farm has been active for the last 6 years and that criteria (a) has been met.

The applicant has stated in the P1C forms that no development opportunities or dwellings have been sold off since November 2008. A search on EPIC has not revealed any other planning applications in connection with the business ID, nor any other developments being sold off, therefore the proposal meets criteria (b)

Criteria C requires the new dwelling to be visually linked or sited to cluster with an established group of buildings on the farm. It is acknowledged that there is a structure to the rear of No 10 however, this is in a derelict state and would not be considered as forming part of a group of buildings. No 10 Castleward Road (comprising the dwelling and garage) is included within the farm holding and is considered to be a group of buildings. As such the proposal is considered to comply with Criteria C of CTY 10.

Policy CTY 10 also requires proposals to meet those requirements of CTY 13, 14 and 16.

CTY13

The site is open on approach from the north-east along Castleward Road as can be seen in the image below. The land slopes gently upwards away from the road to a relatively flat portion of land to the rear of the buildings.



It is considered that a single storey dwelling positioned in keeping with the layout plan date stamped 29th December 2017 would be acceptable.

It is noted from the indicative layout plan that the proposed new access to the dwelling will run as close as possible to the existing boundaries of No 10 Castleward. The amended access point is considered to be satisfactory to Transport NI from a road safety perspective and it is welcomed that the new boundaries of the proposed lane and site are to be planted.

While the necessity of planting to aid integration is required in this site, it is considered that the dwelling will be sufficiently set back from the public road and if sited to the rear of No 10 a dwelling could integrate satisfactorily.

CTY14

While the site is open, it is not considered that a dwelling conditioned as above would create a detrimental change to the rural character of the area.

CTY16

A septic tank is proposed. Details of its location would be submitted at reserved matters stage and the necessary permission from NIEA Water Management Unit and NI Water are required. The proposal is compliant with CTY16.

Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage

The site is located near a number of listed buildings i.e. Grade B2 Potato Store on Downpatrick Rd Strangford and Grade B1 Former Presbyterian Church. In assessment of these buildings, a consultation was carried out with Historic Environment Division, who have requested additional information in order to fully assess the impact of the proposal on these buildings. This request was based on a desk based exercise by HED. It is the opinion of the Planning Authority that the listed structures are too removed from the site to be realistically impacted upon and

therefore further information was not requested. The proposed farm dwelling will be conditioned to sit unobtrusively to the rear of the existing property at No.10 Castleward Road, and shall be conditioned to rural style single storey in form negating any potential visual impact.



Summary

It is considered that the proposal satisfactorily complies with PPS21 policy CTY10 and is recommended for approval.

Recommendation:

Approval

CONDITIONS:

1. Application for approval of the reserved matters shall be made to the Council within 3 years of the date on which this permission is granted and the development, hereby permitted, shall be begun by whichever is the later of the following dates:-

- i. the expiration of 5 years from the date of this permission; or
- ii. the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: As required by Section 62 of the Planning Act (Northern Ireland) 2011.

2. Approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the Council, in writing, before any development is commenced.

Reason: This is outline permission only and these matters have been reserved for the subsequent approval of the Council.

3. A scale plan and accurate site survey at 1:500 (minimum) shall be submitted as part of the reserved matters application showing the access to be constructed and other requirements in accordance with the attached form RS1. The access shall be constructed in accordance with detailed approved plans and prior to (the commencement of any other development/occupation of the dwelling house), as approved.

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

4. The dwelling hereby permitted shall be a single storey dwelling with a ridge height that shall not exceed 5.5m above existing ground level at the lowest point within its footprint. The dwelling shall be designed and landscaped in accordance with the Department's Design Guide Building on Tradition.

Reason: To ensure that the proposal is in keeping with the character of this Area of Outstanding Natural Beauty.

5. The proposed dwelling shall be sited in the area shaded YELLOW on the approved plan Drawing No LA07/2017/0746/01 date stamped 17th May 2017.

Reason: To ensure that the development is satisfactorily integrated into the landscape in accordance with the requirements of Planning Policy Statement 21.

6. The dwelling hereby permitted shall not be occupied until all new boundaries have been defined by a timber post and wire fence with a native species hedgerow/trees and shrubs of mixed woodland species planted on the inside.

Reason: To ensure the proposal is in keeping with the character of this designated Area of Outstanding Natural Beauty.

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

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

Signed:

Date:

Signed:

Date:

ITEM NO	5			
APPLIC NO	LA07/2017/1261/O	Outline	DATE VALID	21/08/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr Thomas Mageean 20 Junction Road Saintfield BT24 7JU		AGENT	2Plan NI 47 Lough Fea Road Cookstown BT80 9QL
LOCATION	Site abutting 20 Junction Road Saintfield			
PROPOSAL	Proposed dwelling and garage			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	1	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm.
- 3 The proposal is contrary to Policy CTY8 and CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Junction Road.



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Application Reference: LA07/2016/1261/O
Date Received: 21.08.2017
Proposal: Proposed dwelling and garage
Location: Site abutting 20 Junction Road Saintfield

Application was presented to Planning Committee on 10 January 2018 with a recommendation to Refuse.

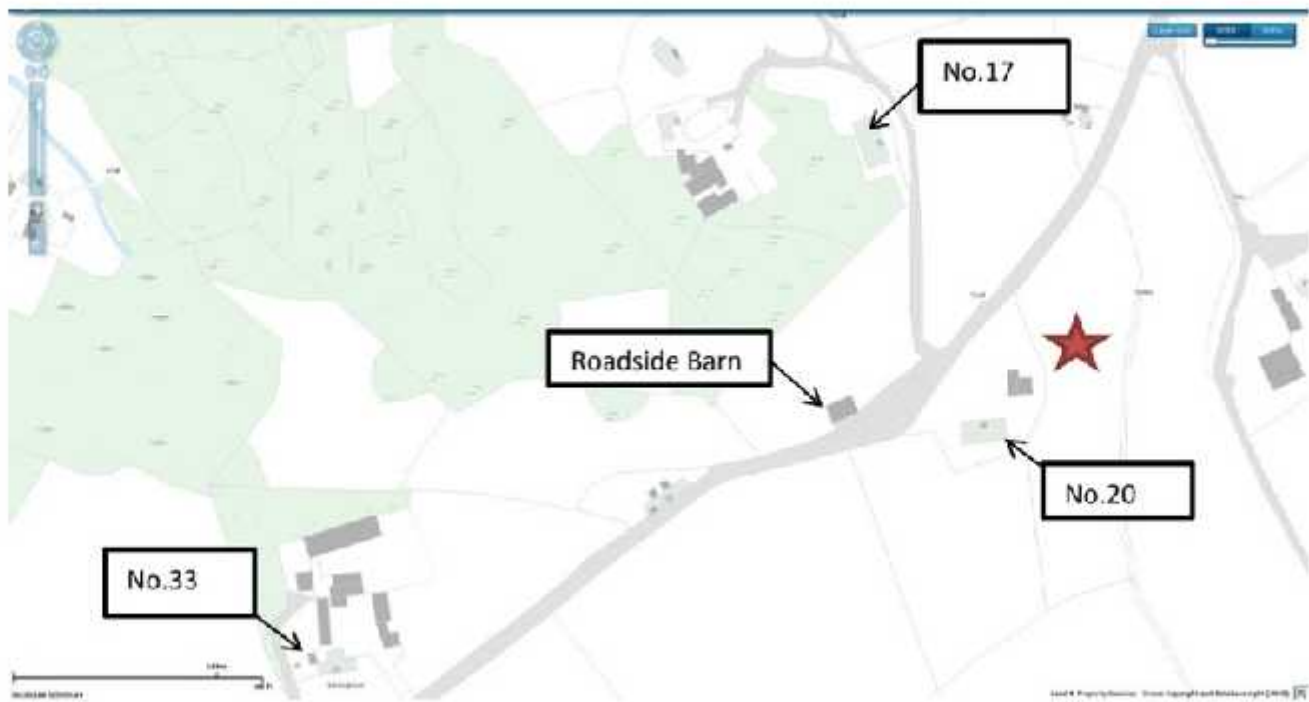
Committee agreed that application be deferred to allow further discussion with the Planning Officers and applicant/agent regarding clarification on the issue of ownership and the application to be returned to Committee.


A letter was sent to the agent on the 12 January 2018 requesting the above; a response was received on the 12 February 2018. The agent has submitted ownership details and deeds and folios for the buildings in question as follows

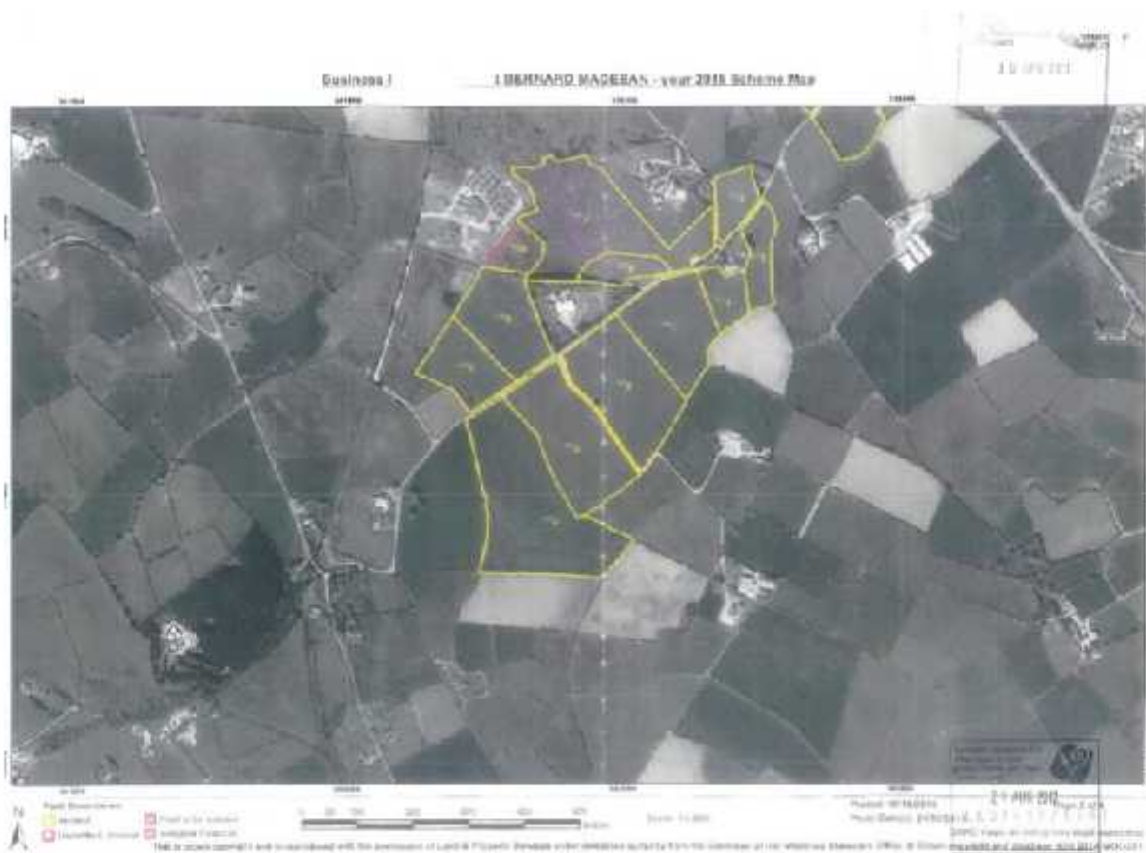
No.20 Junction Road and outbuilding	Thomas Mageean
No.17 Junction Road	Bernard Mageean
Roadside Barn	Thomas Mageean
No.33 Junction Road	Bernard Mageean

The farm business is in the name of Bernard Mageean and registered to No.17 Junction Road. The buildings associated with the farm business are those at No.17 and those at No.33.

The Buildings at No.20 are not included within the farm business of Bernard Mageean. Therefore the siting proposed does not comply with policy requirements of CTY10 that farm dwelling visually links or clusters with an established group of buildings on the farm .



 Proposed siting





Therefore the reasons for refusal as previously offered remain

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policies CTY1, CTY10 and CTY13 (g) of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm.
3. The proposal is contrary to Policy CTY8 and CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Junction Road.

Recommendation: Refusal

Signed

REASON 1 DEFERRAL REQUEST

Discussions are being held between Thomas Mageean, Barney Mageean and DEARA in relation to formalising the applicants involvement in the application farm.

The applicant was due to visit DEARA offices today, however this has been rescheduled due to the adverse weather conditions.

As the application was previously deferred on the request of the Committee Members, this is the first request for deferral made on behalf of the applicant/agent.

We cordially request that this deferral is facilitated to enable the application to be presented to Committee when the formal paperwork has been processed by DEARA.

REASON 2 DEFERRAL REQUEST

An appointment has also been made for Monday 05 March 2017 at Newry Mourne & Down to listen to the audio recording of January's Committee meeting, as a conflict exists between what I as the agent recall the reasons for the deferral and what the minutes have recorded the reason for deferral (i.e. ownership clarification). In the first instance ownership clarification had previously been provided during the early stages of the processing of the application (email sent to case officer Mark Keane from 2 Plan NI dated 24/10/2017, providing annotated maps of the three building locations under question). Secondly It was my understanding that the application was deferred to enable the Committee's Legal Advisor contact Stewart Beattie QC in relation to the interpretation of 'a group of buildings on the farm', in cases such as this where lands are taken in conacre and a landlord/tenant farming business structure is in place.

If the deferral request is not allowed, the points on which I wish to speak on are as follows:

- The applicants involvement in the application farm.
- What constitutes a group of buildings on the farm for the purposes of policy CTY10 and lands taken in conacre.

Kind Regards,

Sheila Curtin MRTPI

47 Lough Fea Road, Cookstown, Co Tyrone, BT80 9QL

t: 028 8676 4492 | m: 078 0936 4680

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**RTPI**

Chartered Town Planner

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ITEM NO	6			
APPLIC NO	LA07/2017/1276/O	Outline	DATE VALID	23/08/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr & Mrs S McCartan 49 Cargagh Road Lisnamore Crossgar BT30 9HN		AGENT	Kennedy Design - Chartered Surveyors 65 Rocks Chapel Road Lisnamore Crossgar BT30 9HN

LOCATION Land between 49 Cargagh Road and 56 Rocks Chapel Road
Lisnamore
Crossgar
Co Down
BT30 9HN

PROPOSAL Single Dwelling

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

- 1 **The proposal is contrary to the Strategic Planning Policy Statement 2015 (SPPS) and Policies CTY1 and CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there is gap is not sufficient to accommodate up to a maximum of two houses which would respect the existing development pattern along the frontage in terms of size, scale, siting and plot depth. Therefore it is not a valid infill opportunity and there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**

- 2 **The proposal is contrary to the Strategic Planning Policy Statement 2015 (SPPS) and Policies CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the site would not respect the traditional pattern of settlement exhibited in that area.**



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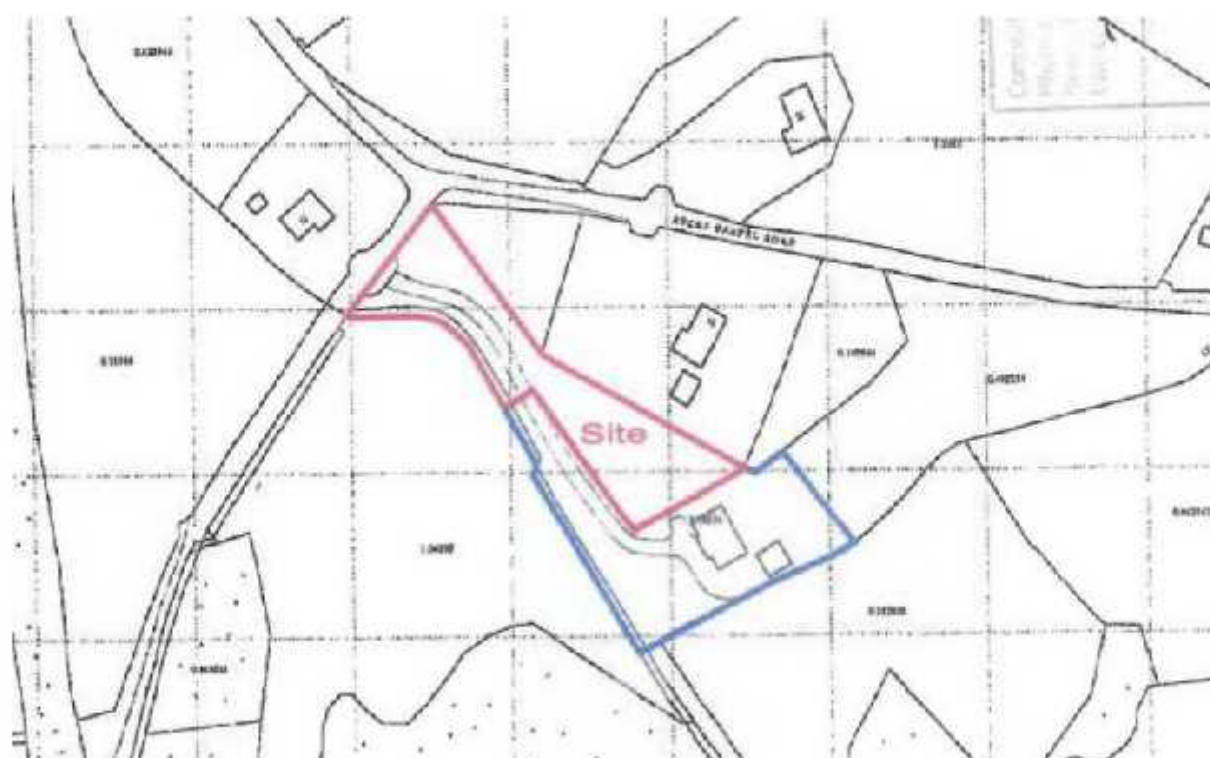
Application Reference: LA07/2017/1276/O

Date Received: 22.08.2017

Proposal: The application is for outline planning permission for a single dwelling

Location: Land between 49 Cargagh Road and 56 Rocks Chapel Road
 Lisnamore Crossgar

The application site is located outside the settlements in the open countryside as designated in the Ards and Down Area Plan 2015.





Site Characteristics & Area Characteristics:

The application site lies directly NW of No 49 and to the SW of No 56 and comprises a long narrow plot of land which extends down to the Cargagh Road. The site is currently the garden of No 49 and is laid out in lawn. The land is higher at this point than the road level. No 49 is a bungalow with detached garage and is accessed via a sweeping tarmac driveway. No 56 is a large two storey dwelling which has been extended over the years,





Site History:

R/2012/0412/F 56 Rocks Chapel Road, Lisnamore, Crossgar,
Extension to dwelling PERMISSION GRANTED 15.02.2013

R/2006/0159/F 56 Rocks Chapel Road, Extension to dwelling. PERMISSION GRANTED
08.04.2006

R/2005/0164/O 350m south east of 41 Cargagh Road, Annacloy, Crossgar. Site for dwelling
and garage. Permission Refused 21.01.2006

R/2005/0163/O 420m south east of 41 Cargagh Road, Annacloy, Site for dwelling and
garage. Permission Refused 21.01.2006

R/2005/0162/O 500m south east of 41 Cargagh Road, Annacloy, Site for dwelling and
garage. Permission Refused 19.01.2006

R/2005/0124/O 200m east of 41 Cargagh Road, Annacloy, Crossgar. Site for dwelling and garage. Permission Refused 21.01.2006

R/2002/1725/O 130m south of 49 Cargagh Road, Annacloy, Crossgar Dwelling. Application Withdrawn 05.04.2004

R/1994/0466 Cargagh Road Annacloy Bungalow Permission Granted

R/1993/0167 Opposite 52 Caragh Road Annacloy Dwelling PERMISSION GRANTED

R/1986/0601 56, Rockchapel Road, Crossgar. Garage Permission Granted

R/1980/0503 Rocks Chapel Road, Crossgar Split-Level Bungalow Permission Granted

R/1978/0105 Rocks Chapel Road, Crossgar Dwelling Permission Refused

R/1977/0762 Rocks Chapel Road, Crossgar Bungalow Permission Refused

Planning Policies & Material Considerations:

The application site is located outside the settlements in the open countryside as designated in the Ards and Down Area Plan 2015 and as such the SPPS is the relevant policy document, which is read in conjunction with PPS 3 and PPS 21.

Consultations:

NI water – No objections

Transport NI – No objections subject to conditions

NIEA Water management – No objections

Objections & Representations

In line with statutory requirements four neighbours have been notified on 04.09.2017

The application was advertised in the Mourne Observer and the Down Recorder on 06.09.2017.

Consideration and Assessment:

The SPPS states that in the case of infill/ribbon development provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. This is less prescriptive than the content of PPS21 regarding infill dwellings, however the SPPS states that the policy provisions of PPS21 will continue to operate until such time as a Plan Strategy for the whole of the Council area has been adopted.

Policy CTY 1 of Planning Policy Statement 21 identifies a range of types of development that are, in principle, considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Planning permission will be granted for an individual dwelling house in the countryside in the certain cases which are listed, the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 8 is one such instance. Integration and design of buildings in the Countryside CTY 13 and Rural character CTY 14, and CTY 16 are also relevant.

Policy CTY8- Ribbon Development. Planning permission will be refused for a building which creates or adds to a ribbon of development. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. For the purpose of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.

The description of the proposed site is given as "Land between 49 Cargagh Road (CR) and 56 Rocks Chapel Road (RCR). This indicates that the gap is to be found between these 2 address points. The site comprises the front garden and access drive of No 49 CR. The dwelling at No 49 CR has a long elongated garden, with an access road leading up the centre of this garden, thus for the purposes of the policy, it would have a frontage onto the CR. The dwelling at No 56 RCR which has been extended previously has an access and gates which lead onto the RCR. The curtilage of No 56 RCR does appear to have been extended over the years also (permission R/2012/0412/F – showed this portion as now being included within the red line) whereby now there is an area planted out with trees with a central area mown out, with a wooden field gate which opens out onto the CR. The planning Office would contend that the presence of a wooden gate does not constitute frontage to the Cargagh Road. There also appears to be a building to the rear of No 56, there is no permission for this building and its status is thus considered as unauthorised, therefore for the purposes of the policy this cannot be considered as one of the buildings comprising a built up frontage. The PAC have considered this in appeal 2016/A0107 whereby an unauthorised building as part of a ribbon of development was not accepted as a building for the purposes of applying the policy.

In determining whether an "infill" opportunity exists, one must identify whether there is an otherwise substantial and continuously built up frontage present. For the purpose of policy this "includes a line of three or more buildings along a road frontage without accompanying development to the rear". A building has a frontage to a road if the plot on which it stands abuts or shares a boundary with the road. It is evident that there is one dwelling along the RCR, namely No.56. No.49 CR, as the name suggests presents a frontage only to the CR and not RCR.

No. 52 CR is on the opposite side of the CR and does not share a common frontage with No.49 CR. whilst No.52 does share a common boundary with the RCR it cannot be considered to share in the same frontage as No.56 RCR as the CR provides a break in this frontage and therefore the frontage cannot be described as continuous.

As the aforementioned buildings do not have common frontage to either road, there is no line of three or more buildings to constitute a substantial and continuously built up frontage, as envisaged by the policy. Accordingly, there is no gap or infill opportunity.



As there is no substantial and continuously built up frontage extending along either the RCR or the CR within which the application site sits and it does not represent a gap site, the proposal does not meet the first test set out in Policy CTY8. In these circumstances it is not necessary to assess the plot width or area when compared to adjacent plots.

I reference recent PAC appeal decision 2017/A0135 dated 5 February is pertinent to the consideration of this case.

Policy CTY 14 of PPS 21 'Rural Character' states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. It sets out five circumstances where a new building would be unacceptable.

The appeal proposal would visually link with the existing buildings at Nos 49 CR, No.52 CR and No.56 RCR, when viewed from approach from the west on RCR, to form ribbon

development leading to suburban style build up detrimental to the rural character of the area. For these reasons, the proposal also fails to comply with policies CTY8 and CTY14.

Recommendation

Refusal

Refusal Reason:

1. The proposal is contrary to the Strategic Planning Policy Statement 2015 (SPPS) and Policies CTY1 and CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there is not a substantial and continuously built up frontage.
2. The proposal is contrary to the Strategic Planning Policy Statement 2015 (SPPS) and Policies CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the site would result in the addition to a ribbon of development when viewed from the Rocks Chapel Road.

Appointed Officer Signature

Date

Authorised Officer Signature

Date

ITEM NO	7			
APPLIC NO	LA07/2017/1551/O	Outline	DATE VALID	21/09/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr and Mrs Hoey 135 Hillsborough Road Lisburn		AGENT	Patrick Johnson Design 21 Priests Lane Blaris Road Lisburn BT27 5RB

LOCATION Between 43 and 45 Darragh Road
Darragh Cross
Saintfield

PROPOSAL Proposed infill opportunity for 2 dwellings under planning policy PPS21

REPRESENTATIONS	OBJ Letters		SUP Letters		OBJ Petitions		SUP Petitions	
	2	0	0	0	Addresses	Signatures	Addresses	Signatures
					0	0	0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Darragh Road.
- 3 The proposal is contrary to Policy CTY15 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would if permitted mar the distinction between the defined settlement limit of Darragh Cross and the surrounding countryside and result in urban sprawl.



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Application Reference: LA07/2017/1551/O

Date Received: 5th October 2017

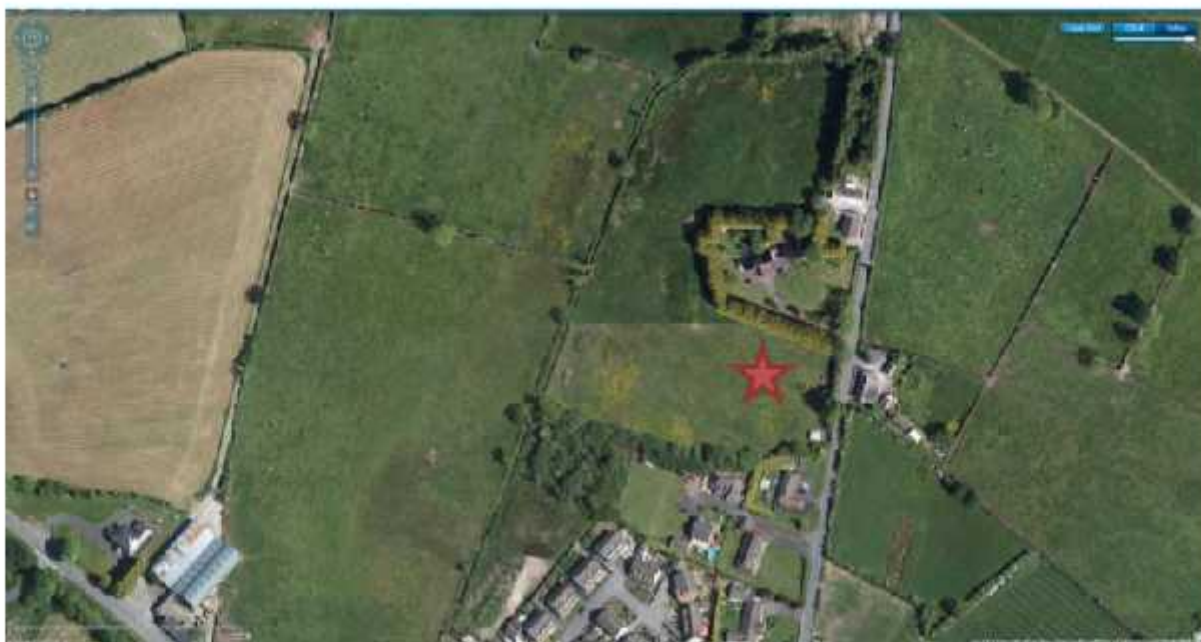
Proposal: Infill for 2 dwellings

Location: Between 43 and 45 Darragh Road, Darragh Cross, Saintfield



 **Settlement Limit of Darragh Cross**

 **Application Site**



Site Characteristics & Area Characteristics:

The site is located along the minor Darragh Road, Darragh Cross. It is comprised of a 0.19 hectare portion land cut out of a larger agricultural field, currently used for grazing. The site is relatively flat and level with the road, it is defined at the roadside by a post and wire fence, with mature vegetation to the northern and southern boundaries.

The site is located in the rural area and immediately adjacent the settlement limit of Darragh Cross.

The surrounding topography is relatively flat. It is noted that the land immediately surrounding the site is used for grazing, however, there are number of detached dwellings dispersed along Darragh Road, once out of the settlement limit. A variety of house types and plot sizes are apparent.

Site History:

There is no previous history on this site for this type of development.

There is similar application on land north of the site see LA07/2016/1537/O. This application sought approval for 2 dwellings, but was however, refused on the grounds that it could accommodate more than 2 dwellings, design and ribbon / character. This decision has been appealed and a decision is pending the appeals process.

Planning Policies & Material Considerations:

In assessment of this proposal regard shall be given to the Strategic Planning Policy Statement (SPPS), Ards and Down Area Plan 2015, PPS 21 (CTY 1, 8, 13, 14), Building on Tradition (Guidance Document), in addition, to the history and any other material consideration.

The application was advertised in the local press on 25.10.17

The following neighbours were notified of the proposal on 12.10.17

Nos 40, 43, 45 and 45a Darragh Road, Darragh Cross

Consultations:

In assessment of the proposal a consultation was carried out with Transport NI.

No objections have been received.

Objections & Representations

2 objections have been received

Paul & Geraldine Waddell 43 Darragh Road have raised concerns about the need for a dwelling at this location, and the impact it will have on traffic, environment, sewerage system etc.

Sharon Bayliss 40 Darragh Road also queries the need for a dwelling at this location and raises concerns regarding the integration of the proposal into the surrounding landscape. Ms Bayliss considers that the proposal would not respect the existing pattern of development, that it would overlook her property, sterilise the agricultural land to the rear of the site, and add to current problems with road safety. Ms Bayliss also advises that the sewer system is at capacity and not capable of supporting any additional dwellings.

Consideration and Assessment:

The relevant local development plan is the Ards and Down Area Plan 2015. The site is located outside the settlement limits of Darragh Cross and within the rural area as designated in the plan. There are no specific policies in the Plan material to this application.

Planning Policy Statement 21 provides the policy context, its Policy CTY1 specifies a range of types of development considered acceptable in principle in the countryside and that will contribute to the aims of sustainable development. The applicant considers the proposed site represents a small gap within an otherwise substantial and continuously built up frontage in accordance with Policy CTY 8. As the Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) does not introduce a more stringent policy context in respect of such development PPS 21 remains the relevant policy context under which to consider the application.

Policy CTY8 deals specifically with this type of development and while it is entitled 'Ribbon Development' it makes provision for the development of a small gap sufficient to only accommodate a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the

frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.

The alleged gap is positioned between road frontage dwellings Nos 45 and 43 Darragh Road. No.45 lies within the settlement limits of Darragh Cross and cannot be considered as occupying a rural context in policy terms and therefore cannot be included when considering development proposal under Policy CTY8 of PPS21.

As there is no substantial and continuously built up frontage extending along the Daragh Road of 3 buildings, the application site it does not represent a gap site but more a visual break, the infilling of which would extend urban sprawl into the countryside. As the proposal does not meet the first test set out in Policy CTY8. In these circumstances it is not necessary to assess the plot width or area when compared to adjacent plots.

It is considered therefore, on the basis of the above that the proposal does not comply with CTY 8 and would add to a ribbon of development along Darragh Road when taken in conjunction with Nos 39 and the adjacent unnumbered dwelling and No.43.

In addition, given the sites location immediately adjacent to the settlement limit of Darragh Cross, CTY 15 of PPS 21 is applicable, which states that planning permission will be refused for development that mars the distinction between a settlement and the surrounding countryside or that otherwise results in urban sprawl. It is considered that the approval of 2 dwellings on this site would contribute to the sprawl of development from the settlement limit into the countryside. This site represents a clear distinction between the built up area (ending at No 45 Darragh Road) and the surrounding countryside and should therefore be maintained. The proposal is therefore contrary to CTY 15 of PPS 21.

On the basis of the above, an opinion to refuse has been recommended

Recommendation: Refusal

REASON:

1. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Darragh Road.
3. The proposal is contrary to Strategic Planning Policy Statement (SPPS) and Policy CTY15 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would if permitted mar the distinction between the defined

settlement limit of Darragh Cross and the surrounding countryside and result in urban sprawl.

Signed

Date

Signed

Date

Planning ref LA07/2017/1551/O

We will be addressing the following factors;

1. My grandparents live 3 doors up (the clearys) and therefore we would like to be closer to them.
2. We also both have an interest in animals. We have always wanted to build a home in darragh and have the animals beside us. We have 6 horses and 12 goats in total.
3. My mum also wishes to retire to be beside her parents again hence the need for the second dwelling.
4. We are recently married and have also sold our first home 12 weeks ago and been living with my husbands parents ever since. We would it love if our dreams of living down in darragh were fulfilled.

We completely understand that these are not planning points but we really need the counsellors to understand our circumstances and to talk about them in the meeting.

Kind regards,
Declan and Hannah Hoey

ITEM NO	9			
APPLIC NO	LA07/2017/1588/F	Full	DATE VALID	16/10/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Philip Young Esq 77a Cahard Road Ballynahinch BT24 8yd		AGENT	John Kirkpatrick Architect 20 Ballyknockan Road Saintfield BT24 7HJ
LOCATION	77a Cahard Road Ballynahinch BT24 8YD			
PROPOSAL	2 storey side extension to a dwelling to allow kitchen/dining/living area with lounge above			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses Signatures	Addresses Signatures
			0 0	0 0

- The proposal is contrary to Policy EXT 1 from Addendum to Planning Policy Statement 7 Residential Extensions and Alterations in that the scale, massing and design of the extension is not sympathetic with the built form and appearance of the existing property and will detract from the appearance of the surrounding area.



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Application Reference: LA07/2017/1588/F

Date Received: 16th October 2017.

Proposal: 2 storey side extension to a dwelling to allow kitchen/dining/living area with lounge above.

Location: 77a Cahard Road, Ballynahinch.



Site Characteristics & Area Characteristics:

The site in question is a single storey detached dwelling located off the Cahard Road and is accessed via an existing shared access. The design of the dwelling is of its time with large 'picture' windows and a central return with amenity area surrounding. There are planted field boundaries between the public view points of the road and the dwelling and strong planted boundaries to the boundary to the rear of the dwelling however the dwelling is still visible when travelling along the Cahard Road. The boundary to the west of the site is defined by a post and wire fence. The site is accessed via a shared lane.

The site is not located within any settlement development limits as defined in the Ards and Down Area Plan 2015, there are no relevant site constraints associated with the lands in question.

Site History:

R/1979/0674 – Cahard Road, Ballynahinch – Bungalow – approval – 06-04-1980.

Planning Policies & Material Considerations:

The application is considered against Ards and Down Area Plan 2015 and also Addendum to PPS 7 Residential Extensions and Alterations and SPPS.

Consultations:

No additional consultations are required in order to be able to make a determination on the application.

Objections & Representations

The application was advertised 1st November 2017 which expired 15th November 2017, no neighbour notifications were required and to date there have been no objections made in relation to this application.

Consideration and Assessment:

The proposal is for a two storey side extension to the dwelling and also for external changes including the blocking up of windows and introduction of new access door arrangements and also the internal reconfiguration of the dwelling.

The proposed extension is 6.2m wide and the frontage of the dwelling increases from 13.9m to 19.9m in length. The proposed extension introduces a two storey element to the dwelling. The ridge of the existing dwelling is 5.5m with the proposed ridge of the extended section 6.7m in height. The proposed extension sits gable ended to the road. The proposal also introduces stone finish to the proposal.

The application is considered against EXT 1 of Addendum to PPS 7 Residential Extensions and Alterations which sets out the policy considerations for extensions to dwellings within the residential curtilage of a dwelling.

The scale, massing and design of the proposal is not sympathetic with the built form and appearance of the existing property. The proposed extension introduces a two storey element that is not respectful of the design of the existing property. The extension sits gable ended to the road with a dominating impact over the remainder of the dwelling. The chimney breast, while internal dominates the front façade of the dwelling and the extension in general is not subordinate to the existing dwelling and will detract from the appearance of the property. There is an internal reconfiguration associated with this application which leads to the blocking up of some doors and windows, while the removal of the 'picture' windows and the replacement with smaller openings that offer a greater vertical emphasis and solid to void ratio is welcomed this improvement is lost with the overall demonstrable harm caused by the scale, massing and design of the proposed extension. The large glazed openings and introduction of stone finish is not in keeping, nor respectful of the existing dwelling.

The extension will, to a lesser degree, detract from the appearance and character of the surrounding area due to the poor design that is not in keeping with the general form and character of buildings in the area and characteristic overall of rural areas.

The remainder of EXT 1, i.e. point's b-d will not be adversely impacted upon as a result of this proposal.

Recommendation:

Refusal

Refusal Reasons:

The proposal is contrary to Policy EXT 1 from Addendum to Planning Policy Statement 7 Residential Extensions and Alterations and SPPS in that the scale, massing and design of the extension is not sympathetic with the built form and appearance of the existing property and will detract from the character and appearance of the surrounding area.

Case officer:

Authorised by:

Date:

ITEM NO	10			
APPLIC NO	LA07/2017/1666/O	Outline	DATE VALID	31/10/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Michael & Noleen Trainor 34 Clanmagherny Road Tyrella Downpatrick BT30 8SU		AGENT	Tumely Planning Services 11 Ballyaiton Park Downpatrick BT30 7BT
LOCATION	Between 74 & 78 Clanmagherny Road Tyrella Downpatrick BT30 8SU			
PROPOSAL	2 infill dwellings			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- 1 **The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**
- 2 **The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not respect the existing development pattern along the frontage, and would, if permitted, result in the addition of ribbon development along Clanmagherny Road.**



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Application Reference: LA07/2017/1666/O

Date Received: Oct 2017.

Proposal: Outline planning permission is sought for 2 infill dwellings, on lands between 74 and 78 Clanmaghera Road,

Applicant Michael and Noleen Trainor

The site is located in the countryside, comprising a roadside plot, along the Clanmaghera Road, between Minerstown and Ballykinlar, in an AONB and Area of Constraint on Mineral Developments, as identified in the Ards and Down Area Plan 2015. There do not appear to be any other zonings affecting this site

This area is pre-dominantly rural in character, although this side and stretch of road includes several buildings.

ACEmap®

Printed: 19/08/2017 Customer Ref:

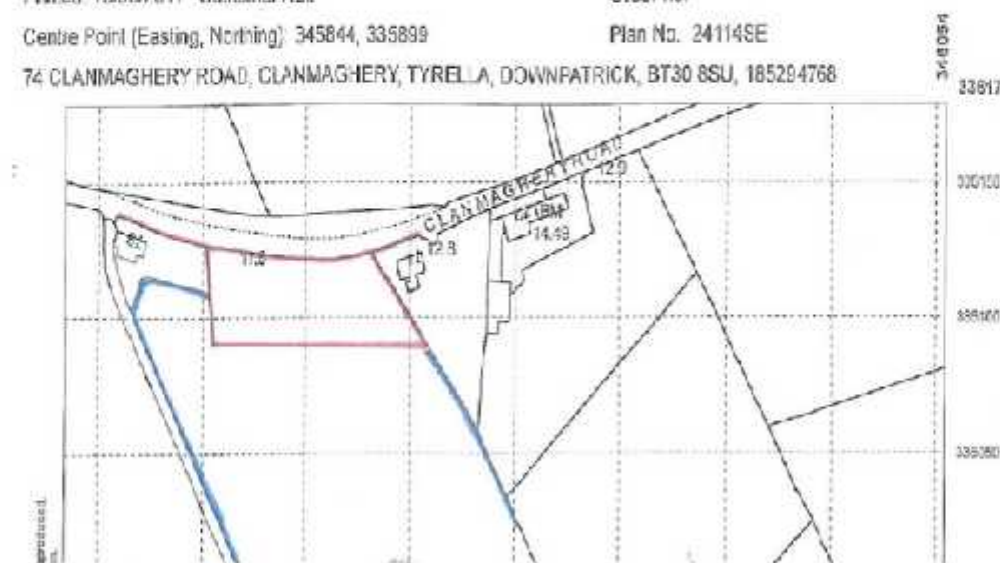
Centre Point (Easting, Northing): 345844, 335899

74 CLANMAGHERY ROAD, CLANMAGHERY, TYRELLA, DOWNPATRICK, BT30 8SU, 185204768

Scale: 1:2,500

Order no.

Plan No. 24114SE

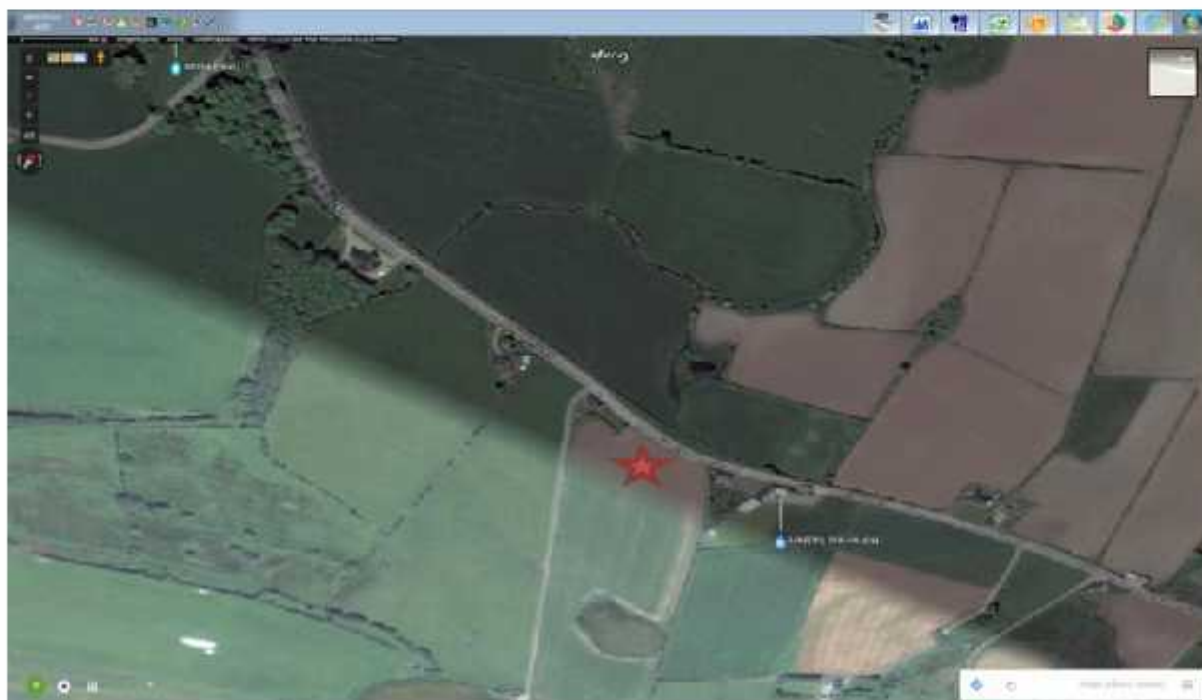


Site Characteristics & Area Characteristics:

The site outlined in red comprises a rectangular shaped plot of land along the Clanmaghery Road. This site comprises a portion of a field which is generally low lying, bounded by post and wire fencing and scattered planting. This field also includes 2 overhead powerlines, and is bounded by the vacant building of no.78 to the west and dwelling of no.74 to the east.

There is a field gate in the bottom corner of this field, adjacent to no.78.

It is noted both the buildings at no.74 and 78 are single storey. It is noted there is an area of grassed lands to the side of no.74, which separates this dwelling with the buildings at no.72.



Site History:

A history search has been carried out for the site and surrounds whereby no relevant history was observed relating to the application site, whereby the most relevant history relating to the adjoining lands observed includes:

R/2002/0698- Adjacent and rear of 78 Clanmaghera Road, Dwelling, Outline, Refusal, 10-10-02, Applicant: Mr M Trainor
(Refusal reasons: no need, lack of integration and undue prominence)

Consultations:

Consultations were carried out with Transport NI, NI Water, Environmental Health, and Historic Environment Division (Monuments)
No objections are offered in principle.

It is not considered necessary to seek any additional comments from any other body to fully assess and determine this application.

Objections & Representations

Neighbour notification was carried out with several properties along Clanmaghera Road in Nov 2017, while the application was also advertised in the local press in Nov 2017.

No representations have been received to date (19-12-17).

Applicable Policy considerations- RDS, Ards & Down Plan 2015, SPPS, PPS3, PPS21, and supplementary guidance

As stated above the site is located in the countryside whereby Policy PPS21 and the recently published SPPS apply.

One of the policies retained by the recently published SPPS is PPS21, whereby it is considered there is no conflict or change in policy direction between the provisions of the SPPS and those of PPS21. As such it is considered PPS21 remains the applicable policy context to consider the proposed development under.

Policy CTY1 states there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

This is an Outline application for 2 dwellings, a P1 form, site location plan, and design and access statement were submitted.

The information submitted indicates the applicant (Michael and Noleen Trainor) live at no.34 Clanmaghera Road, who are in possession the field comprising the application site.

Based on the information submitted this application is for the development of a gap site to be considered under policy CTY8 of PPS21.

As stated above the site comprises a roadside plot along the Clanmaghery Road and is located between the buildings and curtilages of no.74 and 78.

With regards to policy CTY8, a substantial and built up frontage is defined as a line of 3 or more buildings along a road frontage.

Policy CTY8 of PPS21 states that Planning Permission will be refused for a building that creates or adds to a ribbon of development. However an exception to its opening statement will be permitted for the development of a small gap site sufficient only to accommodate a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.

It goes on to note that for the purposes of this policy a substantial and continuously built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.

To meet the definition of what a substantial and continuously built up frontage is, the relevant buildings must be along a road frontage.

When considering what a small gap site is for the purposes of the Policy, the Policy headnote's wording directs the reader to consider the existing development pattern along the frontage in terms of size, scale, siting and plot size.

The justification and amplification in paragraph 5.34, refers to gaps between housing or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. It goes on to comment that the infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage.

Accordingly, it is the gap between buildings that requires to be assessed. As outlined above the site is located between the dwelling and curtilages of no.78 and 74. No.74 then connects to no.72, whereby there is a grassed area between these properties. It is unclear what this portion of land is used as, however based on the information available it is considered this portion of lands is comprises the side garden of no.74.

It is considered the substantial and built up frontage associated with this application comprises the dwellings and curtilages of no.78, 74 and 72 along the Clanmaghery Road.

On this basis, it is considered the application site may be viewed as a gap site within an otherwise substantial and continuously built up frontage.

The application site, as defined by the red line has a frontage of approx 80m, the frontage of no.78 is approx 45m, the frontage of no.74 is approx 60m, and the frontage of no.72 is approx 45m. The average plot along this frontage is therefore approx 50m.

The gap between no.78 and 74 measures approx 125m building to building.

The application site as previously stated measures some 80m.

With the average plot frontage measuring 50m it is obvious that the application site whilst too large to accommodate 1no infill dwelling, is too small to accommodate 2no infill dwellings whilst respecting the existing development pattern along the frontage in terms of its size.

Accordingly it is considered the proposal fails to satisfy the policy requirements of CTY8 of PPS21 in that the proposed plot frontages fail to respect the frontages of the plots making up the substantial and built up frontage along the Clanmaghera Road.

As this is an Outline application no detailed plans have been provided.

It is also noted the lands comprising the application site are low lying, whereby the existing field boundaries and existing development to either side will ensure the development of this site will not offend the requirements of policy CTY13.

Policy CTY14 guards against development impacting on rural character. The current proposal will add to a ribbon of development as well as creating a suburban style of build up of development when viewed with existing and approved buildings therefore offending the policy requirements of CTY14.

The proposed development is located within the Strangford and Lecale AoNB, PPS 2 states that Planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met:

- a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and
- b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and
- c) the proposal respects:
 - local architectural styles and patterns;
 - traditional boundary details, by retaining features such as hedges, walls, trees and gates; and
 - local materials, design and colour.

It is considered that the proposal does not respect the special character of this AoNB and of this particular locality, by virtue of the suburban development patterns being advocated.

It is also noted the dwelling will be served by septic tanks/bio disc, it is considered there are sufficient lands to accommodate these services with associated soak-aways in compliance with CTY16.

However as outlined above the proposal fails the policy requirements of Policy CTY8 and CTY14 of PPS21, NH6 of PPS2 and therefore Refusal has been recommended.

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

- The proposal is contrary to Policy CTY8 and CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not respect the existing development pattern along the frontage, and would, if permitted, result in the addition of ribbon development along Clanmaghery Road.

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

Planning Committee Schedule of 7th March 2018

Planning reference: **LA07/2017/1666/O**

Proposal: **2 infill Dwellings**

Applicant: **Michael & Noelene Trainor**

Location **Between 74 & 78 Clanmaghery Road, Tyrella.**

Recommendation: **Refusal**

Reasons

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

2 The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not respect the existing development pattern along the frontage, and would, if permitted, result in the addition of ribbon development along Clanmaghery Road.

Site Description

The site is located within the countryside as defined in the Ards and Down Area Plan 2015 and comprises a roadside plot, along the Clanmaghery Road, between Minerstown and Ballykinlar, this area is defined as AONB.

This road frontage is general interspersed with dwellings.

The application site is rectangular in shaped located on southern side of the Clanmaghery Road. This application site is generally level with the road and is bounded by post and wire fencing and scrappy planting. This site also has overhead powerlines trans-versing it, and is bounded by single storey dwelling No.78 with aside garden to the west and a similar dwelling of No.74 to the east also with a side garden on the easterly side.

Planning Policies & Considerations

RDS

SPPS

PPS 21

PPS3

Ards & Down Area Plan 2015

DCAN 15

Consultations and Representations

The following consultations were carried out -

Transport NI

NI Water

Environmental Health

Historic Environment Division (Monuments)

No objections were received from any of the consultees and following notifications of the relevant neighbours and advertisement in the local press no objections to the proposal were received either.

Assessment of reasons for Refusal

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

It must be argued that the application site meets the requirements of the Policy and it is noted in the case officers report that the frontage of the site are established as been between 40 to 60m in length with the current frontage of the application site measuring some 80m with the building to building measurement been less than 120m which wen divided gives the plot size of 60 per proposed site between buildings. It is argued that the site is compliant with the policy and the site has a frontage comparable with and of the same size frontage that exists either side of the application site.

2 The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not respect the existing development pattern along the frontage, and would, if permitted, result in the addition of ribbon development along Clanmaghery Road.

The proposal is compliant with policy CTY8 of PPS21 and it respects the development pattern as the site frontages are similar to the frontages immediately adjacent to proposed site as the existing site frontages measure from 45m to 60m while the separation distance from building to building is 120m which when divided into two plots gives a distance akin to the property immediately adjacent to the proposal. The proposed site will contrary to the planning officer's interpretation complete the frontage as envisaged by the policy and will not result in the addition of ribbon development along Clanmaghery Road. It has to be stated that not all frontage area in relation to this policy must be uniform but should be reflective of their surroundings as this proposal is.

Noteworthy comments

It has to be noted that the reasoning put forward in the officer's report to committee differ greatly from those indicated on the schedule displayed on the planning portal and the Councils web-page namely in relation to refusal Reason 2 which now has no reference to policy CTY14 and the third reason in relation to Policy NH6 has been dispensed with.

Overview

The main issues of concern in relation to dwellings on infill sites under Policy CTY8 are clearly met by this proposal. The gap between the existing buildings is of similar proportion to the existing frontages either side of the proposed site. The proposal fully meets the justification and amplification in paragraph 5.34 which further gives credence and support to the current proposal.

Conclusion

We would respectfully ask the Planning Committee to overturn this recommendation and grant Planning Permission for the development as applied for in compliance with the policy under which this proposal is submitted.

ITEM NO	1			
APPLIC NO	LA07/2016/0199/O	Outline	DATE VALID	11/02/2016
COUNCIL OPINION	APPROVAL			
APPLICANT	Liam and Siobhan Boylan and family 10 Avoca Lawns Warrenpoint BT34 2RJ		AGENT	Quinn Design and Engineering Services 36 Corrags Road Burren Warrenpoint BT34 3YP
LOCATION	Land zoned for housing to the rear of numbers 68 to 132 Lower Dromore Road Warrenpoint			
PROPOSAL	15 new dwellings, 4750 square metres (1.1 acres) of native tree planting, landscaping, walls, new estate road and ancillary development including regrading, with access from The Woodlands (Drainage Assessment Received)			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	35	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/0199/O

Date Received: 16th February 2016

Proposal: 15 new dwellings, 4750 square metres (1.1 acres) of native tree planting, landscaping, walls, new estate road and ancillary development including regrading, with access from The Woodlands

Location: Land zoned for housing to the rear of numbers 68 to 132 Lower Dromore Road, Warrenpoint

Site Characteristics & Area Characteristics:

The site occupies a steeply sloping vacant plot of land within the development limits of Warrenpoint. It overlooks the harbour and the Cooley Mountains and is surrounded by residential dwellings. The land is currently overgrown grassland with ferns, scrub and some mature trees along the boundaries. The site is located adjacent to the Woodlands development which is also has a steep topography. A narrow overgrown access to the site is also adjacent to 132 Lower Dromore Road.



Site History:

P/2009/1064/F – Residential Development of 17 dwellings and site works - Lands to the rear and East of 46-132 Lower Dromore Road, Warrenpoint – Withdrawn

WB 18 Housing – Banbridge Newry & Mourne Area Plan 2015 – 1.37 hectares (key site requirements include gross density of 15 dwellings per hectare and access may be from Woodlands and through adjacent small site). The plan also mentions a right turn land on Lower Dromore Road junction with A2 however these works have already been carried out).

Planning Policies & Material Considerations:

Regional Development Strategy 2035

SPPS – Strategic Planning Policy Statement

PPS 2 – Natural Heritage – NH 6 – AONBs

PPS 3 – Access, Movement and Parking

PPS 6 – Planning, Archaeology and the Built Heritage

PPS 7 – Quality Residential Environments

PPS 8 – Open Space, Sport and Outdoor Recreation

PPS 12 – Housing in Settlements

PPS 15 – Planning and Flood Risk

Supplementary Guidance:

DCAN 8 – Housing in existing urban areas

Creating Places

Consultations:

Transport NI – No objections in principle – subject to conditions.

NIW – informatives supplied including early predevelopment enquiry to NIW to determine how proposal may be served. WWTW at Warrenpoint are presently available to serve this proposal.

Environmental Health – No objections providing proposal is connected to public sewerage system as stated in application.

HED: Historic Monuments – content with location of site away from inauguration stone of the Clan McGuinness.

Rivers Agency – accepted the logic of the drainage assessment. Implementation of this assessment and flood risk measures lies with the developer and his/her professional advisors.

DAERA Drainage and Water – content subject to conditions;

DAERA Natural Heritage and Conservation Areas (NED) – refers to standing advice in relation to badger activity and if found a survey is required. Standing advice is also provided for wild birds.

Loughs Agency – Condition attached re discharge of storm water.

Objections & Representations

64 neighbours notified and the proposal advertised in 5 local papers on the 1st, 3rd and 4th March 2016. Vast amounts of objection letters were received. The main issues referred to road safety and the safety of residents within The Woodlands due to its existing construction and the proposed increase in traffic. Other objections raised included safeness of existing retaining walls and proposed ones; disruption/loss of wildlife including birds, bats.

Consideration and Assessment:

Article 45 of the Planning Act (NI) 2011 states that subject to this Part and section 91(2), where an application is made for planning permission, the Council or, as the case may be, the Department, in dealing with application, must have regard to the local development plan, so far as material to the application, and to any other material considerations. As per the current development plan – The Banbridge Newry and Mourne Area Plan 2015, the site lies inside the town of Warrenpoint and also within a designated Area of Outstanding Natural Beauty (AONB) and Area of Archaeological Potential (AAP). It also zoned in the area plan under WB18 for housing. The requirements of the plan state:

1.37 hectares (key site requirements include gross density of minimum 15 dwellings per hectare and access may be from Woodlands and through adjacent small site). The plan also mentions a right turn lane on Lower Dromore Road junction with A2 however these works have already been carried out as part of a different scheme).



The zoning of land provides a basis for rational and consistent decision on planning applications and provides a measure of certainty about which types of development will and will not be permitted.

The current statutory development plan refers to policy for the control of development on zoned sites being contained in Policy SMT2 in Volume 1 of the plan.
Policy SMT2 – Development on Zoned Land

Planning permission on zoned sites will be granted for the specified uses as well as any range of uses included in the key site requirements and any specified complementary uses.

The development proposals will also be considered in the context of all prevailing regional planning policy and any relevant plan policies and proposal, including, where specified, key site requirements.

PPS 7 – Policy QD1 – Quality in New Residential Development

Planning permission will be granted for 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. This policy lists 9 criteria to comply with:

- (a) A concept layout has been provided showing 15 dwellings including 3 detached and 6 pairs of semis however, these are only indicative and full details will be provided at any Reserved Matters/Full stage. Housing on the concept plan is however shown towards the upper parts of the site with woodland planting towards the lower slopes. The site has been included with the Area Plan as land zoned for housing, and through suitable and skilful design due to the site's steepness, housing on this land could respect and the surrounding context as well as being appropriate to the character and topography.



- (b) The site lies within an AAP and NED:HM were consulted and responded that they are content with location of site away from inauguration stone of the Clan McGuinness. No archaeological mitigation is therefore required. New landscaping is proposed and existing vegetation can be conditioned to be retained and augmented.
- (c) 15 dwellings are proposed which although is the minimum per hectare (site measures 1.37 hectares) it is 6 houses short of what the development plan is suggesting in the key site requirements. However I believe given the gradient of the site and the proposal to plant trees is an acceptable proposal for this site. Through careful design there should be sufficient space to each dwelling for private amenity space. The number of dwellings proposed falls short of the open space requirement as per PPS 8 Policy OS 2 (Open Space in New

Residential Development). Taking into account the steepness of the site, land remains towards the lower slope/south west and it is here that a woodland area is proposed as per the concept plans which would assist in the 'greening' of the area. Any approval would be conditioned to provide high quality landscaping to be maintained and retained in perpetuity.

- (d) Due to the scale of the proposal, and the site's location within an existing and well established residential area, no local neighbourhood facilities are required.
- (e) Any RM/Full application would have to design a scheme that would support walking, cycling and meet the needs of people whose mobility is impaired and this would include traffic calming measures, ensuring access to public transport is achievable and no rights of way are disrupted. This is possible on this site through careful design.
- (f) Due to the size of the site and the number of dwellings proposed, there should be ample space within the curtilage of each dwelling for the parking of private cars of at least 2 per dwelling. Any RM/Full application would have to ensure this is presented at the design stage.
- (g) Partial details of the house types have been supplied however this is an outline application and applicable conditions relevant to this site and locality will be imposed regarding design, form and material finish on any approval notice.
- (h) The housing density on this site is acceptable even if it's under the minimum key site requirements due to the site's steepness. Although the gradient of the site could pose tricky, a quality residential environment is achievable through careful design and landscaping that would also minimise any issues regarding overlooking, loss of light, overshadowing, noise or other disturbance.
- (i) Through careful design and siting, the development could deter crime and promote personal safety.

PPS 12 – Policy Planning Control Principle (PCP) 1 – Increased Housing Density without Town Cramming.

This policy supports an increase in density of housing development within town and city centres and other locations which benefit from high accessibility to public transport facilities without eroding local character, environmental quality and amenity. New design should also respect adjacent housing and safeguard their privacy. The proposed site lies within the development limits of Warrenpoint and contains land zoned within the statutory development plan for housing under WB18.

PCP 2– Good Design

Any RM/Full application would have to ensure good design is proposed.

PCP 3– Sustainable Forms of Development

The proposed site would be a sustainable form of development in that it is located within an existing well established residential area, involves the completeness of the residential area and is within land zoned for housing in the area plan.

PPS 3 – Access, Movement and Parking

A vast number of objections were received regarding the access arrangements and TNI initially responded stating that the road network within The Woodlands could cope with the extra traffic that the development would bring; that the horizontal and

vertical alignment of the road (Woodlands) was not untypical of the area and that the proposal will complete housing on the zone.

A final consultation was issued to DFI Roads on 11th October 2017 and the response was the considered professional opinion on the proposal from the Principal Roads Engineer/Network Planning Manager and included:

- Site and surrounding area was inspected/site history and area plan zoning considered as well as acquaintance with appeal history on nearby planning application site at Warrenhill (a separate matter);
- Housing density is less than the minimum yield stipulated in current area plan zoning therefore comments apply to the limited development proposed;
- Geometry, gradient and alignment of the existing public road which whilst steep, is not atypical of the topography of the area;
- Would not be unreasonable to construct a further 15 dwellings and aware of residents views but any possible significant disruption will be during the house building process – which it is hoped will be of limited duration. The present housing road is lightly trafficked and no expectation there to be any traffic progression or safety issues once the houses are occupied, assuming normal courteous driving;
- Satisfied that the proposed 15 dwellings is, on balance, acceptable in terms of the existing adjacent roads infrastructure.



PPS 2 – Natural Heritage

A biodiversity checklist was completed and indicated no concerns however NED referred to standing advice and the need for surveys to be completed should badgers or wild birds be found. As part of any approval notice, an informative will be attached to highlight the legislation of protected species and need for survey should

badgers be found on site. The planting of native trees will however assist the areas biodiversity.

PPS 2 – NH 6 – Areas of Outstanding Natural Beauty

In terms of the site's location within the AONB, careful design and respectfulness of the locality, its architectural and environmental characteristics and qualities as well as historical features and assets, a suitably designed housing layout could be accommodated on this site without causing detriment to the area.

PPS 15

Rivers agency accepted the logic and no reason to disagree with the conclusion of the drainage assessment prepared for this site under policy FLD 3. Rivers Agency have indicated that the responsibility for justifying the drainage assessment and implementation of the proposed flood risk measures (as laid out in the assessment) rests with the developer and his/her professional advisors (paragraph 5.1 of revised PPS 15).

Recommendation:

Approval

The chosen site has been zoned in the Banbridge Newry & Mourne Area Plan 2015 as land identified for housing. The number of houses proposed is acceptable to the key site requirements and the access road involved is through The Woodlands which is also identified within the plan. The plan refers to access through the small adjacent site however this smaller site has been fully developed. Although a vast number of objections have been received with the majority relating to the site's access via The Woodlands, and its ability to cater for increased traffic, senior management in Transport NI has assessed the proposal, and in accordance with current planning policy, deem the access suitable to accommodate a further 15 dwellings which in their words would '*complete housing in the zone*'.

This is an outline application, therefore in principle, the proposal for 15 dwellings and landscaping including the planting of native trees is acceptable on land zoned for housing.

Conditions:

1. As required by Section 62 of the Planning Act (Northern Ireland) 2011, application for approval of the reserved matters shall be made to the Council within 3 years of the date on which this permission is granted and the development, hereby permitted, shall be begun by whichever is the later of the following dates:-
 - i. the expiration of 5 years from the date of this permission; or
 - ii. the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: Time Limit

2. Except insofar as expressly conditioned below, approval of the details of the siting, design and external appearance of the buildings, the means of

access thereto and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the Council, in writing, before any development is commenced.

Reason: This is outline permission only and these matters have been reserved for the subsequent approval of the Council.

3. A scale plan and accurate site survey at 1:500 (minimum) shall be submitted as part of the reserved matters application showing the access to be constructed and other requirements 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.

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

The development shall be in accordance with the requirements of the Department's Creating Places Design Guide and, for the purpose of adopting private streets as public roads, the Department shall determine the width, position and arrangement of the streets associated with the development and the land to be regarded as comprised in those streets.

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

5. No development shall take place until a plan of the site has been submitted to and approved by the Council indicating the existing and proposed ground levels, the finished floor levels of the proposed buildings and the position, height and materials of any retaining walls. Development shall be carried out in accordance with the approved plans.

Reason: To ensure the development takes account of the site's natural features and to safeguard the amenities of the proposed dwellings.

6. At the Reserved Matters stage a plan indicating full details of all proposed tree and shrub planting and a programme of works, shall be submitted to and approved by the Council. All tree and shrub planting shall be carried out in accordance with those details and at those times.

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

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

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

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

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

Informative:

The applicant’s attention is drawn to the Wildlife (Northern Ireland) Order 1985 which indicates that it is an offence to intentionally kill, injure or take any wild animal included in Schedule 5 of this Order which includes the Badger. It is also an offence to disturb these animals or obstruct access to their place of refuge, or destroy or damage anything which conceals or protects their place of refuge. If there is evidence of badgers found, a survey is required which should comply with British Standard 42020:2013, which came into effect on 31st August 2013. The British standard provides recommendations and guidance for those engaged in planning and development, whose work might affect or have implications for conservation, or enhancement of biodiversity.

Standing Advice Badgers:

http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_8_badgers.pdf

Standing Advice Wild Birds

http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice_17_wild_birds_issue_01_may_2015.pdf

Case Officer Signature:
Date:
Authorised Officer Signature:
Date:

This application should be refused permission because the access proposed is unsafe.

Both TransportNI and planning have previously rejected use of The Woodlands as an access to develop this site due to the fact that it is substandard and unsafe.

The gradient is almost 40% greater than the maximum permitted in the safety standards published by the department.

There can be no justification for ignoring these safety standards and they must be respected to avoid adverse incidents with respect to public safety.

The Area plan can never be used to support unsafe development. If this site is to be developed then it must be done safely not in a convenient but unsafe way.

The current application is unsafe and I would ask the committee to protect the safety of the public and refuse permission for it.

Quinn Design and Engineering Services

36 Corrags Road, Burren, Warrenpoint, Co. Down, BT34 3PY

Tel (028) 417 72377 • Mobile 07768854084

Email:- brendanfrancisquinn@yahoo.co.uk

Statement in support of planning application
LA07/2016/0199/O

Proposal: 15 new dwellings, 4750 square metres
(1.1 acres) of native tree planting, landscaping
walls, new estate road and ancillary
development including regrading, with access from
The Woodlands

Location: Land zoned for housing to the rear of
numbers 68 to 132 Lower Dromore Road,
Warrenpoint

Applicant: Liam, Siobhan Boylan and family

This application has been considered by the Planning Department. During their consideration, the Planning Department has sought advice from a wide range of government bodies including Transport NI (TNI)

After a lengthy consideration, the Planning Department has decided that the application should be approved.

The Planning Committee's Consideration of this application so far.

The Council's Planning Committee has deliberated on this application in December 2017 and again in February past. The minutes of the February meeting as published in the agenda for the upcoming meeting confirm that the application was deferred

"to allow discussions to take place between the applicant and NI Housing Executive who owned an adjoining strip of land which may provide an alternative potential access to the site".

Neither the applicants nor myself have approached or intend to approach NI Housing Executive re the acquisition of the strip of land referred to.

The applicants have submitted a valid planning application which seeks permission to access the public road at a location which was proposed in the adopted area plan. TNI have on 3 occasions confirmed that the proposed access is **acceptable**.

The area plan document confirms that *"access may be from Woodlands"*. For such a small word, it has created a great deal of debate in relation to its definition or importance in the context it was used in the area plan documents.

I would trust that the Committee would agree that the word *"may"* can never be interpreted in a manner to mean that access can not be via The Woodlands, especially, when the only access mentioned in the plan is via The Woodlands.

Regardless of whether the area plan documents used the word *"may"* or *"must"* or *"should"*, the area plan confirms that access through The Woodland is acceptable.

The Council has a timeous obligation to determine all planning applications at the earliest possible date. It would seem that the Council, given that all necessary information has been available for some time, has lost sight of this requirement.

The Objector's Contributions To The Planning Committee Meetings.

In his presentations and in answering questions that followed, Mr Thornton, who spoke on behalf of the objectors, advised that

- The existing road at the Woodlands is too narrow for 2 cars to pass
- The road is 40% steeper than the permissible gradient
- The road is very dangerous during periods of frost and
- That these factors have caused several traffic accidents in The Woodlands.

Road width. I have surveyed the width of the estate road at The Woodlands since the February meeting. Depending on where one measures from on and too on the tapered kerbs, the carriageway varies between 5.45 to 5.5m wide with localised widening at its bends.

Creating Places provides planning authorities and agents with the necessary guidance and standards when designing/considering new housing sites.

The second page of the document confirms that the document incorporates "*guidance on layout and access*". This being the case, the standards contained within the document are not absolute.

While Creating Places provides advice, the standards contained within it permit a degree of tolerance to suit site specific requirements. This approach was included to ensure that sites and zonings enclosed within existing urban areas could be developed to achieve the aims of strategic planning policy which requires more new housing to be located within urban areas.

Table 3 on page 119 of Creating Places (shown below) provides engineers with the minimum standards for new estate roads.

Table 3 Carriageway widths and alignments

	Numbers of dwellings served by the stretch of road being considered (around)		
	0-200	200-400	400 (Local Distributor Road)
Minimum width in metres	5.5 ^(min)	5.5	6.7
Minimum width for bus routes in metres	6.0	6.0	6.7 / 7.3 ⁽²⁾
Carriageway narrowing - minimum width in metres	4.8	-	-
Widening on bends required (Yes/No)	Y ⁽⁶⁾	Y	Y
Minimum curve radii in metres	30 ⁽²⁾	40 ⁽²⁾	127
Minimum vertical clearance for archways in metres	5.3 ⁽¹⁾	5.3	5.3
Maximum gradient for roads with footways (%)	10	10	6
Maximum superelevation (%)	3	4	5
Minimum length of SAG curve per 1% change in gradient	5	10	13

You will note that a road with a width of 5.5m will serve up to 200 houses. The existing estate road at The Woodlands serves 25 houses and this application seeks permission in principle for 15 houses. If this application were to be approved and 15 houses were to be built, the estate road in the Woodlands will be required to serve 40 houses, 20% of the total number of houses which can be served using a 5.5m wide road.

Mr Thornton has in February past contended that 2 cars can not meet/pass each other on the existing estate road. The applicants contend that this is a gross exaggeration considering;

1. That a car is less than 2,4m wide and
2. That the existing estate road is the width required to serve 200 houses.

If modern standards permit a 5.5m wide estate road to serve 200 houses, it is in-comprehensible to understand why a 5.5m wide road in Warrenpoint can't serve 40 houses.

Significantly, the objectors have not submitted any drawings, photographs or measurements which confirm that the existing estate road is too narrow to allow 2 cars to pass.

Mr Thornton has been critical of the horizontal alignment of the estate road. He has on a few occasions referred specifically to the bends in the estate road and pointed out how dangerous both he and the objectors feel they are.

TNI, when assessing proposals for new estate roads **encourage designers to include bends as speed control measures**. The bends in the estate road at The Woodlands turn the road through angles of less than 90 degrees at a time and without them it is contended that the objectors would experience a marked increase in traffic speeds in The Woodlands.

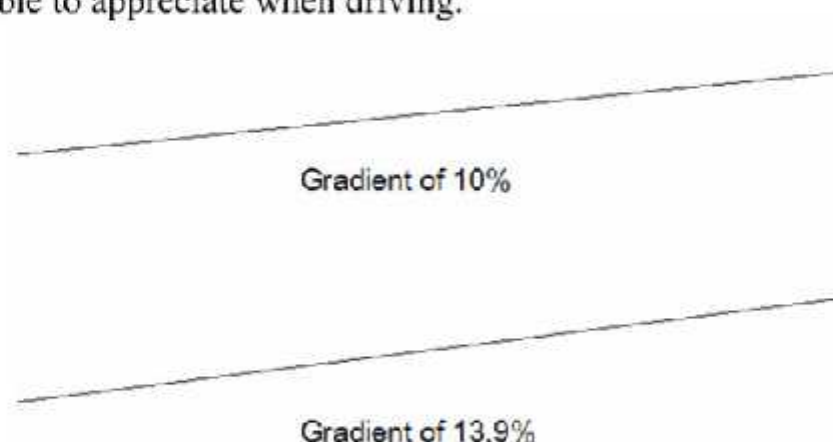
Gradient. Table 3 on the previous page confirms that a road which can serve up to 200 houses should not have a gradient which exceeds 10%. Again the 10% gradient figure is *advisory* and can be set aside if necessary to facilitate the development of steep sites.

The estate road at The Woodlands has 3 short sections where the gradient exceeds 10%. The first is 19m long and the gradient is 11.7%. The steepest section starts at a point 74m from the junction with Lower Dromore Road and extends for 40m. Over this section, the gradients vary from 10% up to 13.9% and back to 10%. Lastly, a 35m section of road which commences some 155m from the junction with Lower Dromore Road has gradients which vary between 10.5% and 11.9%.

When driving on a road with a gradient of 10%, a motorist would struggle to notice an increase in gradient up to 13.9% as the actual difference is so slight.

The diagram overleaf demonstrates this.

The upper line represents a road rising at 10% and the lower line represents a road rising at 13.9%. I would contend that the difference in the gradients is very hard to appreciate on paper and practically impossible to appreciate when driving.



The measured gradients referred to are only slightly above the advisory max gradient of 10%. Mr Thornton has indicated that the existing gradients are **40% above** the max permissible gradient. The steepest section of estate road at The Woodlands has a gradient of 13.9%; this is 3.9% above the permitted max gradient, not 40% as contended by Mr Thornton.

As mentioned previously by TNI, road gradients above 10% are quite often permitted to ensure that steep sites can be developed for housing.

Frost. Any un-treated road will be dangerous in frost events; as such each motorist should only venture onto un-treated roads when they feel their vehicle and their own driving skills will be able to manage the conditions.

The Woodlands received approximately 50mm of snow between Tuesday evening 28th February and Wednesday morning, 29th March past. During this period daytime temperatures hovered around 0 deg C and dipped below 0 deg C at night.

I trust all involved will agree that driving on snow is much more dangerous and challenging than driving on frost. I drove the entire estate road at The Woodlands at 9.10am on Wednesday morning to allow me to experience the driving conditions first hand. There was clear evidence in the form of fresh tyre tracks in the snow that the estate road had been used by a great number of people to safely leave their homes to go about their daily business. Salt provided by TNI had been spread on only 3 separate small locations.

From listening to Mr Thornton's report and answers to subsequent Councillors' questions I would have expected to encounter a very different scenario. However the estate road in The Woodlands was passable with care.

I left The Woodlands and drove the estate roads in Ashley Heights, Dromore Heights, Cloughmore View and Knocknagreena. These 4 estates sit on the opposite side of the same hill which is occupied by The Woodlands and each estate is served from the Upper Dromore Road close to St Marks High School. Each estate has short sections of road with gradients of 10% and above. Significantly, the final drop from Dromore Heights to the Upper Dromore is a straight section of road, over 100m long, with gradients well over 14% until a road user reaches the Upper Dromore Road.

The driving conditions in these 4 estates were identical to those at The Woodlands and like The Woodlands, people had been able to get their vehicles out of their driveways and go about their daily business.

The 4 photographs below show the estate road in The Woodlands as it was on Wednesday morning. Tracks left by the motorists who safely went about their daily business are clearly visible in each photo. You will note that salt was spread on only 3 very small areas.



Tyre tracks in the photograph below confirms that a vehicle safely left Mr Thornton's home at no 23 which is located at the very top of the estate.



I drove the estate road in the Woodlands once again on the evening of 28th March at 9pm to see again the conditions. The steeper thoroughfare had been completely gritted using salt stored in plastic boxes provided by TNI and the road was extremely passable.

The forecast for the night of Wednesday 28th February was for more snow with freezing conditions, yet the residents in The Woodlands had their cars safely parked in their driveways or on the footpaths outside their houses. Given Mr Thornton's remarks one would have expected to see a great number of cars parked on the Lower Dromore Road.

To summarise, the estate road at The Woodlands will be no more dangerous in frost than any other similar un-treated estate road in the area. The fact that motorists safely negotiated their way down the estate road onto Lower Dromore Road in 50mm of snow is a testament to this.

Frequency of accidents. Mr Thornton referred to the frequency of accidents on the existing estate road and indeed one of the objection letters submitted to the Council alluded to 2 separate accidents within the 6 months prior to the objection being submitted. The objector, Mr Mc Kibben, invited the Planning Department to check the police records.

Annex A now attached is the accident report for The Woodlands provided by the PSNI for the period 1st April 1998 to 30th November 2017.

The accident report confirms that there has been 1 “*slight*” collision which resulted in slight injuries to a driver. The incident took place on 4th March 2016 at grid point 313563, 319093. The grid point referred to shows the accident took place outside no 2, which is within 30m of the junction with Lower Dromore Road. Significantly, the accident occurred on a stretch of road which has a gradient below 10%.

TNI, when consulted confirmed that the 4th March 2016 incident referred to above is the only incident for The Woodlands on their records. TNI have allocated ref no CC 2016 03 04 00187 to the incident. TNI further confirmed that the incident was caused by a **motorist driving on the wrong side of the road.**

It is a legal requirement to report all traffic accidents where some one has been injured or where the parties involved in the incident can not agree who is at fault. The PSNI have received 1 such accident report in 17 and a half years.

To summarise.

The width and gradient of the estate road at the Woodlands complies with the modern requirements for an estate road which could serve up to 200 houses.

The second page of Creating Places confirms that the document provides only “*guidance*” on layout and access.

The steepest section of the existing estate road is 3.9% above the advisory gradient of 10%, not 40%.

My visit to The Woodlands on Wednesday morning, 28th February confirmed that the Woodlands residents, including Mr Thornton were able to negotiate their way down the estate road in 50mm of snow.

Publicly available records from the PSNI and TNI confirm that there has been 1 reported accident at The Woodlands in the 17 and a half years since 1st April 1998.

In answering a question from Cllr Mc Ateer at the recent committee meeting Mr Thornton advised as follows;

“The road is incredibly steep, very very dangerous, in the summer time with care, it’s pretty ok. Any time there is any frost whatsoever, it is virtually impossible to get down the road safely”. (Transcribed from the recording of the February committee meeting)

From my experience on Wednesday morning, in The Woodlands just after the estate road had been blanketed in 50mm of snow, I would contend that Mr Thornton’s remarks to the Council were a gross exaggeration. As such Mr Thornton has mis-lead the Committee.

The applicants and I therefore respectfully contend that the objectors’ concerns are poorly founded. Their claims have not been supported by documentary evidence/measurements and in many case their claims; concerns/assertions have been grossly over exaggerated.

Furthermore the applicants and I have noted that the objectors’ assertions have been accepted as factual by the Committee.

At least twice in his February presentation to the Committee Mr Thornton asked the Committee to *“deal with the facts”*. Notably, Mr Thornton and indeed the remaining objectors haven’t presented any facts which justify their claims that the road is too steep, too narrow etc etc.

They have referred on numerous occasions to consultation replies and letters written by Roads Service and the previous planning authority in relation to a previous application which proposed over 40 units on the same site.

The committee is required to decide applications in a fair and consistent manner. To ensure this requirement is upheld, the applicant contends that the committee should as a minimum ask the objectors to demonstrate where the road is too narrow, how the gradient affects motorists, provide dates, times and the names of those involved in accidents. It would also be very beneficial if the objectors could explain how the residents in The Woodlands were able to go about their daily business on Wednesday 28th February when the road was covered in 50mm of snow.

The plan-led system

The 2011 Planning Act, and the devolving of planning powers to the 11 new Councils in April 2015, introduced a new '*Plan-led System*'.

Section 45 of the 2011 Act requires regard to be had to the Plan and to all other material considerations.

Section 6 states, that where regard is to be had to the Plan, the determination must be made in accordance with the Plan, unless material considerations indicate otherwise.

In short, under the '*Plan-led System*', **the Plan is the primary consideration in the determination of planning applications.**

What Happens If This Application Is Refused?

If the Planning Committee decides to refuse this application, there will be a planning appeal. At the appeal TNI will confirm they have no objections.

The Council's own planning department after considering this application since February 2016 are already on record as having no objections, hence the recommendation for approval.

Given these circumstances an award of costs is bound to be made against the Council.

Conclusion

I would contend that the content of this document when read in conjunction with the accident report provided by the PSNI will show that the objectors' concerns are poorly founded and in some cases grossly over exaggerated.

The Planning Department and TNI are very content to approve this application.

My clients are entitled to a timeous decision on their application.

Respectfully, I would contend that the Planning Department's recommendation to approve this application should be upheld by the Committee.

Brendan Quinn
BSc Hon's
ICIOB

Keeping People Safe



Collision history of injury road traffic collisions reported to the police

Collision history of Woodlands, Warrenpoint between Lower Dromore Road junction and End

1st April 1998 - 30th November 2017

Fatal Collisions	Serious Collisions	Slight Collisions	All Collisions
0	0	1	1

Killed	Seriously Injured	Slightly Injured	All Casualties
0	0	1	1

Injuries/fatalities by Road User Type	
Pedestrian	0
Driver	1
Motorcyclist	0
Pedal Cyclist	0
Passenger	0
Pillion Passenger	0
Other	0
Total	1

Please be aware that these do not include collisions at the above junctions

Due to ongoing validation, this information may be subject to change

Source: Statistics Branch, Police Service of Northern Ireland, Lisnasharragh

NEWRY AND MOURNE DISTRICT COUNCIL**COMHAIRLE AN IÚIR AGUS MHÚRN**

Minutes of District Development Committee Meeting held on Monday 16 October 2006 at 7.00pm in the Boardroom, District Council Offices, Monaghan Row, Newry

In the Chair:	Councillor W Burns
Other Members	26
In Attendance:	Councillor C Burns Councillor W Burns Councillor M Carr Councillor C Casey Councillor M Cole Councillor M Connolly Councillor B Curran Councillor G Donnelly Councillor F Feely Councillor A Flynn Councillor I Hanna Councillor T Hearty Councillor D Kennedy Councillor T Murphy Councillor J McArdle Councillor J McCreesh Councillor P J McDonald Councillor K McKeivitt Councillor M Murphy Councillor J O'Hare Councillor G Oliver Councillor J Patterson Councillor H Reilly Councillor M Ruane Councillor G Stokes Councillor A Williamson
Also In Attendance:	Mr T McCall, Clerk and Chief Executive Mr G McGivern, Director of District Development Mr E Curtis, Director of Administration Mr J Finnegan, Internal Auditor Mrs G Quinn, Committee Administrator
Apologies:	Councillor J Feehan Councillor M Mathers Councillor C Mussen

At the outset of the Meeting Members observed one minute's silence as a mark of respect on the death of Councillor Mussen's daughter, Roisin.

**D.D/299/2006: - SYMPATHY
(REF: M/23)**

At the request of Councillor O'Hare it was agreed to send a message of sympathy to the family of the late Charlie Murphy a former Councillor with Newry Urban No. 2.

At the request of Councillor Casey and Councillor McArdle it was agreed to send a message of sympathy to Councillor Marian Mathers on the death of her father-in-law Hugh.

At the request of Councillor T Murphy it was agreed to send a message of sympathy to Mr & Mrs Lennon on the tragic death of their daughter Jessica.

D.D/300/2006: - MINUTES

On the proposal of Councillor Hanna seconded by Councillor Williamson Minutes of the District Development Committee Meeting held on Monday 18 September 2006 were adopted as a true and accurate record same having been circulated.

MATTERS ARISING

NIE – Councillors Emergency Contact Numbers

Councillor Casey advised that he had been finding it difficult to contact NIE on the Councillors priority number. He said he had phoned twice a day for 2 weeks and whilst the issue was now resolved, he asked that the Council write to NIE advising on the problem Councillors are experiencing contacting them on their priority number and registering dissatisfaction.

Councillors Visit to Fingal County Council

Councillor Carr referred to the recent visit by Councillors to Fingal County Council Offices, Dublin. He said that in the Boardroom each place setting had a microphone and Meetings were broadcast on the Worldwide Web using a webcam system.

Councillor Carr requested that the Council look at the cost of providing this facility and these costings be brought back to the Council for discussion at an appropriate Meeting.

**D.D/301/2006: - SPECIAL COMMITTEE MEETING – TUESDAY 10 OCTOBER 2006
- COUNCIL RESPONSE TO AREA PLAN
(REF: M/31/5)**

Mr Richard Bowman, Planning Consultant, Ferguson & Mellveen was in attendance for discussion on this item.

Read: Report of Special Committee Meeting of Council held on Tuesday 10 October 2006 to consider the Council response to Draft Newry and Mourne Area Plan. (Copy of Report and Draft Response circulated).

With reference to the comments on the Rural unallocated it was noted that the Rural unallocated had been re-worded by Richard Bowman as follows: -

It is Policy of Newry and Mourne District Council to promote rural development and encourage people to live and work in the countryside if they wish. In this regard the Council would ordinarily welcome a 20% allocation (or higher) to the rural remainder as suggested in Table 13B of the Population and Housing Technical Supplement.

That said Council is mindful of the ever increasing restrictions being placed on rural development, in terms of Blanket Green Belt and PPS 14 and will question as to whether even 20% of all new houses would be developed in the rural area under such tight restrictions.

Prior to PPS 14 and the Draft BNMAP the Rural Area in the District was a mix of Green Belt and Open Countryside and accounted for over 30% of the average annual dwellings built throughout the District. Using data previously provided by Planning Service it is noted that prior to PPS 14 and the Draft BNMAP Green Belt approvals in the District are on average 65% less than those in rural remainder. It is therefore reasonable to assume that if either the overly restrictive Policies for PPS 14 remain in place or the Blanket Green Policy is not relaxed in the Area Plan, approvals for housing in the rural areas would be around 65% less. That being the case a 65% reduction from the original 30% plus allocation would mean that the effect of allocation for the rural area would only be 10.5%.

In principle, the Council will always object to any reduction in approvals for housing in rural areas. However when faced with the situation where the tighter restrictions on rural housing appear inevitable, Council will wish to ensure that maximum opportunities are afforded for housing development in settlements. The 9.5% variation between the Area Plan allowance of 20% and what appears to be a realistic figure under Green Belt Policy of 10.5% accounts for 13,000 dwelling units. If it is not possible to build these 13,000 buildings in the rural area Council want them to be reallocated to the settlements across the District.

Councillor Carr asked that a comment be included in the Council's response objecting strongly to the de-zoning of land within settlements when it is clear that tighter restrictions in the rural area will increase demand within these settlements.

On the proposal of Councillor Reilly seconded by Councillor Carr it was agreed to approve the draft response to the Newry and Mourne Area Plan 2015 with a comment being added on de-zoning of land within settlements when it is clear that tighter restrictions in the rural areas will increase demand within these settlements.

The Newry and Mourne District Council draft response to Newry and Mourne Area Plan 2015 be forwarded to Planning Service on Tuesday 17 October 2006.

Councillor Feely asked that it be recorded that he did not agree with the suggestion in the Council's response that Newry City should be allocated 5,000 units.

I wish to request speaking rights in my role as Crotlieve DEA Councillor, at the Planning Committee on Wed 7th March 2018 in support of the objectors, and to oppose planning application LA07/2016/0199/0.

Cllr Michael Carr

ITEM NO	2			
APPLIC NO	LA07/2016/1092/F	Full	DATE VALID	12/08/2016
COUNCIL OPINION	APPROVAL			
APPLICANT	Fitzpatrick SSAS C/O Eadie House 74 Kirkintilloch Road Bishopbriggs Glasgow G64 2AH		AGENT	Andrew Scurfield BSc MRICS 6 Saintfield Road Crossgar Downpatrick BT30 9HY
LOCATION	Lands to the north and west of and the existing Leode Quarry Leode Road Hilltown Newry Co Down BT34 5TJ			
PROPOSAL	A lateral extension in a predominantly westerly direction to the existing quarry, the construction of a screening landform, followed by the deepening of the enlarged quarry floor and the provision of a holistic restoration concept for the entire mineral development site			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	
	10	0	0	
			Addresses Signatures	
			0 0 0 0	
			SUP Petitions	
			0	
			Addresses Signatures	
			0 0	



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2016/1092/F

Date Received: 12th August 2016

Proposal: A lateral extension in a predominantly westerly direction to the existing quarry, the construction of a screening landform, followed by the deepening of the enlarged quarry floor and the provision of a holistic restoration concept for the entire mineral development site

Location: Lands to the north and west of and the existing Leode Quarry, Leode Road, Hilltown, Newry, Co Down, BT34 5TJ
The site is located approximately 2 miles west of Hilltown.

Site Characteristics & Area Characteristics:

The site is located at Leode Road, Hilltown in an outcrop of elevated land at the NW edge of the Mourne Mountains. It is over 200m above sea level. The site contains an existing operational hard rock quarry and associated plant. The current worked area is around 20 hectares, though it is constrained by public roads and geotechnical issues that prevent further deepening. It is proposed to extend the quarry in a westerly direction into current agricultural land which is laid out in a number of different fields. The topography of the area is such that the main public views into the site are from the north and NE, the closest being from Tamar Road around 0.3 miles away, and from as far as Rathfriland which is 3 miles away. The main existing



quarry face is visible from both these locations and a number of intervening points. The proposal would remove this outcrop of rock reducing the visual impact in the long term. Tamary Road continues around the western side of the quarry, though the site is screened from this side by a local ridge running parallel to the road. A number of private dwellings are located over this ridge and would overlook the site. It is proposed to construct substantial screening landforms to mitigate these private views from the west and the more open public views from the north.



Existing workings



Existing quarry face from Tamary Road to the north

The site is located in a rural area halfway between Hilltown and Mayobridge. It is in an unzoned area outside settlement limits on the Banbridge, Newry and Mourne

Area Plan 2015. It is also just within the Mourne and Slieve Croob Area of Outstanding Natural Beauty. It is no longer an Area of Constraint on Mineral Development. The local development pattern consists mainly of clustered farm groups with occasional one-off dwellings. There is a wind turbine just to the north of the quarry. The image below illustrates the additional area where rock is proposed to be extracted (outlined orange).



Site History:

Quarrying has taken place on this site since 1955. There have been a series of planning approvals as the site and plant have been extended:

Reference	Location	Proposal	Decision	Decision Date
P/1979/1398	LEODE, HILLTOWN	Proposed Extension to Existing Quarry	PERMISSION GRANTED	05/08/1980
P/1981/0711	LEODE ROAD, HILLTOWN	Proposed extension to quarry and installation of machinery	PERMISSION GRANTED	06/01/1982
P/1988/0890	LEODE QUARRIES NO 26 LEODE ROAD HILLTOWN	New access to quarry	PERMISSION GRANTED	27/09/1988
P/1989/1407	LEODE QUARRIES LEODE ROAD HILLTOWN	Extension to quarry	PERMISSION GRANTED	19/05/1990
P/1990/0740	LEODE QUARRY LEODE ROAD HILLTOWN	Erection of office building	PERMISSION GRANTED	07/02/1991
P/1993/0185	LEODE QUARRIES, LEODE ROAD HILLTOWN	Erection of asphalt processing plant and retention of existing vehicle storage shed	PERMISSION GRANTED	14/04/1995
P/1996/0415	LEODE QUARRIES LEODE ROAD HILLTOWN	Extension to quarry & erection of additional plant	PERMISSION GRANTED	06/03/1998

Reference	Location	Proposal	Decision	Decision Date
P/1997/1474	70 METRES SOUTH WEST OF NO 15 LEODE ROAD HILLTOWN	Extension to Stone Quarry	PERMISSION GRANTED	16/12/1999
P/1997/1476	200 METRES SOUTH EAST OF NO 21 LEODE ROAD HILLTOWN	Extension to Stone Quarry	PERMISSION GRANTED	16/12/1999
P/2001/2157/F	Lead Quarry, Leode Road, Rathfriland BT34 5TJ	Proposed alteration to plant	PERMISSION GRANTED	29/08/2002
P/2003/0790/F	Lead Quarry, Leode Road, Hilltown.	Proposed extension to Quarry	PERMISSION GRANTED	30/01/2006
P/2005/1980/F	Leode Quarry, Leode Road, Hilltown, Newry	Variation of planning condition No 2 of planning permission P/1997/1476 to allow for deepening of quarry floor	PERMISSION GRANTED	30/01/2006
P/2006/2204/F	Leode Quarry, Leode Road, Hilltown, Newry	Demolition of existing coated roadstone plant and erection of replacement coated roadstone plant at a lower level. Erection of associated ancillary aggregate storage sheds.	PERMISSION GRANTED	17/07/2007
LA07/2015/1120 /PAN	Lands to the north and west of and the existing Leode Quarry, Leode Road, Hilltown, Newry, Co Down, BT34 5TJ.	A lateral extension in a predominantly westerly direction to the existing quarry with subsequent deepening of the enlarged quarry floor, the construction of screening banks and the provision of a holistic restoration concept for the entire mineral development site.	PROPOSAL OF APPLICATION NOTICE IS ACCEPTABLE	20/11/2015

As the current application is a major application as defined by the Planning (Development Management) Regulations (Northern Ireland) 2015, it was preceded by a Proposal of Application Notice and a period of Pre-application Community Consultation as required by legislation – see report in Environmental Statement. The current proposal is for the winning and working of greywacke gritstone by drilling and blasting at a rate of 350,000 tonnes per year and for loading and hauling within the site. It will be processed by the existing fixed processing and coated road stone plants at the opposite end of the site which are not subject to this application. A restoration concept to facilitate public amenity use of the site at the end of the quarry's operational life has been provided.

Planning Policies & Material Considerations:

- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015
- PPS2 – Natural Heritage
- PPS3 – Access, Movement & Parking
- DCAN15 – Vehicular Access Standards
- PPS6 – Planning, Archaeology and the Built Heritage
- A Planning Strategy for Rural Northern Ireland

Consultations:

- TransportNI – No objections.
- NI Water – No objections. Public water supply available. Existing water main crossing site.
- Environmental Health – No objections subject to conditions regarding operating hours, noise levels from blasting and other operations and dust mitigation.
- NIEA – Standard advice on site drainage. Extension to existing PPC permit (for dust control) required before operations commence. Excavation depths acceptable with regard to groundwater. Additional Environmental Information regarding badgers and newts was requested. This was provided in May 2017. NIEA now has no objections subject to conditions protecting the area around the badger sett.
- Rivers Agency – Drainage Assessment required. This was provided in May 2017 and agreed by Rivers Agency.
- Shared Environmental Service – No effects on European sites.
- Loughs Agency – No remit to comment.
- DETI Geological Survey – No objections.
- Health & Safety Executive – No objections regarding separation distances and bench widths. Condition recommended to amend shot-firing rules.
- Historic Environment Division – No objections subject to conditions requiring a developer-funded programme of archaeological works in the initial site stripping phase.

Objections & Representations

The original application and Environmental Statement were advertised in 3 local newspapers on 2nd September 2016. Additional Environmental Information was advertised on 29th June 2017. Final changes to the drawings were advertised on 11th January 2018. 12 neighbouring properties were notified of the proposal on 29th September 2016, 16th June 2017 and 15th December 2017.

Letters of objection were received from the owners of 7 local properties, plus another in Hilltown. Their objections include damage to their properties and human health from blasting, safety issues for children and livestock on adjoining land, nuisance from noise and dust, the adverse visual impact of the site and the proposed extension on the Mournes AONB, impact on wildlife, that screening was not provided

as required under previous applications, impact on tourism, additional traffic disruption, and impact on an old laneway within the site.

In assessing these concerns, the Council must balance the adverse environmental and other impacts that mineral workings can create with the need for the resource and the economic benefits of extracting it. It is recognised that minerals can only be extracted where they are found and that the extension of existing sites is more sustainable than the commissioning of completely new sites from scratch. The existing workings at Leode Road can be rounded off and subsequently deepened and there will be limited increased visual impact provided the proposed screening bunds and landscaping measures are undertaken as proposed. Having had regard to the advice of expert consultees and the concerns of objectors, the Council sought some amendments to the extent of the proposed extraction, taking into account the position of neighbouring dwellings and other public views. However, the geotechnical make-up of the rock (which requires it to be worked in a south to north direction) made it difficult to make substantial changes to the proposal. Even a small change to the position of the bund (20m) would result in the loss of 1 million tonnes of material due to the reduced depth that could be worked. We then sought changes to the height of the bunds, making them steeper at key locations to further limit the views into the site, particularly from dwellings to the west. It is considered that the revised proposal has gone some way to address the visual concerns raised. The site is relatively well enclosed from the wider landscape of the Mourne AONB and no verifiable evidence that the proposal would harm the tourism potential of the area has been given.

Safety is a matter primarily for the operator, though there were no issues raised by consultees given the separation distance of over 100m to any occupied dwelling. If there are subsequent concerns regarding blasting activities on site, these can be raised with the Health and Safety Executive on a case-by-case basis. Environmental Health was content with the noise and dust mitigation measures outlined in the Environmental Statement. Wildlife surveys were undertaken and NIEA Natural Environment Division is now content subject to conditions regarding badgers. It is understood that previously conditioned tree planting was undertaken, but the saplings became choked by whin bushes and died. The applicant intends to use whins as a nurse species in the extensive landscaping scheme now proposed, but then control it to permit tree growth. The provision of the bund and planting will be conditioned as part of the approval and any breaches can be followed up by the Council's Planning Enforcement team. The P1 Form indicates that there will be no increase in traffic attending the site as a result of the extended workings and TransportNI had no objections. The old laneway is no longer in use and is not a public right of way. It is on private land and there is no reason in policy to preserve it. However, there is a traditional vernacular dwelling along the laneway and it is intended to preserve this by planning condition as part of the heritage of the area.

It is the Council's view that the conditions proposed will provide adequate mitigation to prevent unacceptable adverse impacts on the objectors or other sensitive receptors. The objection letters cannot therefore be given determining weight.

Consideration and Assessment:

As the development is within Category 19 – Quarries and open-cast mining where the surface of the site exceed 25 hectares – of Schedule 1 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015, an Environmental Statement was automatically required and was submitted with the application. The Environmental Statement and subsequent additional information has been advertised in accordance with statutory requirements and has been taken into consideration in the determination of the application.

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 outside settlement limits in a rural area and within the Mournes and Slieve Croob Area of Outstanding Natural Beauty. With regard to mineral development, the Plan states that hard rock quarries in the Mournes area are to be found in the foothills northeast of Mayobridge and on the outskirts of Newry. The minerals are used to produce building and road stone aggregates for Banbridge, Newry and Mourne and the wider Belfast markets. It notes that there is consistent demand for aggregates over a relatively long period. The Plan aims to balance the need for extraction against the need to protect and conserve the environment. Specific policy for mineral extraction is found in the SPPS and the PSRNI.

The SPPS sets out core planning principles to be employed in the quest to achieve sustainable development. Of particular relevance to this application are supporting sustainable economic growth and preserving and improving the natural environment. 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. Minerals are an important natural resource and their responsible exploitation is supported by Government. The minerals industry makes an essential contribution to the economy and to our quality of life, providing primary minerals for construction, such as sand, gravel and crushed rock, and other uses, and is also a valued provider of jobs and employment, particularly in rural areas. This development will facilitate the extraction of minerals from the site for around 30 more years and the land will then be restored to a lake and woodland area with potential public amenity and biodiversity value. It will yield some 350,000 tonnes of aggregate per year for the local construction and road building/maintenance industry with associated economic benefits (it presently contributes around £4 million per year to the local economy) and it is considered that the works can be undertaken without long-term harm to the natural environment. Most of the extraction will take place within the existing quarry footprint (by deepening) once it is widened by the lateral extension (which is required to unlock the deeper resource). Having regard to the planning history of the site, the Environmental Information provided and the advice of consultees, this is considered a sustainable development in principle.

As there is no significant change to the policy requirements for mineral development following the publication of the SPPS and it is arguably less prescriptive, the retained policy in the Planning Strategy for Rural Northern Ireland will be given substantial

weight in determining the application in accordance with paragraph 1.12 of the SPPS.

Policy MIN 1 relates to environmental protection. A number of areas have been considered:

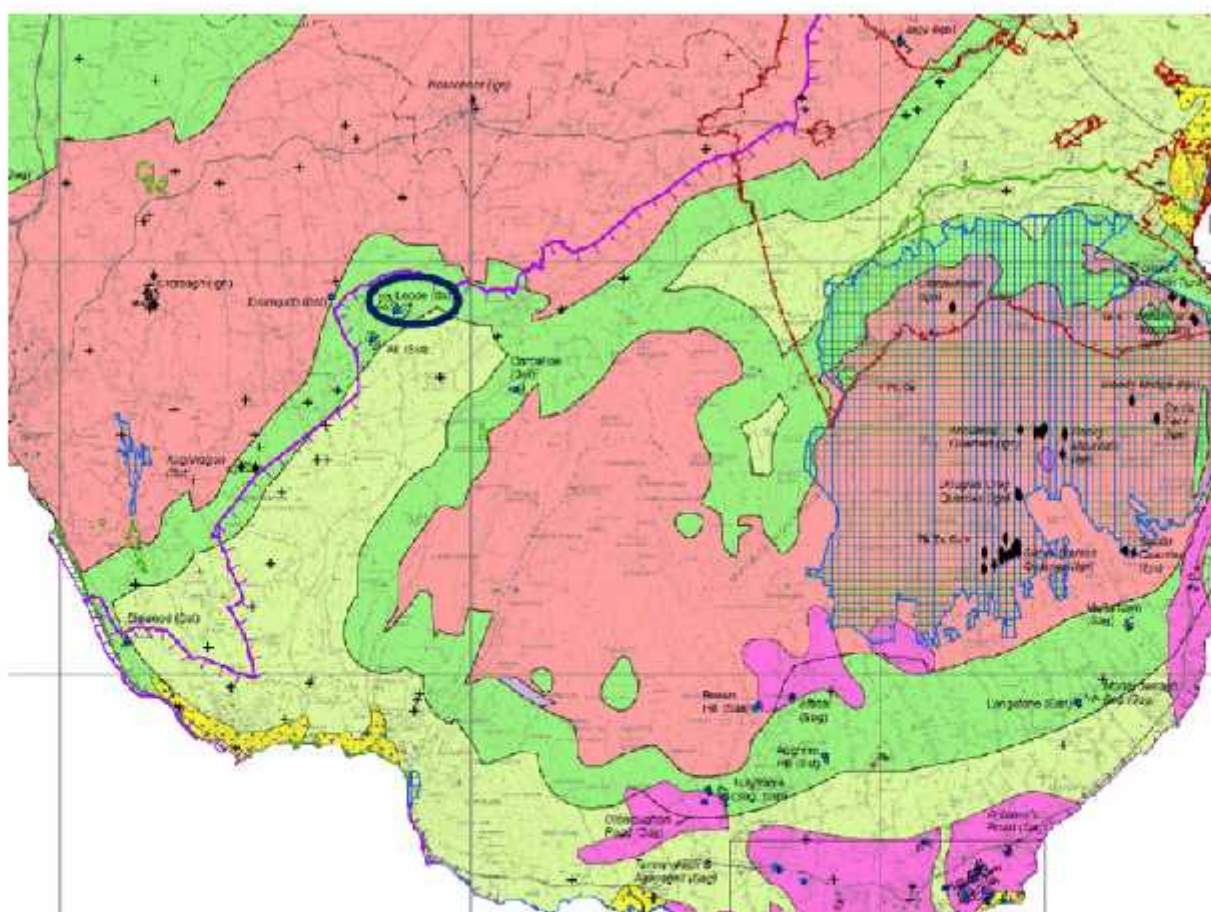
- The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Services on behalf of the Council. The proposal would not be likely to have a significant effect on the features of any European site. The site is not within the Carlingford Land Drainage Basin, so there is no hydrological linkage to Carlingford Lough. There are no Areas of Special Scientific Interest or National Nature Reserves within 2km of the site.
- There are no designated archaeological sites that overlap the proposed development, though Historic Monuments Unit has advised that there are a number of recorded sites in the surrounding area. Large application sites such as this are rarely archaeologically sterile and have potential to contain extensive sub-surface archaeological remains. An Archaeological Impact Assessment was included within the Environmental Statement with mitigation measures recommended. Historic Monuments Unit is content with the proposal subject to conditions for the agreement and implementation of a developer-funded programme of archaeological works. This will meet the requirements of policy BH4 of PPS6.
- There is a derelict 19th Century vernacular dwelling / outbuildings near the northern edge of the site. These buildings are beyond the outside edge of the proposed screening bund and can be preserved in their current state while facilitating the scheme. A condition should be imposed to retain these buildings for the heritage benefit of future generations as they reflect the land use and built heritage of the area before the quarry was developed. A photographic and descriptive survey should also be undertaken.
- An ecological assessment was undertaken to assess the effects of the development on wildlife and habitats. Following some clarifications, NIEA Natural Environment Division is now content with the proposal subject to mitigation conditions regarding distance from a badger sett. Survey work revealed no further issues regarding bats, birds or other mammals. The planting of native trees and shrubs on the screening landform during the first phase of the works will provide new habitat for a range of species which will compensate for the loss of existing scrub habitat and boundary features. The proposal is considered to meet the requirements of PPS2.
- The agricultural land that will be lost to the proposal is not of particularly high quality given its elevated and undulating nature, the presence of extensive gorse and its proximity to the existing workings. It is considered more sustainable to extend the quarry into this area than commission a new site which would require a much greater surface area to extract the same amount of resource. Therefore there are no concerns about the loss of good quality agricultural land to the extension.
- The existing quarry workings are dewatered. The maximum depth of extraction will be 154mAOD. This will be conditioned. A hydrogeological survey has indicated that there are no concerns regarding groundwater. NIEA Land and

Groundwater team are content subject to a condition that there is a monitoring and action plan for groundwater. This will ensure that the aquatic environment is protected.

- A Drainage and Flood Risk Assessment was undertaken and Rivers Agency has no objections from a Drainage or Flood Risk perspective. NIEA Discharge Consent for pumping of any surface water to a nearby water course is in place. The extension will result in an increase in this discharge of only 1.16 litres per second which will not have a discernible impact on the receiving watercourse which leads to the River Bann. Discharge will not exceed the greenfield runoff rate.
- A Waste Management Plan has been provided in respect of dealing with the overburden on the site. The waste is inert and will not have to be exported from the site as it will be used to create screening landforms.

In summary, the protection and conservation of the environment will not be compromised by the proposal.

Policy MIN 2 deals with the visual implications of mineral extraction. This is often the most significant issue with mineral workings. The site is within the Mourne and Slieve Croob Area of Outstanding Natural Beauty (south of the purple line on the map below). The geology of the district is such that the site sits on a narrow ridge of bedrock with potential for high specification aggregate – one of few such suitable sites in south Down. The site is included on the Northern Ireland Mineral Resources Map, an extract of which is shown below. Much of the surrounding geology is granite (shown pink).



Minerals can only be extracted from where they are found. The AONB location does not necessarily rule out the utilisation of this resource. The visual impact on the landscape must also be assessed against policy NH6 of PPS2. Policy MIN2 states that mineral workings should take advantage of existing landforms and features to minimise their visual impact in the landscape. This site has a significant ridge line to the south which screens all public views from this direction. There is also higher land to the west which screens views from Tamary Road and beyond. The main public views into the site are from the north and north-east as the land beyond the site falls significantly. A Landscape and Visual Impact Assessment has been undertaken by a Chartered Landscape Architect and the results have informed the design of a screening bund which is to be provided during the first phase of works and landscaped with native planting during the first available planting season. This has been designed with shallow slopes to replicate natural topography, though the slope has been increased at key locations following negotiation with the operator to ensure that the final height of the bund will appropriately limit significant views. The commissioning phase will undoubtedly result in some loss and disruption to local landscape character from certain short and medium range views, though this is considered to be of relatively short duration in the context of the predicted 30 year operation. Once the bund is established and planted, it will effectively screen the most significant public views into the quarry and also a number of views from private properties to the west as shown by line-of-sight cross sections. Once the first two phases are complete and the existing western face is moved back to meet the bund (by the 10 year point), the majority of the development which involves deepening of the existing quarry floor can proceed with negligible visual impact from the surrounding landscape. Provided the phases are appropriately conditioned, the duration of the operations is restricted and the site is subsequently restored, any negative impacts on visual amenity and the special character and landscape quality of the AONB would be short term, limited and therefore greatly outweighed by the need for the mineral resource which is easily workable at this location. Neither are the impacts of the proposal on the value of the area as a tourist resource sufficient to outweigh the economic advantages of exploiting the mineral resource. The proposal is considered to meet the requirements of policies MIN 2 and NH6.

Policy MIN 6 considers the safety and amenity of the occupants of nearby dwellings. It is acknowledged that mineral developments can be bad neighbours of housing. The edge of the application site is 80 metres from the nearest dwelling, though there will be a wide screening bund between it and the edge of the worked area. Once the bund is constructed and landscaped in the first phase (before any blasting takes place in the extended area), it will limit views into the site from these properties and will also reduce impacts from noise and dust. The edge of the worked area will be over 120 metres from the dwellings ensuring that all blasting will be beyond the recommended minimum safe distance. Indeed most blasting will be towards the centre of the site to deepen the quarry floor and the new landform should result in a lesser noise impact than the current arrangement. A blasting report has been prepared by an independent Blasting Engineer based on historical blasting data for this site. It found that recommended limits for ground vibration and air overpressure will not be exceeded and that separation distances to residential properties are adequate. There were no objections on blasting grounds from the Health and Safety Executive, though they recommended that the Company's shot firing rules are amended to stop the traffic on the public road for the short duration of the blast (approximately 10 minutes) so as not to shock unsuspecting motorists driving past

the quarry. This will be conditioned. A noise impact assessment was undertaken in accordance with recognised standards for mineral sites. The works required in the first phase to create the screening landform will be the noisiest for residents. They will operate in accordance with the temporary daytime limit of 70 db LAeq, for up to 8 weeks a year. This is considered acceptable for a temporary period given the longer term environmental benefits that will result. The normal operations of the quarry will have a target noise level of 47 db at the nearest noise sensitive receptors, well within the upper limit of 55 db. A number of mitigation measures will be taken including the conditioning of operating hours to prevent any night time activity, careful selection of plant, on-site speed limits, and routine maintenance of plant and machinery including silencers and acoustic covers. The deepening of the quarry will gradually improve the noise climate compared to current levels. A Dust Impact Assessment has shown that the sensitive receptors are already topographically screened, screening will be supplemented by the new landform and planting, and the site already operates under a PPC licence for dust control with no complaints. A mitigation plan has been proposed to ensure no adverse effects on amenity. Environmental Health is satisfied with the proposal subject to conditions regarding operating hours, noise levels from blasting and other operations and dust mitigation. It is not contrary to policy MIN 6.

Policy MIN 7 requires consideration of the traffic implications of mineral development. Linked to this is Policy AMP2 of PPS3 which requires that the access does not prejudice road safety or significantly inconvenience the flow of traffic. The P1 Form indicates that the operation will not generate any additional vehicle movements as output will continue at the current rate and no changes are required to the existing approved access. The stretch of Leode Road between the site entrance and the main Newry Road has been improved and provides suitable access to the strategic road network for lorries. TransportNI are content with the proposal without conditions and the Council is therefore satisfied that the development will not prejudice the safety and convenience of road users.

Policy MIN 8 requires mineral workings to be restored at the earliest opportunity. When the mineral reserves on the site are exhausted after around 30 years, plant will be removed from the site and the de-watering pumps will be turned off allowing the void to fill with water. The site will continue to drain from the NE corner through the established permitted discharge location (via a hydrocarbon interceptor). The initial tree planting from phase 1 will be supplemented by additional planting. The restoration scheme will provide an area of public amenity and biodiversity value subject to appropriate consents which can be considered in the circumstances then prevailing. A plan of the proposed restoration scheme has been provided and the carrying out of these works will be conditioned.

Having had regard to the development plan and all other material considerations, the proposal is considered a sustainable development that will not cause demonstrable harm to interests of acknowledged importance. It should therefore be approved subject to the conditions identified below.

Recommendation: Approval

Conditions:

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

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

2. No quarrying activities including extraction shall be carried out on the site outside the hours of 7.00am to 7.00pm Monday to Friday, 7.00am to 3.00pm Saturdays, nor at any time on Sundays, Bank or Public Holidays.

Reason: In the interests of the amenity of nearby residents.

3. No site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Department for Communities. The programme should provide for the identification and evaluation of the archaeological remains within the site, for mitigation of the impacts of the development through excavation recording or by preservation of remains and for the preparation of an archaeological report.

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

4. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department for Communities to observe the operations and to monitor the implementation of archaeological requirements.

Reason: To monitor programmed works in order to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition or agreement, is satisfactorily completed.

5. The vernacular dwelling and outbuildings at the northern edge of the site, shaded green on the approved drawing No. 02 date stamped 12 August 2016, shall be retained and maintained in their current state as a local heritage asset and no development shall take place within 5 metres of these buildings. Prior to the commencement of any development, a descriptive and photographic survey of the buildings shall be undertaken and a copy provided to the Council.

Reason: To ensure the preservation of vernacular buildings which reflect the heritage of the local area.

6. Mineral extraction shall not commence in the extended area to the west of the current site until earth banks have been constructed using the overburden from the site as indicated on the approved drawing Nos. 04 REV 1 and 11 REV 1 date stamped 8 December 2017.

Reason: In the interests of visual amenity.

7. During the first available planting season after the construction of the earth banks in accordance with condition 6, trees and shrubs shall be planted along the boundaries of the site in the positions shaded green on the approved advanced landscape plan 09 REV 1 date stamped 8 December 2017 in accordance with the planting schedule on the above plan. The woodland shall be managed in accordance with the notes on the above plan to ensure its effective establishment and growth.

Reason: In the interest of visual amenity.

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

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

9. No extraction shall take place within 5 metres of any land which is outside the red line boundary of the site as shown on the stamped approved Drawing No. 02 bearing the date stamp 12 August 2016.

Reason: In the interests of public safety.

10. The rate of extraction shall not exceed 350,000 tonnes per year.

Reason: In the interests of amenity.

11. No extraction shall take place below the following levels:
- 154 metres A.O.D. in the western portion of the site;
 - 157 metres A.O.D. in the eastern portion of the site;
- as shown on the approved drawings.

Reason: To limit the extent of the development.

12. Each blasting charge shall be so balanced that a peak particle velocity of 6mm/second and an air over pressure of 128 dB is not exceeded at any occupied dwelling which is outside the ownership or control of the operator.

Reason: To safeguard the amenity of residents in the area.

13. All dust mitigation measures specified in the document entitled, 'Construction of screening landform and lateral and vertical extension to Leode Quarry' prepared by Quarryplan and dated November 2015, shall be instigated to minimise the generation and movement of dust from the proposed development to surrounding residential dwellings.

Reason: To safeguard the amenity of residents in the area.

14. The noise impact from the quarry extension as hereby approved shall have a Daytime Target Noise Limit of 47dB LAEQ at the outdoor amenity area of the nearest residential properties.

Reason: To protect residential amenity.

15. An increased temporary daytime limit up to 70dB LAEQ at the outdoor amenity area at NSR 3 (17 Tamary Road, Hilltown) shall be permitted for a maximum of 8 weeks per year until the construction of the screening landform required by condition 6 has been completed in accordance with drawing Nos. 04 REV 1 and 11 REV 1 date stamped 8 December 2017.

Reason: To achieve long term environmental benefits from the screening landform.

16. Following the completion of Phase 1 the on-site generator shall be enclosed within a 3 metre high berm.

Reason: To protect residential amenity

17. All noise mitigation measures specified in the document entitled, 'Noise Impact Assessment' prepared by Envest Environmental and dated June 2016, shall be instigated to minimise the noise impact from the proposed development to surrounding residential dwellings.

Reason: To protect residential amenity.

18. Prior to the commencement of development, the operator shall prepare and implement a monitoring and action plan for groundwater that may be encountered during the operations. The monitoring plan should include details for groundwater quantity including the proposed location of monitoring points and monitoring frequency. The action plan should outline actions to be taken if a highly transmissive fracture is unexpectedly intercepted.

Reason: Protection of the aquatic environment and sensitive receptors including private wells.

19. Before extraction commences, oil, petrol, diesel oil, and lubricant storage facilities shall be surrounded by an impervious bund or enclosure able to contain a minimum of 110% of the volume of the largest tank. All filling and distribution valves, vents, and sight glasses associated with storage tanks shall be located within the bunded area. There shall be no bund drain valves as this would be in breach of the Control of Pollution (Oil Storage) Regulations (Northern Ireland) 2010.

Reason: To minimise the risk of accidental pollution.

20. The operator shall amend their shot firing rules to stop the traffic on the public road for the duration of the blast so as not to shock unsuspecting motorists driving past the quarry. The amended shot firing rules shall be agreed in writing with the Health and Safety Executive for Northern Ireland and a copy

of the agreement shall be provided to the Council prior to the commencement of development.

Reason: In the interests of highway safety.

21. No site clearance or mineral extraction shall commence on site until a protection zone, clearly marked with posts joined with hazard warning tape, has been provided from the badger sett entrance as shown on the approved Drawing No. 03 date stamped 12 August 2016 at a radius of 25 metres. No works, clearance, disturbance by machinery, dumping or storage of materials shall take place within that protection zone without the consent of NIEA Natural Environment Division. The protection zone shall be retained and maintained until all operations have been completed on site.

Reason: To protect badgers and their setts.

22. No piling or blasting activity shall take place within 100m of the badger sett on site, as shown on the approved Drawing No. 03 date stamped 12 August 2016, without the consent of NIEA Natural Environment Division.

Reason: To protect badgers and their setts.

23. Upon completion of the extraction hereby approved, or in the event of operations ceasing in advance of the exhaustion of approved reserves for a continuous period of 6 months and within 3 months of a written request from the Council, a site restoration plan shall be submitted to the Council for its approval, in writing. This plan shall include the following:-
- i. the identification of all items of plant, machinery, scrap metal, stockpiles and waste material to be removed;
 - ii. the identification of all areas to be levelled or graded;
 - iii. the position of all quarry faces, together with details of measures to be used to ensure that all final faces are left in a safe and stable condition;
 - iv. the identification of areas which are liable to flood, together with details of proposed measures to ensure public safety;
 - v. details of any additional landscaping measures to be implemented;
 - vi. a timescale for the implementation of the restoration scheme; and
 - vii. arrangements for the future management of any public amenity areas created.

The restoration scheme shall be implemented in accordance with the approved Drawing No. 10 REV 1 and the site restoration plan as finally approved and within the approved timescale.

Reason: To facilitate restoration of the site.

Case Officer Signature:

Date:

Appointed Officer Signature:

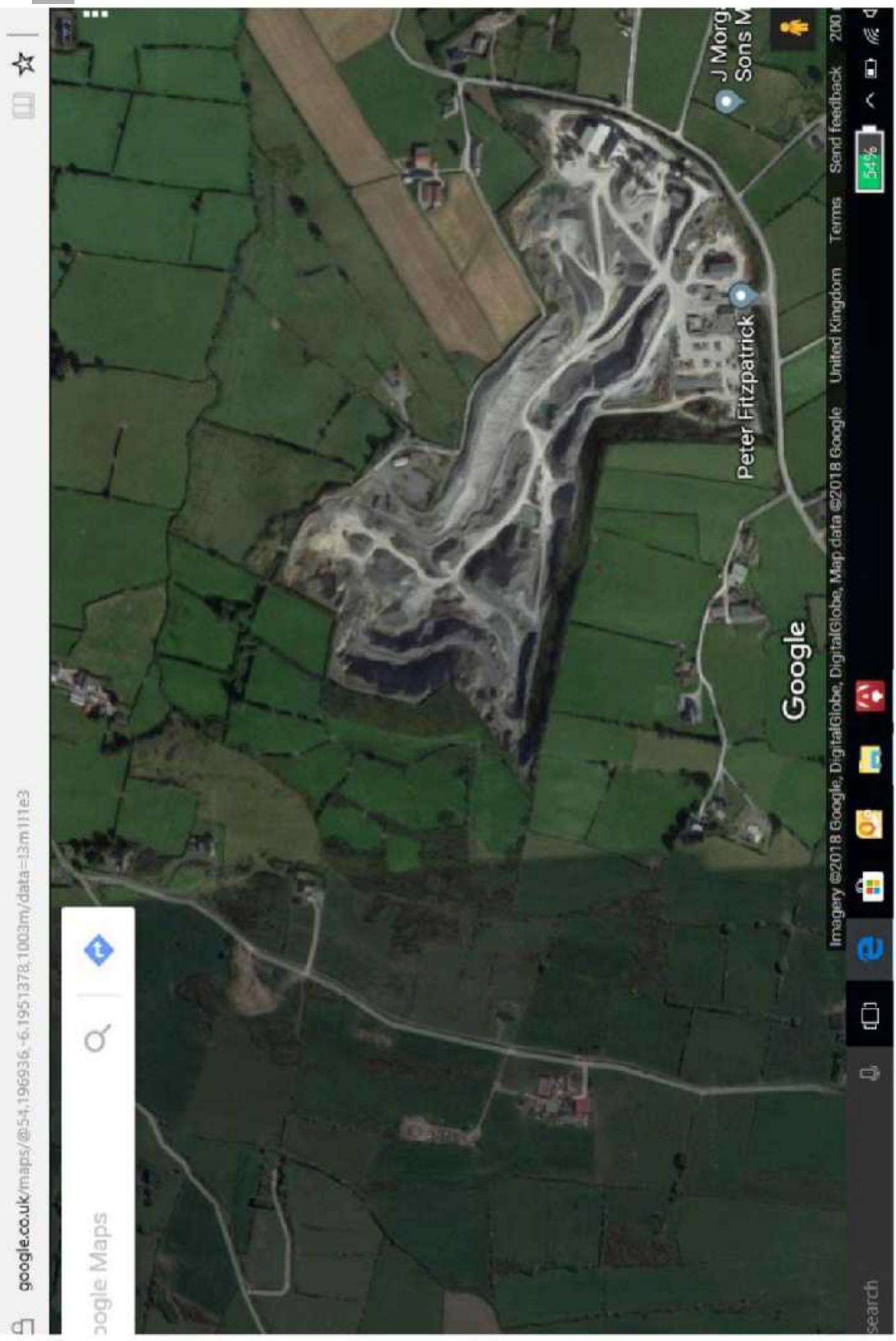
Date:

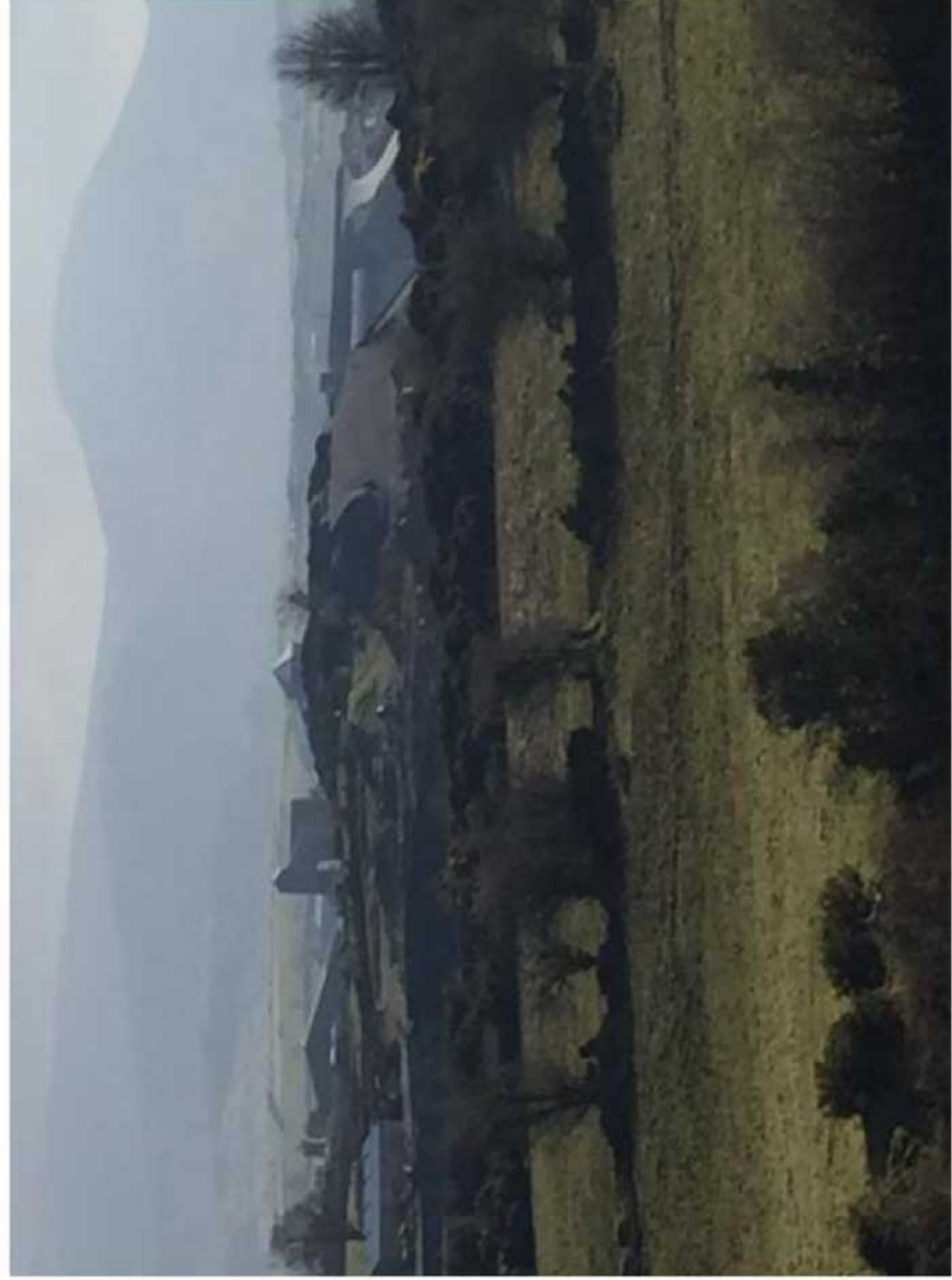
Submission to speak in objection to the extension of the quarry

Ref : LA07/2016/1092/F

- Visual Impact: of the existing quarry which will be exacerbated if this extension was approved, absence of screening which was a condition of previous planning permission.
- Loss of natural habitat to the rich wildlife many at risk
- The irreversible loss of the townland of Leode 1/6 of the townland is already gone.
- Health and Safety of the local residents
- Health and Amenity of the local residents
- Reference the Banbridge, Newry and Mourne Area Plan 2015
- Reference A Planning Strategy For Rural Northern Ireland 1993
- Reference Strategic Planning Policy Statement 2015

google.co.uk/maps/@54.196936,-6.1951378,1003m/data=!3m1!1e3







Visual Impact

- Conditions attached to existing planning permission requires screening this has not been carried out. This has resulted in detrimental visual impact.
- Will anyone enforce the construction and maintenance of the screening included in this current application and what will this look like?

Health and Safety

110

- “To have particular regard to the safety and amenity of the occupants of developments in close proximity” Planning Strategy for Rural Northern Ireland.
- There is currently no fencing to prevent unauthorised access to the site

Health and Amenity

- What is the potential impact to our homes of the blasting, who is liable if there is any damage?
- What will be the impact to our health from noise and air pollution due to increased quarry activity in close proximity to our homes?

NOISE !

- The noise assessment provided by the applicant allows for a 10db INCREASE above the background level of 37db at the residents homes!!
- There has been no effort to stipulate measures to reduce noise impact on residents

Banbridge Newry and Mourne Area Plan 2015

- “The extraction of sand and gravel minerals in environmentally sensitive areas will be controlled in the public interest”

A Planning Strategy for Rural Northern Ireland

- “the principle of sustainable development is that we have a moral duty to look after our environment and to hand it on in good order to future generations”



Some points I'd like to raise

The landscape has already been irreversibly damaged the quarry is already 50 - 60 acres

Visual impact is already severe.

Screening was part of last planning and has not happened.

Houses - how will residents continue to get insured, someone independent to risk assess the impact to our homes of the explosions now and when they come closer.

Health and safety - no fence around perimeter very dangerous to children.

Concerns over the health impact from increased dust and noise pollution.

I'd like to request a site visit to ensure there are restrictions and guidelines that need followed for example: fencing; mature trees installed as screening not saplings as such...a good standard developed tree etc.

Thanks

Gillian

RE: LA07/2016/1092/F - Extension to Leode Quarry - Item 13

It is the intention that Mr Paul Fitzpatrick Business Development Director will speak on behalf of the Applicant Company and will cover the following topics and expand on the bullet points provided below:

The Company and History

- Third Generation Family Business;
- Commenced trading at the beginning of the 20th Century;
- Relocation of business to Leod Quarry in 1955;
- Supply full range of quarry products, Asphalt Production, Contract work & Recycling;
- Workforce of highly trained employees

Annual Contribution to the Economy

- Staff Salaries
- Subcontracting spend
- Fuel Spend
- Other Expenditure - including Rates.

The Application History and EIA Iterative Process

- Designs Considered
- Ecological
- Landscape Reinforcement
- Reserve Sacrifice

The Company & the Environment

- ISO 14001 – Accredited Environmental Management System
- Large scale restoration programme – completed Jan. 2014
- Creation of clay banking and planting of 5,500 trees.
- Installation of wind turbine – reduction in the environmental impact.
- Commitment to a recycling program of construction and demolition waste.

Andrew Scurfield BSc MRICS

Chartered Mineral Surveyor

Quarryplan Limited

ITEM NO	4			
APPLIC NO	LA07/2017/1162/F	Full	DATE VALID	02/08/2017
COUNCIL OPINION	APPROVAL			
APPLICANT	Brendan Kelly 91 Chancellors Road Lisdrumliska Newry BT35 8QB		AGENT	ERES Limited Mourne House 41-43 Downshire Road Newry BT34 1EE
LOCATION	91 Chancellors Road Lisdrumliska Newry BT35 8QB			
PROPOSAL	Proposed erection of domestic shed and hard standing area. (Amended proposal and plans)			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	
	13	0	0	
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2017/1162/F

Date Received: 02.08.2017

Proposal: Proposed erection of domestic shed and hard standing area

Location: 91 Chancellors Road, Lisdrumliska, Newry, BT35 8QB

Site Characteristics & Area Characteristics:

The site holds a single storey dwelling and detached garage on an elevated site between Ashton Heights and the A1. The site is within the settlement limit for Newry City.

Site History:

P/2000/1601/F

Residential house

Permission Granted: 08.02.2001

P/1993/0631

Site for dwelling

Permission Granted: 04.05.1994

P/1996/1185

Erection of Dwelling

Permission Granted: 04.06.1997

P/1979/0993

Site for dwelling

Permission Granted: 10.12.1979

Planning Policies & Material Considerations:

Banbridge Newry and Mourne Area Plan 2015

Addendum to Planning Policy Statement 7

Consultations:

Transport NI – no objections

NI Transport Holding Company – no comment necessary

Objections & Representations

5 neighbours re-notified on 22.11.2017 and the application was re-advertised on 29.11.2017. The re-notification and re-advertisement was to reflect the change in proposal which now does not seek to add a new access to the dwelling.

Objections to application are as follows,

The residents of Ashton Heights.

1. Would like to know why the applicant put his house up for sale prior to applying for permission
2. Concerns regarding the new access.

The residents of Ashton Heights (Nos 62, 60, 52, 47, 45, 43, 41)

1. Shed will be an eye sore
2. Will be converted to a beauty parlour/ sell cars, vans and valet cars.
3. Concrete foundation has no permission.
4. Does not own land he wishes to get access through.
5. Business would increase traffic through the estate
6. He has 2 sheds at the back of his house, why is he applying for another one.

Concerned residents of Ashton Heights

1. Concerns regarding the access
2. Concerned structure will be turned into a beauty parlour

35 Ashton Heights – William McCabe.

1. It would adversely impact on the health and wellbeing of the community.
2. Increase noise pollution
3. Increased light pollution
4. Nuisance factors
5. Visual intrusion
6. Overshadowing
7. Contravening section 4.11 and 4.12 of the SPPS
8. Compromises safety of individuals on foot and safe exiting of cars from driveways.
9. Quality of life will be greatly reduced.
10. Change the character in a significant way
11. Land ownership query.

33 Ashton Heights – Helena Fullerton

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37 Ashton Heights – Micheal Mulligan and Marie Mulligan

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10. Change the character in a significant way
11. Land ownership query.

29 Ashton Heights – Danny and Dympna Fitzpatrick

1. Concerns with new access
2. Type of vehicles and volumes of traffic associated with new shed
3. Concerned about the purpose of the shed
4. Is there a health and safety risk
5. Increased congestion
6. Increase in noise levels
7. Loss of street light with new access
8. Impact daily lives and affect health and well-being.

31 Ashton Heights – Gerard and Margaret Patterson

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2. Type of vehicles and volumes of traffic associated with new shed
3. Concerned about the purpose of the shed
4. Is there a health and safety risk
5. Increased congestion
6. Increase in noise levels
7. Loss of street light with new access
8. Impact daily lives and affect health and well-being.

47 Ashton Heights – David and Sarah Henry

1. Proposal may affect right to privacy and light which would impact the enjoyment of our property.

Consideration and Assessment:

Description has been amended to remove the new access element.

Policy EXT 1 of the Addendum to Planning Policy Statement 7 is applicable for all residential extensions. The scale, massing, design and external materials are considered sympathetic with the built form and appearance of the existing property.

Particularly given the mature trees to the front of the site the proposal is not considered to detract from the appearance and character of the surrounding area.

The proposal will not unduly affect the privacy or amenity of neighbouring residents and will not cause unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to the local environment quality.

Sufficient space remains within the curtilage of the property for recreational and domestic purposes including parking and manoeuvring of vehicles.

The proposal meets policy criteria of EXT 1 from the Addendum to PPS7.

Council response to objections

The residents of Ashton Heights.

1. The sale of the applicants house is not a material consideration
2. The access element has been removed from the application

The residents of Ashton Heights (Nos 62, 60, 52, 47, 45, 43, 41)

1. Given the existing screening the shed is not considered to have a significant detrimental impact on the streetscape.
2. The application is for a domestic shed, any speculation about the intended use is not a material consideration. The shed can be conditioned to ensure it is only used for ancillary purposes to the main dwelling.
3. Whilst the concrete foundation may have had no permission, this application would regularise that.
4. The access element has been removed from the application
5. There is no proposed business to consider.
6. It is the applicant's prerogative to apply for permission without explaining why he is applying.

Concerned residents of Ashton Heights.

1. Access element has been removed from the application.
2. The application is for a domestic shed, any speculation about the intended use is not a material consideration. The shed can be conditioned to ensure it is only used for ancillary purposes to the main dwelling.

35 Ashton Heights – William McCabe.

1. No evidence that the health and well-being of community would be affected.
2. No evidence of an increase in noise pollution
3. No evidence of an increase in light pollution
4. No evidence of a nuisance factors
5. Visual intrusion will be reduced by existing screening – not considered to be significant.
6. There will be no overshadowing of any sensitive areas.
7. No evidence the proposal contravenes 4.11 or 4.12 of the SPPS
8. No evidence proposal compromises safety of individuals on foot and safe exiting of cars from driveways. Transport NI has no objections.
9. No evidence quality of life will be greatly reduced.
10. Proposal is considered to change the character in a significant way
11. Land ownership is not a material consideration.

33 Ashton Heights – Helena Fullerton

1. No evidence that the health and well-being of community would be affected.
2. No evidence of an increase in noise pollution
3. No evidence of an increase in light pollution
4. No evidence of a nuisance factors
5. Visual intrusion will be reduced by existing screening – not considered to be significant.
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7. No evidence the proposal contravenes 4.11 or 4.12 of the SPPS
8. No evidence proposal compromises safety of individuals on foot and safe exiting of cars from driveways. Transport NI has no objections.
9. No evidence quality of life will be greatly reduced.
10. Proposal is considered to change the character in a significant way
11. Land ownership is not a material consideration.

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7. No evidence the proposal contravenes 4.11 or 4.12 of the SPPS
8. No evidence proposal compromises safety of individuals on foot and safe exiting of cars from driveways. Transport NI has no objections.
9. No evidence quality of life will be greatly reduced.
10. Proposal is considered to change the character in a significant way
11. Land ownership is not a material consideration.

29 Ashton Heights – Danny and Dymrna Fitzpatrick

1. Access element has been removed.
2. Transport NI has no objections – no increased traffic is envisaged.
3. Shed will be domestic, ancillary to the main use of the dwelling house.
4. No evidence of a health and safety risk
5. No evidence of increased congestion
6. No evidence of increase in noise levels
7. Access element has been removed.
8. No evidence of adverse impact on daily lives and affect health and well-being.

31 Ashton Heights – Gerard and Margaret Patterson

1. Access element has been removed.
2. Transport NI has no objections – no increased traffic is envisaged.
3. Shed will be domestic, ancillary to the main use of the dwelling house.
4. No evidence of a health and safety risk
5. No evidence of increased congestion
6. No evidence of increase in noise levels
7. Access element has been removed.
8. No evidence of adverse impact on daily lives and affect health and well-being.

47 Ashton Heights – David and Sarah Henry

1. Proposal will not impact on right to privacy and light of No. 47. The site of the proposed shed is not close enough to No.47 to affect lighting or near the rear of the property to affect privacy.

Recommendation:

Approval

Conditions:

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

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

2. The shed hereby permitted shall not be used at any time other than for the purposes ancillary to the residential use of the dwelling known as 91 Chancellors Road, Newry.

REASON: To prevent non domestic use of the shed.

Case Officer:

Authorised Officer

ITEM NO	8		
APPLIC NO	LA07/2017/1559/F	Full	DATE VALID 11/10/2017
COUNCIL OPINION	REFUSAL		
APPLICANT	EDB Constructions Ltd Marmions Yard Seavers Road Killeavy Newry BT35 8NA	AGENT	O'Hare Associates Architectural Consultants Ltd The Masters House Abbey Yard Newry BT34 2EG

LOCATION 58 Armagh Road
Newry

PROPOSAL Demolition of existing dwelling and provision of 9 No. 2 Bedroom Apartments and 1 no. 1 Bedroom Apartment (10 Total)

REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions		SUP Petitions	
	0	0	1	0	0	0
			Addresses	Signatures	Addresses	Signatures
			10	10	0	0

1. The proposal is contrary to the SPPS and Policy QD 1 (Criteria A, C, E, F, G and H) of Planning Policy Statement 7 (PPS 7): Quality Residential Environments, Planning and Planning Control Principles 1 and 2 of Planning Policy Statement 12 (PPS12): Housing in Settlements as the applicant has failed to demonstrate that the proposal would create a quality residential development in that:

- The development does not respect the surrounding context and is not appropriate to the character of the site in terms of layout, scale, massing, proportions and appearance of buildings and landscaped and hard surfaced areas;
- adequate provision has not been made for private open space and landscape areas as an integral part of the development;
- a movement pattern has not been provided that meets the needs of people whose mobility is impaired or to the existing footpath to encourage sustainable patterns of movement.
- Adequate and appropriate provision has not been made for parking;
- The design of the development does not draw upon the best local traditions of form, materials and detailing;
- the design and layout will create conflict with adjacent land uses in terms of adverse overlooking, overshadowing noise and other disturbance;

2. The proposal is contrary to Policy LC1 and LC3 of PPS7 (Addendum) Safeguarding the Character of Established Residential Areas in that the applicant has failed to demonstrate that all of the criteria set out in Policy QD1 of PPS7: Quality Residential Environments has been met and fails to meet all additional criteria (A-C) of Policy LC1, with the development also failing to incorporate permeable paving within the proposed development.

3. The proposal is contrary to Policy DES2 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, be detrimental to the character of the surrounding area by reason of its adverse effect on the amenity of neighbouring developments, scale, layout, design and materials which are out of character of the area as well as its relationship to adjoining buildings and views.

4. The proposal is contrary to Policy AMP7 of Planning Policy Statement 3: Access, Movement and Parking in that the applicant has failed to demonstrate that there is adequate car provision to serve the proposed development.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2017/1559/F

Date Received: 11.10.17.

- 1.0. PROPOSAL:** Demolition of existing dwelling and provision of 9 No. 2 Bedroom Apartments and 1 no. 1 Bedroom Apartment (10 Total)
- 2.0. LOCATION:** 58 Armagh Road, Newry
- 3.0. SITE AND AREA CHARACTERISTICS:**
- 3.1.** The site fronts onto the Armagh Road comprising of a detached dwelling on a large plot.
- 3.2.** Existing development to either side of the site is predominantly characterised by a range of single storey/ two storey detached dwellings within relatively large plots
- 3.3.** The site is within the settlement limit of Newry City, as designated in the Banbridge, Newry & Mourne Area plan 2015 and not zoned for any specific purpose.
- 4.0. PLANNING POLICIES & MATERIAL CONSIDERATIONS:**
- Regional Development Strategy (RDS)
Banbridge, Newry and Mourne Area Plan (2015) BNMAP 2015
Strategic Planning Policy Statement of Northern Ireland (SPPS)
Planning Strategy for Rural Northern Ireland (PSRNI)
- Planning Policy Statements**
- PPS 3- Access, Movement and Parking
PPS 7 and its Addendum- Quality Residential Environments
DCAN 8- housing in Existing Urban Areas
PPS12- Housing in Settlements
- Further Guidance**

Creating Places, Living Places Urban Stewardship and Design Guide.

5.0. SITE HISTORY:

P/1988/4107 - Alterations to dwelling. Permitted Development. (Application site)

6.0. CONSULTATIONS:

Transport NI (30.10.17) - No objections

NIW (25.10.17) – Public water, foul sewer and surface water set within 20m of site. Available capacity at WWTW

7.0. OBJECTIONS & REPRESENTATIONS:

7.1. 15 Neighbours were notified and the Application was advertised in October 2017

7.2. 1 Objection/ Petition lodged. The objectors raised a number of concerns which are summarised as follows:

- Property at No.58 was used as a parochial house and recently a private dwelling, but always as a single unit residence. The rezoning of this property to allow multi-storeys units in an established single dwelling area causes concern.
- Want matter brought to a public hearing
- Impact on character and change to the neighbourhood
- Detrimental impact to privacy, light,
- Impact to traffic

7.3. The issues raised are considered as part of the planning assessment and consideration below

8.0. PLANNING ASSESSMENT & CONSIDERATION:

8.1. Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan. The plan context is outlined above at Para 3.5. The proposal does not conflict with the area plan.

SPPS, PPS12 (PCP1 and PCP2), PPS7 (QD1), PPS7 (Addendum) Safeguarding Established Residential Areas, PSRNI (DES 4), Creating Places, DCAN 8 and DCAN 11 PPS3, Parking Standards and DCAN15:

8.2. The SPPS sets out core planning principles and the need to achieve sustainable development. Of particular relevance to this application are the aims of supporting good design and positive place making while preserving and improving the built and natural environment, (Para 3.3)

It is considered that the proposal is contrary to the principles set out in the SPPS for the reasons set out below.

PPS 12- Housing in Settlements

8.3. Planning Control Principle 2- Good design

It is considered that the design of the scheme does not successfully respect the overall character, quality and sustainability of the area. There is further consideration of these issues under PPS 7 below.

Planning Control Principle 3- Sustainable forms of development.

- 8.4.** While the site is within the settlement area, the development would harm the character of the immediate residential area, therefore it is not considered to be a sustainable form of development. There is further consideration of these issues below.

SPPS, PSRNI, PPS 7- Quality Residential Environments, Policy QD1

- 8.5.** Policy QD 1 of PPS 7 states, amongst other things, that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment based on an overall design concept that draws on the positive aspects of the character and appearance of the surrounding area.
- 8.6.** It is considered that the proposal fails to comply with SPPS, Policy QD1 of PPS 7 and Policy DES2 of the Planning Strategy for Rural Northern Ireland (PSRNI) in that it does not create a quality and sustainable residential environment. It is also considered that it would result in unacceptable damage to the local character environmental quality of the established residential area. In particular the proposal is contrary to criteria A, C, E, F, G and H of Policy QD1 in that:

QDI, A – Nature and Context of the Proposed Development.

- 8.7.** The development, to either side of the site, is characterised by a range of single storey/ two storey detached dwellings within relatively large plots with formalised garden and in curtilage parking for 2 vehicles (Glenpatrick Lawns and 60-68, Armagh Road). A similar type of development is displayed opposite and NW at 67-73 Armagh Road, with two storey semi-detached and terrace housing within formalised plots located opposite and SE of the site (Violet Hill Avenue). There is a range of external finishes displayed within the immediate vicinity of the site buildings although the predominant trend is for one finish such as red brick, render or dash but generally not a mix of finishes on one building, as is proposed in this application.
- 8.8.** The proposed development includes the demolition of the existing building set in a landscaped plot and its replacement by a three storey apartment block. It intends to create 10 units on a 0.15ha. This proposed density is much higher than surrounding development. Existing development, to either side of the application site, is of a lower density and the proposal, if approved, would have a detrimental impact upon the character and amenity of surrounding development.

- 8.9.** The existing living accommodation of the dwelling covers a footprint of approximately 149.28sqm, with a total footprint of 194.42sqm which includes the ancillary garage and store. The proposed development would double the footprint of the existing building. The proposal, if approved would double the length of the existing building (i.e. SE Elevation), currently approximately 11.19m in length, to 22m; with 10.8m of this elevation now raised to 9.4m in height.
- 8.10.** There are a number of existing mature trees to the rear of the road frontage boundary which currently offer screening to the existing dwelling and are an important characteristic feature along the road and help to soften the visual appearance of existing development. Whilst it is acknowledged that it is the intention to retain vegetation as shown on the layout plan however give the extent of ground works for car parking, access widening etc. within the crown spread of existing trees, proposals are likely to impact upon the root structure that it is difficult to envisage how such vegetation is capable of being retained.
- 8.11.** If approved, the proposal would result in the loss of the formalised front garden which would be replaced by a communal car park and large area of hard standing. This, together with the potential loss of vegetation along the frontage, will create a very hard landscape and appearance within the application site. This would be contrary to the existing situation and would have a detrimental visual impact particularly when viewed from the main road and when entering the development.
- 8.12.** As a result of the above, the overall development would not respect the surrounding context and is inappropriate to the character and topography of the site in terms of scale, mass, layout, design, pattern and form. The proposal, if approved would be dominant, overbearing and out of keeping when considered in the context of existing and long established residential dwellings found within the area. The proposals fail to meet the requirements of the SPPS and PPS7, QD1 (a) and PPS 12.

QDI, C – Provision of Open Space.

- 8.13** The proposed development has approximately 254sqm of communal open space which is approximately 25sqm to each unit and which would appear to be within the requirements for open space provision within the 'Creating Places' document. However some of the open space provision is directly in front of the entrance to apartment 3 which is unlikely to be implemented and will remain as hard standing in order to accommodate pedestrian access at the very least. As a result the actual useable open space may be much less than what is shown on the detailed plans. The proposals fail to meet the requirements of the SPPS and PPS7, QD1 (c)

QDI, E – Movement Pattern.

- 8.14.** The layout does not contribute to the quality of the residential development proposals and do not incorporate linkage to the existing footpath to encourage sustainable patterns of movement.

- 8.15.** No regard has been given to the design and layout of the building to facilitate those whose mobility is impaired. There are no internal lifts for occupiers to allow ease of access to open space etc. and bin storage areas are out of range for occupiers. The proposals fail to meet the requirements of the SPPS and PPS7, QD1 (e)

QD1, F - Parking

- 8.16.** Parking is below the required 16/17 spaces to serve the development, with parking and hard standings areas dominating the residential environment particularly at the front having an adverse visual appearance on the street scheme. The proposed location of the car parking spaces, within close proximity to existing residential properties, would have a detrimental impact on existing residential amenity. The proposed parking provision is inadequate and inappropriate and fails to meet the requirements of the SPPS and PPS7, QD1 (c)

QD1, G – Proposed Design compared to local Form, Materials and Detailing.

- 8.17.** The original building is not listed nor has it any special designation attached to it. However the property has a unique charm and architectural style with use of simple and traditional external finishes set within mature grounds. It is largely in keeping with the form, detailing and design of the immediate area. The proposal, as presented, will replace the existing property with a 3 storey building which is double the footprint of the original building and finished in mix of external finishes, accompanied with a large area of hard standing and parking to the front of the property which will cause loss of vegetation.
- 8.18.** Overall the development will appear overbearing and dominant when viewed from the Armagh Road and Glen Patrick Lawns. The dominant trend in the immediate area is for one finish such as red brick, render or dash on one building but generally not a mix of finishes. The proposal is for a range of finishes, which does not reflect the immediate context.
- 8.19.** The proposed building is of a much greater form, size, scale and higher density with a design which is not reflective of any existing built form, detailing and materials displayed within the immediate area. The proposal fails to meet the requirements of the SPPS and PPS7, QD1 (g)

QD1, H - Conflict with adjacent Land uses.

- 8.20.** The proposal would introduce communal car parking areas to the rear of Nos. 2 – 6 areas, (between 0 - 4m away from the common boundary) resulting in the introduction of activity by both vehicles and pedestrians within the immediate vicinity of these properties which previously didn't exist. This will result in adverse impact on the amenity of these properties, due to direct overlooking, loss of privacy, vehicle lights and general nuisance. Whilst it may be argued that the original open space in the form of a garden area was originally in place at this location however this was to serve a lesser number of occupant(s) whereas an apartment development at maximum capacity would serve up to 29 people.

- 8.21.** The main entrance point to the apartments is positioned on the northern elevation of the property, immediately abutting the communal road access. Its location, approximately 7m directly opposite the living area of No. 60, will also lead to adverse impact on an adjacent property.

PPS7 (Addendum) LC1/ LC3

- 8.22.** The application does not fully meet the requirements of Policy QD1 of PPS 7 and furthermore does not adhere to all criteria set out under Policy LC1 of the Addendum to PPS 7.
- 8.23.** The density of the proposed development is significantly greater than density levels in the established residential area. The proposed development intends to create 10 units on a 0.15ha which equates to 66 units to the hectare. This proposed density is much higher than existing surrounding development.
- 8.24.** The development is out of keeping with the overall character and environmental quality of the established residential area which largely comprises of single dwelling in single family occupation with formalised garden to front and rear with in curtilage parking. The proposed development, in contrast, is a large scale development, in multiple- occupancy. It incorporates larger areas of hard standing and communal parking which will be dominant and overbearing in the street scheme with development out of context with its surroundings.
- 8.25.** Based on the space standards set out in Annex A of the Addendum to PPS 7, the apartment sized proposed would not fit within the recommended parameters of size provisions (although sizes have not specified in the case of a three storey for a 1 bed or 2 bed apartment) however based on calculations as a single storey or two storey building for e.g. a 2 bed apartment the provision is 60/65sq for a single storey, 70/75 for a two storey so logically this figure is likely to be higher than this taking a sequential approach may be in the region of 80/85 sqm to which this development cannot adhere to and barely meet. Furthermore proposals do not incorporate permeable paving in compliance with Policy LC3 of the Addendum to PPS 7.

Overall the proposal does not meet any of the criteria of LC1 and LC3 of PPS7 (Addendum)

Policy DES 2 of PSRNI

- 8.26.** Whilst there is no objection in principle to a residential land use, it is the totality of the scheme in terms of design, layout, scale, form, adverse impact on residential amenity as well as impact on the local character and visual aspect that proposals are deemed unacceptable and will have adverse impact to the area. The proposal fails to comply with DES 2 of PSRNI.

Objection/ Petition from residents of Glenpatrick Lawns - Consideration of Issues:

8.27. The issues have been addressed as follows:

- The Planning Department has fully considered the implications of the proposed change from a single residential unit to ten apartments, as outlined above. On the basis of a recommendation to refuse, the application, based on the current scheme of delegation, will be brought before a council planning committee meeting which will allow opportunity for concerned residents to raise concerns.
- The Planning Department considers that the proposal will have a detrimental impact upon the amenity of surrounding residents as well as the character and appearance of the area. This has been fully considered within the above assessment.
- Transport NI has raised no objections to proposal.
- The objection letter submitted has been given full consideration. Overall proposals are unacceptable as it will introduce a high density development of such scale, size, form, design and density which is not sympathetic or reflective of existing built form within the immediate area. The development will have an adverse impact upon the character and visual appearance of the area and set an unacceptable precedent to similar plots within the vicinity. It is considered that the proposal would result in loss of amenity to neighbouring properties through loss of privacy, overlooking, light pollution, noise and general nuisance due to increased activity at the site.

9.0. RECOMMENDATION:

9.1. Refusal due to issues raised above and for the reasons stated above.

Refusal Reasons:

1. The proposal is contrary to the SPPS and Policy QD 1 (Criteria A, C, E, F, G and H) of Planning Policy Statement 7 (PPS 7): Quality Residential Environments, Planning and Planning Control Principles 1 and 2 of Planning Policy Statement 12 (PPS12): Housing in Settlements as the applicant has failed to demonstrate that the proposal would create a quality residential development in that:
 - The development does not respect the surrounding context and is not appropriate to the character of the site in terms of layout, scale, massing, proportions and appearance of buildings and landscaped and hard surfaced areas;
 - adequate provision has not been made for private open space and landscape areas as an integral part of the development;
 - a movement pattern has not been provided that meets the needs of people whose mobility is impaired or to the existing footpath to encourage sustainable patterns of movement.

- Adequate and appropriate provision has not been made for parking;
 - The design of the development does not draw upon the best local traditions of form, materials and detailing;
 - the design and layout will create conflict with adjacent land uses in terms of adverse overlooking, overshadowing noise and other disturbance;
2. The proposal is contrary to Policy LC1 and LC3 of PPS7 (Addendum) Safeguarding the Character of Established Residential Areas in that the applicant has failed to demonstrate that all of the criteria set out in Policy QD1 of PPS7: Quality Residential Environments has been met and fails to meet all additional criteria (A-C) of Policy LC1, with the development also failing to incorporate permeable paving within the proposed development.
 3. The proposal is contrary to Policy DES2 of the Department's Planning Strategy for Rural Northern Ireland in that the development would, if permitted, be detrimental to the character of the surrounding area by reason of its adverse effect on the amenity of neighbouring developments, scale, layout, design and materials which are out of character of the area as well as its relationship to adjoining buildings and views.
 4. The proposal is contrary to Policy AMP7 of Planning Policy Statement 3: Access, Movement and Parking in that the applicant has failed to demonstrate that there is adequate car provision to serve the proposed development.

Case Officer

Authorised Officer

Photographs



Front elevation of No. 58



Front elevation and front garden of No. 58 Armagh Road



Rear and S Elevation of No. 58



Rear and N Elevation of No. 58



View from entrance at Armagh Road (Large detached dwelling within large formal garden with mature boundaries)



Existing dwelling at No. 58



Nos 60 - 64 Armagh rd (Adjacent and N of site) (Exmples of detached dwellings within large formal garden plot – low density development)



View from directly opposite site



View from opposite 2-6 Glenpatrick Lawns



Existing building to rear of 2 and 4 Glenpatrick Lawns



View from Armagh Road (S looking N) of existing dwelling in relation to 2 and 4 Glenpatrick Lawns

ITEM NO	11			
APPLIC NO	LA07/2017/1707/F	Full	DATE VALID	07/11/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Kevin Teggart Senior 51 Ayallogue Road Newry		AGENT	O'Callaghan Planning Unit 1 10 Monaghan Court Monaghan Street Newry BT35 6BH
LOCATION	Approximately 270 metres south east of 51 Ayallogue Road Newry			
PROPOSAL	Erection of replacement dwelling with detached garage			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2017/1707/F

Date Received: 01.11.2017

Proposal: Full Permission for the erection of replacement dwelling with detached garage

Location: Approximately 270 metres south east of 51 Ayalogue Road, Newry

Site Characteristics & Area Characteristics:

The site includes 2 buildings and one substantially demolished building to the back of a larger farm complex. The red line boundary also includes a section of agricultural land closest to the farm complex and a private lane connecting the site to the Ayalogue. The site is set back approx. 320m from the Ayalogue Road and is located within the Ring of Gullion AONB.

Site History:

N/A

Planning Policies & Material Considerations:

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

Consultations:

Transport NI – No objections subject to compliance with RS1 form
NI Water – generic response.

Objections & Representations

8 neighbours notified on 23.11.2017 and the application was advertised on 22.11.2017. No objections or representations received.

Consideration and Assessment:

The site is located within the rural countryside / AONB as designated in the Banbridge Newry and Mourne Area Plan 2015. There are no specific objections in relation to the Area Plan.

Planning Policy Statement 21

Policy CTY 1 makes provision for a replacement dwelling where it meets the policy test laid out in policy CTY 3.

It is accepted that the buildings applied for when considered together are substantially intact. However at the time of my site visit the buildings offered no essential characteristics of a dwelling house. Anecdotal evidence has been submitted by the agent stating the previous use as a house and that a building is noted in historical maps. However the test in this policy is not the history of a building but whether or not it has the characteristics of a dwelling house. In this case, in the absence of any essential characteristics of a dwelling house, the proposal fails the first test of CTY 3.

Whilst the agent has made reference to planning application LA07/2017/0420/F it is noted in this case the application was presented to committee as a refusal but subsequently over turned by the committee. The appeal referred to under ref 2014/A0254 did exhibit the essential characteristics of a dwelling and evidence was also produced at that hearing showing the dwelling prior to the works carried out. Whilst the agent has provided a photo from 1958 – this photo is not conclusive and the subject buildings are not easily deduced from it. In fact there are no features of the photograph that can be specifically or conclusively identified on site.

I would accept the off-site replacement aspect of the application has amenity benefits in terms of access through a working farm yard.

When the siting is considered against the back drop of the existing agricultural buildings, the distance from the public road and the orientation of the proposed dwelling it is not considered to have a significantly greater visual impact than the existing buildings to be replaced. The site is considered on balance to integrate. This is also in compliance with policy CTY13.

Whilst in different circumstances the design would expected to be amended, in this instance the front elevation which is the critical elevation is acceptable as the development to the rear of the property would not be easily read from the public road.

All services are anticipated to be provided without significant adverse impact and access will not prejudice road safety which has been confirmed by Transport NI.

As the proposal does not meet policy CTY3 in full, it therefore fails to meet the exception at policy CTY1. The proposal is contrary to policies CTY1 and CTY3.

Any approval notice would contain a negative condition for the applicant to provide the Council with the consent to discharge before work commences. The proposal is in general compliance with CTY16.

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

Transport NI has confirmed it has no objections to the proposal with regard the above policy criteria.

Planning Policy Statement 2 – Natural Heritage.

Policy NH6 is applicable as the proposal is within the Ring of Gullion AONB. However as this for a replacement dwelling with an acceptable siting, it is not considered to have an adverse impact on the AONB.

Recommendation: Refusal

Reason:

1. The proposal is contrary to the **Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside**, in that there is no structure that exhibits the essential characteristics of a dwelling.

Case Officer:

Authorised Officer:

The Planning Committee
Newry, Mourne and Down Council
C/o O'Hagan House
Monaghan Row
Newry
BT35 8DJ

26th February 2018

Your ref: LA07/2017/1707/F
Replacement Dwelling at lands 270 metres south east of No 51 Ayalogue
Road, Killeavy
Applicant: Mr Kevin Teggart Senior

Dear Sir / Madam,

The above mentioned planning application has been listed for refusal, and it is to be discussed at the planning committee meeting on 07th March 2018. The application has been recommended for refusal for the following reason:

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling.

The subject building is substantially intact at this time. However, we concede that the building no longer displays the main characteristics of residential use, e.g. kitchen, fireplace, chimney etc. The reason for this is that the building's residential use has been abandoned for some time and after the building became uninhabitable it was adapted for ancillary / agricultural use. This however is not a fatal shortcoming for the purposes of this planning application since the salient planning policy's headnote confirms the following:

For the purposes of this policy all references to 'dwellings' will include buildings previously used as dwellings.



RTPI
Chartered Town Planner



It is clear that the planning policy attempted to deal with some of the situations that might arise in the countryside, for example the typology of a dwelling recently destroyed by fire:

"In cases where a dwelling has recently been destroyed, for example, through an accident or a fire, planning permission may be granted for a replacement dwelling. Evidence about the status and previous condition of the building and the cause and extent of the damage must be provided".

We believe the policy did not deal with the situation of a dwelling that was destroyed, but not recently, because of an assumption that not all of a building of that typology would remain intact. On that basis, we refer back to the **Lamont** judgement, wherein the Courts held that

Of course, the Planning Service need not 'slavishly' follow the policy. The policy is one of many under the Planning Policy Statement 21 which focuses on sustainable development in the countryside. Within PPS21 a number of like situations are grouped together, for example, proposals for dwellings on farms. The policy indicates the preferred approach to these like cases in order to achieve the broader social and environmental goals relating to development in the countryside. However, the policy itself, and much case law on this and similar issues, acknowledges that no policy can take into account the myriad considerations that may arise in individual fact scenarios that arise in the broad policy area. No planning policy can anticipate the personal, environmental, logistical etc. circumstances of all the individual planning applications made under the policy that need to be considered. However, what is contained in the policy, which cannot be ignored is the thrust of the desired result of the policy.

In effect, the Courts' direction is that an application must be decided by having regard to the relevant planning policy. However, this does not mean that a policy has to be applied, to the letter. Policies can lawfully be departed from or disappplied.

Since the policy did not anticipate a scenario of this nature, we submit that there is a lacuna in coverage particular to abandoned dwellings that have been modified or adapted for agricultural purposes. In these circumstances, decision-makers are legally empowered to arrive at a decision by having regard to the thrust of the desired result of the policy.

The first thing to note in relation to PPS 21, is that the "abandonment test" had been removed from previous planning policies that dealt with replacement dwellings. This is implicit in PPS 21, given the statement "*for the purposes of this policy all references to 'dwellings' will include*



buildings previously used as dwellings". Therefore, we believe that the provisions of the policy could apply to this scenario.

The NI Assembly / Executive, which introduced PPS 21, indicated at that time that the purpose of changing the policy was a recognition that many former dwellings had fallen into a state of dilapidation. The Executive was of the view that it would be better if these buildings were replaced by fit for purpose homes (see attached letter from Edwin Poots MLA, the former Environment Minister responsible for PPS 21, to Thomas Buchan MLA).

We fully recognise the new political dispensation in relation to planning in this jurisdiction: in particular the transfer of planning powers to local Councils and the creation of new planning authorities. However, to ignore the aforementioned Ministerial Guidance on PPS 21 (on the basis it was published prior to the transfer of planning powers) would be tantamount to ignoring the policy because the original policy writers no longer have operational responsibility for the handling of planning applications of this nature.

In reality, it is likely that the new planning authorities will publish their own guidance through time, however until such times as the new authorities publish their own LDP's and policies, the above mentioned policy and its associated guidance must continue to be taken into account.

In relation to this specific proposal, the building was damaged in a fire in 1959 as a result of a gas canister exploding. Up until that time, the dwelling had been occupied by 11 members of the applicant's family:

Joseph Teggart (Father, deceased)
 Margaret Teggart (Mother, deceased)
 May Teggart (Oldest child, deceased)
 Stephen Teggart (Deceased)
 Roseleen (Teggart) Duffy (Deceased) - Featured in the photo outside the dwelling.
 Joe Teggart (Currently resides in Crossmaglen)
 Kathleen (Teggart) Cromie (Currently resides in Seavers road, Killeavy)
 Theresa (Teggart) McKinley (Currently resides in Newtowncloghogue)
 Kevin Teggart (Applicant - Currently resides on Ayallogue road)
 Gerard Teggart (Currently resides on Ayallogue road)
 Raymond Teggart (Youngest child, currently resides on Ayallogue road)

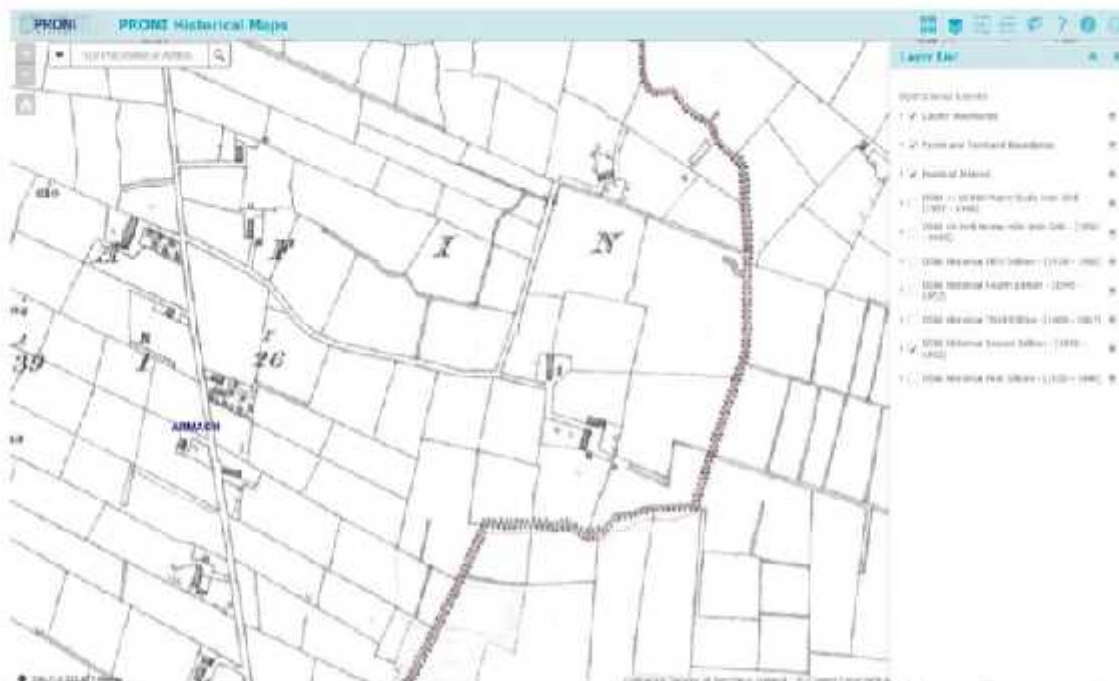


The history to the house is that it was built by Joseph Teggart, the applicant's father. His parents lived in a dwelling across the yard – the building with the stone steps outside it that appears now as a loft. The applicant recalls that at the time of the fire that destroyed the home, the emergency services were called and two fire engines attended the scene. Joseph Teggart lived in the house for most of his life. He died within 2 years of the house burning down, aged 81. The applicant was aged 13 when the fire occurred, and the house was never habitable again after the fire.

We appreciate that much of this evidence is anecdotal, however the building appears on the following historic map extracts:



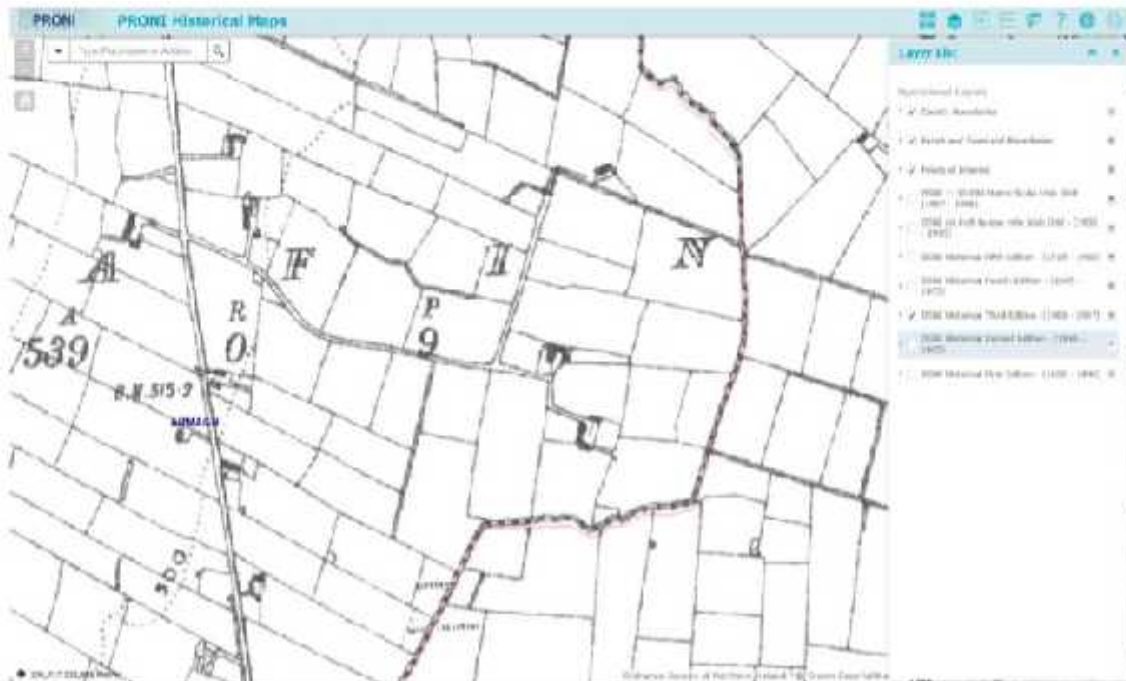
Historic Maps (1832 – 1846)



Historic Maps (1846-1862)

While we freely accept that the mere fact the building appears on the maps shown above does not indicate this property was a dwelling, we do believe that there is no reason why the application can not be determined on the basis of the evidence discussed herein.



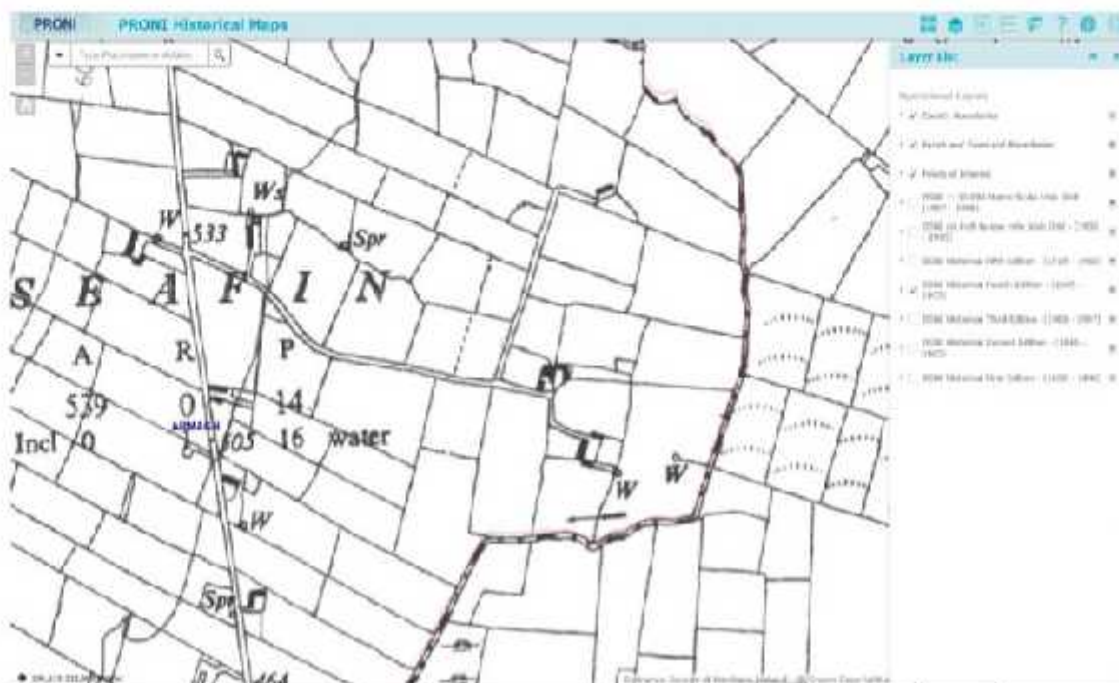


Historic Maps (1900-1907)



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Historic Maps (1905-) This shows the “outshot” constructed off the main house. This extension was not in place at the time of the 1846 – 1862 maps.

We have requested rates records and valuation entries, from LPS. We anticipate receipt of this information in the coming weeks, and thus we would respectfully request the Committee to defer a decision (in the event it is not sufficiently reassured to approve the application) to enable the rates history to be provided.

The need for flexibility in the application of the policy was among the key themes expressed in a previous Environment Minister’s Review of PPS 21. In relation to the issue of replacement dwellings, Minister Attwood made the following comment:

I have explored the application of Policy CTY 3 ‘Replacement Dwellings’ with a view to identifying additional flexibility, especially in regard to the assessment of whether the dwelling to be replaced meets the essential characteristics of a dwelling.

This Review, while not operational planning policy is material to the determination of individual planning applications and appeals and it will remain so until the Council publishes its own LDP proposals.

In light of the two Environment Minister's comments, we feel there ought to be some scope for the application of flexibility in this case.

In advocating the exercise of pragmatism and flexibility, we urge the Committee to follow the example set in the handling of application LA07/2017/0420/F.

In that case, Newry, Mourne and Down Council approved a replacement dwelling north east of 90 Strangford Road, Chapeltown. The building presented had 4 walls substantially intact including peaks of gables. It had not been used for a considerable period of time as the roof, and any sign of roof structure was completely gone. The following extract was taken directly from the Council's assessment of the case:

- There is to the western facing side of the building a large opening with oval top defined with red brick detail, this opening is more akin to a traditional barn door opening and would not be associated with the openings typically found in dwellings.
- There is one other opening forming a window and evidence of other openings having been blocked up/disused. There is no evidence of any internal separation within the external structure that remains, perhaps there never being any.
- There are no characteristics evident on the building that would suggest that this building had ever been used as a dwelling. Externally there are no remnants of a curtilage or evidence of any definition or separation, noted the field the building is situated in had been recently ploughed at the time of inspection. The openings and existing form are not suggestive of a dwelling especially as no openings are along two sections of the building, the gable and rear wall. There is no chimney no evidence of there ever being one.



(11) LA07/2017/0420/F – Mr & Mrs Gerard and Bernadette Curran

Location:
50m NE of 90 Strangford Road, Chapletown

Proposal:
Replacement dwelling and garage

Conclusion and Recommendation from Planning Official:
Refusal

Speaking rights:
Sean Kennedy, Agent, presented in support of the application.

Noted:
Councillor D Curran has indicated support for this application

AGREED: On the proposal of Councillor Clarke seconded by Councillor Murnin it was agreed to issue an approval in respect of Planning Application LA07/2017/0420/F, contrary to Officer Recommendation.

Planning Officers be delegated authority to impose any necessary conditions.

9

The minutes of the Council's planning committee meeting that occurred on 16th August 2017 confirm that the planning committee voted to approve the application contrary to the planning officer recommendation (to refuse).





an tUll, mhuillín
agus an Dúin

Newry, Mourne
and Down

District Council

Application Reference: LA07/2017/0420/F

Date Received: 10th April 2017

Proposal: Replacement dwelling and garage

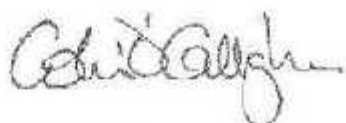
Location: Land approx. 50m NE of no 90 Strangford Road, Chapeltown.



In relation to the present application, we have been provided with a historic photograph taken from the yard to the front of the dwelling in question. The house bears no resemblance to the building as it stands now, as the original pitched roof was damaged in the fire and it was then replaced with a mono-pitched structure, while the lean to at the end of the building was built up to tie into the main roof. However, we trust the Council will discuss this evidence on the understanding it has been provided in good faith and not in an attempt to show the exact condition of the dwelling at the relevant date.

We hope to have provided sufficient information to assist the Committee in its deliberations on this subject. In concluding, we would request the Committee to follow its recent example (the case at Chapeltown) and to approve this application. We would also request that some consideration be given to the Ministerial Review of PPS 21 and the associated Minister's Guidance, even if these documents are not to be given determining weight. Finally, in the event the planning committee is not sufficiently reassured to approve this application, we would respectfully request a brief deferral to enable us to provide the Valuation List and associated evidence for the property. In the event the Committee has any further queries, please do not hesitate to contact this office.

Yours Faithfully,



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



RTPI
Chartered Town Planner





Image: Applicant's deceased sister pictured to the front of the subject building, prior to its demise in 1959.



Domestic window and door openings to the front of the extended part of the house. Note the use of cast iron rain water goods, which is not consistent with agricultural use.



Window opening with frame intact. This frame is consistent with residential use of the building.



Window and door openings blocked up

WRITTEN MINISTERIAL STATEMENT

By Minister Alex Attwood Minister for the Environment

REVIEW INTO THE OPERATION OF PPS21 'SUSTAINABLE DEVELOPMENT IN THE COUNTRYSIDE'

Published at 6.00 pm on 16 July 2013

Mr Attwood (The Minister of the Environment): There has been a long history to planning policy for development in the countryside. PPS21 was published in final form on 1 June 2010 following work undertaken by an Executive Subcommittee on Rural Planning Policy and was endorsed by the Executive at that time. It superseded Draft PPS21 which had been published with immediate effect in November 2008, replacing draft PPS14, a very restrictive policy introduced under Direct Rule.

Whilst the publication of PPS21 some 3 years ago brought a higher level of certainty to rural planning policy in Northern Ireland following a long-drawn-out period of uncertainty, valid concerns have been raised over its practical implementation on the ground.

Early into my role as Environment Minister, several MLA's made representations to me regarding concerns that some people were not getting the same opportunity to build in rural areas compared with other parts of Northern Ireland. These concerns centred on whether the policy was being applied consistently across area planning offices; and whether some area offices were applying the policy more strictly than others. It would be wrong if the policy was not being implemented fairly in all cases.

I listened to these concerns and gave a commitment to undertake a review of the operation of the policy. This Statement is an account of my approach to this work, my interventions and my findings to date.

The operational review has been a real time assessment of what is going on in planning offices in terms of the application and consistent interpretation of PPS21. It has been focused on how the policy is being applied in practice. Its aim has been two-fold:

- firstly, informed by experiences and perceptions of all those involved in sustainable development in the countryside, to take appropriate steps necessary to ensure everyone is treated consistently; and
- secondly, to ensure appropriate flexibility on the operation of PPS21 in line with its content and substance.

When I announced the review I made it clear that it would not be a fundamental review of rural planning policy. Furthermore it was never my intent that it should recommend fundamental changes to the existing policy framework of PPS21. To do so would have required an approach outwith an operational review and would not, at an early phase of PPS21, have been appropriate.

In undertaking my review I have held discussions on the operation of the policy with a number of key stakeholders: MLAs, Planning Forum members; former members of the Independent Working Group established to examine the issue of non-farming rural dwellers; and rural stakeholders representing farming and environmental interests.

I have also taken on board the views of planning staff and of applicants and agents who are most familiar with the actual operation of the policy on the ground. I have considered planning statistics on the number of approvals of single and replacement dwellings since the policy was published.

In particular, I took considerable time to examine a range of specific cases in order to satisfy myself that the Department's approach to the assessment of such proposals was

based, not just on proper application of individual policies, but also that it had regard to the overarching aims and objectives of PPS21. This includes, managing growth to achieve sustainable development that meets the essential needs of a vibrant rural community; and facilitating the development necessary to achieve a sustainable rural economy, including appropriate farm diversification and other economic activity.

Non farming rural dwellers

Special provision for non-farming rural dwellers remains a matter of continued interest, and was also highlighted during the review. In recognition of this, I met former members of the Independent Working Group on non-farming rural dwellers to hear first hand their expert perspectives on this matter.

These experts reiterated to me that advice previously provided to the Executive Subcommittee that the term 'non-farming rural dweller' is difficult to interpret and define and should not therefore be used to create a special category of planning policy.

I am reassured that PPS21 already provided significant opportunities for non-farming rural dwellers to live in the countryside through policy provisions including replacement dwellings; the conversion and reuse of non-residential buildings as dwellings; new dwellings within an existing cluster or ribbon of buildings; development within Dispersed Rural Communities; and a dwelling to meet compelling personal and domestic circumstances.

Consistency and flexibility were important issues to emerge from the review. Of particular concern were the policies in respect of 6 key areas: dwellings on farms; replacement dwellings; the conversion and re-use of existing buildings new dwellings in existing clusters; developments within gap sites and development in support of the rural economy. I will deal with each of these in turn.

1. Dwellings on Farms

Through the review I have advanced an approach to promote greater flexibility in relation to the requirements for clustering and visual linkage in respect of siting new dwellings on farms.

I took particular note of the concerns raised regarding the health and safety implications of clustering new dwellings with existing farm buildings which was raised by the UFU and others through the review.

I have impressed upon officials the need for greater regard to be given to the practicalities of requiring new dwellings to be clustered with an established group of buildings on the farm. For example, I do not expect applicants to be required to access new dwellings through busy working farmyards where an acceptable access can be achieved without detriment to integration.

It is also important to note that Policy CTY10 'Dwellings on Farms' already contains important health and safety safeguards which permit an alternative site away from a group of buildings on the farm where this health and safety implications can be demonstrated. CTY10 and, for example, the practicality issue referred to above, and together with consistency in interpretation have produced less issues over recent times than was the case two years ago.

2. Replacement Dwellings

I have explored the application of Policy CTY 3 'Replacement Dwellings' with a view to identifying additional flexibility, especially in regard to the assessment of whether the dwelling to be replaced meets the essential characteristics of a dwelling. One example, where a more flexible approach has been taken relates to a proposal for a replacement dwelling in Armagh area. The structure had long ago been a dwelling however there was no roof and while the 4 walls were intact they were not 100% complete. The structure was also completely overgrown with vegetation internally and externally.

Prior to the review there would have been concerns that the structure did not qualify for replacement in accordance with Policy CTY3 as the four walls were not substantially intact. Following staff training provided as part of the review process, the application was re-assessed and a greater degree of flexibility was applied. The Department concluded that on balance the application was acceptable and approval was granted.

This demonstrates the value of the operational review. Interrogation of policy, application in real time, training and peer review leading to the right outcome.

3. Conversion and Reuse

Similarly, I have identified scope for more flexibility in the type of building that may be suitable for conversion to a dwelling or other use, where this would not adversely affect the character or appearance of the locality.

Policy CTY 4 – 'The Conversion and Reuse of Existing Buildings' permits proposals for the sympathetic conversion, with adaptation if necessary, of a suitable building for a variety of uses, including use as a dwelling.

My review highlighted that some Area Planning Offices had been adopting a much stricter interpretation of the policy that required the building to be converted to exhibit some special architectural features. However, this is not a requirement of the policy which states only that the conversion should maintain or enhance existing form, character and architectural features.

While the policy gives a range of examples of buildings which may be appropriate for conversion, such as former school houses and traditional barns, this list is not to be regarded as exhaustive and does not rule out the conversion of other buildings if they are of sound construction and can be converted in line with the policy criteria. This message has been communicated to staff through training and the process of peer review. Again, a positive outcome of an operational review.

4. Dwellings within Existing Clusters

Through the review I have identified the potential for some additional flexibility in how the policy in respect of new dwellings in existing clusters is being applied.

Policy CTY2a 'New Dwellings in Existing Clusters' provides for a dwelling at an existing cluster of development subject to identified criteria, including a requirement that the cluster is associated with a focal point such as a social/community building/facility, or is located at a cross roads.

The policy does not provide an exhaustive list of what will be regarded as a focal point and in the absence of a community building or facility applicants are free to present other evidence of a focal point within the cluster. This may be some other entity or association that serves as a hub or gathering point in the community.

Through the review, I have communicated to officials the need for appropriate flexibility. This will not mean, cluster approval here, there and everywhere. But approvals will be more consistent between DPO's and more accommodating consistent with the intention of the policy.

5. Ribbon Development

There were also issues raised with respect to development opportunities within gap sites. I have identified the need for additional flexibility in how such sites are defined for the purposes of CTY 8 'Ribbon Development', which allows for up to two dwellings within an otherwise substantial and continuously built up frontage.

One example, where I identified a greater need for flexibility was a proposal for a dwelling and a garage in one area which had initially been recommended for refusal. I met with the applicant who identified examples which they considered to have set a precedent. I asked my officials to consider how the application of the policy may be reviewed in light of the examples provided. After further assessment officials unanimously agreed that the application should be allowed.

Furthermore, when applying the policy officials have been reminded of the need to take account of extant permissions when assessing whether a suitable infill opportunity exists.

6. Development in support of the rural economy

Through the review I have also been promoting greater opportunity and flexibility to support rural business.

For example, an application was received for a dwelling in association with an existing business in one area. The proposal was originally recommended for refusal. However the local Council referred the matter to my Private Office. Given the nature of the business and the fact that the owner was retiring, a family member was taking over and lived a considerable distance away, I asked officials to reconsider their initial opinion. Permission was subsequently granted.

In addition to the areas I have outlined above, other steps I have taken to ensure consistency and flexibility generally include the following:

Staff Training

At my request, the Department rolled out training for all planning officers on the implementation of PPS21. The training was rolled out to approximately 150 staff. The purpose of the training was to focus on those areas of PPS21 which give rise to different interpretations and to apply a common approach to ensure consistent application of policy across all Area Planning Offices.

The training covered each of the policies in detail. It provided examples of proposals which are acceptable and those which are unacceptable when considered in the context of the

relevant policy. It also identified areas where there may be scope for more flexibility within the content and substance of the policy.

Peer Review

I have also initiated a process of peer review of applications already decided under PPS21. The purpose of this is to share best practice and increase consistency between Area Offices. Applications are discussed at the monthly Development Management Working Group and an agreed position is confirmed by the Group. Lessons learned from this peer review approach can be incorporated into the ongoing training programme and issued as further advice as necessary.

Rural Design Guide

I also published the Rural Design Guide 'Building on Tradition'. This supplementary planning guidance to PPS21 clarifies and exemplifies the requirements of the policy and has proved to be of great assistance to planning staff in the consistent interpretation and application of PPS21, as well as helping applicants and others understand its policy requirements. I would commend this guidance to all those with an interest in development in the countryside.

Review of Occupancy Conditions

As part of the review I have looked closely at the practice of attaching personal occupancy conditions to rural dwellings approved on the basis of site specific personal and domestic circumstances which has in some cases created difficulties for applicants in securing mortgage finance. Recently, I drafted and issued a new 'letter of comfort' which I have advised the Council for Mortgage Lenders should conclude the problems the CML or its members were creating around this issue.

Wider actions to support the countryside

Other measures which seek to support rural areas and their communities include:

- **PPS16 'Tourism' which I published in June** facilitates appropriate tourism, including development in the countryside. It makes provision in the countryside for tourist amenity proposals that are not suited to an urban or village location. Similarly, it allows for tourist amenity proposals that need to be located close to existing tourist attractions in the countryside. PPS 16 also removes the much criticised tourist needs tests which had applied for tourist accommodation proposals in the countryside making it easier for developers to make sure that their proposals accord with planning policy.
- **PPS4 'Planning and Economic Development'** sets out the circumstances in which permission will be granted for economic development in the open countryside. It allows for redevelopment of existing employment sites in the rural area including for tourism and it allows for expansion of existing employment sites. It allows for small scale economic development on suitable sites on the periphery of existing settlements where there are no alternatives within the settlement.
- **Permitted Development Rights:** The Agriculture industry represents a vital part of the Northern Ireland economy and therefore the elimination of unnecessary red tape to enable the agriculture sector to thrive in an increasingly competitive and challenging economic climate is imperative. With the continuing rise in energy and fuel bills the new PD rights introduced on 30th April 2013 for non domestic micro-generation including solar panels, ground and water source heat pumps and biomass boiler housing and

fuel stores, provide farmers with opportunities to benefit from renewable energy technologies to help make savings and reduce running costs in the longer term.

Furthermore, legislative proposals to revise existing PD rights by increasing the size limitation from 300m² to 500m² for agricultural buildings and introduce new PD rights for anaerobic digestion plant on an agricultural unit were agreed by the Environment Committee on 4th July and will come into operation in August 2013.

- **Improved Processing Timescales** - Over the last two years there has been a huge effort made to speed up the planning process which has positively impacted on processing times for rural applications. Performance in 2012/13 has significantly improved across all categories of development. Over the most recent year, the average processing times for Major, Intermediate and Minor categories of planning application reduced by four, two and three weeks respectively compared to 2011/12. In addition, the first year Programme for Government target to process 60% of Large Scale Investment Applications within six months was also met with 72% of all such applications being processed within this timescale. Some of these large scale investment applications were in rural areas and Departmental targets were also met for processing Intermediate and Minor applications.
- **Renewable Energy:** Renewables is another key economic driver for Northern Ireland, particularly rural areas. A key target is the reduction in the number of live planning applications for renewable energy projects. The number of decisions issued against renewable energy applications increased by a very significant 90%, from 401 in 2011/12 to 762 in 2012/13. Almost nine in ten (89%) of renewable energy applications were approved.

The Department has worked creatively and collectively with key stakeholders to the planning process to ensure timely processing of planning applications and to discuss any areas of concern. For example, a sub group of the Planning forum has been established to focus on renewable energy applications. This group is looking at a range of measures to improve decision making for renewable energy project applications.

- **Agrifood Sector:** Agri food is a key economic driver for Northern Ireland but particularly the rural areas. As a result of the recent announcement by the major UK supermarkets to source more of their produce from the UK, it is anticipated that the Department is likely to receive several hundred planning applications in the near future for poultry buildings across the Province. In order to respond to this demand the Department has established a small multidisciplinary team in the South Antrim Area Planning office and is developing appropriate level of expertise within the team. It will also work closely with the industry and all other stakeholders collectively to ensure that the applications are progressed in a fast and predictable manner to maximise this opportunity.
- **Strategic Planning Policy Statement (SPPS)** - Members will also be aware that I intend to bring forward a single **Strategic Planning Policy Statement (SPPS)** in time for the transfer of planning functions to councils in 2015. The statement will consolidate existing policy provisions, including provisions in relation to rural planning, into a shorter, more concise statement of planning policy. The statement will be subject to public and Assembly consultation.

All these measures are intended to create a positive framework that allows communities to prosper and thrive but which also protects the countryside from excessive or inappropriate developments.

Planning Statistics suggest interventions have begun to pay dividends. Most significantly the approval rate for single and replacement dwellings in rural areas has improved from 74% in 2010/11 to 88% in 2012/13. I believe that this can be attributed to the implementation of a number of measures such as the role out of training for staff, the 'peer review' of applications at a monthly management meeting, and the publication of the rural design guide.

In total there have been 8,575 applications for new single and replacement dwellings in rural areas approved since the implementation of PPS21. This represents an approval rate of 83% across this almost 3 year period.

Looking forward I believe that the process of planning and local government reform provides a great opportunity for a stronger local dimension to rural planning policy when the majority of planning powers transfer to local Councils. Post transfer the new Local Authorities will be responsible for bringing forward their own development plans with bespoke policies that are more finely tailored to local circumstances in the area, in line with prevailing regional planning policy.

In summary, this operational review into PPS21 has both identified and addressed how there can be more consistency, opportunity and flexibility in the application of PPS 21 policies.

I believe that my interventions are bearing fruit. PPS 21 is working much more effectively now and I remain more satisfied that it is fundamentally the right policy and enjoys widespread support.

My own experience is that the volume of concerns raised to me personally on the operation of the policy is much reduced. Nevertheless, I will continue to keep under close scrutiny the operation of PPS21 in order to ensure that it is properly and consistently applied going forward. This is an update on the operational review. The review is a real time, real life mechanism. It will continue. The issue of a fundamental review, in my view, does not arise, certainly at this time.

**From the office of the
Minister of the Environment**



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Your reference:

Our reference: COR/322/2010

Y July 2010

Dear Thomas

Thank you for your letter of 2 June 2010 seeking clarification of the term "substantially intact" in relation to policy in PPS21 on the replacement of dwellings.

The purpose of changing the policy on replacement dwellings was a recognition that many former dwellings had fallen into a state of dilapidation, becoming an eyesore in the countryside. The Executive is of the view that it would be better if these buildings were replaced by fit for purpose homes.

The premise of the policy is to replace an existing dwelling or a former dwelling where the majority of the building remains intact. The policy says that, as a minimum, all external structural walls of the dwelling should be "substantially intact". This is open to interpretation for example if the roof remained on the dwelling greater flexibility could be applied to the percentage of walls remaining. Where the roof has gone the external load bearing "shell" of the building should remain substantially intact. In this respect, it should follow that all four individual external structural walls which make up the single building unit remain, and are substantially in place. However, if three of the four walls are wholly in tact then a judgement can be applied if the 4th wall has been damaged by livestock, machinery or indeed by the owner to allow building to be used for storage. Considerably greater flexibility can be applied where the roof is largely still in place. Where peaks of gables have been lost this also can be interpreted as substantially intact. Each application must be dealt with on its own merit but there is considerable flexibility in the application of this policy. The policy does not allow the replacement of buildings which are essentially ruinous or where the building is only partially remaining.

I hope you find this information helpful.

Yours sincerely

**EDWIN POOTS MLA
Minister of the Environment**

ITEM NO	13			
APPLIC NO	P/2013/0242/F	Full	DATE VALID	25/03/2013
COUNCIL OPINION	APPROVAL			
APPLICANT	MJM Group Ltd Unit 5 Carnbane Business Park Newry BT35 6QH		AGENT	O'Callaghan Planning Unit 1, 10 Monaghan Court, Newry, BT35 6BH
LOCATION	Lands at Watson Road/Dorans Hill Newry including lands to the east of Watsons Road			
PROPOSAL	Proposed residential housing development of 200 no. units comprising 61 detached, 126 semi-detached, 13 townhouses (some with garages) improvements and widening of existing Watsons Road and Dorans Hill, introduction of new roundabout and distributor road, planting of acoustic barrier along distributor road, proposed landscaping, open space, car parking, site and access works.			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	208	2	0	0
			Addresses Signatures	Addresses Signatures
			0 0	0 0



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**

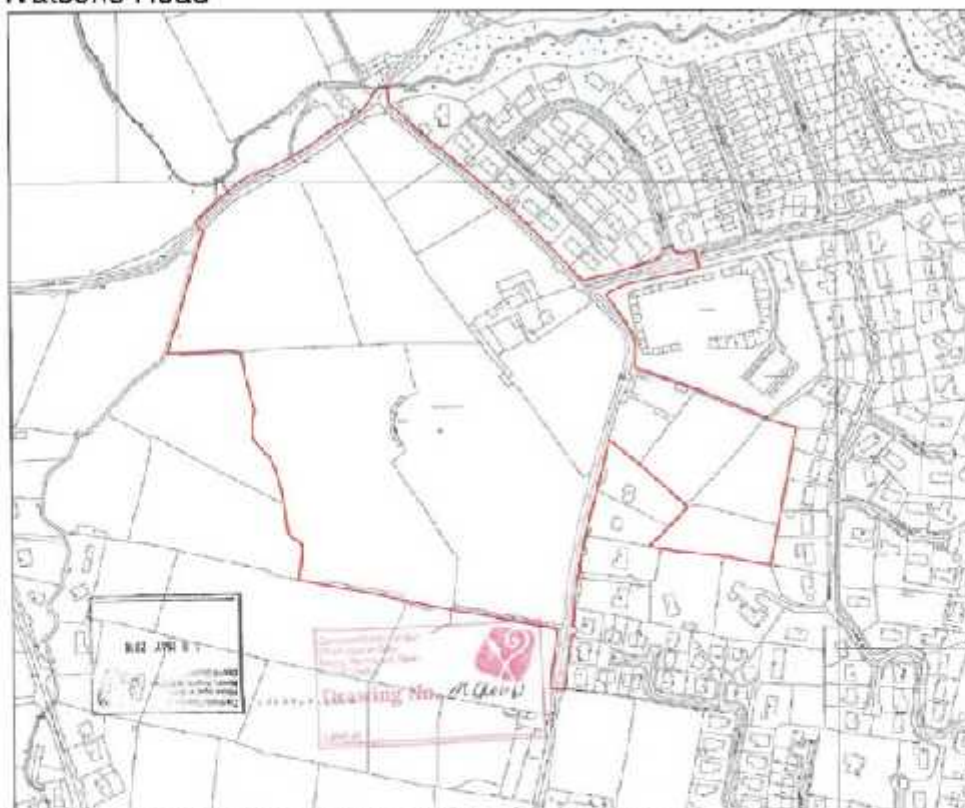
District Council

Application Reference: P/2013/0242/F

Date Received: March 27th 2013

Proposal: Proposed residential housing development of 200 no. units comprising 61 detached, 126 semi-detached, 13 townhouses (some with garages) improvements and widening of existing Watsons Road and Dorans Hill, introduction of new roundabout and distributor road, planting of acoustic barrier along distributor road, proposed landscaping, open space, car parking, site and access works.

Location: Lands at Watson Road/Dorans Hill Newry, including lands to the east of Watsons Road



Site Characteristics & Area Characteristics:

The application site is composed of 2 main sections, one section to the east of Watsons Road and one section to the west of Watsons Road.

The smaller section of the site is located to the east side of Watsons Road. This eastern section of the site has an approximate area of 16053m². A modest detached

bungalow once existed along the roadside on the eastern side of Watson's Road but has now been demolished. This east section of the site is composed of 4 no. fields. Overall its topography falls from the roadside towards the rear boundary in an eastern direction. It also falls from the south boundary towards the north boundary.

The boundaries of the roadside field are defined by mature trees and hedging. A small post and wire fence runs through this field in a central position from east to west. The boundaries of the adjoining field to the east are similarly defined by trees and hedging. The east, north and south boundaries of the field to the east of this again are also similarly defined. The east boundary of this field is defined by sparse hedge cover and a post and wire fence. Hawthorn Hill housing development is located immediately to the east of the site adjacent to this field. The dwellings of Hawthorn Hill are located at a lower level than the site.

The site also includes the adjoining field to the south of this. The boundaries of this field are defined by mature trees. This field is surrounded by residential development to the east, south and west. No. 24 Hawthorn Hill and No. 16 Watsons Road are located to the south of this field, nos. 10 and 12 Watsons Road are located to the west and Nos. 28 and 30 Hawthorn Hill are located to the east.

The west section of the site comprises a much larger area of approximately 111915m². It incorporates 8 no. fields. Watsons Fort, a Rath or defended farmstead dating from the Early Christian Period 600-1100AD is located in this west section of the site. With the presence of the fort, the topography of these fields rises steeply towards a central position of the site.

A number of derelict farm buildings formerly stood a short distance west of the junction of Glen Hill and Watsons Road. The site includes 3 no. fields to the north of these former buildings which adjoin Watsons Road. Brannock Heights housing development is located to the east of these fields on the opposite side of Watsons Road. The site also incorporates 2 large fields set to the rear/west of these roadside fields.

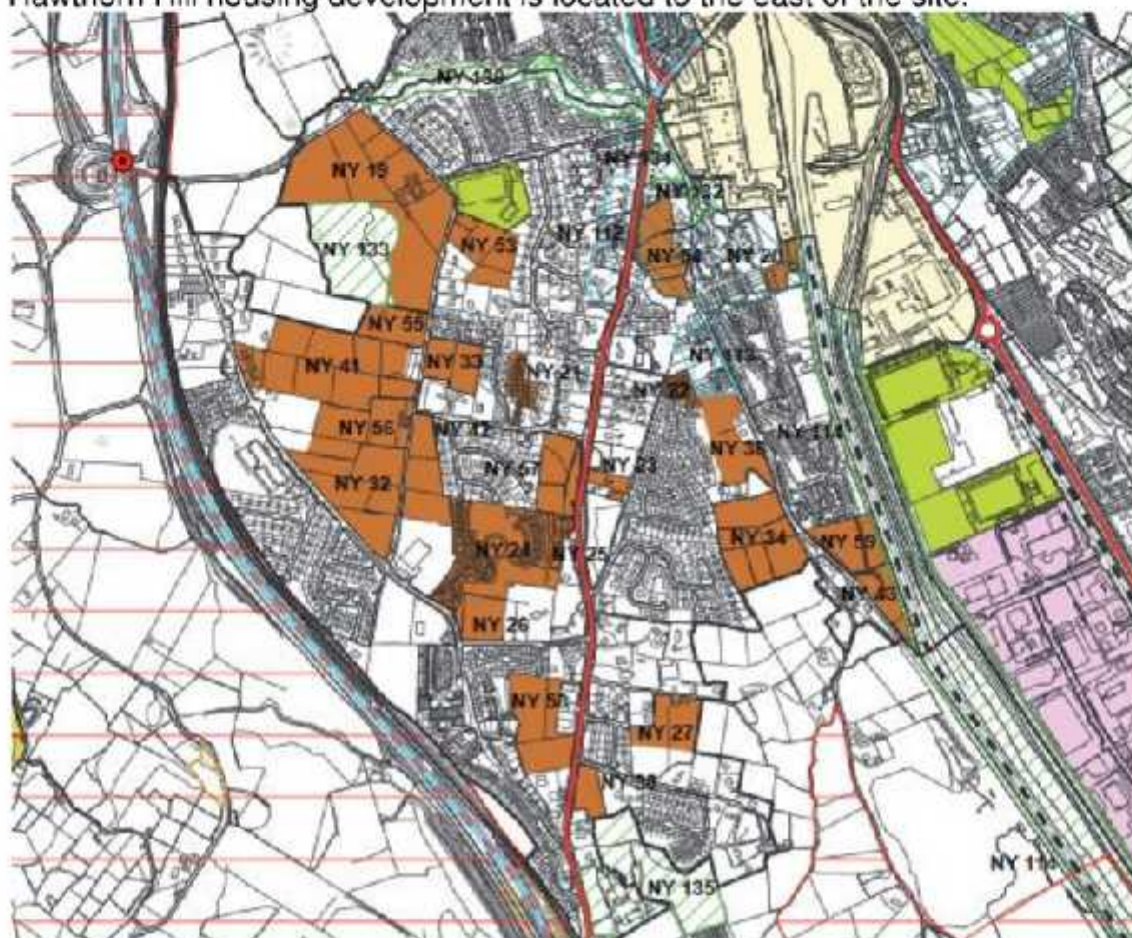
It also incorporates one roadside field set to the south of the derelict farm buildings and the 2 adjoining large fields to the west of this roadside field.

The boundaries of these fields are defined by native hedgerows and trees. The roadside boundary along Watsons Road is defined by trees and the north roadside boundary along Doran's Hill is mainly defined by hedgerow.

The site is located within the development limit of Newry in accordance with the Banbridge/Newry and Mourne Area Plan 2015. The section of the site which lies to the east of Watsons Road is zoned for housing development (NY53). The south-west section of the site has been designated as a Local Landscape Policy Area (NY133). The area of the site to the east and north of this LLPA on the west side of Watsons Road has also been zoned for housing development. (NY 19). The site was first zoned for housing development in the previous Newry Area Plan 1986-1999.

The development limit of Newry runs along the site's west boundary. The land to the west of the site is undeveloped green fields. A playing field and tennis court is located immediately north of the east section of the site. The area to the north of this is characterised by residential development. Housing developments located in this area include Brannock Heights, Glen Court and Brannock Close. The area to the

south of the east section of the site is also characterised by residential development. 7 no. detached dwellings which front onto Watsons Road are located along a 215m stretch of Watsons Road to the south of the east section of the site. Other residential development further south of this includes Lisdrum Court and Liska Manor. Hawthorn Hill housing development is located to the east of the site.



Planning permission has been approved for a playing field a short distance north-west of the site under P/2009/1135/F. Full planning permission was also approved here for the erection of a community sports facility under P/2010/0678/F. Two football pitches were approved at the same location under P/2012/0676/F.

This application seeks full planning permission for the erection of a housing development incorporating 200 no. units comprising 61 detached, 126 semi-detached, 13 townhouses (some with garages) improvements. The application also includes some major roadworks including the provision of a new roundabout at the junction of Watson's Road and Doran's Hill with a new distributor road running through the development with side roads branching off this to serve residential estates, this road will connect with Watson's Road near the southern end of the main site, the existing Watsons Road will be severed at this point, and will instead connect to the distributor road. The existing Watsons Road will be widened and will also be used to serve new residential estates, as will Doran's Hill to the west of the proposed roundabout, there will also be the provision of a footpath on Glen Hill. The proposal also includes the retention of the rath as an area of open space within a protected zone, there will be another area of open space along the side of the distributor road.

Site History:

Full planning permission was approved for the erection of 77 dwellings and associated access roads, parking and landscaping on 08.05.2013 in the land immediately south of the west section of the site.

Section of site to east of Watsons Road:

P/2009/0078/F: An application seeking full planning permission for a Housing Development consisting of 28 dwellings (13no. detached dwellings, 6 blocks of semi-detached dwellings, and 1 townhouse block with 3no. dwellings) with associated site works was withdrawn on 15.11.2012.

P/2007/0329/O: An application seeking outline planning permission for a housing development was withdrawn on 10.09.2012.

P/2006/1590/F: An application seeking full planning permission for the erection of a housing development (4 No. Houses) was withdrawn on 02.06.2008.

Section of the site to west of Watsons Road:

P/2006/1624/F: An application seeking full planning permission for the erection of residential development comprising 32No. dwellings and 13No. apartments (Phase 2) was refused by the Department on 06.01.2009. An appeal was subsequently lodged with the Planning Appeals Commission (PAC). The appeal was allowed on 28.07.2009.

P/2004/2131/F: An application seeking full planning permission for the erection of a housing development comprising 161 dwellings was allowed by the Planning Appeals Commission on 16.11.2005.

P/2001/0821/F: An application seeking full planning permission for the erection of housing development (amended proposal for 161 dwellings) was withdrawn on 30.08.2006.

Planning Policies & Material Considerations:

Strategic Planning Policy Statement

Banbridge/Newry and Mourne Area Plan 2015

Planning Policy Statement 7 Quality Residential Environments.

Consultations:

Roads Service/Transport NI Consultation has established that there are no issues with the internal road layout of the development and that if the upgrade of the junctions of Watson's Road with Glen Hill and Doran's Hill are implemented in accordance with the relevant guidance then there should not be any issues with road safety. It also requires that the development be constructed in 5 phases with the new infrastructure being fully provided by the completion of Phase 3. In relation to the "tie-in" with a development adjacent to the southern boundary of the site, Transport NI in its final response dated December 19th 2016 stated that it had no objections to the proposed extension of the determined area associated with the new Private Streets Determination drawings, however in order for it to be endorsed by TNI, a number of minor amendments are required relating to drainage, roads sections and general layout. It is further stated that these comments are on the basis that the proposed extension is within the redline of the application. The PSD drawing for the

southern end of the new distributor road does not tally with the most recent layout drawing and this will need to be addressed before any decision can be issued.

While local residents have expressed concerns about the need for the bridge to be upgraded, TNI has not required this in their final responses and has expressed no objections subject to all works being implemented in accordance with the suggested conditions and all relevant guidance.

Environmental Health Department of Newry and Mourne District Council No objections to this proposal provided the development is connected to the public sewerage system.

Northern Ireland Housing Executive Was consulted in relation to this proposal given the key site requirement for 12 social housing units in housing zoning NY53. They have confirmed there is a need for 12 social housing units at this location. The need is for family housing and they have requested the housing mix should be as follows:

7 units should be 2 bed, 4 person houses

5 units should be 3 bed, 5 person houses

They requested an amended plan identifying where the social housing units will be located. They also recommended the developer should discuss the layout and design of the dwellings with a housing association.

Rivers Agency Advises the site is in close proximity to the Glen River which is at capacity for existing flows, due to the inadequacy of culverts downstream. They also advised the site is affected by an undesignated watercourse which flows along the northwest boundary. The site is not located within a flood plain and there is no record of flooding at the site. In line with annex d15 of PPS15 they requested the applicant to submit a drainage assessment. Following consideration of the submitted drainage assessment Rivers Agency has no objections to this proposal from a drainage and flood risk perspective.

Protecting Historic Monuments of Northern Ireland Environment Agency

Advises that the application site contains the above and below ground archaeological remains of 2 recorded archaeological sites. One of these is Watsons Fort, a Rath or defended farmstead dating from the Early Christian Period 600-1100 AD. The other is the site of an enclosure which may have functioned as a Rath. The applicant submitted an archaeological impact assessment with this application. It was agreed that archaeological mitigation will be required prior to development. The nature and scale of this mitigation should be addressed at licensing stage.

Protecting Historic Monuments raised concerns regarding the high density of housing in close proximity to Watsons Fort in particular the housing to the south-west of the Rath. They advised the ridge height or the ground level of the dwellings here should be reduced to ensure the monument is integrated within the proposed development. The Planning Department has assessed these comments but consider that limited weight can be attached to them in view of the previous planning history on the site.

Natural Heritage of Northern Ireland Environment Agency Advises there is evidence of substantial badger activity throughout the site and several active sett entrances are located along field boundaries. It also advised highly suitable smooth newt habitat is located in the west of the site. The site provides good bat foraging habitat and a number of species were present in initial bat activity surveys.

The badger setts have been identified on the detailed housing layout plan. NIEA has also proposed the imposition of a number of negative planning conditions intended to protect 'protected species', including the submission of a detailed Wildlife Management Plan for agreement by the Planning Authority prior to commencement of development at each stage in the implementation of the proposal.

Water Management Unit of Northern Ireland Environment Agency Initially raised concerns that the sewage loading associated with the proposed development would cause Newry Waste Water Treatment Works (WWTW) to operate above its capacity. They therefore recommended the Department consult NI Water to determine if the WWTW would be able to cope with the additional load or whether the capacity would have to be increased.

NI Water They did not raise any objections to the proposed development **and in response to WMU's comments specifically stated that there is sufficient capacity in the local sewage infrastructure to cater for this development.**

Objections & Representations

206 addresses were notified under the neighbour notification scheme, to date a total of 210 representations have been received, 207 of these were objections and 2 were letters of support. These have been fully considered as part of the Planning Department's assessment of the application, as detailed below.

Many of the objections are of a pro forma type and raise concerns on issues such as the inadequacy of the local infrastructure, road safety, lack of provision of footpaths, street lighting, green spaces and community facilities, impact on the rath and on badger setts and other flora and fauna, the proposed scheme not respecting the context of the surrounding area.

Objections have also been received from the landowner of a development that is to be constructed adjacent to the southern boundary of the site; the issues of concern relate to a "tie-in" between the footpaths to be provided along Watson's Road in accordance with Roads Service's requirements, the objector also raises issues of procedural fairness.

There are a number of individual objections which raise more specific issues including the arrangement of the provision of social housing across the development, the possibility of persons using the development to gain access to the playing fields to its north, the difficulties experienced by residents in Ballinlare Cottages, which are situated to the north east of the site, in obtaining parking to and safely entering and exiting their properties. However this estate is situated outside of the boundary of the application site and therefore this area does not form any part of the application site and road improvements in this area cannot be required by the current application. Recently a number of objections have been received stating that as the application has been under consideration for over three years, the archaeological and flora and

fauna impact assessments that were submitted with it are now outdated and that fresh assessments should be carried out.

Consideration and Assessment:

Strategic Planning Policy Statement

The SPPS provides strategic guidance for the preparation of new Local Development Plans by Councils, the site is in an approved residential development and therefore there are no implications for this site from the SPPS.

Banbridge/Newry and Mourne Area Plan 2015.

The site is located within the development limit of Newry. The section of the site which lies to the east of Watsons Road is zoned for housing development (NY53). The key site requirements of this are:

- A minimum of 12 dwellings shall be provided for social housing.
- Housing development shall be a minimum gross density of 20 dwellings per hectare.
- Access shall be onto Watsons Road, which shall be realigned and widened to agreed standards.
- A footway provided along the entire site frontage onto Watsons Road.

The south-west section of the site has been designated as a Local Landscape Policy Area (NY133).

Those features or combination of features that contribute to the environmental quality, integrity or character of these areas are:

- Watsons Rath on a localised hill, including its setting and views.
- Area of local amenity importance including mature vegetation and attractive vistas. The plan states the rath is a distinctive feature in the wider landscape of this part of Newry.

The area of the site to the east and north of this LLPA on the west side of Watsons Road has also been zoned for housing development (NY19). This is a committed housing zoning as there is a live approval for a housing development which was approved by the Planning Appeals Commission.

PPS6: Policy BH2 The Protection of Archaeological Remains of Local Importance and their Settings This policy states development proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings will only be permitted where the Department considers the importance of the proposed development or other material considerations outweigh the value of the remains in question.

The application site contains the above and below ground archaeological remains of 2 recorded archaeological sites. One of these is Watsons Fort, a Rath or defended farmstead dating from the Early Christian Period 600-1100 AD. The other is the site of an enclosure which may have functioned as a Rath.

The applicant submitted an archaeological impact assessment with this application; Historic Environments Division was consulted and raised no objections.

PPS7 Quality in Residential Developments Policy QD1

The Policy states that all proposals for residential development will be expected to conform to all of the following criteria:

- (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 surfaced area;
- (b) features of the archaeological and built heritage, and landscaped features are identified and , where appropriate, protected and integrated on a suitable manner into the overall design and layout of the development;
- (c) adequate provision is made for public and private open 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.
- (d) adequate provision is made for necessary local neighbourhood facilities, to be provided by the developer as an integral part of the development;
- (e) a 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;
- (f) adequate and appropriate provision is made for parking;
- (g) the design of the development draws upon the best local traditions of form, materials and detailing;
- (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;
- (i) the development is designed to deter crime and promote personal safety.

The principle of a residential development on this site has been established by the previous approvals and the zoning of the site for this purpose in successive development plans. The submitted layout of the development acknowledges the protected rath in the centre of the main part of the eastern part of the development. This area will also contain protected badger setts and there will be a tunnel under the main road that will run through the development to enable them to cross the road. The dwellings to the immediate north and south of the rath will be orientated around it, the main road through the development will provide access for a further 3 estate roads, it will be lined with trees. The existing Watson's Road will provide access for 4

estate roads as well as 14 dwellings that will face directly on to it with vehicle access from the rear, another estate road will access off Doran's Hill west of the proposed roundabout, this estate road will join on the one of the estate roads that leads off the main road. The density of the dwellings contained within the proposed development is significantly higher than that of the surrounding developments such as Brannock Heights, Glen Court, Hawthorn Hill and the dwellings along Watsons Road near the southern end of the development.

A total of 11 different house types are proposed in the application, some of which have been submitted in options to either be finished in red brick or render, House Type F has also been proposed in both gable and hipped roof versions. Located between the new main road and the realigned Watson's Road immediately adjacent to the new roundabout will be a pair of dual frontage dwellings of House Type J, these will have vehicle parking spaces immediately to their rear with the result that the gardens immediately adjacent to the roundabout will be the main areas of private open space and will be visible from traffic using the roundabout, this will be mitigated by three trees which it is proposed to plant at the apex of the junction. The other dwellings adjacent to these two roads will be arranged gable end on, trees will be planted at the corners of the sites to help screen the rear areas from view. In several places within the development the dwellings are shown as being within linear rows with no variation in the building lines, this is particularly the case of the dwelling built near to the northern end of the existing Watson's Road.

The amount of private open space proposed for each unit varies markedly across the development, and with house types, those sites located at corners in the development have larger plots due to their orientation, while those arranged in linear rows have more restricted curtilages, the layout was amended following representations from the Planning Authority and the amended plan generally complies with the provisions of PPS7. Car parking will generally be provided to the sides of the semi-detached dwellings in a one behind the other arrangement; dwellings with this arrangement will also have garages. The small number of terraced dwellings in the development will have parking directly in front of them with trees planted at each end and occasionally with planting in the middle, together these will both bookend the parking spaces and break up the expanse of parking so as to limit its visual impact within the wider streetscape.

Overall the Planning Department's assessment is that the scheme complies with the provisions of the policy. Approval may be granted considering the overall character of the layout, the history of the site and of the other material considerations.

PPS8: Policy OS2 Public Open Space in New Residential Development:

The policy states that the Department will only permit proposals for new residential development of 25 or more units, or on sites of one hectare or more, where public open space is provided as an integral part of the development. This policy refers to a normal expectation of at least 10% of the total site area.

The Planning Department has assessed the amount of proposed open space, an issue raised by objectors. It is satisfied that the scheme incorporates sufficient areas of open space. (This open space excludes the large green areas which will be fenced off to protect badgers.) This equates to 20.5% of the total site area which is well in excess of the 10% required by Policy OS2. The site also benefits from its

close proximity to an existing amenity site which incorporates a playing field and tennis court.

Policy OS2 also states 'For residential development of 100 units or more, or development sites of 5 hectares or more, an equipped children's play area will be required as an integral part of the development. The Department will consider an exception to this requirement where an equipped children's play area exists within reasonable walking distance (generally around 400 metres) of the majority of the units within the development'.

The proposed housing development originally incorporated just one play area. The Department raised concerns that children living in the western section of the development would have to negotiate a busy road to access this play area. Amended plans were submitted showing an additional play area in the west section of the development to address this concern.

In the event planning permission is granted it is recommended a condition should be imposed requiring the developer to submit full details of the 2 play areas prior to the occupation of dwellings approved and to maintain them thereafter. It is standard practice not to stipulate the types and position of the playground equipment so as to afford the developer flexibility into deciding which are considered appropriate.

PPS15:

As this proposal falls within a number of these categories Rivers Agency requested the applicant to submit a drainage assessment. Following consideration of the submitted drainage assessment Rivers Agency has no objections to this proposal from a drainage and flood risk perspective.

Recommendation:

The site has an extensive planning history; it is zoned for residential development in the current area plan, the section to the west of Watson's Road first having been zoned in the late 1980's. Given this history it is clear that the principle of residential development on the site has been established, subject to the provision of new road infrastructure and measures being implemented to protect the rath, the badger setts and related features. There have been no significant changes in the policy regime either in the Area Plan or PPS's etc which are of sufficient weight to overcome the history of the site and it remains of determining weight.

The issue on this application is therefore whether or not the submitted scheme complies with the policy criteria, the scheme is of a similar size and general layout to those previously approved, the policy context set out under PPS7 has been in place during the processing of most of the historic applications on the site therefore they have been determined to be in compliance with this policy. The current scheme retains the protection around the rath and the setts which were included in previous schemes and therefore it complies with the relevant policies of PPS 2 and 6. In relation to the recent comments from third parties that these are outdated, no significant changes have occurred to any of the features referred to since the original submission of the application and therefore the objection is not sustained.

The amount of public open space included within the scheme is significantly in excess of that required under PPS 8; therefore the proposal complies with this policy.

Several objectors have raised the concentration of the social housing required by the development plan in the part of the site east of Watson's Road, stating that it would be better to have this spread out across the entirety of the site. The social housing requirement was introduced by the new area plan which post-dated the original approvals granted on the main part of the site to the west of Watson's Road, the plan classed this as being a committed development. In view of this it would in all likelihood be unreasonable to impose a new requirement which was not specified by the then extant area plan or by the PAC. While it is possible that the developer may agree to allow social housing across the entirety of the site this would be a matter for them to agree voluntarily and the proposal will require the imposition of a condition to ensure that the number of social housing units provided are equal to that required by the plan. In relation to concerns raised about an access being created into the playing fields and this becoming a site for "anti-social behaviour," the submitted scheme shows no such entrance and it could only be accessed by means of trespassing on to land that is entirely within the boundary of a residential unit. While it has been suggested that the owners of this site may not maintain their property correctly this is purely speculative and the playing fields are in any case owned by the Council which can maintain its side of the boundary and prevent any unauthorised accesses.

Transport NI has stated that it has no objections with the estate roads or within the new distributor road or the junction upgrades with Watson's Road at Doran's Hill and Glen Hill. The remaining issue is that of the tie-in with the adjacent development, TNI's last consultation response has stated that it has no objection to the extension of the red line subject to a number of amendments related to proposed drainage arrangements; these amendments can be sought through an appropriate planning condition.

Therefore following assessment of all material considerations including the previous history and zoning of this site, the content of the objections and consultations and of the assessment of the proposal against all relevant planning policies, it is my recommendation that the proposal complies with all relevant policies and approval is recommended.

Conditions

1. No development activity shall commence until a Wildlife Management Plan (WMP) has been submitted to, and agreed in writing by, the Department. The WMP shall be updated prior to each subsequent phase of the development and no development activity shall commence on each subsequent phase until an updated WMP is submitted to the Department and agreed in writing. All works on site shall conform to the WMP and any amendments to the WMP must be agreed in writing with the Department. The WMP shall include (but not be limited to) the following:
 - a) Aims and objectives of the WMP.
 - b) The role and responsibilities of the Ecological Clerk of Works.
 - c) Results of updated badger surveys to inform the WMP for the imminent phase of the development, including details of available setts within and adjacent to

- the site and any changes in sett distribution or activity since the previous survey.
- d) Details of all badger management, mitigation and protection measures carried out during the preceding phase of the development and the results of the monitoring of the effectiveness of such measures.
 - e) Setts proposed for permanent closure during the imminent phase.
 - f) Setts proposed for temporary closure during the imminent phase.
 - g) Timing and scheduling of all sett closures.
 - h) Details of the setts which will be available to badgers within and adjacent to the site during and after the imminent phase of the development.
 - i) Details of all badger management, mitigation and protection measures to be implemented during the imminent phase of the development, including fencing and planting schedule for badger protection areas.
 - j) Proposed monitoring of badger management, mitigation and protection measures and scheduling of further surveys to inform the next update of the WMP.
 - k) Details of any tree or hedgerow removal proposed for the imminent phase of the development.
 - l) Any mitigation measures proposed for the imminent phase of the development for other protected species such as bats and breeding birds.
 - m) Any emerging issues and proposals for the next plan update.

Reason: To protect badgers and other wildlife on the site.

2. The development shall be phased as shown on Drawing No. PL/PH/01, date stamped 21 March 2014 by the Area Planning Office. All construction activity shall be restricted to one phase of the development at a time. There shall be no works, vegetation clearance, disturbance by machinery, dumping or storage of materials within any subsequent phase of the development except as stipulated in the Wildlife Management Plan.

Reason: To allow badgers and other wildlife to adapt to the development over time.

3. No development activity shall commence until a person recognised by the Department as a suitably qualified and experienced person has been appointed as an Ecological Clerk of Works (ECoW) and the role and responsibilities of the ECoW agreed in writing with the Department. The ECoW shall be responsible for the production of the WMP and shall supervise all construction activities at regular intervals.

Reason: To protect badgers and other wildlife on the site.

4. There shall be no development activity, vegetation clearance, disturbance by machinery, dumping or storage of materials (except for the hand planting of trees and shrubs) within the badger protection areas or wildlife corridors without the consent of the Department.

Reason: To protect badgers and other wildlife on the site.

No works, including any archaeological excavations, shall take place within 25 metres of a badger sett without the presence of an NIEA Protected Species Licence holder.

Reason: To protect badgers and their setts.

5. No development activity shall commence until a Lighting Plan has been submitted to, and agreed in writing by, the Department. The Lighting Plan shall include details of all external lighting on the site and measures to mitigate for impacts of artificial lighting on bats and other wildlife. In particular the Lighting Plan shall include:
 - a) Specifications of lighting to be used across the site.
 - b) Lighting levels to be as low as possible across the site.
 - c) A map showing predicted light spillage across the site (isolux drawing).
 - d) Badger protection areas, wildlife corridors and retained hedgerows to be kept free from any artificial lighting.

Reason: to protect bats and other wildlife.

7. There shall be no tree, scrub or hedgerow removal during the bird breeding season (1 March to 31 August inclusive).

Reason: To protect breeding birds.

8. Prior to the commencement of the development hereby approved, the developer shall submit a plan to the Council identifying the 12 units within the development hereby approved which will be provided for social housing in accordance with a registered housing association. These units shall consist of:

60% (7 units) should be 2 bed, 4 person houses, and
40% (5 units) should be 3 bed, 5 person houses

Reason: To ensure adequate provision of social housing in accordance with the requirements of the Area Plan.

9. All landscaped areas shown within the development shall be maintained for a period of 30 years from the date of this decision, by a landscape management company in accordance with stamped approving drawings Nos 85 (Rev 1), 86 (Rev 1), 87 (Rev 1) and 88 (Rev 1) received on August 19th 2014.

Reason: To ensure that all areas of open space are maintained to the relevant standards.

10. Prior to any dwelling hereby approved becoming occupied, the developer shall submit to and agree with the Council, details of the two play areas as indicated on stamped approved drawing Number 17 (Rev 2) received on October 7th 2016. These play areas shall be maintained for a period of 30 years from the date of this decision at the developer's expense

Reason: To ensure that the play area is provided in accordance with all relevant standards.

11. No development shall commence until the developer has obtained from Transport NI and all relevant landowners, agreement for works relating to the connection of footpaths and roads approved by this decision with similar structures, either existing or proposed, in the surrounding area.

Reason: To ensure that a satisfactory network of footpaths and roads are provided to service the development.

No more than those dwellings indicated within phase 1 of the development hereby permitted indicated on drawing number PL/PH/01 REV E received on 8 December 2015 shall be occupied prior to the completion of all road works associated with phase 1 on Dorans Hill, Watsons Road and internal housing roads.

REASON: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out prior to the completion of this part of the development.

No more than those dwellings indicated within phase 2 of the development hereby permitted indicated on drawing number's PL/PH/01 REV E received on 8 December 2015 shall be occupied prior to the completion of all road works associated with phase 2 on the new Distributor Road, Watsons Road, Glen Hill and internal housing roads.

REASON: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out prior to the completion of this part of the development.

No more than those dwellings indicated within phase 1, 2 & 3 of the development hereby permitted indicated on drawing number's PL/PH/01 REV E received on 8 December 2015 shall be occupied prior to the completion of all road works associated with phase 3 on the new Distributor Road, Watsons Road and internal housing roads.

REASON: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the site are carried out prior to the completion of this part of the development.

Prior to the commencement of any works of the development hereby permitted the proposed roundabout and any associated works will require to be designed in

accordance with the relevant section of the Design Manual for Road and Bridges and will be subject to separate agreement by Transport NI.

REASON: In the interests of Road Safety and Traffic Progression.

Prior to the commencement of any works hereby permitted the developer will be required to comply with and complete the legislative process to stop-up and abandon relevant parts identified by Transport NI of the existing Watsons Road. These works will require the developer to contact Transport NI Lands Branch to provide the necessary plans for this procedure to commence. The developer will also be liable for any costs associated with the processing of this Order and no works hereby permitted will be commenced until this process has been fully completed to the satisfaction of Transport NI.

REASON: In the interests of Road Safety and Traffic Progression.

The developer will be required to ensure that the road works associated with this proposal have been subject to the Safety Audit process in accordance with the relevant Departmental guidelines.

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

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

The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 12-117/C13, 12-117/C14, 12-117/C15, 12-117/C16 bearing the date stamp 10 November 2015.

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

Notwithstanding the provisions of the Planning (General Development) Order (NI) 1992 no garages shall be sited closer than 5.6 metres from the back of the footway or service strip.

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

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

No other development hereby permitted shall be Occupied until the works necessary for the improvement to the public road have been completed in accordance with the details outlined blue on Drawing Number 12-117/C13, bearing the date stamp 10 November 2015. The Department hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

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

The visibility splays as indicated at the junctions of the proposed accesses with the public road, shall be provided in accordance with Drawing No 12-117/C13, 12-117/C14, 12-117/C15, 12-117/C16 bearing the date stamp 10 November 2015, prior to the commencement of any other works or other development.

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

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

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

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

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

The development hereby permitted shall not be occupied until any highway structure/ retaining wall/ culvert/ vehicle restraint system requiring Technical Approval, as

specified in the Roads (NI) Order 1993, has been approved and constructed in accordance with BD2 Technical Approval of Highways Structures : Volume 1: Design Manual for Roads and Bridges.

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

Any telegraph poles/ street furniture will require to be re-sited to the rear of sight visibility splays.

Reason: In the interests of road safety and traffic progression

The gradient of any side slopes proposed will be a maximum of 1m in 2 metres.

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

The development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted to and approved by the Department for Regional Development Street Lighting Section.

Reason: Road safety and convenience of traffic and pedestrians.

The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Regional Development Street Lighting Section. These works will be carried out entirely at the developer's own expense.

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

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

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

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

Reason: In the interest of Road Safety.

The developer/applicant prior to the commencement of any road works shall provide a detailed programme of works and associated traffic management proposals to the Department of Regional Development Transport NI for agreement in writing.

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

The developer/applicant will contact Transport NI Traffic Management prior to commencement of works on site to agree suitable positions for any existing road signage and traffic management measures that will require being relocated as a result of this proposal.

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

Case Officer

Authorised Officer

P/2013/0242/F – MJM Group Limited – Watsons Road and Dorans Hill

Objection from Watson's Road Residents Group

The following points will be covered

- **Discrepancy in plans for approval and actual developer plans**
- **PAC previous reports and conditions**
- **Road safety at Dorans Hill**
- **Current action on the site**

Des

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1 March 2018

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

Dear Mr Murtagh

P/2013/0242/F | PROPOSED RESIDENTIAL HOUSING DEVELOPMENT OF 200 NO. UNITS COMPRISING 61 DETACHED, 126 SEMI-DETACHED, 13 TOWNHOUSES (SOME WITH GARAGES) IMPROVEMENTS AND WIDENING OF EXISTING WATSONS ROAD AND DORANS HILL, INTRODUCTION OF NEW ROUNDABOUT AND DISTRIBUTOR ROAD, PLANTING OF ACOUSTIC BARRIER ALONG DISTRIBUTOR ROAD, PROPOSED LANDSCAPING, OPEN SPACE, CAR PARKING, SITE AND ACCESS WORKS. | LANDS AT WATSON ROAD/DORANS HILL NEWRY INCLUDING LANDS TO THE EAST OF WATSONS ROAD

We hereby object to the above planning application on behalf of EDB Construction Ltd, who own land within the application site. I have enclosed a copy of EDB's title documents at **Annex 1** to confirm the extent of their land ownership and refer you to the applicant's completed and submitted P2A form that names EDB as a landowner within the application site. My client's land is required by the applicant to deliver the proposed road layout and tie-in along Watsons Road.

The relevant housing zoning within the Banbridge, Newry and Mourne Area Plan (BNMAP) is NY19. BNMAP does not provide any site-specific Key Site Requirements for this zoning, however, Planning Policy Statement 7 (PPS7) Policy QD2 requires proposals to demonstrate how the comprehensive planning of the entire zoned area is to be undertaken and ensure that unsatisfactory piecemeal development will not occur. The planning authority has so far failed to give any consideration to this policy requirement.

At paragraphs 4.52 and 4.53 of PPS7 under the heading "Comprehensive Planning", it is stated:

"4.52 The comprehensive planning of new or extended housing areas is considered to be of vital importance in pursuit of an improved quality standard. Piecemeal development may result in the undesirable fragmentation of a new neighbourhood"

and fail to secure the proper phasing of development with associated infrastructure and facilities.

4.53 The Department would encourage land pooling by owners and developers to facilitate the comprehensive development of residential sites. Where this cannot be achieved, and comprehensive development of the site would be prejudiced, the Department will refuse the application." (Emphasis added).

The proposed development requires road widening and realignment involving land in my client's ownership. This section of road also forms part of the main spine road through the site to all proposed phases of development.

To date, neither the applicant nor the planning authority have sought to secure the implementation of the overall proposed development by engaging my client in a planning agreement under Section 76 of the Planning Act (Northern Ireland) 2011 to ensure the required road widening and realignment is delivered.

The approval of this application in this context has the potential to cause significant issues when it comes to the delivery of the overall approved development. This is a clear failure to secure the comprehensive planning of housing zoning NY19 and avoid unsatisfactory piecemeal development.

The proposal, as it currently stands, is therefore contrary to the requirements of PPS7 Policy QD2 and it cannot lawfully be approved. We therefore request that the application is either refused, or is deferred from next week's planning committee subject to the applicant and the Council engaging in discussions with my client to agree terms for facilitating the delivery of the road improvements and securing the comprehensive development of the site.

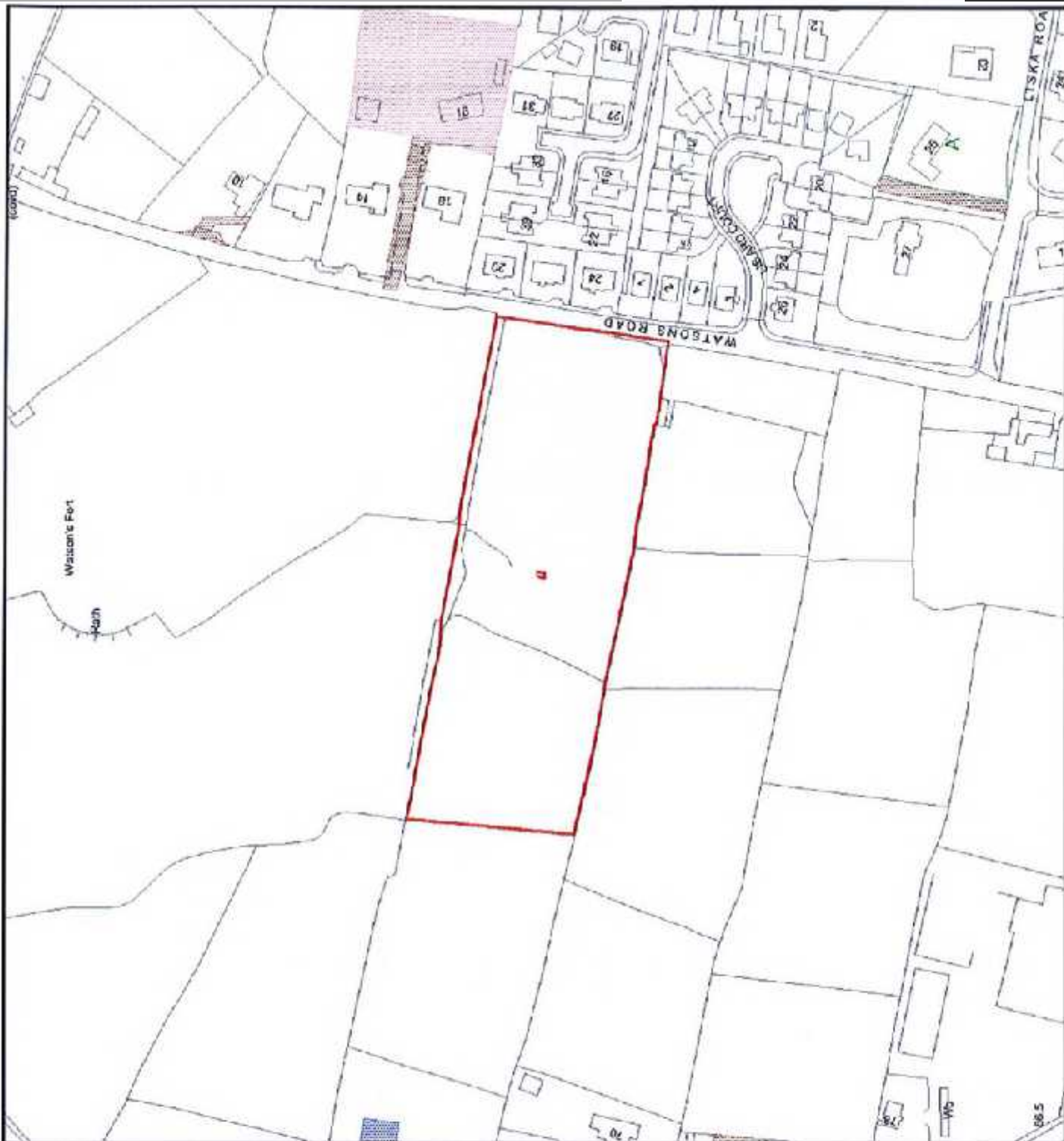
It should be noted that a similar matter was recently the subject of a successful judicial review - O'Hare's application [2016] NIQB 20, a copy of which is enclosed at **Annex 2**. In that case, the planning authority had similarly failed to properly consider and adhere to the requirements of PPS7 Policy QD2 and had failed to secure the comprehensive development of a housing zoning. The subsequent approval of Z/2013/0930/F was therefore determined to be unlawful as a consequence and the permission was quashed.

Kind regards



Richard O'Toole
MBA Planning

Annex 1



Date: 01 Mar 2018
County: Armagh
Folio: AR105490
Scale: 1:2500
Our Ref.: 2018/163768
Your Ref:
Map Ref(s): 26610NE
Sheet 1 of 1

Key to folio labels:
a - AR105490

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Folio: AR105490

County: Armagh

Date Searched to: 27/2/2018

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Land & Property Services – The Land Registry

TITLE REGISTER

Date of First Registration: 19/06/2006 Folio: AR105490

Edition: 1 County: Armagh

Opened: 19/06/2006 L.R. Map Reference:

Prior Title (if any): Grid Reference:

Area: 1.6871 Hectares

PART I – containing a description of the land and, where appropriate, particulars of the lease under which it is held.

The freehold land shown on the Registry map relating to the above Folio and comprising land situated at Watsons Road, Newry

PART II – containing the name and address of the registered owner and the other particulars relating to ownership of the land.

Date of Registration & Remarks	Particulars
	CLASS OF TITLE: Absolute
Registered 19th June 2006 Document No: 2006/286631/A	CANON ESTATE LIMITED of BANK BUILDING, 39 HILL STREET, NEWRY is a full owner as a tenant in common of an undivided half share K & S DEVELOPMENTS LIMITED of BANK BUILDING, 39 HILL STREET, NEWRY is a full owner as a tenant in common of an undivided half share
Registered 2nd November 2006 Document No: 2006/380954/F Consideration £1,125,000	BRACKENVALE DEVELOPMENTS LIMITED of 2 WEST STREET, PORTADOWN, CRAIGAVON, COUNTY ARMAGH is full owner
Registered 18th June 2013 Document No: 2013/293964/D	EDB CONSTRUCTION LTD of 2A SEAVERS ROAD, KILLEAVEY, NEWRY, BT35 7LR is full owner

PART III – containing particulars relating to burdens and charges etc.

Date of Registration & Remarks	Particulars

Any entries deleted are no longer subsisting

Folio: ARI05490

County: Armagh

Date Searched to: 27/2/2018

Date of Registration & Remarks	Particulars
<p>Charge Registered 2nd November 2006 Document No: 2006/380954/P C of C to T. D. Gibson & Co</p>	<p>Charge for all moneys secured by the said Document. Charge Owner: Anglo Irish Bank Corporation PLC, Commercial Union House, 1-3 Donegall Square South Belfast BT1 5LS.</p>
<p>Cancelled 18th June 2013 Document No: 2013/293964/G</p>	
<p>Charge Registered 22nd March 2014 Document No: 2011/90149/B C of C to MKB Russells Cancelled 18th June 2013 Document No: 2013/293964/H</p>	<p>Charge for all moneys secured by the said Document. Charge Owner: NATIONAL ASSET LOAN MANAGEMENT LIMITED, TREASURY BUILDINGS, GRAND CANAL STREET, DUBLIN 2 whose address for service of notices is c/o MKB Russells, Solicitors, 14-18 Great Victoria Street, Belfast, BT2 7BA.</p>

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Folio: AR105490

County: Armagh

Date Searched to: 27/2/2018

Details of Pending Applications:

Application Number	Application Type	Client Name	Applicant	Date Lodged
There are no pending applications.				

Folio: ARI05490

County: Armagh

Date Searched to: 27/2/2018

Land Certificate History:

21/06/2006
S.C. CONNOLLY & CO
1 DOWNSHIRE ROAD
NEWRY
COUNTY DOWN
BT34 1ED
Northern Ireland

13/11/2006
T. D. GIBSON & CO
MORRISON HOUSE
107 CHURCH STREET
PORTADOWN
COUNTY ARMAGH
BT62 3DD
Northern Ireland

07/02/2012
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Annex 2

Neutral Citation No: [2016] NIQB 20

Ref: MAG9855

Judgment: approved by the Court for handing down
(subject to editorial corrections)*

Delivered: 12/2/2016

2015/051522

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)

IN THE MATTER OF AN APPLICATION BY TONY O'HARE AND
PATRICK O'HARE AS PERSONAL REPRESENTATIVES OF THE ESTATE OF
TERENCE O'HARE (DECEASED) FOR JUDICIAL REVIEW

and

IN THE MATTER OF PLANNING CONSENT Z/2013/0930/F IN RESPECT OF
LANDS AT GLEN ROAD HEIGHTS, GLEN ROAD, BELFAST, IN FAVOUR OF
OAKLEE HOMES GROUP

O'Hare's application [2016] NIQB 20

MAGUIRE J

Introduction

[1] This application for judicial review is concerned with the development of land *inter alia* for social housing. The land in question is situated off the Glen Road in West Belfast in an area of substantial demand for social housing. The site as a whole features in the Belfast Metropolitan Area Plan ("BMAP") under the designation WB04/11. It comprises some 12.64 hectares. In BMAP the zoning is described as "lands between Glen Road, Glencolin Rise, Glencolin Grove, Meadowhill and Glen Road".

[2] A number of "key site requirements" are stipulated in BMAP in relation to the zoning. These are:

- A concept statement to facilitate the comprehensive development of the site shall be submitted and agreed with the Department.
- A minimum of 240 dwellings shall be provided for social housing.

- Access shall be agreed with DRD Road Service and the following improvement shall be required:
 - An improved right turn pocket, which may require third party land, shall be required on Glen Road into Glencolin Drive.

[3] At page 88 of BMAP it is stated that the “key site requirements have been attached to Site WB04/11 for the purpose of meeting social housing need in West Belfast, namely a minimum of 240 units”.

[4] Policy QD2 of PPS7 also may be relevant to the development of this site. This deals with the subject of design concept statements, concept master plans and comprehensive development. It notes that:

“The Department will require submission of a design concept statement or, where appropriate a concept masterplan, to accompany all planning applications involving -

- A. 300 dwellings or more;
- B. the development in part or full, of sites of 15 hectares or more zoned for housing in development plans; or
- C. housing development on any site of 15 hectares or more.”

[5] In the case of the proposals for partial development of the site zoned for housing the concept masterplan will be expected to demonstrate how the comprehensive planning of the entire zoned area is to be undertaken.

[6] Any proposals for housing that would result in unsatisfactory piecemeal development will not be permitted, even on land identified for residential use in a development plan.

[7] In the section justifying and amplifying this policy it is stated that:

“4.48 Where a concept masterplan is required, this will need to indicate in graphic form a scheme for comprehensive development of the whole area, and include a written statement, detailed appraisals, sketches, plans and other illustrative materials to address all of the relevant matters set out in this statement and its associated supplementary planning guidance. The

concept masterplan should also clearly demonstrate how it is intended to implement the scheme.”

[8] At paragraphs 4.52 and 4.53 of PPS7 under the heading “Comprehensive Planning”, it is stated:

“4.52 The comprehensive planning of new or extended housing areas is considered to be of vital importance in pursuit of an improved quality standard. Piecemeal development may result in the undesirable fragmentation of a new neighbourhood and fail to secure the proper phasing of development with associated infrastructure and facilities.

4.53 The Department would encourage land pooling by owners and developers to facilitate the comprehensive development of residential sites. Where this cannot be achieved and the comprehensive development of the site would be prejudiced, the Department will refuse the application.”

[9] The particular planning application with which these proceedings are concerned was made by Choice (formerly Oaklee Housing Association). It was submitted on 20 August 2013. The application is not for the development of the zoning in WB04/11 as a whole but it relates to a particular part of it. That part consists of 3.582 hectares. The permission sought was for “proposed social housing development comprising 90 no general needs housing units and 3 no complex needs bungalows (93 no units in total) associated landscaping, parking, site and access works”.

[10] The supporting planning statement for the application (also produced in August 2013) refers to the draft zoning designation in what became BMAP and to site requirements “associated with the comprehensive development of the zoning”. These include the submission of a concept statement, access details and the need for a minimum of 240 dwellings to be provided for social housing. At paragraph 2.5, 4.2 and 4.3, the following references appear:

“2.5 Any development on the subject site would seek to take account of the existing topography of the site and retain a satisfactory means of access to adjacent lands.

4.2 Provision of improved access arrangements to the Glen Road sufficient enough to provide a right hand turn pocket to ensure comprehensive development of the entire zoned lands can be accommodated through future phases of the development. The layout also provides a

roads layout to achieve access to the adjacent lands to ensure the proposed layout does not stifle the ability to comprehensively develop the zoned housing lands ... A comprehensive masterplan layout is provided as part of this planning application.

4.3 In accordance with PPS7 this design concept statement illustrates the ability of the site to accommodate the proposed social housing development whilst having regard to context, adjacent uses, planning policy, design and layout, amenity space and movement between linkages in the area."

[11] Annex 6 of the supporting planning statement consisted of a layout plan for the subject site with an illustrative layout of the remainder of the WB04/11 zoned lands. The roads layout showed a road going to what appears to be the boundary between the subject site and the applicant's lands. There is a label which indicates "future access". The layout was intended to show how roads access through to the remainder of the zoned area WB04/11 including the applicant's lands would be achieved.

[12] An important contextual aspect of Choice's application for planning permission relates to how in due course it acquired the land upon which the development was to take place. The land was purchased by Choice from Belfast City Council ("BCC"). The purchase occurred on 31 March 2014. The purchase price was £1,575,000 (with a deposit of £157,500.00). Completion was to take place on grant of full planning permission or 2 years after the contract, whichever was earlier.

[13] A key feature of the purchase was that the land acquired for the development did not include all of the land held by BCC. Rather, BCC deliberately retained what is colloquially referred to as a ransom strip. This consisted of a strip of land said to be key land because it held the key to and was essential for the development of other lands. In an affidavit filed on behalf of Choice in these proceedings, Kenneth Crothers, an expert witness, provides a definition of a ransom strip as follows:

"A strip of land abutting land capable of development which is needed by the developer usually for access to the land so enabling development or enhanced development. The owner of the strip frequently obtains ransom value on its sale to the owner of the development land."

[14] What occurred in this case is what Mr Crothers later described in his affidavit:

“It is not uncommon for vendors or developers of land to retain ownership of a ‘ransom strip’ between the boundary of the land in sale or development and adjacent land with development potential thereby creating the opportunity to obtain ‘ransom value’ for that strip.”

[15] The strip of land not sold by BCC to Choice was thus kept by BCC so that it could extract ransom value from those whose lands form part of the BMAP zoning and who wished to have their lands developed.

[16] The applicants in this judicial review were such persons.

The course of Choice’s Planning Application

[17] Choice’s application for planning permission was granted by the Department on 4 March 2015. This is the decision now impugned by the applicants in this judicial review.

[18] It is unnecessary, for reasons which will become clear, to go into detail about the decision making process relating to the grant of this permission but the following points of relevance to this decision are worthy of highlighting:

- (a) The applicants objected to Choice’s application for planning permission. A letter of objection was sent by Turley Associates on behalf of the applicants, on 4 November 2013. *Inter alia*, this letter pointed out that the configuration of the application effectively created a ransom strip which rendered the applicants’ lands inaccessible. It was argued that this situation was fundamentally prejudicial to the object of comprehensively developing zoning WB04/11. It was also argued that PPS7 and policy QD2 were not being observed.
- (b) The importance of this letter for present purposes is that it will have placed Choice on clear notice of the views of the applicants in this case.
- (c) In December 2013 there was a meeting between representatives of the applicants in this case and officials of BCC. At this meeting the council explained its view that it was retaining its ransom strip in order to extract what it viewed as “best value” for the land.
- (d) In the aftermath of this meeting the applicants were in direct contact with Choice about the situation. At this stage Choice were negotiating with the council for the purchase of the lands, the subject of its planning application.
- (e) The professional planning report of the Planning Service issued on 10 April 2014. The applicants’ objection was before them but notwithstanding this the development control group recommended the grant of planning permission.

- (f) Approval was also recommended by the Planning Service to Belfast City Council on 17 April 2014.
- (g) Further objections were received by the Department from the applicants herein dated 13 June 2014 and a meeting between the two was held on 18 June 2014.
- (h) The case was considered in the form of ministerial submissions on a number of occasions *viz* 17 September 2014, 24 October 2014 and 10 February 2015. The first of these submissions referred to the strip of land within the ownership of BCC and said it could be “the key link to developing land in the remainder of the housing zoning”. The submission went on to note that the objector’s objection would have to be fully considered. The second submission depicts some further consideration of the issue. It noted that “comprehensive planning is a material consideration especially in cases where proposals relate to the partial development of a site zone for housing as is the case here”. There is clear reference to the inclusion of the strip of land prejudicing comprehensive development of the zoning and to the internal roads layout stopping short of the objector’s land so rendering the land inaccessible contrary to planning objectives set in PPS7. A development in the case since the last submission was stated to be that there had been a meeting with the applicants where the objection was discussed. This had been on 10 September 2014. In the light of this, officials had written to the applicant for planning permission requesting an amended plan to show the access road extended to the boundary of the objector’s land. A further update was promised. The update came on 10 February 2015 by way of a further submission. This rehearsed the history. It indicated that the planning applicant had declined to do as they had been asked: that is to extend the road boundary to the objector’s land. Choice had explicitly disagreed with the argument that their proposal prejudiced comprehensive development of the site and this is recorded in the submission. The submission referred to there being two options before the minister:

“Option 1 – The Department reasserts its view that the red line must be extended as requested by the Department in its letter dated 24 October 2014. If the applicant is not willing or able to do so, then the application is refused. The applicant would have a right to appeal and the final decision would rest with the Planning Appeals Commission. In turn the PAC would face a possible JR, rather than the Department.

Option 2 – The Department accepts the [planning] applicant’s argument that it is unnecessary to extend the red line. This approach is contrary to the Department’s

stated requirements and leaves the objector's land inaccessible. This course of action may leave the Department open to judicial challenge by the objector."

[19] The submission ended with recommendation that the Minister consider how he wished to proceed.

It appears that the Minister made a decision seeking the issue of a decision notice in favour of the application for planning permission speedily after receiving the submission. No reasons were provided by the Minister for his decision. The formal permission issued on 4 March 2015.

The Judicial Review Application

[20] The applicant's application for judicial review of the Department's decision was launched on 29 May 2015.

[21] Leave to apply for judicial review was granted by the court on 23 October 2015 after a contested hearing. In the course of the hearing, the issue of the applicants' delay in seeking judicial review was contested by the Department and by Choice. On the substantive grounds for judicial review, the Department made no submissions. The court made a ruling on the delay issue and did not defer the issue to the full hearing. In respect of that issue the court found as follows:

- (i) That given the strong emphasis on promptitude in planning applications, it could not be said that the applicants' application had been made promptly.
- (ii) However, notwithstanding this, the court was prepared to extend the time for the receipt of the application to the date when it was received. This extension was granted because:
 - (a) The court accepted the applicants were not expert professionals in planning matters, although they did have professional assistance.
 - (b) The applicants, as executors of an estate, were allowed some leeway as there was a need for them to consult with the beneficiaries under the deceased's will before deciding to proceed.
 - (c) The court was satisfied that some of the delay had been brought about by the failure of the Department to provide access to a variety of key documents which ought to have been on the planning file and/or the Department's website but were not. The court estimated that the delay this entailed was at least in the region of 3 weeks ending on 21 April 2015.

- (d) There had been a failure by the Department to reply to correspondence the applicants had sent which even at the date of the leave hearing had not been remedied.

[22] In the above circumstances, the court considered that the short delay in initiating the proceedings was excusable.

[23] The court also indicated that if it had had to decide the issue, which in fact it did not have to do, it would have been willing to extend the time in this case also on public interest grounds. A significant BMAP zoning was at issue in the case. It provided for a minimum of 240 units of social housing in an area in which this was badly required. The goal of comprehensive development, it seemed to the court, was endangered by the impugned decision and some investigation into this was therefore required, given that there appeared to be grounds for believing that the Department had not fully or substantially applied or considered the relevant policy framework which was engaged in the making of its decision.

[24] At the hearing before the court on 22 October 2015 the court expressly considered whether it should refuse leave because of the lack of promptitude given that there was said to be prejudice caused to Choice should it grant leave.

[25] In particular it was submitted that Choice would be prejudiced because it had entered a contract with BCC for the purchase of the lands in question. Additionally, it had obtained grant aid for the development from the Northern Ireland Housing Executive. Choice had also entered into a contract with contractors for the construction of the housing on the site. Notably this contract was entered into within a very short time after the grant of the planning permission and well before the overall time limit in judicial review of 3 months had expired.

[26] The court declined to refuse leave on the basis of prejudice to Choice. Among the reasons given for the court's stance on this point was that the court was entirely satisfied that Choice, at all material times, was fully aware of the existence of the applicants and the applicants' outlook and interest in relation to Choice's application for planning permission. The possibility of the applicants' mounting a judicial review challenge to any grant of planning permission to Choice was plainly there. Accordingly, in so far as Choice decided, well within the outer time limit for any judicial review application which the applicants might decide to bring, to enter into contracts with others for the purpose of giving effect to their permission (which it was perfectly entitled to do), it must have known and appreciated that it was running a risk. Unfortunately for them the risk materialised in this case.

Post Leave Developments

[27] In the aftermath of the grant of leave to apply for judicial review there have been some important developments. Apart from the filing of further affidavit evidence by both Choice and the applicants, BCC (which had notice of the leave

hearing but did not appear at the leave stage) sought and obtained the court's leave to take part in the proceedings. As a result, BCC has also placed affidavit evidence before the court.

Most importantly, without filing affidavit evidence, the Department, through its solicitors, indicated that they had been instructed not to contest the judicial review.

[28] By a letter of 10 November 2015 the Department's solicitors proposed that there should be a remedies hearing in respect of the case.

[29] In the light of this development the matter was mentioned before the court on 26 November 2015. There was general agreement that the matter should proceed to a remedies hearing. As the Department had only indicated in their solicitor's letter of 10 November that at the time of the impugned decision proper consideration had not been given to a material planning policy, the court requested that the Department, prior to any remedies hearing, should provide additional detail about its reason for not defending the judicial review.

[30] On 16 December 2015 additional detail was provided in a letter from the Department's solicitors. It was indicated that the Department accepted that "the comprehensive development of the entire zoned site [was] a material consideration in the application for development of part only. The final paragraph of the policy which prohibits 'unsatisfactory piecemeal development' on sites zoned for housing [was] therefore applicable to the present application".

[31] The letter went on to state that the Department did not accept the applicants' contention that the policy prohibited the grant of planning permission for part of the zoned site in circumstances where the owner of that part proposes to exercise private property rights in a manner which controls or regulates access to the remainder of the site by other owners. However it was accepted that policy required that an application for partial development should demonstrate how this could be achieved in a manner which enabled the development of the entire site in a way which was satisfactory to the Department.

[32] While noting that the wording of the key site requirements for the zoning was slightly different to the wording of policy QD2, the Department went on to indicate that it did not consider that there was a difference in substance. In the end, the letter went to say that "in deciding to grant planning permission these planning policies were not properly taken into account in the sense that proper consideration was not given to the meaning and requirements of the policy or to the question of whether the decision to grant planning permission would be in accordance with policy or a departure".

[33] The revelation was also made in the letter of 16 December 2015 that on the day after the Minister's decision further consultation advice had been presented to the Department by Transport NI. The Minister at the time of making his decision

had not been aware of this advice and accordingly “these matters do not appear to have been fully taken into account”.

[34] When the letter of 10 November and that of 16 December are read together it is further plain that the Department did not contend that the same decision as that contained in the impugned decision would inevitably be reached if all material considerations were taken into account – both those relating to comprehensive development and those relating to Transport NI’s consultation response.

The Remedies Hearing

[35] The court agreed to the proposal that there should be a hearing to consider the issue of the appropriate remedy, if any, which should be granted in the light of the concessions made by the Department and in the light of its decision not to defend the judicial review. Below the court will outline the position adopted at the hearing by the parties.

The applicants

[36] On behalf of the applicants Mr Scoffield QC, in both oral and written submissions, placed emphasis on the significant concessions made by the Department. In his view, the concessions were fundamental and went to the root of the decision to grant Choice’s planning permission. In addition to the concessions made in respect of the grounds of judicial review in the Order 53 statement, counsel also relied on the revelation made by the Department in respect of the information from Transport NI which had not been available at the date of the Minister’s decision. While there was no ground of judicial review which was on this point, nonetheless, it was significant and the court should take it into account. It was another instance of policy not being considered.

[37] In terms of legal principle, Mr Scoffield’s submission was that in planning matters where the decision-maker had been found to have acted or had conceded acting unlawfully the normal consequence should be that the resultant planning permission should be quashed. In the present case the neglected policy was a failure by the Department to take into account a relevant consideration. The breach in this case, he argued, was a failure to have regard to a material consideration contrary to Article 25(1) of the Planning (Northern Ireland) Order 1991. In these circumstances the court should grant the remedy of *certiorari*. Mr Scoffield cited the well-known case of Gransden and Co Limited v Secretary of State for the Environment (1987) 57 P&CR 86 and the less well known case of Tata Steel Limited v Newport City Council [2010] EWCA Civ. 1626 in support of his submissions.

[38] While counsel accepted that there can be exceptional cases where the general approach he contended for might not be applied, such cases were exceptional and, in his submission, this case did not fall within an exceptional category. This was particularly so as the Department itself had conceded that it could not say that the

decision on Choice's planning application, if referred back to them, would be the same if the Minister had proper regard to all relevant considerations. Insofar as it might be contended that the planning permission should not be quashed because of the applicant's delay in mounting the judicial review this, according to Mr Scoffield, had been cured by the court's express grant of an extension of time to bring the proceedings, a decision made at the leave stage. In respect of the issue of prejudice to Choice were the planning permission to be quashed, Mr Scoffield argued that any prejudice was as a result of the fact that once the planning permission had been granted Choice "rushed to enter contractual commitments within weeks". In respect of the purchase of the land from Belfast City Council, Choice, in fact, had entered into legal arrangements well before the planning permission was granted. Mr Scoffield relied also on BCC's indication in an affidavit filed before the court that they would not intend to rescind the contract for the sale of the land. It was also submitted by counsel that Choice might be protected from legal liabilities to their building contractor because of the terms of additional Clause Z7.5 in the relevant building contract. Insofar as the issue of what might happen to grant aid from the Northern Ireland Housing Executive provided to Choice, Mr Scoffield argued that as Choice had not placed sufficient evidence before the court in respect of the grant aid arrangements the court would be unable to form any opinion about what degree of prejudice might result, if any.

[39] Mr Scoffield also addressed the issue of where the public interest lay in respect of the facts disclosed in this case. In his submission the public interest favoured the comprehensive development of the BMAP zoning which had been prejudiced by the grant of planning permission to Choice. He put the point pithily as follows:

"A plea based on retaining the 92 permitted dwellings is at the expense of jeopardising the (minimum) further 148 dwellings for social housing which planning policy dictates as being required to be provided. This is the core public interest at issue in this case."

[40] Apart from the public interest, Mr Scoffield contended that his clients' own interests were of importance. In particular, the applicants remained cut off from access by reason of BCC's ransom strip which was being viewed as key land - but this was occurring only because the entire site was not being developed comprehensively.

The Department

[41] Mr McLaughlin BL for the Department expressed to the court the Department's position of neutrality in respect of the issue of remedy. Specifically, he did not wish to advocate any particular approach, nor did he wish to make any submissions on the issue of alleged prejudice to the interests of Choice or BCC.

Choice and Belfast City Council

[42] Mr Beattie QC appeared on behalf of Choice. Mr Anthony BL appeared on behalf of BCC. For practical purposes, the position of both was similar: namely that the court should either grant no relief or, in the alternative, a declaration of unlawfulness only. Both parties also offered the further suggestion that if the court was minded to grant an order of *certiorari*, it should, instead of doing so, exercise its powers under section 21 of the Judicature (Northern Ireland) Act 1978 to remit the matter to the Department with a direction to reconsider it and reach a decision in accordance with the ruling of the court.

[43] In respect of Choice, Mr Beattie reminded the court that there was an acute social housing need in West Belfast and that Choice, a non-profit making entity, was the applicant for planning permission and was actively seeking to provide a substantial contribution to meeting that need. In doing so, he pointed out that Choice was supported by grant aid from the NIHE. A total of £5,620,329.23 in grant aid he claimed was at risk if there was a failure to complete the planned project on which Choice was engaged and this might “result in the grant being recovered with interest”.

[44] Mr Beattie submitted that Mr Scofield was wrong to suggest that Choice might be protected against litigation by its building contractor by reason of Clause Z7.5 of the building contract. In his submission, the contract entered into was absent any provision relating to planning permission.

[45] In respect of the ransom strip, Mr Beattie asserted that Choice had no objection to the road they intended to build being used for access to the adjoining land. In particular, it was not Choice’s planning permission which prejudiced comprehensive development of the zoning. Rather, it was BCC’s ransom strip which was the “potential culprit”.

[46] Counsel’s view was that delay remained a live issue in the context of remedies. In this regard he quoted paragraph 14.51 of Larkin and Scofield’s, *Judicial Review in Northern Ireland*. Reliance was also placed by Mr Beattie on Re Aquis Estates Limited [2000] NIJB 1 and Corbo Properties Application [2012] NIQB 107, as examples of cases where unlawfully obtained planning permissions had not been quashed by the court.

[47] Overall Mr Beattie’s analysis was that the real issue in the case was between the applicant and BCC and in this regard Choice could not compel BCC to allow access. In support of this, in his skeleton argument the following comment is made:

“The case represents an attempt to use planning policy to trump property rights and the statutory duty [under the Local Government Act (Northern

Ireland) 1972] imposed on BCC" *i.e.* the obligation to achieve best price.

[48] In the conclusion section of his skeleton argument, the court was reminded that Choice had committed no offence and was suffering on-going prejudice.

[49] Mr Anthony BL supported the central submissions of Mr Beattie – the delay of the applicants in seeking judicial review; the adverse financial consequences which would be sustained if NIHE grant aid were to be lost; and the public interest in the provision of social housing. He also quoted authority which chimed with Mr Scofield's submission that unlawful decisions should ordinarily be struck down and relief granted save in exceptional circumstances (see Horner J in Corbo Properties (*supra*) at paragraph [45]). From the same authority, counsel drew attention to paragraph [49] which spoke about the needs of good administration. In particular Mr Anthony quoted the following words:

"In some cases good administration will dictate that the relief is granted. In other cases good administration will demand that relief should be refused. It all depends on the particular facts and circumstances of that case."

Further cases cited by Mr Anthony included portions of the judgment of Gillen J (as he then was) in Re Omagh District Council's Application [2007] NIQB 61 and portions from the judgment of Girvan LJ in Re Downes Application [2007] NIQB 1 (not a planning case).

The court's assessment

[50] The court has considered the totality of submissions made by the parties. It accepts that the appropriate remedy where unlawfulness is established must take account of the particular circumstances of the case before the court. However, this is not inconsistent with the court accepting, as it does, that where unlawfulness is established or conceded, generally in the context of planning applications the remedy which should follow will be a quashing order. In the court's view, such a position is consonant with the rule of law as a general concept and with the requirements of good administration but the court also accepts that it may have to deviate from the norm in exceptional cases where this would be appropriate. Accordingly the court should be prepared to deviate from the norm where such a step is called for.

[51] The question in this case is whether a deviation from the norm is required.

[52] In this regard the court is content to recognise that in this case there are two sets of broad circumstances in play which might lead to the result which Choice and BCC favour. These are where: (i) the issue of the applicant's delay in bringing the

proceedings looms large and may have been material to the course of events and (ii) the issue of prejudice to a party or others which may arise in the event that the court grants a quashing order. It is to these issues that the court will now turn.

Delay

[53] In the present case the issue of delay in making the judicial review application was fully canvassed in the course of a contested leave hearing. Having heard the arguments the court extended the time in so far as this was required. This is not a case where the issue of delay was deferred to the final hearing or only provisionally decided. What then is the effect of this? In particular, can the court have regard to the issue of delay when determining what relief, if any, it can grant if the application subsequently is resolved in favour of the applicant or is conceded?

[54] If the court at the leave stage grants leave notwithstanding a lack of promptitude on the part of the applicant – for reasons such as those explained in paragraph [21] *supra* - the effect of this is to enable the application to proceed and it will not be appropriate for the court at the full hearing to revisit the issue of delay under Order 53 Rule 4. However this does not mean that delay cannot at the substantive hearing be viewed as relevant to the grant of relief.

[55] The above analysis is consistent with that of Weatherup LJ in the recent Court of Appeal decision in the case of Re Laverty's Application [2015] NICA 75 where the position in respect of delay under Order 53 Rule 4 is set out: see paragraph [21]. In a summary of the law, it is stated that "On a substantive hearing delay may impact on the relief granted". The court will proceed on the basis that this is correct.

[56] The usual situation where delay may impact on the relief granted will be where the delay itself can be said to have produced prejudice to an affected party, in planning cases, usually the developer. An obvious example would be where a party has acted in the confident belief that the time in which a judicial review application could be taken challenging a decision on which that party relies had passed so enabling steps to be taken which give effect to the decision in relative safety but where nonetheless, for one reason or another, the time for challenge is extended. In this type of case the delay in making the challenge may cause or contribute to prejudice to the affected party.

[57] The court has asked itself whether the present case is such a case and whether the applicants' delay has itself brought about prejudice to the developer or BCC. On balance the court does not consider that the delay in this case has had that effect. While the judicial review may have generated a degree of prejudice, in particular, to Choice, the court is inclined to the view that this does not arise from the short delay on the applicants' part in initiating the proceedings (which were underway within three months of the impugned permission) but arises from the fact that proceedings have been taken at all.

[58] The chronology of events supports this conclusion. The land for the proposed development was purchased by Choice in 2014 long before the planning permission was granted. When the permission was granted on 4 March 2015 Choice would have been well aware of the risk that the applicants might seek judicial review. However, notwithstanding this, Choice completed the 2014 purchase of the land from BCC and entered into a contract with a building contractor both before the end of March 2015. The contractor started preparatory work on site speedily. This plainly was not a situation in which Choice was awaiting the expiry of the period within which a judicial review challenge might be mounted. If Choice had been, it might have been expected that it would have held off committing itself in material respects until at least the period of three months had passed from the date on which the planning permission had been granted.

[59] The reality, it seems to the court, is that Choice was faced with the issue of how it should manage the risk of judicial review which the applicants represented. The deleterious effects which arise from the applicants' challenge, on a proper analysis, do not arise from the absence of promptitude on the applicants' part. Their source is the existence of the judicial review not the timing of it.

Prejudice

[60] The court is willing to accept that on the basis of the evidence which has been placed before it that if it quashes the planning permission this will involve a measure of prejudice to Choice and, to a lesser extent, BCC.

[61] A quashing order will have the effect of rendering the grant of planning permission now enjoyed by Choice a nullity. This will mean that the planning authority will have to make a fresh decision. The impact this may have is uncertain. At the least, the process will be likely to delay the realisation of Choice's development. There may, as a result, be knock on effects and perhaps litigation. It does not seem likely, though it is possible, that there would be litigation between BCC and Choice but Choice's builder may be able to sue for losses he might sustain. Issues concerning the interpretation of contractual provisions may arise. The site will in the meantime have to be maintained and issues may arise in connection with the financing of the project and with the grant aid provided or ear marked for the project. The court lacks information as to what stance the NIHE might be minded to adopt.

[62] At worst, the application for planning permission might be refused. It might turn out that the work already done would in the end be wasted, though this cannot be assumed. Again, litigation may ensue. It is possible that grant aid may be lost altogether or recovered.

[63] The court is unable to quantify the exact costs of the various scenarios with any exactitude especially as much of what is said above involves more than a little speculation. But the court is willing to accept that prejudice to Choice may indeed

arise, greater in the latter than the former scenario. The question which arises therefore is whether the court should grant no form of coercive relief in this case to the applicants because to do so creates prejudice to Choice? It seems to the court that the resolution of this issue involves the court balancing the general norm of quashing decisions which are unlawful against the prejudice which may be caused by doing so.

The balance

[64] The court is of the clear view that this is a case in which it should quash the decision impugned notwithstanding the fact that this decision may cause a measure of prejudice to Choice (or BCC). It has arrived at this view for the following main reasons:

- (i) First of all, it is evident that the subject matter of the impugned decision in this case relates to a matter of considerable importance. At issue is how the zoning identified in BMAP making provision for much needed social housing in West Belfast is to be treated. The court is not dealing with an isolated application or with a minor proposal within an area plan.
- (ii) Secondly, the unlawfulness in this case goes to the root of the planning authority's functions. There has, on any view, been a substantial failure by the planning authority in this case to consider material considerations and reach a planning judgment which reconciles the various interests and policies at issue.
- (iii) Thirdly, the court is satisfied that this case is one where it is feasible for the planning authority to decide afresh the application. The case is not one where it is too late for this to be achieved.
- (iv) Fourthly, to leave matters to lie where they have currently come to rest would be inherently unsatisfactory where serious issues arise about the comprehensive development of the zoning. These issues should not be resolved by an unlawful decision.
- (v) Fifthly, the court is of the view that the grant of a declaration or similar relief in this case has little or no attraction as it would leave the impugned planning permission in place. While suggestions were made at the hearing to the effect that, if necessary, the planning authority could later revoke the planning permission if it thought it right to do so, such a course is speculative and, in reality, is no substitute for the court itself now providing the appropriate relief.
- (vi) Sixthly, the court cannot ignore the fact that the applicants have a legitimate interest of their own in taking these proceedings. They have

an expectation that a decision affecting their interests should be determined lawfully. The course of denying them an effective remedy should only be resorted to exceptionally.

- (vii) Seventhly, Choice was aware of the position of the applicants and of the risk of judicial review which they represented. In these circumstances it was open to them to make provision for this contingency and so mitigate any potential loss which might arise.

Other Issues

[65] There were a variety of other issues raised in the course of the remedies hearing to which the court will provide a response.

[66] One such issue related to the new information that the Minister's decision was made at a time prior to the receipt of further consultation information provided by Transport NI: see paragraph [33] *supra*. It would appear from material put before the court that an issue had emerged about the stress the comprehensive development of the zoning might place on a near-by roundabout. This may need to be alleviated before the comprehensive development of the site takes place. For Choice, Mr Beattie argued that there are available ways of dealing with this issue and that a fair resolution of this issue was possible without the court making a quashing order.

[67] The court's reaction to this issue is that there may well be strength in Mr Beattie's submission on this point. While the court need not decide the issue, in view of the conclusions it has already reached, it is content to make it clear that its consideration of this issue has not affected the view overall which it has reached. Its conclusion would have been the same whether this roads issue had arisen or not.

[68] As noted earlier, both Mr Beattie and Mr Anthony had submitted that a way the court could deal with the issues of remedy was to invoke section 21 of the Judicature (Northern Ireland) Act 1978 whose terms have briefly been referred to above (see paragraph [42] *supra*). In other words, the court could decide simply to refer the matter back to the planning authority without quashing the decision. The court has not been persuaded that this course of action is one which it should adopt in this case. A referral back would in law leave the planning permission extant and, while the planning authority would have to give effect to the court's judgment, it is difficult to see how this would work in practice. It seems to the court that section 21 was principally intended to be of assistance to the court in cases where it was open to a decision maker simply to reconsider a decision and substitute a new decision for an old one. That, however, is not the case here as the permission which has been granted confers a legal right which continues in law unless and until it is set aside or it expires.

[69] Finally, the court wishes to acknowledge that the parties drew to the court's attention to the fact that the planning authority to which the application for planning permission would go, in the event of a quashing order, would now be Belfast City Council. At the same time, it was suggested that the Council, because of its interest in the matter of this application, would not be the appropriate authority to deal with it. In these circumstances, the Department may have to exercise its powers under section 29 of the Planning Act (Northern Ireland) 2011 to call in the application.

[70] The court is of the view that the Department should be the authority which deals with this case in the future. If this means exercising call in powers so be it. However the court is anxious that whatever route is adopted the matter should be dealt with as soon as possible.

Conclusion

[71] In all the circumstances of this case the court will order *certiorari* to quash the decision of the planning authority impugned in this case by the applicants.

Application No: P/2013/0242/F

I have requested speaking rights on behalf of the applicant Brian McConville, MJM Group.

Brian and his family are one of the largest employers in this area; they are significant contributors to the local economy and instrumental in driving improvement in this locality including playing a leading role in Newry Chamber's intervention in saving the A&E services in Daisy Hill and raising more than £20,000 last year for Southern Area Hospice. Mr McConville would be here today if he hadn't already committed to attending the largest cruise ship trade show in the world this week, in the US, which will help generate contacts to ensure the future of the 240 + MJM jobs in Newry.

Brian also has extensive farming interests and at all times he acts with a responsible attitude towards the land that he manages for commercial or agricultural usage.

This site has been zoned for development in the area plan since the late 1980's with Mr McConville being the third developer to take forward the scheme; It consists of 200 houses ranging from social housing, and affordable homes to large detached family houses spread over a number of different phases and includes a new roundabout, distributor road and upgrades which are within the developer's scope of works.

Mr McConville has at all junctures, expressed his desire to create a responsible scheme which satisfies, to the best of his ability, the concerns of local residents and political representatives. He acquired this site with the benefit of a live planning application, and he has not changed the layout of this scheme. He has at all times been content not to attempt to revisit any aspect of this scheme, in the hope that this would have facilitated the smooth progression of the application. Mr McConville has been patient in awaiting a decision on this application and he has endeavoured to engage with the local community in an attempt to resolve their concerns, which primarily relate to the existing infrastructure at Doran's Hill but also to the capacity of the local road network post-construction.

According to Northern Ireland Housing Executive's report in 2017 there are more than 37,000 applicants on the housing waiting list. Our own Council Chair met recently with a housing association to discuss the lack of housing in our area which they say is at crisis point. At a recent skills forum hosted by the Council we also heard from one of our leading businesses. They talked about how a lack of suitable housing is a blocker for them encouraging more of their global team to work in their headquarters in Newry. Indeed, we hope to relocate some of our senior executives from our Southampton office to Newry should this scheme be successful.

It is our view therefore, that there is a clear need for quality housing schemes in Newry, such as the one we are taking forward today. This application has satisfied the planning requirements and those of the statutory consultees at this stage including the implementation of an extensive wildlife management plan prior to, and during all phases of construction. The current agricultural and drainage work being carried out on the site is being implemented with full awareness of the initial version of this plan.

This application last came before this committee exactly 12 months ago. At that time, it was deferred by Council, to pursue discussions with DfI Roads Service around the potential for upgrades to the road network around Doran's Hill. I was not involved at the time but I was at an earlier stage, on behalf of a different applicant, when there was extensive consultation carried out with the local community and political representatives on this key issue despite it not being a condition of planning.

Brian and our team returned to this primarily engaging through elected representatives. In recent months efforts to find a solution to the concerns of local residents around road improvements on Doran's Hill have intensified. O Callaghan Planning were commissioned by Brian McConville to liaise with a proficient highway engineer, and they came up with four potential options incorporating road widening and a footpath linking the Barcroft Park area through to the development site and up to Thomas Davis GFC. These proposals were discussed at length in meetings with DfI Road Service both, with and without political representatives, and it was made clear that these improvements would be delivered (within reason) at the developer's expense to support the local community.

Unfortunately, in the last number of weeks DfI Roads Service have confirmed directly to us that despite commending the efforts we had gone to, none of these options meet their standards and they have genuine safety concerns. They have verified that they cannot endorse a scheme that is not 100% in accordance with their current standards.

In representing Brian McConville I can clearly say that every effort has been made to find a solution to this issue but at the current time we do not have an option within our gift. We do however, wish to go on record to say that if we are successful with planning we shall continue to work with the community, elected representatives and DfI Road Service to try to find a solution to the satisfaction of the local residents and the standard expected from DfI Road Service.

We appreciate the concerns of local residents. Indeed, we understand that there is concern with the existing arrangements on Doran's Hill. However, if this application fails, the problem will not be resolved. This proposal has been recommended for approval in part owing to the considerable investment committed to the creation of a new trunk road. We believe that this will alleviate many of the concerns presently being expressed.

We wanted to come here today saying we had a solution to the desire for a footpath on Doran's Hill and that we can resolve all the issues (which are not conditions of planning) brought by local residents individually and collectively. If one looks at the pattern of development along Watsons Road in the recent past, this has entailed developers improving the road across their own frontage. If this application is permitted, Watson's Road would be improved all the way from Doran's Hill to Liska Road. These improvements would not have been undertaken without the private sector.

We cannot resolve the footpath issue at this stage, however, what I will say is that we have put every effort into achieving solutions, into being a good neighbour, and we will continue to do so. We ask the committee to note our efforts and our commitment to resolving this issue, particularly in the context of DFI Road Service not formally seeking these improvements.

If successful today we want the development to be an extremely appealing place for local people to want to live and settle and something which we in Newry City are proud to be a part of. It is critically important for the continuation of our business activities, for job creation and retention and for the overall housing needs of the area that we get a decision on this application today.

ITEM NO	12			
APPLIC NO	LA07/2017/1895/F	Full	DATE VALID	12/12/2017
COUNCIL OPINION	REFUSAL			
APPLICANT	Mr Brian and David Gallagher 34 Castle View Jonesborough Newry BT35 8GZ		AGENT	Blackgate Property Services Ltd Mourne House 41-43 Downshire Road Newry BT34 1EE
LOCATION	Approximately 55 metres South East of No. 6 Molly Road Lower Jonesborough Newry BT35 8JR			
PROPOSAL	Erection of dwelling and detached garage, new landscaping and associated site works in compliance with PPS21-CTY6 - personal and domestic circumstances.			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			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 there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

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

3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the site is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and the proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.

4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and would therefore result in a detrimental change to the rural character of the countryside.

5. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy NH6 of Planning Policy Statement 2, Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.



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

Application Reference: LA07/2017/1895/F

Date Received: 06.12.2017

Proposal: Erection of dwelling and detached garage, new landscaping and associated site works in compliance with PPS21-CTY6 - personal and domestic circumstances.

Location: Approximately 55 metres South East of No. 6 Molly Road Lower, Jonesborough, Newry

Site Characteristics & Area Characteristics:

The site includes the northern section of a larger agricultural field situated alongside the public road. The land falls to the East in what is an otherwise rural area located in the Ring of Gullion AONB outside the village of Jonesborough.

Site History:

P/2014/0998/F

Lands 55m South-East of No.6 Molly Road Lower, Jonesborough, Co Armagh

Erection of farm dwelling and garage

Permission Refused: 23.12.2015

Planning Policies & Material Considerations:

Banbridge, Newry and Mourne Area Plan 2015.

Strategic Planning Policy Statement for Northern Ireland

Planning Policy Statement 21

Planning Policy Statement 2

Planning Policy Statement 3 / DCAN 15

Consultations:

Transport NI – No objections.

NI Water – No objections / standing advice

Objections & Representations

4 neighbours notified on 05.01.2018

Application advertised on 10.01.2018

No objections received.

Letter of support from Dr. Hany El Naggar – Consultant Neurologist.

Letter of support from John Paul Peters – Social worker.

Consideration and Assessment:

The proposal lies within the Rural Area / AONB as depicted in the Area Plan. Whilst there are no specific objections from the Area Plan – determining weight will be afforded to the relevant planning policies as stated below.

PPS21 Sustainable Development in the Countryside.

As the proposed dwelling is to be sited outside the development limit in the rural area PPS21 is applicable. Policy CTY1 makes provision for a new dwelling in the countryside where the proposal meets one of the exceptions listed. The agent confirmed he wished the application to be assessed against policy CTY 6 in line with the supporting statement.

With regard to policy CTY 6 medical evidence has been submitted confirming the condition of the applicant. The consultant supports the application which seeks to provide single storey accommodation for David (applicant) to allow his brother to look after him (other applicant Brian). It will also accommodate respite care for the applicants' elderly parents.

Whilst the agent has said Brian's existing dwelling/curtilage cannot accommodate David, this has not been clearly demonstrated in any detail. There are no compelling or site specific reasons why a new dwelling at this rural location is absolutely necessary or why an existing single storey dwelling solution cannot be considered. It also has not been demonstrated that genuine hardship would be caused if permission was refused.

As a result of the above the proposal is considered contrary to CTY 6 (a) and (b).

As a consequence of the above considerations the proposal does not meet any of the exceptions listed under CTY 1 for a new dwelling in the countryside and with no overriding reasons why this development is essential and cannot be located in a settlement, the proposal is contrary to policy CTY 1.

In terms of CTY13 the proposal will be critically viewed from the Molly Lower Road in both directions. The site is unable to provide a suitable degree of enclosure and relies primarily on the use of new landscaping to enable the dwelling to integrate into the landscape. In terms of CTY14 the proposal will further erode the rural character of the area due to the suburban style build-up of development when viewed with the surrounding existing buildings. The proposal will be critically viewed in terms of build up from Molly Road Lower and Finnegan's Road. As a result, the proposal is contrary to CTY13 (parts b and c) and CTY14 (part b).

In terms of CTY 16 any approval notice would carry a negative condition for consent to discharge to be agreed in writing by the Council, prior to commencement to development.

Planning Policy Statement 3 / DCAN 15

Transport NI was consulted with regard to this policy criteria and have no objections to the proposal.

Planning Policy Statement 2

Policy NH6 is applicable due to the location in the Ring of Gullion AONB. The siting (for the reasons noted above) is considered unsympathetic to the special character of the AONB and therefore fails this policy criterion.

Recommendation:

Refusal

Reasons for Refusal:

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 there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.
3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the site is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and the proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.
4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and would therefore result in a detrimental change to the rural character of the countryside.
5. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy NH6 of Planning Policy Statement 2, Natural

Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

Case Officer:

Authorised Officer:

ITEM NO	D1			
APPLIC NO	P/2014/0427/O	Outline	DATE VALID	15/05/2014
COUNCIL OPINION	REFUSAL			
APPLICANT	Joseph McGivern Nadaeven Well Road Warrenpoint BT34 3RS		AGENT	
LOCATION	To the rear and south of 2 Berkley Grove Warrenpoint			
PROPOSAL	Site for dwelling			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	2	0	0	0
			Addresses	Signatures
			0	0
			Addresses	Signatures
			0	0

- 1 The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the visibility of the existing access at Berkeley Grove onto Well Road renders it unacceptable for intensification of use and is not in accordance with the standards contained in the Department's Development Control Advice Note 15.
- 2 The proposal is contrary to Policy QD 1 (Criteria a) of the Department's Planning Policy Statement 7 (PPS 7) : Quality Residential Environments, Policy LC1 (Criteria b) of the Department's Addendum to PPS7 : Safeguarding the Character of Established Residential Areas, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment.



Comhairle Ceantair
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agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0427/O

Date Received: 20.05.2014

Proposal: Site for dwelling

Location: To the rear and south of 2 Berkley Grove Warrenpoint. The application site is included in the Mourne Area of Outstanding Natural Beauty (AONB) and within an Area of Townscape Character (ATC) as defined by the Banbridge / Newry and Mourne area Plan 2015. The application site is within the settlement development limits of Warrenpoint and is approximately 10 kilometres South East of Newry city.

Site Characteristics & Area Characteristics:

The site to be developed is located to the rear and south of 2 Berkely Grove, Warrenpoint. The application is irregular in shape and is bordered to the south and west by post and wire fencing, mature hedgerows or definable boundaries to the north and east. Land within the application site rises from the south, the site is not clearly visible from the public road. To the north of the site is Berkely Grove, a small housing development accessed via the Well Road. Access into the application site is proposed through Berkely Grove and between No's. 2 and 4. The access is currently overgrown with trees and shrubs.

The application site is just outside the main town centre. The surrounding area is made up of several large single dwelling plots.

Site History:

P/1977/0897	BROSSLEY, WALL ROAD, WARRENPOINT	PROPOSED ADDITION TO DWELLING	PERMISSION GRANTED
P/1986/0126	7 SHANDON DRIVE, KILKEEL	RETENTION OF DORMER WINDOWS IN DWELLING	PERMISSION GRANTED
P/1989/0001	SITE 2 BERKLEY GROVE WELL ROAD	Detached domestic garage	PERMISSION GRANTED

	WARRENPOINT		
P/1987/1229	SITE NO.1 NEW HOUSING DEVELOPMENT OFF WELL ROAD WARRENPOINT	Site for dwelling	<i>PERMISSION GRANTED</i>
P/1983/0216	WELL ROAD, WARRENPOINT	PROPOSED SITE FOR HOUSING DEVELOPMENT	<i>PERMISSION GRANTED</i>
P/1988/0023	WELL ROAD WARRENPOINT	Housing development(11 dwellings)	<i>PERMISSION GRANTED</i>
P/1987/1140	ADJACENT TO ROSEMOUNT WELL ROAD WARRENPOINT	Road lay-out for Housing Development	<i>APPLICATION WITHDRAWN</i>
P/2005/2580/F	Nadaeven, Well Road, Warrenpoint	Extensions to dwelling	<i>PERMISSION GRANTED</i>
P/1980/1006	NADARVEN, WELL ROAD, WARRENPOINT	EXTENSION TO DWELLING TO FORM SELF CONTAINED FLAT	<i>PERMISSION GRANTED</i>
P/1989/4071	'NADAEVEN' WELL ROAD WARRENPOINT	Alterations to dwelling	
P/1997/0202	NADAVEEN WELL ROAD WARRENPOINT	Extension to dwelling and domestic Garage	<i>PERMISSION GRANTED</i>
P/2012/0219/F	Nadaeven, Well Road, Warrenpoint, Newry, BT34 3RS,	Erection of single storey side extension to dwelling	<i>PERMISSION GRANTED</i>
P/2008/0550/F	'The Haven', 8a Well Road, Warrenpoint.	Demolition of existing conservatory and side glazed porch. Construction of new entrance porch and rear extension. Extension to kitchen, utility room and shower room.	<i>PERMISSION GRANTED</i>
P/2004/1406/F	Adjacent to The Haven, Well Road, Warrenpoint	Erection of dwelling, garage, and store room	<i>PERMISSION GRANTED</i>
P/2000/1463/F	The Haven, Well Road, Warrenpoint	Sun room/conservatory extension	<i>PERMISSION GRANTED</i>
P/1992/1277	"THE HAVEN"	Erection of building	<i>PERMISSION</i>

	WELL ROAD WARRENPOINT	to enclose existing swimming pool	<i>GRANTED</i>
P/2005/1830/F	Adjacent to 'The Haven' Well Road, Warrenpoint	Erection of dwelling - change of house type.	<i>PERMISSION GRANTED</i>
P/2011/0924/F	1 Broseley Lane - Formerly Well Road, Warrenpoint,	Extension and renovations to existing dwelling and erection of garage	<i>PERMISSION GRANTED</i>
P/2007/0900/F	Lands adjacent and east of Nos 17-19 and 27-30 Drumsesk Place and adjacent and south of Nos 2 and 4 Berkley Grove, Warrenpoint (on site of existing dwelling known as 'Broseley' ('Brosely') off Well Road)	Erection of 17.No residential units comprising 7 No. private dwellings (revised house types) and 2 apartment blocks, containing 5 No.apartments each with new access road leading onto Drumsesk Place.	<i>PERMISSION REFUSED</i>
P/2005/0631/O	Curtilage of Broseley, Well Road, Warrenpoint.	Site for 4 no. dwellings within the curtilage of existing dwelling "Broseley" with new access for "Broseley" and 4 no dwellings onto Drumsesk Place.	<i>PERMISSION GRANTED</i>
P/1980/0412	4 WELL ROAD, WARRENPOINT	PROPOSED ERECTION OF DWELLING	<i>PERMISSION GRANTED</i>
P/1975/0829	THE HAVEN, 4 WELL ROAD, WARRENPOINT	PROPOSED USE OF LAND FOR ERECTION OF BUNGALOW	<i>PERMISSION REFUSED</i>
P/1977/0318	WELL ROAD, WARRENPOINT	PROPOSED SITE OF TWO DWELLINGS	<i>PERMISSION REFUSED</i>
P/2002/0821/O	Curtilage of 'Broseley', Well Road, Warrenpoint - 125m NW of Well Road, Rostrevor Road Junction	Formation of new entrance onto Drumsesk Place, Warrenpoint and provision of 5 No new dwelling sites for detached dwellings within curtilage of existing	<i>PERMISSION GRANTED</i>

	dwelling.	
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Planning Policies & Material Considerations:

The Strategic Planning Policy Statement for Northern Ireland

The Banbridge / Newry and Mourne Area Plan 2015

Planning Policy Statement 7 (PPS 7) - Quality Residential Environments

Planning Policy Statement 7 (Addendum) (PPS 7 Addendum)- Safeguarding the Character of Established Residential Areas

Planning Policy Statement 12 (PPS 12) Housing in Settlements

Planning Policy Statement 3 (PPS3) – Access, Movement and Parking

DCAN 15 – Vehicular Access Standards

Consultations:

There were three consultations issued for this proposal, see details below.

- Department For Infrastructure (DFI Roads) - This application should be refused on grounds of road safety. (09/06/2014). Following receipt of additional information a further consultation was issued to DFI Roads which they responded “taking all matters into account in relation to road safety it is the Department’s opinion that this proposal will result in the intensification in use of Berkley Grove” and their refusal comments in the initial response were still appropriate. (25/03/2015)
- NI Water – Generic response (21/07/2014)
- Environmental Health- No objections in principle to this proposal provided as per submission the development is connected to public sewerage system. (13/06/2014)

Objections & Representations

There were seventeen neighbour notifications issued for this proposal. The application was advertised in the local press on 13th June 2014. There were two objections letters received which outlined concerns with access and accuracy of the amended P1 form and site location plan. These issues will be addressed in the consideration and assessment section below. One letter of support was received from the occupiers of Brosley.

Consideration and Assessment:

The amended P1 for submitted to the Planning 16th December 2014 indicates this is an application for Full Permission, it can be confirmed that that is an application for outline permission only.

A concept plan submitted in December 2014 indicates how the proposed development will sit within the application site. It will be positioned 13 metres west of the adjoining dwelling to the east (Nadaeven) and 19 metres south of the adjoining dwelling to the north (No. 2 Berkely grove) with a F.F.L of 50.7m and will be orientated south.

The application site and immediate surrounds to the east, west and south are included in an ATC within the Banbridge and Newry and Mourne Area Plan with key features outlined as “a suburban area of large and medium sized demi-detached and

detached houses of varied design set in well landscaped gardens and many with generous plots". PPS 6 Addendum Policy ATC 2 states that "The Department will only permit development proposals in an Area of Townscape Character where the development maintains or enhances its overall character and respects the built form of the area. The Department will also require that any trees, archaeological or other landscape features which contribute to the distinctive character of the area are protected and integrated in a suitable manner into the design and layout of the development. "

Designation as an ATC puts an onus on prospective developers to produce a high standard of design, which respects and is sympathetic to the particular qualities of the area in question. Notwithstanding the acceptability of proposals in terms of other planning issues, the Department will operate a presumption against development that would detract from or fail to maintain the character of the distinct townscape displayed within an ATC. Proposals for residential development are also subject to the provisions of Policy QD 1 of PPS 7 'Quality Residential Environments'. This includes specific reference to ATCs and advises that in such areas: "housing proposals will be required to maintain or enhance their distinctive character and appearance. In the primarily residential parts of these designated areas proposals involving intensification of site usage or site coverage will only be permitted in exceptional circumstances."

This site is located within the ATC WB35 within the Area Plan, and the proposal seeks to subdivide an existing plot to create a small separate residential site within the grounds of Brosely house. This would set a dangerous precedent within the ATC and open other large detached properties up for further redevelopment. The character of the immediate area within the ATC shows distinctly large plots, this proposal would adversely affect this established character and would result in higher density development within an area designated for its detached dwellings on large plots. The adjacent dwellings of Navaeven, Brosley, The Haven and Rosemount are all large dwellings set in large plots accessed from Well Road. This site is significantly smaller than these plots and would be out of keeping with the pattern of development and overall character of the established residential area as outlined by Policy ATC2 of PPS6 (Addendum) and is therefore contrary to the ATC WB 35 zoning of the Newry and Mourne Area Plan.

Policy QD1 of PPS7 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create quality and sustainable residential development. 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. 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. In Areas of Townscape Character such as this site the housing proposals will be required to maintain or enhance their distinctive character and appearance. In the primarily residential parts

of these designated areas proposals involving intensification of site usage or site coverage will only be permitted in exceptional circumstances.

It is the opinion of the Planning Department that this site is out of keeping with surrounding development in that the adjacent land contains larger dwellings and plots. While it is acknowledged that the housing density within Berkley Grove is at a higher density than that existing within the ATC zoning, it must be recognised that Berkley Grove has the access road running through the development and does not have a back to back development that would be created here between this proposed site and No 2 Berkley Grove.

The access through the housing development of Berkley Grove is unacceptable as it would lead to an access road behind to the side and to the front of No 2 Berkley Grove which would have an adverse impact on the amenity of this property and its privacy. While the dwelling plot may be similar to those in Berkley Grove, it is to the rear of the housing development and is considered to be backland development, which is contrary to the character of the existing surrounding area. The Proposal is therefore contrary to Policy QD1 points a and h. As no exceptional circumstances have been forthcoming to warrant a relaxation of these policy grounds refusal is recommended.

Policy LC 1 of the Addendum to PPS 7 states *"In established residential areas planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD 1 of PPS 7, and all the additional criteria set out below are met: (a) the proposed density is not significantly higher than that found in the established residential area; (b) the pattern of development is in keeping with the overall character and environmental quality of the established residential area"*

This proposal would significantly reduce the existing plot sizes within the Well Road ATC and those established within the surrounding area, together with introducing a form and scale of development which is not found within the surrounding area, given that the proposal represents a backland development and this proposal would represent a precedent for introducing a significantly higher density of residential development within the surrounding area. This would open up the remaining large garden sites for future development thus eroding the established character further. While it is acknowledge that Berkley Grove represents a higher density than that within the ATC along Well Road, the spacing between buildings along Berkley Grove is broke up with the presence of the Access road and the fact that none of the properties are back to back but inside have significant distances between the existing large detached properties and Berkley Grove. Therefore the proposal is contrary to both point a and b of LC 1.

AMP 2 states that *“Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where: a) such access will not prejudice road safety or significantly inconvenience the flow of traffic;”*

DFI Roads has recommended refusal on grounds of road safety due to the narrow nature of the existing entrance into Berkley Grove and the requirements for increased site splays onto Well Road, which involves third party lands not within the remit of this application site. Further information was submitted to the Planning Department for consideration in December 2014 which the agent considered highly material to the alleged inadequate visibility at the junction of Berkley Grove and the Well Road. Having re-consulted DFI Roads on this, their refusal reasons are remain unchanged. This proposal is therefore contrary to AMP 2 of PPS 3 in that the development would prejudice road safety due to the increase in intensification of traffic utilising this existing entrance.

Recommendation:

Refusal

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

Refusal Reasons

1. The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the visibility of the existing access at Berkley Grove onto Well Road renders it unacceptable for intensification of use and is not in accordance with the standards contained in the Department's Development Control Advice Note 15.
2. The proposal is contrary to Policy QD 1 of the Department's Planning Policy Statement 7 (PPS 7): Quality Residential Environments, in that the applicant has failed to demonstrate that the proposal: (a) the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale; and (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.

3. The Proposal is Contrary to Policy LC 1 of the Departments Planning Policy Statement 7 Addendum: Safeguarding the Character of Established Residential Areas in that it has not been demonstrated that a) the proposed density is not significantly higher than that found in the established residential area; (b) the pattern of development is in keeping with the overall character and environmental quality of the established residential area.

4. The proposal is contrary to Planning Policy Statement 6 Addendum Policy ATC 2 and Policy ATC WB 35 of the Newry and Moume Area Plan 2015, in that it has not been demonstrated that the proposal maintains or enhances the overall character of the ATC zoning and respects the built form of the area.

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1. Live Applications

MONTH 2017/18	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	129	1,075	293
May	149	1,058	281
June	149	976	263
July	135	957	250
August	166	959	249
September	140	910	243
October	157	935	230
November	163	912	230
December	83	869	230
January	158	917	228
February	135	921	212

Newry, Mourne & Down District Council – February 2018

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2. Live Applications by length of time in system

Month 2017/18	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	590	192	77	72	144	1,075
May	585	192	76	65	140	1,058
June	550	163	78	55	130	976
July	535	172	73	45	132	957
August	540	170	72	40	137	959
September	488	179	71	35	137	910
October	534	171	63	27	140	935
November	507	175	60	33	137	912
December	461	178	62	38	130	869
January	510	179	69	37	122	917
February	524	185	63	38	111	921

Newry, Mourne & Down District Council – February 2018

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3. Live applications per Case Officer

Month 2017/18	Average number of Applications per Case Officer
April	67
May	62
June	58
July	50
August	50
September	57
October	58
November	57
December	55
January	50
February	54

Newry, Mourne & Down District Council – February 2018

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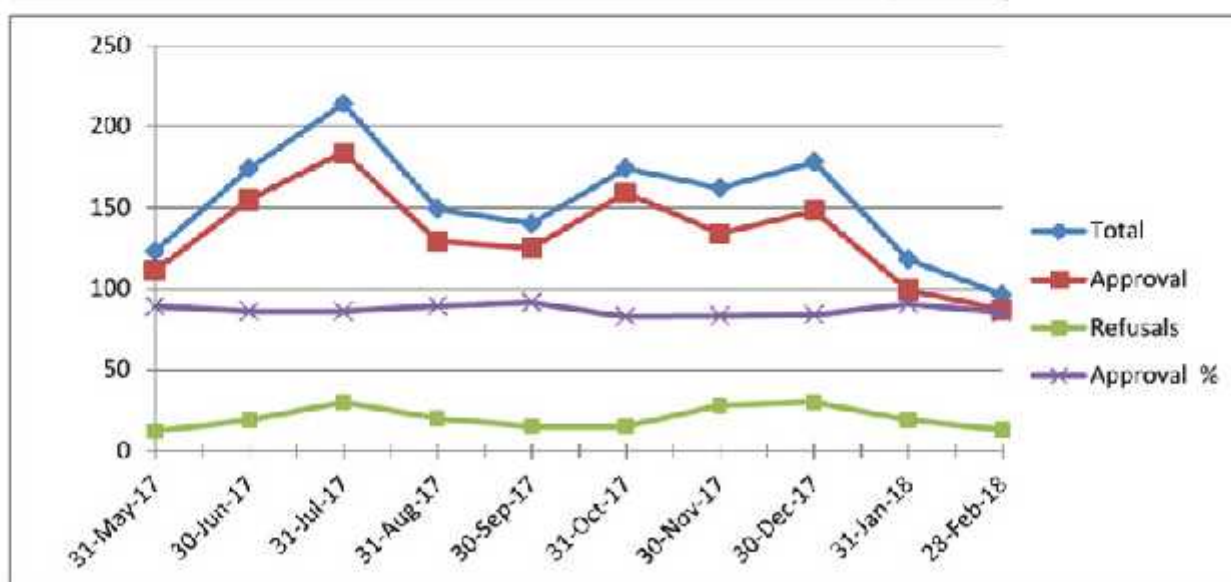
4. Decisions issued per month

Month 2017/18	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	123	104
May	174	148
June	214	170
July	149	124
August	140	122
September	174	154
October	162	146
November	178	160
December	118	103
January	96	87
February	136	116

Newry, Mourne & Down District Council – February 2018

5. Decisions Issued YTD

Month 2017/18	Number of Decisions Issued (cumulative)	Breakdown of Decisions	
		Approvals	Refusals
April	123	Approvals (111)	90%
		Refusals (12)	10%
May	297	Approvals (266)	90%
		Refusals (31)	10%
June	511	Approvals (450)	88%
		Refusals (61)	12%
July	660	Approvals (579)	88%
		Refusals (81)	12%
August	800	Approvals (704)	88%
		Refusals (96)	12%
September	974	Approvals (863)	89%
		Refusals (111)	11%
October	1,136	Approvals (997)	88%
		Refusals (139)	12%
November	1,314	Approvals (1,145)	87%
		Refusals (169)	13%
December	1,432	Approvals (1,244)	87%
		Refusals (188)	13%
January	1,528	Approvals (1,331)	87%
		Refusals (197)	13%
February	1,664	Approvals (1,447)	87%
		Refusals (217)	13%



Newry, Mourne & Down District Council – February 2018

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6. Enforcement Live cases

Month 2017/18	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+ yrs	Total
April	292	126	95	87	55	83	738
May	286	137	89	91	53	85	741
June	295	138	91	93	53	88	758
July	311	142	89	88	61	88	779
August	321	139	93	80	70	88	791
September	326	146	89	80	74	89	804
October	290	167	87	84	75	91	794
November	277	181	91	76	77	99	801
December	281	192	87	80	79	105	824
January	273	192	96	76	82	111	830
February	279	199	93	77	85	112	845

7. Planning Committees 2017/2018

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/ Deferred for future meeting
26 April	26	19	7
24 May	39	28	11
21 June	34	18	16
19 July	32	20	12
16 & 23 August	36	19	17
13 September	16	10	6
11 October	22	13	9
8 November	38	23	15
6 December	28	15	13
10 January	17	8	9
7 February	23	16	7
Totals	311	189	122

Newry, Mourne & Down District Council – February 2018

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8. Appeals

Planning Appeal Commission Decisions issued during February 2018

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Other decisions
Newry & Mourne	19	5	2	2	1 withdrawn
Down	7	3	1	2	
TOTAL	26	8	3	4	1

Statutory targets monthly update - up to January 2018 (unvalidated management information) Newry, Mourne and Down

	Major applications (target of 30 weeks)				Local applications (target of 15 weeks)				Cases concluded (target of 39 weeks)			
	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 30 weeks	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 15 weeks	Number opened	Number brought to conclusion ³	"70%" conclusion time ³	% of cases concluded within 39 weeks
April	0	1	91.8	0.0%	127	113	19.0	38.9%	35	20	64.2	60.0%
May	1	2	110.4	0.0%	149	157	18.0	43.9%	32	46	61.1	56.5%
June	1	2	73.2	0.0%	124	205	19.2	42.0%	32	21	65.3	55.0%
July	1	1	128.4	0.0%	133	141	20.0	41.1%	32	19	113.0	55.0%
August	2	1	248.8	0.0%	146	134	17.1	36.8%	29	28	63.0	39.3%
September	1	-	0.0	0.0%	124	152	19.3	39.5%	42	25	58.8	44.0%
October	0	2	277.7	0.0%	134	151	18.2	41.1%	29	41	33.0	80.5%
November	0	1	186.6	0.0%	127	166	14.2	53.6%	23	9	51.8	66.7%
December	0	2	272.4	0.0%	110	104	16.4	39.4%	19	5	43.1	60.0%
January	0	-	0.0	0.0%	120	93	19.6	44.1%	22	14	58.7	61.5%
February	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
March	0	-	0.0	0.0%	0	-	0.0	0.0%	0	-	0.0	0.0%
Year to date	7	12	127.4	0.0%	1,320	1,419	17.2	43.9%	299	228	55.0	59.9%

Source: NI Planning Portal

Note

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

values and then taking the data point at the 70th percentile of the sequence.

Record of meetings between Planning Officers and Public Representatives 2017-2018

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DATE OF MEETING	PLANNING OFFICER'S NAME/S	PUBLIC REPRESENTATIVE'S NAME
3/4/17	A McKay	M Ritchie MP
4/4/2017	A McAlarney	Cllr Walker
20/4/17	P Rooney	M Ritchie MP
27/4/17	A McAlarney	C McGrath MLA
27/04/17	A McAlarney M Keane	Cllr W Clarke
09/05/2017	A McAlarney	C McGrath MLA
11/5/17	A McKay	M Ritchie MP
1/6/17	A McAlarney	C McGrath MLA
2/6/17	G Kerr	Cllr J Tinnelly
20/06/17	A McAlarney	Cllr Walker
04/08/2017	A McAlarney	Colin McGrath
04/08/2017	G Kerr	Cllr David Taylor
15/08/2017	P Rooney G Kerr	Justin McNulty MLA
25/08/2017	G Kerr	Cllr J Tinnelly
06/09/2017	A McAlarney	Cllr Curran
12/09/2017	A McAlarney	Cllr Devlin
15/09/2017	A McAlarney	Colin McGrath
21/09/2017	G Kerr	Cllr David Taylor
05/10/2017	A McAlarney	Colin McGrath (Office staff Carmel OBoyle attending)
05/10/2017	A McAlarney	Sean Doran
6/10/17	A Hay	Cllr Walker + Jim Shannon MP
06/10/2017	A McAlarney	Cllr Walker Jim Shannon
06/10/2017	G Kerr P Rooney	Cllr David Taylor
09/10/2017	G Kerr	Cllr Brian Quinn
20/10/2017	G Kerr O O'Toole	Cllr David Taylor
23/10/2017	G Kerr	Cllr J Tinnelly
24/10/2017	A McKay G Kerr	Cllr J Tinnelly
27/10/2017	P Rooney	Cllr Brian Quinn
31/10/2017	A McAlarney	Cllr Harry Harvey
03/11/2017	G Kerr	Cllr D McAteer
06/11/2017	G Kerr	Cllr G Fitzpatrick
07/11/2017	L O'Hare	Cllr D McAteer
15/11/2017	A McAlarney	Colin McGrath
17/11/2017	G Kerr	Cllr Brian Quinn
20/11/2017	G Kerr P Rooney	Cllr Brian Quinn

Record of meetings between Planning Officers and Public Representatives 2017-2018

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24/11/2017	A Davidson	Cllr David Taylor
28/11/2017	A Davidson	Cllr Terry Hearty
01/12/2017	G Kerr	Cllr J Tinnelly
11/12/2017	A McAlarney	Cllr Walker Jim Shannon MLA
18/12/2017	A McAlarney	Cllr W Clarke
31/01/2018	A McKay	C Hazzard MP
02/02/2018	A McAlarney	Cllr Walker
13/02/2018	A McAlarney	Cllr Enright
16/02/2018	A McAlarney	Colin McGrath MLA
22/02/2018	A McAlarney	Cllr William Walker

Current Appeals

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AUTHORITY Newry, Mourne and Down

ITEM NO 1
Planning Ref: LA07/2016/0381/ **PAC Ref:** 2016/A0185
APPELLANT Mr Matt Burns **DEA** Crotlieve
LOCATION Opposite No. 107 Kilbroney Road
 Rostrevor
PROPOSAL Proposed farm retirement dwelling

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged** 15/12/2016
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 2
Planning Ref: LA07/2016/0802/ **PAC Ref:** 2016/A0192
APPELLANT Darren O'Hagan **DEA** Crotlieve
LOCATION 60m NE Of 11a New Line Road
 Hilltown
 Newry
PROPOSAL Site for dwelling and detached garage

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 30/12/2016
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

241

ITEM NO 3
Planning Ref: LA07/2016/0365/ **PAC Ref:** 2016/A0224
APPELLANT Mr And Mrs McCluskey **DEA** Rowallane
LOCATION Lands Between 1 Brae Road And 212 Belfast Road
 Ballynahinch
PROPOSAL 2no proposed dwelling houses

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 27/02/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 4
Planning Ref: LA07/2016/0477/ **PAC Ref:** 2016/A0226
APPELLANT Mr Caolan Quinn **DEA** Slieve Gullion
LOCATION 50m South-east Of No 106 Carrickgallogly Road
 Carrickgallogly
PROPOSAL ~~Ballinac~~
 Erection of dwelling

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 28/02/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

242

ITEM NO 5
Planning Ref: LA07/2017/0077/ **PAC Ref:** 2017/A0071/F
APPELLANT Gary O'Hare **DEA** Crotlieve
LOCATION Lands Between No. 20B And No. 22 Derrycraw Road
 Newry
PROPOSAL RT34 1RG
 Construction of 2 No. new detached 1 1/2 storey infill dwellings with detached double garages, associated site works and new access to public road.

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps **Date Appeal Lodged** 24/07/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 6
Planning Ref: LA07/2017/0624/ **PAC Ref:** 2017/A0094
APPELLANT Mary Rooney **DEA** Crotlieve
LOCATION 80A Kilbroney Road
 Rostrevor
PROPOSAL RT34 3RI
 Single storey side and rear extension

APPEAL TYPE DC - Non Determination of a Planning Application
Appeal Procedure Written Reps **Date Appeal Lodged** 25/08/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

243

ITEM NO 7

Planning Ref: LA07/2017/0172/ **PAC Ref:** 2017/A0114

APPELLANT SCS **DEA** Newry

LOCATION Lindsay's Hill Approx 60 Metres South East Of 53-55 North Street
Newry BT34 1DD

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

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure Informal Hearing **Date Appeal Lodged** 25/09/2017

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representation

Date of Site Visit

ITEM NO 8

Planning Ref: LA07/2017/0563/ **PAC Ref:** 2017/A0121

APPELLANT Mr John Morgan **DEA** Crollieve

LOCATION Land 20m North Of 24 Ballyvally
Mayobridge

PROPOSAL RT34 2RT
2 dwellings with detached garages to rear

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Date Appeal Lodged** 22/12/2017

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representation

Date of Site Visit

Current Appeals

244

ITEM NO 9
Planning Ref: LA07/2017/0145/ **PAC Ref:** 2017/A0151
APPELLANT Cathal Sloan **DEA** The Mournes
LOCATION Lands Approximately 55 Metres South Of 14 Sandy Brae
 Attical
PROPOSAL Site for dwelling and detached garage at existing cluster of
 development in the countryside

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Informal Hearing **Date Appeal Lodged** 30/10/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 10
Planning Ref: LA07/2017/0371/ **PAC Ref:** 2017/A0158
APPELLANT Kieran And Briega King **DEA** Newry
LOCATION 56a Drumintee Road
 Meigh
 Newry
PROPOSAL Retention of existing caravan port at rear of dwelling

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged** 07/11/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

245

ITEM NO	11		
Planning Ref:	LA07/2015/1123/	PAC Ref:	2017/A0161
APPELLANT	Quayside Propoeties Ltd	DEA	Newry
LOCATION	2-3 Sugarhouse Quay Lisdrumgullion		
PROPOSAL	Newry Demolition of remaining parts of building for health and safety reasons		
APPEAL TYPE	DC - Refusal of LB Consent		
Appeal Procedure	Written Reps with Site Visit	Date Appeal Lodged	15/11/2017
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	12		
Planning Ref:	LA07/2017/0370/	PAC Ref:	2017/A0165
APPELLANT	Fergal Rafferty	DEA	Slieve Gullion
LOCATION	16 Ummeracam Road Silverbridge		
PROPOSAL	Newry Retention of two storey projection to southern gable of dwelling, alterations to bay windows at front of dwelling and alterations to window fenestration to side and front elevations of dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	15/11/2017
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO 13
Planning Ref: LA07/2017/0687/ **PAC Ref:** 2017/A0168
APPELLANT Steven And Diane Campbell **DEA** The Mournes
LOCATION 30m North Of 94 Greencastle Road
 Killeel
 RT34, 4DE
PROPOSAL Infill site for new dwelling and garage in existing cluster (amended plans)

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged**
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 14
Planning Ref: LA07/2016/1647/ **PAC Ref:** 2017/A0169
APPELLANT DBM Contracts **DEA** Newry
LOCATION 20 Metres East Of 6 Daisy Hill
 Carnagat
 Newry
PROPOSAL Erection of two dwellings and retention of retaining walls

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 22/11/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO	15	PAC Ref:	2017/A0177
Planning Ref:	LA07/2017/0375/	DEA	Slieve Gullion
APPELLANT LOCATION	Mr Declan Kearney 30m West Of 34 Station Road Adavoyle Killeavy		
PROPOSAL	Farm Dwelling and Garage		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	16	PAC Ref:	2017/A0178
Planning Ref:	LA07/2017/0786/	DEA	Slieve Croob
APPELLANT LOCATION	Walter Watson 4 Drumnaquoile Road Castlewellan		
PROPOSAL	Replacement dwelling and detached garage		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	04/12/2017
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO 17
Planning Ref: LA07/2017/0856/ **PAC Ref:** 2017/A0181
APPELLANT Brian Hollywood **DEA** Slieve Gullion
LOCATION 20 Lough Road
 Mullaghbawn
 RT35 RYP
PROPOSAL Proposed change of use from Spa Centre Business to dwelling with
 some minor renovations

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Informal Hearing **Date Appeal Lodged** 06/12/2017
Date of Hearing 15/03/2018
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 18
Planning Ref: LA07/2017/1174/ **PAC Ref:** 2017/A0186
APPELLANT Brendan McCartan Esq **DEA** Slieve Croob
LOCATION Approx 18m North Of 156
 Downpatrick Road
 Rallynahinch
PROPOSAL Dwelling & garage

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 11/12/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO 19
Planning Ref: LA07/2017/0319/ **PAC Ref:** 2017/A0188
APPELLANT Mr Sean O'Hare **DEA** Slieve Gullion
LOCATION 10A Limekiln Road
 Newry
 BT35 7JX
PROPOSAL Retention of authorised treatment facility for end-of-life vehicles, including access road and all associated site infrastructure, including areas of hardstanding, drainage systems, all buildings, structures, racks, fencing and gates
APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Informal Hearing **Date Appeal Lodged** 12/12/2017
Date of Hearing 18/04/2018
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 20
Planning Ref: LA07/2017/0018/ **PAC Ref:** 2017/A0189
APPELLANT Rozanna Huq **DEA** Downpatrick
LOCATION To The South Of 24 Crossgar Road East Crossgar
 BT30 9ER
PROPOSAL Proposed 2no infill dwellings and garages
 (Amended site plan received re: Site splays).
APPEAL TYPE DC - Conditions of Approval
Appeal Procedure **Date Appeal Lodged** 11/12/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO 21
Planning Ref: LA07/2017/0114/ **PAC Ref:** 2017/A0202
APPELLANT Mr Vincent McGuinness **DEA** Newry
LOCATION 210m South 30 Low Road
 Killeavy
 Newry
PROPOSAL Retention of existing industrial units and yard area for use as a waste transfer station. Includes associated car parking, external storage are and weighbridge.

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Date Appeal Lodged** 22/12/2017
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 22
Planning Ref: LA07/2017/1138/ **PAC Ref:** 2017/A0209
APPELLANT Bernard Morgan **DEA** Newry
LOCATION Adjacent To And Immediately South East Of No.1 Newtown Court
 Newtown Road
 Clonbrannigan
PROPOSAL Erection of Agriculture Buildings

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Informal Hearing** **Date Appeal Lodged** 11/01/2018
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO 23
Planning Ref: LA07/2016/0952/ **PAC Ref:** 2017/A0213
APPELLANT D & M Downey **DEA** Newry
LOCATION 113-117 Dublin Road
 Newry
PROPOSAL RT35 ROP
 Sub-division of part of existing bulky goods retail warehouse (No 115) to provide 3 No. ground floor class A1 retail units with new shopfronts (the 3 No. units to operate without compliance with the bulky goods condition on approval P/1993/0605); and western extension of site area
APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Informal Hearing **Date Appeal Lodged** 18/01/2018
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 24
Planning Ref: LA07/2016/1331/ **PAC Ref:** 2017/A0214
APPELLANT Ms Joanna Magee **DEA** Downpatrick
LOCATION Lands Adjoining And Between 57 And 61 Churchtown Road
 Downpatrick
PROPOSAL Two detached dwellings and garages
APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 23/01/2018
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO	25	PAC Ref:	2017/A0228
Planning Ref:	LA07/2017/0770/	DEA	Slieve Croob
APPELLANT	Mr And Mrs J McPolin		
LOCATION	13 Downpatrick Road Ballynahinch RT24 RSH		
PROPOSAL	Proposed detached garage, rear extension to dwelling and extended site curtilage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	20/02/2018
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	26	PAC Ref:	2017/E0048
Planning Ref:	LA07/2017/1400/	DEA	Slieve Croob
APPELLANT	Nu Screen Ltd		
LOCATION	70 Ballywillwill Road Castlewellan RT31 R1 G		
PROPOSAL	Erection of engineering workshop and the carrying on of a fabrication and glazing business		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	17/01/2018
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			



Appeal Decision

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Appeal Reference:	2017/A0133
Appeal by:	Mr Paul Smith
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of dwelling and detached garage on a farm
Location:	40m South West of No 23a Castlewellan Road, Hilltown
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2015/0545/F
Procedure:	Hearing on 18 January 2018
Decision by:	Commissioner Pamela O'Donnell, dated 15 February 2018.

Decision

1. The appeal is dismissed.

Reasoning

2. The main issues in the appeal are whether the proposal can take access onto a Protected Route and whether the access arrangements would visually integrate into the surrounding countryside.
3. The site is in the rural area as designated in the Banbridge, Newry and Mourne Area Plan 2015. There is no specific policy in the Plan material to the appeal proposal and no conflict arises between the provisions of the Strategic Planning Policy Statement for Northern Ireland and those of retained policy regarding issues relevant to the appeal. Accordingly, the main policy context is provided by Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) and Planning Policy Statement 3 'Access, Movement and Parking' (PPS3).
4. The Council was satisfied that the farm business met the requirements of Policy CTY10 of PPS21 to qualify for a dwelling on a farm. However, they argued that the proposed access arrangements failed to comply with Policy AMP3 of PPS3 and Policy GTY13 of PPS21.
5. The preamble to PPS21 indicates that the policy provisions set out in Annex 1 thereof will take precedence over the provisions of Policy AMP3 of PPS3 insofar as they relate to proposals seeking access to the category of road highlighted as 'Other Protected Routes – Outside Settlement Limits'. In this case, the proposed access would be onto such a route, namely the B8, Castlewellan Road. Accordingly, and irrespective of the other historic iterations of the policy, the most up to date policy expression as set out in PPS21 and entitled "*Consequential amendment to Policy AMP 3 of PPS3 Access, Movement and Parking*" is relevant to the consideration of the appeal.

6. The PPS21 consequential amendment or revision of Policy AMP3 indicates that planning permission will only be granted for a development proposal onto a Protected Route (PR) in four specified cases. The parties were in agreement that the relevant criterion in this case was (b) which is in respect of farm dwellings. The policy permits access onto a PR where a farm dwelling would meet the criteria in Policy CTY10 of PPS21 and where access cannot reasonably be obtained from an adjacent minor road. It goes on to say that where this cannot be achieved proposals will be required to make use of an existing vehicular access to the PR. The penultimate paragraph of the policy states that access arrangements must be in accordance with the Department's published guidance and the final paragraph says that the remainder of Policy AMP3 as set out in a previous clarification, including the justification and amplification text, remains unaltered.
7. It is clear from the justification and amplification to the policy that its objective is to restrict the amount of new accesses onto PRs as such roads facilitate the efficient movement of traffic over long distances in Northern Ireland. These roads contribute significantly to economic prosperity by providing efficient links between all the main towns, airports and sea ports and with the Republic of Ireland. Consequently, any new access should not compromise their function as regards the free and safe movement of traffic or significantly add to congestion. Paragraph 5.28 states that in all cases, where access to a PR is acceptable in principle, it will also be required to be safe in accordance with Policy AMP2.
8. Both parties agreed that access could not be obtained from an adjacent minor road. However, there was dispute around whether or not the proposal could make use of the existing access to Nos 23 and 23a Castlewellan Road. The position of the Council was that the existing access should be used, which would require improvements. The Council's interpretation of Policy AMP3, as clarified at the Hearing, was that it does not preclude new accesses onto PRs, however, a new access would only be contemplated in exceptional circumstances where persuasive evidence was provided to demonstrate why the sequential requirements of the policy could not be met.
9. A replacement farm house at No 23 Castlewellan Road was granted planning permission in February 1999 (P/1998/1124). The stamped approved plans show visibility splays of 2.4 x 125m in both directions from the access and a condition of the approval sought the provision of these splays before work commenced on the site. However, the approved access requirements were not provided and the original dwelling (now 23a) was never demolished. The current visibility splays at the existing access to Nos 23 and 23a measure around 2.4m x 22.5 and 2.4m x 14m as taken from the Appellant's survey in Appendix 5 of his Statement of Case. These measurements differ from those shown on the plan submitted with the appeal that show splays of 2.4 x 22 and 2.4 x 21m at the access to Nos 23 & 23a. In any event, both fall short of what would be required.
10. The Appellant argues that the existing access to Nos 23 and 23a cannot be used to access the proposed farm dwelling as it is sub-standard and he has no reasonable prospect of securing the additional land to provide splays to accord with published guidance. The Appellant owns the land to the south of the existing access, but not to the north.

11. The visibility splays at the existing access to Nos 23 and 23a are substandard as they fall short of what would be required under the guidance. However, the Appellant has not approached the neighbouring landowners to ascertain if they would be agreeable to allowing the necessary splays across their properties. Even though they may be advanced in age and/or may require financial recompense for the land in question, the Appellant has not demonstrated that there would be no likelihood of securing the land to provide the splays within the lifetime of the planning permission. The onus is on the Appellant to produce the necessary evidence to substantiate his case and in the evidential context before me, I have not been persuaded that the existing access could not be improved in accordance with published guidelines.
12. The Appellant also contends that the access, subject of this appeal, is an existing vehicular access. In the absence of a Certificate of Lawful Development to demonstrate the lawfulness of the appeal access, I place limited weight on the Appellant's assertions. Also, as the appeal access is some 70m to the north of the existing access to Nos 23 and 23a, it cannot be described as being in the same general location, as argued by the Appellant. For the reasons stated, the proposal does not comply with Policy AMP3.
13. The Appellant argued that there is a lacuna in Policy AMP3 as it does not envisage situations such as this where an existing access on to a PR is substandard. However, as I read it, the policy does not rule out the improving of an existing access to meet published guidance. Furthermore, given the policy objective to restrict the number of new access onto PRs, it is a common sense approach. As alluded to above, the previous incarnations of the policy are no longer relevant and I see nothing in the case law advanced to make me depart from my consideration of these matters.
14. The Appellant advanced other material considerations in support of his position, including a number of previous decisions of the Council. At the Hearing, the Appellant highlighted the following cases as being of particular relevance to this appeal. These are discussed below.
15. Application LA07/2015/0456/F was in respect of the relocation of an access from that approved under a previous planning application. The relocation was onto a PR and the access approved was originally agricultural in nature. Contrary to the officer's recommendation to refuse, the application was subsequently approved by the Planning Committee of the Council on the basis of the 'exceptional circumstances' advanced. From the evidence, it appears that the approved access was no longer available to the applicants and mortgage details were provided to demonstrate this. I have not been provided with the evidence presented to the Committee, so I cannot comment on it. However, the Committee were satisfied that the existing access could not be used, unlike the circumstances of this case.
16. Application LA07/2016/1670/F was in respect of a farm dwelling and garage in substitution of a previous outline approval. The current policy context has been in force since 2010. Therefore, it was applicable when both applications were determined. Unlike this case, the layout shows a paired or combined access arrangement with a neighbouring dwelling. Such an arrangement is endorsed in paragraph 5.14 of PPS3 as it states that the combining of individual access points along a road will be encouraged as this can help to improve road safety. That situation is distinguishable from the appeal proposition of a stand alone, direct access some 70m from the existing access.

17. Application LA07/2017/0580/F was also in respect of a new access paired with an existing one. In addition, the evidence indicates that the sale of the property could not proceed based on the use of the existing access and, unlike this case, the Council was satisfied that the existing access could not be used.
18. Application LA07/2016/1099/F was in respect of a replacement dwelling, not a farm dwelling. In that case the Planning Committee overturned the officer's recommendation to refuse as they were satisfied that the evidence demonstrated the historical existence of a vehicular access that could be used. I have not been provided with the historical map for consideration. However, as that application was for a replacement dwelling, it is likely there would have been an existing access in place. Again, the Committee were satisfied with the evidence provided, unlike this case.
19. For the reasons stated, the above examples are distinguishable and even if one or two poor planning decisions had been demonstrated, it would not be in the public interest to replicate such decisions. An inconsistent approach to the application of the policy has not been established. Thus, I do not accept that the Appellant has been treated unfairly. In any event, the Council has indicated that the policy, as they have applied it, does not rule out the provision of a new access onto a PR, so long as persuasive evidence to support this approach is provided, which has not been demonstrated in this appeal.
20. The access, as proposed, has been laid out with gates and pillars as entrance features. As alluded to above, the question of whether or not this is lawful development can be resolved by an application for a Certificate of Lawfulness of Development under Section 170 of the Planning Act (Northern Ireland) 2011. I note that an agricultural access was found to be an acceptable alternative to the use of an existing access during the determination of application LA07/2015/0456/F, outlined above. However, that access was considered as part of that particular application in the round and was considered acceptable. Similarly, if the Appellant had satisfactorily demonstrated that the existing access in this case could not be improved, it is possible that the proposed new access would have been regularised as part of any permission granted by the Council without the need to apply for a Certificate of Lawfulness. I agree that the extent of the precedent would not be as widespread as that suggested by the Council if this appeal were allowed. However, if approved, it would set a precedent sanctioning new accesses onto PRs in circumstances where an existing access, with improvements, could have been used. This would go against the underlying policy objectives. The Appellant offered to close up the existing access to No 23a, but not to No23, as part of the proposal. However, such concession does not justify a new access onto a PR which is contrary to policy for the reasons given. As the proposal does not comply with Policy AMP3 and the material considerations do not outweigh this failure, the second reason for refusal is sustained.
21. It was also argued that the access does not integrate with its surroundings contrary to criterion (d) of Policy CTY13 of PPS21. Said policy relates to the integration and design of buildings in the countryside and though not part of the policy head note, the justification and amplification text provides the context for the consideration of the policy objectives which relate to preserving the visual amenity and rural character of an area.

22. Paragraphs 5.71 to 5.74 of the amplification text to Policy CTY13 of PPS21 deal specifically with proposed accesses and other ancillary works. In particular, paragraph 5.72 requires that where possible access to a new building should be taken from an existing laneway, which echoes a fundamental requirement of Policy CTY10. It goes on to say that a new access drive should, as far as practicable, run unobtrusively alongside existing hedgerows or wall lines. The Council clarified at the Hearing that their objection regarding visual integration was not in respect of the impact of the visibility splays per se, but with the alignment and entrance features of the access.
23. As the farm dwelling would be set back off the road some 70m, a significant length of laneway is required to access it. Even though the position of the access was dictated by the need to provide the required visibility splays, meaning that it does not run alongside existing vegetation as espoused by the policy, the route of the laneway cuts across a flat, open and exposed roadside field. This creates a suburban emphasis which paragraph 5.72 considers unacceptable. While the Appellant was content to remove the entrance features and his permitted development rights in respect of same, the imposition of a condition in this regard would not overcome the lack of integration associated with the overall access arrangements. Rather than mitigate against the lack of visual integration, a dry stone wall, as proposed, would draw further attention to the access arrangements given the exposed nature of the site and the landscaping proposed would not satisfactorily mitigate the visual impact either. For these reasons and in the context that an existing access laneway could potentially be used in this case, I consider the access contrary to Policy CTY13 of PPS21. The first reason for refusal has therefore been sustained.
24. It is noted that the Appellant owns other land in Hilltown where there may be an opportunity for a farm dwelling that would not require access onto a PR. This is another option that could be explored. The current planning application for tourism development at No 23a remains undetermined and lies outside the scope of this appeal. Concerns around the processing of the application are matters for the parties and any advice tendered by one officer does not represent the corporate view of the Council.
25. As both reasons for refusal have been sustained, the appeal must fail.

This decision relates to: Drawing No 01 Site Location Map @ 1:2500 and Drawing No 02 Rev 4 Site Layout, Plans and Elevations @ 1:500 stamped refused by the Council on 18 August 2017.

COMMISSIONER PAMELA O'DONNELL

List of Appearances

Planning Authority:- Mr G Murtagh (Newry, Mourne & Down Council)

Appellant(s):- Mr C O'Callaghan (Agent)
Mr P Smith (Appellant)

Third Parties:- None

List of Documents

Planning Authority:- "A" Statement of Case

Appellant(s):- "B" Statement of Case

Third Parties:- N/A



Appeal Decision

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Appeal Reference:	2017/A0028
Appeal by:	Mr Mark Rice
Proposed Development:	Retention and extension of an existing prefabricated structure to create a farm dwelling
Location:	Lands adjacent to and north of 46 Lower Foughill Road, Jonesborough
Application Reference:	LA07/2015/0946/F
Procedure:	Written representations with accompanied site visit
Decision by:	The Commission, dated 21 st February 2018

The Commission has considered the report by Commissioner O'Neill and accepts her analysis of the issues and recommendation that the appeal should fail. The Commission agrees that the first reason for refusal has been sustained to the extent specified by the Commissioner.

Decision – the appeal is dismissed.

This decision is based on Drawing PL-01 Rev E 1:2500 site location map, 1:2000 existing aerial view, photographic analysis, 1:500 proposed site layout, 1:100 floor plan and elevations date stamped received by the Commission on 27th October 2017.

TREVOR A RUE
Deputy Chief Commissioner



Appeal Decision

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Appeal Reference:	2017/A0076
Appeal by:	Mr & Mrs E Kerr
Appeal against:	The refusal of full planning permission.
Proposed Development:	Conversion and extension of an existing stone building to form a dwelling plus detached garage and associated works.
Location:	154a Downpatrick Road, Teconnaught, Ballynahinch.
Planning Authority:	Newry, Mourne and Down District Council.
Application Reference:	LA07/2015/1381/F
Procedure:	Written representations and accompanied site visit on 5 th December 2017
Decision by:	Commissioner Damien Hannon, dated 9 th February 2018

Decision

1. The appeal is dismissed

Reasons

2. The main issue in this appeal is whether the proposed development is acceptable in principle the countryside.
3. The appeal site lies within the open countryside outside any settlement development limits as designated in the Ards and Down Area Plan 2015 (ADAP), which operates as the relevant Local Development Plan (LDP). The LDP however, contains no provisions specific to proposals for the extension and conversion of existing buildings to dwellings.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. During this transitional period planning authorities will apply existing retained policy including Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21) and the SPPS. However Paragraph 1.12 of the SPPS states that where the SPPS introduces a change of policy direction and/or provides a policy clarification that would be in conflict with the retained policy, the SPPS should be afforded greater weight in the assessment of individual planning applications.
5. Policy CTY 1 of PPS 21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside. The appellant argued that the proposal constituted one of these acceptable types of development, namely the conversion of a non-residential building to a dwelling in

- accordance with Policy CTY 4. This policy states that planning permission will be granted for the sympathetic conversion of, with adaptation, if necessary, a suitable building for a variety of alternative uses, including use as a single dwelling, where this would secure its upkeep and retention. Paragraph 6.73 of the SPPS states that provision should be made for the sympathetic conversion and re-use, with adaptation if necessary, of a locally important building as a single dwelling where this would secure its upkeep and retention. The alternative wording of the SPPS constitutes a revision of Policy CTY4 and consequently the term 'locally important building' must take precedence over the term "suitable building" in Policy CTY4 of PPS21.
6. The SPPS does not define the term "locally important" but lists examples such as former school houses, churches and older traditional barns and outbuildings. While these cited examples typically relate to buildings that generally have some design, architectural or historic merit, they do not comprise a definitive list and there may therefore, be other factors that would result in a particular building being of importance to a locality.
 7. The appeal building is a single storey linear style stone structure with a tin roof measuring some 12m long and 5m wide. It has a footprint of 61 m² and is located within the curtilage of a more recently constructed dwelling and lies approximately 185m from the Downpatrick Road. It is the only remaining building of a group of three that constituted the original holding. The appellant provided OS maps dating back as far as 1830 to support his statement that the group originally comprised, the appeal building (a barn), a dwelling and another barn or outbuilding. The appellant also stated that the appeal building was used, in conjunction with the other two, during the Second World War to house evacuees and that it is known locally as the 'Ladykillers House' as it was owned in the 1940s by Billy McMullan AKA 'Orange Billy' who occupied it together with three women. The appellant's evidence in respect of the historical use and evolution of the appeal building and its associated group, was not disputed.
 8. The appellant stated that the building was used residentially during the war but argued that it nonetheless qualified as a locally important building as an 'older traditional barn or outbuilding' specifically referred to in the SPPS. Regardless of whether the appeal building had a variety of uses over time, it has two extended apertures in its north east elevation which, if original, would indicate that it was not constructed as a dwelling. I conclude that given its dimensions and design, the building would qualify as an older outbuilding if not as a barn for the purposes of the SPPS.
 9. However, the policy does not state that all older traditional barns or outbuildings are necessarily locally important. The appeal building is the surviving remnant of a group of three dating back prior to 1830. It also has some colloquial context. However, notwithstanding its age and stone construction it displays no noteworthy architectural features or merit. Furthermore, given its distance from the road and the screening impact of intervening vegetation and topography, it has little visual prominence in the local landscape. It is small, dilapidated, unassuming and presents as a remnant outbuilding in the context of the curtilage of a modern dwelling. In this context, I do not accept that appeal building is a 'locally important building' as envisaged by the SPPS. Consequently the proposal does not qualify as acceptable development in accordance with Policy CTY 4. Policy CTY 1 further

states that that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. No such case was advanced and in these circumstances, the council's objection in principle is upheld and its reason for refusal based on the SPPS and Policy CTY 4 of PPS 21 is sustained and determining in this case.

This decision is based on the following drawings received by the Council on 7th August 2017:-

- 1:1250 scale Site Location Map numbered 01
- 1:500 scale Proposed Site Layout numbered 02
- 1:50 scale elevations and floor plans entitled 'Existing Building' numbered 03.
- 1:50 scale elevations and floor plans entitled 'Detached garage' numbered 04.
- 1:50 scale Proposed Elevations (1) numbered 05.
- 1:50 scale Proposed Floor Plan numbered 06.
- 1:50 scale Proposed Elevations (2) numbered 05.

COMMISSIONER DAMIEN HANNON

List of Appearances

Planning Authority:-	Mr Mark Keane
Appellant:-	Mr E. Kerr Mr N. Coffey

List of Documents

Planning Authority:-	COU 1	Statement of Case
Appellant:-	APP 1 APP 2	Statement of Case Comments



Appeal Decision

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Appeal Reference:	2017/A0129
Appeal by:	Mr Alan Montgomery
Appeal against:	Full Planning Permission
Proposed Development:	Erection of agricultural building
Location:	Approximately 60m north of 21 Downpatrick Road, Killough, Downpatrick
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2016/1219/F
Procedure:	Written Representations
Decision by:	Commissioner Helen Fitzsimons 15 th February 2018.

Decision

1. The appeal is allowed subject to conditions.

Reasons

2. The appeal site lies outwith any settlement as identified in the Ards and Down Area Plan 2015. It lies within the Lecale Area of Outstanding Natural Beauty.
3. As the appeal site is located within the open countryside Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) is a material consideration. The Planning Authority raised no objections under the pertinent policy; Policy CTY 12 of PPS 21 'Agricultural and Forestry Development'.
4. The appeal site is located within a coastal flood zone and Planning Policy Statement 15 'Planning and Flood Risk' is also a material consideration. As the appellant has demonstrated that his proposal is one of the exceptions listed under Policy FLD 1 'Development in Fluvial (Rivers) and Coastal Floodplains' of PPS 15 the Planning Authority withdrew its sole reason for refusal. In order to give effect to the policy a condition is required to ensure that the development be carried in accordance with the Flood Risk Assessment submitted with the proposal.

Conditions

1. The development hereby permitted shall be carried out in its entirety in accordance with the mitigation measures set out in Chapter 5 of the Flood Risk Assessment dated June 2017.

2. The development shall be commenced within five years of the date of this decision.

This decision is based on the following drawings

1:2500 scale site location plan;

1:500 scale drawing ' Proposed Agricultural Shed';

1:200 scale drawing ' Proposed Floor Plan';

1:200 scale drawing proposed elevations; and

Two unscaled untitled plans number 05 and 06 by the Planning Authority

COMMISSIONER HELEN FITZSIMONS

2017/A0129

List of Documents

Planning Authority: - PA1 Written Statement and Appendices
PA 2 Comments

Appellant: - A 1 Written Statement and Appendices
A2 Comments



Appeal Decision

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Appeal Reference:	2017/A0141.
Appeal by:	P & T Miskelly.
Appeal against:	The refusal of outline planning permission.
Proposed Development:	2 no. detached houses and associated works.
Location:	Site adjacent to 35 Darragh Road, Darragh Cross, Downpatrick.
Planning Authority:	Newry, Mourne & Down District Council.
Application Reference:	LA07/2016/1537/O
Procedure:	Written representations and accompanied site visit on 26 January 2018.
Decision by:	Commissioner Mark Watson, dated 22 February 2018.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether or not the proposed development would:
 - be acceptable in principle;
 - be acceptable in terms of design; and
 - adversely impact on the rural character of part of the countryside.
3. The Ards and Down Area Plan 2015 (ADAP) operates as the statutory local development plan for the proposal. In it, the site lies within the countryside. The ADAP offers no specific policy or guidance in respect of the proposed dwellings and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development.
4. The site comprises a broadly rectangular piece of land on the western side of the Darragh Road. It is relatively flat, having previously been infilled with inert material. More recently the site has had stones and other spoil deposited on part of it when the site was utilised as a storage area by a contractor carrying out road improvement works in the locality. The frontage is defined by a low cut mature hedge set behind a narrow grass verge. A pair of metal gates hung on concrete pillars situated mid-frontage afford access to the site. The southern boundary is defined by a mature line of trees, whilst mature conifers define the western boundary. The side wall of an outbuilding belonging to No. 35 Darragh Road and a stretch of fencing provide

the northern site boundary. There are several dwellings with outbuildings of various size and vintage to the north of the site. No. 39, a single storey dwelling with a long, rectangular garden that runs lengthways along the road frontage, lies to the south. The small settlement of Darragh Cross lies approximately 0.2 km to the south of the site.

5. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. It follows that if the development complies with CTY8 it will comply with Policy CTY1 of PPS21.
6. Policy CTY8 of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Policy CTY8 goes on to state that an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy states that for its purposes, the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
7. The Appellant considered that the appeal site was such a gap site, falling within an otherwise substantial and continuously built up frontage comprising Nos. 39 – 31 Darragh Road. Whilst the Council agreed that the site lay within such a frontage, it considered that the gap between the outbuilding at No. 35 and the dwelling at No. 39, was too large to accommodate a maximum of two dwellings.
8. Despite minor variations in separation distances between the gables of the existing buildings and plots sizes, the appeal site could accommodate two dwellings on plots such as is shown in the Appellant's illustrative site layout, that would respect the existing development pattern of the buildings to the north in terms of size, scale, siting and plot size. However, the Council is correct that in assessing whether the site constitutes an exception to the policy, the gap being assessed must be that between existing buildings along the frontage. The gap along this part of Darragh Road comprises not only the appeal site itself, but also the elongated section of garden belonging to No. 39. The total gap in the frontage would allow for two dwellings on the appeal site, but also two further dwellings on similar plot widths on the elongated section of garden belonging to No. 39. Although the appeal site itself can accommodate a maximum of two dwellings, the actual gap that exists between No. 39 and the outbuilding belonging to No. 35 could to potentially accommodate up to four dwellings. Despite the garden section of No. 39 being heavily vegetated, the actual, total gap cannot be considered to be a small gap site sufficient to accommodate up to a maximum of two houses for the purposes of the policy. The appeal site, which only constitutes part of that gap, does not qualify for the exception within Policy CTY8 which allows for infill development.

9. Whilst the Appellant opined that permitted development rights could allow for a building to be constructed within part of No. 39's curtilage, thus closing the gap between buildings along the frontage, the appeal proposal must be judged on the current situation as opposed to a potential future scenario. Given my conclusions elsewhere in this decision relating to ribbon development and rural character, the appeal development also does not fully meet the other planning and environmental requirements element of the policy.
10. The site, although it may not be the most visually attractive, functions as an important visual gap as it breaks up the existing built development along the western side of Darragh Road. Development of the site for the appeal dwellings would extend the existing ribbon of development comprised of the dwellings and outbuildings at Nos. 31 to 35 Darragh Road. Although this would be most apparent from the sustained, transient views travelling south along the road towards the site, views would also become available at the southern edge of the site itself travelling northwards. The appeal development would add to an existing ribbon of development. For the reasons given above the proposed development does not comply with Policy CTY8.
11. Whilst the Appellant and his representative considered that the appeal site could not be utilised for anything except built development, this would not justify the appeal proposal given the lack of policy support. Nor would there having had been an old building on the site at some time in the past. I am not persuaded that the site is unique given its condition or location and there are no overriding reasons why the development is essential and could not be located in a settlement. As the development does not meet Policy CTY8, it also fails to meet Policy CTY1 of PPS21 and the related provisions of the SPPS. The Council's first reason for refusal is sustained.
12. Policy CTY13 of PPS21 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The Council's concerns under this policy related to the design of the proposed dwellings as shown in the drawings submitted with the application. Although I agree that the suggested design contains suburban elements in terms of detailing and form, contrary to what the Building on Tradition design guide would espouse, those plans are illustrative only. The appeal before me seeks outline permission and I agree that the matters relating to design, including ridge height, can be reserved in the event of outline planning permission being granted. The appeal development would not offend Policy CTY13 of PPS21. The second reason for refusal is not sustained.
13. Policy CTY14 of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to or further erode the rural character of an area. The locality has already experienced a fair degree of built development, much of it focussed along the roadside. The Appellant's representative pointed to the existing roadside development almost running contiguously to the small settlement of Darragh Cross some distance to the south. However, this would not in itself justify the appeal development, but rather reinforces the importance of the site as a visual gap. The granting of outline planning permission for the appeal dwellings would consolidate built development along this part of Darragh Road, resulting in a suburban style build-up of development, irrespective of retaining existing boundary vegetation, new planting and the design

and siting of the dwellings in question. The appeal development would also add to an existing ribbon of development for reasons outlined earlier. Accordingly, the appeal development would cause a detrimental change to the rural character of the area. Policy CTY14 of PPS21 is not met when read as a whole and the Council's third reason for refusal is sustained.

14. Whilst the second reason for refusal has not been sustained, the remaining objections to the development are sustained and determining. The appeal must fail.

This decision is based on the following drawings submitted with the application:-

DRAWING NUMBER	TITLE	SCALE	DATE
01	Site Location Plan	1:2500	15.11.16
02	Proposed Site Layout	1:500	15.11.16
03	Proposed Plans	1:100	15.11.16
04	Proposed Elevations	1:100	15.11.16

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:- Mrs C Moane (Newry, Mourne & Down District Council)

Appellant:- Mr G Tumelty (Tumelty Planning Services)
Mr P Miskelly (Appellant)

List of Documents

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

Appellant:- 'B' Statement of Case (Tumelty Planning Services)



Appeal Decision

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Appeal Reference:	2017/E0027
Appeal by:	Ms Joan Henderson
Appeal against:	The refusal of a Certificate of Lawfulness for Existing Use or Development
Subject:	This application has been submitted to demonstrate that planning permission P/2010/1299/F has been lawfully implemented
Location:	200m SE of No.21 Levallyreagh Road, Rostrevor
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2017/00053/LDE
Procedure:	Written representations and accompanied site visit on 8 th February 2018
Decision by:	Commissioner Julie de-Courcey dated 21 st February 2018

Decision

1. The appeal is allowed in respect of the works relating to the demolition of the dwelling to be replaced in accordance with planning permission reference P/2010/1299/F. This work is lawful and a certificate of lawfulness of existing use or development is attached.

Preliminary

2. Section 169 of the Planning Act (Northern Ireland) 2011 [the Act] provides for Certificates of lawfulness of existing use or development (CLEUD) whereas Section 170 relates to certificates of lawfulness of proposed use or development (CLOPUD). The appeal relates to an application made for a CLEUD.
3. It is apparent from the description of development on the application form that it is concerned not only with works that had been undertaken but also with the lawfulness of future development in respect of the proposal to complete the dwelling and garage approved in accordance with planning reference P/2010/1299/F. Proposals for future lawful development should be considered in the context of Section 170 relating to a CLOPUD.
4. The application for a CLEUD is before me and that is what must be determined in this appeal. However, as most of the evidence presented by both parties related to the question of whether the works carried out to date, if they were lawful, represented a material start to the development as approved on foot of application P/2010/1299/F. I will set out my views on that matter in order to be helpful.

Reasons

5. The main issue to be considered in this appeal is whether operational development that has already been carried out is lawful.
6. Planning permission P/2010/1299/F was granted on 6 April 2011 for the "erection of replacement dwelling and garage" to replace the original house at 200m south-east of No.21 Levallyreagh Road. It was subject to 8 conditions. As required by Article 34 (1) of the Planning (Northern Ireland) Order 1991 [the Order] and Condition 1 of planning permission P/2010/1299/F, development must commence before the expiration of five years of the date on which the permission was granted. In this instance, before 6 April 2016.
7. With regard to a CLEUD, Section 169 (4) of the Act states that: "*if, on an application under this section, the council is provided with information satisfying it of the lawfulness at the time of the application of the use, operations, or other matter described in the application, or that description as modified by the council or a description substituted by it, the council must issue a certificate to that effect; and in any other case it must refuse the application*".
8. The appellant's architect swore an affidavit on foot of a site visit in September 2015. He said that "*the replacement dwelling was still intact*" at the time of that inspection. I take this quotation to refer to the original dwelling to be replaced. An undated photo, that the appellant said was taken in October 2015, shows that it had been demolished. One of two items on an invoice from Edencross Contracts, dated 20 November 2015, relates to demolition of the existing building and its removal from site. The Council did not dispute the appellant's evidence that the original dwelling was demolished in October 2015. On this basis, I consider it more likely than not that the original dwelling was demolished during either/both September and/or October 2015.
9. The Act came into operation on the 1 April 2015 and replaced the Order. As it is accepted that demolition occurred after this date, it is necessary that I consider the matters before me in the context of the prevailing legislation at that time. Section 23 of the Act sets out the meaning of "development" and includes building operations. By virtue of which Section 23 (2) (a) thereof, building operations include the demolition of buildings. Section 23 (3) (f) of the Act provides that operations that shall not be taken to involve the development of land include the demolition of any description of building specified in a direction given by the Department to councils generally or to a particular council. Pursuant to Sections 23 (f) and (g) of the Act, the Planning (Demolition – Description of Buildings) Direction 2015 states that the demolition of any building to which paragraph 2 thereof applies shall not be taken for the purposes of the Act to involve the development of land. As the appellant's photos suggest that the original dwelling had a cubic capacity of more than 115m³, it exceeds the limit set in paragraph 2(a). Part 33, Class A of the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 provides that any building operation consisting of the demolition of a building is permitted development. The limitations set out in Class A.1 thereof are not applicable to

- demolition of the dwelling. Therefore, at the date of application for the CLEUD, demolition of the existing dwelling was permitted development that did not require express planning permission and is lawful.
10. Edencross Contract's invoice of 20 November 2015 refers to demolition of the existing building and its removal from site and makes no mention of excavating foundation trenches. However, the architect's affidavit referring to a site inspection in September 2015 said that the "*foundations had been started as per the planning approval location, to the corner of the replacement dwelling*". An undated photo, although hard to make out, appears to corroborate this evidence. On foot of this visit the architect commissioned a structural engineer to attend the site. The engineer's subsequent letter to the architect refers to a site visit on 7 October 2015 when "*the foundations for the proposed dwelling had been excavated*". Work on implementing the 2011 permission was apparently suspended pending submission of a planning application for a change of house type (LA07/2016/0527/F) in April 2016. The site approved under P/2010/1299/F comprises a large field and the appellant said that the excavated trench had been filled in for animal welfare but did not say when this took place.
 11. When determining the application for the change of house type (LA07/2016/0527/F) the Council noted that: whilst ground in the area of the former dwelling appeared to have been disturbed, there was no evidence of foundations for the approved buildings (P/2010/1299/F); and that Building Control had no record of foundation inspections on the site. Nevertheless on the basis of the applicant's evidence, it accepted, on the balance of probability, that trenches were excavated within the approved time limit i.e. 6 April 2016. Infilling of the foundations took place some time between 7 October 2015 and the Council's site visit in respect of planning application LA07/2016/0527/F, which was submitted on 18 April 2016. I am persuaded that work commenced on excavation of foundations for the approved dwelling prior to 6 April 2016. However, as these were subsequently filled in and covered over, there is no persuasive evidence that would enable me to certify that these operations were lawful when the CLEUD was applied for on 16 January 2017.
 12. A new access was created between the point of access that served the original dwelling and that approved to serve the new buildings. A watercourse within the appeal site runs parallel to Levallyreagh Road. It has been culverted for a length of approximately 25m. The aforementioned invoice dated 20 November 2015 includes work carried out to the watercourse at the site entrance but does not mention creation of the access itself. The affidavit from the appellant's architect indicates that the new access was in place in September 2015. As the new access is constructed across the culvert it is reasonable to conclude that works to the watercourse were carried out by that date. Undated photos, reportedly taken in October 2015, show the new access and culvert in place and correspond with the other two elements of evidence in this respect. There is no suggestion on the appellant's behalf that any works to implement planning permission P/2010/1299/F were carried out before September 2015. Taking the evidence in the round, I am persuaded that it is more likely than not culverting of the watercourse and construction of the new access took place during September 2015.
 13. These works come within the scope of Section 23 (1) of the Act and constitute development. They are not operations listed in Section 23 (3) thereof that shall not

- be taken for the purposes of the Act to involve the development of land. Part 3, Class B of the Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 defines certain works for the formation, laying out and construction or alteration of a means of access to a road, which is not a special, trunk or classified road as permitted development. Whilst there is no indication that Levallyreagh Road is anything other than an unclassified road, this legislative provision is subject to the access being required in connection with development permitted by any class in this Schedule (other than by Class A of Part 3). As the erection of a dwelling and garage are not permitted development, the creation of the new access and integral culverting are development for which planning permission is required.
14. As the works were carried out less than 17 months before the application for the CLEUD on 16 January 2017, they were not immune from enforcement action and are not lawful for the purposes of Section 169 (2) of the Act.
 15. A CLEUD can be issued in respect of demolition of the original dwelling.
 16. In the context of the submitted evidence I shall now consider whether this existing, lawful development on the site constitutes a material start to the erection of the replacement dwelling and garage as approved by P/2010/1299/F. As that permission was granted in accordance with the Planning (Northern Ireland) Order 1991, it is necessary that I consider the matters before me in that context as it was the prevailing legislation at that time.
 17. In accordance with Article 34 (1) of the Order 1991 and Condition 1 of planning permission P/2010/1299/F, development must commence before the expiration of five years of the date on which the permission was granted, namely before 6 April 2016. Article 36 of the Order sets out how Article 34 is to be interpreted. It covers most, but not all, development as defined by Article 11 thereof. It is silent on development consisting solely of engineering operations and/or the demolition of a building. In accordance with Article 36 (1) development is to be taken to be begun on the earliest date on which any of the operations specified in subsections (a) to (d) comprised in the development begins to be carried out. In respect of the construction of a building, sub-section (a) provides that development shall be taken to be begun *"where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building"*.
 18. The appellant referred to a letter issued by the Department in March 2009, not in respect of the appeal site, that sets out the material operations that it considered should be taken to constitute development having begun. It appears to have mistakenly based this advice on the provisions of Section 56 of the Town & Country Planning Act 1990 that applies in England and Wales as opposed to the provisions of domestic statute in Article 36 (1) of the Order. Therefore, the issue of whether the works undertaken by the appellant involve any work of construction in the course of the erection of the buildings approved by planning permission reference P/2010/1229/F must be determined on the basis of the relevant legislation applicable in Northern Ireland.

19. In the aforementioned affidavit, the architect explained that his site visit in September 2015 was prompted by experiences of "major foundation problems" with other building projects undertaken by the appellant and that he subsequently asked the structural engineer to attend the site and advise on the soil type. A structural engineer's aforementioned letter says that he asked the client to "excavate a trial hole to the side of the proposed location of the dwelling, as can be seen attached". Undated photos were submitted showing the digging of a trial/test hole. The hole is not seen in the context of the wider site. At any rate, given that Article 36 of the Order is silent on development consisting solely of engineering operations and that this exploratory work did not constitute any work of construction in the course of erection of the building, I am not persuaded that this engineering operation alone satisfied the requirements of Condition 1 of planning permission P/2010/1299/F.
20. Conditions 2 and 3 of that consent require works to be undertaken before the commencement of development on the site. The appellant provided no legal authority for her proposition that pre-commencement conditions are only relevant if they go to the heart of a planning approval. As such conditions play an important role within a planning permission and, until they have been satisfied, a planning permission cannot be implemented, I am not persuaded by her contention. This approach is consistent with Commissioner Daly's decision in 2016/E0045 that the Council referred to. Furthermore whilst the Department's aforementioned letter did not refer to compliance with pre-commencement conditions in considering whether development has begun, there is no evidence that the planning permission it related to was granted subject to such conditions.
21. Condition 2 required that the existing building be demolished, all rubble and foundations removed and the site restored in accordance with the approved plans. The existing building has been demolished and all rubble and foundations removed. The approved plans do not include any details of site restoration works to be carried out prior to the clearing of topsoil and construction of the new buildings and the Council did not identify any shortcoming in this respect.
22. Condition 3 required that the vehicular access, including visibility splays and any forward sight lines, shall be provided for in accordance with the approved plans, prior to the commencement of any other works or development hereby permitted. In accordance with Drawing No. PL02a, construction of the approved vehicular access involved 4 elements: construction of the point of access in the location shown on the approved plans and in accordance with the "entrance detail" shown thereon; the construction of 2.4 x 60m visibility splays to DOE Roads satisfaction; line of existing open watercourse to rear of hedgerow to be piped to the satisfaction of the Department of Agriculture along the full length of the sight splay; and provide an access width of 4.5m for the first 10m at a maximum gradient of 1 in 12.5m for 5m from the edge of the road. The Council is content that the required forward sight line is contiguous with the approved visibility splays and I concur with this conclusion.
23. The point of access to the site occupies a position between the original access and that approved to serve the new buildings. It has not been constructed in accordance with the approved access detail shown on Drawing No. PL02a. Notwithstanding the appellant's contention that repositioning of the access and use of the existing lane:

- constitutes a minor amendment to the planning permission; achieves the same objectives as the reason given for the imposition of Condition 3; is more sympathetic to site topography and involve less disruption to existing vegetation: is less suburban and more sympathetic to rural character, the access and laneway currently serving the site are not in the approved position and to the agreed design. The matter of whether the appellant could lawfully reinstate the access that served the original dwelling is a moot point as the building has been demolished, the access closed up and its use was not approved in conjunction with the new buildings. If the appellant wanted to pursue this point, she could apply to the Council for a CLOPUD. The issue is not the degree of compliance with condition 3 and the amount of overlap between what was approved and what has been implemented but whether the requirements of Condition 3 have been met.
24. Hedgerow has been removed on either side of the approved access but the required visibility splays are not in place and there is no evidence that they were laid out in their entirety. The appellant says that this was not possible due to the proximity of the watercourse to the road and that works to remove the ditch would have caused the latter to collapse. The watercourse lies below the road and the approved plan required that it be piped along the full length of the visibility splay most likely to address this issue. If this was not the case in practice, the appellant could have submitted a fresh planning application to address any difficulties encountered in implementing this aspect of the planning approval. Albeit that the culverting carried out may comply with Rivers Agency stipulations in a letter of 30 October 2015, this does not overcome the fact that this element of the works does not fully comply with the approved plan. Part of the approved lane, where it crosses the slope, meets the stipulations regarding width and gradient. However, as it does not start/end at the approved point of vehicular access to the site, this requirement has not been satisfied. In all, the requirements of condition 3 have not been implemented.
25. Condition 3 required that the required works to the vehicular access be carried out prior to the commencement of any works or other development hereby permitted. Therefore, whilst the works required by Condition 2 have been carried out and the Council has no associated concerns, it was not discharged, as the approved vehicular access was not provided prior to that work being carried out.
26. As the pre-commencement conditions were not complied with, condition 1 on P/2010/1299/F and the requirements of Article 34 (1) of the Order were not satisfied. Even if the trial/test hole came within the remit of Article 36 (1) (a) of the Order, on this basis, that engineering work would not have satisfied the requirements of Article 34 (1) of the Order. At any rate, the issue of compliance with pre-commencement conditions aside, as the works carried out do not amount to any work of construction in the course of erection of the buildings; the development approved by P/2010/1299/F cannot be taken to have begun. As Article 36 (1) of the Order does not mention the demolition of existing buildings, it has not been demonstrated that the approved development (P/2010/1299/F) has lawfully commenced on the site. Therefore, in my opinion, the completion of the replacement dwelling and associated garage would not be lawful.

COMMISSIONER JULIE DE-COURCEY

PLANNING ACT (NORTHERN IRELAND) 2011: SECTION 169

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT

The Planning Appeals Commission hereby certifies that on 16 January 2017 the operation described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate was lawful within the meaning of section 169 of the Planning Act 2011, for the following reason:

- The demolition of the building on site was permitted development.

Signed

Julie de-Courcey

COMMISSIONER JULIE DE-COURCEY

21st February 2018

FIRST SCHEDULE

1. The demolition of the building as coloured green on the approved plan (P/2010/1299/F) date stamped 4th February 2011

SECOND SCHEDULE

200m metres south-east of No. 21 Levallyreagh Road, Rostrevor

Notes:

- (1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.
- (2) It certifies that the operation described in the First Schedule taking place on the land described in the Second Schedule was lawful 16 January 2017 and was not liable to enforcement action under Section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.
- (3) This certificate applies only to the extent of the operation described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations which are materially different from that described or which relates to other land may render the owner and occupier liable to enforcement action.

List of Appearances

Planning Authority: Mr G Murtagh

Appellant: Mr M Kearney, Newline Architects
Mr J McGoldrick, Newline Architects

List of Documents

Planning Authority: "PA 1" Statement of Case
"PA 2" Rebuttal

Appellant: "APP 1" Statement of Case
"APP 2" Rebuttal



Appeal Decision

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282

Appeal Reference:	2017/A0163
Appeal by:	Mr Norman Roddy
Appeal against:	The refusal of consent
Proposed Development:	Conversion of existing six sheet display unit incorporated into an existing Adshel Bus Shelter to a six sheet digital display screen
Location:	Buttercrane Quay opposite Buttercrane Shopping Centre, Newry.
Planning Authority	Newry Mourne and Down District Council
Application Reference:	LA07/2017/1078/A
Procedure:	Written representations and Commissioner's site visit on 8 February 2018
Decision by:	Commissioner Pauline Boomer, dated 19 February 2018.

Decision

1. The appeal is allowed and consent is granted, subject to the condition set out below.

Reasons

2. The main issue in the appeal is whether the proposed signage would prejudice the safety and convenience of road users.
3. There is no conflict between the provisions of the Strategic Planning Policy Statement for Northern Ireland: "Planning for Sustainable Development" (SPPS) and those of retained policies regarding the display of an advertisement. Consequently, Planning Policy Statement 17: "Control of Outdoor Advertisements" (PPS 17) provides the policy context for the appeal. As the appeal site lies within Newry Conservation Area, Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6) is also material to consideration in this appeal.
4. Policy AD1 of Planning Policy Statement 17 'Control of Outdoor Advertisements' (PPS17) states that consent will be given for the display of an advertisement where it respects amenity when assessed in the context of the general characteristics of the locality and where it does not prejudice public safety. The objection to this proposal relates only to the issue of public safety. The Local Planning Authority (LPA) argues that the appellant has failed to demonstrate that the appeal proposal will respect public safety.
5. The digital poster panel would be incorporated within an existing bus shelter located outside the Buttercrane Shopping Centre in Newry. The bus shelter is

centrally positioned on the footpath which lies between the public road and the Newry Canal. The existing advertisement at the bus shelter is an internally illuminated static paper poster display which is to be replaced by a digital display panel with LED back lighting. No structural change to the existing bus shelter is required. The digital image would be static, changing at intervals from one static display to another. Advertising copy would not change more frequently than every five seconds and the transition to the next advertisement would be via a smooth fade out. The brightness would be controlled by a light sensor that automatically adjusts depending on ambient light levels.

6. The proposed display panel would be installed within the existing bus shelter which is located on the eastern side of Buttercrane Quay, abutting Newry Canal. Traffic moves in both directions along this side of the Canal. In their Statement of case, the LPA considers that the proposed advertisement is located adjacent to a pedestrian crossing and on this basis alone, the LPA have concluded that there is a significant risk of traffic collision here as a direct result of the proposed change to digital signage. I note that Transport NI were consulted on the appeal proposal but in their response requested only that the appellant "submit a dimensioned plan showing the proposal in relation to the existing footway plus bus shelter". The appellant contends that he did not receive a request for this additional drawing. Whilst the LPA argue that under Section (6) of Article 3 of the Planning (General Development Procedure) Order (NI) 2015, they were entitled to request this additional information which they consider necessary to determine the application, I have to question how essential such a plan was to ascertain whether or not prejudice to road safety would result. The appellant had submitted a 1:1250 site plan identifying the exact position of the bus shelter which could be clearly assessed on the ground as the structure is in situ. The proposal now under consideration involved no change to the position of the bus shelter or the display signs within it with the actual area of display reduced by 30%. However, the critical issue related only to the change from internally illuminated static paper poster displays to a digital display panel with LED back lighting. Full details of the means and method of illumination were provided to both Transport NI and the LPA to make their assessment of the impact on these changes which they failed to do.
7. Paragraphs 4.9-4.16 of PPS17 address the issue of road safety in detail and list the threats to public safety which policy requires to be considered. However, in their consultation response, Transport NI did not address any of these issues and raised no concerns about the potential adverse impact of the appeal proposal on road safety. The LPA refer only to the proximity of a pedestrian crossing which sits approximately 30m north of the existing bus shelter and on this basis alone they appear to have concluded that this would create a significant risk of a traffic collision. They have not provided any details about volume of traffic, traffic speeds or accident figures along this stretch of road to support their conclusion that road safety would be prejudiced at this location as a direct result of the appeal proposal.
8. Policy BH13 of PPS6 deals with the control of advertisements in a Conservation Area and states that "The Department will not normally grant consent for the display of advertisements in or close to a conservation area which would adversely affect the character, appearance or setting of the area or which would be detrimental to public safety". However whilst public safety is mentioned in the

headnote of the policy, this has not been articulated in the Justification and Amplification text which deals primarily with the visual test where there is no issue.

9. The onus lies with the LPA to justify all reasons for refusal and demonstrate that the appeal proposal conflicts with the relevant policies. It is not sufficient to claim that they have not received requested details to make an assessment but to consider if they have the relevant information required to make an informed decision. Whilst the appellant has referred me to other approvals for similar proposals in Belfast and throughout the UK, the circumstances of each location is different and each case has to be considered on its own merits. However the LPA failed by way of rebuttal to offer any explanation or make any comparisons with these other cases assessed against the same policy .
10. I have not been presented with any evidence to support the LPA's conclusion that the appeal proposal would fail to respect or prejudice public safety. In this evidential context, I find no conflict with Policy AD 1 or Policy BH13. As the three reasons for refusal have not been sustained, the appeal is allowed.
11. In terms of conditions, the LPA has suggested that a condition be attached requiring that the appellant obtain in writing, confirmation that the proposal complies with all relevant requirements from Transport NI. Given the limited response from Transport NI to date, I consider this necessary to attach such a condition in order to ensure that the proposed advertisements met all their requirements.

Conditions

1. Before installing the advertisement hereby granted, the appellant shall obtain in writing from the Local Planning Authority, confirmation that the proposal complies with all relevant requirements of Transport NI .

This decision relates to the following drawings/details date stamped received by the LPA on 17 July 2017.

- 1:1250 site location plan;
- Drawing LMK 0402 1:50 elevations of existing bus shelter;
- Drawing No. 441100 1:50 digital Box details; and
- Photographs of a bus shelter in Chester.

COMMISSIONER PAULINE BOOMER

2017/A0163**List Of Documents**

- LPA1 Statement of case from Newry, Mourne and Down District Council
- APP1 Statement of Case from Appellant

2017/A0163

List of Appearances

Planning Authority:-

Appellant(s):-

Third Parties:-

List of Documents

Planning Authority:- "A"

Appellant(s):-

Third Parties:-

