

<b>ITEM NO</b>	<b>16</b>				
<b>APPLIC NO</b>	LA07/2016/0276/F	Full	<b>DATE VALID</b>	2/29/16	
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>				
<b>APPLICANT</b>	Frank Hughes Bookmakers 14 The Mall Newry BT34 1BB		<b>AGENT</b>	Delahunt Laverty Architecture 79 Greenan Road Newry BT34 2PT 028 4177 2220	
<b>LOCATION</b>	14-15 The Mall Newry Co. Down BT34 1BB				
<b>PROPOSAL</b>	Change of use of vacant shop to offices. Construction of rear extension incorporating new stairs, store and toilets. External refurbishment including new roof, external finishes, windows, and shopfronts. Internal alterations to existing layouts.				
<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>	<b>Addresses</b> <b>Signatures</b>
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Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0276/F

**Date Received:** 19<sup>th</sup> February 2016

**Proposal:** Change of use of vacant shop to offices.  
Construction of rear extension incorporating new stairs,  
store and toilets.  
External refurbishment including new roof, external  
finishes, windows, and shopfronts.  
Internal alterations to existing layouts.

**Location:** 14-15 The Mall, Newry, Co. Down, BT34 1BB.  
The site is located in central Newry.

**Site Characteristics & Area Characteristics:**

The site contains a low two-storey building split into three sections. A central archway provides access to a public house to the rear. The northern section is a bookmaker's shop and the southern section is a vacant commercial unit. The first floor of all three sections is offices. The walls are rendered and painted (with a tiled finish to the bookmaker's shop) and the roof is artificial slate. There is a brick chimney at the northern end. The site fronts onto The Mall to the west, on the opposite side of which is the Newry River.

The site is located in central Newry, within the city centre. It is within the Primary Retail Core and an Area of Archaeological Potential as defined on the Banbridge, Newry and Mourne Area Plan 2015. It is also within the Newry Conservation Area and the fluvial flood zone of the Newry River and in proximity to Newry Canal which is a Scheduled Monument (DOW 046:500). There is a range of surrounding land uses including commercial and other public buildings. The buildings to both sides of the site (both for the sale of food) are higher two or three storey buildings.



### Site History:

P/2001/1601/F - Alterations and conversion of existing Bookmakers offices – Approved 07.12.2001

P/2001/1666/A - Erection of Shop Sign – Consent granted 11.01.2002

P/2005/1217/DCA - Alterations to building – Consent granted 14.01.2006

P/2005/1231/F - Alterations and extension to building – Approved 18.01.2006

LA07/2016/0274/DCA - Demolition of existing redundant chimney and shop front to No 14. Demolition of shop signage / roller shutter casing to front and existing external fire escape and single storey toilet block to rear No 15. Removal of all roof coverings, wall finishes, windows and doors.

The planning history and associated drawings indicate that the building has been used for bookmaking, retailing and offices for a long time and these uses are established. The 2006 approvals permitted raising of the roof and new shopfronts / windows, but this work was not carried out and the permission has lapsed.

The present DCA application will be processed alongside the current full application. The full application must be determined by the planning committee as the recommendation to approve is contrary to the advice of a statutory consultee (Rivers Agency). The DCA application will be processed under the Council's Scheme of Delegation, but must then be notified to the Department for Infrastructure in accordance with Section 105 of the Planning Act.

**Planning Policies & Material Considerations:**

- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Banbridge, Newry & Mourne Area Plan 2015
- PPS3 – Access, Movement and Parking
- Parking Standards
- PPS6 – Planning, Archaeology and the Built Heritage
- PPS15 – Planning and Flood Risk
- DCAN 3 – Bookmaking Offices
- Newry Conservation Area Booklet

**Consultations:**

- Rivers Agency – Site within fluvial flood zone of Newry River and the potential inundation area of Camlough Reservoir. Assurance required on reservoir safety along with a flood risk assessment if the proposal is deemed an exception to the policy.
- NI Water – Site-specific informatives. Available capacity at receiving Wastewater Treatment Works.
- Environmental Health – No objections.
- NIEA – No archaeological objections; standard advice on sewerage and drainage.

**Objections & Representations:**

14 neighbouring properties were notified on 25<sup>th</sup> March 2016. The application was advertised in local newspapers on 18<sup>th</sup> March 2016. No third party objections or representations were received in response to these consultations.

**Consideration and Assessment:**

The main issues to be considered are the principle of partial demolition within the Conservation Area, the design of the refurbished and extended building, the impact on adjoining properties, and implications for archaeological remains and flood risk.

Use of a building as a betting office is a ‘no class specified’ use under Article 3 (4) of the Planning (Use Classes) Order (Northern Ireland) 2015. The shop unit is a Class A1 use and the proposed use as offices would likely fall under use class A2. Therefore the retail policy of the SPPS will be applicable to this element of the proposal.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the settlement limit of Newry on the above Plan, and within the designated city centre and Primary Retail Core. The plan states that the PRC contains the traditional concentration of retailing and other city centre functions and it is designated to control the scale and nature of new development and to ensure the continuance of a compact, lively and attractive

shopping environment. Although this proposal will result in the loss of a shop unit, it will be replaced with offices which are still within Class A (2), and are associated with the existing bookmaker's business which is an appropriate town centre use. Therefore the proposal is not considered contrary to the provisions of the Area Plan. It is also in accordance with the sequential test in the SPPS (paragraph 6.281) as it is located within the Primary Retail Core – the first port of call for this type of development. As the use as both offices and bookmakers is established, and there is no increase in the scale of the betting shop itself, it would not fall foul of any of the criteria in DCAN3 which relates more the selection of new sites for bookmakers' offices.

Turning to the matter of demolition of part of the existing building, the section to be demolished is a small rear return built in concrete brick that is not visible to public views and does not make a material contribution to the character of the building or the wider conservation area. Therefore the demolition of this section to facilitate the extension and refurbishment is not contrary to paragraphs 6.18 and 6.19 of the SPPS or policy BH14 of PPS6. The loss of the existing chimney on the main ridge is regrettable, but as this feature is not highly noticeable within the conservation area, it would not warrant refusal of the application. The improvements to external finishes and openings are considered appropriate compensation. No other building on this part of the street has a visible chimney. There is no need to condition a timescale between demolition and re-development as the area to be demolished is not visible, so it will not mar the conservation area.

The new rear extension to accommodate a staircase and toilets will be a timber framed structure. It will be clad with an eternit fibre cement board rain screen with a Trocal anthracite flat roof. While not traditional materials found in the conservation area, the planning authority considers that as this part of the building cannot be seen from public viewpoints, refusal on these grounds would not be sustainable. Of greater consequence is the refurbishment of the front of the building. This will include more traditional shopfronts, a traditional rendered finish and replacing the artificial slate roof with salvaged Bangor Blue slates. The first floor window openings will also be adjusted and fitted with more appropriate vertically proportioned sashes. It is considered that these works will greatly enhance the character and appearance of the conservation area as now required under paragraph 6.18 of the SPPS. This part of the conservation area does not have a characteristic built form and it has been somewhat marred by the more modern developments to either side of this site, but this site contains one of the older buildings in the street and it is more appropriate to follow the scale of the existing building than the two adjoining ones. This approach is endorsed by the Newry Conservation Area booklet (page 10). The scheme seeks to enhance the traditional characteristics of the building and apply more appropriate external finishes to the front elevation. There should be no adverse environmental problems as a result of the development and it will not significantly alter views in the conservation area. There is no impact on trees and the scheme is in general conformity with the Newry Conservation Area booklet and the retained sections of policy BH12 of PPS6.

PPS6 is also relevant with regard to historic monuments. The site is in proximity to Newry Canal and is within an Area of Archaeological Potential. Historic Monuments Unit was consulted on the application. Due to the small nature and scale of the proposed extension, they have no archaeological objections.

The site is within the fluvial flood zone of Newry River and the potential inundation area of Camlough Reservoir. Rivers Agency was consulted and advised that policies FLD1, FLD3 and FLD5 were applicable. If the proposal was considered a valid exception under FLD1, they requested a Flood Risk Assessment, and they requested evidence that the condition, management and maintenance regime of the reservoir is appropriate to provide sufficient assurance regarding reservoir safety, so as to enable the development to proceed to the Flood Risk Assessment stage of FLD5. The agent was asked to provide this information, but in response, he argued that this requirement was unduly onerous since the scheme is for refurbishment and minor extension of an existing mostly occupied building. He pointed out paragraph 5.6 of PPS15 which advises that extensions to existing buildings are unlikely to increase flood risk elsewhere and that consultation with Rivers Agency in such cases is unnecessary unless there is significant intensification of use of implications for the safe evacuation of people in a flood. The planning authority is satisfied that neither of these scenarios applies to this proposal and that the consultation to Rivers Agency could therefore have been avoided within the terms of the policy. While Rivers Agency is bound to give all advice within the terms set down in PPS15, it is a matter for the planning authority as to how this should be weighted in relation to other material considerations. In this case, the requirement to provide a flood risk assessment does appear onerous given the scale of the proposal and the fact that the business is presently operating from the same building. Therefore the Planning Department recommends that the consultee advice is set aside due to the circumstances of this case. Part 2 of the Council's Scheme of Delegation requires that this decision is taken by the Planning Committee. Due to the proximity of the site to the Newry River, NIEA has recommended that a condition is imposed requiring the submission of a Construction Method Statement prior to commencement of development.

With regard to parking provision, it is considered that as there is an existing bookmaker's and offices operating at the site and it is within the town centre with available on street car parking, nearby public car parks and a bus station, there should be no requirement for additional parking provision in association with this scheme given the minor scale of the changes proposed.

**Recommendation:** Approval

**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. A detailed Construction Method Statement, for works in, near or liable to affect any waterway as defined by the Water (Northern Ireland) Order 1999, must be submitted to NIEA Water Management Unit, at least 8 weeks prior to the commencement of the works or phase of works.

Reason: To ensure effective avoidance and mitigation measures have been planned for the protection of the water environment.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

<b>ITEM NO</b>	<b>17</b>			
<b>APPLIC NO</b>	LA07/2016/0421/O	Outline	<b>DATE VALID</b>	4/4/16
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Fiona Doyle 23 Spring Meadows Warrenpoint BT34 3SU		<b>AGENT</b>	Bernard Dinsmore Chartered Architect 24a Duke Street Warrenpoint BT34 3JY 028 4175 3698

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

**PROPOSAL** Proposed infill dwelling and detached garage

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

- 1 The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Tamnaharry Hill Road.
- 2 The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:
  - the building would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings;
  - the (building) would, if permitted create or add to a ribbon of development;
  - and would therefore result in a detrimental change to the rural character of the countryside.
- 3 The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that it does not meet the policy criteria of CTY8;



## REPRESENTATION AGAINST RECOMMENDATION TO REFUSE

This representation is made under the Newry Mourne & Down District Council Planning Committee operating protocol dated May 2016 in relation to an application which has been recommended for refusal by Planning Services.

<b>Application Reference:</b>	<b>LA07/2016/0421/O</b>
<b>Applicant Name:</b>	Fiona Doyle
<b>Site Location</b>	Site adjacent to and west of No. 25 Tamnaharry Hill Road, Mayobridge, Newry, Co. Down
<b>Proposal:</b>	Infill Dwelling and Detached Garage

From the Case Officers report the reasons for refusal are as follows:

### ***Refusal Reasons:***

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

1. The relevant section of Policy CTY 1 states that Planning Permission will be granted for an individual dwelling house in the countryside for ....the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with CTY8....

The subject site meets this criteria in full. There a substantial and continuous built up frontage along this stretch of Tamnaharry Hill Road as demonstrated on the accompanying annotated ACE Map and Google map, with this site as a gap site in the centre.

2. Policy CTY 8 states that planning permission will be granted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within **an otherwise substantial and continuously built up frontage** and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size, and, meets other planning and environmental requirements. This gap site meets this criteria unlike for example a nearby site refused under P/2013/0774/O.

CTY 8 goes on ...for the purpose of this policy the definition of a substantial built-up frontage includes **a line of 3 or more buildings along a road frontage** without accompanying development to the rear.

The Planning Officers Professional Report states that in this instance this application does not meet the exception requirement under the requirements of CTY 8. I believe the assessment to be incorrect

- No's 29A and 29 display road frontage.
- The adjacent 'small field' to the east the Planner refers to is in fact the entrance into a large field to the rear.
- Then the application site.
- Whilst no. 25A is accessed a short way up a private lane there is no doubt that it displays the characteristic of a dwelling that fronts onto Tamnaharry Hill Road. It has a small portion of undeveloped fenced-off ground which could certainly not be described as an 'open field'.
- No. 25 is set back and almost invisible.
- No. 27 is not included in the Planners "Consideration and Assessment" but is noted in "Site Characteristics & Area Characteristics" as being ....sited similarly to no. 25A.... (i.e.) it has the characteristics of road frontage.
- Then a gap
- Then no. 23.

Therefore, there is a distinct frontage of four dwellings as demonstrated on the attached ACE map, and Google map.

3. For the purpose of CTY 13 it must be noted that this is an outline application. However in response to items (a) – (g) of the Policy:
  - (a) A new dwelling will be no more prominent in the landscape than neighboring dwellings. If it can be accepted that the site is an exception to CTY8 then Planning Services can control its siting, within the red line.
  - (b) The Case Officer notes that the site benefits from long established natural boundaries in the form of bramble hedgerows.
  - (c) It will not therefore rely primarily on the use of new landscaping for integration.
  - (d) The level of integration of ancillary works will be determined under a Reserved Matters Application.
  - (e) The appropriateness of the building will be determined by the Reserved Matters Application.
  - (f) The Case Officer notes that the site slopes upwards towards the rear boundary which taken together with natural boundaries provides a natural back drop.
  - (g) Only relevant to a dwelling on a farm.

Therefore, there is absolutely no reason why a dwelling could not be successfully integrated into the Countryside under Policy CTY 13 whether in the location suggested in the design and access statement or at a different location conditioned by Planning Services within the red line (i.e.) set further back.

4. The proposal is not contrary to CTY14
  - (a) It will not be unduly prominent in the landscape by proper assessment of reserved matters application.
  - (b) The new dwelling will respect the indivisibility with existing development and its capacity to absorb this gap site through its siting, scale and design.
  - (c) It will respect the traditional pattern of settlement by adopting the spacing of existing buildings and integrating sensitively along the existing group.
  - (d) The proposal satisfies the exception to CTY 8 by way of meeting the requirements for a gap site.
  - (e) The impact of ancillary works will be fully under the control of Planning Services through a Reserved Matters application.

Conclusion:

In conclusion it is contended that the Planning Officer's overall assessment of this site under PPS21 is incorrect.

1. The proposed development is an exception to Policy CTY8. It is a gap site sufficient in size to accommodate only up to a maximum of two houses.
2. Again under CTY 8 there is a distinct frontage of four houses and not two as reported by the Planning Officer.
3. Under CTY13 A dwelling could be visually integrated by careful design and outline planning and reserved Matters conditions.
4. Assessment under CTY14 is largely dependent on agreement of development principle under CTY8.

Finally, it is worth noting that Transport NI have no objection to this application.

I request on behalf of the applicant that the Council overturn Planning Services recommendation.

SIGNED:



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**BERNARD DINSMORE**  
*Chartered Architect*

23<sup>RD</sup> JUNE 2016

# ACEmap® Single

Scale: 1:2,500

Printed: 14/01/2016 Customer Ref:

Order no. ORD20829

Centre Point (Easting, Northing): 315351, 325353

Plan No. 26710NW

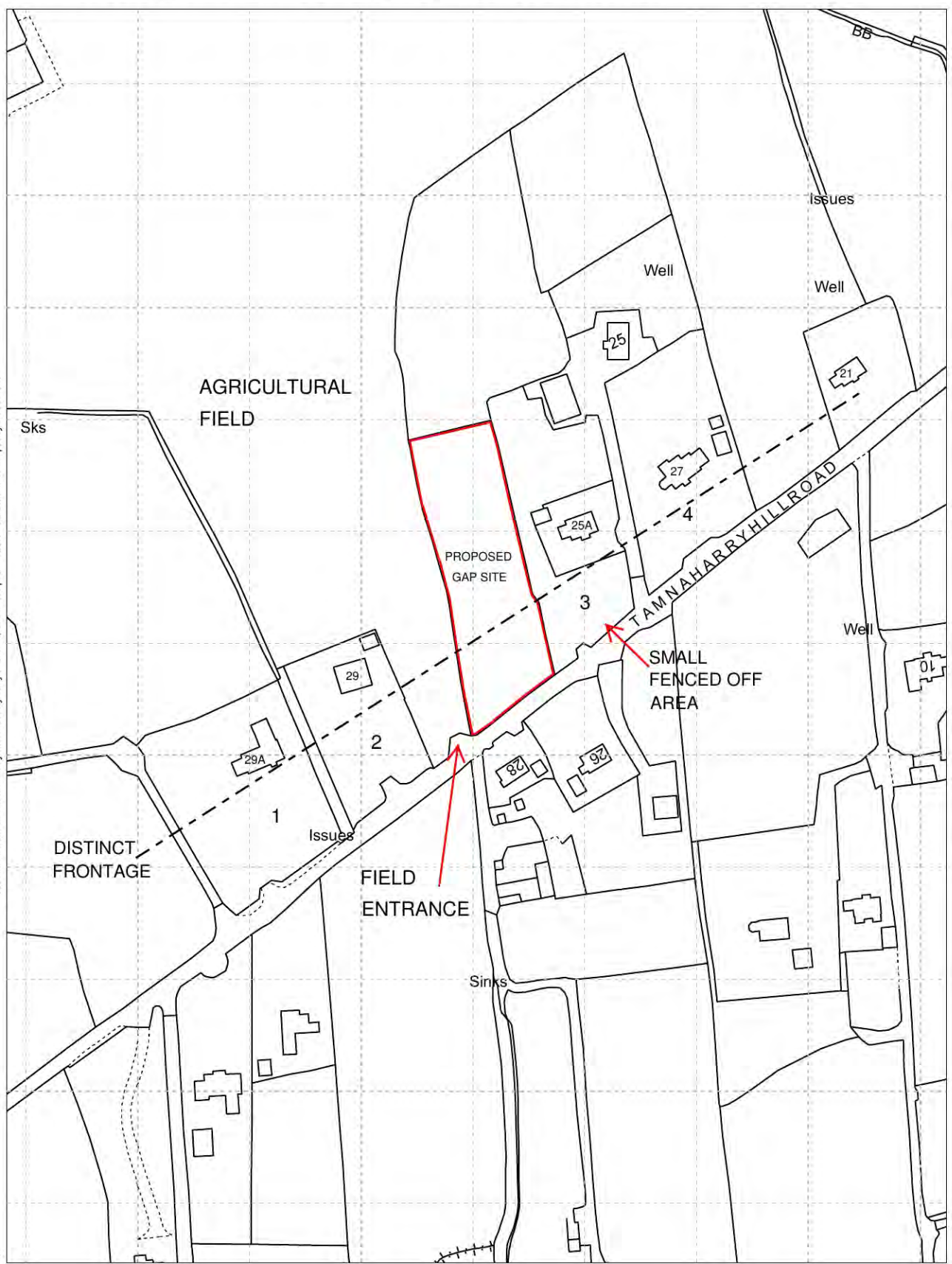
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Overview of The Site Within the Existing Settlement Pattern



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:**

LA07/2016/0421/O

**Date Received:**

04/04/2016

**Proposal:**

Proposed infill dwelling and detached garage.

**Location:**

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

**Site Characteristics & Area Characteristics:**

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



(views of the site)

**Site History:**

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

**Planning Policies & Material Considerations:**

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

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

**Consultations:**

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

**Objections & Representations**

6 Neighbour notifications issued on 16/05/2016

No responses received

### Consideration and Assessment:

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

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

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



Figure 1 overview of site within existing settlement pattern

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



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

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

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

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

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

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

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

**Recommendation:** Refusal

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

**Refusal Reasons:**

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

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

## REPRESENTATION AGAINST RECOMMENDATION TO REFUSE

This representation is made under the Newry Mourne & Down District Council Planning Committee operating protocol dated May 2016 in relation to an application which has been recommended for refusal by Planning Services.

<b>Application Reference:</b>	<b>LA07/2016/0421/O</b>
<b>Applicant Name:</b>	Fiona Doyle
<b>Site Location</b>	Site adjacent to and west of No. 25 Tamnaharry Hill Road, Mayobridge, Newry, Co. Down
<b>Proposal:</b>	Infill Dwelling and Detached Garage

From the Case Officers report the reasons for refusal are as follows:

### ***Refusal Reasons:***

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

1. The relevant section of Policy CTY 1 states that Planning Permission will be granted for an individual dwelling house in the countryside for ....the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with CTY8....

The subject site meets this criteria in full. There a substantial and continuous built up frontage along this stretch of Tamnaharry Hill Road as demonstrated on the accompanying annotated ACE Map and Google map, with this site as a gap site in the centre.

2. Policy CTY 8 states that planning permission will be granted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within **an otherwise substantial and continuously built up frontage** and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size, and, meets other planning and environmental requirements. This gap site meets this criteria unlike for example a nearby site refused under P/2013/0774/O.

CTY 8 goes on ...for the purpose of this policy the definition of a substantial built-up frontage includes **a line of 3 or more buildings along a road frontage** without accompanying development to the rear.

The Planning Officers Professional Report states that in this instance this application does not meet the exception requirement under the requirements of CTY 8. I believe the assessment to be incorrect

- No's 29A and 29 display road frontage.
- The adjacent 'small field' to the east the Planner refers to is in fact the entrance into a large field to the rear.
- Then the application site.
- Whilst no. 25A is accessed a short way up a private lane there is no doubt that it displays the characteristic of a dwelling that fronts onto Tamnaharry Hill Road. It has a small portion of undeveloped fenced-off ground which could certainly not be described as an 'open field'.
- No. 25 is set back and almost invisible.
- No. 27 is not included in the Planners "Consideration and Assessment" but is noted in "Site Characteristics & Area Characteristics" as being ....sited similarly to no. 25A.... (i.e.) it has the characteristics of road frontage.
- Then a gap
- Then no. 23.

Therefore, there is a distinct frontage of four dwellings as demonstrated on the attached ACE map, and Google map.

3. For the purpose of CTY 13 it must be noted that this is an outline application. However in response to items (a) – (g) of the Policy:
  - (a) A new dwelling will be no more prominent in the landscape than neighboring dwellings. If it can be accepted that the site is an exception to CTY8 then Planning Services can control its siting, within the red line.
  - (b) The Case Officer notes that the site benefits from long established natural boundaries in the form of bramble hedgerows.
  - (c) It will not therefore rely primarily on the use of new landscaping for integration.
  - (d) The level of integration of ancillary works will be determined under a Reserved Matters Application.
  - (e) The appropriateness of the building will be determined by the Reserved Matters Application.
  - (f) The Case Officer notes that the site slopes upwards towards the rear boundary which taken together with natural boundaries provides a natural back drop.
  - (g) Only relevant to a dwelling on a farm.

Therefore, there is absolutely no reason why a dwelling could not be successfully integrated into the Countryside under Policy CTY 13 whether in the location suggested in the design and access statement or at a different location conditioned by Planning Services within the red line (i.e.) set further back.

4. The proposal is not contrary to CTY14
  - (a) It will not be unduly prominent in the landscape by proper assessment of reserved matters application.
  - (b) The new dwelling will respect the indivisibility with existing development and its capacity to absorb this gap site through its siting, scale and design.
  - (c) It will respect the traditional pattern of settlement by adopting the spacing of existing buildings and integrating sensitively along the existing group.
  - (d) The proposal satisfies the exception to CTY 8 by way of meeting the requirements for a gap site.
  - (e) The impact of ancillary works will be fully under the control of Planning Services through a Reserved Matters application.

Conclusion:

In conclusion it is contended that the Planning Officer's overall assessment of this site under PPS21 is incorrect.

1. The proposed development is an exception to Policy CTY8. It is a gap site sufficient in size to accommodate only up to a maximum of two houses.
2. Again under CTY 8 there is a distinct frontage of four houses and not two as reported by the Planning Officer.
3. Under CTY13 A dwelling could be visually integrated by careful design and outline planning and reserved Matters conditions.
4. Assessment under CTY14 is largely dependent on agreement of development principle under CTY8.

Finally, it is worth noting that Transport NI have no objection to this application.

I request on behalf of the applicant that the Council overturn Planning Services recommendation.

SIGNED:



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**BERNARD DINSMORE**  
*Chartered Architect*

23<sup>RD</sup> JUNE 2016

# ACEmap® Single

Scale: 1:2,500

Printed: 14/01/2016 Customer Ref:

Order no. ORD20829

Centre Point (Easting, Northing): 315351, 325353

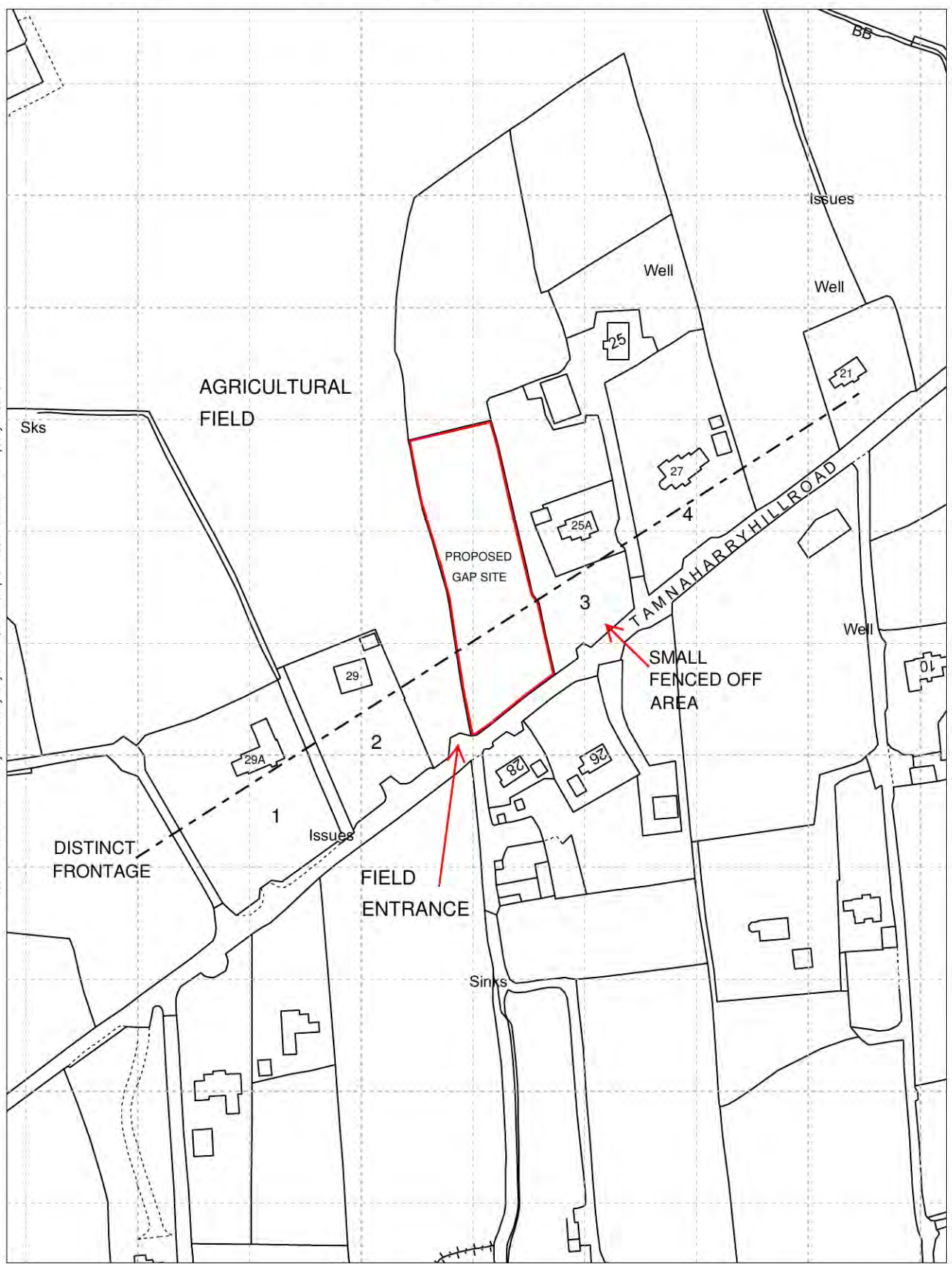
Plan No. 26710NW

25 TAMNAHARRY HILL, TAMNAHARRY, MAYOBRIDGE, BT34 2EY, 187241017

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Overview of The Site Within the Existing Settlement Pattern

**ITEM NO** 18  
**APPLIC NO** P/2014/1041/O Outline **DATE VALID** 12/18/14  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Matthew Mallon 30 Edentrumly Road Mayobridge Newry **AGENT** Quinn Design & Engineering Services 36 Corrags Road Burren Warrenpoint BT34 3PY 028 41 772377

**LOCATION** 20 metres north east of no 30a Edentrumly Road Mayobridge Newry (lands adjacent and north and north-east of No. 30A Edentrumly Road)

**PROPOSAL** Site for dwelling and detached garage

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

- 1 The proposal is contrary to Policy 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 Strategic Planning Policy Statement for Northern Ireland (SPPS), Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that:
    - other dwellings/development opportunities have not been sold off from the farm holding within 10 years of the date of the application;
    - the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm and access to the dwelling is not obtained from an existing lane.
    - health and safety reasons exist to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm
- verifiable plans exist to expand the farm business at the existing building group to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm.





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

**Application Reference: P/2014/1041/O**

**Date Received: 18.12.14**

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

**Location:** 20 metres north east of no 30a Edentrumly Road, Mayobridge, Newry (lands adjacent and north and north-east of No. 30A Edentrumly Road)

**Site Characteristics & Area Characteristics:**

Site is located 1.2 miles SE of Mayobridge within the open countryside. The site is 0.5 ha of land which comprises of agricultural with the SW corner occupied by a recently constructed dwelling and roadside wall. Land at the site rises steeply from the road from W to E field boundaries comprise of native species hedge along the N and E portion of the site.

**Site History:**

**P/2010/0481/F** - Matthew Mallon of 30 Edentrumley Rd. Erection of new dwelling and garage on a farm. 80m North East of no.30 Edentrumly Road, Mayobridge, Newry. (Application site including lands to the west) Refused 22.10.10 –Integration, unduly prominent and has no buildings in which to visually link.

**P/2007/0161/RM** - Mr Aidan Mallon of 30 Edentrumley Rd. Erection of dwelling and garage. Adjacent to No.30 Edentrumley Road, Mayobridge (Application site – sited to SW corner) Approved 09.06.08

**P/2005/0952/O** - Mr Aidan Mallon of 30 Edentrumley Rd. Site for dwelling and garage. Adjacent to No.30 Edentrumley Road, Mayobridge (Application site – Sited to SW corner) Approved 26.07.05

**P/2004/0770/O** - Miss Theresa Mallon of 30 Edentrumley Rd. Site for dwelling and detached garage. Approximately 50 metres north east of No.30 Edentrumly Road Mayobridge. (Application site) Withdrawn following a recommendation to refuse on prominence, build-up and ribbon development

**P/2002/1045/O** - Miss Theresa Mallon of 30 Edentrumley Rd. Dwelling & detached garage. Approx. 90m N.E. of 30 Edentrumly Road Mayobridge. Withdrawn 31.07.2003 following a recommendation to refuse on prominence, build-up, ribbon development and inadequate site lines (Application site)

**P/2001/1138/O** – Mr Aidan Mallon of 30 Edentrumley Road. Dwelling and garage. Adjacent to 30 Edentrumly Road, Mayobridge. Withdrawn 14.01.2002 (Application Site)

**P/2002/0035/O** - Mr Aidan Mallon of 30 Edentrumley Road. Dwelling and garage. Adjacent to 30 Edentrumly Road, Mayobridge. Approved 05.03.02 (Application site)

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

#### **Area Plan:**

#### **Policy Consideration: SSPS, PPS21 and PPS3**

#### **SPPS and CTY10:**

DARD in their consultation response dated 20.02.15 confirm that farm business is currently active and has been established for at least 6 years although the applicant is not a formal member of the business.

The farm business is within the name of Mary Mallon of No.30 Edentrumley Road with land at 30a identified within supporting information to be part of the farm holding. However planning permission was obtained within the name of Aidan Mallon on land at No. 30a approved 09.06.08 and is outside the holding of Mary Mallon.

There are currently no buildings within the farm holding as shown on the farm map however the agent states that the family farm consist of 2 sheds, the main farm dwelling (No. 30) and the applicant's brother's home (30A). As No. 30A is within the ownership of Mr Aidan Mallon (Mr Mallon has acquired planning permission under planning reference at No. 30a) which is not within the farm holding of Mary Mallon. The proposed site is far removed from the existing holding that it is not possible to cluster with the established group of buildings and the site is not visually interlinked (as per 5.41 of CTY10) due to the physical separation by the existing dwelling house at No. 30A. As No.30a is not within the holding there is no support within the policy for visual linkage with adjacent residential properties which lie outside the holding (See appeal 2015/A0176 with regard to visual linkage/ clustering).

No evidence of health and safety reasons have been presented to justify an alternative position, although it is more likely that there is insufficient room close to the established buildings to accommodate a dwelling.

Overall proposal fail to meet planning policy with regard to the SPPS and CTY 10.

The agent in his submission states that once the criteria of CTY10 has been meet the 'exceptional circumstances' tests relating to CTY 13 and CTY 14 are not applicable, CTY10 is not a standalone policy and other policy must be considered.

The SPPS in relation to dwellings on farms emphasises that development must comply with LDP policies with regard to integration and rural character however in the absence of LDP guidance direction is taken from extant policy, the recent judicial review (Justice Treacy) supports this position as does appeal reference 2014/A0260 (Assessment of other policies beyond CTY 1 and CTY10)

### **Integration (SPPS and CTY13)**

The application site had been previously recommended for refusal on 3 occasions (P/2010/0481/F, P/2004/0770/O and P/2002/1045/O) citing integration reasons as one of the reasons for refusal. This position remains unchanged from previous.

The entire site is visible from the Ballyvalley Road (W of application site) from this vantage point any development on the site will appear prominent due to the open and exposed nature of the site. The site rises steeply in an easterly direction from the road, it is difficult to envisage how a dwelling and ancillary works can be adequately integrated and deemed acceptable given that the dwelling will site above the road level. In order to accommodate a new dwelling a level platform to facilitate development will require extensive site works and thus the open and prominent nature of the site will be clearly amplified.

The dwelling will be located to the NW portion of a much larger agricultural field with no means of separation from surrounding ground. Any dwelling at this location cannot be adequately integrated. Any new build at this location will appear dominant in the local landscape and as a roadside site any development will introduce suburban design solutions with a large and prominent garden area, which further contribute to a change in rural character of this area. Thus proposals fail to meet policy tests.

### **Ribbon Development and Rural Character (SPPS, CTY8 and 14)**

CTY14 indicates that planning permission will be refused where development will result in a detrimental change to or erode the rural character of an area. Within 300m of the site there are 7 existing dwellings that include Nos. 24, 25, 26, 27, 30, 30a and 32 Edentrumley Road.

The entire site is visible from the Ballyvalley Road (to the west) from this area any development at the application site will be obvious and easily read with existing properties at 24, 25, 26, 27, 30, 30a and 32 appearing as build-up of development within the open countryside. On approach along Edentrumley Road from S to N the site will read with properties 30, 30a, 27 and 26 Edentrumley Road.

The implementation of planning permission at the site would extend the area of development. When taken with the adjacent dwellings will add to an overall cumulative effect of buildings within this area leading to a change of the rural character of this area.

Furthermore development at this location will create a ribbon of development which is evident on approach in either direction along Edentrumley Road with such a number of dwellings creating a build-up appearance when viewed from the road. From south heading northwards the entire site will read as a ribbon of development along with properties 26, 30 and 30A, whilst in the other direction from south heading north development at this location will read with properties Nos. 30 and 30a all of which have a common frontage to the road, another building at the site will create a ribbon of development in this rural locality, thus creating a built up appearance when viewed from the road.

Proposals will introduce suburban siting and design solutions, which will visually link with existing dwellings on Edentrumley Road creating a continuous urban frontage in the countryside. Development if approved at this location will inevitably create a gap site between Nos. 26 and the proposed site which could potentially pave the way for further erosion to the rural character of this area.

#### **Amenity (SPPS):**

The proposed location of site is within 75m of a working farm however other family member houses are much closer, the working farm is shown within land in ownership and control and thus activities can be controlled to avoid any potential nuisance.

#### **Consultations:**

DARD (20.02.15) - Confirm that business id has been in existence for more than 6 years and single farm payments claimed. The applicant is not a formal member of the business.

Transport NI (09.02.15) - No objection in principle

Environmental Health (15.01.15) - Site is within 75m of a working farm and farms have the potential to cause nuisance, consent to discharge required and sufficient land should be made available for a septic tank.

NIW (14.01.15) - Generic response

#### **Objections & Representations**

5 neighbour notifications issued  
Advertised 16.01.15

No third party representations received

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

Taking into account the submission of additional information from the agent which it is acknowledged that there is existing buildings within the holding the position of the site does not allow for visual linkage and clustering, thus failing to meet criteria for

dwelling on a farm. Overall proposals fail to fully meet criteria for dwellings on the farm under the SPPS as well as CTY10.

Furthermore planning history relating to the site indicates there have been a number of occasions whereby integration, build-up and ribbon development issues have been problematic, this position remains unchanged from previous and these issues still apply.


The agent has identified a number of appeals which indicate where the criteria of CTY10 is met then other policies should not be engaged. The recent judicial review (Treacy) and PAC decisions (2014/A0260, 2015/A0176) provide support that CTY1 and CTY 10 are not self-contained policies and that other policies should be taken into account in this case CTY 13 and 14 but other buildings outside the holding should not be relied upon to provide visual linkage/ clustering. Overall development fails to meet the policy requirements of the SPPS, PPS21: CTY1, 8, 10, 13 and 14 and should therefore be recommended for refusal

**Recommendation:** Refusal

**Refusal Reasons:**

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 Strategic Planning Policy Statement for Northern Ireland (SPPS), Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that:
  - other dwellings/development opportunities have not been sold off from the farm holding within 10 years of the date of the application;
  - the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm and access to the dwelling is not obtained from an existing lane.
3. The proposal is contrary to Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed building is a prominent feature in the landscape; lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; relying primarily on the use of new landscaping for integration; ancillary works will not integrate with their surroundings and the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.

4. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, be unduly prominent in the landscape; result in a suburban style build-up of development when viewed with existing buildings; create a ribbon of development; the impact of ancillary works would damage rural character and would therefore result in a detrimental change to and further erode the rural character of the countryside.
5. The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Edentrumley Road.



7/7/16

7/7/16

3. The proposal is contrary to Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed building is a prominent feature in the landscape; lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; relying primarily on the use of new landscaping for integration; ancillary works will not integrate with their surroundings and the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.
4. The proposal is contrary to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, be unduly prominent in the landscape; result in a suburban style build-up of development when viewed with existing buildings; create a ribbon of development; the impact of ancillary works would damage rural character and would therefore result in a detrimental change to and further erode the rural character of the countryside.
5. The proposal is contrary to Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Edentrumley Road

# Quinn Design and Engineering Services

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

Tel (028) 417 72377 • Mobile 07768854084

Email:- [brendanfrancisquinn@yahoo.co.uk](mailto:brendanfrancisquinn@yahoo.co.uk)

Statement in support of planning application  
P/2014/1041/O

Proposal: Site for dwelling and detached garage

Location: Edentrumley Road, Mayobridge

Applicant: Matthew Mallon



## Background

When this application was submitted to Planning Service in 2014, compliance with CTY 10 alone demonstrated compliance with CTY 1 and permission should have been forthcoming.

The planning system has changed dramatically in the intervening 19 months with the publication of the Strategic Planning Policy Statement. Under this new regime, all applications for new dwellings on farms must comply with CTY 8, 13 & 14 as well as CTY 10.

The planning department has set out why it believes that a new dwelling cannot be approved under CTY 10. Instead of refuting the reasons, I wish to point out how the proposed site complies with the exception test in CTY 8.

### Policy CTY 8, Ribbon Development.

CTY 8 seeks to refuse development in cases where an approval would lead to the creation or extension of a row of buildings along a lane or road.

As with many planning policies, there is an exception rule. The exception in CTY 8 permits the infilling of a gap between buildings with 1 or even 2 dwellings providing the following 4 key tests are met:

1. The site must be within a substantial and continuous frontage which is a line of 3 or more buildings along a road or lane.
2. The existing buildings must have a common frontage OR be visually linked.
3. The site must be a small gap site sufficient to accommodate up to a maximum of two dwellings.
4. The proposal must reflect the pattern of development along the frontage in relation to size, scale, siting and plot size.

The policy also advises that the buildings **don't** need to be set similar distances back from the road/lane.

When considered together, the proposed site and the adjacent plot to the north represent the only gap in a line of over 10 buildings along Edentrumley Road.

Each building has a frontage to Edentrumley Road. Furthermore, when viewed from the surrounding roads, the line of buildings are visually linked.

The application site and the plot to the north represent a small gap in the frontage large enough to accommodate 2 houses, 1 on the application site and 1 on the plot to the north.

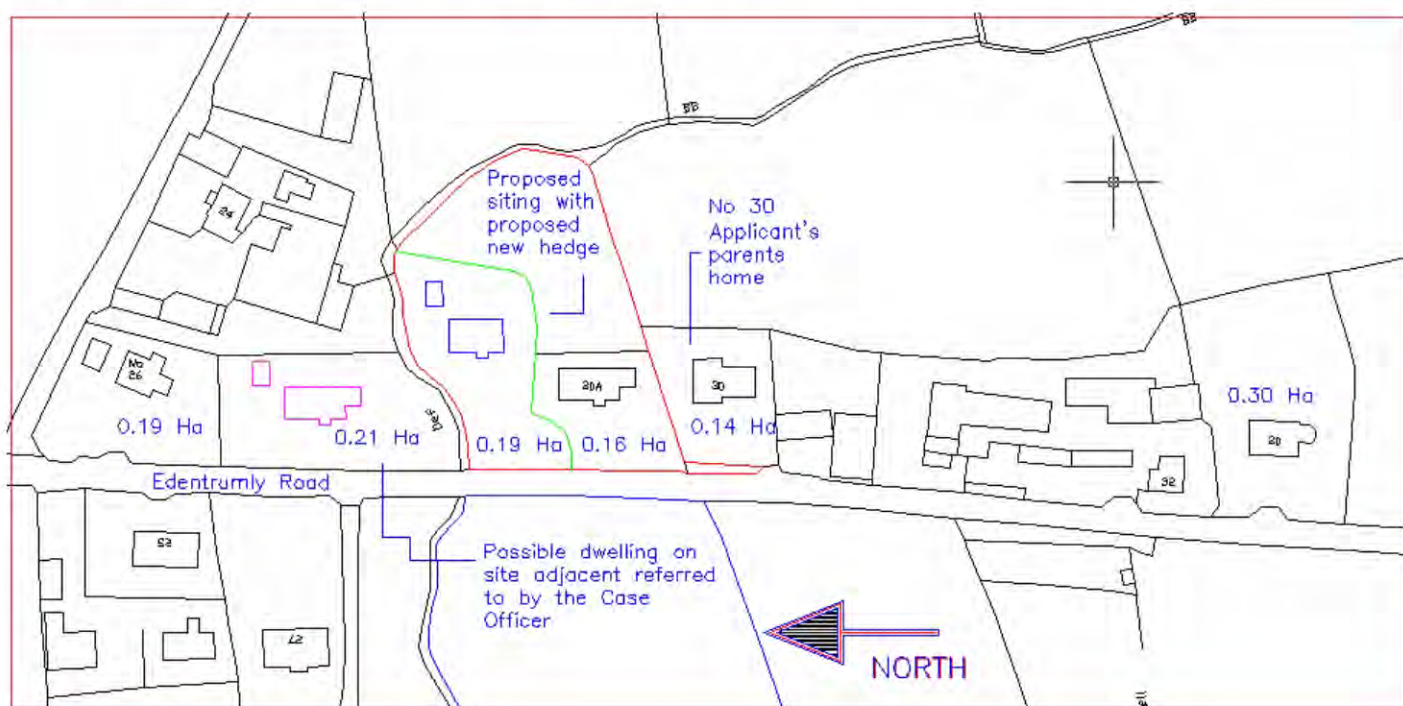
The PAC ruled in appeal reference 2011/A0100 that,

“There is no reason why an application for a single dwelling on part of a gap could not be approved, provided that the gap is “small” within the context of CTY 8”.

At this appeal it was argued that the site could not be approved because there was no current application on the second site. The Commissioner found this to be

“.....a gross misinterpretation of the policy.....”

This appeal tells us that we can approve this site even though there is no application for the second site provided it meets the following tests.



1. **Size and Scale.** The frontage contains an eclectic mix of buildings consisting of two large 2 storey dwellings, 3 low elevation dwellings and an array of farm buildings of differing sizes and shapes. If approval was granted the planning department could impose any conditions deemed necessary to ensure that the size and scale of the

proposed dwelling was in keeping with the other buildings along the road frontage.

**Siting.** As shown on the concept sketch, the proposed dwelling would have a direct access from Edentrumley Road and would be orientated to face Edentrumley Road. This is in keeping with the other dwellings and sheds along the frontage of development

**Plot Size.** The previous page shows the Ordnance Survey map of the area as it would be if 2 dwellings were approved and built on the proposed site and the plot to the north. The proposed dwelling has been shown blue inside the application site with the green line representing the curtilage of the new dwelling. A possible dwelling on the plot to the north is shown purple. I have also shown the areas of the existing plot sizes which vary in area from 0.3 down to 0.14 Ha.

As the map shows, the proposed plot size which would be created if this application were approved would be 0.19 Ha. If the land owner to the north was to apply for a second infill dwelling, the proposed plot size to the north would be 0.21Ha.

These plot areas are in keeping with the existing plot areas along the frontage of buildings.

Against this background the proposed site doesn't offend Policy CTY 8

**The Case Officer agrees with me.**

When considering the application against Policy CTY 8 the Case Officer advised the Council as follows:-

Furthermore development at this location will create a ribbon of development which is evident on approach in either direction along Edentrumley Road with such a number of dwellings creating a build-up appearance when viewed from the road. From south heading northwards the entire site will read as a ribbon of development along with properties 26, 30 and 30A, whilst in the other direction from south heading north development at this location will read with properties Nos. 30 and 30a all of which have a common frontage to the road, another building at the site will create a ribbon of development in this rural locality, thus creating a built up appearance when viewed from the road.

From reading the above, the Case Officer clearly supports my contention that a new dwelling as shown on the concept sketch will read or "*visually*

*link*" (as required by the policy) with the existing dwellings along the frontage of development.

This statement is compounded by the following paragraph of the Case Officer's Report where the council was advised:-

Development if approved at this location will inevitably create a gap site between Nos. 26 and the proposed site which could potentially pave the way for further erosion to the rural character of this area.

From the above analysis it is clear that the Case Officer is very certain that approving this application would "*pave the way*" for another approval on the plot to the north.

In summary, the Case Officer after seeing the site is content that the application site + the plot to the north (when considered together) represents a gap capable of accommodating 2 houses within a substantial ribbon of development.

### **Do we need to consider Policies CTY 13 & 14 if the site complies with Policy CTY 8.**

Policy CTY 1 in PPS 21 states that planning permission will be granted for an individual dwelling house in 6 cases. One of the cases relates to Policy CTY 8. Since the subject proposal is consistent with Policy CTY 8, it is one of the types of development that is acceptable in the countryside in accordance with Policy CTY 1. It is therefore not necessary to consider any other policies in PPS 21.

This interpretation is supported by many unchallenged Appeal decisions; 7 of which are summarised below.

#### **Appeal reference 2011/A0103**

Planning authority's reasons for refusal related to Policies CTY 1, 13 and 14

The Commissioner who decided Appeal reference 2011/A0103 concluded that,

*"In as much as I have found that the proposal satisfies the requirements of Policy CTY 8 I also have concluded that the proposal is in accordance with Policy CTY 1 of PPS 21. As the proposal forms an acceptable form of infill development the Departments third Reason for Refusal based on Policy CTY 14 has also been misplaced."*

**Appeal reference 2013/A0087**

Planning authority's reasons for refusal related to Policies CTY 1, 8 and 14

The Commissioner who decided Appeal reference 2013/A0087 concluded that,

*"In the light of my findings above, the proposal represents an exception to policy. It therefore complies with Policy CTY 8 and CTY 1 of PPS 21. The Department has not sustained its first and second reasons for refusal. Furthermore, as the proposal acceptable form of infill development, the third reason for refusal in respect of rural character is misplaced."*

**Appeal reference 2012/A0281**

Planning authority's reasons for refusal related to Policies CTY 1, 10 and 14

The Commissioner who decided Appeal reference 2012/A0281 concluded that,

*"Taking all the matters into consideration I have concluded that the proposal is an exception to policy CTY 8 in that it constitutes the development of a small gap site within an otherwise substantial and continuously built up frontage. In such circumstances the proposal also satisfies the requirements of policy CTY 1. As such the Department's refusal of planning permission has not been justified."*

**Appeal reference 2014/A0152**

Planning authority's reasons for refusal related to Policies CTY 1, 8 and 14

The Commissioner who decided Appeal reference 2014/A0152 concluded that,

*"It follows that if the proposal meets Policy CTY 8, then the proposal would fall within one of the accepted forms of development permitted by Policy CTY 1."*

**Appeal Reference 2015/A0091**

Planning authority's reasons for refusal related to Policies CTY 1, 8 and 14

The Commissioner who decided Appeal reference 2015/A0091 concluded that,

*“Accordingly, the proposal satisfies the exceptional test and complies with Policy CTY 8. As the proposal is an acceptable form of infill development the objection based on Policy CTY 14 of PPS 21 is misplaced and is not therefore sustained. Given that the proposal complies with Policy CTY8, it is also in accordance with Policy CTY 1 of PPS 21. The reasons for refusal as set out in the Decision Notice are not sustained.”*

#### **Appeal reference 2013/A0254**

Planning authority’s reasons for refusal related to Policies CTY 1 and 8 (CTY 2a was raised at the Appeal)

The Commissioner who decided Appeal reference 2013/A0254 concluded that,

*“It follows that if the proposal meets Policy CTY 8, then the proposal would fall within one of the accepted forms of development permitted by Policy CTY 1. The Department has therefore not sustained its first reason for refusal. Having found that the proposal qualifies as an exception under Policy CTY 1, I do not need to consider the additional arguments advanced by the parties under Policy CTY 2a of PPS 21.”*

#### **Appeal reference 2010/A0128**

Planning authority’s reasons for refusal related to Policies CTY 1 and 8 (CTY 2a was raised at the Appeal)

The Commissioner who decided Appeal reference 2010/A0128 concluded that,

*“As the proposal is not at odds with Policy CTY 8 of PPS 21, it is one of the types of housing development that is acceptable in the countryside in accordance with Policy CTY 1 thereof. There is therefore no need to assess the appeal proposal against Policy CTY 2a. Accordingly, the Department’s first reason for refusal is not sustained and the appeal is allowed.”*

The appeals referred to above make it clear that an application complies with CTY 8 also complies with CTY 1, and no further policies in PPS 21 are engaged.

## Conclusion

Whilst I do not agree with the stance the Council has taken when considering the application against Policy CTY 10, I feel I have sufficiently explained how a different policy can be used to grant outline planning permission for a dwelling on the same site.

As such I would ask the members of the planning committee to over turn this recommendation and grant outline planning permission.

Brendan Quinn  
BSc Hon's  
ICIOB

Colette,

Can you please ensure the below letter is presented to all those sitting on the planning committee next week.

Thank you.

Sinead Bradley

**PRIVATE & CONFIDENTIAL**

FAO: Chairperson & Members  
Planning Committee  
Newry Mourne & Down D. C.

30<sup>th</sup> July 2016

Dear Councillor,

**Planning Ref: P/2014/1041/O**

**Applicant: Mr. Matt Mallon,**

**Detail: Site for Dwelling and Detached Garage.**

**Location: North of 30 Edentrumley Road, Mayobridge.**

I understand Mr Brendan Quinn, agent for the above applicant, will be in attendance at your next committee meeting speaking in favour of the above application by outlining the planning grounds on which a favourable approval should be delivered.

In further support of this I would also ask committee members to consider the strong connection the applicant has to this land where he wishes to set up home. Matt Mallon is hopeful that he will be afforded the opportunity to live in close proximity to his aging parents. In recent times we have witnessed significant changes in how health care and services are offered to our aging population and I believe opportunities such as this, to have nearby family support networks, should never be undervalued or underestimated.

Having grown up with his parents and grandparents on the Edentrumly road, it is understandable why Matt Mallon considers this place, home.

In the knowledge this genuine application is aimed at continuing a generational link to creating a life and home on the Edentrumly road, and in the knowledge that approving this case also plays a significant part in delivering on wider social need, I urge members to see the full value in proceeding to 'approval'.

Please place on record my full and unreserved support for this worthy application.

Yours sincerely

Sinead Bradley MLA



**SINEAD BRADLEY MLA**

*Member of The Committee for the Economy*

SDLP representative for South Down

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Room 323

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Ballymiscaw

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BT4 3XX

## Newry, Mourne & Down District Council – July 2016

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### 1. Live Applications

MONTH 2016	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	138	1,389	436
May	121	1,335	455
June	162	1,178	418
July	106	1,147	425

### 2. Live Applications by length of time in system

Month 2016	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	583	370	222	66	148	<b>1,389</b>
May	549	331	222	86	147	<b>1,335</b>
June	511	249	195	77	146	<b>1,178</b>
July	501	221	196	78	151	<b>1,147</b>

### 3. Live applications per Case Officer

Month 2016	Average number of Applications per Case Officer
April	58
May	56
June	47
July	46

## Newry, Mourne & Down District Council – July 2016

### 4. Decisions issued per month

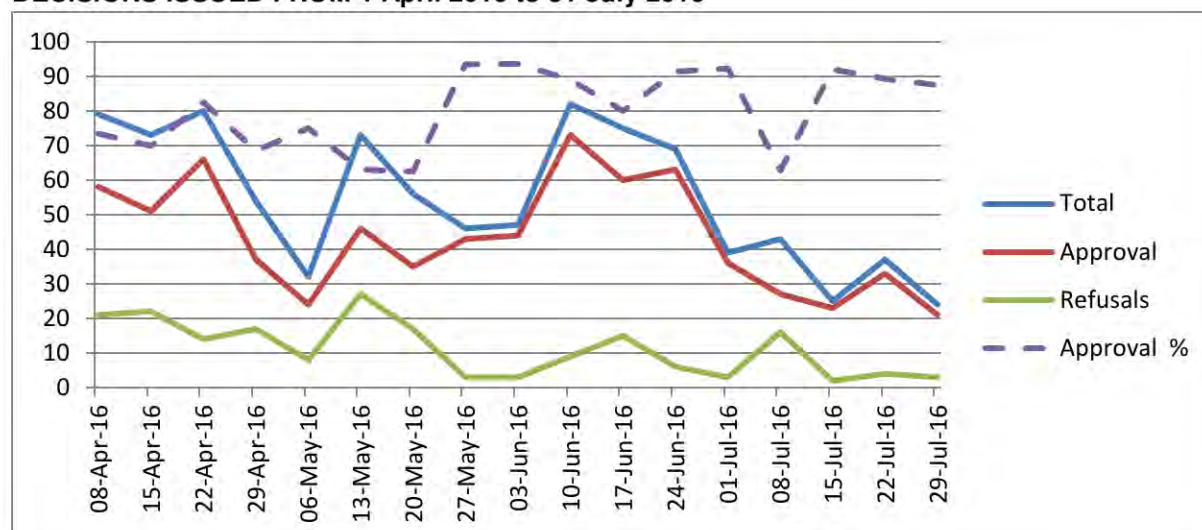
#### Decisions Issued

Month 2016	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	168	163
May	174	169
June	298	273
July	141	114

### 5. Decisions Issued YTD

Month 2016	Number of Decisions Issued	Average processing Time	Breakdown of Decisions	
April	168	35.52 weeks	Approvals (156)	93%
			Refusals (12)	7%
May	342	33 weeks	Approvals (324)	95%
			Refusals (18)	5%
June	640	34 weeks	Approvals (587)	92%
			Refusals (53)	8%
July	781	33.4 weeks	Approvals (115)	82%
			Refusals (26)	18%

**DECISIONS ISSUED FROM 1 April 2016 to 31 July 2016**



## Newry, Mourne & Down District Council – July 2016

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### 6. Enforcement

#### Live cases

Month 2016	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+ yrs	Total
April	185	119	97	56	23	78	558
May	190	113	101	58	24	77	563
June	217	119	104	56	27	79	602
July	220	117	94	64	28	77	600

### 7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/ Deferred for future meeting
13 April 2016	14	11	3
27 April 2016	10	5	5
11 May 2016	15	13	2
26 May 2016	17	12	5
8 June 2016	13	9	4
29 June 2016	35	25	10
6 July 2016	22	9	13*
<b>Totals</b>	<b>126</b>	<b>84</b>	<b>42</b>

\*2 Applications called in by DfI

### 8. Appeals

Area	Number of current appeals
Newry & Mourne	13
Down	4
<b>TOTAL</b>	<b>17</b>

## Newry, Mourne & Down District Council – July 2016

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### 9. Statutory Targets Performance Data

Statutory targets monthly update to April to June 2016 (unvalidated management information)  
Newry, Mourne and Down

	Major applications (target of 30 weeks)			Local applications (target of 15 weeks)			Cases concluded (target of 39 weeks)		
	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 30 weeks	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 15 weeks	Number brought to conclusion <sup>3</sup>	"70%" conclusion time <sup>3</sup>	% of cases concluded within 39 weeks
April	3	42.6	33.3%	164	31.0	18.9%	13	37.2	69.2%
May	2	149.3	0.0%	168	25.5	23.8%	31	92.5	45.2%
June	4	68.9	0.0%	285	27.0	22.5%	2	0.0	0.0%
July	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
August	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Sept	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Oct	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Nov	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Dec	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Jan	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Feb	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Mar	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
<b>Year to date</b>	<b>9</b>	<b>87.8</b>	<b>11.1%</b>	<b>617</b>	<b>27.2</b>	<b>21.9%</b>	<b>46</b>	<b>81.7</b>	<b>50.0%</b>

Source: NI Planning Portal

#### Note s:

1. CLUDS, TPOS, NMCS and PADS/PANs have been excluded from all applications figures
2. The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn. The median is used for the average processing time as any extreme values have the potential to inflate the mean, leading to a result that may not be considered as "typical".
3. The time taken to conclude an enforcement case is calculated from the date on which the complaint is received to the earliest date of the following: a notice is issued; proceedings commence; a planning application is received; or a case is closed. The value at 70% is determined by sorting data from its lowest to highest values and then taking the data point at the 70th percentile of the sequence.

## Record of meetings between Planning Officers and Public Representatives

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DATE OF MEETING	PLANNING OFFICER'S NAME/S	PUBLIC REPRESENTATIVE'S NAME
8/01/2016	A McKay, P Rooney, D Watson	Seán Rogers MLA, Cllr Willie Clarke, Cllr Mark Murnin
12/01/2016	P Rooney, M Keane	Cllr Stephen Burns
14/01/16	A McKay	Margaret Ritchie MLA
20/01/2016	P Rooney	Cllr Cadogan Enright
25/01/2016	D Watson	Margaret Ritchie MLA
27/01/16	M Keane	Seán Rogers MLA
17/02/16	Jacqui McParland	Declan McAteer
19/02/16	Jacqui McParland	Jarlath Tinnelly
22/02/16	Jacqui McParland	Michael Ruane
22/02/16	Jacqui McParland	Gillian Fitzpatrick
24/02/16	David Watson	Seán Rogers MLA
25/02/16	Andrew Hay, James King	Seán Rogers MLA
25/02/2016	Annette McAlarney	Seán Rogers MLA
25/02/16	Anthony McKay	Margaret Ritchie MLA
26/02/16	M Keane	Cllr McGrath
15/03/16	J McParland	Cllr M Ruane
16/03/2016	J McParland	Sean Rogers
25/03/16	A Davidson	Cllr Taylor
30/03/16	J McParland	Seán Rogers MLA
5/04/16	A McKay	Seán Rogers MLA
8/04/16	A McKay	Margaret Ritchie MLA
12/04/2016	Annette McAlarney	Cllr Curran
14/04/2016	J McParland	Cllr Declan McAteer
25/04/2016	J McParland	Cllr Tinnelly
27/04/2016	J McParland	Cllr Tinnelly
28/04/2016	Annette McAlarney	Cllr Burgess
29/04/2016	Annette McAlarney	Cllr McGrath
18/05/2016	Annette McAlarney	Cllr Curran
23/05/2016	A McKay	Cllr Ó Gribín
10/06/16	P Rooney & J McParland	Carla Lockhart MLA
14/06/2016	J McParland	Cllr Quinn
14/06/2016	J McParland A McKay P Rooney	Cllr Tinnelly
15/06/16	P Rooney	Cllr G Fitzpatrick
15/06/2016	P Rooney A McKay	Harold McKee MLA, J Tinnelly & G Fitzpatrick
16/06/2016	J McParland	Cllr Quinn
20/06/2016	Clare Miskelly	Cllr Dermot Curran
21/06/2016	J McParland	Cllr Taylor
21/06/2016	J McParland	Cllr Hanna
27/06/2016	J McParland	Cllr Tinnelly

## Record of meetings between Planning Officers and Public Representatives

360

30/06/2016	A McKay	Margaret Ritchie MP
4/07/2016	Andrew Hay	Jim Shannon MP
08/07/2016	J McParland	Cllr Quinn Cllr Doran
14/07/2016	P Rooney	Cllr W Clarke
21/07/2016	Anthony McKay	Margaret Ritchie MP
26/7/2016	J McParland	Sean Doran
27/07/2016	J McParland	J Tinnelly

## Current Appeals

**AUTHORITY**      **Newry, Mourne and Down**

<b>ITEM NO</b>	1	<b>PAC Ref:</b>	2015/A0150
<b>Planning Ref:</b>	R/2015/0089/F		
<b>APPELLANT</b>	Rob Jennings		
<b>LOCATION</b>	Land 200m North Of 97 Crossgar Road Saintfield		
<b>PROPOSAL</b>	Restoration and extension dwelling (Amended access details received).		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	<b>03/11/2015</b>
<b>Appeal Procedure</b>			
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

<b>ITEM NO</b>	2	<b>PAC Ref:</b>	2015/A0178
<b>Planning Ref:</b>	P/2014/0578/F		
<b>APPELLANT</b>	Mr Shane Quinn		
<b>LOCATION</b>	Adjacent And South West Of No.56 Drumalt Road Dorsey Cullyhanna		
<b>PROPOSAL</b>	Erection of domestic shed and associated hardstanding, access provision and site works with associated change of use of agricultural lands to domestic purposes (and access via existing laneway immediately north of No. 56 Drumalt Road. with extended section)		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>16/12/2015</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			



### Current Appeals

**ITEM NO** 3  
**Planning Ref:** P/2014/0054/O **PAC Ref:** 2015/A0188  
**APPELLANT** Mr Michael McCarthy  
**LOCATION** 40m North East And Adjoining 11 Rock Road  
 Newry  
 RT34 1PI  
**PROPOSAL**

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 12/01/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 4  
**Planning Ref:** LA07/2016/0048/F **PAC Ref:** 2015/A0247  
**APPELLANT** Mr James & Mr John McKibbin  
**LOCATION** 85m Northeast Of 181 Moyad Road  
 Kilkeel  
 RT34 4HI  
**PROPOSAL** Infill dwelling and associated domestic garage

**APPEAL TYPE** Non Determination: Plg Permission  
**Appeal Procedure** **Date Appeal Lodged** 24/03/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

### Current Appeals

**ITEM NO** 5  
**Planning Ref:** P/2014/0303/O **PAC Ref:** 2016/A0005  
**APPELLANT** Michael Horner  
**LOCATION** Adjacent To And North Of 36 Belmont Road  
 Kilkeel  
**PROPOSAL** <sup>Newrv</sup> Erection of Infill Dwelling and Detached Garage

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 05/04/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 6  
**Planning Ref:** P/2014/0798/O **PAC Ref:** 2016/A0009  
**APPELLANT** Mr And Mrs McParland  
**LOCATION** Adjacent To No. 63 Ballycoshane Road  
 Rathfriland  
**PROPOSAL** <sup>Newrv</sup> Site for farm dwelling and garage (Farm Maps and supporting information date received 20 October 2014 and 27 October 2014)

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 07/04/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

## Current Appeals

<b>ITEM NO</b>	7	<b>PAC Ref:</b>	2016/A0010
<b>Planning Ref:</b>	R/2013/0347/F		
<b>APPELLANT LOCATION</b>	Mr & Mrs Peter O'Hare Adjacent 15 Blacks Lane Glasdrumman Ballynahinch (Amended Address)		
<b>PROPOSAL</b>	Proposed general purpose agricultural/forestry shed and part retrospective access arrangements, foundation and hard standing area.		

<b>APPEAL TYPE</b>	Plg Refusal: permissions	<b>Date Appeal Lodged</b>	<b>07/04/2016</b>
<b>Appeal Procedure</b>			
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

<b>ITEM NO</b>	8	<b>PAC Ref:</b>	2016/A0011
<b>Planning Ref:</b>	P/2015/0097/F		
<b>APPELLANT LOCATION</b>	Carlingford Lough Pilots Ltd Adjacent To 92 Greencastle Pier Road Greencastle Kilkeel		
<b>PROPOSAL</b>	Retention of existing office		

<b>APPEAL TYPE</b>	Plg Conditions	<b>Date Appeal Lodged</b>	<b>08/04/2016</b>
<b>Appeal Procedure</b>			
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

### Current Appeals

**ITEM NO** 9  
**Planning Ref:** P/2015/0103/F **PAC Ref:** 2016/A0048  
**APPELLANT** Mr Joe O'Hare  
**LOCATION** Between 47 And 47a Ballintemple Road  
 Ballintemple  
 Newry  
**PROPOSAL** Retention of existing agricultural building and access

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Written Reps with Site Visit** **Date Appeal Lodged** 31/05/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 10  
**Planning Ref:** P/2015/0121/O **PAC Ref:** 2016/A0058  
**APPELLANT** Mr O Slane  
**LOCATION** Land 30m North West Of 1 Tullyet Road  
 Newtownhamilton  
**PROPOSAL** Proposed site for infill dwelling and detached garage.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 17/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

### Current Appeals

**ITEM NO** 11  
**Planning Ref:** P/2015/0210/F **PAC Ref:** 2016/A0063  
**APPELLANT** Mr Brendan McNamee  
**LOCATION** Immediately North East And Opposite No.62  
 Carran Rd  
 Crossmanlen  
**PROPOSAL** Retention of metal fence, gates, granite piers and granite kerbs to front boundary of property

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 20/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 12  
**Planning Ref:** LA07/2015/0286/C **PAC Ref:** 2016/A0066  
**APPELLANT** Ms Edel Rooney  
**LOCATION** Site Approximately 20 Metres South West Of 10 Head Road  
 Moyad  
 Annalong  
**PROPOSAL** Site for dwelling with detached garage (gap site)

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 24/06/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

## Current Appeals

<b>ITEM NO</b>	<b>13</b>		
<b>Planning Ref:</b>	LA07/2015/0292/C	<b>PAC Ref:</b>	2016/A0071
<b>APPELLANT LOCATION</b>	Mr Thomas W Meaney 40m North West Of 55 Magheralone Road Ballynahinch		
<b>PROPOSAL</b>	Proposed new infill dwelling and garage		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>28/06/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

<b>ITEM NO</b>	<b>14</b>		
<b>Planning Ref:</b>	P/2015/0236/F	<b>PAC Ref:</b>	2016/A0073
<b>APPELLANT LOCATION</b>	Mr Francis McGuinness Lands To The Rear Of No 41 Newtown Road Killeen		
<b>PROPOSAL</b>	Newrv Extension to existing dwelling curtilage and erection of domestic garage.		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>28/06/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

## Current Appeals

<b>ITEM NO</b>	<b>15</b>		
<b>Planning Ref:</b>	P/2015/0221/F	<b>PAC Ref:</b>	2016/A0074
<b>APPELLANT</b>	Mr Francis McGuinness		
<b>LOCATION</b>	Adjacent And South Of No 41 Newtown Road Killeen		
<b>PROPOSAL</b>	Newry Erection of Vehicle Maintenance Shed and retention of existing yard for the storage of vehicles.		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>28/06/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

<b>ITEM NO</b>	<b>16</b>		
<b>Planning Ref:</b>	P/2014/1049/O	<b>PAC Ref:</b>	2016/A0077
<b>APPELLANT</b>	Tracy McKenzie		
<b>LOCATION</b>	Adjacent And N Of No.9A Corcreechy Road Newry BT34 1LR		
<b>PROPOSAL</b>	Site for dwelling and garage (infill)		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>30/06/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

### Current Appeals

**ITEM NO** 17  
**Planning Ref:** LA07/2015/0342/C **PAC Ref:** 2016/A0084  
**APPELLANT** Patsy Malone  
**LOCATION** Approximately 110 Metres North East Of 151 Ballydugan Road  
 Downpatrick  
**PROPOSAL** Replacement dwelling

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 14/07/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

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# Appeal Decision

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

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<b>Appeal Reference:</b>	2015/A0193
<b>Appeal by:</b>	Mr John Perry
<b>Subject of Appeal:</b>	The refusal of full planning permission.
<b>Proposed Development:</b>	Erection of dwelling and garage (proposed change of house type previously approved under P/2008/0825/RM)
<b>Location:</b>	Council Road, 450m west of Ballykeel House, 8 Anthony's Road, Kilkeel.
<b>Planning Authority:</b>	Newry Mourne and Down District Council
<b>Application Reference:</b>	P/2015/0002/F
<b>Procedure:</b>	Written representations and accompanied site visit on 27 April 2106.
<b>Decision by:</b>	Commissioner J B Martin dated 27 June 2016

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## Decision

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

## Reasoning

2. The main issue in the appeal is the principle of a dwelling on the site. Relevant policy is found in Planning Policy Statement (PPS) 21 under policies CTY1 and CTY 10. CTY 1 sets out circumstances when planning permission will be granted for a dwelling in the countryside, one of which is a dwelling on a farm in accordance with Policy CTY 10. The planning history of the appeal site and the status of work already carried out on it is also a material consideration.
3. Outline permission for a dwelling and garage on the appeal site was approved by the previous planning authority, the Department of the Environment (the DoE) on 7 March 2006. An application for approval of the reserved matters (including the proposed house type) was subsequently approved by the DoE on 22 June 2009. The effect of Condition 1 on the outline permission required the development to be begun by 22 June 2011 at the latest.
4. Condition 1 also allowed for the submission of an alternative house type to be made to the DoE up to 7 March 2009. The appeal proposal was submitted to the Council on 5 January 2015. The appellant argued that the previous permission had been implemented by provision of the approved access to the site and construction of the foundations for the approved garage. The Council accepted at the site visit that the garage foundations were in the approved

position, and it has not refuted the appellant's statement that they were inspected by Building Control on 11 May 2011.

5. As a result of the aforementioned works the appellant argued that he could lawfully build the previous dwelling approved on the site. The Council argued that was not the case as the access to the site was not provided until the latter half of 2015 and by a condition on the reserved matters approval, its provision was required prior to the commencement of any other work on the site.
6. Unlike the current appeal, in appeals 2004/A420 and 2011/E047 raised by the appellant, there was no dispute between the planning authority and the appellant over the date of commencement of works and their extent and significance. Those cases are therefore not comparable to the situation in the current appeal. Section 169 of the Planning Act 2011 (the Act) provides a specific statutory scheme for the determination of lawful use or development and case law has established that the appellant must follow that procedure to ascertain the lawfulness of development on the appeal site. This argument is therefore not one that I can consider in the appeal.
7. The appellant introduced at appeal stage a case for the appeal proposal under Policy CTY10. The Council has drawn attention to the provisions of Section 59 (1) of the Act, which state that a party to appeal proceedings is not to raise any matter that was not before the Council at the time the decision appealed against was made. Paragraph (2) of Section 59 however provides that nothing in paragraph (1) affects any entitlement or requirement to have regard to any other material consideration. The appellant's argument under CTY 10 is a material consideration, which I therefore must take into account. The Council has also had the opportunity to consider that argument and make comments to the Commission.
8. Policy CTY 10 states that permission will be granted for a dwelling on a farm where all of the following 3 No. criteria can be met:
  - (a) the farm business in question is currently active and has been established for at least 6 years
  - (b) no dwellings or development opportunities out with settlement limits have been sold off from the farm holding within 10 years of the date of the planning application (this provision only applies from 25 November 2008) and
  - (c) the new building is to be visually linked or sited to cluster with an established group of buildings on the farm.
9. In support of his case the appellant submitted P1C forms with his statement of case and aerial photographs indicating numbered fields. Each photograph was entitled '*Business Ref. 625050 - Mr. John Perry - your 2015 Scheme Map*'. Each photograph is referred to as a 'Page' and are numbered from '3 of 8' to '8 of 8'. The appellant stated the information satisfied criteria (a) and (b) above, but accepted the site failed to meet criterion (c). However in practice he stated that planning authorities had tended to accept isolated dwellings where no alternative sites were available on the farm or an out-farm.

10. Page '4 of 8' shows the appeal site and some land adjoining it and 'Page 6' shows land lying to the south of the appeal site at Leestone Road and Newcastle Road, Kilkeel. The other 4 pages indicate land in County Antrim, which the appellant stated were on a different farm.
11. After consulting with the Department of Agriculture and Rural Development (DARD) on the information submitted by the appellant, the Council accepted the farm business met the '6 year' criterion (a) of CTY 10. It stated a site on the lands contained in the County Antrim part of the appellant's farm business under the business number 625050 had been the subject of an application for a dwelling in 2009 that had been refused only on grounds of lack of integration (Policy CTY 13). The Council also stated there had been 4 No. planning approvals for dwellings granted on land contained within the farm business, and the appellant had not demonstrated whether these had been sold off during the relevant 10 year period of criterion (b). Additionally it stated the farm business maps were lacking 2 No. maps to make it complete, and as a result a full assessment under criterion (b) had not been possible.
12. All of the 6 No. map pages submitted indicate the land shown in County Down and County Antrim to be contained under the one farm business number 625050 and the Council state the same business number was used in the 2009 application I have referred to in paragraph 11 above. Policy CTY 10 relates to a dwelling on an area of land operating as a farm business. In this case all of the areas of land submitted by the appellant are included under one business number / the maps submitted are incomplete and a full assessment of the holding has not been possible in respect of criteria (b) and (c). The appellant has failed to demonstrate that his proposal meets those criteria and as such it is contrary Policy CTY 10. No other policy case under CTY 1 has been argued.
13. The Council's reason for refusal is also sustained.

This decision relates to the following drawings as numbered on the Council's decision notice:-

The site location map  
The site layout plan  
The ground floor plans and elevations

**COMMISSIONER J B MARTIN**

**2015/A0193**

**Appearances at Site Visit**

Planning Authority: -	Mr G Kerr
Appellant: -	Mr J Perry (Appellant) and Ms S Clarke Mr C O'Callaghan (Agent – O'Callaghan Planning).

**List of Documents**

Planning Authority: -	Statement of Case and Comments
Appellant: -	Statement of Case and Comments



# Appeal Decision

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<b>Appeal Reference:</b>	2015/A0115
<b>Appeal by:</b>	Paul Mc Ateer
<b>Appeal against:</b>	Conditional grant of planning permission
<b>Proposed Development:</b>	Erection of agricultural building and four silo tanks to provide feedstock for existing farm business subject to conditions which remove permitted development rights and restrict the use of the building
<b>Location:</b>	77 metres south west of 56 Chapel Road, Ballyholland, Co Down.
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	P/2014/0217/F
<b>Procedure:</b>	Written Representation and Accompanied Site Visit on 2 February 2016
<b>Decision by:</b>	Commissioner Rosemary Daly, dated 28 June 2016

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## Decision

1. Condition 4 is varied as set out below and Condition 5 is retained.

## Reasons

2. The main issue in this appeal is whether planning conditions 4 and 5 are necessary to protect the surrounding residential amenity.
3. Planning permission (P/2014/0217/F) was granted on 17 July 2015 for the 'erection of an agricultural building and four silo tanks to provide feedstock for an existing farm business'. Five planning conditions were attached to the planning permission. This appeal seeks the deletion of conditions 4 and 5 from this planning permission. This appeal was advertised by the Commission on 30 September 2015.
4. Condition 4 states that notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 Part 7, no building, structure, hard surface or enclosure, or access onto an unclassified road, shall be erected, provided, maintained or improved within the area outlined red and blue on the site location map Drawing No 01 Rev 03 dated stamped 23 Feb 2015. Condition 5 restricts use of the approved building for the production and storage of animal feed for the sole use of Curly Brae Farm Ltd and no livestock is permitted to be housed within the building at any time.
5. The appeal site is located within remit of Banbridge/Newry and Mourne Area Plan 2015. The site is located in the countryside and does not fall within any

designations in the plan. No specific policies for agricultural buildings in the countryside are set out by the plan. The plan directs considerations of such proposals to operational policy contained in Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21).

6. The Strategic Planning Policy Statement Planning for Sustainable Development (SPPS), published September 2015, sets out a statement of policy on important planning matters that should be addressed in Northern Ireland. The SPPS cancelled policies set out by Planning Policy Statement 1 General Principles (PPS1). Paragraph 2.3 of the SPPS recognises that the planning system operates in the public interest and does not exist to protect private interest of one person against the activities of another. It poses the question whether a proposal would unacceptably affect the amenities and existing use of land and buildings that ought to be protected in the public interest. Paragraph 5.65 of the SPPS states that planning authorities have the power to attach conditions to a grant of planning permission. Such conditions can enable planning authorities to approve development proposals where it would otherwise be necessary to refuse planning permission. However, conditions must be:
  - Necessary;
  - Relevant to planning;
  - Relevant to the development permitted;
  - Precise;
  - Enforceable; and
  - Reasonable.
7. The appellant also provided a copy of Development Management Practice Note 20, Use of Planning Conditions, published by Department of Environment in April 2015 which is designed to guide planning officers and relevant users on the use of planning conditions in decision notices and deals primarily with procedures as well as good practice.
8. PPS21 sets out policies for development in the countryside. Policy CTY1 states there are 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. For non residential development planning permission will be granted for agricultural development that is in accordance with Policy CTY12.
9. At the time of the application the appellant provided information in support of the need for the agricultural development in the countryside. The information included the following elements:
  - The main farm business is separate from the appeal site located some 716 metres south east of the appeal site.
  - The land around the main holding consists of a dense number of piggery buildings. The land beyond the buildings is steep sloping and would require substantial land works to develop. The steep nature of this land would provide numerous problems for access and traffic. The appeal site was presented as the only viable and feasible field for the proposed development on the farm enterprise
  - Curly Brae Farm Ltd is an existing third generation pig farm. It has evolved over 50 years and has become a large scale piggery business. The

business is registered under Farm Business ID 649677 and the applicant has a Pig Herd Number UK8AJE. For the most part there are approximately 2000 pigs on the site at any one time and this requires a great deal of resources to keep the operations working efficiently, including heating, water and food stuffs.

- Feedstock is procured from Gortavoy Feeds in Pomeroy, Dungannon which is an expensive cost to the farm business. The development will create a facility within which the farm business can produce its own feedstock. Thereby reducing the working costs of this farm enterprise and making it more efficient in an increasingly competitive market.
- The design of the building will be typical of many agricultural buildings in the rural area. The scale of the building has been designed to ensure that it is sufficient to accommodate the proposed use and will blend unobtrusively into the landscape. The siting of the building on the site is in the lowest corner of the agricultural field dropping away from the road side.
- The development on the appeal site seeks to utilise the existing access. Raw material will be taken from the Warrenpoint docks/Newry and produce final food stock on the appeal site. At a maximum there will be 2 deliveries by lorry per week from Newry to serve the site, some weeks there may be less.
- The location of the building on the site exceeds the minimum separation distance, as noted by the Environmental Health, of 75 metres from the nearest residential property.
- As an assurance to the third party objections the appellant stressed that the proposal is for the erection of an agricultural building in a rural area which seeks to provide food stock for an existing business only. It is not the intention to use the building for the rearing and keeping of pigs. All operations will be carried out internally and the two deliveries every week to the site that will take place during day time hours.

Based on the appellant's information in support of the planning application the Planning Authority accepted that the development on the appeal site met the requirements of Policy CTY12 Agricultural and Forestry Development of PPS21. Criterion (e) of this policy requires that development will not result in a detrimental impact on the amenity of residential dwellings outside of the holding or enterprise including problems arising from noise, smell and pollution. Conditions 4 and 5 which remove permitted development rights and restrict the use of the building were considered to be necessary to protect and preserve residential amenity in the area. The appellant argued that Conditions 4 and 5 were not imposed correctly and failed to meet the tests of conditions.

10. Notwithstanding the Environmental Health Department's suggested conditions it is evident from the drawings that the approved building is over 75 metres from the nearest residential property and the second suggested condition is not precise in how the building should be maintained in a manner as to prevent nuisance from noise, dust and odour. Subject to the tests of conditions, as set out above, conditions on a planning permission are entirely a matter for the Planning Authority. The Planning Authority is entitled to make their assessment of the impact of the proposal on surrounding residential amenity even if the closest dwelling is 77 metres from the new agricultural building. I do not consider it necessary for the Planning Authority to justify why they did not use the Environmental Health Department's suggested conditions. I also note that in the

Planning Authority's 'Deferred Consideration Report' conditions relating to restrictions on the development were considered prior to issuing the decision.

11. The appellant argued that the removal of permitted development rights, by condition 4, was not necessary as the wording of the legislation referred to 'a group of principal farm buildings' and the approved development related to a building (singular) and therefore the appellant would not be able to avail of permitted development rights at this part of his farm.
12. Class A of Part 7 A of the GPDO permits the carrying out on agricultural land comprised in an agricultural unit of: - works for the erection, extension or alteration of a building; and any excavation or engineering operation. The legislation sets out where development is not permitted by Class A. Permitted development rights for agricultural buildings and operations require *the nearest part of any building or structure so erected or extended is more than 75 metres from the nearest part of a group of principal farm buildings*. The description of development relates to the erection of an agricultural building and four silo tanks. Section 2 of the GPDO provides interpretation for the Order and states a "building" does not include plant or machinery or a structure or erection of the nature of plant or machinery and for the purpose of the Schedule does not include any, gate, fence, wall or other means of enclosure but includes any structure or erection and any part of a building as so defined. The GPDO also provides an interpretation of Class A and stated that "building" does not include anything resulting from engineering operations. Silo tanks are a structure and an erection and are not a result of an engineering operation. In terms of this legislative interpretation the description of the development relates to more than one building on the appeal site and when developed will amount to a principle group of farm buildings on the site. As such permitted development rights for the appellant are not restricted by A.1 (e) of the GPDO. Class C of Part 7 allows for permitted development rights for agricultural building and operations for the construction, formation, laying out or alteration of a means of access to a road. Development is not permitted if it is required in connection with development for which a planning application is necessary under Part 3 of the Planning Act (NI) 2011 or the land is within a site of archaeological interest. Consequently the appellant does have permitted development rights in respect of the agricultural development on this part of his farm in accordance with the provisions of the GPDO. The matter as to whether it is necessary to restrict these permitted development rights must therefore be considered.
13. Numerous objections were made to the Planning Authority at the application stage. These objections expressed concerns relating to the impact of the development on the surrounding residents in terms of odour, noise vermin, increased traffic, impacts on road safety and visual impact. Concerns were also raised about impact on natural heritage and surrounding watercourse. Third parties also highlighted their fears that the appellant could exercise his permitted development rights and that this could change the nature of the approved development on the site, to include buildings for housing pigs. Such permitted development rights mean this could be done without the requirement of a planning application. The appellant considered that condition 4 was imposed to appease third party objections.
14. The Planning Authority considered that intensive livestock units have the potential to cause adverse impacts on the local environment due to odours, noise, air



- quality, insects and vermin. The draft supplementary 'Guidance for Environmental Health on planning consultations involving agriculture and residential premises' is a document for the use of Environmental Health Officers. It notes that pig rearing has the most significant potential for an adverse impact upon a local area, primarily due to odour. It recommends, but for very small numbers of animals, new pig developments should be subject to a detailed site specific assessment if they are within 400 metres of non associated residential properties. The Planning Authority provided a map showing 12 residential properties within 400 metres and 8 of the 12 dwellings within 200 metres of the appeal site. As agreed at the site visit the closest residential property to the site is 56 Chapel Road, some 77 metres east of the building and 60 metres from the curtilage of this property.
15. The appellant referred to 'The Pollution Prevention and Control (Industrial Emissions) Regulations 2013' being a statutory document for determining what is classified as intensive pig farming. Such farming activities are licensed by the Northern Ireland Environment Agency (NIEA). Part A, Section 6.9 of Chapter 6 of these regulations defines 2000 places for production pigs (over 30kg) to be intensive farming. The evidence before states that there are around 2000 pigs on the appellant farm. No specific details relating to the exact herd numbers or weight of the animal was presented. Based on the information before me I have not been persuaded that the appellant pig farm business definitely falls above or below the threshold of what is intensive pig farm. In any case the size of the farm of around 2000 pigs is large scale and with that comes issues of concerns that should be considered in relation to the protection of the neighbouring residential amenity.
  16. Taking account of the Environmental Health Department's advice the Planning Authority is entitled to make its own site specific assessment in relation to the development. The removal of the appellant's Permitted Development rights mean that any alteration or changes that constitute development on this part of the farm would require planning permission. Even when taking into account Part 7 Class A.1 (f) that development would not be permitted if the nearest part of any building or structure so erected or extended is less than 75 metres from a dwelling house (other than a dwelling house of any person engaged in agricultural operation on that unit) there is no guarantee that agricultural development, in the form of new buildings, including buildings for the housing of pigs, structures, hard surfaces or enclosures in association with the appellant pig farm would not be developed and would not be located closer to residential properties in the area. Given the high number of existing residential properties surrounding the appeal site combined with the nature of the appellant's farm business, relating to a large scale pig farm further development on this site could have a greater impact on the amenity of the surrounding residents.
  17. Furthermore the creation of external hard surfaces and enclosure could expand the use of the site for storage of feedstock externally which could increase concerns relating to dust, odour and other nuisances. I am satisfied the third parties concerns are genuine which if not controlled could result in a detrimental impact on their amenity. The removal of the appellants permitted development rights so that no building, structure, hard surfaces, enclosures are provided, maintained or improved is necessary to minimise the effect of such development on the surrounding residential amenity. It is in the public interest that the effects of such development would be considered through the submission of a planning application in accordance with good neighbourliness and fairness. The restriction

of these permitted rights as stated by Condition 4 are reasonable and necessary and meet the tests of conditions and should not be removed from the planning permission P/2014/0217/F.

18. Chapel Road is a minor road with narrow alignment. No information was provided by either party relating to its classification. The proposal utilises the existing access, which has been laid out at the time of my site visit. Deliveries to the site will be no more than twice a week when the development becomes operational. The Planning Authority provided no explanation as to why the appellant's permitted development rights in terms of maintaining, improving the existing access or the creation of a new access should be withdrawn or how a new access would have a detrimental impact on the amenity of residents in the area. Third parties raised concerns relating to increased traffic and road safety as a result of the development but provided no persuasive evidence to demonstrate how a new access would impact on their residential amenity. The approved access layout meets the necessary requirements to provide a safe access onto the Chapel Road. Should the appellant wish to maintain or improve this access or create a new access and such development created an obstruction to the view of persons using any road at or near a crest, bend, corner, junction or intersection so as to be likely to cause danger to such persons then provisions set out in Part 7 of the GPDO do not authorise this development by virtue of Article 3(5) of the GPDO. Accordingly I find no reasoned justification for restricting the appellant's permitted development rights in the respect of the creation of a new access. As such this restriction should be removed from Condition 4 of the planning permission P/2014/0217/F.
19. The appellant stated that Condition 5 imposed the following two restrictive elements:
  - 1) Limiting the use of the building for production and storage of animal feed for the sole use of Curley Brae Farm Ltd; and
  - 2) Prohibiting the housing of livestock in the building at any time.
20. The development approved was considered to be necessary for the efficient use of the agricultural holding. The information presented in support of the application related to the long established large scale pig farm, named as Curley Brae Farm Ltd and owned by the appellant. No evidence was presented by the appellant to state if there is or has been any change in ownership or name of the farm business. The proposal before the Planning Authority met the requirements of Policy CTY12 in that it was accepted that the building was necessary for the efficient use of the agricultural holding.
21. Paragraph 2.3 of the SPPS states the planning system does not exist to protect the private interests of one person against the activities of another. Restricting the business to the appellant's farm business gives control of the scale of operation to only supply the appellant's farm business and not other farms in the area. It is not the responsibility of the planning system to protect the financial, asset value or economic sustainability of the appellant's farm business. Should the building become redundant or no longer viable for its use a new planning application could be considered on its own merits for any alternative use. Should the ownership, shareholding status of the farm holding change, then if necessary, these are matters which can be presented to the Planning Authority through a separate planning application and considered on its merits. Notwithstanding the number of

- permutations as set out by the appellant I am not persuaded that condition 5 affects the overall legal and financial entity or personality of the farm business
22. The appellant helpfully set out the definition of 'agricultural' in accordance with Article 4 of the European Council Regulations (EC). The definition covers a range of activities and processes which can take place under the remit of agriculture and includes the breeding and keeping of animals for farming purposes. Whilst the description of development on the planning permission already limits the development to provision of feedstock for the existing farm business the wording of condition 5 reinforces which farm business the development is related to and prohibits the housing of livestock in the building. The description of development nor the condition as worded does not prevent the production of feedstock for other animals should the appellant's farm business wish to diversify. The condition does not prevent the appellant diversifying his farm business into cattle or sheep farming provided that he does not use the approved building for housing livestock. Should the appellant wish to use the building for storage of animal bedding the appellant is entitled to make a planning application for such changes where the impacts of an alternative farm business can be fully considered.
  23. The appellant's suggested wording for 'agricultural purpose only and for no other purpose' is very wide and open in the context of the definition of agriculture. This wording would not control the use of the building in its surrounding context where there are genuine residential amenity concerns arising from the nature of the appellant's farm business. Likewise to amend the wording of the condition so that the 'building would not be used for intensive pig farming' means it could conflict with the use of the building for the provision of feedstock for the existing farm business.
  24. The condition is enforceable as it relates to the landowner, whom at present is the appellant, should the landownership of the farm business change then any enforcement action would be carried forward to the next landowner.
  25. Condition 5 therefore ties the development to the efficient use of the appellant's agricultural holding. The evidence before me is that his business is a large scale pig farming, which is noted by the Environmental Health guidance to have the most significant potential for an adverse impact upon the local area, primarily due to odour. Under the definition of 'agriculture' any livestock, including pigs, could be housed within the approved building or the building could be used for a different farming purpose or used by another farmer in the area. The restrictions set out in condition 5 are necessary and reasonable to assist with the protection of the surrounding residential amenity. I have not been persuaded that condition 5 is onerous as the development was allowed on the basis of the agricultural need for the existing farm business operating as Curly Brae Farm Ltd. The condition is necessary and reasonable in the interests of the surrounding residential amenity that the building is for the sole use of Curly Brae Farm Ltd and no livestock should be housed within the building. This condition as worded should remain on the planning permission P/2014/0217/F.
  26. The appellant stated that the Planning Authority unlawfully fettered their discretion in a manner consistent with the European Convention on Human Rights, particularly Article 1, protocol 1, the right for the enjoyment of property. However, with exception to the arguments relating to the justification of the conditions no

convincing evidence was presented to justify this claim. I have not been persuaded that planning conditions 4 and 5 would restrict the appellant enjoyment of his property, except for the withdrawal of his rights to maintain, improve or make a new access to his land at this location. Equally the Planning Authority has a duty to protect the enjoyment of all of the properties in the area which in this case I consider the protection of their residential amenity to be significant.

27. Third parties made comments in relation to the restriction of hours of working. This is not a restriction imposed on the planning permission. I note the development and operations involved on the site will be housed internally within the building. No persuasive information was presented to demonstrate why restrictions should be applied to the hours of working on the site. In respect of third party concerns relating to impact on the natural environment including the neighbouring watercourse I have considered the background information in respect of the planning application and I am satisfied that there is no unacceptable adverse impact of development on these matters.
28. The Planning Authority and third parties concerns in respect of the protection of residential amenity are sustained. No persuasive evidence was presented to justify the removal of the appellant's rights in respect of an access onto an unclassified road. Condition 4 is amended as set out below and condition 5 remains as worded on the planning permission. As such Condition 4, as amended and Condition 5 are necessary to preserve and protect the surrounding residential amenity they should form part of the planning permission for this development on the site.

### **Conditions**

4. Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 Part 7, no building, structure, hard surface or enclosure shall be erected, provided, maintained or improved within the area outlined in red and blue on the site location map Drawing Number 01 Rev 3 dated stamped 23<sup>rd</sup> Feb 2015.

This decision relates to drawing 01 Rev3 dated Area Planning Office Received 23 Feb 2015 and drawing 02 Rev 1 dated Area Planning Office Received 23 Feb 2015.

**COMMISSIONER ROSEMARY DALY**

**List of Appearances**

Planning Authority:-	Gareth Kerr, Newry, Mourne and Down District Council
Appellant(s):-	Stephen Hughes, ERES Limited Barney Mc Kevitt, ERES Limited Paul Mc Atteer Wendy Mc Ateer
Third Parties:-	Gary Bradley Teresa Brien Briege Brady Matthew Brady Mark McLaughlin Annemarie McLaughlin

**List of Documents**

Planning Authority:-	“A” Statement of Case and appendices Newry, Mourne and Down District Council
Appellant:-	“B” Statement of Case and appendices, ERES Limited “B1” Rebuttal Statement, ERES Limited
Third Parties:-	“C” Objection Letter from: John Smith Junior John Smith Senior Pat McAnulty  “C1” Rebuttal statement: John Smith Junior John Smith Senior Pat McAnulty  “C2” Collective objection: Mark McLaughlin Annemarie McLaughlin Matthew Brady Senior Mary Catherin Brady Matthew Brady Junior Briege Brady Gary Brady Brenda Brady Patrick McKevitt Teresa Brien



# Appeal Decision

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<b>Appeal Reference:</b>	2015/A0117
<b>Appeal by:</b>	Mr Michael Matthews
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Farm dwelling and garage
<b>Location:</b>	37m south-east of No.69 Fathom Road, Killeen
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	P/2013/0459/F
<b>Procedure:</b>	Hearing on 15 <sup>th</sup> January 2016
<b>Decision by:</b>	Commissioner Julie de-Courcey, dated 7 <sup>th</sup> July 2016

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## Decision

1. The appeal is dismissed.

## Reasons

2. The key issue in this appeal is whether the proposed development is acceptable in principle in the countryside.
3. There is no specific policy in the local development plan, Banbridge, Newry & Mourne Area Plan 2015, that is material to this appeal.
4. The Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' (SPPS), which came into effect in September 2015, is material to all decisions on individual planning applications and appeals. Other than an update in the definition of what constitutes "*agricultural activity*" there is no conflict or change in policy direction between its provisions and those of Planning Policy Statement 21: '*Sustainable Development in the Countryside*' (PPS 21) regarding dwellings on farms. Notwithstanding the appellant's evidence relating to questions to the Minister of the Environment prior to September 2015, internal Department of the Environment (DoE) advice on the interpretation of Policy CTY 10 and the Ministerial Written Statement on the review into the operation of PPS 21, the SPPS is the most recent expression of policy. It retains policy for the countryside within existing planning policy documents until a new plan strategy for the Council area has been adopted. Accordingly the operational requirements of the policies contained in PPS 21 are material to the assessment of this appeal.
5. Policy CTY 1 of PPS 21 sets out a range of types of development that are, in principle, considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. These include a dwelling on a farm in accordance with Policy CTY 10. Policy CTY 10 states that planning permission will be granted for a dwelling house on a farm where 3 criteria can be met. It

follows that if a proposal complies with Policy CTY 10, it will also satisfy Policy CTY 1.

6. Criterion (a) of Policy CTY 10 requires that the farm business to be currently active and have been established for at least 6 years. Paragraph 5.38 of the Justification and Amplification text of the policy, in stating that the applicant will be required to provide the farm's Department of Agriculture and Rural Development (DARD) business ID number, explains how an applicant can demonstrate compliance with criterion (a) and does not introduce an additional policy test. The provision of a business ID number is a preferred means of demonstrating compliance with this criterion. However, there may be certain instances, in the absence of the appellant having a business ID number, where other evidence is provided to demonstrate that there is an active and established farm business.
7. Criterion (a) refers in the definitive article to the farm business (my emphasis) and the policy is framed in such a way that it enables an applicant to apply for a dwelling on a farm based on the activities of the person conducting and operating the farm business on which the application site is situated. The appellant's 1.4ha holding extends to 6 fields. 3 were inherited in 1995 and the remainder acquired in 2005. His farm business ID number (658135) was established in May 2013. The appellant gave contradictory evidence on whether he claims Single Farm Payment (SFP) or other subsidies in respect of his farm business. No corroborating evidence was submitted relating to any associated subsidy claim whereas DARD said that none have been claimed on foot of his business ID.
8. Since 2005 the appellant said that he has engaged in agricultural activity to keep the land in good agricultural and environmental condition included building ditches, hedge trimming, drainage works, removal of stones and erecting fences. No supporting documentary evidence of this activity was provided by way of, for example, any receipts for plant/equipment hire, materials etc. Whilst my site inspection showed the lands to be in in good agricultural and environmental condition, this is not indicative of the appellant's farm business satisfying criterion (a). Albeit that a farm business ID more than 6 years old is not the only way of showing that the farm business is currently active and has been established for the required period, he did not provide supporting evidence such as herd books, farm accounts, livestock, tax returns, bank statements etc. Proof that the appellant has owned the land for more than 6 years does not, of itself, satisfy criterion (a) of Policy CTY 10. The appeal decisions (2006/A02176 and 2007/A0973) relating to the appellant's holding do not assist his case in this respect.
9. Since acquisition of the additional lands, they have been let on conacre to Mr Michael Clarke. 2 of these fields are encompassed within the appeal site, including that on which the proposed dwelling and garage would be sited. The land is let on the basis of "gentleman's agreement" whereby, according to the appellant, he maintains the land and Mr Clarke has grazing rights. On foot of this undocumented agreement, there was no evidence of the exchange of payments for the duration of the licence. Whilst the entirety of the holding is shown on the appellant's farm map as being owned by his business, he said that Mr Clarke claims SFP on these lands under a separate Business ID number (603103). However, DARD advised that a Mr McDonnell appears to claim SFP and Julia Clarke appears to claim Less Favoured Land Subsidy. A copy of Mrs Julia Clarke's "2013 scheme map" for business 603103 shows that the appellant's three

- fields acquired in 2005 are included within the land covered by the unidentified scheme. Whilst these lands are owned by the appellant's farm business, the payment of subsidy to third parties does not support his contention that his farm business is currently active and has been established for at least 6 years.
10. DARD's undated letter to the appellant's wife does not contain his business ID number. The advice therein that award of a Category 1 Business Number enables her to claim subsidies is no indication that the holding would be entitled to such payment in this instance where subsidies are claimed by third parties. Notwithstanding that the level of agricultural activity within a farm business might ebb and flow, there is no persuasive evidence that the appellant's farm business is active and has been established for more than 6 years.
  11. The appellant referred to appeal and DoE decisions, relating to the absence of a farm business ID number that had been established for 6 years. However, each case has to be considered in its own evidential context. There appear to be some similarities between this case and P/2010/0880/F where a dwelling seems to have been approved on the strength of lands within a holding being let on conacre to two separate farm businesses but not actively farmed by the applicant. However, that approval is apparently at odds with a key requirement of Policy CTY 10 and one such decision does not establish a precedent that justifies the setting aside of policy requirements. The appellant did not satisfactorily explain how the cited cases are factually on all fours with the appeal proposal or provide persuasive evidence that there has been a pattern of inconsistency in the planning authorities' decision making. The field on which the proposed buildings would be sited forms part of the Clarke farm businesses and the appellant does not qualify in his own right for a dwelling under criterion (a).
  12. Criterion (c) of Policy CTY 10 requires that the new building is visually linked or sited to cluster with an established group of buildings on the farm. Having concluded that the appellant does not comply with criterion (a) and the site is farmed as part of the Clarke holding, it follows that the assessment under criterion (c) must be on the basis of the latter's farm business. However, without further information on the Clarke holding, I cannot be satisfied that it is not possible to site the proposed dwelling in visual association with an established group of buildings on it. An exception for an alternative siting is identified in criterion (c) where there are demonstrable health and safety reasons or verifiable plans to expand the farm business. However, neither of these circumstances was advanced. Therefore the exception clause does not apply and the proposal fails to comply with the requirements of criterion (c).
  13. As the proposal is not one of the types of development that are acceptable in principle in the countryside and there are no overriding reasons why it is essential and could not be located in a settlement, it is contrary to Policy CTY 1 of PPS 21. Protocol 1 Article 1 of the European Convention on Human Rights confers qualified rights on the individual that do not impair the state's right to control the use of property in accordance with the general interest. In applying Policies CTY 1 and CTY 10 to the proposal, there is no persuasive evidence that the Council acted incompatibly with a Convention right. On the basis of the evidence presented, a decision to dismiss this appeal would not be administratively unfair. The proposal's failure to meet the policy requirement as set out above carries determining weight. Accordingly, the Council's reason for refusal is sustained.



This decision is based on Drawing PL-01 Revision D (stamped Drawing Number 01 Rev 03 by Council).

**COMMISSIONER JULIE DE-COURCEY**

**List of Appearances**

Planning Authority: Ms P Manley, Newry, Mourne & Down District Council

2015/A0117

Appellant: Mr M Matthews, Appellant  
Mr S Hughes, ERES

**List of Documents**

Planning Authority: "A" Statement of Case

Appellant: "B" Statement of Case & appendices



# Appeal Decision

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<b>Appeal Reference:</b>	2015/A0233
<b>Appeal by:</b>	Mr & Mrs Stewart
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Replacement dwelling
<b>Location:</b>	39 Killybawn Road, Clontaghmagh, Saintfield
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	R/2014/0678/F
<b>Procedure:</b>	Written representations and accompanied site visit on 30 June 2016
<b>Decision by:</b>	Commissioner Brigid McGlinchey dated 11 July 2016.

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether:
  - the existing structure represents a replacement opportunity;
  - the design of the proposed dwelling is appropriate;
  - the proposal would visually integrate into the landscape.
3. The appeal site lies in the countryside as defined in the Ards and Down Area Plan 2015. There is no specific policy in the plan that is material to the appeal proposal. The Strategic Planning Policy Statement (SPPS) is material to all decisions on individual planning applications and appeals. One of the policy documents retained by the SPPS is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) which provides the relevant policy context. Policy CTY1 of PPS21 sets out a range of the types of development which are considered to be acceptable in principle in the countryside. One of these is a replacement dwelling in accordance with Policy CTY3. Policy CTY3 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external walls are substantially intact. For the purposes of the policy the reference to "dwellings" includes buildings previously used as dwellings. The policy is clear that buildings of a temporary construction will not be eligible for replacement under this policy.
4. The structure on the appeal site is of wooden construction and sits on blockwork on top of a concrete base. The structure has a footprint of approximately 8m x 2m. The undisputed evidence before me is that it was erected on the appeal site in 1956 by the appellant's grandfather. The structure has an entrance doorway and

- four windows on its northern elevation, two windows on its southern elevation and doorway on its east elevation. The appellant indicated that the latter door provided access to a store whilst the remainder of the structure is subdivided into two rooms. The structure is not connected to mains water and there is no waste water outlet yet surprisingly there was a stainless steel sink with taps inside one of the rooms; the appellant stated at the site visit that waste water was collected in a bucket underneath the sink. He also stated that there had been a dry toilet in a shed located beside a stream adjacent to the appeal site but that the shed has since collapsed. There is no connection to electricity. Though the appellant indicated that lighting/electricity within the building was provided by a generator, there was however no evidence of any electrical fittings; the appellant stated at the site visit that the wiring was pulled out when the former occupants left. Whilst the structure is substantially intact and has windows and doors, given its utilitarian condition, I consider that it does not exhibit the essential characteristics of a dwelling. Nonetheless, the undisputed evidence from the appellant is that the structure was occupied as a dwelling until 4-5 years ago by an elderly lady.
5. Though it may have been in place for a considerable time and may have become a permanent feature in the countryside, this however does not mean that the structure is not of temporary construction. The size of the structure, its external timber sheeted walls thinly rendered in a tar like substance, felted roof and lack of connection to services are reminiscent of those seen on many portable or temporary buildings which are capable of being removed in one piece. Notwithstanding the submitted letter of support from a local MP, given all the foregoing, I consider that the structure could readily be described as being of a temporary construction. It is thus ineligible for replacement under Policy CTY3. The planning authority's objection to the proposal on that basis is therefore justified. As there is no replacement opportunity, the appeal proposal consequently would not meet the other criteria for a replacement dwelling under Policy CTY3 which includes reference to the design of the proposed replacement dwelling. The planning authority's objection on that basis is also justified.
  6. Policy CTY1 goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. There was no evidence to demonstrate that there are overriding reasons why the development is essential. I conclude that the proposal is unacceptable in principle and contrary to Policy CTY1 of PPS21. Accordingly, the first and second reasons for refusal have been sustained.
  9. Policy 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. The planning authority objection under Policy CTY13 related to the design of the proposed 1½ storey dwelling. Notwithstanding its modest size and proposed set back into the site that is partially bounded by mature vegetation, I consider that features of the proposed dwelling particularly the large glazed porch and gallery platform above, with overhangs to either side are suburban in design. Notwithstanding the eclectic mix of designs of other existing dwellings in the locality, the noted suburban design features on the proposed dwelling are not evident. I consider that the proposal would not respect the character of this rural site and would therefore not successfully integrate into the surrounding landscape. The planning authority's objection is therefore justified and its second reason for refusal based on Policy CTY13 is sustained.

This decision is based on the following drawings:-

Drawing No	PA Ref No	Stamp rec'd	Scale	Title
1459/04	01	22/12/14	1:100	Proposed floor plans, east and north elevations
1459/06	02	12/01/15	1:500	Proposed site layout
1459/07	03	22/12/14	1:500	Existing & proposed access
-	04	12/01/15	1:2500	Site location
-	05	22/12/14	1:100	Proposed south & west elevations

**COMMISSIONER BRIGID McGLINCHEY**

**List of Appearances**

Planning Authority:- M Keane  
Appellants:- Mr & Mrs Stewart  
G Thompson, Agent

**List of Documents**

Planning Authority:- C1 Statement of case + Appendices  
C2 Rebuttal  
Appellants:- A1 Statement of case + Appendices  
A2 Rebuttal