

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

|                        |  |         |                   |   |
|------------------------|--|---------|-------------------|---|
| <b>ITEM NO</b>         | <b>26</b>  |         |                   |   |
| <b>APPLIC NO</b>       | LA07/2016/0556/O                                     | Outline | <b>DATE VALID</b> | 4/27/16   |
| <b>COUNCIL OPINION</b> | <b>REFUSAL</b>                                       |         |                   |   |
| <b>APPLICANT</b>       | J & J McKibbin 181 Moyad Road<br>Kilkeel<br>BT34 4HL |         | <b>AGENT</b>      | Michael Burroughs Associates 33 Shore Road<br>Holywood<br>BT18 9HX<br>02890421011 |

**LOCATION** 40m Southeast of 181 Moyad Road  
Kilkeel  
BT34 4HL

**PROPOSAL** Site for dwelling and garage

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

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (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 SPPS and Policy CTY2a of Planning Policy Statement 21, New Dwellings in Existing Clusters in that:
  - the cluster is not associated with a focal point and is not located at a cross-roads;
  - the proposed site is not bounded on at least two sides with other development in the cluster and does not provide a suitable degree of enclosure; and
  - the dwelling would if permitted significantly alter the existing character of the cluster.
- 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 result in a suburban style build-up of development when viewed with existing and approved buildings;
  - the building would, if permitted not respect the traditional pattern of settlement exhibited in that area;
  - and would therefore further erode the rural character of the countryside.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0556/O

**Date Received:** 27<sup>th</sup> April 2016

**Proposal:** Site for dwelling and garage (infill)

**Location:**

Moyad Road is part of the Lisnacree Ward. The road runs from Kilkeel to the north towards Attical. The site is located approximately 2.5Km north of Kilkeel

**Site Characteristics & Area Characteristics:** The site is located to the rear of a dwelling currently under construction that has a frontage directly onto Moyad Road. No 181 Moyad Road is located to the north of the laneway that serves the site.

The site itself consists of a low lying agricultural field and is served by a laneway that also serves 3No other dwellings which are located to the rear of No. 181. Two of these dwellings are complete and 1 is nearing completion. Another dwelling has been approved on the site of the existing mushroom sheds (P/2014/0155/O).

The site is triangular in shape and is accessed off a laneway that serves the 3No. existing dwellings and a site containing number of mushroom sheds at the rear of No. 181.

The northern site boundary comprises the new dwelling fronting onto Moyad Road. A tributary of the Aughrim River forms the southern boundary of the site where there is mature vegetation and a number of trees. The western boundary is defined by a post and wire fence and a newly planted laurel hedge. The access lane to the remaining dwellings also runs along the western boundary.



This aerial photograph shows the application site in the context of the wider area which is clearly under significant development pressure.

### **Site History:**

#### **Surrounding area:**

There have been 5 No. dwellings approved in the immediate vicinity of the application site since 2009.

Dwelling at the most southern point of the laneway (P/2009/0762/O and P/2011/0613/RM).

Outline application P/2013/0448/O and P/2014/0095/RM (complete) and P/2014/0162/O and LA07/2015/0317/RM (under construction) and P/2014/0155/O approved and current application LA07/2016/0524/RM.

Dwelling to the north of the application site P/2014/0751/F (under construction)

#### **Planning history on the application site**

Application P/2011/0611/O on the application site was refused on 12/11/2012

Reason for refusal:

1. The proposal is contrary to Policy CTY2a of Planning Policy Statement 21, Sustainable Development in the Countryside in that:
  - the cluster does not appear as a visual entity in the local landscape;
  - the cluster is not associated with a focal point and is not located at a cross-roads;
  - the proposed site is not bounded on at least two sides with other development in the cluster;
  - the dwelling would if permitted significantly alter the existing character of the area.
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 and would not respect the traditional pattern of settlement exhibited in that area resulting in a further erosion of the rural character of the countryside.
3. The proposed development is contrary to Policy DES 4 of the Department's Planning Strategy for Rural Northern Ireland in that the development has failed to be sensitive to the distinctive character of the Mourne Area of Outstanding Natural Beauty or the quality of its landscape and has failed to respect the traditional settlement pattern exhibited in this area.

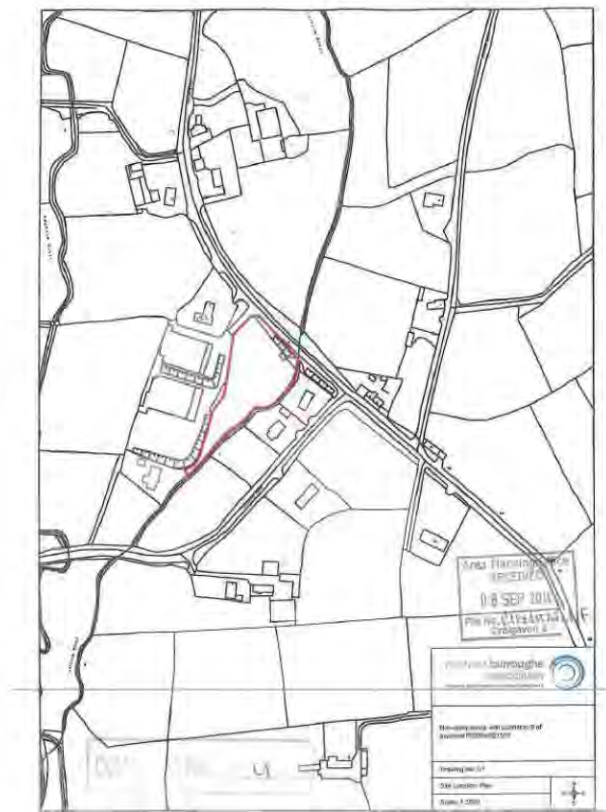
This planning application was also dismissed at appeal 2012/A0120 on 10/05/2013. In her report, the Commissioner considered that the development of the appeal site could be absorbed into the existing grouping through rounding off without significantly altering the character of the area (para 9). At paragraph 12, she states that "Policy CTY2a states that all criteria must be met and the appeal offends the 1<sup>st</sup> and 3<sup>rd</sup> criterion, the 1<sup>st</sup> reason for refusal is sustained".

The crux of the Commissioners report was strict adherence to the criterion of Policy CTY2a.

I would acknowledge that the PAC has issued other decisions where they have not rigidly applied planning policy in this way. Indeed, the applicant has cited decision 2010/A0202 where the Commissioner considered the broad intent of CTY2a to round off and consolidate an existing cluster of development.

This matter is explored fully in the consideration and assessment section of this report.

The dwelling facing onto Moyad Road was granted outline planning permission under application P/2000/1435/O and P/2004/0215/O on 7<sup>th</sup> August 2004. The approval was based on the applicant's personal circumstances which were considered to meet the relevant policy at that time. The reserved matters application P/2007/0529/RM was not submitted until 2007 and was approved on 11.12.2007.



Application P/2014/0751/F to remove the occupancy condition was approved.

Note that the red line boundary for all the previous applications was the larger triangle. When the 'infill' application (P/2011/0611/O) that was refused and dismissed at appeal the red line was reduced to include the rear curtilage of the roadside dwelling.

I consider the plot size and shape to differ from that found in the remainder of this immediate area.

#### **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:**

Transport NI – Standard response with conditions.

NI Water – No objections

Environmental Health – No objections

Rivers Agency – advise that the site is adjacent to the fluvial floodplain but does not lie within the 1 in 100 year fluvial floodplain. Advises to have all finished floor levels at least 600mm above existing ground levels.

**Objections & Representations**

None received. 6No. neighbours notified. Advertised in Mourne Observer 3<sup>th</sup> May 2016

**Consideration and Assessment:**Opinion of the Applicant

The applicant has acknowledged in the supporting statement that a similar application (O/2011/0611/O) was refused planning permission on 4/6/2012 and the refusal was upheld by the PAC on 10/05/2013 (2012/A0120). As both decisions occurred more than 2 years ago, the Council cannot lawfully decline to determine this application.

The applicant contends that since these decisions, the following has occurred which significantly changes the environmental and planning context of this proposal. I have provided a summary below:

- Three decisions have been highlighted where a Council or the PAC has not relied on a 'cross roads' for Policy CTY2a
- Three dwellings have been approved on the opposite side of the lane and the dwelling to the NW has been approved to allow its completion.

The applicant states that there is now a gap in the centre of a cluster of residential development, which is very different to the previous refusals and that this is now justification for the proposals approval.

Planning Policy Context

Under the BNMAP 2015 the site is within the rural area and is within the Mourne AONB.

The Strategic Planning Policy Statement is less prescriptive than PPS 21 (CTY2a) but it does provide guidance on what is considered acceptable for dwellings in existing clusters.

In relation to new dwellings in existing clusters the SPPS states at p52 that “provision should be made for a dwelling at an existing cluster of development which lies outside a farm provided it appears as a visual entity in the landscape; and is associated with a focal point; and the development can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside”.

As with all planning applications, the weight to be accorded to each policy must be balanced depending on the circumstances of the site.

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

PPS 21 policies CTY 1, CTY2a, CTY 8, CTY 13 and CTY14 apply.

CTY 1 relates to development in the Countryside, it assesses the need for a proposal within the rural area. The policy notes that 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.

### **Policy CTY2a**

Policy CTY2a relates to new dwellings in existing clusters:

Planning permission will be granted for a dwelling at an existing cluster of development provided all the following criteria are met:

1. consists of four or more buildings outside a farm;
2. the cluster appears as a visual entity in the local landscape;
3. the cluster is associated with a focal point;
4. the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster;
5. development of the site can be absorbed into the existing cluster through rounding off and consolidation; and
6. development would not adversely impact on residential amenity.

The Commissioner at the previous appeal was not convinced that the site lay outside a farm (criterion 1) as the mushroom sheds were in such close proximity to the site and the appellant offered no clarification of their use, in addition the site was not associated with a focal point (criterion 3) paragraph 12 of her report states “all criteria must be met and the appeal proposal offends the 1<sup>st</sup> and 3<sup>rd</sup> criterion”.

I acknowledge the evidence presented by the applicant in the form of several decisions where it has been determined that ALL criterion have **not** been met and the general trust of CTY2a is to round off and consolidate existing clusters I am not satisfied that the development of this particular site represents the opportunity to ‘round off’ this existing cluster.

My reasons are set out below:

- Although there are now 5 dwellings along the access lane (including No. 181 and the new dwelling to the north of the site) the site appears to be associated with the existing disused mushroom farm complex. Although outline planning permission has been granted for a dwelling on the site of the last mushroom sheds at the rear of No. 181, I am not convinced that the site lies outside of,

or is not associated with this farm unit. This dwelling has not been built (and may never be implemented) and the existing sheds make the area appear as part of a larger farm complex.

- It is my opinion that the existing houses do not appear as a visual entity in the landscape. The variation in levels and mature vegetation along the Aughrim River ensures that the existing dwellings do not appear as a visual entity from the critical views from the south along Moyad Road and Dougans Road.
- I consider the application site to be an important break in the significant development of this area of Moyad Road
- I don't consider the site to be bound on 2 sides by development. The site is bound on the north east by the dwelling on Moyad Road and to the south east by the Aughrim Rover, the dwellings along Dougans Road do not adjoin the site boundary. The remaining boundary is with the lane that serves the existing dwellings along the lane.
- There are critical views of the site from both the Moyad Road and Dougans Road and I consider that the development of this site would significantly alter the character of the area. The application site is an important and visible green break in the built up appearance of this part of the Moyad Road.
- The site itself appears as part of the curtilage of the new dwelling facing Moyad Road rather than a site for consolidation of a cluster.

I consider this application to fail criterion 1, 3 and 5 of CTY 2a.

**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 has limited screening and lacks long established boundaries however as it is located at a lower level than the Moyad Road, the issue for this proposal is not visual integration, it's the fact it will add to a significant urbanised area along this part of Moyad Road. It is my opinion that a modest single storey dwelling could be successfully integrated at this location.

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 along with the remainder of the dwelling in the immediate vicinity, this is a particularly vulnerable landscape, as evidenced by its designation as part of the Mourne AONB. 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.

Paragraph 5.81 states “The assessment of the impact of a new building on rural character will be judged from critical views along stretches of the public road network; shared private lane-ways serving existing or approved dwellings; public rights of way and other areas of general public access and assembly.”

It is my opinion that there are critical views from Moyad Road, Dougans Road and indeed, along the access lane where the build-up of development at this location apparent and the development of the proposed site would further erode the rural character of this area.

**PPS 3 Access Movement and Parking** Policy AMP 2, paragraph 5.18, assess to public roads. Transport NI has no objection to the proposed development.



This aerial photograph clearly demonstrates that if approval were to be granted on the application site there are another three adjacent fields along Dougans Road that could be considered to be under development pressure.



The application site is located to the rear of this new dwelling that fronts onto Moyad Road.



The application site does not appear to be an 'infill' opportunity from Moyad Road.



The application site is immediately adjacent and to the rear of the dwelling on the left of this photograph





These dwellings are located opposite the application site along the lane.



View towards the application site from Dougans Road.



The mature vegetation along the eastern boundary with the Aughrim River can be seen in this photograph.

**Recommendation:**

Refusal.

Although there are now 5 dwellings along the access lane (including No. 181 and the new dwelling to the north of the site) the site appears to be associated with the existing disused mushroom farm complex. Although outline planning permission has been granted for a dwelling on the site of the last mushroom sheds at the rear of No. 181, I am not convinced that the site lies outside of, or is not associated with this farm unit.

It is my opinion that the existing houses do not appear as a visual entity in the landscape.

There are critical views of the site from both the Moyad Road and Dougans Road and I consider that the development of this site would significantly alter the character of the area. The application site is an important and visible green break in the built up appearance of this part of the Moyad Road.

The site itself appears as part of the curtilage of the new dwelling facing Moyad Road rather than a site for consolidation of a cluster.

I consider this application to fail criterion 1, 3 and 5 of CTY 2a.

Although the general thrust of the SPPS is to approve sustainable development that does not cause demonstrable harm I consider that because this proposal fails TWO of the criterion listed on page 52 and of Policy CTY2a ( criterion 1, 3 and 5) and it also fails Policy CTY 14 (rural character) I recommend refusal.

I also consider the plot size and shape to be significantly different from those found in the vicinity. This area appears more like a paddock to the adjacent dwelling currently under construction at Moyad Road than an infill opportunity site. Indeed, this was historically part of the red line boundary associated with all of the previous planning applications - P/2000/1435/O, P/2004/0215/O, P/2007/0529/RM, P/2014/2751/F.

It is my opinion that the application site is not an appropriate 'cluster' opportunity.

A new dwelling on this site would result in a detrimental change in the rural character of this area through cumulative build up.

### **Reasons for Refusal:**

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (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 SPPS and Policy CTY2a of Planning Policy Statement 21, New Dwellings in Existing Clusters in that:
  - the cluster is not associated with a focal point and is not located at a cross-roads;
  - the proposed site is not bounded on at least two sides with other development in the cluster and does not provide a suitable degree of enclosure; and
  - the dwelling would if permitted significantly alter the existing character of the cluster.
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 result in a suburban style build-up of development when viewed with existing and approved buildings;
  - the building would, if permitted not respect the traditional pattern of settlement exhibited in that area;
  - and would therefore further erode the rural character of the countryside.

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



App Ref: LA07/2016/0556/O

## COMMITTEE REPORT

PROPOSED SITE FOR DWELLING AND GARAGE

40m Southeast of 181 Moyad Road

Kilkeel

BT34 4HL

JUNE 2016

michael burroughs associates

33 SHORE ROAD | HOLYWOOD | BT18 9HX

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## 1.0 INTRODUCTION

- 1.1 This report is submitted on behalf of the applicant in support of application LA07/2016/0556/O for a dwelling in a cluster on a site 40m Southeast of 181 Moyad Road, Killeel. It responds to the planning officer's recommended refusal reasons (**Appendix 1**).
- 1.2 The key policy tests for this application are contained within *PPS21 CTY2a – New Dwellings in Existing Clusters*. If the proposal is found to satisfy this policy, then the other policies referred to in the recommended refusal reasons are subsequently satisfied in turn:
- The relevant SPPS policy is no more onerous than CTY2a, therefore its Transitional Arrangements require CTY2a to be given precedence.
  - The requirements of CTY1 will be met, as a dwelling in a cluster is acceptable in principle in the countryside under this policy; and
  - The requirements of CTY14 will be met because, if the proposal is considered to be an acceptable cluster infill site under CTY2a, it cannot reasonably be considered to result in a suburban build-up of development or be out of keeping with the existing settlement pattern.
- 1.3 On a preliminary point, the planning officer's report refers a number of times to the appeal decision 2012/A0120 on this site, which was refused on 10 May 2013. However, in the period since that refusal was issued, the following has occurred that significantly changes the environmental and planning context of the application site:
- It has become common practice that an acceptable 'cluster site' under PPS21 CTY2a does not require a crossroads or focal point, as confirmed by approvals 2010/A0202, LA08/2015/0056/F and LA07/2015/0135/O.
  - Approvals P/2013/0448/O, P/2014/0095/RM have been granted for a dwelling on a site adjacent and southwest of the application site and this dwelling has subsequently been completed.
  - Approvals P/2014/0162/O, LA07/2015/0317/RM have been granted for a dwelling on a site adjacent and west of the application site and this dwelling has subsequently been commenced and is near completion.
  - Approval P/2014/0155/O has been granted for a dwelling on a site adjacent and northwest of the application site.
  - Approval P/2014/0751/F has allowed the dwelling approved on the site adjacent and north of the application site to be completed.
- 1.4 The application site now forms a gap in the centre of a cluster of mainly residential development, as illustrated at **Appendix 2**. This is very different to the context at the time of the previously refused

appeal, therefore that appeal decision should be given limited weight in the determination of this new application. There is now substantially greater justification for it to be approved.

## 2.0 CONSIDERATION OF KEY PLANNING POLICY

### PPS21 Policy CTY2a – New Dwellings in Existing Clusters

- 2.1 CTY2a states that planning permission will be granted for a dwelling at an existing cluster of development in the countryside provided the following criteria are met:

***Criterion 1: The cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings***

- 2.2 The cluster of development around the application site is not within any farm and consists of 7 dwellings and 3 stores (refer to Appendix 2 for confirmation). This criterion is therefore satisfied.
- 2.3 The planning officer has not accepted this, stating that the site is associated with the “*existing disused mushroom farm complex*”. I trust it is clear to the committee that it is unsustainable to argue that the application site could possibly be associated with any disused farm complex. The planning officer’s assertion is evidently self-defeating. The farming activity in this location has long since ceased and these buildings are presently used for general storage and not in association with any alleged farming activity on the application site. The photographs below show the inside of the buildings:

***Photo 1: Mainly Building Materials and Equipment Shown***



**Photo 2: Again, Mainly Building Materials and Equipment Shown**



**Photo 3: This unit mainly used as a domestic garage for cars, trailers and antique tractors, which are not used for farming purposes.**

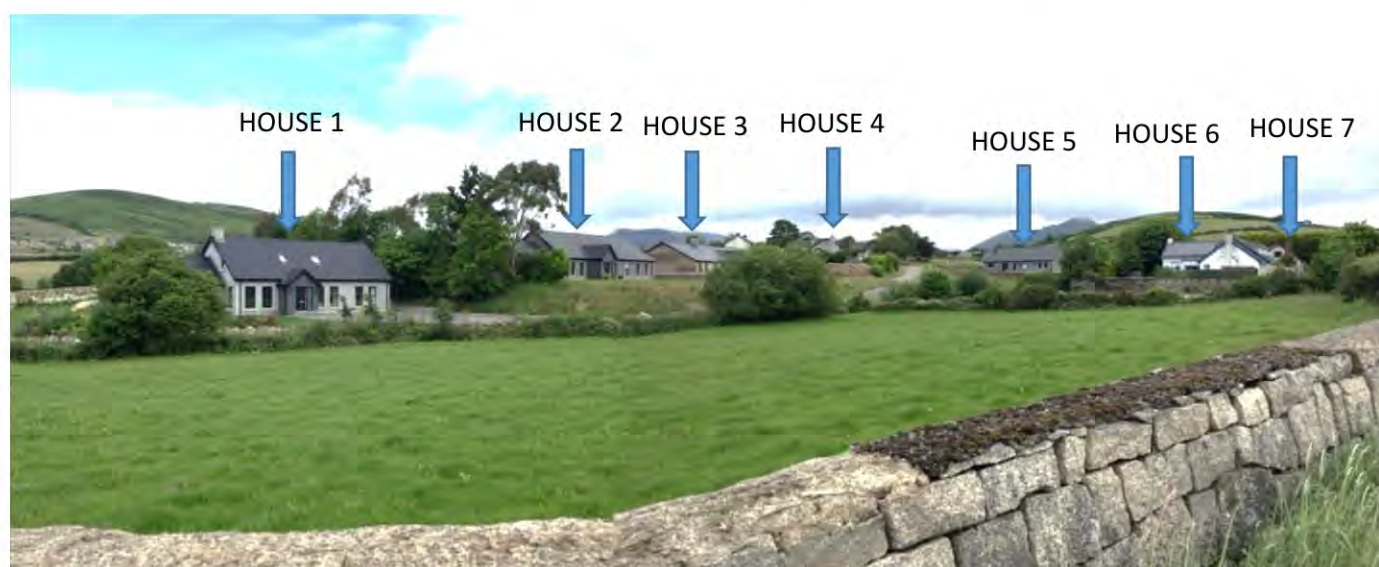


- 2.4 The council planner's report has referred to the appeal decision for support – again, it must be stressed that the appeal was determined at a different time and in a very different context, when there was some more farming activity occurring in this location. This is not the case now, with almost all of the surrounding land having been developed for housing.
- 2.5 In addition, approval P/2014/0155/O has been granted for the replacement of the remaining former mushroom houses with another infill dwelling. It is the applicant's intention to commence the development of this dwelling in the near future and the associated reserved matters application is currently with the council for their approval. It is for the council to determine what weight should be given to this approval, but it certainly adds to the fact that the "mushroom farm complex" is now truly redundant and not in any way active in association with the application site.

***Criterion 2: the cluster appears as a visual entity in the local landscape***

- 2.6 This is a relatively low hurdle for any application to overcome – essentially, if the group is visible, then the criterion is met.
- 2.7 Given the number, configuration and close siting of the various buildings in this location and the limited screening vegetation between them, they are all read together as a group in the landscape. This is most evident from Dougan's Road:

***Photo 4: View of Cluster from Dougan's Road (larger image contained at Appendix 3 for clarity)***



**Criterion 3: the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads**

- 2.8 There is no definitive focal point in this cluster, but this was not considered fatal in either appeal 2010/A0202 or applications LA08/2015/0056/F and LA07/2015/0135/O. Precedent has now been very firmly set by these approvals and they should be given significant weight in the determination of this planning application.
- 2.9 The committee report for application LA08/2015/0056/F (**Appendix 4**) states that that cluster is not located at a cross roads or at any other form of focal point generally required by the third criterion of PPS21 CTY2a. Having previously been recommended for refusal, the application was returned to the planning committee with a recommendation to approve. The reason for the change of recommendation was set out in the following paragraphs:

*“The proposal has been assessed against Policy CTY2a of PPS21: New Dwellings in Existing Clusters. The assessment, which is set out below, includes consideration of a decision by the Planning Appeals Commission (PAC) which, in the opinion of Officers, is relevant to this application (PAC 2010/A0202).*

*It is accepted that this cluster is not associated with a natural focal point, as required under Criterion 3 of CTY2a. However, given that the site is bounded on 2 sides by residential development, a dwelling on this site would cause no demonstrable harm if granted planning approval.*

*The Strategic Planning Policy Statement at paragraph 3.8 states that “the guiding principle for Planning Authorities in determining planning applications is that sustainable development should be permitted, having regard to the Development Plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance”. In this case, given the nature of the cluster and limited views of the site, it is considered that no demonstrable harm will be caused.*

*In conclusion, while the proposal does not comply with the third criterion of Policy CTY2a, Members are advised that policy is not required to be ‘slavishly’ adhered to as demonstrated by the legal judgement (Lamont vs DOE) in 2014.*

*The Planning Appeals Commission took this view in assessing a planning appeal in 2010 (PAC 2010/A0202) in which they considered a proposal under CTY2a. The Commission considered that the overall intention of the policy was to round off and consolidate an existing cluster of*

*development without changing the characteristics of the area. This is considered to be the case with the current proposal.*

*Approval of a dwelling on this site would consolidate the existing cluster and respect the characteristics of the cluster. It is the Officer's opinion that, in this case, while the need for the cluster to have a focal point is not met, there will be no demonstrable harm caused and, on balance, Officers are of the opinion that the proposal should be approved."*

- 2.10 Application LA08/2015/0056/F was subsequently approved (**Appendix 5**). A similar consideration led to the approval of LA07/2015/0135/O by the Newry, Mourne and Down council (**Appendix 6**).
- 2.11 Appeal 2010/A0202 (**Appendix 7**) relates to a site at Curryfree Road where, again, the cluster of development was not located at a cross roads or any other discernible focal point. The site had three other detached dwellings and their respective garages around it. The Commissioner noted:

*"11. Whilst the proposal fails the third criterion of Policy 2a of PPS21, it complies with the policy's broad overall intent in that it would round off and consolidate an existing cluster of development without changing the area's character."*

- 2.12 The very same is applicable to this application. The proposal complies with the policy's broad overall intent in that it would round off and consolidate an existing cluster of development without changing the area's character.

***Criterion 4: the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster***

- 2.13 The application site is bounded along three sides with other development in the cluster, as can be seen at **Appendix 2**.
- 2.14 The planning officer's report does not accept this, stating that the site is bounded by development along only one side, and by the Aughrim River and the lane that serves the other houses in the area on its other two sides. In response: Firstly, a lane is "development", as defined by Section 23 of the Planning Act (Northern Ireland) 2011; secondly, this lane is within the application site and the site itself is bounded by sites with buildings on them to the northeast and northwest. The site is therefore bounded by development on at least two sides and fully satisfies this policy criterion.

- 2.15 In addition, although the Aughrim River may bound the site to the southeast, the existing dwelling at 3 Dougans Road is immediately on the other side of it and it would therefore be perverse and unsustainable to refuse the application on this basis – we would simply submit a new application with the red line drawn slightly larger to abut the boundary of 3 Dougan’s Road. The site is therefore considered to be bounded on three sides with existing development in this cluster, which is more than the minimum requirements of the policy.

***Criterion 5: development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside;***

- 2.16 The application site is located in the centre of the existing cluster of development. It will not alter its character and will not intrude into the open countryside.
- 2.17 Although the area has become even more developed than when the previous appeal was determined, it is useful to note that, even then, the Commission found the proposal satisfied this criterion along with others (**Appendix 8**):

*“9. I have indicated that the appeal site is enclosed by and reads with the 9 existing buildings and another partially completed as identified above. The appeal site nestles within the lowest point within the grouping which sits in a natural hollow. Whilst the Department have not identified any critical views, the photographs supplied by the appellant show that, when approaching in both directions along Moyad Road, one is looking down on the appeal site and the development enclosing it from where it does read as a visual entity in the landscape. When travelling along Dougans Road in an easterly direction, the appeal site is intervisible with all of those adjacent buildings which read as a particular and discrete unit rather than a loose collection of individual buildings. This strong visual linkage from the more elevated critical views is aided by the unusual tiered arrangement of development and the limited vegetation enclosing the appeal site and adjacent plots. I am satisfied that the development of the appeal site can be absorbed into the existing grouping through rounding off and consolidation without significantly altering the character of the area and the 2<sup>nd</sup> and 5<sup>th</sup> criterion are therefore met. With regard to the 4<sup>th</sup> criterion, the Department only raised concerns about enclosure by other development and as I have concluded that the appeal site is bounded on two and a half of its three sides by buildings, I find no conflict in this instance.”*

***Criterion 6: development would not adversely impact on residential amenity.***

- 2.18 Although the proposed dwelling’s siting and design is to be determined at reserved matters stage, there is abundant space within the site to ensure it can be accommodated in a way that will not



adversely impact the residential amenity of any existing dwelling. The council planners have accepted the proposal satisfies this criterion and do not propose a refusal on this basis.

### **3.0 CONCLUSION**

- 3.1 The significant change in circumstances since the refusal of appeal 2012/A0120 has led to this application site now satisfying the relevant PPS21 CTY2a criteria. The requirements of the SPPS, CTY1 and CTY14 are therefore also satisfied as a consequence. The council planners accept that all other relevant policy is also satisfied. The Council are respectfully requested to grant approval.

**Appendix 1**

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

|                        |  |         |                   |   |
|------------------------|--|---------|-------------------|---|
| <b>ITEM NO</b>         | <b>27</b>  |         |                   |   |
| <b>APPLIC NO</b>       | LA07/2016/0556/O                                     | Outline | <b>DATE VALID</b> | 4/27/16   |
| <b>COUNCIL OPINION</b> | <b>REFUSAL</b>                                       |         |                   |   |
| <b>APPLICANT</b>       | J & J McKibbin 181 Moyad Road<br>Kilkeel<br>BT34 4HL |         | <b>AGENT</b>      | Michael Burroughs Associates 33 Shore Road<br>Holywood<br>BT18 9HX<br>02890421011 |

**LOCATION** 40m Southeast of 181 Moyad Road  
Kilkeel  
BT34 4HL

**PROPOSAL** Site for dwelling and garage

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

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (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 SPPS and Policy CTY2a of Planning Policy Statement 21, New Dwellings in Existing Clusters in that:
  - the cluster is not associated with a focal point and is not located at a cross-roads;
  - the proposed site is not bounded on at least two sides with other development in the cluster and does not provide a suitable degree of enclosure; and
  - the dwelling would if permitted significantly alter the existing character of the cluster.
- 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 result in a suburban style build-up of development when viewed with existing and approved buildings;
  - the building would, if permitted not respect the traditional pattern of settlement exhibited in that area;
  - and would therefore further erode the rural character of the countryside.

Appendix 2

# Site Context



1 Refers to photograph numbers overleaf

PHOTO 1



PHOTO 2



PHOTO 3



PHOTO 4



PHOTO 5



PHOTO 6





PHOTO 7



PHOTO 8

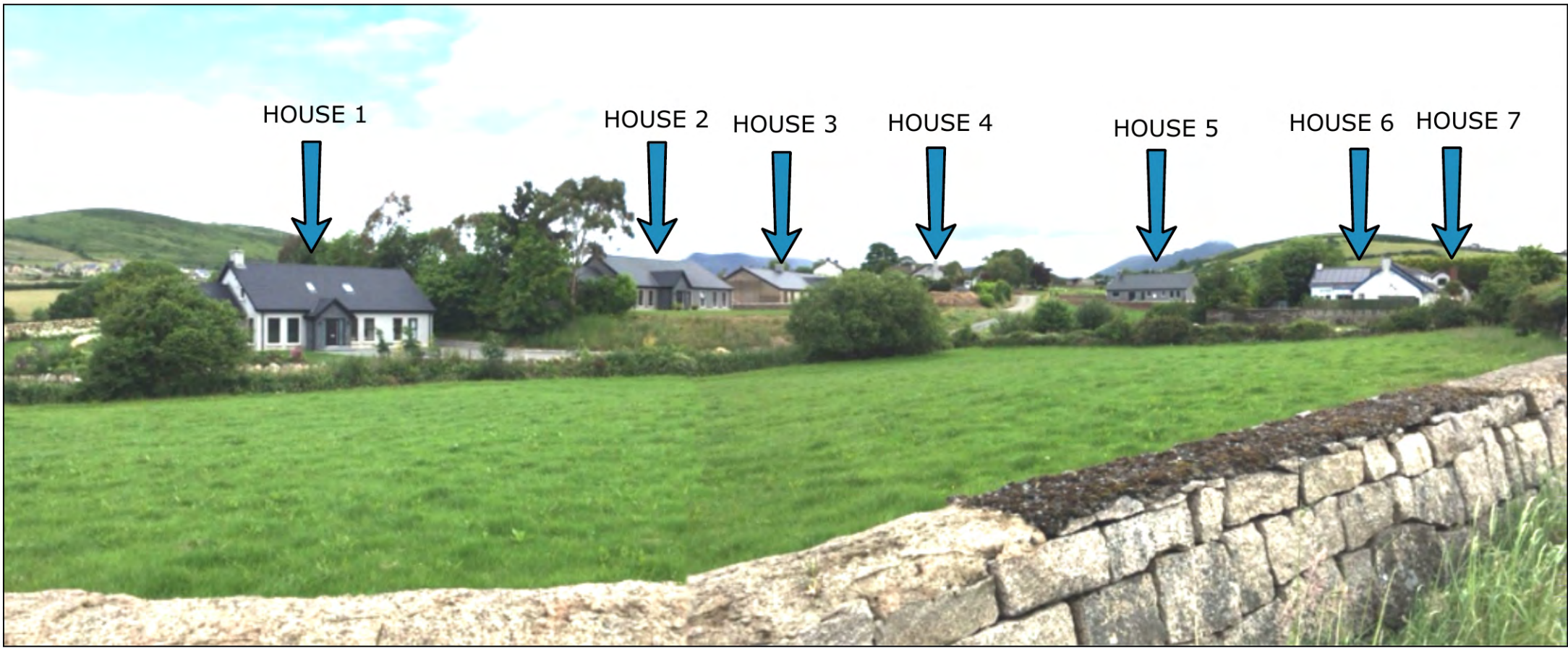


PHOTO 9



Appendix 3

# EXISTING CLUSTER OF DEVELOPMENT



Appendix 4



## APPENDIX 5B

### 1.0 ADDENDUM REPORT FROM SENIOR PLANNING OFFICER

|                     |  |
|---------------------|--|
| Application Number: | LA08/2015/0056/F                                     |
| Proposal:           | Site for Dwelling                                    |
| Site Address:       | Adjacent and East of 11a Derryclone Road, Derryclone |
| Ward:               | Lurgan   |
| Agent:              | Shane McCorry  |
| Applicant:          | Mr J McStravick                                      |

#### 1.1 BACKGROUND

At the Planning and Regulatory Services Committee Meeting, held on Wednesday 14 October 2015, it was agreed that Application No: LA08/2015/0056/F by Mr J McStravick be deferred for the consideration of additional information.

#### 1.2 DETAIL

Members will recall that the application was last presented at Committee with a recommendation to refuse for the following reasons:

1. The proposal fails to comply with Policy CTY1, CTY2a, CTY6 and CTY8 of Planning Policy Statement 21: Sustainable Development in the Countryside on the grounds that it is not one of the types of development which, in principle, are considered acceptable in the countryside 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 Policy CTY13 and CTY14 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the buildings would, if permitted, result in a suburban style build-up of development when viewed with existing and approved buildings and the buildings would, if permitted, create or add to a ribbon of development and would therefore further erode the rural character of the countryside.

Following the Planning and Regulatory Services Committee Meeting, held on Wednesday 14 October 2015, the applicant submitted further information in support of their application. This information has now been considered and assessed and the outcome of that assessment is set out below.

### Principle of Development

The proposal has been assessed against Policy CTY2a of PPS 21: New Dwellings in Existing Clusters. The assessment, which is set out below, includes consideration of a decision by the Planning Appeals Commission (PAC) which, in the opinion of Officers, is relevant to this application (PAC 2010/A0202). There are no objections to this application.

### New Dwellings in Existing Clusters

Policy CTY2a advises that planning permission will be granted for a dwelling at an existing cluster where a number of criteria are met.

The first criterion requires that the cluster of development consists of 4 or more buildings outside of a farm, of which at least 3 are dwellings. In this case, there are more than 4 buildings of which 3 are dwellings.

The second criterion requires that the cluster appears as a visual entity in the local landscape. Given the number and configuration of buildings, Officers consider this criteria to be met.

The third criterion of Policy CTY2a requires that the cluster is associated with a focal point such as a social/community building/facility or is located at a cross-roads.

It is accepted that this cluster is not associated with a natural focal point, as required under Criteria 3 of CTY2a. However, given that the site is bounded on 2 sides by residential development, a dwelling on this site would cause no demonstrable harm if granted planning approval.

The Strategic Planning Policy Statement at paragraph 3.8 states that “the guiding principle for Planning Authorities in determining planning applications is that sustainable development should be permitted, having regard to the Development Plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.” In this case, given the nature of the cluster and limited views of the site, it is considered that no demonstrable harm will be caused.

The fourth criterion of Policy CTY2a requires that the identified site provides a suitable degree of enclosure and is bounded on at least 2 sides with other development in the cluster. Officers consider that the site has a suitable degree of enclosure and is bounded on 3 sides with other development in the cluster.

The fifth criterion of Policy CTY2a requires that development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside.

As aforementioned, given that the site has a suitable degree of enclosure and is bounded on 3 sides by development, Officers therefore consider that criteria 5 is satisfied.

The sixth criterion of Policy CTY2a requires that development will not adversely impact on residential amenity.

The proposed dwelling is positioned in between No 11a Derryclone or No 11 Derryclone Road and will face onto a private laneway. The dwelling is single storey and there are no windows on its side elevation, thus there is no impact on overlooking or other grounds on the private amenity of the aforementioned dwellings.

### Integration and Impact on Rural Character

The design and the integration of the development have been assessed against Policy CTY2a. However, these are also separately considered under CTY13 and CTY14 of PPS21.

CTY13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of an appropriate design. CTY14 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 the area.

Due to the design and siting of the proposal, the existing buildings and established vegetation, the proposal is considered to comply with CTY13 and CTY14.

### **1.3 CONCLUSION**

In conclusion, while the proposal does not comply with the third criterion of Policy CTY2a, Members are advised that policy is not required to be 'slavishly' adhered to as demonstrated by a legal judgement (Lamont vs DoE) in 2014.

The Planning Appeals Commission took this view in assessing a planning appeal in 2010 (PAC 2010/A0202) in which they considered a proposal under CTY2a. The Commission considered that the overall intention of the policy was to round off and consolidate an existing cluster of development without changing the characteristics of the area. This is considered to be the case with the current proposal.

Approval of a dwelling on this site would consolidate the existing cluster and respect the characteristics of the cluster. It is Officers' opinion that, in this case, while the need for the cluster to have a focal point is not met, there will be no demonstrable harm caused and, on balance, Officers are of the opinion that the proposal should be approved.

### **1.4 CONDITIONS**

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission;

Reason: Time Limit

2. The materials to be used in the construction of the external surfaces of the building hereby permitted, shall match those as shown on drawing No 03 date stamped 30<sup>th</sup> March 2015;

Reason: To preserve the visual amenity of the rural area

3. Notwithstanding the provisions of The Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no extensions, dormers, or garages shall be erected other than those expressly authorised by this permission;

Reason: To ensure the development integrates into the countryside



4. Notwithstanding the provisions of The Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no walls shall be erected along the site's frontage with Derryclone Road and adjacent laneway;

Reason: To ensure the development integrates into the countryside to preserve the rural character

5. No other development hereby permitted shall be commenced until the vehicular access has been constructed in accordance with Drawing No 02A bearing the date stamp 18<sup>th</sup> June 2015;

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

6. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practise. The works shall be carried out during the first available planting season after the occupation of any part of the dwelling; and

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

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

Contact Officer: Nicola Creaney  
Extension: 4724  
Date: 28 January 2016

Appendix 5

## APPROVAL OF PLANNING PERMISSION

### Planning Act (Northern Ireland) 2011

Application No: **LA08/2015/0056/F**

Date of Application: **30th March 2015**

Site of Proposed  
Development:

**Adjacent and east of 11a Derryclone Road  
Derryclone  
Co Armagh**

Description of Proposal:

**Erection of dwelling**

Applicant: Mr J McStravick  
Address: 38 Forest Glade  
Lurgan

Agent: Shane McCorry Architects  
Address: 43 Church Street  
Lurgan  
Bt66 6EU

Drawing Ref: 01A, 02A, 03, 04

Council in pursuance of its powers under the above-mentioned Act hereby

### GRANTS PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.

Reason: Time Limit.



2. The materials to be used in the construction of the external surfaces of the building hereby permitted, shall match those as shown on drawing No 03 date stamped 30th March 2015.

Reason: To preserve the visual amenity of the rural area.

3. Notwithstanding the provisions of The Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no extensions, dormers, or garages shall be erected other than those expressly authorised by this permission.

Reason: To ensure the development integrates into the countryside.

4. Notwithstanding the provisions of The Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and re-enacting that Order, no walls shall be erected along the site's frontage with Derryclone Road and adjacent laneway.

Reason: To ensure the development integrates into the countryside. To preserve the rural character.

5. No other development hereby permitted shall be commenced until the vehicular access has been constructed in accordance with Drawing No.02A bearing the date stamp 18th June 2015.

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

6. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out during the first available planting season after the occupation of any part of the dwelling.

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

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.

### Informatives

1. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Any mud, refuse, etc. deposited on the road as a result of the development, must be removed immediately by the operator/contractor.
2. All construction plant and materials shall be stored within the curtilage of the site.
3. It is the responsibility of the developer to ensure that water does not flow from the site onto the public road (including verge or footway) and that the existing roadside drainage is preserved and does not allow water from the road to enter the site.
4. Transport NI would recommend that the driveway width fronting the dwelling is constructed slightly wider for ease of turning.
5. With regards to existing water and sewer infrastructure:
  - the onus is on the developer to find out if there is existing water and sewer infrastructure within their property
  - it is an offence under Article 236 of the Water and Sewerage Services (Northern Ireland) Order 2006, to build over or near water mains, sewers, pipes and associated works owned or maintained by Northern Ireland Water unless with the prior consent by NI Water
  - developers should obtain details of existing infrastructure from NI Water by requesting a copy of the water and sewer records. Copies of our records are supplied under Articles 257 and 258 of the 2006 Order. There is a nominal charge for this service
  - where existing water and sewer infrastructure is located within a property and proposed development of the site interferes with the public water mains, sewers and associated works, the householder/developer may make a Notice under Article 247 of the 2006 Order to have the public infrastructure diverted, realigned. Each diversion and realignment request is considered on its own merits and approval is at the discretion of NI Water. The applicant is required to meet any financial conditions for realignment or diversion of the water and sewer infrastructure, including full costs, company overheads, etc.



With regards to proposed development not serviced by existing water and sewer infrastructure:

-it is the responsibility of the developer to find out about the nearest public water main, foul sewer and storm sewer/water course that has the capacity to service the proposed development. Copies of existing water and sewer records can be obtained from NI Water. There is a nominal charge for this service

-guidance can be given to developers about how the proposed development can be served by a public water main or sewers. To find out how proposed development can be serviced with water and sewer infrastructure, developers and house builders can submit a Pre-Development Enquiry

-if your proposed development is not near a public water main, foul sewer or surface water sewer and you cannot discharge your surface water to a natural watercourse you may wish to consider making a requisition Notice asking NI Water to extend the public water main or foul/storm sewer system to service your development

This can be done by requisitioning a water main under Article 76 of the 2006 Order and sewers under Article 154 of the 2006 Order. House builders and developers may have to contribute to the cost of extending water mains and sewers

If you wish to find out more about what you can or cannot do, if there is existing water or sewer infrastructure in, over or under your property or you want to find out how your proposed development can be served contact NI Water staff on the Developers Service Business Line 08458770002 and ask for the Developers Services Co-Ordination Team.

Copies of our Application Forms can be obtained by contacting the Developers Service Business LINE 08458770002 or by downloading from our webpage [www.niwater.com/servicesfordevelopers.asap](http://www.niwater.com/servicesfordevelopers.asap) and Forms

6. A Consent to Discharge Sewage Effluent being obtained from DOE, Northern Ireland Environment Agency, as required by the Water (Northern Ireland) Order 1999 (Tel: 028 90 254792).



Any new or existing septic tank unit being a minimum of 15 metres from the proposed development or any other habitable dwelling/building such as an office or such a dwelling/building in the course of construction or the subject of planning approval.

A legal agreement being obtained in relation to lands used in connection with any septic tank/drainage arrangement where such lands are outside the ownership of the applicant or outside the area marked in red which is the subject of this application. This agreement must ensure that the lands in question will always be available for the intended purpose and also that any occupier/owner of the proposed development will have access to these lands for maintenance/improvement works as required. Such legal agreement should be included in any planning approval as a planning condition.

The applicant ensuring that the proposal does not compromise any existing drainage arrangements serving existing neighbouring premises or developments not completed/commenced which are the subject of planning approval.

All waste generated by this development, e.g. demolition waste (as applicable) being handled/disposed of so as to ensure compliance with the Waste & Contaminated Land (NI) Order 1997 and subordinate Regulations. (Special requirements would apply in respect of, for example, asbestos or other hazardous waste). Further information regarding handling and disposal of such waste can be obtained from the Land & Resource Management Unit, Department of the Environment, Northern Ireland Environment Agency, Belfast – telephone 028 90 254792.

The Council receiving confirmation from Northern Ireland Water that a mains water supply is available and that it is feasible for the proposed development to be connected to same. Where mains water supply is not available, the applicant/agent is strongly advised to contact this department before any detailed plans are prepared. (The District Council cannot approve plans for housing development unless a satisfactory water supply is available).

Finally, the developer should be aware that if it is their intention to bring any fill material onto the site they will require a Waste Licensing Exemption under the Waste Management Licensing Regulation (NI) 2003. Applications for such an exemption should be made to the Waste Licensing Section of the Northern Ireland Environment Agency (NIEA) - contact Gary Tate on 028 90 569358.

Prior to the granting of an exemption under the above regulations the developer will be required to demonstrate to NIEA that planning approval has



# Planning Act (Northern Ireland) 2011

Armagh Banbridge &amp; Craigavon District Council

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been granted for infilling/importing inert material to the associated land.

7. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
8. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

Dated: 12th February 2016

Authorised Officer \_\_\_\_\_





Appendix 6



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

## Delegated Application

| <i>Development Management Officer Report</i>  |                       |   |
|---|-----------------------|---|
| <b>Case Officer: Laura Duffy</b>  |                       |   |
| <b>Application ID:</b> LA07/2015/0135/O   |                       | <b>Target Date:</b>   |
| <b>Proposal:</b><br>Site for dwelling   |                       | <b>Location:</b><br>Site between 40a and 40b Drumcro Road<br>Kilkeel BT34 4HA                           |
| <b>Applicant Name and Address:</b><br>J E McKibbin<br>C/O Agent   |                       | <b>Agent Name and Address:</b><br>Michael Burroughs Associates<br>33 Shore Road<br>Holywood<br>BT18 9HX |
| <b>Date of last Neighbour Notification:</b>   |                       | 20th May 2015   |
| <b>Date of Press Advertisement:</b>   |                       | 6th May 2015  |
| <b>ES Requested:</b> No   |                       |   |
| <b>Consultations:</b>   |                       |   |
| <b>Consultation Type</b>  | <b>Consultee</b>      | <b>Response</b>   |
| <p>NI Water has no objections and recommends a number of standard informatives.<br/>           Transport NI - no objections.<br/>           NIEA -Archaeology and built heritage are content with the proposal, Water Management Unit<br/>           are content with the proposal,<br/>           Environmental Health Department are content.</p> |                       |   |
| <b>Representations:</b>   |                       |   |
| Letters of Support  | None Received         |   |
| Letters of Objection  | 2                     |   |
| Petitions and signatures  | No Petitions Received |   |
| Number of Petitions of Objection and  | No Petitions Received |   |

|   |  |
|---|--|
| signatures  |  |
| <p><b>Summary of Issues:</b></p> <p>A total of 7 dwellings are currently accessed off the lane and the foundations of a further two dwellings have been laid. All of the buildings are intervisible due to the spacing of the buildings and the lack of screening/vegetation between them.</p> <p>Given the configuration of the dwellings and the lack of vegetation/landscaping due to the local topography, the dwellings all read as a group in the landscape.</p> <p>This application is therefore assessed under policy CTY 2a.</p> |  |

## Site Visit Report

### Site Location Plan:



**Date of Site Visit:** 9th March 2016

### Characteristics of the Site and Area

The site is accessed from a laneway off the Drumcro Road. The site is within a significant cluster of dwellings and a storage unit (Mourne Crafts) from a lane leading to the farm at No 44. There are 4 dwellings in the immediate vicinity of the site and the foundations of another are located immediately to the NE.

A total of 7 dwellings are currently accessed off the lane and the foundations of a further two dwellings have been laid. All of the buildings are intervisible due to the spacing of the buildings and the lack of screening/vegetation between them.

### Planning Assessment of Policy and Other 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 the Northern Ireland Countryside.

### Assessment

Under the BNMAP 2015 the site is within the rural area and is within the Mourne AONB.

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

The SPPS states at Paragraph 3.8 that the "guiding principle for Planning Authorities in determining planning applications is that sustainable development should be permitted, having regard to the development Plan and all other material considerations unless the proposed

development will cause demonstrable harm to interests of acknowledged importance".

The SPPS states that "provision should be made for a dwelling at an existing cluster of development which lies outside a farm provided it appears as a visual entity in the landscape; and is associated with a focal point; and the development can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside".

PPS 3 Access Movement and Parking Policy AMP 2 paragraph 5.18, assess to public roads. Transport NI has no objection to the proposed development.

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

PPS 21 policies CTY 1, CTY2a, CTY 8, CTY 13 and CTY14 will be considered.

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

Policy CTY2a relates to new dwellings in existing clusters:

Planning permission will be granted for a dwelling at an existing cluster of development provided all the following criteria are met:

- the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings;
- the cluster appears as a visual entity in the local landscape;
- the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads,
- the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster;
- development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside; and
- development would not adversely impact on residential amenity.

The development pattern at the application site can be described as an existing cluster of development. When travelling up the lane towards No 40. There are 7 existing dwellings in the immediate area and 2 more are under construction. Mourne Crafts occupies an industrial unit/storage shed immediately adjacent to No. 40.

Given the configuration of the dwellings and the lack of vegetation/landscaping due to the local topography, the dwellings all read as a group in the landscape.

This cluster is not associated with a focal point however, this fact was not fatal in planning appeal 2010/A202 where the Commissioner recognised that the overall thrust of CTY 2a was to consolidate and round off development.

The Commissioner states in this appeal that the proposal complies with the policy's broad overall intent in that it would round off the cluster without changing the areas character.

The Commissioner considered a number of site specific characteristics so compelling as to outweigh the fact the cluster is not associate with a focal point. In considering this application, I think there are many direct comparisons.

The application site is bound along the laneway by a post and wire fence, its square shape makes the plot appear as a site for development, it is bound on either side by dwellings, given its size and relationship with Nos 40a and 40b it is unsuited to agriculture. The site is visually associated with the other dwellings in the vicinity that give the overall appearance of a cluster. I don't consider the development of this site to be detrimental to the character of this area.

Policy CTY 8 is not applicable to this application. This Policy makes an exception for the development of a gap site sufficient only to accommodate up to a maximum of 2 dwellings with an otherwise substantial and continuously built up frontage in compliance with policy CTY8 of PPS21.

The starting point for consideration under CTY 8 is to ensure there is a line of 3 buildings in a continuously built up frontage without accompanying development to the rear.

This is not the case at the application site it Drumcro Road therefore this application will not be assessed under CTY 8.

CTY 13 assesses the impact this proposal will have on the rural area by reason of design, siting, integration and landscaping. There will be no overlooking or loss of amenity at the existing properties, the site is 32m wide and 36m deep, this is sufficient to accommodate a dwelling of reasonable proportions. All design matters can be addressed at reserved matters Stage.

CTY 14 assesses the impact this proposal will have on the rural character of the immediate area. The development of this site will not alter the existing character of the area. There is a significant number of dwellings all in close proximity to one another and all intervisible. The development of this site will consolidate the existing cluster of development by filling an obvious gap between Nos 40a and 40b.

Environmental Health were consulted in relation to the sewage arrangements and have responded with no objections. The proposal is in general compliance with CTY16.

### Objections

2 objections received (40a and 40b Drumcro Road). Planning issues raised include:

- Proposed dwelling would be close to their property;
- Traffic on the existing laneway;
- Rural intensification – there are already 7No. dwellings clustered at this location
- Concerns about power.

Matters of design can be addressed at reserved matters stage.

Transport NI has no objection to the proposal

With regard to rural intensification, I would note that site will essentially consolidate the existing cluster and the development will not change the overall character of the area.

### Site History

A significant number of dwellings have been approved along this lane in recent years. There are currently 7No. dwelling built and another 2 under construction. An industrial shed/storage unit is also located to the south of the site (Mourne Crafts).

**Neighbour Notification Checked**

Yes

### Summary of Recommendation

Approval of a dwelling on this site would consolidate the exiting cluster without changing the character of the area.

It is my opinion that permission should be granted in light of planning appeal decisions including 2010/A0202 where the Commission considered at paragraph 11 "Whilst the proposal fails the third criterion of Policy CTY2a of PPS21, it complies with the policies broad overall intent in that it would round off and consolidate an existing cluster of development without changing the characteristics of the area".

The SPPS states at Paragraph 3.8 that the "guiding principle for Planning Authorities in determining planning applications is that sustainable development should be permitted, having regard to the Development Plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance". I don't consider that the development of this site will cause demonstrable harm.

Legal judgement Lamont Vs DOE in 2014 where Justice Treacy added that case law does not require the Planning Service to "slavishly" follow the policy.

When the SPPS is considered alongside CTY2a, I consider that although the application site fails the 'focal point' criterion, the general thrust of the documents when read together is that development should round off and consolidate existing clusters without significantly altering the character or visually intrude into the countryside. The proposal will not cause any of these effects.

I don't consider the development of this site to be detrimental to the character of this area.

Approval is recommended.

### Conditions

1. 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: To enable the Council to consider in detail the proposed development of the site.

2. As required by Section 62 of the Planning Act (Northern Ireland) 2011, application for approval of the reserved matters shall be made to the DCouncil 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

3. No development shall take place until full details of all proposed tree and shrub planting and a programme of works, have been approved by the Council, and 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.

4. A scale plan 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.

### **Informatives**

1. Water Management Unit (WMU) advises the applicant of the following:

DOE Standing Advice Note No.1 –

Single Dwellings (April 2015).

Standing Advice Notes are available at:

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice.htm](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice.htm)

Discharge consent under the terms of the Water (Northern Ireland) Order 1999 will be required for the discharge of sewage effluent from the proposed development.

The applicant should be informed that it is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata.

Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment.

The applicant should ensure that measures are in place to prevent pollution of surface or groundwater as a result of the activities on site, both during construction and thereafter.

2. Environmental Health Department advises the applicant of the following:

There are no objections in principle to this proposal.

Farms have the potential to cause public health nuisances from odour, noise and pests. This department recommends that the proposed dwelling is situated a minimum of 75m from farm buildings. The applicant should be made aware that occupants of the proposed dwelling may experience noise, odour and pests from the nearby farm.

Should the development proceed, then consent to discharge under the Water Order 1999 shall be required. A Water Order Consent application form can be obtained by applying to Water Management Unit, Calvert House, 17 Antrim Road, Lisburn, Co. Antrim, BT28 3AL.

The applicant is to be advised that no work should be undertaken until such is approved. The applicant must ensure that sufficient land is, and will be, available in the final development to accommodate septic tank and effectual effluent dispersal system. To achieve this, the applicant should engage the service of a suitably qualified person.

Energy efficiency and renewable energy:

Applicants should be encouraged to consider the use of renewable energy and energy efficient materials and fittings in association with this development.

3. Northern Ireland Water (NI Water) advises the applicant of the following:



The onus is on the developer to find out if there is existing water and sewer infrastructure within their property. Details of such can be obtained from NIW under Articles 257 and 258 of the Water and Sewerage Services (Northern Ireland) Order 2006. There is a nominal charge for this service.

It is an offence under Article 236 of the Water and Sewerage Services (Northern Ireland) Order 2006, to build over or near watermains, sewers, pipes and associated works owned and maintained by NI Water unless with the prior consent of NI Water.

Where existing water and sewer infrastructure is located within a property and the proposed development of the site interferes with the public watermains, sewers and associated works, the householder / developer may make a Notice under Article 247 of the 2006 Order to have the public infrastructure diverted, realigned. Each diversion and realignment request is considered on its own merits and approval is at the discretion of NI Water. The applicant is required to meet any financial conditions for realignment or diversion of the water and sewer infrastructure, including full costs, company overheads, etc.

It is the responsibility of the developer to establish if existing public watermains, foul/storm sewers, together with appropriate waste water treatment facilities, have adequate capacity to serve the proposal. To establish how best any development may be served by existing public water and sewerage infrastructure, a Pre Development Enquiry (PDE) would require to be submitted. There is a charge for this service.

If the proposed development is not near a public watermain, foul sewer or surface water sewer and surface water cannot be discharged to a natural watercourse the applicant may consider making a requisition Notice asking NI Water to extend the public watermain or foul/storm sewer system to service the development. This can be done by requisitioning a watermain under Article 76 of the 2006 Order and sewer under Article 154 of the 2006 Order. The developer may have to contribute to the cost of extending the watermains and/or sewers.

Septic Tank emptying: The applicant should provide a hard standing area with a 3.5 metres wide access capable of supporting the weight of a sludge tanker within 30 metres of the septic tank.

If you wish to find out more about what you can or cannot do if there is existing water or sewer infrastructure in, over or under your property, or you want to find out how your proposed development can be serviced contact NI Water staff on the Developers Services Business Line 08458770002 and ask for the Developers Services Co-Ordination Team. Copies of the relevant application forms can be obtained by contacting the Developers Services Business Line or by downloading from our web page [www.niwater.com/servicesfordevelopers.asp](http://www.niwater.com/servicesfordevelopers.asp).

4. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.

5. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

Case Officer Signature:

Date:

Appointed Office

Date:

24/3/16

24/3/16

Liam Hannaway  
Chief Executive



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

355

## OUTLINE PLANNING PERMISSION

### Planning Act (Northern Ireland) 2011

Application No: **LA07/2015/0135/O**

Date of Application: **14th April 2015**

Site of Proposed Development: **Site between 40a and 40b Drumcro Road  
Kilkeel, BT34 4HA**

Description of Proposal: **Site for dwelling**

Applicant: J E McKibbin  
Address: C/O Agent

Agent: Michael Burroughs Associates  
Address: 33 Shore Road  
Holywood  
BT18 9HX

Drawing Ref: 01

The Council in pursuance of its powers under the above-mentioned Act hereby

### GRANTS OUTLINE PLANNING PERMISSION

for the above-mentioned development in accordance with your application subject to compliance with the following conditions which are imposed for the reasons stated:

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 DCouncil 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

**Oifig an Iúir  
Newry Office**  
O'Hagan House  
Monaghan Row  
Newry BT35 8DJ

**Oifig Dhún Pádraig  
Downpatrick Office**  
Downshire Civic Centre  
Downshire Estate, Ardglass Road  
Downpatrick BT30 6GQ

0300 013 2233 (Council)  
0300 200 7830 (Planning)  
council@nmandd.org  
www.newrymournedown.org

**Freastal ar an Dún  
agus Ard Mhacha Theas  
Serving Down  
and South Armagh**



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: To enable the Council to consider in detail the proposed development of the site.

3. No development shall take place until full details of all proposed tree and shrub planting and a programme of works, have been approved by the Council, and 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.

4. A scale plan 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.

#### Informatives

1. Water Management Unit (WMU) advises the applicant of the following:

DOE Standing Advice Note No.1 – Single Dwellings (April 2015).

Standing Advice Notes are available at:

[http://www.planningni.gov.uk/index/advice/northern\\_ireland\\_environment\\_agency\\_guidance/standing\\_advice.htm](http://www.planningni.gov.uk/index/advice/northern_ireland_environment_agency_guidance/standing_advice.htm)

Discharge consent under the terms of the Water (Northern Ireland) Order 1999 will be required for the discharge of sewage effluent from the proposed development.

The applicant should be informed that it is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment.

The applicant should ensure that measures are in place to prevent pollution of surface or groundwater as a result of the activities on site, both during construction and thereafter.

2. Environmental Health Department advises the applicant of the following:

There are no objections in principle to this proposal.



Farms have the potential to cause public health nuisances from odour, noise and pests. This department recommends that the proposed dwelling is situated a minimum of 75m from farm buildings. The applicant should be made aware that occupants of the proposed dwelling may experience noise, odour and pests from the nearby farm.

Should the development proceed, then consent to discharge under the Water Order 1999 shall be required. A Water Order Consent application form can be obtained by applying to Water Management Unit, Calvert House, 17 Antrim Road, Lisburn, Co. Antrim, BT28 3AL.

The applicant is to be advised that no work should be undertaken until such is approved. The applicant must ensure that sufficient land is, and will be, available in the final development to accommodate septic tank and effectual effluent dispersal system. To achieve this, the applicant should engage the service of a suitably qualified person.

Energy efficiency and renewable energy:

Applicants should be encouraged to consider the use of renewable energy and energy efficient materials and fittings in association with this development.

3. Northern Ireland Water (NI Water) advises the applicant of the following:

The onus is on the developer to find out if there is existing water and sewer infrastructure within their property. Details of such can be obtained from NIW under Articles 257 and 258 of the Water and Sewerage Services (Northern Ireland) Order 2006. There is a nominal charge for this service.

It is an offence under Article 236 of the Water and Sewerage Services (Northern Ireland) Order 2006, to build over or near watermains, sewers, pipes and associated works owned and maintained by NI Water unless with the prior consent of NI Water.

Where existing water and sewer infrastructure is located within a property and the proposed development of the site interferes with the public watermains, sewers and associated works, the householder / developer may make a Notice under Article 247 of the 2006 Order to have the public infrastructure diverted, realigned. Each diversion and realignment request is considered on its own merits and approval is at the discretion of NI Water. The applicant is required to meet any financial conditions for realignment or diversion of the water and sewer infrastructure, including full costs, company overheads, etc.

It is the responsibility of the developer to establish if existing public watermains, foul/storm sewers, together with appropriate waste water treatment facilities, have adequate capacity to serve the proposal. To establish how best any development may be served by existing public water and sewerage infrastructure, a Pre Development Enquiry (PDE) would require to be submitted. There is a charge for this service.

If the proposed development is not near a public watermain, foul sewer or surface water sewer and surface water cannot be discharged to a natural watercourse the applicant may consider making a requisition Notice asking NI Water to extend the public watermain or foul/storm sewer system to service the development. This can be done by requisitioning a watermain under Article 76 of the 2006 Order and sewer under Article 154 of the 2006 Order. The developer may have to contribute to the cost of extending the watermains and/or sewers.



Septic Tank emptying: The applicant should provide a hard standing area with a 3.5 metres wide access capable of supporting the weight of a sludge tanker within 30 metres of the septic tank.

If you wish to find out more about what you can or cannot do if there is existing water or sewer infrastructure in, over or under your property, or you want to find out how your proposed development can be serviced contact NI Water staff on the Developers Services Business Line 08458770002 and ask for the Developers Services Co-Ordination Team. Copies of the relevant application forms can be obtained by contacting the Developers Services Business Line or by downloading from our web page [www.niwater.com/servicesfordevelopers.asp](http://www.niwater.com/servicesfordevelopers.asp).

4. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
5. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

Dated: 4th April 2016

Authorised Officer \_

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Appendix 7

# Appeal Decision

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

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|                               |   |
|-------------------------------|---|
| <b>Appeal Reference:</b>      | 2010/A0202  |
| <b>Appeal by:</b>             | Billy Henderson Properties Limited against the refusal of full planning permission. |
| <b>Development:</b>           | One and a half storey dwelling and detached garage.                                 |
| <b>Location:</b>              | 20 metres south-east of 21 Curryfree Road, Creevedonnell, Londonderry.              |
| <b>Application Reference:</b> | A/2009/0214/F   |
| <b>Procedure:</b>             | Written Representations and Accompanied Site Visit on 20 <sup>th</sup> April 2011.  |
| <b>Decision by:</b>           | Commissioner Julie de-Courcey, dated 27 <sup>th</sup> April 2011.                   |

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## Decision

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

## Reasons

2. The main issues in this appeal are whether the proposed buildings are acceptable in principle in the countryside and their effect on the area's character, appearance and neighbours' residential amenity.
3. Policy CTY 1 of Planning Policy Statement 21 (PPS 21) identifies a dwelling sited within a cluster of buildings in accordance with Policy CTY 2a of that document as being one of the types of development that, in principle, are considered to be acceptable in the countryside. Policy CTY 2a sets out six criteria that a proposal must comply with in order for planning permission to be granted for a dwelling at an existing cluster of development. I note the appellants' Ordnance Survey evidence about the historical existence of a cluster at this location, that the alleged former forge (now within the curtilage of No.25 Curryfree Road) was a community facility that was a local focal point and that the T junction of public roads to the south of the appeal site was historically a cross-roads with a public right of way leading eastwards across the river valley to a ford, school, mill, cricket ground and farm holdings. However, whether the site comes within an existing cluster of development falls to be assessed in the contemporary context.
4. The appeal site adjoins three detached houses with their respective garages. It shares a party boundary with the house to the south-west and those to the north-west and north are separated from it by the shared drive that serves all three

dwellings. This drive would also serve the proposed buildings. To the south are detached bungalows at Nos. 22 and 24 Curryfree Road. To the south-west are a range of buildings associated with the two storey house at No. 25 Curryfree Road. There is a detached cottage to the east of the appeal site on the opposite side of the road. What appears to be a shed/outbuilding that the appellants identify as a dwelling/replacement, does not read as part of this loose cluster. Notwithstanding, the other buildings form a loose cluster around the T junction of the part of Curryfree Road running north-east to south-west and the branch that leads eastwards to Rushall Road. On this basis, the proposal satisfies the first and second criteria of Policy CTY 2a of PPS 21 as the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings) of which at least three are dwellings, and the cluster appears as a visual entity in the local landscape.

5. The proposed buildings would be seen when travelling in both directions on Curryfree Road. However, as they would be seen in the context of the three dwellings and garages that surround the site on two of its three sides, they would not be prominent from this vantage. Whilst there are trees on the party boundary with the dwelling to the south-west and behind the roadside fence, the site is not enclosed by long established natural boundaries. Notwithstanding, adjoining buildings, the shared drive and the site's existing boundary definition provide it with a suitable degree of enclosure so that it is not at odds with the second criterion of Policy CTY 13 of PPS 21. Imposition of a condition securing retention of existing vegetation in addition to the supplementary planting proposed would safeguard the current situation.
6. The proposed dwelling would present its rear elevation to the public road with its front elevation orientated north-westwards to take advantage of the panoramic views across the river valley. It would present a long ridge line to the road. However, as the ridge line would be broken up by changes in height, orientation and coping stones, it would not have a uniform appearance. In the context of the scale and design of the three adjoining dwellings, in terms of scale, form and massing. There would be a lower proportion of solid to void on the front elevation, an area of full height glazing and a variety of window sizes. However, this would not be seen from Curryfree Road and the Department did not identify a critical view from the shared drive. The view of the proposed buildings from the neighbouring dwellings is not a critical view as defined by paragraph 5.60 of PPS 21.
7. The Department directed me to longer range views from Killymallaght Road and Trench Road on the opposite side of the river valley, which it considered to be critical. From those vantages the proposed buildings would be seen in the context of the three immediately adjoining it with a backdrop of vegetation and topography. The wind turbines on the hill top to south-west dominate the landscape. From some stretches of those views, the proposed dwelling's front elevation would be partially obscured by the middle of the three new houses. Its context and distance would ensure that the amount and style of glazing on the front elevation would not be prominent or inappropriate. As the proposed buildings would integrate into the landscape in compliance with both the fourth



criterion of Policy CTY 2a and Policy CTY 13 of PPS 21, the Department's second reason for refusal is not sustained.

8. The disposition, design and boundary treatment associated with the three adjoining dwellings has resulted in a suburban style of build-up. Development of the site could be absorbed into the existing cluster through rounding off and consolidation and would not cause a detrimental change to or further erode the area's character. As already set out in the preceding paragraph, the proposed buildings would not be unduly prominent in the landscape. As such, the proposal is not at odds with Policy CTY 14 and would comply with the fifth criterion of Policy CTY 2a of PPS 21. Accordingly, the Department's third reason for refusal is not sustained.
9. No. 21 Curryfree Road presents its rear elevation to the shared drive. As it is set below the level of the public road there are views into its rear area. Vehicles going to/from the house to the south-west of the appeal site pass its point of access at a level 2.6m higher than No.21's finished floor level (FFL). Given the dwelling's orientation, its private amenity space is to the side and front. At their nearest point, the proposed dwelling's front elevation would be 19.5m from the rear elevation of No. 21. The existing dwelling's FFL would be 3.6m lower than that of the proposed house. No. 21 has a two storey projecting rear wing with two windows at ground floor level serving the utility room and kitchen respectively. Each of these rooms have a second window on the side elevation. There is one window at first floor level serving a bedroom. There would be three roof lights at first floor level on the front elevation of the proposed dwelling serving a family/games room. "Creating Places advocates a separation distance of around 20m or greater between opposing rear first floor windows but provides no guidance on a situation such as this where it is the front and rear elevations of dwellings that would be facing. Notwithstanding the dwellings' respective FFLs, given the separation distance, I am not persuaded that the residential amenity of the occupants of No.21 would be harmed to the extent that would merit dismissing the appeal on the basis of the Department's concerns about overbearing impact. Imposition of a condition removing permitted development rights for the extension or alteration of the proposed dwelling would give the Department control over any future additions as they might reduce the separation distance between it and No.21. On this basis, the proposal is not at odds with paragraph 52 of Planning Policy Statement 1 nor the sixth criterion of Policy CTY 2a of PPS 21.
10. The third criterion of Policy CTY 2a requires that the cluster is associated with a focal point such as a social/community building/facility or is located at a cross-roads. I have no evidence that what the appellants refer to as a "right of way" is a legally asserted public footpath/right of way. As such, the junction to the south of the appeal site is not a cross-roads. There is no social/community building/facility currently in the vicinity of the appeal site. There is merit in the appellants' point that the criterion is not exclusive in its definition of a focal point and that stated examples of such is not an exhaustive list. Notwithstanding, the term "focal point" suggests a single entity and not an existing cluster of development otherwise the third criterion would add nothing to the policy in the

round and be extraneous. The appeal decision referred to by the appellant was decided in a different policy context to this proposal and dealt with a reason for refusal that is not pertinent in this instance. Consequently, the proposal does not satisfy this third criterion of Policy CTY 2a.

11. Whilst the proposal fails the third criterion of Policy CTY 2a of PPS 21, it complies with the policy's broad overall intent in that it would round off and consolidate an existing cluster of development without changing to the area's character. In this respect, there are a number of site-specific characteristics that I find so compelling as to outweigh the fact that the cluster is not associated with a focal point. These are as follows:

- The site comprises a mown grassed area with a suburban style ranch fence marking its boundary with the public road. Fencing posts have been erected on top of the retaining wall along its boundary with the shared drive and there are stone pillars on either side of the entrance off the drive;
- It is visually associated with the adjoining dwellings and has the appearance of domestic curtilage;
- Given its size and relationship with adjoining dwellings, the site is unsuited to agriculture;
- It is bounded by residential development on two of its three sides; and
- It is a small gap site within an otherwise substantial and continuously built-up frontage that extends for 240m along this side of Curryfree Road.

As the proposal is not at odds with the spirit of Policy CTY 2a of PPS 21 in the round, it is one of the types of housing development that is acceptable in the countryside in accordance with Policy CTY 1 thereof. Accordingly, the Department's first and fourth reasons for refusal are not sustained and the appeal is allowed.

### Conditions

1. The development shall be begun before the expiration of five years from the date of this permission.
2. Notwithstanding the provisions of Article 2(3)(a) and Schedule 1, Parts A, B and C of the Planning (General Development) (Amendment) Order (Northern Ireland) 2011 (or any legislation revoking that Order and re-enacting those provisions) the dwelling shall not be enlarged, improved or extended without the Department's prior permission.
3. Notwithstanding the landscaping details shown on Drawing Reference 0927 003 Revision A, existing vegetation on the site's roadside and south-western boundaries shall be retained.

This decision relates to Drawing Reference 0927 001 Location Map, Drawing Reference 0927 003 Revision A Site Layout Plan, Drawing Reference 0927 004 Proposed Elevations and Plans and Drawing Reference 0927 006 Proposed Garage Elevations and Plans.

**COMMISSIONER JULIE DE-COURCEY**



Appendix 8



# Appeal Decision

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

367

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|                               |   |
|-------------------------------|---|
| <b>Appeal Reference:</b>      | 2012/A0120  |
| <b>Appeal by:</b>             | John & James McKibben against the refusal of outline planning permission. |
| <b>Development:</b>           | Proposed site for a cluster dwelling and garage.                          |
| <b>Location:</b>              | 70m south east of no 181 Moyad Road, Kilkeel.                             |
| <b>Application Reference:</b> | P/2011/0611/O   |
| <b>Procedure:</b>             | Written Representations and Commissioner's Site Visit on 26 April 2013.   |
| <b>Decision by:</b>           | Commissioner Pauline Boomer, dated 10 May 2013.                           |

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## Decision

1. The appeal is dismissed and outline planning permission is refused.

## Reasons

2. The main issue in this appeal is whether the proposed development is acceptable in principle in the countryside.
3. Planning policy for the countryside is set out in Planning Policy Statement 21 - Sustainable Development in the Countryside (PPS 21). Policy CTY 1 of this document identifies a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is a dwelling sited within an existing cluster of buildings in accordance with Policy CTY 2a.
4. This policy states that planning permission will be granted for a dwelling at an existing cluster of development provided all of its six criteria are met. A cluster of development is not defined by the Policy, but its first three criteria give an indication of its intended meaning. The first criterion requires the cluster of development to lie outside of a farm and to consist of four or more buildings (excluding ancillary buildings such as garages) of which at least three are dwellings. The second criterion indicates that the cluster should appear as a visual entity in the local landscape. The third criterion indicates the cluster is to be associated with a focal point such as a social/community building/facility, or is located at a crossroads.

5. The appeal site comprises a triangular plot of land set back 25m from Moyad Road. It is accessed via an existing laneway which serves a detached one and a half storey dwelling at No.181, 6 disused mushroom houses and two partially built dwellings, one to the immediate north-east and another further to the south-west. Two detached one and a half storey dwellings, Nos 1 and 3, accessed off Dougans Road lie directly east-north-east of the appeal site. Development along both sides of the laneway is tiered with the appeal site lying at a lower level than No. 181, the mushroom houses and the partially constructed dwelling to the north-east and marginally below the level of those properties at Nos 1 and 3 Dougans Road.
6. The appellant argues that the appeal site is centrally located within a group of 11 buildings to the west of Dougans Road and south of Moyad Road. I agree that the appeal site is enclosed by the dwellings at No 181 and Nos 1 and 3 and by 6 mushroom houses. Whilst the two approved dwellings are currently under construction up to and beyond wall plate level, they must be taken into account but given the physical separation distance and intervening vegetation, I disagree that the partially built dwelling to the south-west reads as part of this group. I do not accept the appellant's argument that other development at 4 and 6 Dougans Road and 174, 175, 178 and 180 Moyad Road are associated with it. I am however satisfied that this grouping consists of four or more buildings including three dwellings.
7. However the appellant drew my attention to the planning history of the site to the south-west which was assessed and approved as "a dwelling and garage on a farm" at the same time as the planning application, the subject of this appeal, was being considered by the Department. I also note the existence of 6 mushroom houses within the ownership of the appellant and although annotated as "disused" on the site location plan, the appellant offered no clarification of their current use. I therefore have no evidence to confirm that the appeal site lies outside of a farm and the first criterion is therefore offended.
8. Whilst the Department considers that the appeal site fails to meet the 2<sup>nd</sup> and 3<sup>rd</sup> criteria and part of the 4<sup>th</sup> and 5<sup>th</sup> criteria set out in Policy CTY2a, they did not present any explanation or justification for the 1<sup>st</sup> Reason for Refusal in their Statement of Case, referring only to the 3<sup>rd</sup> criterion in their rebuttal.
9. I have indicated that the appeal site is enclosed by and reads with the 9 existing buildings and another partially completed as identified above. The appeal site nestles within the lowest point within the grouping which sits in a natural hollow. Whilst the Department have not identified any critical views, the photographs supplied by the appellant show that, when approaching in both directions along Moyad Road, one is looking down on the appeal site and the development enclosing it from where it does read as a visual entity in the landscape. When travelling along Dougans Road in an easterly direction, the appeal site is intervisible with all of those adjacent buildings which read as a particular and discrete unit rather than a loose collection of individual buildings. This strong visual linkage from the more elevated critical views is aided by the unusual tiered arrangement of development and the limited vegetation enclosing the appeal site and adjacent plots. I am satisfied that the development of the appeal site can be absorbed into the existing grouping through rounding off and consolidation,

without significantly altering the character of the area and the 2<sup>nd</sup> and 5<sup>th</sup> criterion are therefore met. With regard to the 4<sup>th</sup> criterion, the Department only raised concerns about enclosure by other development and as I have concluded that the appeal site is bounded on two and a half of its three sides by buildings, I find no conflict in this instance.

10. The 3<sup>rd</sup> criterion requires that the cluster is associated with a focal point such as a social/community building/facility or is located at a crossroads. Whilst the appellant argued that the appeal site meets this criterion as it lies at a “staggered crossroads”, the policy allows only for development where it is located at a crossroads (my emphasis). The junction of Moyad Road with Dougans Road is located 80m north-west of its junction with Leitrim Road. As the latter junction sits on the crest of the hill and given the considerable separation distance and intervening vegetation, one is not aware of the Leitrim Road junction when exiting from Dougans Road or the shared laneway serving the appeal site. When travelling southwards along Moyad Road, there is no awareness of a crossroads and on the other approach, one is past the Leitrim Road junction before the existing grouping comes into view. Given the degree of physical and visual separation between the Dougans Road junction and the Leitrim Road junction, I am not persuaded that the appeal site is in fact located at a crossroads.
11. The appellant presented a number of cases where he contends that the Department assessed against Policy CTY2a and approved dwellings located at staggered crossroads. The Department in their rebuttal has indicated that planning applications P/011/0547/O and C/2010/0683/F were associated with social/community buildings and therefore met 3<sup>rd</sup> criterion on this basis. It appears from the site location plan attached that planning application D/2011/0130/F was assessed against Policy CTY 8 which has no requirement for location at a crossroads. No details other than the decision notice and site location map submitted by the appellant in regard to B/2010/0242/F were presented which makes it impossible to ascertain against which policies it was assessed and on what basis it was considered acceptable. In this evidential context, I am not persuaded that the Department has been inconsistent in their interpretation of the 3<sup>rd</sup> criterion of Policy CTY2a. Each appeal has to be assessed on its own merits and Appeal 2010/A0202 was decided on a particular set of site specific circumstances which are not replicated here. I conclude that the appeal proposal offends the 3<sup>rd</sup> criterion of Policy CTY 2a.
12. Policy CTY2a states that all criteria must be met and as the appeal proposal offends the 1<sup>st</sup> and 3<sup>rd</sup> criterion, the 1<sup>st</sup> reason for refusal is sustained.
13. Policy CTY14 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. I have concluded above that the development of the appeal site can be absorbed into the existing grouping through rounding off and consolidation, without significantly altering the character of the area. The introduction of a single dwelling enclosed by existing development would respect the traditional pattern of settlement in an area characterised by similar groupings and the 2<sup>nd</sup> reason for refusal is not sustained.



14. The appeal site is located in the Mourne Area of Outstanding Natural Beauty (AONB) and Policy DES 4 of the Planning Strategy for Rural Northern Ireland therefore applies. Whilst the appellant is correct in his assessment that the policies in PPS21 take precedence over the policy provisions for CPA designations in all existing and published draft plans, AONBs still fall to be considered against Policy DES 4 which was not superseded by PPS21 as outlined in its Preamble.
15. The headnote of Policy DES 4 requires development “to be sensitive to the distinctive character of the area and the quality of their landscape, heritage and wildlife“. It also states that “new buildings should respect and may have to reflect the traditional architectural styles and settlement pattern“. The appeal proposal would have limited visual impact given its low lying position and enclosure by existing buildings. The introduction of another dwelling at this location would reflect the character and settlement pattern of the area where other concentrations of development are apparent, without harming the scenic value of the area. Whilst there are a variety of different house styles and designs in the immediate vicinity, as this is an outline proposal, appropriate conditions could be attached to ensure that the development reflect the traditional styles of the area. I find no conflict with policy DES4 and the Department has not sustained its 3<sup>rd</sup> reason for refusal.

This decision relates to the 1:2500 site location plan date stamped refused by the Department on 4 July 2012.

**COMMISSIONER PAULINE BOOMER**