

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

**ITEM NO** 22  
**APPLIC NO** LA07/2016/0346/O Outline **DATE VALID** 3/8/16  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Mr McKnight 10 Ballycoshane Road Hilltown BT34 5XD  
**AGENT** www.niplanningpermission.co.uk 31 Grange Park Dunmurry BT17 0AN  
 NA

**LOCATION** Lands approx. 20m north east of 40 Ballycoshane Road Hilltown BT34 5XD

**PROPOSAL** Proposed erection of detached farm dwelling.

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

- 1 The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape.
- 2 The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to the rural character of the countryside.



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

**Application Reference:** LA07/2016/0346/O

**Date Received:** 8<sup>th</sup> March 2016

**Proposal:** Site for farm dwelling and garage

**Location:** The site is located within the Tollymore ward of the Mourne district. It is located approximately 3Km South West of Rathfriland, off the main Castlewellan Road.

**Site Characteristics & Area Characteristics:**

The site is clearly visible when travelling north to south along Ballycoshone Road. It comprises a section of a larger agricultural field which is currently used for grazing sheep. There are two new chicken sheds and 3No. silos located to the north of the site, these are set at the lowest part of the field.

The land slopes steadily uphill from the roadside towards the farm complex at No. 40. There is a line of leylandii trees along part of the laneway where it nears the farm dwelling and additional trees surround the farm complex.

**Site History:**

There is no relevant site history.

**Planning Policies & Material Considerations:**

- Banbridge, Newry and Mourne Area Plan 2015.
- Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.
- Planning Policy Statement 3 Access (PPS3), Movement and Parking Policy AMP2.
- Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside.



**Consultations:**

Statutory - Department of Rural Development Countryside Management Compliance Branch – has confirmed the farm business ID has been in existence for more than 6 years.

Statutory - NI Water has no objections and recommends a number of standard informatives.

Statutory - Transport NI no objections.

NIEA Water Management Unit had no objections, standard informatives

**Objections & Representations**

No objections received.

**Consideration and Assessment:**

Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.

The overarching aim of the SPPS is “that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance” Page 12.

Page 53 relates to dwellings on farms: provision should be made for a dwelling house on an active and established farm business to accommodate those engaged in the farm business or other rural dwellers. It notes that dwellings on farms must also comply with policies regarding integration and rural character.

Under the BNMAP the site is located in the rural area and is not affected by any other designations therefore the provisions of PPS 21 will apply.

PPS 3 Access Movement and Parking Policy AMP 2, access to public roads. Transport NI has been consulted and has no objections.

Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside.

PPS 21 policies CTY 1, CTY 3, CTY 8, CTY 10, CTY 13 and CTY14 apply.

CTY 1 Development in the Countryside, assesses the need for this proposal within the rural area.

CTY 8, states “Planning permission will be refused for a building which creates or adds to a ribbon of development”.

There are no issues of ribbon development on the proposed site.



CTY 10 Dwellings on farms – permission will be granted where a) the farm business has been active for over 6 years and b) no development opportunities have been sold from the farm holding in the last 10 years and c) the new building is **visually linked or sited to cluster** with an established group of buildings on the farm.

The proposed site will clearly cluster and visually link with the farm complex, the issue for this site is one of integration.

The policy then notes “In such circumstances the proposed site must also meet the requirements of CTY 13(a-f), CTY 14 and CTY 16”.

DARD has confirmed that there has been an active farm business for over 6 years. I am satisfied that the farm is active and established for the purposes of CTY 10 criteria a and b.

A planning history search shows that no other sites have been approved for dwellings on the farm.

CTY 13 assesses the impact this proposal will have on the rural area by reason of design, siting, integration and landscaping.

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.

A new building will be unacceptable where:

- (a) it is a prominent feature in the landscape; or
- (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
- (c) it relies primarily on the use of new landscaping for integration; or
- (d) ancillary works do not integrate with their surroundings; or
- (e) the design of the building is inappropriate for the site and its locality; or
- (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
- (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.

The proposed site lacks established boundaries on three sides and as a result it would require significant new landscaping to achieve satisfactory integration. The fact the site is on an elevated portion of a larger field makes the issue even more obvious.

When travelling from south to north along the Ballycoshone Road, a dwelling at this location would read as skyline development.





This photograph taken from the roadside demonstrated the lack of vegetation within the site and how a dwelling would appear as skyline development.

CTY 14 assesses the impact this proposal will have on the rural character of the immediate area. A new building will be unacceptable where:

- (a) it is unduly prominent in the landscape; or
- (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
- (c) it does not respect the traditional pattern of settlement exhibited in that area; or
- (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
- (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.



These photographs from Ballycoshone Road show how open the site appears, a new dwelling would not successfully integrate due to the lack of established boundaries.



The amplification notes: at paragraph 5.79 "In order to maintain and protect the rural character of an area the new building should respect the traditional pattern of settlement; that is, the disposition and visual appearance of land and buildings in the locality of the proposed development. Accordingly, to be considered acceptable, a new building in the countryside should:

- adopt the spacing of the traditional buildings found in the locality; or
- integrate sensitively along with a group of existing buildings, such as a farm complex".

The addition of a dwelling at this particular location would cause damage to the rural character of this area. The site lacks any long established boundaries. I accept that the leylandii hedge along the access road do provide a backdrop but the site appears very prominent from the roadside due to the topography of the site.

Drawing No. 2 shows what a dwelling might look like on the site. This drawing clearly demonstrates how the site appears disconnected from the farm complex. The site would require the introduction of 3 new boundaries to help a dwelling integrate. Although the vegetation would grow over time, the site would always appear unnatural within this larger field.

The issue for this application is Policy CTY 13 (Integration) and CTY 14 (Rural Character). The critical views are from Ballycoshone Road. There is no vegetation/trees to help a dwelling integrate as the site is a section cut out of a field. There is insufficient enclosure for a new dwelling and a site should not rely on new planting to make it acceptable.

I would consider a dwelling sited to the south of No. 40 to cluster with the farm complex. A dwelling here would not be as prominent and would more easily integrate with the landscape and cluster with the farm complex.







Refusal is recommended.

The SPPS reinforces the importance of the need for farm dwellings to comply with Local Development Plan policies regarding to integration and rural character. The proposed site offers little in the way existing screening and the elevated nature of the site means that any new dwelling will appear prominent in the landscape and adversely affect the rural character of the area.

1. The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape.
2. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to the rural character of the countryside.

4/5/16

4. 05. 2016

**Please see the below written submission for the applicant Mr. McKnight to speak at the Planning Committee Meeting on 29th June 2016. (PDF Format)**

His Key Point of the applicant wanting to speak at the Planning Committee Meeting is The Council did not request that he amend the location of the Proposed Farm Dwelling to be situated and screened by the existing trees on the site. The applicant is more than happy to amend the location of the proposed detached dwelling and plant pre-grown purchased mature trees around his application site to strengthen any required screening the Council may require at the application site. His application was just recommended for Refusal, without any correspondence or requests for amendments, which the applicant feels is totally unjust.

The proposed application LA07/2016/0346/O | Proposed erection of detached farm dwelling. | Lands approx. 20m north east of 40 Ballycoshane Road Hilltown BT34 5XD was submitted to Newry, Mourne and Down Council and the case officer agreed that the Outline Planning Application was a Farm Dwelling Opportunity and DARD confirmed that the existing farm was an active farm for over 6 years to meet the main policy criteria of CTY10.

As this proposed development is a farm dwelling opportunity under the Policy CTY10 and using the DARD Number (605142) this development will in no way set a precedent for proposed new developments along the Ballycoshane Road, Newry.

I trust this is satisfactory to your requirements.

Patrick O'Reilly  
BSc(Hons)MSc  
Senior Planning Consultant  
NI Planning Permission  
**Scottish Provident Building,  
7 Donegall Square West,  
Belfast,  
BT1 6JH**  
Website: [niplanningpermission.co.uk](http://niplanningpermission.co.uk)  
Mob: 07851082912 Tel: 02890588426



## **Pre-Application Report**

# **In Support of LA07/2016/0346/O | Proposed erection of detached farm dwelling. | Lands approx. 20m north east of 40 Ballycoshane Road Hilltown BT34 5XD**



By [www.niplanningpermission.co.uk](http://www.niplanningpermission.co.uk)

**Proposal: LA07/2016/0346/O | Proposed erection of detached farm dwelling. | Lands approx. 20m north east of 40 Ballycoshane Road Hilltown BT34 5XD**

**Re: DARD Business Number - 605142**

## Introduction

The proposed application LA07/2016/0346/O | Proposed erection of detached farm dwelling. | Lands approx. 20m north east of 40 Ballycoshane Road Hilltown BT34 5XD was submitted to Newry, Mourne and Down Council and the case officer agreed that the Outline Planning Application was a Farm Dwelling Opportunity and DARD confirmed that the existing farm was an active farm for over 6 years to meet the main policy criteria of CTY10.

The proposal being put forward has and will ensure that the site is designed to a very high standard that will only go to enhance the quality of the built environment in the area as the proposed new dwelling will be developed to mimic the house designs of the existing properties along the Ballycoshane Road, Newry.

The principal reason and requirement for this development is to allow the applicant to develop the site, as it was always the intention to do develop the existing farmlands.

As this proposed development is a farm dwelling opportunity under the Policy CTY10 and using the DARD Number (605142) this development will in no way set a precedent for proposed new developments along the Ballycoshane Road, Newry.

The proposal has been assessed with regard to the relative Planning Policy and Guidance documents, and is respectfully suggested that the application is consistent with the advice of the subject policies.

With regards to the recommended Refusal Reasons below the applicant can show the Proposed Farm Dwelling anywhere within the Red Line of the Application Site. The Council did not request that the applicant amend the location of the Proposed Farm Dwelling to be situated within a different area of the application site and screened by the existing trees on the site. His application was just recommended for Refusal, without any correspondence or requests for amendments, which the applicant feels is totally unjust.

### Recommended Refusal Reasons

The SPPS reinforces the importance of the need for farm dwellings to comply with Local Development Plan policies regarding to integration and rural character. The proposed site offers little in the way existing screening and the elevated nature of the site means that any new dwelling will appear prominent in the landscape and adversely affect the rural character of the area.

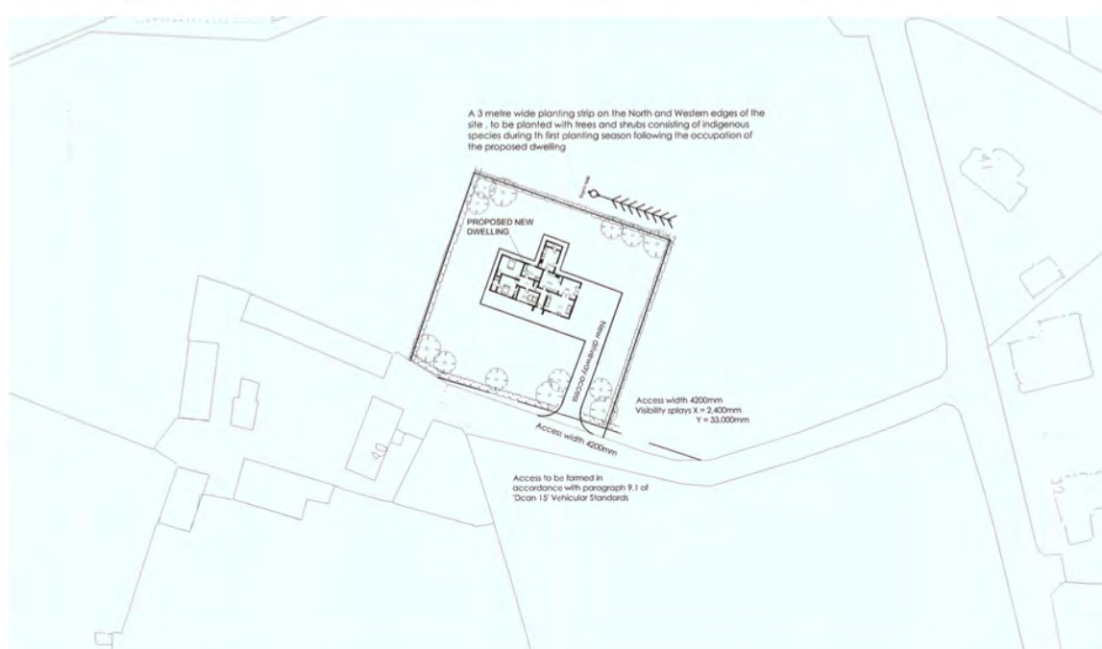
1. The proposal is contrary to Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape.
2. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, be unduly prominent in the landscape and would therefore result in a detrimental change to the rural character of the countryside.



## Characteristics of the site

The application site is situated on a large working farm which can easily absorb a new single storey detached dwelling that will provide adequate parking and adequate amenity space both to the front and rear of the proposed dwelling. The site is surrounded by a variety of mature vegetation and sloping topography therefore there is more than adequate screening already present. The only buildings situated on the large working farm, is a dwelling and stable area at Lands at 40 Ballycoshane Road, Newry, County Down, BT34 5XD. **Please see the below map of the site:**

### Map showing the approx site





**Photo 1: Only Existing Dwelling on the Farm Holding of Lands at 40 Ballycoshane Road, Newry, County Down, BT34 5XD**



**Photo 2: Approx site location, the site is very well screened by sloping topography and mature trees.**





**Policy CTY 13 – Integration and Design of Buildings in the Countryside**

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.

A new building will be unacceptable where:

- (a) it is a prominent feature in the landscape; or
- (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
- (c) it relies primarily on the use of new landscaping for integration; or
- (d) ancillary works do not integrate with their surroundings; or
- (e) the design of the building is inappropriate for the site and its locality; or
- (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
- (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.

**Policy CTY 14 – Rural Character**

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.

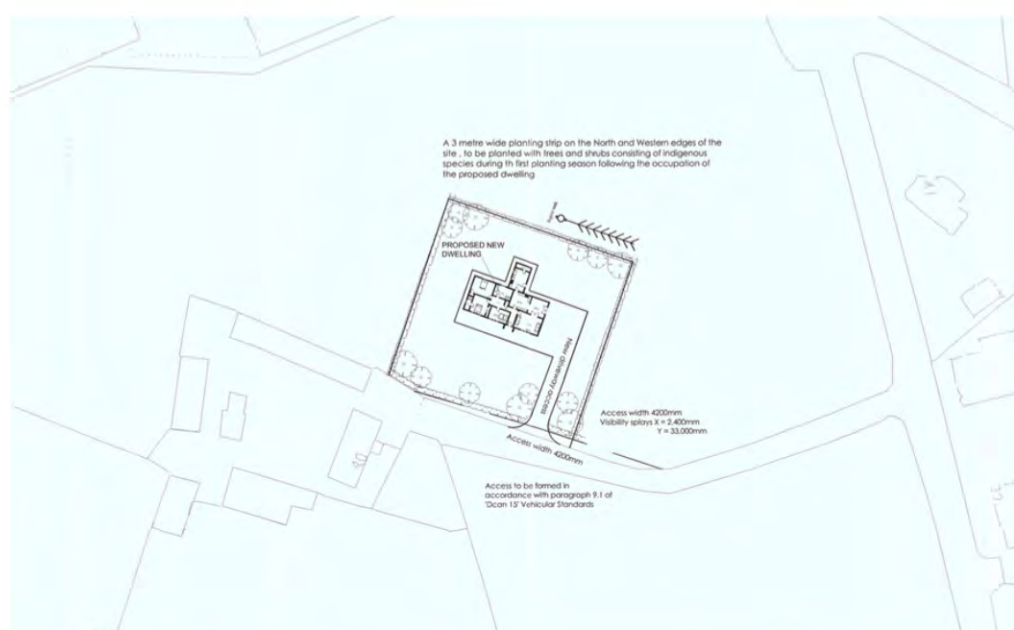
A new building will be unacceptable where:

- (a) it is unduly prominent in the landscape; or
- (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
- (c) it does not respect the traditional pattern of settlement exhibited in that area; or
- (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
- (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

## The Proposal

The below map provides an example proposed site map showing where a proposed Farm Dwelling under policy CTY10 could be potentially be situated, as this application is an Outline Planning Application, the applicant can show the Proposed Farm Dwelling anywhere within the Red Line of the Application Site. The Council did not request that we amend the location of the Proposed Farm Dwelling to be located and screened by the existing trees on the site (marked in the below red line box).

In terms of the dwelling proposed, the dwelling will be in keeping with the character of the area in terms of plots size, scale and massing.





**Landscaping**

Within this proposal the applicant will retain as many trees and hedging in the site as possible and will plant new mature tree planting in order to strengthen the natural screening of the proposed new farm dwelling.

**Access Provision**

The proposed new farm dwelling will be accessed via the existing driveway access point onto the Ballycoshane Road, Newry.

**Site History**

No previous relevant Planning History.

## Conclusion

The proposed development is a farm dwelling opportunity under the Policy CTY10 and using the DARD Number (605142) this development will in no way set a precedent for proposed new developments along the Ballycoshane Road, Newry.

The site will be carefully considered and designed so that it may hopefully meet the existing planning policy and not have an adverse impact on the countryside.

The proposed development will be sympathetic to the surrounding landscape and built environment of the area. This proposed development will safeguard the established character of the area.

The proposed new single storey farm dwelling will not be unduly prominent and will be designed in keeping with the neighbouring properties along and surrounding the Ballycoshane Road, Newry. The site already enjoys considerable screening whilst travelling along the Ballycoshane Road, Newry.

The Council did not request that the applicant amend the location of the Proposed Farm Dwelling to be situated and screened by the existing trees on the site. The applicant is more than happy to amend the location of the proposed detached dwelling and plant pre-grown purchased mature trees around his application site to strengthen any required screening the Council may require at the application site.

To ensure minimal impact of the proposed development appropriate conditions in terms of siting, landscaping, height and size of dwelling and curtilage could easily be applied and dealt with through a Reserved Matters planning application.



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

|                        |   |                    |                      |                      |                  |                   |   |
|------------------------|---|--------------------|----------------------|----------------------|------------------|-------------------|---|
| <b>ITEM NO</b>         | <b>23</b>   |                    |                      |                      |                  |                   |   |
| <b>APPLIC NO</b>       | LA07/2016/0372/O  | Outline            | <b>DATE VALID</b>    | 3/24/16              |                  |                   |   |
| <b>COUNCIL OPINION</b> | <b>REFUSAL</b>  |                    |                      |                      |                  |                   |   |
| <b>APPLICANT</b>       | Ms Jacqueline Magee                                       | 15                 | <b>AGENT</b>         |                      |                  |                   |   |
|                        | Commons Hall Road<br>Newry<br>BT34 2PL                    |                    |                      |                      |                  |                   |   |
|                        |   |                    |                      | NA                   |                  |                   |   |
| <b>LOCATION</b>        | Lands adjacent and North of 15 Commons Hall Road<br>Newry |                    |                      |                      |                  |                   |   |
| <b>PROPOSAL</b>        | Proposed dwelling on a farm                               |                    |                      |                      |                  |                   |   |
| <b>REPRESENTATIONS</b> | <b>OBJ Letters</b>  | <b>SUP Letters</b> | <b>OBJ Petitions</b> | <b>SUP Petitions</b> |                  |                   |   |
|                        | 0   | 0                  | 0                    | 0                    | 0                | 0                 | 0 |
|                        |   |                    | <b>Addresses</b>     | <b>Signatures</b>    | <b>Addresses</b> | <b>Signatures</b> |   |
|                        |   |                    | 0                    | 0                    | 0                | 0                 |   |

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS), 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 and access to the dwelling is not obtained from an existing lane.
- 2 The proposal is contrary to 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 Commons Hall Road.
- 3 The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted create or add to a ribbon of development and would therefore result in a detrimental change to further erode the rural character of the countryside.



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

**Application Reference:** LA07/2016/0372/O

**Date Received:** 24/03/2016

**Proposal:** Site for farm dwelling and garage

**Location:** The site is located approximately 3.5Km south east of Newry City centre in the Derryleckagh ward and is accessed off the Old Warrenpoint Road.

**Site Characteristics & Area Characteristics:**

The proposed site is immediately adjacent and north of the farm at No. 15 Commons Hall Road. The site is the front section of a larger agricultural field that is currently used for grazing. A dense 2m high hedge forms the roadside boundary. There is a field gate along the road at the southern end of the site. The northern and southern site boundaries comprise a mixture of rough vegetation interspersed with semi mature trees. The eastern boundary is undefined as this site is a section of a larger field.



(L) View into the site at the field gate and (R) view to the south along Commons Hall Road along the site frontage.





(L) View along Commons Hall Road, the entrance to No 15 is in the foreground.  
 (R) View into the site

#### **Site History:**

There is no relevant site history.

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

- Banbridge, Newry and Mourne Area Plan 2015.
- Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.
- Planning Policy Statement 3 Access (PPS3), Movement and Parking Policy AMP2.
- Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside.

#### **Consultations:**

Statutory - Department of Rural Development Countryside Management Compliance Branch – has confirmed the farm business ID has been in existence for more than 6 years.

Statutory - NI Water has no objections and recommends a number of standard informatives.

Statutory - Transport NI no objections.

NIEA Water Management Unit had no objections, standard informatives

## **Objections & Representations**

No objections received.

## **Consideration and Assessment:**

This site is located within the rural area as designated within the Banbridge, Newry and Mourne Area Plan 2015.

Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.

Page 53 relates to dwellings on farms: provision should be made for a dwelling house on an active and established farm business to accommodate those engaged in the farm business or other rural dwellers. It notes that dwellings on farms must also comply with policies regarding integration and rural character.

Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside.

PPS 21 policies CTY 1, CTY 8, CTY 10, CTY 13, CTY14 and 16 apply.

CTY 1 Development in the Countryside, assesses the need for this proposal within the rural area. A number of exceptions are listed and these include 'a dwelling on a farm'. CTY 1 also notes that 'All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for drainage access and road safety.

Policy CTY 8, states "Planning permission will be refused for a building which creates or adds to a ribbon of development". The supporting text adds at paragraph 5.32 that 'Ribbon development has consistently been opposed and will continue to be unacceptable.

I would have concerns in respect of the proposal in terms of ribbon development. No. 11, 15a and 15 are located along the road and then the associated farm sheds are located immediately adjacent to the site.





Aerial view of the site and farm holding. A dwelling sited behind No. 15 would offer a better solution.

This photo also shows the significant amount of development along Commons Hall Road. The development of the proposed site would add to this ribbon of development and further erode the rural character of the area.

CTY 10 Dwellings on farms – permission will be granted where a) the farm business has been active for over 6 years and b) no development opportunities have been sold from the farm holding in the last 10 years and c) the new building is **visually linked or sited to cluster** with an established group of buildings on the farm. The policy then notes “In such circumstances the proposed site must also meet the requirements of CTY 13(a-f), CTY 14 and CTY 16”.

DARD has confirmed that there has been an active farm business for over 6 years. I am satisfied that the farm is active and established for the purposes of CTY 10 criteria a and b.

A planning history search shows that no other sites have been approved for dwellings on the farm.

I accept that a dwelling on the proposed site would be visually linked with the existing farm but in doing so, the proposal fails Policy CTY 8 by adding to a ribbon of development and therefore fails the requirements of CTY 14 (part d – ribbon development).

CTY 13 and CTY 14 relate to new **buildings** in the countryside and are therefore a material consideration for all planning applications in the rural area.



CTY 13 assesses the impact this proposal will have on the rural area by reason of design, siting, integration and landscaping. The site itself is well screened along the road however this hedge would need to be removed to accommodate the sight splays. I don't consider CTY 13 to be fatal to the proposal as the dwelling could integrate with No. 15 and the existing farm sheds, however by doing so, it will add to the existing ribbon of development along Commons Hall Road.

CTY 14 assesses the impact this proposal will have on the rural character of the immediate area. It notes 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.

A new building will be unacceptable where:

- (a) it is unduly prominent in the landscape; or
- (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
- (c) it does not respect the traditional pattern of settlement exhibited in that area; or
- (d) **it creates or adds to a ribbon of development (see Policy CTY 8);** or
- (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

The amplification notes: at paragraph 5.78 that in assessing the cumulative impact of a building on the rural character the following matters should be taken into consideration. These include intervisibility of the building with existing development, the vulnerability of the landscape and the siting of the proposal.

With this in mind it is clear that a dwelling at the proposed location will be clearly viewed when travelling along Commons Hall Road, the access will require the removal of the roadside frontage and create a more suburban feel to the locality. The siting of the proposal is such that it will add to the existing line of development and therefore further erode the rural character of the area.

This proposal when viewed with the existing buildings surrounding this site will add to the existing ribbon of development along Commons Hall Road rather than integrate and cluster with the farm complex.

I consider this particular part of Commons Hall Road to be under severe development pressure. I think the development of this particular site will further erode the rural character of this area by extending development further into the countryside.



PPS 3 Access Movement and Parking Policy AMP 2, access to public roads notes that planning permission will only be granted for a development 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 and b) the proposal does not conflict with Policy AMP3 Access to Protected Routes. Transport NI had been consulted and has no objections.

### **Recommendation:**

Refusal.

I would note planning appeal 2014/A0034 where the Commission notes that CTY 13 and CTY 14 are material considerations for the appeal. The commissioner notes at paragraph 6 that "whilst CTY 10 provides for dwellings on farms which are visually linked or sited to cluster with an established group of buildings on the farm, it does not sanction the creation or extension of a ribbon of development, especially where other opportunities exist elsewhere on the holding"

This proposal for a site for a farm dwelling will add to the significant line of development along Commons Hall Road.

The issue for this application is Policy CTY 8 – Ribbon development. There is a total of 4 buildings facing onto Commons Hall Road (including the farm sheds at No. 15), in a row the proposed dwelling will add to this line of development.

I would consider a dwelling sited behind No. 15, accessed via the existing farm lane that also serves No. 15 to offer a better solution at this location as it would cluster with the farm complex rather than add to the existing line of development.

### **Refusal Reasons**

1. 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 sited to cluster with an established group of buildings on the farm and access to the dwelling is not obtained from an existing lane.
2. The proposal is contrary to 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 Commons Hall Road.

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

|                        |  |                    |  |                      |
|------------------------|--|--------------------|--|----------------------|
| <b>ITEM NO</b>         | <b>24</b>  |                    |  |                      |
| <b>APPLIC NO</b>       | LA07/2016/0406/O   | Outline            | <b>DATE VALID</b>  | 3/31/16              |
| <b>COUNCIL OPINION</b> | <b>REFUSAL</b>   |                    |  |                      |
| <b>APPLICANT</b>       | Martin Farnon 15 Ballygorian Road Hilltown Newry BT34 5TD  | <b>AGENT</b>       | Quinn Design and Engineering Services 36 Carrogs Road Burren Warrenpoint BT34 3PY<br>02841772377 |                      |
| <b>LOCATION</b>        | 100 metres north west of no 42 Ballygorian Road Hilltown Newry                                     |                    |  |                      |
| <b>PROPOSAL</b>        | Site for replacement dwelling and detached garage using existing un-altered access to public road. |                    |  |                      |
| <b>REPRESENTATIONS</b> | <b>OBJ Letters</b>   | <b>SUP Letters</b> | <b>OBJ Petitions</b>   | <b>SUP Petitions</b> |
|                        | 1  | 0                  | 0  | 0                    |
|                        |  |                    | <b>Addresses Signatures</b>  |                      |
|                        |  |                    | 0  | 0 0 0                |

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling and all external structural walls are not substantially intact.
- 2 The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.0 metres x 60 metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15.
- 3 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 width of the existing access 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.





Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

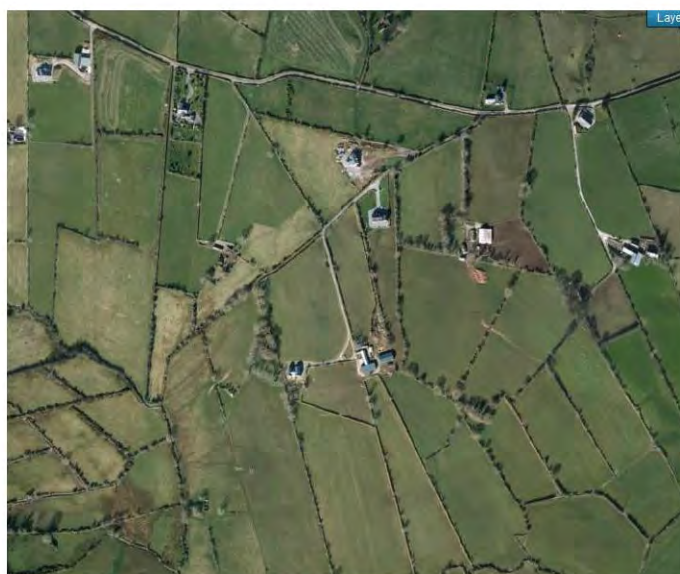
**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0406/O

**Date Received:** 31<sup>st</sup> March 2016

**Proposal:** Proposed replacement dwelling

**Location:** The site is within Crotlieve, approximately 2.5Km to the north west of Hilltown. Ballygorian Road is a narrow rural road and the access lane to the site also serves 4 other dwellings.



### Site Characteristics & Area Characteristics:

The site is accessed off an existing laneway the serves Nos. 42 – 46 Balygorean Road. The lane is finished in hardcore/gravel and essentially ends at the entrance to No. 42 when it becomes a rural lane of earth with grass up the centre. This lane ends at the proposed field for the off-site replacement dwelling. The dwelling to be replaces is located two fields beyond the point where the vehicular access laneway ends.

The existing dwelling was clearly a house at one stage. It appears that the dwelling was attached to a store/animal accommodation. The wall along the front elevation and the southern elevation are substantially complete. The northern gable has almost completely collapsed with less than 30% remaining. The eastern wall has also suffered a significant amount of decay and only about 40% remains. There is no roof on the property and internally there was a fireplace. The general layout of the building and the features along the front elevation convince me that it was indeed a dwelling house however, the building has been left to ruin and has fallen into disrepair. The animals in the field are able to walk in and around the remaining structure.



The dwelling is located at the far side of this field, it is proposed to locate the new dwelling closer to the existing field gate.





Approach to the dwelling which is clearly not 'substantially intact' as per the SPPS and CTY 3



The north gable wall could not be described as being 'substantially intact'





Eastern elevation of the dwelling



Front (west) elevation of the dwelling





The proposed location for the new dwelling is just beyond the existing field gate.



Existing lane leading to the proposed site.

**Site History:**

No relevant planning history on the site.

**Planning Policies & Material Considerations:**

- Banbridge, Newry and Mourne Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.
- Planning Policy Statement 3 Access (PPS3), Movement and Parking Policy AMP2
- Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside.
- Building on Tradition – A Sustainable Design Guide for Rural Northern Ireland

**Consultations:**

Transport NI – This response states that if the proposed dwelling could be reasonable occupied at present or with minor modifications Transport NI has no further objection to this application. If this is not the case, re-consult.

Historic Environment Division – notes that the application site is located close to the edge of a rath and as such a no development zone of 20m should be adhered to. A plan has been provided.

Archaeology & Built Heritage



Fig. 1: Aerial photograph showing outline of rath and development exclusion zone (blue). This overlaps with the red-line area to the north of the monument. An access that follows the existing hedgeline would be acceptable under Policy BH2 of PPS6.



Environmental Health Department – No objections  
NI Water -Standard advice  
Rivers Agency has no specific objection to the proposal and recommended a number of standard informatives.

### **Objections & Representations**

One received from an existing resident along the access lane. The only issue raised in the email was the poor condition of the access road and that the approval of another dwelling along the lane would result in further damage to the lane.

5No. neighbours were notified on 13<sup>th</sup> April 2016 and the application was advertised in three local papers on 20<sup>th</sup> and 22<sup>nd</sup> April 2016.

### **Consideration and Assessment:**

Under the BNMAP the site is located within the Mourne AONB.

Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS): Planning for Sustainable Development.

In relation to Replacement Dwellings, page 53 the text states “provision should be made for the replacement of existing dwellings where the building to be replaced exhibits the essential characteristics of a dwelling and **as a minimum all external structural walls are substantially intact**”

PPS 3 – paragraph 5.19 states that where an existing access is available but this does not meet with current standards, the Department would encourage applicants to consider the potential for incorporating improvements to the access in the interests of road safety.

Transport NI has states in its response that if the proposed dwelling could be reasonably occupied at present or with minor modifications, it has no further objection. If this is not the case then reconsult. I would not consider this dwelling to be capable of occupation in its current form. Major work would be required to make it habitable. It is therefore necessary to reconsult Transport NI as improvements to the existing lane/visibility splays at Ballygorian Road will be required.

Planning Policy Statement 21 (PPS21) Sustainable Development in the Countryside. PPS 21 policies CTY 1, CTY 3, CTY 13 and CTY14 apply.

CTY 1 Development in the Countryside, assesses the need for this proposal within the rural area. If this proposal meets the requirements of CTY 3 - Replacement Dwelling then it will automatically meet the criteria of CTY1.

CTY 3 Replacement Dwellings states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and **as a minimum all external structural walls are substantially intact.**

This building exhibits the essential criteria of a dwelling however, critically, ALL external walls cannot be describes as substantially intact.

I consider this issue to be fatal to this proposal for a replacement dwelling. The building has been completely abandoned and fallen into serious disrepair. The animals in the field are able to walk in and around the structure and have possible contributed to its collapse. CTY 3 is quite clear in what the requirements are for a dwelling to be considered as appropriate for replacement. This building falls short of what is required.

Objection considered and for the sake of completeness Transport NI has been re-consulted. I expect Transport NI will require the lane to be upgraded and appropriate visibility splays shown at Ballygorian Road to meet current access standards as provided by PPS3 and DCAN 15.

The proposal fails to comply with the SPSS, and PPS 21 in that the **ALL** external structural walls are substantially intact. The dwelling has clearly been abandoned may years ago as cattle can now wonder through the property. The building has been allowed to fall into serious disrepair, the roof has collapsed and only about 30% of the north gable wall remains. Only about 40% of the Eastern (rear elevation) remains. The other walls are substantially intact

It is important to consider that **BOTH** the SPSS and CTY 3 require as a **minimum** that **ALL** walls are substantially intact. Although I am content that this was once a dwelling the fact that all walls are not substantially intact is a serious shortcoming for this application.

I consider that this proposal fails the first policy test of a replacement dwelling.

**Recommendation:**

Refusal



**Reason for Refusal**

1. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure that exhibits the essential characteristics of a dwelling and all external structural walls are not substantially intact.
  
2. The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.0 metres x 60 metres) cannot be provided in accordance with the standards contained in the Department’s Development Control Advice Note 15.
  
3. 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 width of the existing access 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.

|  |  |
|--|--|
| <b>Case Officer<br/>Signature</b>          |  |
| <b>Date</b>                                |  |
| <b>Appointed<br/>Officer<br/>Signature</b> |  |
| <b>Date</b>                                |  |

# Quinn Design and Engineering Services

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14 June 2016

Democratic Services  
Newry, Mourne and Down District Council  
Local Planning Office  
O'Hagan House  
Monaghan Row  
Newry  
BT35 8DJ

Dear Sir/Madam

**Formal request to speak in support of the application listed below at  
the 29 June Planning Committee Meeting**

Planning reference: LA07/2016/0406/O

Planning Schedule Item Number: 25

Proposal: Site for replacement dwelling and detached garage using  
existing un-altered access to public road

Location: 100 metres north west of no 42 Ballygorian Road, Hilltown

Newry

Applicant: Martin Farnon

I refer to the above application which appears on page 25 of the Planning Schedule which will be considered at the Planning Committee Meeting due to be held on 29 June 2016.

In keeping with the 'Planning Committee Operating Protocol' I wish to appear before the committee and present the following information in support of the above application.



## **Background.**

The subject dwelling is semi-detached to an out building which is in poor condition. The front and lower gable walls of the subject dwelling are completely intact with the lower gable having an intact chimney and the front wall displaying an intact porch.

The rear wall has been subject to a small area of localised collapse.

## **The Councils Consideration to date.**

While it is accepted that the Case Officer's Report (COR) did not intend to mislead the Council, the Council's decision to recommend this application for refusal has none the less been very heavily influenced by the content of the COR.

The Case Officer (CO) contends that the rear wall is only 40% intact and that the internal, party gable wall is only 30% intact.

The CO confirms that the percentages contained in the report were derived from *estimating* the area of each wall which remains and were not based on accurate measurements taken on site.

I have carried out an accurate survey of the areas which have collapsed and using this new information will be able to demonstrate that the percentage of the dwelling's walls which remain is significantly higher than that which COR has advised the Council.

The photographs contained in the COR fail to explain where the dwelling adjoins the outbuilding. When viewed as one, the entire building appears to be in a much worse state than the actual dwelling is in.

## **Policy CTY 3**

Policy CTY 3 from which the first refusal reason stems advises "*Planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact*"

CTY 3 does not require all external walls to be complete; it only requires the external walls to be *substantially intact*.

The internal gable wall the CO refers to is the dividing wall between the dwelling and adjoining out building. Policy CTY 2 requires all “*external*” walls to be substantially complete. The internal gable wall can not therefore be referred to as an external wall.

This contention is supported by a recent High Court judgement which ruled that the wording in policy statements must be interpreted in accordance with the language used.

### **Refusal reasons 2 & 3**

The second and third refusal reasons have been generated as the Council is not content that the subject dwelling can be replaced. Should the Planning Committee decide that the dwelling complies with Policy CTY 3, refusal reasons 2 & 3 will no longer apply.

### **Conclusion**

While it is accepted that the COR did not intend to mislead the Council in relation to the condition of the subject dwelling, it nevertheless fails to present the true condition of the dwelling.

When the condition of the adjoining out building is discounted and the results of the detailed survey of the dwelling are considered, it is clear that the dwelling qualifies to be replaced.

Yours Faithfully

Brendan Quinn  
BSc Hon's  
ICIOB



|                            |
|----------------------------|
| <i>Ref:</i> <b>TRE9128</b> |
|----------------------------|

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

|                                     |
|-------------------------------------|
| <i>Delivered:</i> <b>17/01/2014</b> |
|-------------------------------------|

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION (JUDICIAL REVIEW)**

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**Department of the Environment's Application [2014] NIQB 4**

**IN THE MATTER OF AN APPLICATION BY THE DEPARTMENT OF THE  
ENVIRONMENT FOR JUDICIAL REVIEW**

**AND**

**IN THE MATTER OF A DECISION OF THE PLANNING APPEALS COMMISSION  
DATED 15 JANUARY 2013**

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**TREACY J**

**Introduction**

[1] By this application, the Department of the Environment ("the Department") challenges a decision of the Planning Appeals Commission ("PAC") dated 15 January 2013 on an appeal by Mr A Hyde ("the appellant") against an enforcement notice issued to him by the Department on 24 May 2011 under Art 68 of the Planning (NI) Order 1991 ("the 1991 Order"), to allow the appeal under Ground(a) of Article 69(3) of the 1991 Order and grant planning permission for the element of his unauthorised use of land at 10 Crooked Stone Road, Aldergrove as a commercial car park which had not become time-barred from enforcement.

[2] Mr Charles Banner of counsel appeared for the applicant. Belfast International Airport Limited ("BIAL") support the applicant for judicial review and were represented by William Orbinson QC. Mr Tony McGleenan QC and Mark McEvoy BL appeared on behalf of Mr Alan Hyde as Notice Party to the application. Mr Hyde was the successful Appellant in the impugned decision of the PAC. Mr David Scoffield QC appeared for the respondent PAC. I am indebted to all counsel for their excellent written and oral submissions which were of great assistance to the court. I am also grateful to Mr Banner for the provision of his speaking note in reply which in cases of this kind is to be much encouraged.

## **Background**

[3] The car park, used in connection with the appellant's business known as "Easipark", provides parking primarily for users of Belfast International Airport with a mini-bus shuttle service to and from the passenger terminal. The subject of this application is the section of the Decision at paras 29-43 under the heading "*Ground (a) that permission ought to be granted*".

[4] The PAC held that the Development did not comply with Policy AMP10 of Planning Policy Statement 3 *Access, Movement and Parking* ("PPS3"), which was specifically addressed to apply to "*Provision of Public and Private Car Parks*"; that the Development did satisfy Policy CTY11 of Planning Policy Statement 21 *Sustainable Development in the Countryside* ("PPS21"), which related to farm diversification schemes; that on a proper interpretation of these policies, development which satisfied Policy CTY11 did not also need to satisfy Policy AMP10; and there was therefore no policy objection to the development.

## **Order 53 Statement**

[5] The Department sought the following relief:

- (a) An order of *certiorari* to bring up into this Honourable Court and quash part of the decision of the Planning Appeals Commission dated 15 January 2013 to allow an appeal by Mr A Hyde under Article 69(3) of the Planning (Northern Ireland) Order 1991 against an enforcement notice issued by the applicant on 24 May 2011, the part in question being the decision to allow the Ground (a) element of Mr Hyde's appeal.
- (b) A declaration that the said decision is unlawful, *ultra vires*, and of no force or effect.

...

[6] The sole ground on which the relief was sought stated:

- (a) The Planning Appeals Commission erred in law in concluding that, on a proper construction of Policy CTY11 of Planning Policy Statement 21 *Sustainable Development in the Countryside* and Policy AMP10 of Planning Policy Statement 3 *Access, Movement and Parking*, the development subject to the enforcement notice needed to comply only with the former in order to be in accordance with planning policy".



## Statutory Framework

[7] Art 25(1) of the 1991 Order provides that, in determining an application for planning permission, regard must be had:

“to the development plan, so far as material to the application, and to any other material considerations”.

[8] The Department’s planning policies are normally issued through Planning Policy Statements (PPS). These set out the policies of the Department on particular aspects of land-use planning and apply to the whole of Northern Ireland. They are material to decisions on individual planning applications and appeals [see for example the Preamble to PPS21 and PPS1 General Principles]. The Department has issued a range of PPS setting out planning policy guidance covering an array of issues. It is common case that the PPS are material considerations which carry significant weight in planning decision-making.

[9] PPS3 *Access, Movement and Parking* sets out “*the Department’s planning policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking*”. Policy AMP10 of PPS3 is entitled “*Provision of Public and Private Car Parks*” and states:

“Planning permission will only be granted for the development or extension of public or private car parks, including park and ride and share, where it is demonstrated that:

- they do not significantly contribute to an increase in congestion;
- are not detrimental to local environmental quality;
- they meet a need identified by the Department for Regional Development in Transport Plans or accepted by DRD following robust analysis provided by a developer;
- within defined areas of parking restraint they are only used for short-stay parking and are appropriately managed to deter long stay commuter parking; and
- they are compatible with adjoining land uses.”

[10] PPS21 *Sustainable Development in the Countryside* sets out “*planning policies for development in the countryside*”, defined as “*land lying outside of settlement limits as identified in development plans*”. The policies in PPS21 are introduced by para 5.0 entitled “*Planning Policies*” which states:

“In exercise of its responsibility for development management in Northern Ireland the Department assesses development proposals against all planning policies and other material considerations that are relevant to it.

The planning policies of this statement must therefore be read together and in conjunction with the relevant contents of development plans and other planning policy publications, including the Regional Development Strategy. The Department will also have regard to the contents of published supplementary planning guidance documents.

The following policies set out the main planning considerations in assessing proposals for development in the countryside. The provisions of these policies will prevail unless there are overriding policy or material considerations that outweigh them and justify a contrary decision.”

[11] Policy CTY1 of PPS21 is entitled “*Development in the Countryside*” and provides in relevant part:

“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. Details of these are set out below.

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, or it is otherwise allocated for development in a development plan.

All proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations...

#### **Non residential development**

Planning permission will be granted for non-residential development in the countryside in the following cases:

- farm diversification proposals in accordance with Policy CTY11;
- ....



There are a range of other types of non-residential development that may be acceptable in principle in the countryside, e.g. certain utilities or telecommunications development. Proposals for such development will continue to be considered in accordance with existing published planning policies.”

[12] Policy CTY11 of PPS21 is entitled “*Farm Diversification*” and provides in relevant part:

“Planning permission will be granted for a farm or forestry diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm. The following criteria will apply:

- (a) the farm or forestry business is currently active and established;
- (b) in terms of character and scale it is appropriate to its location;
- (c) it will not have an adverse impact on the natural or built heritage; and
- (d) it will not result in detrimental impact on the amenity of nearby residential dwellings including potential problems arising from noise smell and pollution.”

### **Submissions**

[13] The applicant contended that a planning authority’s failure to give planning policy its single objectively correct meaning, as determined by the Court, is an error of law and referred the Court to Tesco Stores Ltd v Dundee City Council [2012] PTSR 983 (SC).

[14] The applicant contended that the PAC erred in concluding that, because the development complied with Policy CTY11 of PPS21, Policy AMP10 of PPS3 had no bearing on the Ground (a) appeal. The proper interpretation of PPS3 and PPS21 is that both policies applied to the development in the present case. The applicant set out its reasoning as follows:

- (i) The Development was a car park. Policy AMP10 of PPS3 is specifically expressed to apply to “*Provision of Public and Private Car Parks*”. It was also in the countryside and therefore engaged PPS21 which is expressed to apply to “*development in the countryside*”.

Accordingly, absent express indication to the contrary, both policies were applicable.

- (ii) There is nothing in PPS3 disapplying Policy AMP10 from development to which PPS21 applies. Indeed, the justification and amplification to Policy AMP10 makes specific reference at para 5.77 to car parks “*in rural locations*”. This makes clear that Policy AMP10 was intended to apply to car parks in the countryside.
- (iii) The policies in PPS21 are subject to para 5.0 quoted above, which states in terms that “*the planning policies of this statement must... be read together and in conjunction with... other planning policy publications*”. Policies CTY1 and CTY11 have to be read in that context.
- (iv) Policy CTY11 of PPS21 also has to be read in the light of Policy CTY1, which cross-refers to farm diversification schemes pursuant to CTY11 as being one of the “*types of development which are considered to be in principle acceptable in the countryside*” (at para1), as opposed to other types of development for which “*overriding reasons*” were needed to justify a countryside location (at para 2). The effect of compliance with CTY11 in the present case was simply that there was no in principle policy objection to the Development based upon its location in the countryside and that there was therefore no requirement for “*overriding reasons*” to justify the countryside location. There was still, however, a requirement to “*meet other planning and environmental considerations*”. Policy AMP10 of PPS3 was one such consideration.
- (v) The preamble to PPS21 sets out some circumstances in which the provisions of PPS21 will take precedence over the provisions of other policies, including certain provisions of PPS3. Had it been intended that Policy CTY11 of PPS21 was to take precedence over PPS3 generally or Policy AMP10 specifically, this section would have said so. It did not.
- (vi) Policy CTY11 of PPS21 is not itself expressed to disapply Policy AMP10 of PPS3 for purported farm diversification schemes that take the form of a commercial car park.
- (vii) The PAC’s assertion that “*whilst the amplification text for the farm diversification policy in draft PPS21 made reference to proposals also having to comply with planning policy, the text for Policy CTY11 of the extant PPS21 does not*” is misconceived. Para 5.44 of the justification and amplification to Policy CTY11 in the draft PPS21 states: “*Additional policy guidance on specific forms of farm diversification is set out in a number of other planning policy statements*”. That was a mere statement of fact. It is in any event no different in substance from the over-arching text of para 5.0 set out above which introduces the planning policies in the Extant PPS21 by saying: “*the planning policies*



*of this statement must... be read together and in conjunction with... other planning policy publications”.*

[15] Therefore, the applicant submits, the PAC erred in law in concluding that the Development only needed to satisfy Policy CTY11 of PPS21 in order to be in accordance with planning policy.

[16] The applicant submitted that where a legal error in a planning decision is identified, the Court will not withhold relief unless the outcome would inevitably have been the same and referred the Court to Simplex GE (Holdings) Ltd. v. Secretary of State for the Environment (1989) 57 P&CR 306. The high threshold of inevitability exists, it submitted, so that the Court does not stray into the forbidden territory of evaluating the planning merits of the development in question in attempting to second guess what might have happened absent the identified legal error.

[17] Mr Scoffield for the respondent PAC contended that the precise issue in the case related not merely to the interpretation of one policy but, rather the interaction, if any, of two policies namely (i) Policy CTY11 of PPS21 on sustainable development in the countryside and (ii) Policy AMP3 on Access, Movement and parking. Both in his written and oral submissions he conducted a detailed policy analysis in an attempt to make good his thesis that CTY11 was self-contained. Thus it was submitted that the generally permissive language of Policy CTY11 pointed to the conclusion that a proposal which meets Policy CTY11 does not also have to meet Policy AMP10 in order to be acceptable in the countryside. To that extent it was said the later document PPS21 (published in 2010) “takes precedence” over PPS3 (published in 2005). In summary it was submitted that once the PAC were satisfied that permission should be granted in principle for the farm diversification proposal which meets CTY11 and there were no site specific objections the PAC was required to grant permission. Indeed, he submitted that it would be impermissible for the PAC to take into account AMP10 in such circumstances.

[18] In contrast Mr McGleenan on behalf of the appellant took a different approach from the respondent. His first contention is that the development in question (a car park located in the country) engaged *both* CTY11 and AMP10. He agreed with the applicant (and BIA) that AMP10 was an existing policy against which the application should be considered. He maintained that the PAC identified that AMP10 was a policy against which the application should be considered and did so. He did not dispute that PPS3 is engaged but said it is an ancillary consideration to those raised by the application of PPS21 (see para 17 of Mr McGleenan’s skeleton argument).

[19] Mr Scoffield, on behalf of the PAC took a different view contending that once the PAC was satisfied that permission should be granted in principle under CTY11 and there were no site specific objections, that they were required to grant the application for planning permission. Indeed, Mr Scoffield accepted that the logic of his argument was that the PAC would have been in error in importing AMP10 considerations which, on his analysis, would be entirely irrelevant to this development.

## **Discussion**

[20] In Tesco [2012] UKSC 13 Lord Reed stated at paras 17-19:

17. It has long been established that a planning authority must proceed upon a proper understanding of the development plan ... The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of City of Edinburgh Council v Secretary of State for Scotland 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with which the other members of the House expressed their agreement. At p 44, 1459, his Lordship observed:

"In the practical application of sec 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions in it which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it."

18. In the present case, the planning authority was required by section 25 to consider whether the proposed development was in accordance with the development plan and, if not, whether material considerations justified departing from the plan. In order to carry out that exercise, the planning authority required to proceed on the basis of what Lord Clyde described as "a proper interpretation" of the relevant provisions of the plan. We were however referred by counsel to a number of judicial dicta which were said to support the proposition that the meaning of the development plan was a matter to be determined by the planning authority: the court, it was submitted, had no role in determining the meaning of the plan unless the view taken by the planning authority could be



characterised as perverse or irrational. That submission, if correct, would deprive sections 25 and 37(2) of the 1997 Act of much of their effect, and would drain the need for a "proper interpretation" of the plan of much of its meaning and purpose. It would also make little practical sense. The development plan is a carefully drafted and considered statement of policy, published in order to inform the public of the approach which will be followed by planning authorities in decision-making unless there is good reason to depart from it. It is intended to guide the behaviour of developers and planning authorities. As in other areas of administrative law, the policies which it sets out are designed to secure consistency and direction in the exercise of discretionary powers, while allowing a measure of flexibility to be retained. Those considerations point away from the view that the meaning of the plan is in principle a matter which each planning authority is entitled to determine from time to time as it pleases, within the limits of rationality. On the contrary, these considerations suggest that in principle, in this area of public administration as in others (as discussed, for example, in R (Raissi) v Secretary of State for the Home Department [2008] QB 836), policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context.

19. That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759, 780 per Lord Hoffmann). Nevertheless, planning authorities do not live in the world of Humpty Dumpty: they cannot make the development plan mean whatever they would like it to mean.

[21] And at para 35 of the same case Lord Hope stated:

“35. ....We are concerned here with a particular provision in the planning documents to which the respondents are required to have regard by the statute. The meaning to be given to the crucial phrase is not a matter that can be left to the judgment of the planning authority. Nor, as the Lord Ordinary put it in his opinion at [2010] CSOH 128, para 23, is the interpretation of the policy which it sets out primarily a matter for the decision maker. As Mr Thomson for the interveners pointed out, the challenge to the respondents' decision to follow the Director's recommendation and approve the proposed development is not that it was *Wednesbury* unreasonable but that it was unlawful. I agree with Lord Reed that the issue is one of law, reading the words used objectively in their proper context.

[22] Although Tesco was on its facts concerned with the proper interpretation of a development plan nothing turns on this. The same considerations apply to the carefully drafted and considered statements of policy embodied in Planning Policy Statements. This is not disputed by any of the parties.

[23] I am satisfied that CTY1 must be read subject to para 5.0. Thus development proposals must be assessed against all planning policies and other material considerations that “are relevant to it”. Para 5.0 is not the policy but importantly it indicates *how* the relevant planning policy is to be construed. Thus, CTY1 is, as Counsel for the applicant and notice party submitted, subject to para 5.0. That this approach is correct is confirmed by the paragraph “Non-Residential Development” in CTY1 which provides:

“...

#### Non-Residential Development

Planning permission *will* be granted for non-residential development in the countryside in the following cases:

- farm diversification proposals in accordance with Policy CTY 11;...  
There are a range of *other* types of non-residential development that *may* be acceptable in principle in the countryside, e.g. ... Proposals for such development will *continue* to be considered in accordance with existing published planning policies.

[24] Mr Scofield drew a distinction between (i) the specifically enumerated bullet point developments (of which there are 9) and (ii) the “*other*” types of non-residential



development that “*may*” be acceptable in principle. Whereas AMP10 considerations were, he submitted, legally irrelevant factors in the former category they would/could be relevant in the second category. He contended that the word “continue” indicated that “whereas proposals falling within the nine categories set out in the preceding part of the policy are now to be considered against policies specifically identified in Policy CTY1, proposals for other types of development falling outside those categories will, as previously, be considered, against other planning policies that were introduced before PPS21 was introduced. The reference to continuity applies only to developments which are outside the nine categories” [see respondents skeleton at para 29]. If Mr Scoffield’s contention were right then there would be two categories of “in principle” development which, on his analysis, would have to be approached differently depending on whether they fell within the bullet point categories or the “other” permissible development category. In the former category, according to Mr Scoffield, such proposals would not require to be considered in accordance with published planning policies but in the second category they would. I cannot accept that this is a sensible or objectively correct construction of the policy. On the contrary, the underlined portion referred to above provides additional support for the contention that the proper approach is that mandated by para 5.0 namely that development proposals must be assessed against all planning policies and other material considerations *that are relevant to it*. The planning policies of PPS21 must therefore be read together and in conjunction with the relevant contents of other planning policy publications. The policies that follow para 5.0 (which para is standard in PPS) set out the *main* (not the sole) planning considerations in assessing proposals for development in the countryside. The provisions of these policies will prevail *unless* there are other overriding policy or material considerations that outweigh them and justify a contrary decision. That was not the approach of the PAC who consequently fell into reviewable error. Thus at para 32 of its decision the PAC said that if the development was found to meet “either” CTY11 of PPS21 “or” AMP10 of PPS3 it “would” satisfy Policy CTY1 of PPS21. The PAC continued “there are essentially *two routes* through which development could be found acceptable in the countryside in accordance with Policy CTY1.” This point was picked up again at para 41 of the decision where the decision states: “as the development is acceptable in principle, there is no requirement that it also meet Policy AMP10 of PPS3”.

[25] The policies contained in PPS21 set out the main planning considerations in assessing proposals for development in the countryside. The provisions of these policies will prevail unless there are other overriding policy or material considerations that outweigh them and justify a contrary decision. In the present case there were other material considerations namely PPS3 Policy AMP10. They required to be conscientiously taken into account and put into the scales when assessing the planning merits of the development proposal. Mr McGleenan argues that such an exercise was in fact carried out. Mr Scoffield argues that even though such an exercise was unnecessary and indeed impermissible that the PAC effectively did just that (see paras 38 et seq of the decision).

[26] As to the question of weighing I am not satisfied that any such exercise was carried out. At the very least it is unclear that they did conduct any such exercise. The starting point must surely be that the PAC erroneously concluded that CTY1 is a self-contained policy which, since it was satisfied, must lead to the grant of planning permission. In the first instance it seems to me that ordinarily one must expect the

decision maker to have correctly identified the relevant policy(s) and the relationship between them, correctly interpreted and applied them. That, for the reasons given, did not occur in the present case.

[27] It is not enough to say that the Commissioner considered AMP10. It is clear he did consider it and that the development did not meet the policy tests because the applicant had not demonstrated a need for this development in a rural location in close proximity to BIA [see para 40 of decision]. He appears to have regarded this finding as immaterial to the decision to be reached and in consequence did not weigh it against the other considerations, as he was required to do. I cannot be satisfied that the decision *might* not have been different if the PAC had not made the error it did and accordingly I quash the decision [see Simplex (1989) 57 P&CR 306 at pp 323, 327 and 329].



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

|                        |  |         |                   |  |
|------------------------|--|---------|-------------------|--|
| <b>ITEM NO</b>         | <b>25</b>  |         |                   |  |
| <b>APPLIC NO</b>       | LA07/2016/0421/O                                   | Outline | <b>DATE VALID</b> | 4/4/16   |
| <b>COUNCIL OPINION</b> | <b>REFUSAL</b>                                     |         |                   |  |
| <b>APPLICANT</b>       | Fiona Doyle 23 Spring Meadows Warrenpoint BT34 3SU |         | <b>AGENT</b>      | Bernard Dinsmore Chartered Architect 24a Duke Street Warrenpoint BT34 3JY<br>028 4175 3698 |

**LOCATION** Site adjacent to and west of No. 25 Tamnaharry Hill Road  
Mayobridge  
Newry  
Co. Down

**PROPOSAL** Proposed infill dwelling and detached garage

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

- 1 The proposal is contrary to 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 Tamnaharry Hill Road.
- 2 The proposal is contrary to 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;
  - the (building) would, if permitted create or add to a ribbon of development;
  - and would therefore result in a detrimental change to the rural character of the countryside.
- 3 The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that it does not meet the policy criteria of CTY8;



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:**

LA07/2016/0421/O

**Date Received:**

04/04/2016

**Proposal:**

Proposed infill dwelling and detached garage.

**Location:**

Site adjacent to and west of No. 25 Tamnaharry Hill Road, Mayobridge, Newry.

**Site Characteristics & Area Characteristics:**

The site is approximately one mile south from the village of Mayobridge, set within rolling landscape, with the surrounding land uses predominately agricultural and residential and a mixture of dwelling types. Adjacent to and east of the site lies No. 25A Tamnaharry Hill Road, a contemporary two storey dwelling and detached garage, separated from the site itself by an enclosed field to the front and side of the dwelling. Further north east sits No. 25, which is accessed via a long concrete laneway and comprises a single storey bungalow and there is a large brick and corrugated iron agricultural building situated approximately 120 metres north from the roadside. Further east, sits No. 27, a large storey and a half contemporary dwelling sited similarly to No.25A in terms of positioning along the Tamnaharry Hill Road. The field adjoins another open field to the west; with No. 29 Tamnaharry Hill Road further west, a storey and a half bungalow. The site itself, currently an open field is bound by bramble hedgerow to the north and east and by a wire and post fence to the south roadside and west. In terms of levels, the site slopes upwards towards the rear boundary. The Tamnaharry Hill Road slopes steeply south east and at the front of the site.



(views of the site)

**Site History:**

- P/2011/0824/RM - 83 metres south east of 25 Tamnaharry Hill Road, Mayobridge, Newry - erection of replacement dwelling – approved 23/01/2012
- P/2007/0466/O - 83 metres south east of 25 Tamnaharry Hill Road, Mayobridge, Newry - erection of replacement dwelling - approved 13/01/2009
- P/2009/1548/F – adjacent to and abutting the boundaries to the North West and east of 25 Tamnaharry Hill Road, Mayobridge – farm dwelling. Approved 16/06/2010
- 2006/A0132 - Adjacent to 25 Tamnaharry Hill Road, Mayobridge, Newry – appeal dismissed, 26/07/2007
- P/2006/2043/RM - No.25 Tamnaharry Hill Road, Mayobridge – Erection of single storey domestic dwelling to replace existing sub-standard dwelling, approved, 15.08.2007
- P/2004/1766/O - No.25 Tamnaharry Hill Road, Mayobridge – replacement dwelling – approved 05/11/2004
- P/2004/3277/O - Adjacent to 25 Tamnaharry Hill Road, Mayobridge, Newry - Site for dwelling and domestic Garage, appeal dismissed
- P/2003/2288/O - 50 metres west of No.27 Tamnaharry Hill Road, Mayobridge - Erection of one and a half storey dwelling with detached garage – refused 12/10/2004
- P/1997/0318 – Adjacent to 25 Tamnaharry Hill Road, Mayobridge – dwelling and garage, permission granted.
- P/1978/0149 – Tamnaharry Mayobridge - proposed site for replacement dwelling – refused.

**Planning Policies & Material Considerations:**

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

- Strategic Planning Policy Statement (SPPS)
- Banbridge / Newry and Mourne Area Plan 2015
- PPS 3 Access, Movement and Parking
- PPS 21 Sustainable Development in the Countryside
- DCAN15 – Vehicular Access Standards
- 'Building on Tradition,' a Sustainable Design Guide for Northern Ireland will also be considered.

**Consultations:**

- NI Transport – No objection with conditions
- NI Water - generic response
- Environmental Health – no objections, with informatives

**Objections & Representations**

6 Neighbour notifications issued on 16/05/2016

No responses received



### Consideration and Assessment:

The site lies out with the settlement development limits as identified in the Banbridge / Newry and Mourne Area Plan 2015 in an area of undesignated countryside. There are no specific policies in the plan relevant to the determination of the application so the application will be considered under the operational policies of the SPPS and PPS 21.

As there is no significant change to the policy requirements for infill dwellings following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of this proposal in accordance with paragraph 1.12 of the SPPS.

Policy CTY8 states that planning permission will be refused for a building which creates or adds to a ribbon of development but qualifies this by stating that “an exception will be permitted for the development of a small gap site sufficient to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements”. A ‘substantial and built up frontage’ includes a line of three or more buildings along a road frontage without accompanying development to the rear.



Figure 1 overview of site within existing settlement pattern

In this instance, working from south west, numbers 29A and 29 Tamnaharry Hill Road currently display road frontage without accompanying development to the rear. Following this is a small field, then the application site. Adjacent to the application site and north east sits number 25A, which is accessed from a private lane and does not display road frontage, with an open field between the road and the curtilage of

the dwelling. Further along Tamnaharry Hill Road sits number 25, which is also accessed off this same private lane, though set back and therefore not displaying roadside frontage.

Given this is the case, the proposed development is not an exception to policy CTY 8. The application site is not currently a gap site as there is not currently a frontage containing three buildings as required by Policy CTY8, rather there are two. Therefore the proposed dwelling would add to a ribbon development which is contrary to Policy CTY 8. In addition, as a dwelling on this site would not meet the requirements of policy CTY 8 for an infill dwelling, the proposal is unacceptable in principle under policy CTY 1 Development in the Countryside, 'Housing Development.'

Policy CTY 13 Integration and Design of Buildings in the Countryside allows for new development in the countryside where it can be visually integrated into the surrounding landscape and where the design is appropriate. In the case, the proposed site is very exposed from critical views along Tamnaharry Hill Road. The proposal includes the siting of the dwelling slightly forward of the existing dwellings either side, due to site topography. It is considered that a new dwelling in this position would become a prominent feature in the landscape, a principle which is unacceptable under CTY 13.

Policy CTY 14 Rural Character allows for new development in the countryside where it does not cause detrimental change to, or further erode the rural character of an area. As aforementioned under the description of the area's character, the application site currently sits between a number of existing dwellings, namely numbers 29A, 29, 25A, 25 and 27 Tamnaharry Hill Road, all of varying character and styles. Given the positioning of the application site, it is considered that the development of additional housing should this be one or two dwellings would result in a sub-urban style build-up of development. This is further supported given the existing dwellings on the opposite side of the road, namely numbers 26 and 28 which include a large two storey suburban style dwelling and a single storey bungalow.

Furthermore, CTY 14 points out that a new building will be unacceptable in the countryside where it creates or adds to a ribbon of development. As abovementioned under the assessment of CTY8, the application site is not considered an acceptable gap site and would allowing development in this location would add to a ribbon of development.

Under the assessment of PPS 3 Access, Movement and Parking, Policy AMP 2 states that planning permission will only be granted for a development proposal involving direct access onto a public road where such access will not prejudice road safety. The proposal does not include details regarding access, however given the positioning of the site; it would require the construction of a new access onto Tamnaharry Hill Road. NI Transport have been consulted on this application and have no objections to the proposal provided that a scale plan and accurate site

survey at scale 1:500 (minimum) is submitted as part of the reserved matters application showing the access to be constructed and other requirements in accordance with form RS1.

**Recommendation:** Refusal

The proposal is contrary to PPS 21 CTY1, CTY8 and CTY14

**Refusal Reasons:**

1. The proposal is contrary to PPS 21 CTY 1 under Housing Development, in that it does not meet the policy criteria of CTY8;
2. The proposal is contrary to PPS 21 CTY 8 in that the site is not an exception to policy CTY 8 and is not considered a gap site, therefore development on this site would add to a ribbon development;
3. The proposal is contrary to PPS 21 CTY 13 in that the new building, if developed would become a prominent feature in the landscape;
4. The proposal is contrary to PPS 21 CTY 14 in that development on this site would result in a sub-urban style build-up of development and again would add to a ribbon of development.

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