



March 5th, 2020

Notice Of Meeting

You are invited to attend the Planning Committee Meeting to be held on **Wednesday, 11th March 2020** at **10:00 am** in **Boardroom, District Council Offices, Monaghan Row, Newry.**

Committee Membership:-

- Councillor M Larkin (Chair)
- Councillor H Reilly (Deputy Chair)
- Councillor P Brown
- Councillor W Clarke
- Councillor L Devlin
- Councillor G Hanna
- Councillor V Harte
- Councillor C Mason
- Councillor D McAteer
- Councillor H McKee
- Councillor M Ruane
- Councillor J Trainor

Agenda

1.0 Introduction and Apologies

- Councillor Brown
- Councillor Trainor

2.0 Declarations of Interest.

3.0 Declarations of Interest in relation to Para. 25 of Planning Committee Operating Protocol - Members to be present for the entire item.

4.0 Minutes of Planning Committee Meeting held on Wednesday 12 February 2020. (Attached).

 *Planning Committee Minutes 12-02-2020.pdf*

Page 1

For Consideration and/or Decision

5.0 Addendum list - planning applications with no representations received or requests for speaking rights. (Attached).

 *Addendum list - 11-03-2020.pdf*

Page 12

Development Management - Planning Applications for determination


6.0 LA07/2016/0821/F - change of house type to that previously approved under R/2012/0323/F - 24 Ringhaddy Road, Killinchy. (Case Officer report attached).

Rec: APPROVAL


- A request for speaking rights has been received from Bell Architects, in objection to the application. **(Submission attached)**.
- A request for speaking rights has been received from Andy Stephens, agent, in support of the application. **(Submission attached)**.

 *LA07_2016_0821-F-Ringhaddy.pdf*

Page 13

 *Item 6 - LA07-2016-0821-F (objection Ringhaddy Road).pdf*

Page 30

 *Item 6 - LA07-2016-0821-F (support Ringhaddy).pdf*


Page 32

7.0 LA07/2019/1087/0 - replacement dwelling and garage -


**approximately 50m NE of 21 Drakes Bridge Road, Crossgar.
(Case Officer report attached).**

Rec: REFUSAL

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

 *LA0720191087O 21 Drakesbridge Road.pdf*

Page 88


 *Item 7 - LA07-2019-1087-0 (Drakes Bridge Road).pdf*

Page 92


**8.0 LA07/2019/1134/0 - replacement dwelling - 90 Manse Road,
Darraghcross, Crossgar. (Case Officer report attached).**

Rec: REFUSAL

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

 *LA0720191134O 90 Manse Road.pdf*

Page 95

 *Item 8 - LA07-2019-1134-0 (Manse Road).pdf*

Page 100


**9.0 LA07/2019/1644/0 - replacement dwelling - lands at and
located to the west of 24 Crabtree Road, Ballynahinch. (Case
Officer report attached).**

Rec: REFUSAL

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

 *LA07-2019-1644-O Crabtree Road 2 - Replacement.pdf*

Page 103


 *Item 9 - LA07-2019-1644-F (Crabtree Road).pdf*

Page 111

**10.0 LA07/2019/1189/F - temporary mobile home - land 25m east of
113 Ballagh Road, Newcastle. (Case Officer report attached).**

Rec: REFUSAL

- Addendum list

 *LA0720191189 113 Ballagh Road.pdf*

Page 113

11.0 LA07/2019/1455/F - new access to dwelling in substitution to that approved under planning ref: LA07/2018/0118/F - 30m SE of 8 Outlecken Road, Belleeks, Newry. (Case Officer report attached).

Rec: REFUSAL

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

 *1455 - SE 8 Outlacken Rd (Access).pdf*

Page 117


 *Item 11 - LA07-2019-1455-F (Outlecken Road).pdf*

Page 120


12.0 LA07/2019/1449/F - proposed infill dwelling and detached garage under PP21 - Site adjacent to, and 50m south of 29 Foughilletra Road Jonesborough. (Case Officer report attached).

Rec: REFUSAL

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

 *2019 1449 - adj south of 29 Foughilletra Rd.pdf*

Page 121


 *Item 12 - LA07.2019.1449.F (Foughilletra Road).pdf*

Page 125

13.0 LA07/2018/0048/F - demolition of existing barns and construction of new build self-catering holiday letting unit, in substitution of previously approved conversion LA07/2015/1030/F - lands 10M NW of 56 Levelleyreagh Road, Rostrevor. (Case Officer report attached).

Rec: REFUSAL

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

 *LA07 2018 0048 F.pdf*

Page 127


 *Item 13 - LA07 2018 0048 F (Levelleyreagh Road).pdf*

Page 131

14.0 LA07/2019/0850/F - erection of a house and the demolition of existing house - 10 Meetinghouse Lane, Kilkeel. (Case Officer report attached).

Rec: REFUSAL

- Addendum list


 *LA07 2019 0850 F.pdf*

Page 133


15.0 LA07/2019/1551/O - proposed 1 1/2 storey dwelling & garage - immediately east of 15 Mill Road, Hilltown, Newry. (Case Officer report attached).

Rec: REFUSAL

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

 *LA07 2019 1551 O.pdf*

Page 138


 *LA07-2019-1551-0 (Mill Road).pdf*

Page 143

16.0 LA07/2018/1612/F - erection of 1 No. storage and distribution warehouse with associated office, to include all site and access works - lands at Loughway Business Park, approx 50m east and south of Unit 9a Loughway Business Park, Newry. (Case Officer report attached).

Rec: APPROVAL

- Addendum list

 *LA07-2018-1612-F.pdf*

Page 145

17.0 LA07/2020/0058/F - This is a section 54 application seeking planning permission to develop land without complying with conditions 03,04,05 and 09 of the previous planning permission LA07/2019/1245/F (seeking removal of conditions) - Approximately 75m SW of 58 Derrymore Road Newry. (Case Officer report attached).

Rec: APPROVAL

- Addendum list

 *LA07-2020-0058-F Approximately 75m SW of 58 Derrymore Road.pdf*

Page 155

18.0 LA07/2017/0918/F - proposed extensions and alterations to existing nursing home to create an additional 38 bedrooms

including alterations to existing chapel and convent and all ancillary site works including a total of 41 number spaces. Please note all buildings are listed. (Additional Information received 18/12/2019) (Amended plans received 03/02/2020) - 1 Home Avenue Newry Co. Down. (Case Officer report attached).

Rec: APPROVAL

- Addendum list

 [LA07-2017-0918-F Home Avenue \(004\).pdf](#)

Page 158

19.0 LA07/2017/0938/LBC - Proposed extensions and alterations to existing nursing home to create an additional 38 new bedrooms including alterations to existing chapel and convent and all ancillary site works including an additional 41 car park spaces at Kilmorey Care, 1 Home Avenue, Newry, Co.Down, BT34 2DL (Amended plans/additional info received). (Case Officer report attached).

Rec: CONSENT

- Addendum list

 [LA07-2017-0938-LBC Home Avenue .pdf](#)

Page 171

20.0 LA07/2017/0963/LBC - refurbishment works to reinstate existing laundry building - Our Mother of Mercy 1 Home Avenue, Newry. (Case Officer report attached).

Rec: CONSENT

- Addendum list

 [LA07-2017-0963-LBC Home Avenue .pdf](#)

Page 182

For Noting

21.0 Historic Actions Tracking Sheet. (Attached).

 [Planning HISTORIC TRACKING SHEET - UPDATED 25-02-2020.pdf](#)

Page 189

22.0 February 2020 Planning Committee Performance Report. (Attached).

 [FEBRUARY 2020 Planning Committee Performance Report.pdf](#)

Page 197

23.0 Record of meetings between planning officers and public representatives. (Attached)

 *11 March 2020 Committee report.pdf*

Page 205

24.0 February 2020 Appeals and Decisions. (Attached).

 *Current Appeals and Decisions issued February 2020.pdf*

Page 206

NEWRY, MOURNE & DOWN DISTRICT COUNCIL

Minutes of the Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 12 February 2020 at 10.00am in the Boardroom, District Council Offices, Monaghan Row, Newry

Chairperson: Councillor M Larkin

Deputy Chairperson: Councillor H Reilly

In attendance: **(Committee Members)**

Councillor P Brown
Councillor W Clarke
Councillor L Devlin
Councillor V Harte
Councillor G Hanna
Councillor C Mason
Councillor D McAteer
Councillor H McKee
Councillor M Ruane
Councillor J Trainor

(Officials)

Mr C Mallon	Director Enterprise Regeneration & Tourism
Mr A McKay	Chief Planning Officer
Mr A Hay	Principal Planning Officer
Mr A Davidson	Senior Planning Officer
Ms A McAlarney	Senior Planning Officer
Mr M Keane	Senior Planning Officer
Mr D Fitzsimon	Planning Consultant
Mr F O Connor	Legal Advisor
Ms N Largey	Legal Advisor
Ms C McAteer	Democratic Services Officer
Ms L Dillon	Democratic Services Officer

P/011/2020: APOLOGIES AND CHAIRPERSON'S REMARKS

No apologies.

P/012/2020: DECLARATIONS OF INTEREST

No declarations of interest.

P/013/2020: DECLARATIONS IN ACCORDANCE WITH PLANNING COMMITTEE PROTOCOL PARA. 25 – MEMBER TO BE PRESENT FOR ENTIRE ITEM

Declarations in relation to Paragraph 25 of Planning Committee Operating Protocol – Members

to be present for entire item:-

- Item 7 - LA07/2019/1069/0 - site for dwelling and garage lands approx. 20m NE of 31A Quarter Road, Glassdrumman, Annalong - **Councillors Brown, Devlin, Mason, Reilly and Ruane** did not take part in the discussion/decision on this application.

(Councillor McAteer explained that although he did not attend the Site Meeting he did however receive an update from the Planning Officer on site on the issues discussed and he indicated he would remain present in the Meeting during discussion/decision on this Application.)

- Item 8 - LA07/2019/1221/F - proposed guest house tourist accommodation and associated site works land 10m NW of 180 Tullybrannigan Road, Newcastle – **this application was withdrawn from the agenda.**

MINUTES FOR CONFIRMATION

P/014/2020: MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 8 JANUARY 2020

Read: Minutes of Planning Committee Meeting held on Wednesday 8 January 2020. **(Copy circulated)**

AGREED: On the proposal of Councillor Ruane seconded by Councillor McAteer it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 8 January 2020 as a true and accurate record.

FOR DISCUSSION/DECISION

P/015/2020: ADDENDUM LIST

Read: Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 12 February 2020. **(Copy circulated).**

AGREED: On the proposal of Councillor Hanna seconded by Councillor Devlin it was agreed to approve the Officer recommendation in respect of the following application listed on the Addendum List for Wednesday 12 February 2020:

- LA07/2019/0943/F - proposed manufacturing facility welfare & office facilities, associated site works including: yard storage areas, boundary fencing, 2 No. vehicular & pedestrian access entrances - Lands approximately 150m North East of MJM Group Unit 01 Derryboy Road Carnbane Business Park Newry BT35 6QH
APPROVAL

DEVELOPMENT MANAGEMENT - PLANNING APPLICATIONS FOR DETERMINATION

P/016/2020: PLANNING APPLICATIONS FOR DETERMINATION

The following applications were determined by the Committee:-

(1) LA07/2019/1302/F (Audio recorded -YES)

Location:

To the rear of Nos. 65-69 South Promenade Newcastle

Proposal:

Provision of dwelling with associated parking and amendment of application R/2011/0794/F to remove parking area for apartments and replace with a shared amenity space.

Conclusion and Recommendation from Planning Official:

Refusal

Power-point presentation:

Ms Annette McAlarney, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Representatives from DfI Roads were in attendance to answer queries from Members.

Speaking rights:

In objection

Kieran Fitzpatrick, presented in objection to the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

In support

Eoin Morgan, agent, and Roseanne Ireland, applicant, presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Issues raised

Concerns regarding parking along the road and potential for causing accidents.

Agreed: On the proposal of Councillor Clarke seconded by Councillor McAteer it was unanimously agreed to defer Planning Application LA07/2019/1302/F to allow a site visit to take place, and report back to the Planning Committee in due course.

(2) LA07/2019/1362/O (Audio recorded -YES)

Location:

Adjacent and immediately south of No. 64 The Heights, Loughinisland

Proposal:

Gap/infill site for dwelling and domestic garage

Conclusion and Recommendation from Planning Official:

Refusal

Power-point presentation:

Ms Annette McAlarney, Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Speaking rights:

In support

John Young, agent, presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Issues raised:

- Increased the site area
- Applicant intends to demolish nearby buildings
- Infill can be integrated

Agreed: On the proposal of Councillor Larkin seconded by Councillor Trainor it was unanimously agreed to defer Planning Application LA07/2019/1362/O to allow a site visit to take place, and report back to the Planning Committee in due course.

**(3) LA07/2019/1537/F
(Audio recorded -YES)**

Location:

23 South Promenade Newcastle

Proposal:

Proposed conversion of existing vacant house to 2 no. apartments, rebuilding of rear return plus new garage and workshop/stores in rear garden

Conclusion and Recommendation from Planning Official:

Refusal

Power-point presentation:

Ms Annette McAlarney, Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Representatives from Dfi Roads were in attendance to answer queries from Members.

Speaking rights

In support

Colette Maze, agent, presented in support of the application, detailing and expanding upon a written statement that had been circulated to Members.

Issues raised:

- If the building was previously multiple occupancy then historically parking may have been provided along the road.
- Intensification of use of lane.
- Deficient in sightline width.

Agreed: On the proposal of Councillor Hanna seconded by Councillor Clarke it was unanimously agreed to issue an Approval in respect of Planning Application LA07/2019/1537/F, contrary to Officer recommendation, on the basis that most of the parking required at this building can be accommodated 'on street' or at the Car Park located nearby, and that the proposed apartments will not cause any intensification of traffic in the area.

It was also agreed Officers be delegated authority to impose any relevant conditions.

(4) LA07/2019/1640/F
(Audio recorded -YES)

Location:

31 Central Promenade Newcastle

Proposal:

Change of use from a florist shop to donut shop

Conclusion and Recommendation from Planning Official:

Approval

Speaking Rights:

In objection

David Elliott, presented in objection to the application, detailing and expanding upon a written statement that had been circulated to Committee Members

In support

Barry Hillen, agent and Matthew Toner, applicant, presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Power-point presentation:

Mrs A McAlarney, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Issues raised:

- Covenant contained in Deeds of the privately owned apartments stipulates no selling of hot food and if the application is approved this will cause problems for private owners wishing to sell their apartments.
- Possible odour nuisance
- A high concentration of fast food outlets already exist in Newcastle.
- Possibility of potential for a fast food outlet opening in the premises in the future if this change of use was granted.
- Restricted opening and frying times.

- Planners do not believe there is a visual detrimental impact on the residential enmity of nearby residents in relation to the proposed extractor system at the back of the building.

Noted: Case Law in respect of Planning states Covenants are civil matters and are not material considerations within Planning.

Councillor Clarke proposed to issue an Approval in respect of Planning Application LA07/2019/1640/F as per the information and recommendation contained in the Case Officer report presented to Committee. Councillor Devlin seconded the proposal.

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

FOR:	10
AGAINST:	1
ABSTENTIONS:	1

The proposal was declared carried.

Agreed: On the proposal of Councillor Clarke seconded by Councillor Devlin it was agreed to issue an Approval in respect of Planning Application LA07/2019/1640/F as per the information and recommendation contained in the Case Officer report presented to Committee.

It was also agreed Officers be delegated authority to impose relevant conditions that are adequate enough to ensure no detriment to residents including the maintenance of the extractor system.

Noted: The owner of the proposed business is willing to meet with residents.

(12.29pm: Councillor H McKee left the meeting)

(12.30pm: Councillors Reilly, Brown, Devlin, Mason and Ruane withdrew from the meeting)

(5) LA07/2019/1069/O
(Audio recorded - NO)

Location:

Lands approx.. 20m NE of 31A Quarter Road, Glasdrumman, Annalong

Proposal:

Site for dwelling and garage

Conclusion and Recommendation from Planning Official:

REFUSAL

Power-point presentation:

Mark Keane, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Speaking rights:

In support

Michael Clarke, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Agreed: On the proposal of Councillor Larkin seconded by Councillor Hanna it was agreed to issue an Approval in respect of Planning Application LA07/2019/1069/O contrary to Officer recommendation, on the basis that the site visit revealed the development of the site represented a rounding off opportunity of a cluster and would have no detrimental impact on the countryside and there was no potential for any further development.

(12.50pm: Councillors Reilly, Brown, Devlin, Mason and Ruane re-joined the meeting)

(12.50pm: Councillor Trainor left the meeting)

(6) LA07/2018/0868/F
(Audio recorded -YES)

Location:

Lands at and to the rear of St Anne's Close (15m SW of 6 St. Anne's Close) and to the rear of St. Anne's Court (7m W of 6 St. Anne's Court) Killough

Proposal:

Proposed demolition of 7 St Anne's Close and the erection of a residential development consisting of 47 No dwellings (44 semi-detached and 3 No townhouses), associated domestic garages, public open space and associated site works and landscaping, with access from St Anne's Close

Conclusion and Recommendation from Planning Official:

Approval

Power-point presentation:

Ms A McAlarney, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Speaking Rights:

In support

Michael Graham, agent was available to present in support of the application.

Agreed: On the proposal of Councillor Clarke seconded by Councillor Hanna it was unanimously agreed to issue an approval in respect of Planning Application LA07/2018/0868/0 as per the information and recommendation contained in the Case Officer report presented to Committee.

(7) LA07/2015/0825/F
(Audio recorded – YES)

Location:

Lands between 79 and 81 Drumalane Road Newry

Proposal:

Demolition of No.81 Drumalane Road and erection of 11 No. dwellings (3 No. detached and 8 No. semi-detached), access from Drumalane Road, landscaping and all associated site works (Amended proposal).

Conclusion and Recommendation from Planning Official:

Approval

Speaking Rights:

In support

Michael Graham, agent was available to present in support of the application.

Power-point presentation:

Mr Andrew Davidson, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

AGREED: **On the proposal of Councillor Reilly seconded by Councillor Clarke it was agreed unanimously agreed to issue an approval in respect of Planning Application LA07/2015/0825/F as per the information and recommendation contained in the Case Officer report presented to Committee.**

(8) **LA07/2019/1408/0**
(Audio recorded – YES)

Location:

Site to south of 19A Derrywilligan Road, Ranton's Cross Roads, Newry

Proposal:

Proposed dwelling and garage

Conclusion and Recommendation from Planning Official:

Refusal

Speaking Rights:

In support

John Harkness, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Councillor D Taylor presented in support of the application.

Power-point presentation:

Mr Andrew Davidson, Senior Planning Officer gave a power point presentation on the application with supporting information including a site location plan, an aerial view of the site and photographs from various critical views of the site.

Issues raised:

- Land is seen as domestic ground not agricultural and does not extend into the countryside.
- A development exists to the north west of the site.
- The proposed development will provide completeness to the cluster already present and will distinguish the cross roads focal point.

AGREED: On the proposal of Councillor Larkin seconded by Councillor Reilly it was agreed to issue an Approval in respect of Planning Application LA07/2019/1408/O, contrary to Officer recommendation, on the basis that a similar development took place on Carobane Road Belleeks, it was accepted the proposed development would provide a rounding off of the cluster already there and recent PAC decisions indicate the Committee do not have to slavishly follow Planning Policy.

It was also agreed Officers be delegated authority to impose any relevant conditions.

EXEMPT INFORMATION ITEMS

AGREED: On the proposal of Councillor Ruane seconded by Councillor Devlin the following item is deemed to be restricted by virtue of Paragraph 3 of Part 1 of Schedule 6 of the Local Government Act (Northern Ireland) 2014 – information relating to the financial or business affairs of any particular person (including the Council holding that information) and the public may, by resolution, be excluded during this item of business.

P/017/2020: AUDIO RECORDING OF PLANNING COMMITTEE MEETINGS

Read: Report dated 12 February 2020 from Mr F O'Connor, Legal Advisor, re: audio recording of Planning Committee Meetings. **(Copy circulated).**

AGREED: Councillor Clarke proposed and Councillor Devlin seconded to come out of closed session.

When the Committee was out of closed session the Chairman reported the following had been agreed:-

AGREED: On the proposal of Councillor Reilly seconded by Councillor Larkin it was agreed to amend the lawful basis currently relied upon by Council in the audio-recording of Planning Committee Meetings. The current practice is to seek the express consent of individuals and it was agreed this be replaced by relying upon the ground set out in Article 6 Article 6(1)(e) of the General Data Protection Regulations (GDPR), viz that "processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller".

FOR NOTING

P/018/2020: PLANNING APPLICATION LA07/2018/0001/O - LIDL NEWCASTLE

Mr McKay gave an update on Planning Application LA07/2018/0001/O.

He said it had not been possible to have the application tabled at the meeting today as Planning Department had only been in receipt of a revised transport assessment submitted by the Applicant. He said following consultation on the revised transport assessment, the objectors have been notified and it is hoped this application will be tabled at the next Planning Committee Meeting to be held on Wednesday 11 March 2020.

LOCAL DEVELOPMENT PLAN

P/019/2020: MINUTES OF LOCAL DEVELOPMENT PLAN STEERING GROUP - 22 JANUARY 2020

Read: Minutes of Local Development Plan Steering Group Meeting held on 22 January 2020. **(Copy circulated)**

AGREED: **On the proposal of Councillor Ruane seconded by Councillor McAteer it was agreed to note the Minutes of the Local Development Plan Steering Group Meeting held on 22 January 2020.**

FOR NOTING

P/020/2020: HISTORIC ACTION SHEET

Read: Planning historic action sheet. **(Copy circulated)**

AGREED: **It was unanimously agreed to note the Planning historic action sheet.**

P/021/2020: PLANNING COMMITTEE MEETING PERFORMANCE REPORT - JANUARY 2020

Read: Planning Committee Performance Report January 2020. **(Copy circulated)**

AGREED: **It was agreed to note the Planning Committee Performance Report for January 2020.**

P/022/2020: MEETINGS BETWEEN PLANNING OFFICERS AND PUBLIC REPRESENTATIVES

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

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

P/023/2020: APPEALS & DECISIONS

Read: Report re: Appeals and Decisions – January 2020.

(Copy circulated)

AGREED: It was agreed to note the Appeals and Decisions for January 2020.

The Meeting concluded at 1.15pm.

For confirmation at the Planning Committee Meeting to be held on Wednesday 11 March 2020.

Signed: _____ Chairperson

Signed: _____ Chief Executive

Item 5 – Addendum List

Addendum list - planning applications with no representations received or requests for speaking rights – Planning Committee Meeting on Wednesday 11 March 2020

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

- **LA07/2019/1189/F** – temporary mobile home – land 25m east of 113 Ballagh Road, Newcastle **REFUSAL**
- **LA07/2019/0850/F** – erection of a house and the demolition of existing house – 10 Meetinghouse Lane, Kilkeel **REFUSAL**
- **LA07/2018/1612/F** - erection of 1 No. storage and distribution warehouse with associated office, to include all site and access works - lands at Loughway Business Park, approx 50m east and south of Unit 9a Loughway Business Park, Newry. **APPROVAL**
- **LA07/2020/0058/F** - This is a section 54 application seeking planning permission to develop land without complying with conditions 03,04,05 and 09 of the previous planning permission LA07/2019/1245/F (seeking removal of conditions) - Approximately 75m SW of 58 Derrymore Road Newry **APPROVAL**
- **LA07/2017/0918/F** - proposed extensions and alterations to existing nursing home to create an additional 38 bedrooms including alterations to existing chapel and convent and all ancillary site works including a total of 41 number spaces. Please note all buildings are listed. (Additional Information received 18/12/2019) (Amended plans received 03/02/2020) - 1 Home Avenue Newry Co. Down **APPROVAL**
- **LA07/2017/0938/LBC** - Proposed extensions and alterations to existing nursing home to create an additional 38 new bedrooms including alterations to existing chapel and convent and all ancillary site works including an additional 41 car park spaces at Kilmorey Care, 1 Home Avenue, Newry, Co.Down, BT34 2DL (Amended plans/additional info received) **CONSENT**
- **LA07/2017/0963/LBC** - refurbishment works to reinstate existing laundry building - Our Mother of Mercy 1 Home Avenue, Newry **CONSENT**

-0-0-0-0-0-0-



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

Application Reference: LA07/2016/0821/F
Date Received: 20.06.2016
Proposal: Change of House type to that previously approved under R/2012/0323/F
Location: 24 Ringhaddy Road Killinchy

Site Characteristics & Area Characteristics

The site is located in the countryside several miles north of Killyleagh in an AONB and Area of Constraint on Mineral Developments as identified in the Ards and Down Area Plan 2015. The site is also adjacent to Quarterland Bay and is within/adjacent Strangford Lough Ramsar site, SPA, SAC, Marine Nature Reserve and ASSI.

The Ringhaddy Road is a relatively narrow rural road which extends from the Ballymorran Road and Killyleagh Road down to the shore and bay, the area being characterised by agricultural lands and large detached properties.

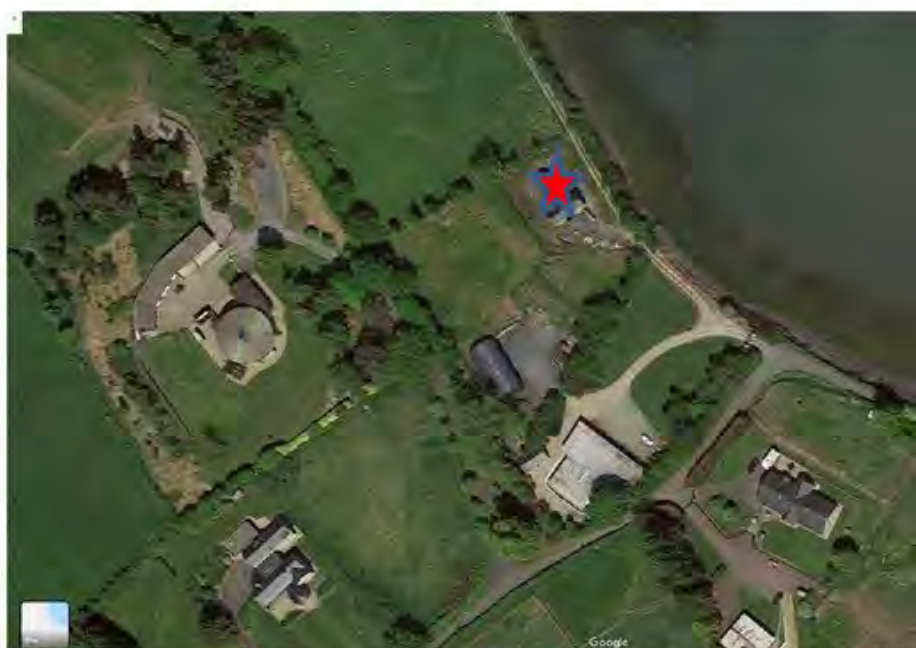




Photo 1



Photo 2



Photo 3

Site History

R/2012/0323/F- 70m north west of 22 Ringhaddy Road, Killinchy, New dwelling and double garage, Approval 12-02-14

There is currently an enforcement case on the site under **LA07/2017/0127/CA**

Planning Policies & Material Considerations

The proposal has been assessed against the following policies:

- Regional Development Strategy (RDS)
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Ards and Down Area Plan 2015
- Planning Policy Statement 2 Natural Heritage
- Planning Policy Statement 21 – Sustainable Development in the Countryside
- “Building on Tradition” ‘A Sustainable Design Guide for the Northern Ireland Countryside’

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

The application site is directly adjacent to National, European and International designated sites:

- Strangford Lough Part 3 ASSI, which is declared under the Environment Order (Northern Ireland) 2002;
- Strangford Lough SPA and SAC; the SPA is designated under the EC Birds Directive (79/409/EEC on the conservation of wild birds) and the SAC is designated under the EC Habitats Directive (92/43/EEC on the conservation of natural habitats and of wild fauna and flora); and
- Strangford Lough Ramsar Site which is designated under the Ramsar Convention.
- Strangford Lough MCZ which is designated under the Marine Act (Northern Ireland) 2013

Consultations

Consultation was undertaken with Rivers Agency, NIEA and DFC HED and Shared Environmental Services, who offer no objections in principle. A HRA screening exercise was also undertaken as part of this application.

DFC HED (Historic Monuments) The application site has previously been subject to archaeological investigation under license number AE/14/38. Consequently, HED (Historic Monuments) has assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Rivers Agency states that the change of house type does not materially change flood risk at this previously approved site. The Strategic Flood Map for Northern Ireland indicates that the site lies on the **periphery** of the 1 in 200 year coastal flood plain. The Q200 coastal level at this location is 3.27m OD Belfast. The Site Layout Drawing stamped 16/12/2019 by the planning authority indicates that the site levels are above the Q200 level.

All levels proposed in the development are above 3.27mOD with the additional 600m freeboard.

NIEA Water Management Unit refer to DAERA Standing Advice - Single Dwellings

NIEA Coastal Marine and Fisheries Division has considered the impacts of the proposal and on the basis of the information provided is content with the proposal with the imposition of conditions and informatives. While the proposed development is directly adjacent to designated site boundaries, provided the proposal is confined to the red line boundary there should be no impact on the site selection features of the designated sites.

In addition to designated sites marine mammals are afforded protection throughout their range through the following nature conservation legislation:

- The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended); and
- The Wildlife (Northern Ireland) Order 1985 (as amended).

This includes marine mammals such as cetaceans and seals, both of which are present within Strangford Lough. All plans/projects within or adjacent to the marine environment must therefore provide appropriate mitigation, if required.

Marine and Fisheries Division has considered the impacts of the proposal and on the basis of the information provided is content with the proposal with conditions and informatives.

Shared Environmental Services. The planning application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Newry, Mourne and Down Council which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.

The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). The proposal would not be likely to have a significant effect on the features of any European site. Conditions are recommended.

Objections & Representations

44 neighbours were notified on the application.

A number of amendments have been received on the planning application and where necessary neighbours have been notified.

To date there have been 81 letters of objection made on the application. Issues raised can be broadly summarised as follows and are addressed in the consideration and assessment section below

- Inappropriate development in an AoNB
- Design inappropriate
- Inaccurate drawings
- Proposal is contrary to CTY13 and CTY14
- Proposal is contrary to NH6 PPS2
- Past planning history on site
- Right of Way

Consideration and Assessment:

This consideration follows on from the quashing by the Courts under Judicial Review of the previous decision by NMDDC to approve planning application LA07/2016/0821/F. The Council is therefore retaking the decision. The past planning history on the site and its wider surroundings are known to the planning office however consideration of the current application is confined to the change of house type being proposed.

The application is for change of house type. The construction of the dwelling is already commenced on site and at the time of writing construction had ceased. See photos at 1, 2 and 3 above.

SPPS Para 6.77 states that in all circumstances proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings, must not have an adverse impact on the rural character of the area, and meet other planning and environmental considerations including those for drainage, sewerage, access and road safety. Access arrangements must be in accordance with the Department's published guidance.

6.78 Supplementary planning guidance contained within 'Building on Tradition. A Sustainable Design Guide for the Northern Ireland Countryside' must be taken into account in assessing all development proposals in the countryside.

The change in house type relates to the farm dwelling approved below under R/2012/0323/F

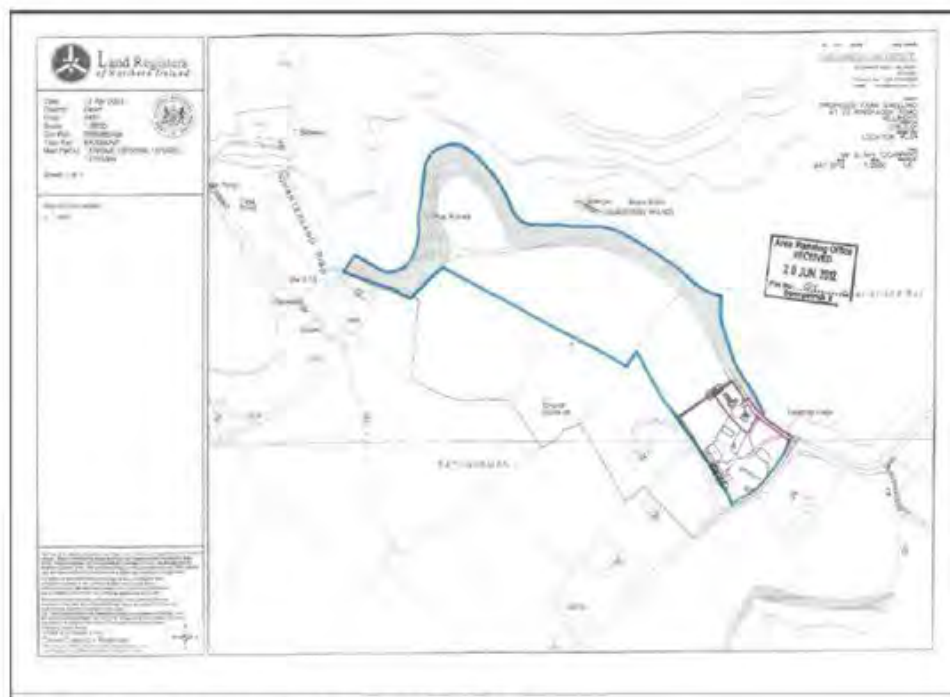


Fig 1 Site location plan for R/2012/0323/F

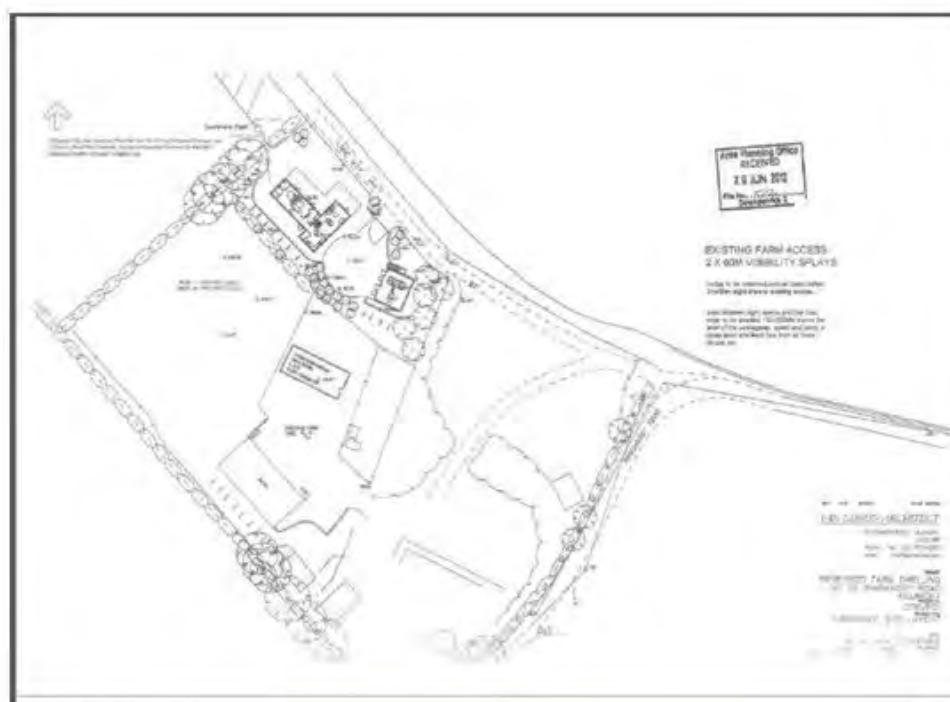


Fig 2 Site layout plan for R/2012/0323/F



Fig 3 Elevations for R/2012/0323/F



Fig 4 Floorplan R/2012/0323/F



Fig 5 Elevations for R/2012/0323/F



Fig 6 Garage plans for R/2012/0323/F

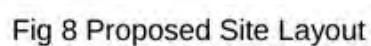
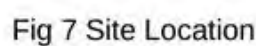




Fig 9 Proposed elevations



Fig 10 Proposed Garage plans

It is clear from comparison of the two house types, that the changes being proposed refer to an increase in footprint and floorspace from that approved under R/2012/0323/F. The increase in footprint refers to the addition of a master bedroom/ensuite/dressing room, another bedroom and a utility room the garage proposed is now single storey and is

deemed appropriate and in scale for the size of dwelling proposed. Finishes on the garage reflect that of the dwelling. The planning office are content that accurate drawings have now been submitted for the proposed development.

The finishes being proposed are natural slate, wooden painted cladding, Upvc windows and rainwater goods. Finishes in terms of wooden painted cladding mirror those of the adjacent dwelling. Building on Tradition Design Guide makes reference to painted timber as both a traditional and a contemporary material appropriate in the rural landscape. This is deemed acceptable in the current context.

The guidance document Building on Tradition states that to reduce the impact of a new building in the countryside, new buildings are required to be “visually linked” or sited to cluster with an established group of buildings on a farm. These should be positioned sensitively so as form an integral part of that building group, or when viewed from surrounding vantage points, the new building reads as being visually interlinked with those buildings. The current application as originally approved under R/2012/0323/F was for a farm dwelling which complied with the visually linking and clustering requirement of CTY10. This provides that there is a level of integration provided by the existing buildings on site.

PPS2 Natural Heritage

Policy NH 1 - European and Ramsar Sites – International

Policy NH 2 - Species Protected by Law

Policy NH 3 - Sites of Nature Conservation Importance – National

Policy NH 5 - Habitats, Species or Features of Natural Heritage Importance

Policy NH 6 - Areas of Outstanding Natural Beauty

The above policies were considered in the processing of the application with consultation undertaken with the competent authorities SES and NIEA.

NED advise that the north eastern edge of the red line boundary of the proposed site is adjacent to the designated sites. In order to prevent contaminated run off from entering Strangford Lough during the construction phase of the development NED recommends a 10m buffer is maintained between the location of refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc and Strangford Lough SPA/SAC/Ramsar/ASSI.

As the development has already commenced, from inspection of the site on 17 April 2019, it would appear that any re fuelling oil/fuel storage, concrete mixing or washings or storage of machinery spoil etc is in excess of 10m from the Lough shore as per NED's requirements.

Storm drainage of the site, during construction and operational phases, must be designed to the principles of the Sustainable Drainage Systems (SuDS) in order to prevent the polluting effects of storm water on aquatic environments.

Foul sewage from the development will be disposed of by septic tank. The septic tank and soak away will be directed away from the designed sites therefore any potential impacts from foul discharges are unlikely.

Due to the small scale of the proposed development and temporal nature of the construction activities disturbance is considered unlikely. Furthermore, the sub littoral zone is stony and does not contain high biomass for feeding waterfowl and waders and there are no known roosts in the immediate area.

No objections have therefore been returned, with conditions and informatives being recommended.

Policy NH6 considers impact of the development on AoNB. The proposed change of house type is located within the Strangford and Lecale AoNB.

Planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met: a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and c) the proposal respects:

- local architectural styles and patterns;
- traditional boundary details, by retaining features such as hedges, walls, trees and gates; and
- local materials, design and colour.

The proposed change of house type has been considered against the above and does not offend policy NH6 in terms of impact on the character and qualities of the AoNB. Further discussion of the design is given below and should be read in conjunction with the above. Any matters in relation to Rights of Way are private matters beyond the remit of the

planning office. The issue raised by objectors in terms of the Right of Way is a matter being dealt with by the Councils Rights of Way officer.

PPS21 CTY1

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

Planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.

A new building will be unacceptable where:

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

The siting as proposed by R/2012/0323/F was not considered prominent given its setting at the lower portion of a slope with rising ground behind it. The proposed change of house type will not alter its prominence and acceptability on the site. In fact the garage now being proposed is much reduced in height and scale than that previously approved under R/2012/1/0323/F

It is acknowledged that there has been a degree of hedgerow/tree removal on the north western boundary. It is proposed to supplement this with new tree planting. New boundary planting will be required to the rear of the site, it is proposed to erect a post and wire fence and plant a native species hedge along this new boundary within the blue lands. Whilst a new boundary will have to be implemented to the rear of the retaining wall this is considered appropriate and shall be conditioned accordingly. This is detailed on the Site layout drawing of 16 Dec 2019. A 1.5m high retaining wall is proposed to the immediate rear of the dwelling defining the site curtilage.

There is no change to the ancillary works proposed. This was deemed acceptable under R/2012/0323/F.

As approved as a farm dwelling the clustering and visual linkage element of CTY10 provides integration on site.

The design of the proposed dwelling with its increased footprint has minimal impact on the landscape over that previously proposed. The design is in keeping with the guidance document Building on Tradition.

Policy CTY 14 – Rural Character

Planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area.

A new building will be unacceptable where:

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

The issue of the need for the submission of a Design Concept Statement was raised as a point of objection. A DCS is referred to in the Building on Tradition Design Guide. Whilst applicants are encouraged to submit a design concept statement setting out the processes involved in site selection and analysis and building design as part of their planning application this is not a policy requirement. Additionally, design concept statements generally refer to the size and scale of the development and whether any complex issues relating to the site or the proposal need to be addressed. It is considered that given the current application is for a Change of House type to a previously approved farm dwelling at the same location that the changes involved do not necessitate the submission of a such a document as they propose minimal changes to the dwelling. An assessment by the planning office of the changes involved can be made in the absence of a design concept statement. A Design Concept statement is not required to consider the acceptability of the proposal on the site. The Planning office consider there to be no impact on rural character as a result of the house type now being proposed.

CTY16 Policy CTY 16 – Development Relying on Non-Mains Sewerage

Planning permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.

Applicants will be required to submit sufficient information on the means of sewerage to allow a proper assessment of such proposals to be made.

In those areas identified as having a pollution risk development relying on non-mains sewerage will only be permitted in exceptional circumstances.

A septic tank (Viltra IWOX Clear) is proposed within the redline of the application site, the associated soakaways are within the blue lands under the control of the applicant. A separate consenting regime exists for consent to discharge for the development. NIEA Water Management Unit have already responded to the application by referring to Standing Advice.

Recommendation: APPROVAL subject to following conditions

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

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

2. This permission is granted solely as a substitute for the permission for a dwelling previously granted on the site under ref. R/2012/0323 on the 12th Feb 2014, and only one dwelling shall be constructed on site.

Reason: To ensure that only one dwelling is constructed on the site in accordance with the Council policies.

3. The vehicular access, including visibility splays and any forward sight line shall be provided in accordance with the approved plans, prior to the occupation of the dwelling hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the levels of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

4. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway before the development hereby permitted is occupied and shall be retained and kept clear thereafter.

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

5. The (gradient of the access/gradients of the accesses) shall not exceed 8% (1 in 12.5) over the first 5m outside the road boundary. Where the vehicular access crosses footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.

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

6. The existing vegetation along the northern and western boundaries of the site as indicated retained on the approved plan 02 date stamped 16 December 2019 shall be retained unless necessary to prevent danger to the public in which case a full explanation along with a scheme for compensatory planting shall be submitted to and agreed in writing with the Council, prior to removal.

Reason: To ensure the maintenance of screening to the site.

7. The proposed landscaping as indicated on drawing ref 02 date stamped 16 December 2019 shall be carried out during the first available planting season before occupation of the dwelling hereby approved.

Reason: In the interests of visual amenity.

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

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

9. All construction activity shall be confined within site boundaries, and the boundary of the designated areas shall not be disturbed in any way without written consent

from the Council.

Reason: To protect the integrity of Strangford Lough ASSI, Strangford Lough MCZ, Strangford Lough SPA and SAC and Strangford Lough Ramsar Site, and to avoid it being damaged by construction vehicles, deposited materials, contaminated run-off, or any other activity during the construction period or thereafter. Any works occurring within the designated site but outside the red line planning application boundary are subject to The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) and the Environment (Northern Ireland) Order 2002 (as amended).

10. A clearly defined buffer of at least 10 m must be maintained between the location of all refuelling, storage of oil/fuels, concrete mixing and washing areas, storage of machinery/materials/spoil etc. and Strangford Lough.

Reason: To prevent polluting discharges entering and impacting on the site integrity of Strangford Lough SAC/SPA/Ramsar.

11. Storm drainage of the site, during construction must be designed to the principles of Sustainable Drainage Systems (SuDS) in order to prevent the polluting effects of storm water on Strangford Lough SAC/SPA/Ramsar. Construction of SuDS should comply with the design and construction standards as set out in The SuDS Manual - Construction Industry Research and Information Association (CIRIA) Report C753.

Reason: To prevent polluting discharges entering and impacting on the site integrity of Strangford Lough SAC/SPA/Ramsar.

12. All surface water run-off during the construction and operational phases shall be directed away from Strangford Lough SPA/SAC/Ramsar/ASSI (Part 3).

Reason: To prevent polluting discharges entering and impacting on the site integrity of Strangford Lough SAC/SPA/Ramsar.

Signed:

Date:

Signed:

Date:

Public Representation 4/3/2020 - Submission to the Planning Committee

Newry Mourne and Down District Council - Re Meeting on 11th March 2020 - Re: LA07/2016/0821/F

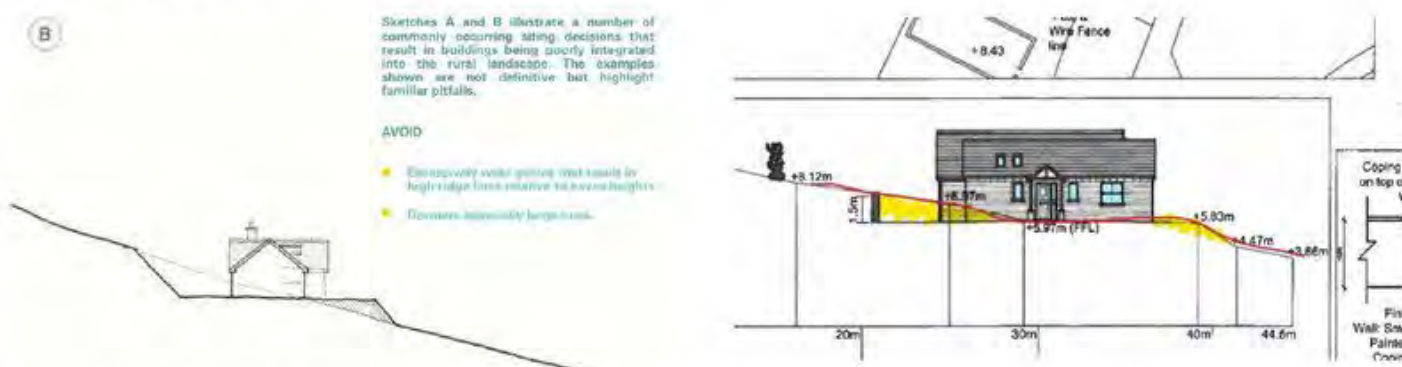
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Point 1. Technical application/plans errors / issues / omissions as detailed by Murray Bell of Bell Architects.

Dwelling on A FARM

Dwelling was originally approved as a dwelling on a farm, and yet on the 2016 approval, the applicant has not ticked this – if this is a repeat application, then the issue of this being the dwelling on a farm should be made clear as we would not want any additional opportunity for a further dwelling on the farm except within the 10 year-rule as governed by PPS21. The applicant has ticked 'NO' to this point.

Unnatural Cut and Fill



Building On tradition talks about the vital importance of respecting landform and not creating unnatural cuts into the landscape – this dwelling does exactly that – it causes a huge cut into the landscape that is unnatural and unintegrated. Refer below aerial photograph in addition.

PPS21 – Integration and appropriateness in Landscape.



The previous approval COR states clearly and in two places That existing landscape / topography and vegetation make The site acceptable. This vegetation has now been removed making the site open and unintegrated, and as such the site fails the integration test. Only one tree remains and this is inadequate cover.



The diagram (right) submitted by Bell Architects in September 2019 identifies 4 No. elevations which are missing, not Drawn, undetailed and not clarified. The Planning authority has not ensured That adequate information has been Provided to make a full and proper Assessment of the proposal.



Site Levels – clarification required.

In the 2012 approval, the **finished floor level** was indicated as 96.5, and yet in the current application this is stated as 5.97 and yet there is no cross referencing of levels. The levels should be on an ordnance base and to correct methodology to ensure accurate heights are achieved and maintained.

No landscaping proposed to the Northern boundary. This is a fundamental mistake as this is where the large trees have been recently removed.

Finishes

Finishes – Slate should be Bangor Blue.

Point 2. The applicant states on Form P1 that there are **NO Right of Way** Issues over the delineated site within the red line, but the applicant was well aware that a Public Right of Way (PROW) exists over the land. NMDDC were investigating this at the date of the application in June 2016, re-affirmed the PROW on 26th October 2016 and has taken action against the applicant to re-instate it through the High Court which is currently ongoing. The applicant has not amended the application accordingly, despite having many opportunities to do so, including after the first application approval was overturned by Judicial Review in February 2019 and fresh plans were submitted.

Point 3. The application refers to an originally approved **Farm Dwelling** under R/2012/0323/F which has been partially built but never completed. This application was strongly contested by many objectors at the time, as this is an AONB, the site is prominent on the western shore of a previously unspoilt bay and the site has been subject to many applications, some of which have been investigated through the Ombudsman NI Order 1996, whose report of 10th October 2016 found maladministration and censured Planning Service for their handling of the applications. Two consequent written apologies to the Concerned Ringhaddy Residents Group from the Department of Infrastructure refer. See link below. The Council have an obligation to apply to the Ombudsman for sight of the full report as, being in possession of all the facts, may well influence Council decisions now and in the future.

<https://www.dropbox.com/sh/sc0wec9n5gqq765/AACY84t06ypKZ0fANFu4tFKba?dl=0>

Point 4. The existing house is approved at 79m2 /850 sq ft. A modest rural dwellinghouse. It is neither justified nor necessary to increase the size by **73%** of what is already an environmentally damaging approval for a Farm Dwelling in an AONB which has already been prejudiced. It should also be noted that the applicant has already started the building work applied for and an NMDDC 'STOP' notice is currently in force on the site. See aerial image above.

In conclusion we ask Planning Committee members to note that a previous approval for this application has already been overturned by Judicial Review last year and that to approve the application today would be both wrong and unsafe. We urge that the application be refused.

Speaking Rights Submission – LA07/2016/0821/F

Change of house type – 24 Ringhaddy Road, Killinchy

This submission seeks to **support** the professional officers in their recommendation to grant permission for the above application at the Planning Committee Meeting of 11th March 2020.

Proposal Before Members

The application before members is a change of house type to that granted permission under R/2012/0323/F on 12/02/2014, which was not legally challenged despite CRAR being in receipt of legal advice at the time.

The 2012 permission lawfully commenced and established the principle of a farm dwelling at this location.

Despite the comments of 3rd party objectors the consideration in this application **only extends to the net differences** between this proposal and R/2012/0323/F.

The Committee Report outlines the net differences at Page 10, as follows:

- 1 – Increase in footprint to include a master bedroom/ensuite/dressing room, additional bedroom and utility room and;
- 2 – Reduction in the height of the garage to single storey

These changes are not significant, and the revised dwelling is still modest in size and comparative to those in the Ringhaddy Area on more elevated sites.

Planning History & Legal Fallback

The site benefits from a full planning consent under R/2012/0323/F, which is referenced in the proposal description and which has lawfully commenced on site, as demonstrated in the Photographs 1, 2 & 3 on Page 2 of the Committee Report.

The applicant commenced development within the specified timeframes and only Condition 2 & 4 sought to apply pre-development conditions to be discharged prior to commencement.

These have both been discharged and no party has expressed a view to the contrary.

Permission R/2012/0323/F represents a valid fallback position for the applicant, and I note the applicants permitted development rights were not removed. Therefore, the applicant can make several alterations to R/2012/0323/F without the need for planning consent at all and weight must be attached to that in this assessment.

The relevant legal tests for fallback are considered in the following case law:

- Zurich Assurance Ltd T/A Threadneedle Property investments v North Lincolnshire Council & Simons Developments Ltd - fallback scenarios are considered at paragraph 75
- Michael Mansell v Tonbridge & Malling Borough Council applies the principles of the Zurich case and considers fallback throughout by specifically paragraph(s) 11, 27

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33

There have been two notable planning appeals that have also considered the issue of fallback:

- Appeal 2017/A0008 paragraphs 15-17
- Appeal 2013/A0229, paragraphs 6-7

The previous approval provides a "benchmark" of what Down District Council deemed as satisfying prevailing planning policy in the context of the site and is material to the assessment of this proposal.

Therefore, consideration in this application only extends to the net differences between what the applicant can build under R/2012/0323/F, and what is now being proposed, given the applicant has lawfully enacted their fallback position.

The applicant's proposition is that nothing has materially altered in the Local Development Plan, Prevailing Regional Policy and the alterations when compared to the fallback position are not so significant to justify a contrary decision.

The Plan, Policies and Personnel all remain the same.

Statutory Consultees

There are no sustainable objections from any of the statutory consultees to the proposal on traffic, environmental, built heritage or residential amenity grounds.

No evidence has been presented by 3rd party objectors to the contrary of these expert opinions.

An HRA screening exercise has been undertaken and the application has been screened out for any significant environmental effects.

There are no environmental impacts that could reasonably be argued when taking account of the legal fallback position and the lack of any increase in the site area.

Planning decisions can only be taken in an evidential context and all the evidence including the responses from the statutory agencies would indicate that there is a lack of sustainable objections.

The planning officer's report engages with all the relevant matters, considers them with balance and against the correct evidential context. It reaches a conclusion that is both sound and lawful.

In this regard, I would highlight the words (9/03/2018) of Justice McCloskey in recent proceedings (the Judicial Review by Paul McNamara v Lisburn & Castlereagh City Council), where he states;

"The report of the Planning Case Officer to the Council is, in every case, a matter of critical importance".



Appeal Decision

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

Appeal Reference:	2017/A0008
Appeal by:	Katherine Hunter
Appeal against:	The refusal of full planning permission
Proposed Development:	Amended House Type (approved under C/2013/0112/F) – Retention of as built dwelling with proposed alterations to include height reduction of roofs, ground works, alteration to fenestration and front balcony and addition of air source heat pump.
Location:	31 Prospect Road, Portstewart
Planning Authority:	Causeway Coasts and Glens Borough Council
Application Reference:	LA01/2016/1266/F
Procedure:	Hearing on 31 August 2017
Decision by:	Commissioner Pamela O'Donnell, dated 30 January 2018

Decision

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

Claim for Costs

2. A claim for costs was made by the Appellant against Causeway Coast & Glens Borough Council. This claim is the subject of a separate decision.

Preliminary Points

3. Objectors to the proposal alleged that the description of the proposal was inaccurate; that the drawings provided were insufficient to adequately describe the proposal and that the appeal site had been raised by some 2m.
4. Article 3 (2) and (3) of the Planning (General Development Procedure) Order (NI) 2015 (GDPO) specify that an application for planning permission shall contain a written description of the development to which it relates and that it must be accompanied by a plan which identifies the land concerned and any other plans and drawings necessary to describe the development the subject of the application.
5. The application was submitted as described above. The 1:1250 red line site location plan submitted with the application identified the land to which the proposal relates. Other accompanying information in the proposal included scaled floor plans and elevations, contextual elevations and a block plan, contextual overlays and overlays of comparative elevations with comparative site plans,

overlays of floor plans and a drawing of viewing angles from the second floor balcony. Contextual computer generated visualizations of the proposed development were also submitted for consideration.

6. The written description of the proposal does not refer to the proposed floor space extension at basement (or lower ground floor) level. However, given that the description uses the words 'to include' and that the plans submitted clearly detail this area as part of the proposal, I am satisfied that the above legislative requirements have been met. Given this and that the Objectors were aware of the overall extent of the proposal, I am also satisfied that no prejudice has arisen as a result of its description. No topographical survey was submitted to corroborate the claim that the site had been raised by 2m. Whilst conventional section drawings were not submitted for consideration, contextual elevations were and they detail levels across the site. Having reviewed the section and spot levels from the approved drawings relating to the extant planning permission on the site (C/2013/0112/F), they show that site levels increase from the road to the rear boundary by over 3m. Even though some parts of the rear garden area are now shown to have increased in level since that approval in 2013, the levels provided with the appeal drawings are not, in my opinion, significantly different to those on the approved drawings. The detailed plans provided were accepted by the Council and no additional technical drawings were requested to inform their decision. Like the Council, I too am satisfied that sufficient information has been provided to enable me to reach a reasoned and informed decision on the appeal in accordance with the legislative requirements. The plans submitted with the appeal have therefore been taken into account in my overall assessment in combination with my own on site-observations.
7. Some Objectors raised concern regarding the accuracy of the Neighbour Notification procedure. Article 8 of the GDPO relates to the giving of notice of applications for planning permission and appeals. Article 8 (1) (b) requires the Council to serve notice of the application to any identified occupier on neighbouring land. Having reviewed the relevant details, I am satisfied that the Council has carried out its statutory duty regarding the notification of neighbours in accordance with the legislation.

Reasoning

8. The main issue in the appeal is whether the proposal would result in unacceptable damage to the local character, environmental quality and residential amenity of the area.
9. Section 6 (4) of the Planning Act 2011 states that determination under this Act must be made in accordance with the plan, unless material considerations indicate otherwise. In this case, the relevant statutory plan is the Northern Area Plan 2016 (NAP). The appeal site is located within the development limit for Portstewart as designated in the NAP and is unzoned land. There are no relevant designations or policies within the Plan pertinent to the appeal site or the appeal proposal. The other material considerations in the appeal are discussed below.
10. The Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS) provides advice regarding housing in settlements to planning authorities engaged in preparing new area plans. Its provisions do not conflict with extant regional

policy in respect of proposals for dwellings within settlements. Accordingly, the relevant policy context is provided by Planning Policy Statement 7 'Quality Residential Environments' (PPS7). Supplementary guidance contained in 'Creating Places - Achieving Quality in Residential Developments' (CP) is also material to the consideration of the appeal.

11. Policy QD1 of PPS7 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It adds that all proposals for residential development will be expected to conform to nine criteria. The main objections to the appeal proposal are on the grounds that it would fail to comply with criteria (a), (g) and (h) of Policy QD1.
12. Criterion (a) requires proposals for residential development to respect the surrounding context. It states that development proposals should be "*appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and the appearance of buildings, structures and landscaped and hard surfaced areas*". Criterion (g) requires the design of the development to draw upon the best local traditions of form, materials and detailing. Criterion (h) seeks to ensure that proposals do not create conflict with adjacent land uses or give rise to unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance.
13. No 31 is located along the eastern side of Prospect Road, a well established residential area. The site comprises a modern three storey detached flat roof dwelling currently under construction. The dwelling is abutted by housing on three sides. No 29 Prospect Road is a two storey detached dwelling finished in wet dash with a slate hipped roof, bay windows and high chimneys. No 33 Prospect Road is a two-and-a-half storey semi detached residential block finished in smooth render with weather boarding. It has a saw-tooth roof which is finished in flat black tiles. No 16 Seaview Drive North, a detached dwelling finished in dash and smooth render, is located to the rear of the site and its grade level is higher than that of No 31. The surrounding area is made up of a mix of dwelling types of differing heights, designs and finishes, although predominantly detached dwellings of two storeys in height.
14. The appeal seeks permission for an amended house type to that which was approved under planning application C/2013/0112/F. It seeks to retain the dwelling as built and proposes further amendments to include the reduction of roof heights, ground works, alterations to the fenestration and front balcony and the addition of an air source heat pump.
15. Planning application C/2013/0112/F was in respect of a replacement dwelling with integral garage. It was approved in May 2013 and remains extant. The Council accepted that the extant permission represented a fallback position in the appeal. However, they considered it to be a poor planning decision and, because of this, argued that only limited weight should be given to it in the consideration of the appeal proposal. They relied on *Gambone v Secretary of State for Communities and Local Government (2014) EWHC 952* to support their position. This and the issue of 'fallback' are considered below.

16. I was told that the Appellant has the funds available to revert to the approved development and that she means to carry out the modifications in the event of a refusal. To corroborate this statement, I was furnished with a letter from Investec, a Wealth and Investment Company confirming that the Appellant has access to readily available and significant sums to oversee the costs associated with implementing the approved development. Figures were tabled at the Hearing and I was informed that sufficient funds were also available to cover the costs of demolition and new build in accordance with the approved plans, if that course of action were necessary. I was advised that additional detailed financial accounts could become available, if required. As referred to above, the Council accepted that the extant approval represents a fallback position and that it could be implemented. The evidence indicates that the Appellant has no other permanent residence. She is currently living with relatives and her belongings are in storage. She has also been unable to complete and occupy the dwelling at No 31 due to the ongoing planning process for a considerable period of time. Given these circumstances and the financial evidence provided which was not persuasively rebutted, I am satisfied that there is a realistic possibility of reversion to the approved development, should the appeal fail. I therefore accept that there is a genuine fallback in the appeal.
17. While the Council considers the previous approval to be a poor planning decision with which I agree, and feels it is entitled to distance itself from it because it was taken by Central Government, the situation remains that the Appellant can lawfully enact her fallback position and revert to the previous permission. The fallback position must therefore be given significant weight in the determination of the appeal and any harm associated with it taken into account in the overall planning judgment. Accordingly, I must disagree with the stance of the Council and the Objectors that only limited weight be placed on it and I find nothing in the case law referred to or in what was discussed at the Hearing to make me depart from this conclusion. In any event, it was open to the Council to revoke the extant permission if it was of the strong view that it would cause demonstrable harm and I have not been made aware of any such attempt at revocation. In finding there to be a genuine fallback in this case, it falls to me to compare the harm that would be caused by the appeal proposal with the harm likely to be caused if the fallback opportunity were taken up on the character of the area and on residential amenity. My consideration must be confined to this comparison.
18. The Council provided a schedule of the main differences between the appeal proposal and the extant approval and it is noted that the appeal proposal is different to that which is already built on the site. My reading and scaling of the submitted plans would broadly correlate with the information provided within this schedule.
19. The overall height above Ordinance Datum of the appeal proposal would be some 18cm higher than the building approved. It would be set back in the site some 70cm further and therefore closer to the boundary with No 16 Seaview Drive North. The appeal proposal would be between 10-20cm closer to the northern site boundary with No 29 and around 10cm closer to the southern site boundary with No 33. The floor space at ground floor level would increase to provide for a larger basement area. Ground levels at the front of the site have been reduced by around 50cm while those to the rear have been increased by around 30cm. While finished floor levels would be reduced relative to those of the extant approval at

ground floor level, those at the upper levels would increase. The materials proposed are generally the same as those that have been approved, although obscured glazing would now be inserted in some of the windows.

20. The main differences in the treatment of the elevations are as follows –

- Rear/Eastern elevation - removal of parapet wall and patio doors and reconfiguration of fenestration at second floor level with the introduction of obscured glass to an en suite;
- Side/Northern elevation – removal of three windows – the four remaining apertures would not serve any habitable rooms such as a lounge area, as with the extant approval. The proposed first floor window would also be finished in obscured glass and the proposed ground floor window and door would be screened by a new fence;
- Side/Southern elevation – the pattern of fenestration would change. This would include an increase in the size of the garden room window but also involves the removal of a full height window. There would be an additional two windows introduced at second floor level, but they would be finished in obscured glass. The height of the screen wall to the garden room would increase by some 0.8m, and
- Western/Front elevation – the finished floor level of the balconies would be around 0.38m higher than those approved and a new wall and ground works are proposed to screen the development at street level.

21. In general terms and relative to the extant approval, the appeal proposal would be located further to the east of the site and it would sit marginally closer to the northern and southern site boundaries. It would also be elevated some 18cm higher than the approved dwelling. In addition, some improvements are proposed, including the removal and/or repositioning of windows in some of the elevations and the introduction of obscured glass. The proposed roof profile, devoid of projecting solar panels, would be less fussy than that which was approved and the proposed set back would better reflect the established building line. Whilst the proposal would be higher than neighbouring dwellings, it would be only 18cm higher than the permitted height and, in my opinion, this difference would not be significant, especially when read as part of the wider townscape setting. In this context, I am not persuaded that the proposal would “tower over” the neighbouring properties, as suggested. In respect of the increase at basement level, this area is to the rear of the site, so, while it would add to the overall size of the proposal, it would not significantly contribute to its scale and mass from public viewpoints. The wall to the front, as proposed, would help to screen the proposal from along Prospect Road and the changes to finished floor levels would not be readily appreciable from those approved in the streetscape. Accordingly, I do not consider the differences to be so significant that they would render the appeal proposal “top-heavy” and visually incongruous from the views identified. Having undertaken a detailed site visit and carefully reviewed the drawings provided, I am of the opinion that the scale, proportions, massing, layout and overall appearance of the proposed dwelling would not be significantly different to that which was approved from public viewpoints. The materials and finishes proposed would be similar, and the overall detailing comparable. Taking account of the existing ground levels across the site, I am broadly satisfied that the overall difference between the extant approval and the proposal would not be

of such magnitude as to cause any additional unacceptable dominance or overdevelopment of the site.

22. While two storey detached dwellings predominate, there is no distinctive character to Prospect Road and its surroundings given the overall mix of dwelling types that exist which includes those of contemporary design, broadly akin to the appeal proposal. The contextual information provided by the Appellant reinforces this conclusion. Only glimpse type views of the proposal would be available when travelling along Seaview Drive North and it would not be overly conspicuous from the Strand as it would read as part of the wider panorama of the surrounding townscape. Whilst three storey buildings are not predominant, some are evident, thus the appeal proposal would not be an alien feature in the area. In any event, the extant approval was for a three storey dwelling. In the evidential context before me, and for the reasons stated, I am satisfied that the proposal would have no more detrimental effect or have a visual impact significantly greater than the extant approval. In this context, I find that the proposal accords with criteria (a) and (g) of Policy QD1. I now turn to consider criterion (h) of policy QD1.
23. The extant approval permitted balconies on first (or upper ground floor) and second floor level of the dwelling. They would allow for views towards No 33. The main difference between the approval and the appeal proposal is an increase in the floor height of the balconies by around 38cm. In order to help illustrate both scenarios, a 'study of viewing angles' drawing was provided. It shows the angles of view from the second floor balcony. Having undertaken a site visit from within No 33 and from within the building on the appeal site, I consider that the drawing provided broadly reflects the difference in views available and whilst a degree of overlooking would occur, I find that the appeal proposal would have no more detrimental effect than that which was approved. The proposed first floor balcony would be located in a similar location to that which was approved and based on my on-site observations, I am satisfied that it would not lead to any unacceptable overlooking of No 33. I therefore find the overall difference in floor levels to be largely insignificant in this matter. This finding also takes into account the increased setback of the appeal proposal and its closer proximity to the party boundary. The flash balcony of the master bedroom, as now proposed, would principally afford views out towards the sea due to its orientation. Despite its proximity, given its limited dimensions it would only afford restricted and narrow angled views towards No 33 and one would have to lean out significantly in order to overlook the neighbouring property. For these reasons, I am satisfied that the proposed flash balcony would not lead to any unacceptable overlooking to the detriment of residential amenity.
24. The extant approval permitted seven windows on the southern elevation and no obscured glass was proposed. As regards the appeal proposal, of the three ground floor (or lower ground floor) windows proposed, two would be located in similar locations to those of the extant permission with one of the windows smaller in size. None of the proposed windows at this level would overlook any of the windows in the side elevation of No 33 and the outlook from the proposed curved bedroom window would be screened by the existing boundary wall. At first floor level, the proposed windows would be in the same general location as those in the extant approval and the additional glazing around the garden room would be largely offset by the removal of a full height window. In any event, during my site visit, I found that only limited views into the rear amenity space of Nos 33 and

33A were afforded from the garden room due to the angle of view available and the intervening boundary wall. These views would not be unacceptable in an urban context, and I note that the height of the garden room would not be significantly different to that which was approved. While there would be two additional windows introduced at second floor level, they would be finished in obscured glass and would be narrow and top hung. Given that the obscured glass can be secured by condition and the acute angle of view that would be available, I am satisfied that any overlooking from these windows would not be unacceptable. In comparison with the approval, the inclusion of obscured glass combined with the relocation of the remaining apertures would reduce the likelihood of any unacceptable overlooking from the east or rear elevation. For the reasons stated, I am satisfied that despite the set-back and closeness to the party boundary, the appeal proposal would have no more detrimental effect on the amenity of the residents of Nos 33, 33A & 35 than that which was permitted.

25. The extant approval permitted seven windows along the northern elevation towards No 29 Prospect Road. In addition, no obscured glazing was proposed despite one of the windows servicing a habitable room (lounge area). The appeal proposal, by contrast, proposes only four apertures including a door. The ground floor window and door would be screened and the proposed blank spandrel panel would be in the same general location as a window in the extant approval. The proposed first floor window would be in obscured glass. The second floor window would be in the same general location as that approved and whilst it would serve a bedroom, it would be narrow and the limited angle of view available from same would minimise any overlooking. All in all, I consider that this elevation presents an improved relationship with No 29 despite the basement extension and the closer proximity to the boundary. Furthermore, views from the rear windows of the appeal proposal towards the small patio area directly to the rear of No 29 would be very acute and thus not unacceptable. Whilst the appeal proposal would allow for a view from the first floor rear bedroom window into the rear decking area of No 29, this would be an oblique view and again, not unacceptable. In any event, the extant approval had a larger aperture, namely patio doors in the same general location. Any overlooking from the second floor level of the proposal would be reduced by the introduction of obscured glass and the repositioning of windows. The extant approval, in comparison, would have created overlooking from this level into the decked area due to the location of the permitted windows. Given its distance away and my on-site observations, I find that No 27 Prospect Road would not be overlooked by the appeal proposal.
26. The separation distance between the extant approval, the appeal proposal and No 16 Seaview Drive North would fall within the guidance specified in CP. This is despite the appeal proposal edging some 70cm closer to the common boundary. An intervening boundary wall and fence is proposed which would help to screen the appeal proposal. Given the difference in levels and the position of the wall and fence relative to the path of the sun, they would not create unacceptable overshadowing. Furthermore, the proposed fenestration at second floor level would be reduced overall, with one window finished in obscured glass. The proposed level of glazing at first floor level would be broadly similar to that which was approved, although the patio doors would be removed. For these reasons, I am satisfied that the impact of the appeal proposal would have slightly less detrimental effect on amenity than the extant approval on the residents of Seaview Drive North despite it being closer. As regards the potential for

overlooking from the outdoor patio area at the rear of the proposal, I am satisfied that this would be largely comparable to the impact from the extant approval given the details provided and based on my on-site observations. In light of the orientation of the views from the appeal proposal and the separation distances involved, I am satisfied that there would be no overlooking of the private amenity areas associated with the properties opposite the site.

27. Concern was also expressed in respect of loss of light and overshadowing. However, as the overall size and scale of the appeal proposal would not be significantly greater than the building that has permission and given the path of the sun, I am satisfied that there would be no discernible difference to the availability of daylight to surrounding residents as a result. Appeal decision 2016/A0008 is distinguishable to the circumstances before me as there was no fallback position to consider and compare in that case. In any event, each application must be determined on its own merits and in its own evidential context and in this case the extant approval for a three storey dwelling has already set the precedent for a building of that approximate height on the site.
28. For the reasons stated, I consider that the appeal proposal would have less or no more detrimental effect on residential amenity when compared with the extant approval. In this context, the proposal does not offend criterion (h) of Policy QD1. The reason for refusal has not therefore been sustained.
29. As regards the expressed concerns around the practicality and feasibility of the proposal, it would not be in the Appellant's interest to propose a development that could not be realised from a technical perspective. Furthermore, this appeal is not the vehicle to decide whether or not the development would be safe from a Health and Safety perspective. It would be for the Appellant to ensure that the entire development, as proposed, is structurally sound and that it would not compromise the integrity of any retaining structures. Though undertaken at risk, the legislation allows for the submission of retrospective planning applications.
30. It is noted that a lift shaft is proposed, but no actual lift. If a lift were to be installed in future and this was to materially affect the external appearance of the roof of the building, then separate planning permission would be required. Similarly, separate planning permission would be required to change the dwelling to apartments. It is not proposed to use the rear return roof as a balcony as part of the appeal proposal as there is no aperture to provide access to this area and the roof would have no protection around its perimeter. The alleged negative impact on property values was not supported by documentary evidence to substantiate this claim. Limited weight is therefore placed on this objection. As regards site drainage, there is no objection from the competent authorities on this issue. Given their position and the lack of compelling evidence to demonstrate that the appeal proposal would directly lead to a drainage problem, I place limited weight on this objection also. I am not persuaded that the noise, general disturbance or odour generated around bin storage in connection with a single dwelling would be unacceptable. One Objector made reference to policies within the Planning Strategy for Rural Northern Ireland. However, those policies are not of any relevance to the appeal proposal.
31. The Objectors referred to a challenged decision regarding an approval for a hotel on the coast, but as no details were submitted for consideration, I cannot

comment on whether that case is similar to this. In any event, I note that the Council indicated that the hotel case was distinguishable. Rights under the European Convention on Human Rights are qualified and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. I am satisfied that the approval of this appeal represents a fair, reasonable and proportionate response to the facts of this case.

32. The Objectors also suggested a number of amendments to the proposal including the redesign of the second floor. However, this suggestion ignores the fallback position. In any event, the appeal is in respect of full planning permission with a full suite of drawings provided for consideration and I have found the proposal acceptable in the light of the particular circumstances of the case. None of the objections, either individually or cumulatively, would warrant the dismissal of the appeal. As the reason for refusal has not been sustained, the appeal succeeds. The rationale and need for conditions is discussed below.
33. In the interest of road safety, the permanent retention of visibility splays is necessary. The installation of the air source heat pump and acoustic enclosure would be acceptable provided they operate within accepted industry noise standards. This can be controlled by the imposition of planning conditions. References to any specific manufacturers in the conditions could be unenforceable if those suppliers were to rebrand or go out of business. Thus, the suggested references to certain manufacturing brands have been removed. The provision of the proposed screen wall is necessary from a visual amenity perspective and the obscured glazing proposed on second floor level is necessary in the interests of residential amenity.

Conditions

1. The access arrangements including visibility splays as shown on approved Drawing No 02 and Transport NIFCD 1 form dated 18.10.2016 shall be laid out before the dwelling is occupied and permanently retained thereafter.
2. The air source heat pump shall have a sound power level of no greater than 66dB(A) unless otherwise agreed, in writing, with the Planning Authority.
3. Prior to the air source heat pump becoming operational, it shall be permanently housed within an acoustic enclosure to provide attenuation of at least 18dB.
4. Prior to the occupation of the dwelling hereby approved, the proposed screen wall to the front of the dwelling as shown on Drawing No 01 (Rev. 02) shall be provided in its entirety and retained on a permanent basis.
5. Prior to the occupation of the dwelling hereby approved, all second floor windows shall be finished in obscured glass and permanently retained.
6. The development shall be begun before the expiration of five years from the date of this permission.

This decision approves: Drawing No 01 (Rev. 2), Location Plan, Site Plan, Plans and Elevations, 1:100 and 1:1250 @ A1, Drawing No 02, Contextual Elevations and Block

Plan 1:200 and 1:500 @ A1, Drawing No 03, Contextual Overlays 1:200 @ A1, Drawing No 04, Overlays – Elevations and Site Plan 1:100 and 1:200 @ A1, Drawing No 05 Overlays – Floor Plans 1:100 @ A1, Drawing 06, Overlays – Floor Plans 1:100 @ A1, Drawing No 07, Overlays – Floor Plans 1:100 @ A1 and Drawing No 8, Study of Viewing Angles, 1:50 @ A3 stamped refused by the Council on 23 March 2017.

COMMISSIONER PAMELA O'DONNELL

2017/A0008

List of Appearances

Planning Authority:-	<p>Ms E Hudson (Causeway Coast & Glens Borough Council)</p> <p>Ms C Mc Keary (Causeway Coast & Glens Borough Council)</p> <p>Cllr. M Fielding (Causeway Coast & Glens Borough Council)</p>
Appellant(s):-	<p>Mr S Beattie (Instructed by Clyde Shanks)</p> <p>Mr G Rolston (Clyde Shanks)</p> <p>Mr C Shanks (Clyde Shanks)</p> <p>Mr G Montgomery (Architect)</p> <p>Mr K Hunter (Appellant) – Observing</p>
Third Parties: -	<p>Mr W Robinson (on behalf of the Objectors)</p> <p>Mr K Burns (GM Design)</p> <p>Mr & Mrs McGonnigle (No 29 Prospect Road)</p> <p>Mr J Dalzell</p> <p>Mr C Barkley</p> <p>Mr P Elwood</p> <p>Ms V Stephenson (in support of Appellant)</p> <p>Ms O Culbert</p> <p>Mr J Hunter</p>

List of Documents

Planning Authority:-	"A" Statement of Case
Appellant(s):-	<p>"C" Statement of Case</p> <p>"C1" Letter from Investec</p>
Third Parties:-	"B" Statement of Case



Appeal Decision

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Appeal Reference:	2013/A0229
Appeal by:	Mr Damien Murphy against the refusal of full planning permission.
Development:	Retention of dwelling and detached garage, relocated as to that approved under planning application P/2011/0922/F.
Location:	Adjacent to and 110 metres east of No 25 Cashel Road, Silverbridge, Newry.
Application Reference:	P/2013/00741/F
Procedure:	Written Representations and Commissioner's Site Visit on 18 July 2014.
Decision by:	Commissioner Rosemary Daly, dated 8 August 2014.

Decision

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

Background

2. The Department granted full planning permission for a dwelling and detached garage on a farm at 25 Cashel Road on 22 March 2012 (P/2011/0922/F). The existing farm dwelling and associated buildings are accessed off a private laneway and are located some 340 metres west of Cashel Road. The laneway rises gradually in elevation from Cashel Road, reaching a gentle crest before descending down to the farm group. The undulating topography in the area means that the farm dwelling and associated buildings are not visible from Cashel Road. The approved site fronts onto the farm laneway, lies east of the farm grouping and is separated from it by an intervening field. A dwelling, which is the subject of this appeal, is already constructed to roof level on the appeal site and work has commenced on the separate garage. However, the buildings are sited some 25 metres further east than the approved siting, with the result that the structures are closer by that distance to Cashel Road and further by the same distance from the farm group at 25 Cashel Road. The appeal proposal seeks retrospective approval for the revised siting and for a ridge height that is 0.6m higher above finished ground level than that shown on the approved plans.

Reasoning

3. The issues to be addressed in this appeal are whether there is policy support for the alternative siting and for the revised design.
4. Policy CTY 1 of Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) sets out the range of types of development which in principle are considered acceptable in the countryside. One such type of development relates to a dwelling on a farm in accordance with Policy CTY 10, which states that planning permission will be granted for a dwelling house on a farm where certain criteria are met. The Department has raised no issues in respect of criteria (a) or (b). The pertinent criterion is (c), which requires that the new building should be visually linked or sited to cluster with an established group of buildings on the farm. In cases of non-compliance with this criterion Policy CTY 13 requires that buildings should be visually integrated into the surrounding landscape and be of an appropriate design.
5. In respect of criterion (c) of CTY 10, the justification and amplification section set out in Paragraph 5.41 states that: *"...to help minimise impact on the character and appearance of the landscape such dwellings should be positioned sensitively with an established group of buildings on the farm, either to form an integral part of that building group, or when viewed from surrounding vantage points, it reads as being visually linked with those buildings, with little appreciation of any physical separation that may exist between them"*. Given that the approved siting of the new dwelling is removed from the existing farm grouping by some 125m it is clear that it did not cluster with that grouping. While it is possible to see the farm grouping and the approved site in conjunction from certain points along the laneway it is also evident, from those same views, that they are visually distinct from one another, being physically separated by an intervening field. There is no substantive intervening vegetation to obscure or filter that physical gap and the changes in elevation along the laneway further emphasise the visual and physical separation. It is therefore my judgement that the visual linkage test, as set out in criterion (c) of Policy CTY 10, was not met in the first application.
6. In the absence of any indication that the proposal was considered an exception to the siting requirements of criterion (c) of CTY 10, it must be concluded that the Department, in granting permission, made a judgement that criterion (c) had been met in the first application. The permission for that siting remains capable of implementation. Notwithstanding my reservations about the policy interpretation applied in approving the first application it provides a benchmark for what the Department deemed as satisfying criterion (c) of CTY 10 and is material to my assessment of the appeal proposal. Accordingly, in assessing the Department's second reason for refusal, I now consider the differences between the siting of the buildings currently being constructed and the siting of those previously found to be acceptable and approved by the Department.
7. While the dwelling and detached garage in the appeal proposal are sited 25m east of the approved location, they remain within the same field parcel and maintain the

same orientation to the adjoining laneway as that indicated on the approved plans. The revised siting does not change the visual relationship between the proposed dwelling and the main farm grouping to any significant degree. Clearly, though, the revised siting does not meet the visual linkage test of CTY 10 and in failing to do so the proposal does not fall within one of the accepted categories of development allowed for in Policy CTY 1. However, I cannot ignore the fact that there is an extant planning permission for a siting in which the visual relationship with the farm grouping at No. 25 is not significantly different from that now proposed. In respect of the second stated reason for refusal, I find the planning history to be a material consideration that outweighs the failure of the appeal proposal to satisfy the siting requirements of criterion (c) of CTY 10.

8. In its first reason for refusal the Department has stated that the appeal proposal would be a prominent feature in the landscape. Policy CTY 10 indicates that where a new building on a farm is not visually linked or sited to cluster with an established group of buildings on the farm the proposed site must then meet the requirements of Policy CTY 13 and criteria (a) to (f) inclusive to ensure that it is satisfactorily integrated into the landscape. In granting permission for the original application it must be assumed that the Department was satisfied that the proposal did not offend the requirements of CTY 13, in particular criterion (a), which deals with visual prominence. I now turn to assess the appeal proposal against the approved plans in that context.
9. The approved plans show that the dwelling was to be sited close to the crest of a hill, between the 99m and 100m contour lines, with the 100m line defining the top of the slope. It is apparent from the approved plans that the finished floor level was to be 100.3m, with the ground level around the dwelling raised up to provide a level platform at the 100m level. This suggests to me that if the approved plans were implemented at the very least the upper portions of the dwelling would be visible against the skyline as seen from Cashel Road in the vicinity of the laneway junction with the public road. The appeal proposal is sited between two 100m contour lines, with a finished floor level of 100.3m, meaning that the ground and floor levels would be no higher than those previously approved. I accept that the appeal proposal moves the dwelling and garage 25m closer to Cashel Road and entails an increased ridge height of 0.6m, meaning that more of the upper portions of both buildings will be seen against the skyline than would have been the case with the approved plans. However, given what the Department was prepared to accept in the first instance and in the knowledge that the original permission remains extant and capable of approval I am not persuaded that the differences between the two schemes are so significant or so marked that it warrants refusal of the appeal proposal.
10. I conclude that the very particular and specific planning history of this site is determining in this case. Accordingly the existence of the extant planning permission materially outweighs the failure of the appeal proposal to comply with criterion (c) of CTY 10, criterion (a) of CTY 13 and its failure to fall within one of the accepted forms of development identified in CTY 1 of PPS 21.

11. In order to prevent a proliferation of dwellings in the field relating to the appeal site and given that planning permission P/2011/0922/F is still extant, it is necessary to condition that only one dwelling is constructed on the site. To ensure safe access from the laneway to the public road the visibility splays and forward sight distance indicated on the site layout plan should be put in place before occupation of the dwelling and thereafter be maintained. It is not necessary to amend the gradient of the access to the dwelling as the laneway is already in place serving the existing farm. The natural screening along the northern boundary assists the assimilation of the dwelling and garage into the surrounding countryside. It should therefore be retained and be allowed to grow on to a height of not less than 3 metres above ground level.

Conditions

1. One dwelling and domestic garage only shall be constructed within the area cross hatched on drawing No. 1, the 1:2500 scale location map bearing the Planning Service received date stamp of 9 Oct 2013 as attached.
2. Before the dwelling and garage are occupied the visibility splays, forward sight splay and widening of the laneway shall be put in place, all in accordance with drawing No. 2, the 1:500 scale Site Layout Plan bearing the Planning Service received date stamp 9 Oct 2013 and shall thereafter be permanently retained.
3. The existing hedge along the site's northern boundary shall be allowed to grow on and shall thereafter be retained at a height of not less than 3 metres above ground level.

This decision relates to the following drawings:

- Drawing No 1, Site Location Map Scale 1:2500 bearing the Planning Service received date stamp 9 Oct 2013;
- Drawing No 2, Site Layout Plan Scale 1:500 bearing the Planning Service received date stamp 9 Oct 2013;
- Drawing No 3 Plan, Elevations and Details Scale 1:100 bearing the Planning Service received date stamp 9 Oct 2013;
- Drawing No 4 First Floor Plan Scale 1:50 bearing the Planning Service received date stamp 9 Oct 2013; and
- Drawing No 5 Double Garage Details Scale 1:50 bearing the Planning Service received date stamp 9 Oct 2013.

COMMISSIONER ROSEMARY DALY

Case No: CO/4764/2012

Neutral Citation Number: [2012] EWHC 3708 (Admin)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT IN LEEDS

Leeds Combined Court,
1 Oxford Row, Leeds, LS1 3BG

Date: 20/12/2012

Before:

MR JUSTICE HICKINBOTTOM

Between:

THE QUEEN on the application of
ZURICH ASSURANCE LIMITED trading as
THREADNEEDLE PROPERTY INVESTMENTS

Claimant

- and -

NORTH LINCOLNSHIRE COUNCIL

Defendant

- and -

SIMONS DEVELOPMENTS LIMITED

Interested
Party

Paul G Tucker QC and Anthony Gill (instructed by Nabarro LLP) for the Claimant
Vincent Fraser QC and Alan Evans (instructed by Legal Services Department,
North Lincolnshire Council) for the Defendant
Christopher Katkowski QC and Graeme Keen (instructed by Gordons LLP)
for the Interested Party

Hearing date: 17 December 2012

Judgment

Mr Justice Hickinbottom:**Introduction**

1. The Claimant ("Zurich") is the owner of the Foundry Shopping Centre, which lies within the primary shopping area in the centre of Scunthorpe, the largest town in North Lincolnshire. The shopping centre comprises 19,000 sq m of retail floorspace in 45 units.
2. The Interested Party ("Simons") has an option to purchase the Trent Valley Garden Centre, Doncaster Road, Gunness ("the Site"), which is about 2.5 kilometres from Scunthorpe town centre.
3. On 26 March 2012, the Defendant ("the Council"), which is the relevant local planning authority, granted planning permission to Simons to demolish the garden centre and its associated structures, and construct a retail park with four retail units and associated access roads, car parking, servicing area and landscaping.
4. In this claim, issued on 8 May 2012, Zurich challenges that decision, with the permission of His Honour Judge Gosnell sitting as a judge of this court granted on 23 July 2012.
5. At the substantive hearing, Zurich was represented by Paul Tucker QC and Anthony Gill, the Council by Vincent Fraser QC and Alan Evans, and Simons by Christopher Katkowski QC and Graeme Keen.

Factual Background

6. The Site has been a garden centre since the mid-1980s: on 17 January 1985, planning permission was granted for a change of use of the land, and to erect appropriate buildings. That permission was subject to a condition (Condition 2) that limited the goods that could be sold to a prescribed list which, in general, excluded food and clothes. However:
 - i) full planning permission was granted on 3 April 1986 to retain a restaurant, lounge and patio area;
 - ii) outline planning permission was granted on 9 August 1990 to erect buildings to create a non-food retail warehouse park (although that was never implemented, and has of course long since lapsed); and
 - iii) there is significant evidence that the Site has in fact been used for very wide retail use – far wider than allowed by Condition 2 – for some considerable time (e.g. the Secretary of State's decision letter of 9 August 1990 refers to the garden centre having "already some... 4,500 sq m of retail floorspace used for the sale of a wide range of goods").
7. On 22 August 2011, Simons made a further application for planning permission for a new retail park on the Site, initially proposing six retail outlets, but later reduced to four namely one large unit (4,645 sq m) and three smaller units. Accompanying the application was a screening opinion dated 22 July 2011 under Regulation 4 of the Town and Country Planning (Environmental Impact Assessment) (England and

Wales) Regulations 1999 (SI 1999 No 293), to the effect that a full environmental impact assessment was unnecessary. The application was validated by the Council on 31 August 2011.

8. Two letters of objection were lodged by planning consultants representing Zurich (Indigo Planning Limited, "Indigo"). However, on 14 December 2011, the application was considered by the Council's Planning Committee, which resolved in favour of granting it subject to the completion of a satisfactory Section 106 planning obligation. The application was referred to the Secretary of State, who indicated that the matter would not be called-in for decision by him.
9. On 23 December 2011, a letter before claim was sent to the Council by an informal group of local businesses and residents opposed to the project, known as "Keep Scunthorpe Alive" ("KSA"), challenging the decision to grant permission; and further letters of objection were sent by Indigo. As a result, the Council's case officer (Mr David Wordsworth) prepared a further report for the committee which, rather than merely updating the earlier report to deal with the objections received, was a comprehensive report covering all of the ground again including the contents of the objections to which I have referred ("the Main Report") with an addendum of its own responding to two late, further letters of objection from Indigo and KSA ("the Addendum Report"). It is therefore unnecessary for me to consider the earlier report further.
10. On 7 March 2012, on the basis of the Main Report and the Addendum Report, the Council's Planning Committee reconsidered the application, and again resolved to grant permission subject to referral and a satisfactory Section 106 obligation, in the following terms:

"Resolved - (a) That the committee is mindful to grant permission for the development; (b) that the application be referred to the Secretary of State in accordance with statutory procedures to enable him to consider whether or not to intervene; (c) that in the event of the Secretary of State deciding not to intervene, the Head of Development Management be authorised to grant permission subject to the completion of a formal agreement under Section 106 of the Town and Country Planning Act 1990 providing for off-site highway improvements, Scunthorpe town centre protection, protected species translocation and maintenance and a contribution towards improving the existing footpaths in the vicinity of the site, and to the conditions contained in the report, and (e) [sic] that if the obligation is not completed by 7 June 2012, the Head of Development Management be authorised to refuse the application on the grounds of the adverse impact upon the vitality and viability of Scunthorpe town centre, adverse impact upon highway safety and levels of congestion within the locality, adverse impact upon protected species and their habitat, and non-compliance with Policy EC16 of PPS 4, policies T2 and T6 of the North Lincolnshire Local Plan, and policies C14, C25 and CS17 of the North Lincolnshire Core Strategy."

(The voting being equal on the above matter, ... the chairman used his second and casting vote in favour of the motion)."

That resolution very much followed the wording of the officer's formal recommendation at pages 63-4 of the Main Report.

11. The Secretary of State did not call-in the decision. A Section 106 agreement was completed, and full planning permission granted, on 26 March 2012.
12. It was a condition of the grant of planning permission (Condition 38) that the first tenant of the large unit should be a retail company within the Marks and Spencer plc group of companies ("Marks & Spencer"). Marks & Spencer had had a 949 sq m shop in High Street, Scunthorpe from 1931 to early 2011 when it closed, commercial non-viability being given as the reason for closure.
13. It is that grant of planning permission on 26 March 2012 that Zurich now challenges.

Legal Principles

14. This case hinges largely upon criticisms of the officer's Main and Addendum Reports to the Council's Planning Committee, seen in the light of national and local planning policy. The relevant legal principles relating to such reports and policy were agreed by the parties, and are uncontroversial.
15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:
 - i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the reasoning of the report, particularly where a recommendation is adopted.
 - ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole. Consequently:

"[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106106, per Judge LJ as he then was).
 - iii) In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (R v Mendip District Council ex parte Fabre (2000) 80 P & CR

500, per Sullivan J as he then was). That background knowledge includes “a working knowledge of the statutory test” for determination of a planning application (Oxton Farms, per Pill LJ).

16. The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:
 - i) The interpretation of policy is a matter of law, not of planning judgment (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13).
 - ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.
 - iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780 per Lord Hoffman).

The Relevant National and Local Guidance

17. At the relevant time, national planning policy was contained in Planning Policy Statement 4: Planning for Sustainable Economic Growth (“PPS4”), supplemented by Planning for Town Centres: Practice Guidance on Need, Impact and Sequential Approach (“the PPS4 Practice Guidance”), both published by the Secretary of State for Communities and Local Government. (For the sake of completeness, it should be said that PPS4 was replaced on 27 March 2012, i.e. the day after the relevant planning decision in this case. However, the National Planning Policy Framework, which replaced PPS4, has no relevance to this claim.)
18. PPS4 identifies the Government’s overreaching objective for a prosperous economy as “sustainable economic growth” (paragraph 9). To help achieve that, the Government’s more particular objectives for planning include building prosperous communities by improving the economic performance of towns, delivering more sustainable patterns of development, and promoting the vitality and viability of towns and other centres as important places for communities (including the focusing of new economic growth and development of main town centre uses in existing centres) (paragraph 10).
19. One policy to that end is the requirement for sequential assessment for planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan (Policy EC14.3). Such sequential assessments must be performed in accordance with Policy EC15, which provides:
 - “15.1 In considering sequential assessments required under Policy EC14.3, local planning authorities should:
 - a. ensure that sites are assessed for their availability, suitability and viability.

b. ensure that all in-centre options have been thoroughly assessed before less central sites are considered.

c. ensure that where it has been demonstrated that there are no town centre sites to accommodate a proposed development, preference is given to edge of centre locations which are well connected to the centre by means of easy pedestrian access.

d. ensure that in considering sites in or on the edge of existing centres, developers and operators have demonstrated flexibility in terms of:

i. scale: reducing floorspace of their development;

ii. format: more innovative site layouts and store configurations such as multi-storey developments with smaller footprints;

iii. car parking provisions: reduced or reconfigured car parking areas; and

iv. the scope for disaggregating specific parts of a retail or leisure development, including those which are part of a group of retail or leisure units, onto separate, sequentially preferable, sites. However, local planning authorities should not seek arbitrary sub-division of proposals.

15.2 In considering whether flexibility has been demonstrated under policy EC15.1.d above, local planning authorities should take into account any genuine difficulties which the applicant can demonstrate are likely to occur in operating the proposed business model from a sequentially preferable site, for example where a retailer would be limited to selling a significantly reduced range of products. However, evidence which claims that a class of goods proposed to be sold cannot be sold from the town centre should not be accepted."

20. Policy EC16.1 requires planning applications for main town centre uses that are not in a centre and not in accordance with an up-to-date development plan to be assessed against a number of identified impacts on centres, including "the impact of the proposal on town centre vitality and viability..." (Policy 16.1.b). Policy EC10.2 requires such applications also to be assessed against a number of other considerations, including the impact on economic and physical regeneration (Policy EC10.2.d) and the impact on local employment (Policy EC 10.2.e).

21. Policy EC17 is of particular importance in this claim. It provides as follows:

"EC17.1 Planning applications for main town centre uses that are not in an existing centre and not in accordance with an up to

date development plan should be refused planning permission where:

- a. the applicant has not demonstrated compliance with the requirements of the sequential approach (policy EC15); or
- b. there is clear evidence that the proposal is likely to lead to significant adverse impacts in terms of any one of impacts set out in policies EC10.2 and 16.1 (the impact assessment), taking account of the likely cumulative effect of recent permissions, developments under construction and completed developments.

EC17.2 Where no significant adverse impacts have been identified under policies EC10.2 and 16.1, planning applications should be determined by taking account of:

- a. the positive and negative impacts of the proposal in terms of policies EC10.2 and 16.1 and any other material considerations; and
- b. the likely cumulative effect of recent permissions, developments under construction and completed developments.

EC17.3 Judgments about the extent and significance of any impacts should be informed by the development plan (where this is up to date). Recent local assessments of the health of town centres which take account of the vitality and viability indicators in Annex D of this policy statement and any other published local information (such as a town centre or retail strategy), will also be relevant.”

22. The effect of Policy EC17, and the requirements it places on a local authority applying it, are clear – and again uncontentious as between the parties to this claim.
 - i) Where a planning application is for development of main town centre uses not in a centre and not in accordance with an up-to-date development plan, then it is for the applicant to demonstrate compliance with the requirements of the sequential approach (confirmed in paragraph 5.6 of the PPS4 Practice Guidance).
 - ii) The question as to whether the applicant has demonstrated compliance is logically binary, i.e. it is capable of only one of two answers, “yes” or “no”. Compliance has either been demonstrated, or it has not.
 - iii) If it has been demonstrated, and no significant adverse impacts have been identified under Policies EC10.2 or 16.1, then the application is determined by the planning committee performing a balancing exercise, taking account of the positive and negative impacts of the proposal in terms of those two policies and any other material considerations. That balancing exercise takes place within the four corners of the policy: the policy requires it to be performed.

- iv) If it has not been demonstrated, or if it has been demonstrated but there is clear evidence that the proposal is likely to lead to significant adverse impacts set out in Policies EC10.2 and 16.1, then the policy is that the application should be refused. However, that national policy (of refusing an application in these circumstances) is capable of being displaced if the planning committee considers that it is outweighed by other material considerations. That too requires the committee to perform a balancing exercise, but this exercise is performed outside the four corners of the policy: it is required because of the *nature* of the policy, not because of its *terms*. However, one negative factor that must be taken into account in this exercise is of course the fact that it is the national policy to refuse an application in these circumstances.
23. That is the relevant national policy. Turning to local policy, the development plan for North Lincolnshire comprises three elements:
 - i) The Yorkshire and Humber Plan (Regional Spatial Strategy to 2026): The Localism Act 2011 enables the revocation of regional policies, but that has not been fully implemented yet. Policy YH4 identifies Scunthorpe as a sub-regional town which should be the prime focus for facilities (including retail shopping) in the region.
 - ii) Those parts of the North Lincolnshire Local Plan that were saved by a direction of the Secretary of State dated 17 September 2007: Policy S8 (Out-of-centre Retail and Leisure Development) reflects the national sequential approach, by only permitting out-of-centre retail development where (amongst other things):
 - a clear need for the development can be demonstrated;
 - a developer can demonstrate that there are no sites for the proposed use within or at the edge of the town centre that are suitable, viable for the proposed use and likely to be available within a reasonable time period; and
 - the proposal will have no adverse impact on the vitality and viability of existing district centres and the rural economy;
 - iii) The Council's Core Strategy, adopted in June 2011 as part of the North Lincolnshire's local development framework, which sets out the spatial planning framework to 2026.
24. Mr Tucker particularly relied upon the Core Strategy. It stresses (paragraphs 10.7 and 10.9):

"The improvement of Scunthorpe town centre is priority for both the Sustainable Community Strategy and the [Local Development Framework]....

As part of the Scunthorpe Urban Renaissance Programme the town centre will be subject to considerable change and

redevelopment that reinforces its role as North Lincolnshire's main centre as well as enhancing its role regionally."

25. Policy CS14.1 states:

"To fulfil its sub-regional role, identified in the [Regional Spatial Strategy], Scunthorpe town centre will be main location for all new retail, leisure, cultural and office development.... New development should make a positive contribution to improving the town centre's viability and vitality, support the creation of a comfortable, safe, attractive and accessible shopping environment, and improve the overall mix of land uses in the centre and its connectivity to adjoining areas."

26. Directly reflecting PPS4 and the sequential approach required by that national policy, paragraph 10.25 provides:

"New retail development is an important part of the continued growth in North Lincolnshire. In particular it will have an important role to play in helping to regenerate Scunthorpe town centre. In choosing the location of new retail development, it should be done in line with the sequential test as set out in PPS4, which is as follows:

- Existing centres, where the development is appropriate in relation to the role and function of the centre, then
- Edge of centre locations, which are well-connected to the existing centre and where the development is appropriate to the role and function of the centre, and then
- Out of centre sites that are well serviced by a choice of means of transport."

Application of the Policies to this Application

27. In respect of Simons' August 2011 application, the planning committee had the benefit of advice from two consultants in retail development, HOW Planning LLP ("HOW", instructed by Simons) and England & Lyle (instructed by the Council itself).
28. HOW and England & Lyle agreed that the proposed development would not have any significant adverse impact on Scunthorpe town centre, the predicted diversion of trade being no more than 5.5% (see Main Report, at page 59).
29. On the other hand, there was evidence that the development would bring significant economic benefits to the area, with estimates of a claw back of retail trade of £20m, and the creation of approximately 300 part-time and full time jobs (Main Report, page 49). The evidence of the Council's Head of Economic Development and Area Renaissance included the following (Main Report, page 62):

“Whilst we recognise that there may be some negative impact on the town centre of the development, the employment growth, increased local disposable income and stemming the leakage of retail spend outside of North Lincolnshire will result in a net positive impact on Scunthorpe and North Lincolnshire.

It is recognised that female unemployment is currently rising faster than male unemployment in North Lincolnshire. The additional new jobs created, due to their part-time nature, will provide needed employment opportunities particularly for female unemployed.

A global, well-respected firm such as [Marks & Spencer] will provide Scunthorpe with a positive marketing opportunity and may help raising the profile and aspiration of not only Scunthorpe as a town but of North Lincolnshire as a whole.”

30. With regard to the sequential test, HOW concluded that there were no sequentially preferable sites within or on the edge of Scunthorpe. However, England & Lyle examined the potential for the proposed Marks & Spencer store to be split into (i) a non-food (clothes and household goods) store which might be accommodated in a 3,884 sq m unit in Cole Street in the town centre, previously occupied by T J Hughes, and (ii) a food-only store which might be accommodated in the unit in the High Street formerly occupied by Marks & Spencer. The advisers considered that, if the T J Hughes unit was to be discounted, then “there needs to be a clearer justification as to why it is not suitable for use by Marks & Spencer” (paragraph 8.8 of November 2011 Report). Furthermore, if the proposed Marks & Spencer retail operation could be accommodated thus, “the sequential assessment does not adequately assess whether the floorspace of the other retail units could be located on separate sequentially preferable sites to comply with Policy EC15” (paragraph 8.14).
31. HOW responded that Marks & Spencer did not have a business model of stores limited to clothes and household goods, and they considered that they needed a store offering a full range of their goods to make it commercially viable.
32. England & Lyle were still cautious. In their response to HOW’s further comments, they said:

“There may be advantages in creating a critical mass of retail development on the application site but these advantages should be treated as positive benefits of the scheme, not part of the sequential approach. Policy EC17 justifies refusal of planning permission where an applicant has not demonstrated compliance with the requirements of the sequential approach. In this instance we suggest that it is better for the Council to make its own judgement about whether sequentially preferable sites are available, suitable and viable for retail development – including the former T J Hughes unit, West Street car park, land surrounding Church Square, Winterton Road, Glebe Pit and Brigg Road. We would simply comment that, regarding the former T J Hughes unit, the argument seems to be that it

would not be viable for Marks & Spencer to operate a store selling clothing and homewares, and have a separate Simply Food store. But the qualitative need that has been claimed is for an improved retail offer in clothes shopping. It may be viable for Marks & Spencer to operate a store selling clothes and food in the T J Hughes unit, which is significantly larger than the former [Marks & Spencer] store in the High Street. The Council needs to be satisfied that the business model proposed by Marks & Spencer is the most appropriate one for Scunthorpe, such that it justifies an out-of-centre location.”

33. In fact, by that stage, of the possible alternatives mentioned, the T J Hughes unit was the only available site in the town centre, the issue consequently focusing on whether that site was suitable and viable.
34. It was the view of Marks & Spencer, shared by the applicant Simons, that splitting their proposed operation between the T J Hughes unit and other premises was not commercially viable. The Main Report of the officer accepted that justification for not splitting the Marks & Spencer operation, but it did not accept that the smaller units could not be disaggregated, in the following terms:

“The applicants have stated that the closure of [Marks & Spencers] in-centre operation in 2010 on viability grounds, which was a more typical clothing and food offer, demonstrates that this is a challenging catchment for the retailer from a commercial perspective. This position has led [Marks & Spencer] to establish that ‘to create a commercially viable store within the catchment area, a clothing, homeware, food and hospitality offer needs to be provided under one roof in order to give shoppers a comprehensive brand offer and critical mass of retailing that would make them want to return, and therefore seeks to ensure that the store remains commercially viable’. Furthermore, whilst [Marks & Spencer] do trade from convenience goods focused Simply Food units, they do not have a business model comprising solely clothing and homeware goods. This additional justification provided by the applicants does explain how the viability of the [Marks & Spencer] business model is an important consideration, and justifies why neither the T J Hughes site or the Southgate units are suitable given that the clothing and food offer at the [Marks & Spencer] town centre site failed to be viable.” (page 55).

“In summary, the applicants have adequately justified the sequential approach taken by assessing sites within and on the edge of Scunthorpe town centre for their availability, suitability and viability. On the issue of disaggregation, whilst the applicants have provided a justification why the [Marks & Spencer] (unit 1) cannot be disaggregated, they have not demonstrated flexibility in terms of disaggregating the smaller units of the proposal (units 2, 3 and 4) onto separate, sequentially preferable sites. For this reason it is felt that the

sequential test has not been passed and therefore fails to comply with all the requirements of policy EC15 of PPS4.” (page 57)

35. It is common ground between the parties that Simons, as the applicant, failed to demonstrate compliance with the requirements of the sequential approach in Policy EC15, for the reasons given in that report, i.e. that it had failed to demonstrate the flexibility required by Policy EC15.1.d.iv, in that it had not demonstrated that the three smaller units could not be disaggregated into separate, sequentially preferable sites.

The Grounds of Challenge

36. Zurich, through Mr Tucker, relied upon six grounds of challenge.
37. I can deal with two grounds very shortly, because Mr Tucker properly conceded that, in this court, they are bound to fail by dint of authority binding on me. They were Grounds 5 and 6 in the Statement of Facts and Grounds, namely:
 - i) Ground 5: The Highways Contribution Planning Obligation: The Section 106 agreement included an obligation to pay the sum of £300,000 for capacity road improvements. It was submitted that the committee erred because they were not advised that they could only take this proposed obligation into account if it was justified by Regulation 122(2) of Community Infrastructure Levy Regulations 2010 (SI 2010 No 949). However, Mr Tucker accepted that, on the current state of the law and in particular Derwent Holdings v Trafford Metropolitan Borough Council [2011] EWCA Civ 832, even if he were to persuade me that that was so, that would not be a basis upon which the planning permission challenged could be quashed.
 - ii) Ground 6: Legal Error in the Screening Opinion: It was submitted that the screening opinion dated 22 July 2011 (referred to in paragraph 7 above) was unlawful, as it relied upon future documentation which did not exist at the time of the opinion. However, it was not suggested that there was any evidence that, if the opinion had been prepared in accordance with the correct procedure, the resulting decision in relation to the planning permission would have been any different. Consequently, Mr Tucker conceded that, as the challenge advanced was based upon a procedural not substantive defect, following R (Berky) v Newport City Council [2012] EWCA Civ 378, that basis of challenge would be bound to fail in this court.
38. In those circumstances, whilst preserving the Claimant’s position, Mr Tucker did not actively pursue either ground. I formally dismiss them.
39. Mr Tucker did actively rely on four other grounds, which I will deal with in turn.

Ground 1: Misapplication of Policy EC17

40. As I have indicated (paragraph 22(ii) above), the question as to whether an applicant has demonstrated compliance with the requirements of the sequential approach is capable of only one of two answers, “yes” or “no”. If it has not demonstrated

compliance, then there is a presumption raised by Policy EC17 that the application will be refused. In this case it is common ground that Simons failed to demonstrate compliance with the requirements of the sequential approach in the manner I have described (paragraphs 34-5 above).

41. However, Mr Tucker submitted that the planning committee were led into error by the officer's Main Report which, at page 62, said:

"PPS4 is clear in its advice that local planning authorities must consider both the sequential approach and impacts upon retail centres when determining out-of-centre retail development proposals. The applicants have followed the sequential approach and assessed whether sites are suitable, viable or available but have not displayed flexibility by looking at the issue of disaggregation, particularly with regard to the smaller units (units 2, 3 and 4). Consequently policy EC15 of PPS4 is not fully complied with."

42. That reference to the policy not being "fully" complied with is repeated in the Addendum Report, at page 1, which says in response to the further letters of objection:

"In response, it should be noted that it is accepted that the retail proposal at [the Site] does not fully comply with the sequential approach..."

That report goes on to say, at page 3, that:

"In this case, it is felt that the economic benefits of the development are material considerations which outweigh the development plan and any non-compliance with the sequential test under the provisions of PPS4".

43. Mr Tucker submitted that those passages displayed a fundamental misunderstanding and misapplication of Policy EC17 – because the policy does not admit of partially meeting of the sequential test. The committee, instead of being told in unequivocal terms that where there was (any) failure to meet the sequential test the national policy directed refusal of the application, were led to believe that the partial breach of the test should merely be weighed against the positive material considerations, notably the economic benefits of the development. That was a legal error with regard to the proper approach to Policy EC17, as a result of which the planning permission should be quashed.
44. Forcefully as that submission was made, I do not find it compelling. The passages relied upon must be seen in their full context: I am not persuaded that the Main and Addendum Reports, when viewed fairly as a whole, do betray any misunderstanding or misapplication of Policy EC15.
45. The Main Report shows the following.

- i) Mr Tucker accepted – as he had to do – that the relevant PPS4 national policies are comprehensively and accurately set out on pages 21 and following of the Main Report. On page 24, Policy EC17.1 is accurately set out, thus:

“Planning applications for main town centre uses that are not in an existing centre and not in accordance with an up-to-date development plan should be refused planning permission where... the applicant has not demonstrated compliance with the requirements of the sequential approach (Policy EC15)...”.

That is repeated on page 51.

- ii) Policy EC15 is set out in full on page 54; and that test is immediately applied to the circumstances of this case on pages 55-7. The conclusion of the report on that issue, set out in the passage quoted above (paragraph 34) was that “the sequential test has not been passed...”. That conclusion is clear and unequivocal.
- iii) However, that is not the end of the planning committee’s exercise; because, having found that the applicant had not satisfied the sequential test (thereby giving rise to a national policy presumption of refusal), the committee still had to decide whether there are any other material considerations which displace that presumption. The report proceeds, properly, to consider the other material considerations, both positive and negative: the impact of the development on Scunthorpe town centre and other retail centres within the catchment area (pages 57-9), highway issues (pages 59-61), residential amenity (pages 61-2), economic considerations (page 62) and ecology (page 62).
- iv) There is then a section headed “Balance of Considerations”, which includes the first quoted passage upon which Mr Tucker relies. That needs to be placed in its particular context: it forms part of the following passage:

“Under the provisions of Section 70(2) of the Town & Country Planning Act 1990 local planning authorities are required, when determining applications, to have regard to the provisions of the development plan, so far as material to the application, and to any other material considerations. Government guidance and the contents of Planning Policy Statements are material considerations but local planning authorities need not follow Government guidance if other material considerations outweigh this.

PPS4 is clear in its advice that local planning authorities must consider both the sequential approach and impacts upon retail centres when determining out-of-centre retail development proposals. The applicants have followed the sequential approach and assessed whether sites are suitable, viable or available but have not displayed flexibility by looking at the issue of disaggregation,

particularly with regard to the smaller units (units 2, 3 and 4). Consequently policy EC15 of PPS4 is not fully complied with.

Under policy EC17.1a of PPS4 planning applications that fail to demonstrate compliance with the sequential approach (policy EC15) should be refused.” (emphasis added).

- v) The report then proceeds to consider the other material considerations to which it has already referred, of which it considers that the economic benefits of the development should be attributed particular weight in a period of serious economic downturn:

“The attraction that a [Marks & Spencer] store and other retailers would have in potentially stimulating the local economy is a key driver in reducing the leakage of expenditure to neighbouring centres such as Doncaster and Meadowhall”

The other particular factor which is identified is “the fall back position of the existing use of the site, which enables 4,500 sq m gross of retailing from the site”. I return to this factor below (paragraphs 65 and following below; see especially paragraph 68).

- vi) There is then consideration of how the adverse impact on the town centre, albeit not significant, might be diminished by a Section 106 obligation (again referred to below: paragraphs 79 and following below; see especially paragraph 84).

- vii) The final conclusion (and the report’s recommendation) was:

“It is considered that the positive benefits outweigh the negative and what negative impacts have been identified have been mitigated to an acceptable degree. Consequently the recommendation is one of approval subject to the conditions and the completion of a Section 106 agreement”.

- 46. It may be that a Parliamentary or other legal draftsman might have drafted some of those passages differently – but, in my judgment, it is clear what is going on here. The applicant having failed to persuade the officer that the sequential test is passed, the officer performs the exercise which he must perform to see whether the presumption of refusal mandated by PPS4 is outweighed by other material considerations (see paragraph 22(iv) above). With respect to Mr Tucker’s submission, it is evident that, as part of that exercise, the national policy directing refusal in these circumstances is clearly taken into account, expressly, in the italicised passage set out in paragraph 45(iv) above. I agree with Mr Katkowski’s submission: *at this stage*, when the positive and negative factors are being balanced to determine whether the presumption is displaced, the extent and consequences of the breach of the sequential provisions may be relevant. That is so because, as well as the breach of

those provisions raising a presumption of refusal, the extent of the breach may be relevant to the question whether the presumption so raised is overcome in the circumstances of the particular case. The scope of the breach in this case comprised the failure on Simons' part to demonstrate that the three smaller units could not be disaggregated into separate, sequentially preferable sites (see paragraph 35 above).

47. The officer considered that the presumption of refusal was displaced in this case by, at least primarily, the economic benefits that this development would bring to the area (briefly described in paragraph 29 above). That was a conclusion based on planning judgment to which the officer was entitled to come, and which the planning committee were entitled to follow.
48. I do not consider that the Addendum Report takes matters any further. The references, early in the report, to the proposal not "fully" complying with the sequential approach and the economic benefits of the scheme outweighing "the non-compliance with this part of PPS4" appear to me to be no more than a references back to the wording of the main report, rather than a new decision. Mr Tucker relied upon the words "with this part of PPS4" which, he submitted, showed that the officer had improperly suggested that there could be partial compliance with the sequential approach; but, as I have described, the officer had, by this stage, moved on. He had previously unequivocally indicated that the national policy sequential approach had been breached, and was now considering whether other material considerations outweighed the policy directive to refuse the application. In that exercise, it was appropriate for him to consider the nature and scope of the breach of that policy.
49. The report then goes on to list the material factors once again, before concluding that:

"In this case it is felt that the economic benefits of the development are material considerations which outweigh the development plan and any non-compliance with the sequential test under the provisions of PPS4."
50. The final conclusion of the Addendum Report, much in the terms of the conclusion to that in the Main Report, is set out in the penultimate paragraph. Taken as a whole, the Addendum Report says, in substance, that the fresh representations do not change the picture: the officer makes the same conclusion on the same grounds as he does in the Main Report.
51. In my judgment, the committee was not tempted into any forbidden line of thinking, on the basis that there had been a partial compliance with the sequential approach. I appreciate that, contrary to that which was urged by Judge LJ in *Oxton Farm* (see paragraph 15(ii) above), I have responded to Mr Tucker's submissions on Ground 1, which were based upon a somewhat detailed textual analysis, in kind. In this case, the officer's reports are robust enough to bear that analysis. In any event, in relation to this ground, Mr Tucker has failed by some distance to persuade me that the overall effect of the report was significantly to mislead the planning committee about material matters. In my judgment, the approach of the officer, followed by the committee, was correct, and lawful.
52. For those reasons, I do not find that the first ground is made good.

Ground 2: Misapplication of the Sequential Test

53. In applying the sequential test, an applicant must demonstrate that it has applied an appropriate degree of flexibility including, by virtue of Policy 15.1.d.iv, the disaggregation of specific parts of the proposal into separate, sequentially preferable sites. The PPS4 Practice Guidance states (at paragraph 6.33):

“While there is no policy requirement to demonstrate need, an operator claiming that it is unable to be flexible about its chosen ‘business model’ would be expected to demonstrate why a smaller store or stores could not meet a similar need.”

As indicated in this passage, the burden of demonstrating this falls on the applicant.

54. In this case, submitted Mr Tucker, Marks & Spencer merely asserted that to disaggregate their proposed operation into a non-food store (which could be accommodated in the T J Hughes unit) and a food-only store (which could be accommodated separately elsewhere, for example in the old Marks & Spencer High Street unit) was not viable. There was no evidence upon which the officer or committee could have been satisfied, as they purported to be, that the applicant had demonstrated flexibility in accordance with the terms of Policy 15.1.d.iv.
55. Mr Fraser submitted that this ground adds nothing of substance to Ground 1: because, in relation to that ground, it is uncontentious that Simons failed to demonstrate the flexibility required by Policy EC15.1.d.iv, in that it had not demonstrated that the three smaller units could not be disaggregated into separate, sequentially preferable sites. There is therefore a breach of the sequential approach, in any event. It would add nothing of substance if there were a second breach of that same requirement, in relation to the disaggregation of the proposed Marks & Spencer operation.
56. There is obvious force in that submission with regard to the policy-internal question of whether there is a breach of the sequential approach, which triggers the policy directive to refuse the application; because that is a binary question. However, whether there is a further breach may be relevant to the balancing exercise required thereafter, in which the question of whether other material considerations outweigh the policy presumption of refusal. In that exercise, for the reasons I have given (see paragraph 46 above), the scope of the breach or breaches might be relevant. I therefore need to consider the merits of this ground.
57. However, I am unpersuaded by those merits, for the following reasons.
58. I have recited the relevant background (see paragraphs 33 and following above). The Main Report (at page 55) makes clear that the only available Scunthorpe town centre opportunity for Marks & Spencer was the T J Hughes unit. In terms of the whole of its proposed operation at the Site, that unit was discounted by Marks & Spencer on account of its size, its total floorspace being 3,884 sq m as opposed to the 4,645 sq m proposed in the development at the Site. The T J Hughes unit could only possibly be appropriate by “disaggregation”, i.e. splitting the non-food part of the proposed store from the food part and house them in separate premises. However, in sequential assessments, Policy EC15.1.a requires planning authorities to ensure that sites are assessed for, not only availability, but also viability and suitability. Marks & Spencer

considered such a proposal for split premises neither suitable for their commercial requirements or business model, nor commercially viable. Its position was that this was a commercially challenging catchment for retailers – evidenced by their commercial failure in early 2011 at the (admittedly small) High Street store – and to create a commercially viable store a full range of goods needed to be provided under one roof with a critical mass of retailing.

59. It was that evidence of non-viability that the officer accepted as an explanation as to why Marks & Spencer did not consider a split site in the town centre was feasible. Further, at the planning committee meeting on 7 March 2012, a representative from Marks & Spencer gave evidence that:

“... the company’s position remained unchanged. It would only develop sites that it considered commercially viable and there were no such sites in Scunthorpe town centre”.

60. In my judgment, it is simply incorrect to say that there was no evidence before the officer and committee that (i) the T J Hughes unit was too small to create an economically viable Marks & Spencer food and non-food store, or (ii) it was not economically viable to split the operation into two parts, one of which might be housed in the T J Hughes unit. The evidence was that Marks & Spencer had considered the T J Hughes unit, and in their opinion they could not use that unit (or, indeed, any unit in Scunthorpe town centre) for an economically viable operation. For that reason, they had no interest in any available site other than the Site, as the representative at the hearing made clear. That was evidence that the committee could properly take into account. It is unrealistic to expect a commercial operator to reveal its precise commercially sensitive and valuable calculations as to why it considers possible alternatives to the development proposal not to be commercially viable; and it is unnecessary for them to do so to enable a planning authority to come to a view on viability.

61. It is also important to mark that developers, and planning authorities, work in the real world. Marks & Spencer had assessed the only available town centre alternative to the Site, and had concluded that a development that was smaller than that proposed, or one with a more restricted range of goods, was neither commercially viable nor suitable for their commercial requirements. On the basis of that assessment, emphasised by their representative who spoke at the planning committee hearing, the officer and committee knew that, if this planning permission was refused, then Marks & Spencer would not locate into Scunthorpe town centre. As Lord Reed said in Tesco v Dundee, at [29]:

“Provided the applicant has [given consideration to the scope for accommodating the development in a different form and to have thoroughly assessed sequentially preferable locations]... the question remains... whether an alternative site is suitable for the proposed development, not whether the proposed development can be altered or reduced so that it can be made to fit an alternative site”:

to which Lord Hope perceptively added, at [38]:

“[T]he context indicates that the issue of suitability is directed to the developer’s proposals, not some alternative scheme which might be suggested by the planning authority. I do not think that this is in the least surprising, as developments of this kind are generated by the developer’s assessment of the market that he seeks to serve. If they do not meet the sequential approach criteria, bearing in mind the need for flexibility and realism to which Lord Reed refers..., they will be rejected. But these criteria are designed for use in the real world in which developers wish to operate, not some artificial world in which they have no interest doing so.”

62. Working in the real world, the committee were entitled (and, indeed, bound) to take into account the evidence that any arrangement in which Marks & Spencer used the T J Hughes unit (the only available unit in Scunthorpe town centre) would not be commercially viable, and that, because of that lack of viability, Marks & Spencer would not locate to Scunthorpe town centre in the event that this application for the Site was refused. On the basis of that evidence, in the committee’s view, the applicant had demonstrated flexibility in terms of the sequential approach so far as the possible disaggregation of the Marks & Spencer operation was concerned. They were entitled to come to that conclusion on that evidence.
63. For those reasons, I am quite satisfied that there was evidence upon which the committee could be satisfied (as, in the event, they were) that Simons had demonstrated flexibility in accordance with the terms of Policy 15.1.d.iv so far as the disaggregation of the Marks & Spencer operation is concerned.
64. This ground therefore fails.

Ground 3: Fall Back as an Immaterial Consideration

65. Mr Tucker submitted that, because such a comparison may be a material consideration, a planning committee should compare the development for which planning permission is sought on the one hand, with what the applicants could do with the land and premises on the basis of the planning position as it stands without that planning permission (“the fall back position”). However, such a comparison is only proper if there is a realistic possibility of the fall back position happening. Those propositions, which I accept, derive from Snowden v Secretary of State for the Environment [1980] JPL 749.
66. In this case, the fall back position used stems from Section 4 of the England & Lyle Report of November 2011. The report, after referring to the fact that the garden centre “trades freely as open Class A1 retail floorspace...” (paragraph 4.1) and reciting the Secretary of State’s decision letter in 1990 (quoted at paragraph 6(iii) above), says:

“Our interpretation of the planning status of the existing garden centre is that there is an established open A1 retail use of the existing building which has a floorspace of 4,500 sq m gross. The planning consent is subject to conditions on the range of goods allowed to be sold. The consent represents a fall back

position that is relevant to the current application. A retail development with a total floorspace of up to 4,500 sq m gross could be developed on the site. This could apply to either the Marks & Spencer store or the other retail units.”

67. That is reflected in the officer’s Main Report, at page 50:

“... The planning status of the existing garden centre is that there is an established A1 retail use of the existing building which has a floorspace of 4,500 square metres gross. The planning permission is subject to conditions on the range of goods allowed to be sold. Whilst the goods sold at the Trent Valley Garden Centre do not now conform with the list or the condition, and the range of goods sold for a number of years is much wider than the condition allows, the permission does represent a fall back position that is current to the relevant planning application in that a retail development with a total floorspace of up to 4,500 square metres gross could be developed on the site.”

68. That is the fall back position that appears to be taken into account as a material consideration on page 63 of the Main Report:

“Other material considerations to be attributed weight include: the economic benefits that the scheme would have during this serious economic downturn; additionally, *the fall back position of the existing use of the site , which enables 4,500 square metres gross of retailing from the site...*” (emphasis added).

69. Mr Tucker submitted that the way in which the fall back position was taken into account erred in law, in two respects.
70. First, he submitted that the officer and committee were wrong to take into account the fall back position, of any form of open Class A1 retailing use, in the absence of a lawful development certificate issued under Section 191 of the Town and Country Planning Act 1990. That provision enables an application to be made to the relevant local planning authority for a certificate of lawfulness of existing use or development, to ascertain “whether any existing use of buildings or land is lawful” (section 191(1)(a)). Mr Tucker submitted that, without such a certificate, the comparison cannot in law amount to a material consideration.
71. I do not accept that proposition. Before the committee, there was significant evidence that the Site had had open Class A1 use of the Site for many years: there was, for example, the evidence of the Secretary of State’s decision letter of 9 August 1990 (see paragraph 6(iii) above) and the opinion of the Council’s own planning advisers that there was established open A1 retail use of the existing 4,500 sq m building on the Site (see paragraph 66 above). It was open to the committee to take into account that evidence, and give it the weight that they considered appropriate.

72. The second error was, contended Mr Tucker, that the committee were not advised that they could only take the fall back position into account if it were a realistic possibility that the fall back scenario would happen.
73. Mr Fraser and Mr Katkowski submitted that the “fall back position” here was not a true fall back position at all, because the comparator used was not something that might happen to use of the land in the future but rather the use to which it is currently being put as a garden centre enterprise. I do not accept that submission. It is clear from the passages I have quoted above (paragraph 66) from both the officer’s Main Report (“... a retail development with a total floorspace of up to 4,500 square metres gross *could be developed* on the site” (emphasis added)), and the planning adviser’s report from which it was derived (“A retail development with a total floorspace of up to 4,500 sq m gross *could be developed* on the site” (again, emphasis added)), that the comparator was not simply the garden centre continuing to sell a wide range of goods, but the Site being prospectively “developed” with a total retail floorspace of up to 4,500 sq m gross (i.e. with a development of similar size and planning use to the current garden centre). Unlike the adviser’s report, the officer’s report does not suggest that that prospective development would be restricted to a Marks & Spencer store, or three smaller retail units, as proposed in the development of the Site with which this permission is concerned. But it is clear from the language used, that the Main Report was looking at the prospect of the land being developed with such a retail development, even if this application were not granted.
74. Curiously, the Addendum Report is in slightly different terms from page 63 of the Main Report, referring to “the fall back position of the existing use of the site, which enables 4,500 square metres gross of retailing *in the garden centre building*” rather than “... *from the site...*”, which is more suggestive of another retailer trading from the existing building on the Site rather than a redevelopment. Nevertheless, in the Claimant’s favour, I accept that the reports together suggest a comparator involving a redevelopment.
75. However, I remain unpersuaded by Mr Tucker’s ground of challenge. The prospect of the fall back position does not have to be probable or even have a high chance of occurring; it has to be only more than a merely theoretical prospect. Where the possibility of the fall back position happening is “very slight indeed”, or merely “an outside chance”, that is sufficient to make the position a material consideration (see Samuel Smith Old Brewery (Tadcaster) v Secretary of State for Communities and Local Government [2009] EWCA Civ 333 at [20]-[21] per Sullivan LJ). Weight is, then, a matter for the planning committee.
76. In this case, the report did not address the gamut of possibilities for use of the Site if this application were not granted. However, in addition to the possibility that the garden centre would continue to use the Site for 4,500 sq m of open Class A1 retail use, it was obviously a possibility that they would use the existing use to redevelop the Site for a building of similar size with a similar use for some retailer. The officer’s Main Report suggested no more than that. It did not suggest the prospect that Marks & Spencer would use the existing buildings or limited redevelopment of the site to trade.
77. In any event, although Mr Tucker submitted that the planning decision was a close thing – the chair used his casting vote (see paragraph 10 above) – it is clear from the

Addendum Report that the material considerations which in practice outweighed the negative material considerations (including the development plan and non-compliance with the sequential approach) were, perhaps understandably, the economic benefits that the scheme would bring (see paragraph 3 of the Addendum Report, which states that in terms).

78. In all the circumstances, I am not persuaded that, in relation to this ground, the officer's report significantly misled the committee about material matters.
79. Consequently, this ground fails.

Ground 4: The Proposed Restriction on Letting

80. Mr Tucker submitted that the Section 106 obligation with regard to protection of the town centre – by imposing the restriction on tenants of town centre retail premises taking lettings in the new development that it did impose – did not reflect the degree of protection required by the resolution on the planning committee.
81. That resolution (set out at paragraph 10 above), on this point, was brief. The committee resolved to grant permission, authorising the Head of Development Planning to grant permission subject to the completion of a Section 106 agreement

“... for off-site highway improvements, *Scunthorpe town centre protection*, protected species translocation and maintenance and a contribution towards improving the existing footpaths in the vicinity of the site, and to the conditions contained in the report...” (emphasis added).
82. If the obligation was not completed within three months, the Head of Development Management was authorised to:

“... refuse the planning application on *the grounds of the adverse impact upon the vitality and viability of Scunthorpe town centre*, adverse impact upon highway safety and levels of congestion within the locality, adverse impact upon protected species and their habitat, and non-compliance with Policy EC16 of PPS 4, policies T2 and T6 of the North Lincolnshire Local Plan, and policies C14, C25 and CS17 of the North Lincolnshire Core Strategy.” (emphasis again added).
83. Mr Tucker submitted that the sanction for non-completion of the agreement showed the great seriousness with which the committee viewed the obligation for the protection of the town centre that was to be contained in it, described by Mr Tucker as the matter which tipped the balance for the grant of permission; but I do not find any great force in that submission. The Section 106 obligations were of course an important part of the planning consent; but the obligations were many and various, and I do not consider that the resolution suggests that the proposed agreement concerning protection of the town centre was any more balance-tipping than, say, the obligation to pay the Council a sum within 14 days in respect of vole translocation (which appears as paragraph 4.2.5 of the Section 106 agreement). The draconian

sanction of non-compliance after three months was, in the usual way, to ensure swift compliance and prompt commencement of the development.

84. Mr Tucker relied upon the history of how this provision arose. As I have indicated, both HOW and England & Lyle were agreed that the proposed development would not have a significant adverse impact on Scunthorpe town centre (see paragraph 28 above). However, England & Lyle's advice to the Council was nevertheless to consider conditions that would protect the town centre from any adverse impact that the development might entail. They raised the possibility of the smaller units being restricted by a bulky goods condition or, if the committee considered that unnecessary, conditions "on the maximum size of units, the prevention of subdivision and on the amount of convenience goods floorspace allowed in the scheme" (see Addendum Report, page 3).

85. However, the officer's Main Report addressed the issue in a different way (page 63):

"England & Lyle considered if a bulky goods condition would be a way of protecting Scunthorpe's town centre, however the applicants have stated that such a condition would make the development unviable. The developer proposes to enter into an agreement under section 106... which, amongst other things, will give greater certainty to [the Council] that Scunthorpe's town centre would not have its vitality or viability reduced by the proposed development to a degree that would cause harm. A list of over 30 town centre retailers has been compiled and are referred to as regulated tenants with the Section 106 agreement. The developer has agreed that only one regulated tenant will be able to occupy any of the smaller units (2, 3 or 4) for the first five years of the development opening and that retailer must retain a town centre presence for the first five years of the development opening. Whilst it is accepted that there will be some impact upon the town centre, the legal agreement carries significant weight in minimising the less than significant impact that is predicted."

86. The officer's recommendation was therefore that the Council enter into a Section 106 obligation with the owner/developer that prohibited the occupiers of town centre shops from letting any of the development units – which would, of course, be very substantial comfort in respect of the vitality and viability of the town centre – subject to just one exception, namely that one of those town centre unit owners could also occupy a development unit, provided that that retailer also maintained a town centre presence for the first five years. All of that was to be done through the Section 106 agreement between owners/developers and the Council.

87. In the event, that agreement contained the following covenant by the owner/developer (paragraph 4.1):

"... not to let a Unit to a Regulated Tenant during the Regulated Period SAVE THAT in the case of one Unit only there shall be permitted one first letting to a Regulated Tenant where such tenant shall prior to the date of his Occupation

covenant with the Owner and/or Developer (as the case may be) that it will Maintain Representation in the Town Centre for a continuous period of five years commencing from the date of his Occupation.”:

“Regulated Tenant” is defined in terms of a list of 32 town centre traders. “Regulated Period” is “a period of five years commencing on the date when the first Unit opens to the public for trade” (paragraph 3).

88. Mr Tucker’s submission was succinct. The resolution of the committee was made on the basis that only one town trader would be allowed to let one of the smaller units in the development (Condition 38 required Marks & Spencer, who were not in the town centre, to let the large unit; see paragraph 12 above), on the basis that that tenant would also be required to maintain its presence in the town centre for five years; but the Section 106 agreement did not give the Council the ability to enforce that restriction. The Council could only require there to be a covenant between the owner/developer and the relevant tenant. It could not enforce that covenant against the tenant - only the owner/developer could do so. The planning consent was therefore granted without the requisite protection required by the committee having been obtained.
89. However, again I am unpersuaded by this ground, which amounts to an argument that the officer who entered into paragraph 4.1 of the Section 106 agreement did so without due authority. The resolution itself merely required the completion of a Section 106 agreement “for... Scunthorpe town centre protection”: it did not specify how that was to be achieved. In the event, in accordance with the recommendation of the officer’s report, the Section 106 agreement forbade 31 of the 32 relevant retailers from letting any unit in the development: that, of course, was the heart of the protection given to the town centre. However, Mr Tucker complains that the restriction on the 32nd retailer is not as tight as it might have been.
90. For my own part, I am not convinced that the covenant between the owner/developer and the tenant would not be enforceable by the Council, for whose obvious benefit the covenant is made – although I did not hear full argument on that point, and express no concluded view nor do I found my rejection of this ground on that basis.
91. But, leaving that aside:
 - i) The planning committee knew that the restriction was to be included in a Section 106 agreement between the owner/developer and the Council, and so were aware that the relevant tenant would not be a direct party to that agreement.
 - ii) The fact that the restriction is not as legally watertight or certain of enforcement as it might have been does not make the planning permission unlawful. The real protection for the town centre lay in the unchallenged restriction that prevented all but one of the town centre retailers letting a unit in the development at all, and ensured that three out of the four units in the development (including the larger unit, required by Condition 38 to be let to Marks & Spencer) would be let to retailers who had no presence in the town centre at all. There is no evidence that the committee intended there to be a

guaranteed legally watertight and enforceable right in the Council to ensure that any tenant taking advantage of that exception would maintain a particular presence in the town centre. Indeed, no such guarantee could possibly have been given. Further, in none of the reports was there any consideration of the extent of presence that might be required to be maintained in the town. That suggests that the resolution left the precise form of the proposed restriction to the officer dealing with the Section 106 obligation. The fact that Mr Tucker believes that he could have drafted a better provision on behalf of the Council – and I have no reason to doubt him – does not, as a matter of law, invalidate the grant of planning permission.

92. For those reasons, Mr Tucker has not persuaded me that, by imposing a restriction on tenants of town centre retail premises taking lettings in the new development, the Section 106 obligation failed to reflect the degree of protection of the town centre required by the resolution on the planning committee. This final ground, too, consequently fails.

Conclusion

93. By reason of the above, I do not consider any of the grounds of challenge are made good; and I dismiss the claim.

Neutral Citation Number: [2016] EWHC 2832 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Case No: CO/1001/2016

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 10/11/2016

Before :

MR JUSTICE GARNHAM

Between :

Michael Mansell	<u>Claimant</u>
- and -	
Tonbridge & Malling Borough Council	<u>Defendant</u>

Ms Annabel Graham Paul (instructed by **Richard Buxton Environment & Public Law**) for
the **Claimant**

Mr Juan Lopez (instructed by **Tonbridge & Malling Borough Council**) for the **Defendant**

Hearing dates: 25 October 2016

Judgment

THE HONOURABLE MR JUSTICE GARNHAM:Introduction

1. On 7 January 2016, Tonbridge & Malling Borough Council ("the Council") granted planning permission to Croudace Portland for the erection of four residential dwellings and associated access, parking and landscaping on land at Rocks Farm, The Rocks Road, East Malling in Kent. The decision to grant planning permission was made by the members of the Council's Area 3 Planning Committee at a planning committee meeting on 7 January 2016, with an effective date of 13 January 2016. In reaching that decision, members of the committee were advised by an officer's report which recommended approval.
2. Croudace Portland and East Malling Trust, the present owners of the site, are interested parties in these proceedings. The Defendant is the Council. The application is brought by Michael Mansell who lives in a listed property next door to the site in respect of which planning permission was granted. Before me, Mr Mansell was represented by Ms Annabel Graham Paul and the Council by Mr Juan Lopez. The interested parties were not represented. I record here my gratitude for the clear and helpful submissions, both written and oral, advanced by both counsel.

The Factual Background

3. The site of the proposed development is in land to the south east of East Malling village. The land is designated in the local plan as "countryside", and the village is designated as an "other rural settlement". Part of the village is a designated conservation area. The Claimant's property, which lies at the border of the conservation area, is grade 2 listed. It dates from 1507.
4. The development is for four five bedroomed houses, each served by a double garage or car barn with parking for four cars. The development site is presently part of an agricultural holding comprising a large agricultural building of some 600m² and a residential bungalow used by a caretaker. The agricultural building has in the past been used as an apple store. I was told that the building remains in use. The development contemplates that both buildings would be demolished. The site is owned by the East Malling Trust. The intention is that it will be sold to the Applicant for planning permission, namely Croudace Portland.
5. A report was prepared for the planning committee by (or on behalf of) the Council's Director of Planning, Housing and Environmental Health (hereafter "the Officer"). The report runs to some eighteen pages. The report explains that the reasons for reporting to the committee were first the fact that the development involved "*departure from the adopted development plan*" and second because of high levels of local interest. The report described the site and the relevant planning history, which was limited to the grant of planning permission for the building of the bungalow in 1957, and a summary of the consultation.
6. Part 6 of the report contains the operative discussion by, and advice from, the Officer to the committee. The section began by reminding members that as the local planning authority the Council was required to determine planning applications in accordance with the Development Plan in force unless material considerations indicate otherwise.

The report went on to note that the application site was open countryside, outside the village settlement confines of East Malling and that accordingly identified restrictions applied to such development. I will need to return to consider in a little detail the advice contained in Part 6 of the report. For the present, however, it is convenient simply to note that the report concluded with the following observations:

"6.42 ...it is important to understand that the starting point for the determination of this planning application rests with the adopted Development Plan. Against that starting point there are other material planning considerations that must be given appropriate regard, not least the requirements set out within the NPPF which is an important material consideration and the planning and design of the proposal for the site in the context of the permitted development fall back position. The weight to attribute to each of those other material planning considerations, on an individual and cumulative basis, and the overall balance is ultimately a matter of judgement for the Planning Committee. My view is that the balance can lie in favour of granting planning permission."

7. On 7 January 2016 a supplementary report was produced by the Officer and a recommendation, amended as to matters of detail, was made. Later that day the Area 3 committee resolved that the application be approved in accordance with the main and supplementary reports of the Officer.
8. A pre-action protocol letter was sent on behalf of the Claimant on 10 February 2016. A response was sent on 22 February 2016 and these proceedings were commenced on 23 February 2016.

The Legal Framework

9. Central to this challenge are criticisms of the Officer's main report to the planning committee, seen in the light of national and local planning policy. There was no dispute between the parties as to the relevant legal principles to be applied in considering such a challenge.
10. Those principles are conveniently set out in the judgment of Hickinbottom J in R (on the application of Zurich Assurance Ltd) v North Lincolnshire Council [2012] EWHC 3708). At paragraph 15 of that judgment Hickinbottom J said the following:

"15. Each local planning authority delegates its planning functions to a planning committee, which acts on the basis of information provided by case officers in the form of a report. Such a report usually also includes a recommendation as to how the application should be dealt with. With regard to such reports:

i) In the absence of contrary evidence, it is a reasonable inference that members of the planning committee follow the

reasoning of the report, particularly where a recommendation is adopted.

ii) When challenged, such reports are not to be subjected to the same exegesis that might be appropriate for the interpretation of a statute: what is required is a fair reading of the report as a whole.

Consequently:

"[A]n application for judicial review based on criticisms of the planning officer's report will not normally begin to merit consideration unless the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken" (Oxton Farms, Samuel Smiths Old Brewery (Tadcaster) v Selby District Council (18 April 1997) 1997 WL 1106, per Judge LJ as he then was).

iii) In construing reports, it has to be borne in mind that they are addressed to a "knowledgeable readership", including council members "who, by virtue of that membership, may be expected to have a substantial local and background knowledge" (R v Mendip District Council ex parte Fabre (2000) 80 P & CR 500, per Sullivan J as he then was). That background knowledge includes "a working knowledge of the statutory test" for determination of a planning application Oxton Farms, per Pill LJ).

16 The principles relevant to the proper approach to national and local planning policy are equally uncontroversial:

i) The interpretation of policy is a matter of law, not of planning judgment (Tesco Stores Ltd v Dundee City Council [2012] UKSC 13) .

ii) National planning policy, and any relevant local plan or strategy, are material considerations; but local authorities need not follow such guidance or plan, if other material considerations outweigh them.

iii) Whereas what amounts to a material consideration is a matter of law, the weight to be given to such considerations is a question of planning judgment: the part any particular material consideration should play in the decision-making process, if any, is a matter entirely for the planning committee (Tesco Stores Ltd v Secretary of State for the Environment [1995] 1 WLR 759 at page 780 per Lord Hoffman)."

11. The first of the claimant's grounds of challenge concerns a concept in planning law known as "fall back position". Because such a comparison may be a material consideration, a planning committee will often compare, on the one hand, the developments for which planning permission is sought, with, on the other, what the applicants could do with the land and premises without the permission.
12. The provision governing what the applicants could do with this land at these premises without planning permission is the Town and County Planning (General Permitted Development) (England) Order 2015 (the "2015 GPDO").
13. Paragraph 3 of the 2015 Order provides, at subparagraph (1), that "*planning permission is ... granted for the classes of development described as permitted development in Schedule 2.*" Part 3 of Schedule 2 identifies a number of classes of permitted development. Class Q permits certain development in respect of agricultural buildings.
14. Class Q provides that permitted development is

"development consisting of (a) a change of use of a building and any land within its curtilage from a use as an agricultural building to a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order and (b) building operations reasonably necessary to convert the building referred to in paragraph (a) to a use falling within Class C3...".
15. Paragraph Q.1 provides that

"development is not permitted by Class Q if... the cumulative floor space of the existing building or buildings changing use under Class Q within an established agricultural unit exceeds 450sqm."
16. It is also material to note that subparagraph (h) provides that

"the development under Class Q (together with any previous development under Class Q) would result in a building or buildings having more than 450sqm of floor space having a use falling within Class C3 (dwelling houses) of the Schedule to the Use Classes Order...".
17. It is common ground between the parties that the relevant legal principles relating to fall back were set out in R v Secretary of State for the Environment and Havering BC [1998] EnvLR189. In that case Mr Lockhart-Mummery QC, sitting as a Deputy High Court Judge, accepted submissions that there were three elements to the fall back test:

"First whether there is a fall back use, that is to say whether there is a lawful ability to undertake such a use; secondly, whether there is a likelihood or real prospect of such occurring. Thirdly if the answer to the second question is

"yes" a comparison must be made between the proposed development and the fall back use."

The Relevant National Guidance

18. At the relevant time the national planning policy was contained in a document called the National Planning Policy Framework ('NPPF').
19. Paragraph 7 of the NPPF asserts that there are three dimensions to sustainable development: economic, social and environment. Paragraph 11 provides that planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless material considerations indicate otherwise. Paragraph 14 provides (as far as is material):

"At the heart of the National Planning Policy Framework is a presumption in favour of sustainable development which should be seen as a golden thread running through both plan making and decision taking...

For decision taking this means

- *approving development proposals that accord with the development plan without delay; and*
- *where the development plan is absent, silent or relevant policies are out of date granting permission unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole or specific policies in this Framework indicate development should be restricted."*

20. Paragraph 49 and 50 of the NPPF provide as follows:

"49. Housing applications should be considered in the context of the presumption in favour of sustainable development. Relevant policies for the supply of housing should not be considered up-to-date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites."

50. To deliver a wide choice of high quality homes, widen opportunities for home ownership and create sustainable, inclusive and mixed communities, local planning authorities should:

- *plan for a mix of housing based on current and future demographic trends, market trends and the needs of different groups in the community (such*

as, but not limited to, families with children, older people, people with disabilities, service families and people wishing to build their own homes);

- *identify the size, types, tenure and range of housing that is required in particular locations, reflecting local demand; and*
- *where they have identified that affordable housing is needed, set policies for meeting this need on site, unless off-site provision or a financial contribution of broadly equivalent value can be robustly justified (for example to improve or make more effective use of the existing housing stock) and the agreed approach contributes to the objective of creating mixed and balanced communities. Such policies should be sufficiently flexible to take account of changing market conditions over time."*

21. Paragraph 55 provides as follows:

"55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: ..."

The Competing Arguments

22. Ms Annabel Graham Paul, for the Claimant, advances four arguments. First she says that the Defendant Council adopted an unlawful approach to "fall back". In particular, she says that they erred in finding that the existing agricultural building could be converted into three dwellings under permitted development rights. That argument turns first, on the proper construction of Class Q, of Part 3 of Schedule 2 of the 2015 GPDO, a provision that provides for permitted development in the case of agricultural buildings, and second, on the question whether the Council erred in concluding that there was more than a theoretical possibility of implementing a lawful fall back.
23. Ms Graham Paul's second ground is that the Council adopted an unlawful approach to the NPPF. In particular, she says that the Council provided no basis for finding that the up-to-date development plan was in any way inconsistent with the policies in the NPPF and that the officer's reliance on the NPPF was insufficiently reasoned.
24. Third, Ms Graham Paul contends that the Council failed properly to consider the effects of the development on listed buildings and the Conservation Area. Finally,

she argues that there was a failure properly to consider whether the planning committee lacked jurisdiction to determine the application. Resolving that ground will necessitate consideration of the constitution of the Council committees.

25. In response, Mr Lopez, on behalf of the Defendant argues that the Defendant's interpretation of the 2015 Order was correct. He says, furthermore, that the Council was entitled to conclude that the fall back suggestion was realistic and that that is sufficient to make fall back a material consideration.
26. As to ground 2, Mr Lopez argued that the officer's approach to the NPPF was entirely proper. As to ground 3, he says that the Claimant's criticism '*defies all practical reality*' and amounts to an '*impermissible challenge...to planning judgment*'. As to the jurisdiction challenge, the Defendant asserts that the question whether the development is '*in fundamental conflict with the development plan*' was a matter of planning judgment and that the decision in this regard could not fairly be characterised as irrational.

Discussion

Ground 1 – Fall back

27. The Officer addressed the question of "fall back" at paragraphs 6.14 to 6.16 of his report:

"6.14 In practical terms for this site, the new permitted development rights mean that the existing agricultural barn could be converted into three residential units. Some representations point out that only a proportion of the barn could be converted in such a manner (up to 450sqm) but the remainder – a small proportion in terms of the overall footprint – could conceivably be left unconverted and the resultant impacts for the site in terms of the amount of residential activity would be essentially the same. The building could be physically adapted in certain ways that would allow for partial residential occupation and the extensive area of hardstanding which exists between the building and the northern boundary could be used for parking and turning facilities.

6.15 The existing bungalow within the site could be replaced in accordance with policy CP14 with a new residential building provided that it was not materially larger than the existing building. Such a scenario would, in effect, give rise to the site being occupied by a total of four residential units albeit of a different form and type to that proposed by this application. This provides a realistic fall back position in terms of how the site could be developed.

6.16 I appreciate that discussion concerning realistic 'fall back' positions is rather complicated but, in making an assessment of any application for development, we are bound to consider what the alternatives might be for a site: in terms of

what could occur on the site without requiring any permission at all (historic use rights) or using permitted development rights for alternative forms of development."

28. Ms Graham Paul argues that the officer erred in that approach. She says that the Council's analysis falls at both the first and the second of the two hurdles. She says that permitted development under the 2015 Order would not be such as to permit the conversion of this agricultural building into three homes in the manner envisaged by the Officer. And she argues that it is not been shown that there was any real prospect of such a conversion occurring.
29. Critically, Ms Graham Paul contends that the restriction to 450sqm in subparagraph (b) applies to the floor space of the whole of the existing building in respect of which development is contemplated. She says that the proper construction involves identifying the whole building in respect of there is to be any change of use and then adding up the floor space of that existing building. The result must then be less than 450sqm. She says that interpretation is supported by the inspector's decision in a case called Mannings Farm. In that case, the inspector said the following:

"9. The floor space of the existing building...far exceeds the maximum permitted threshold, of 450sqm, as set out in Q.1(b). I note the intention is to reduce the size of the building as part of the proposal but Q.1(b) clearly relates to existing floor space and there is no provision in the GPDO for this to be assessed on any other basis."

30. In my judgment this construction of paragraph Q.1(b) fails because it disregards the definition section of the Order. The critical expression in subparagraph (b) is "*the existing building or buildings*". Paragraph 2 of the Order defines "*building*" as "*any part of a building*". Accordingly, the paragraph should be read as meaning "*the cumulative floor space of the existing building or any part of the building changing use...*" If that is right, it is self-evident that the limit on floor space relates only to that part of the building which is changing use.
31. That was also the approach adopted by the Inspector in the case of Agricultural Buildings at Bennetts Lane, Binegar, Somerset. I was shown a number of inspectors' decisions on this topic but, in my view, it was the Inspector in this case, Mr Rory Cridland, who provided the most thorough analysis of the point. The Inspector said this:

"4. Class Q of Schedule 2, Part 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order") permits development consisting of a change of use of a building and any land within its curtilage, from a use as an agricultural building to a dwelling house together with building operations reasonably necessary to convert it. However, paragraph Q.1(b) excludes such development where the cumulative floor space of the existing building changing use within an established agricultural unit exceeds 450m². The term "building" is defined by the Order as including "any part thereof".

5. *The proposal would result in a change of use of part of the existing agricultural building, currently measuring around 960m² of floor space, to a residential dwelling house with a floor space measuring approximately 449m². The appellants propose to demolish the remaining part of the building but retain agricultural use of the land by returning it to pasture. The Council however contend that paragraph Q.1(b) limits such conversions to smaller agricultural buildings which fall below the 450m² threshold.*

6. *Although I acknowledge that the wording of paragraph Q.1(b) of the Order is not explicit on this point, when read in conjunction with the definition of 'building' set out in Article 2(1) of the Order, there is a strong indication that the paragraph permits the part conversion of an agricultural building. This is supported by Planning Practice Guidance (PPG) which states that "the maximum floor space that may be converted is 450m² of floor space of a building or buildings within a single established agricultural unit". As such, I find that paragraph Q.1(b) of the Order allows for the part conversion of an agricultural building provided that total floor space to be converted does not exceed 450m²."*

32. The inspector went on in that decision to refer to correspondence from the Department for Communities and Local Government. I too was shown that correspondence. That correspondence indicates that it is the view of the Department that the reference to "*part of a building*" in the definition section of the Order means that "*in the case of a large agricultural building, part of it could change use...and the rest remain in agricultural use.*"
33. The proper construction of Class Q is plainly a matter for me, but for the reasons set out above my analysis of the relevant provisions coincides with that adopted by Mr Inspector Cridland and that suggested by the Department.
34. Ms Graham Paul contends that that construction of subparagraph (b) means that it adds nothing to subparagraph (h). I can see the force of that submission and, as a matter of first principle, statutory provision should be construed on the assumption that the draftsman was intending to add something substantive by each relevant provision. Nonetheless, giving the interpretation section its proper weight, I see no alternative to the conclusion that Class Q imposes a floor space limit on those parts of the buildings which will change use as a result of the development. In those circumstances, I reject the Claimant's challenge to the Officer's construction of the Class Q provisions in the 2015 Order.
35. Ms Graham Paul's second challenge under this head relates to the requirement that there is more than a theoretical possibility of implementing such a lawful fall back development.
36. In paragraph 6.15 of the report the Officer concluded that the fall back position was "realistic". In my judgment he was entitled so to conclude. The evidence establishes that there had been prior discussions between the Council and the Planning Agent

acting for the East Malling Trust who owns the site. It was crystal clear from that contact that the Trust were intending, one way or another, to develop the site. Alternative proposals had been advanced seeking the Council's likely reaction to planning applications. It is in my view wholly unrealistic to imagine that were all such proposals to be turned down the owner of the site would not take advantage of the permitted development provided for by Class Q to the fullest extent possible.

37. It was not a precondition to the Council's consideration of the fall back option that the interested party had made an application indicating an intention to take advantage of Class Q. There was no requirement that there be a formulated proposal to that effect. The officer was entitled to have regard to the planning history which was within his knowledge and the obvious preference of the Trust to make the most valuable use it could of the site.
38. Ms Graham Paul argues that, whatever the wishes and intentions of the interested party, it would not, in fact, have been possible to convert the agricultural building into residential use simply by reliance on permitted development. She says that if the aim had been to convert the building to three houses, whose total floor area was less than the maximum of 450m² there would have been a significant part of the building unused. She points to paragraph (i) of Class Q which provides as follows:

"Development is not permitted by Class Q if...(i) the development...would consist of building operations other than

I) the installation or replacement of

(aa)windows, doors, roofs, or exterior walls, or (bb) water, drainage, electricity, gas or other services, to the extent reasonably necessary for the building to function as a dwelling house; and

II) partial demolition to the extent reasonably necessary to carry out building operations allowed by paragraph Q.1(i)(i)..."

39. Ms Graham Paul also points to the need for planning permission if the bungalow on the site was to be converted and if the hardstanding was to be used for parking and the like.
40. However, as Mr Lopez submits, the Council does not have to shut its eyes to the fact that the proposed development might include elements that required planning permission. In fact, Ms Graham Paul conceded that the fact that planning permission for such parts of the development, notably the car parking, could be sought was a legitimate planning consideration. The building could be converted, so as to provide dwelling houses limited in floor space to 450m² by the construction of internal walls without using the whole of the internal space of the barn.
41. In my judgment therefore, it would have been unrealistic to have concluded that, were the present application for permission to be rejected, the interested party would do nothing to develop this site. On the contrary it was plain that development was contemplated and that some development could have taken place pursuant to Class Q. The Council was entitled to have regard to the fact that there might be separate applications for permission in respect of some elements of the scheme and to advise

that appropriate regard must be had to material planning considerations including the permitted development fall back position. Accordingly I reject the second element of the Claimant's challenge on ground 1.

Ground 2 - Unlawful Approach to NPPF

42. Ms Graham Paul accepts that the Council were entitled to have regard to the NPPF but she says that that framework must be interpreted and applied correctly. She says that, in his treatment of paragraphs 49, 50 and 55 of the NPPF, the officer failed to do so.
43. As regards paragraph 49 Ms Graham Paul points out that the Defendant's development plan was in place and up-to-date. She says that the Defendant had a five year supply of deliverable housing sites and that accordingly there was no warrant for dis-applying the local plan. Accordingly she argues that the presumption in favour of sustainable development set out in paragraph 14 of NPPF was not operative.
44. Ms Graham Paul concedes that it is open to a decision maker to find the development was sustainable, and that sustainability may be capable of being a material consideration outweighing a conflict with the development plan. But, she argues, on the facts of the present case, there was no basis for finding that the development plan was inconsistent with the NPPF and there was no analysis of any suggested justification for departure from the development plan.
45. As to paragraph 50 of the NPPF Ms Graham Paul says that that relates to plan making and not decision taking and accordingly is irrelevant to the decision being made by the committee on this occasion. As to paragraph 55 Ms Graham Paul says there was insufficient analysis to justify departing from the plan.
46. I remind myself of what was said by Judge LJ, as he then was, in Oxton Farms, the case cited at paragraph 15(ii) by Hickinbottom J in the Zurich case referred to above. I have to ask myself whether the overall effect of the report significantly misleads the committee about material matters which thereafter are left uncorrected at the meeting of the planning committee before the relevant decision is taken. I fail to see how such a criticism could be made of the officer's report in this regard in the present case.
47. As is conceded by Ms Graham Paul sustainability may be capable of being a material consideration in considering a conflict with a development plan. What the officer did in the present case, in paragraph 6.10 of the report, was to invite the committee to note the effect of paragraphs 49, 50 and 55. It is not suggested that those paragraphs were misrepresented. Nor is it alleged that the Officer failed to point out that the proposed development fell outside the local plan. Nor did he fail to point out the objection to the principle of the proposed development (in both the latter cases he did so in paragraph 6.6). In my judgment in those circumstances it cannot sensibly be argued that the officer misled the committee in any material respect.
48. It is argued that those three paragraphs of the NPPF were irrelevant. I reject that suggestion too. As set out above, the NPPF provides for a presumption in favour of sustainable development which it says should be seen "as a golden thread" running through decision taking. The weight to be given to those considerations in any given

case is a matter for the planning authority but it cannot, at least on facts such as the present, be said that the underlying principle is irrelevant.

49. Finally, it is suggested that the Officer's report did not set out enough to justify departure from the development plan. In my judgment the report accurately and fairly sets out the competing considerations and it was a matter for the judgment of the planning authority how those considerations were resolved. In those circumstances I reject ground 2.

Ground 3 – Conservation Area

50. In support of her third ground Ms Graham Paul refers me to the general duty in relation to listed buildings and conservation areas in the exercise of planning functions, provided for by Sections 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990. She points to the need for special attention to be paid to the desirability of preserving a listed building and its setting, and of preserving or enhancing the character or appearance of a conservation area.

51. She refers me to paragraph 6.25 of the officer's report and the passage that reads

"the development has been laid out in such a way as to avoid any material intrusion within the landscape, with only glimpses of the buildings being able to be seen in views through to the site from the public domain and the conservation area...although the appearance of the site would change, as would the setting of the village, conservation area and surrounding residential properties this change is not considered to be visually harmful."

52. Ms Graham Paul says that such an assessment needs to be properly informed. She says that the author of the report did not visit the Claimant's property and that there is no evidence that he visited the conservation area.
53. In my judgment this argument is hopeless. The Defendants had received a design and access statement from the interested party in respect of an earlier application. That application had been amended, at the Council's invitation, to reduce the number of new dwellings and the reporting Officer was aware of that. The Officer carried out a site assessment in the usual way and had the benefit of an illustrative plan. The report makes express reference to Section 72 of the 1990 Act (in paragraph 6.28).
54. The development neighbours a conservation area but is not located within it and the officer writing the report expressed a perfectly sensible planning judgment, based on his inspection and the history as he knew it to be, that the development would change the setting of the listed buildings and conservation area but would not be harmful. Furthermore the members of the committee had the benefit of local knowledge and were able to visit the site if they chose. A number of them did so.
55. I see no basis on which it can be said that this was so ill informed a judgment as to be vulnerable to challenge. On the contrary, it seems to me a judgment the committee was perfectly entitled to reach. In those circumstances ground 3 is dismissed.

Ground 4 – Jurisdiction

56. Finally, there is a challenge to the jurisdiction of the Area Planning Committee.
57. I have been provided with extracts from the Defendant Council's constitution. Chapter 3 of that constitution provides that the Council "*may make arrangements under Section 101 of the Local Government Act 1972 for the discharge of any of its functions by (a) a committee; (b) a subcommittee...*" Area 3 Planning Committee is required to consist of members of certain identified wards. The function of that planning committee, like the equivalent committee for Areas 1 and 2, is described as "*function relating to town and country planning and development control...except where recommended for approval in fundamental conflict with plans and strategies which together comprise the development plan.*".
58. Paragraph 3.1 further describes the responsibility of Area Planning Committees. It says that applications for planning permission "*recommended for approval in respect of development which is in fundamental conflict with the development plan,...should be reserved for determination by Council, or by reference to the Secretary of State, as appropriate.*".
59. Ms Graham Paul argues that this application related to a proposal for a development which is in fundamental conflict with the development plan. In support of that assertion she relies on what I take to be a speaking note used by the Claimant in addressing the committee on 7 January 2016. The note reads, in material part,

"the report states "there is an objection to the principle of the proposed development in broad policy terms. What this actually means is that this planning application is in fundamental conflict (with) the plans and strategies which together comprise the development plan."
60. There is nothing in that speaking note to indicate that the Claimant was making a point about the jurisdiction of the committee. On the contrary, as I read it, he was seeking to underline a clause in paragraph 6.6 of the officer's report which precedes the clause read out. That clause reads "*consequently, the proposed development falls outside of the requirements of these policies*".
61. In my judgment, neither the remarks of the Claimant at the meeting nor the arguments advanced by Ms Graham Paul get close to establishing that this application was in fundamental conflict with the development plan. It is, of course, right that the development fell outwith the development plan; that much is acknowledged in the report. But, in my judgment, it cannot properly be said that the conflict was in any sense fundamental. This development did not significantly prejudice the fundamental aims, objectives or land allocations under the development plan as a whole. It did not prejudice strategic delivery of the plan. It did not amount to premature pre-judging of the plan making process. It was not of a type or scale which threatened the integrity of the plan.
62. Certainly, if the judgment were mine I would reject any suggestion that this development constituted a fundamental conflict. However the judgment is not mine; it is a planning judgment for the committee which can be challenged only on



Application Reference: LA07/2019/1087/O

Date Received: 10th July 2019

Proposal: Replacement dwelling and garage

Location: Approximately 50m North East of 21 Drakes Bridge Road, Crossgar

Site Characteristics and Area Characteristics:

The application site comprises an area of 0.15 hectares and contains an old stone building with an area of bramble and overgrown vegetation. The site is surrounded by a number of other farm buildings and outbuildings, and an apparently unoccupied dwelling house. It is located up a private access lane off the Drakes Bridge Road.

The site is located in the countryside as defined in the Ards and Down Area Plan 2015. The surrounding area is rural, made up of largely agricultural land and scattered dwellings throughout.

Site History:

No relevant planning history on this part of the site.

Planning Policies and Material Considerations:

The application is considered against the Ards and Down Area Plan 2015 and in addition to this is also considered against the guidance set out in Policies CTY1, CTY13 and CTY14 of PPS 21: Sustainable Development in the Countryside, PPS3: Access, Movement and Parking, and SPPS.

Consultations:

DFI Roads – no objections

NI Water – no objections

Objections & Representations:

The application was advertised in the local press on 27th July 2019 which expired on 7th August 2019 and neighbour notification was issued on 22nd July 2019 and expired on 5th August 2019.

To date there has been 1 letter received neither objecting or in support of the proposal in relation to the proposal.

- My family have lived there for a number of generations and that small outbuilding was never inhabited.
- It was used as a calf house and store and has never been lived in

Consideration and Assessment:**SPPS**

The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. Paragraph 1.12 states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS. However, it is added that where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy. The SPPS retains certain existing planning policy statements and amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21). 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' is also retained and provides relevant planning guidance.

Policy CTY 1 of PPS 21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of instances when planning permission will be granted for a single dwelling are outlined.

Planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. CTY 3 favours the retention of non-listed vernacular dwellings in the countryside, if the dwelling makes an important contribution to the heritage appearance or character of the locality.

The small building subject of this application is stone built with a corrugated tin roof. It has a small lean to on the side elevation. From the site inspection, it was noted that there are four substantially intact walls on the building. There is possibly one blocked up window serving the building. There is no evidence of a chimney breast within the building itself and so it is not considered that this building exhibits the essential characteristics of a dwelling. The test under CTY 3 is whether the building exhibits the essential characteristics of a dwelling house, which officers are not satisfied that this building does. As such, there is no dwelling house to be replaced and therefore the proposed development would not fall under one of the exceptions listed in CTY1 of PPS21.

In terms of road access, DFI Roads are satisfied with the proposed development subject to compliance with a condition stating that visibility splays will be in accordance with the attached RS1 form.

PPS2: Natural Heritage

Policy NH 2: Species Protected by Law, states that Planning permission will only be granted for a development proposal that is not likely to harm a European protected species. In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:-

- there are no alternative solutions; and
- it is required for imperative reasons of overriding public interest; and
- there is no detriment to the maintenance of the population of the species at a favourable conservation status; and
- compensatory measures are agreed and fully secured.

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against.

Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

Owing to the age and setting of the old building and its location adjacent to mature hedging and trees, it was considered necessary to seek a Preliminary Ecological Assessment (PEA) of the site as the building and surrounding vegetation was considered to have bat roost potential. Natural Environment Division were consulted on receipt of the PEA, they responded stating, "given the availability of suitable habitat, it is not unreasonable to suggest that badgers may be present in the vicinity. As badgers and the setts are protected under the Wildlife (Northern Ireland) Order 1985 (as amended), NED

requires further information regarding the presence/absence of badgers in order to provide a substantive response."

The proposed development is not acceptable in principle therefore it was not considered necessary to put the applicant to the added expense of commissioning this badger survey sought by NIEA.

Recommendation:

Refusal is recommended

Refusal Reasons:

1. The proposal is contrary to the 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 Policy CTY3 of PPS21 in that the building to be replaced does not exhibit the essential characteristics of a dwelling house and therefore would not represent a replacement opportunity.

Informatives:

The drawing number to which this decision relates is: LA07/2019/1087/ 01

Case officer:

Authorised by:

Date:

Planning Committee Schedule of 11th March 2020

Planning reference: **LA07/2019/1087/O**

Proposal: **Proposed replacement dwelling & garage.**

Applicant: **Mr Patrick Megoran**

Location **50m North East of 21 Drakes Bridge Road Crossgar.**

Recommendation: **Refusal**

Reasons

- 1. The proposal is contrary to the 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 Policy CTY3 of PPS21 in that the building to be replaced does not exhibit the essential characteristics of a dwelling house and therefore would not represent a replacement opportunity.**

Site Description

The proposal is for outline planning approval for a replacement dwelling and garage on a site 50m North East of 21 Drakes Bridge Road, Crossgar located outside the development limit of the settlement of Crossgar as designated in the Ards and Down Area. The site is located in the open countryside and is surrounded by existing farm buildings and a currently unoccupied dwelling with all buildings been accessed via an existing laneway.

Site History

No relevant planning history.

Planning Policies & Considerations

RDS, SPPS, PPS 21, PPS3, Ards & Down Area Plan 2015, Building on Tradition (Guidance Document).

Consultations and Representations

The following consultations were carried out –

Water Ni - No objections

Dfi Roads - No objections

Following notifications of the relevant neighbours and advertisement in the local press one objection was received where the author made comment on the alleged history of the building.

Assessment of reason for Refusal

Refusal Reason 1

The dwelling which is the subject of the application is located in the countryside as defined in the Ards & Down Area plan 2015 being the current Area Plan covering the site location.

As the replacement opportunity is located in the countryside it is essential that any replacement be on the same site and as such the proposal is compliant with SPPS and Policy CTY1 of Planning Policy Statement 21 Sustainable Development in the Countryside and as such could not be located in a settlement.

The existence of a replacement opportunity allows for this under the policy.

Refusal Reason 2

The proposal is compliant with the requirement of Policy CTY3 Replacement Dwellings which states that Planning permission will be granted for a replacement where the dwelling to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact.

In this situation the subject dwelling not only has the four external walls intact it also has a corrugated metal roof supported on existing timber beams.

From scrutiny of the officer's report it is clear that the absence of a chimney is clearly a deciding factor in the officer reaching the decision that this building does not meet the criteria as set out in policy CTY3 however the applicant would state that the stone built dwelling which is the subject of this proposal does meet the requirement of the policy test and should be considered to be acceptable under the spirit of the policy.

The building is single storey and of stone built status with a corrugated metal roof similar to many buildings that this Council have considered acceptable, it is clear that the existing structure has not been interfered with in an attempt to persuade the planning authority that it meets criteria of the policy rather the applicant relays on interpretation of the policy as has been the case in so many such applications considered by this authority.

The applicant has acquired the lands and property which were offered for sale some time ago and he has set about improving the farm land and reinstating it to agricultural use as the lands have lay desolate for many years previous due to neglect.

Overview

Conclusion

We would respectfully ask the Planning Committee to overturn this recommendation and grant Planning Permission for the development as applied for.



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

Application Reference: LA07/2019/1134/O

Date Received: 23rd July 2019

Proposal: Replacement dwelling and garage

Location: 90 Manse Road, Darraghcross, Crossgar

Site Characteristics and Area Characteristics:

The application site comprises a portion of a larger agricultural field which contains an old dwelling. There is an agricultural access serving this field and there are some trees forming a hedge along the eastern side boundary of the site. The site sits opposite Darraghcross GAC and just outside the village of Darraghcross.

The site is located in the countryside as defined in the Ards and Down Area Plan 2015. The surrounding area is mainly rural, made up of largely agricultural land with a number of dwellings fronting the road.

Site History:

R/2005/0804/O - 88 & 90 Manse Road, Darragh Cross, Crossgar.

Change of use from former buildings to dwelling.

Appeal Allowed

Planning Policies and Material Considerations:

The application is considered against the Ards and Down Area Plan 2015 and in addition to this is also considered against the guidance set out in Policies CTY1, CTY13 and

CTY14 of PPS 21: Sustainable Development in the Countryside, PPS3: Access, Movement and Parking, and SPPS.

Consultations:

DFI Roads – no objections

NI Water – no objections

NIEA – NED has concerns with this proposal and considers that in the absence of further information, the proposal would be contrary to the Habitats Regulations, Planning Policy Statement 2: Natural Heritage and the Strategic Planning Policy Statement for Northern Ireland in that the development would be likely to harm bats and insufficient information has been submitted to establish otherwise.

Objections & Representations:

The application was advertised in the local press on 7th August 2019 which expired on 21st August 2019 and neighbour notification was issued on 31st July 2019 and expired on 13th August 2019.

To date there have been no representations received in relation to the application.

Consideration and Assessment:

SPPS

The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. Paragraph 1.12 states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS. However, it is added that where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy. The SPPS retains certain existing planning policy statements and amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21). 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' is also retained and provides relevant planning guidance.

Policy CTY 1 of PPS 21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of instances when planning permission will be granted for a single dwelling are outlined.

Planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. CTY 3 favours the retention of non-listed vernacular dwellings in the countryside, if the dwelling makes an important contribution to the heritage, appearance or character of the locality.

Following site inspection, Officers consider that the building to be replaced makes a positive impact upon the surrounding area, and it constitutes a vernacular rural building. Annex 2 (Vernacular Buildings) of PPS21 highlights that rural vernacular houses may be recognised as such by meeting most of the primary characteristics and some of the secondary characteristics listed within Annex 2. The dwelling meets a number of both the primary and secondary characteristics, some of which are: Linear plan, limited depth of house, walls of mass load – bearing materials, openings predominantly on the front and back long walls, openings lack symmetry. As such, it is considered that the dwelling is a vernacular rural dwelling. Given its setback from the road and the incline in the field, the building is highly visible in views both ways along the Manse Road. It is therefore considered that the building makes an important contribution to the heritage, appearance and character of the locality and its loss would be detrimental.

In terms of road access, DFI Roads are satisfied with the proposed development subject to compliance with a condition stating that visibility splays will be in accordance with the attached RS1 form.

PPS2: Natural Heritage

Policy NH 2: Species Protected by Law, states that Planning permission will only be granted for a development proposal that is not likely to harm a European protected species. In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:-

- there are no alternative solutions; and
- it is required for imperative reasons of overriding public interest; and
- there is no detriment to the maintenance of the population of the species at a favourable conservation status; and
- compensatory measures are agreed and fully secured.

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against.

Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

Owing to the age and setting of the old building and its location adjacent to mature hedging and trees, it was considered necessary to seek a Preliminary Ecological Assessment (PEA) of the site as the building and surrounding vegetation was considered to have bat roost potential. Natural Environment Division were consulted on receipt of the PEA. They have responded stating that due to the low bat roost potential of the building to be replaced, NED require a full emergence/re-entry survey as per the BCT Guidelines.

The proposed development is not acceptable in principle therefore it was not considered necessary to put the applicant to the added expense of commissioning this full emergence/re-entry survey sought by NIEA.

As such, given that the building to be replaced is considered to be vernacular, its loss would be detrimental to the wider area, refusal is recommended.

Officers recommend that a new application be lodged to alter and extend this building to the rear, to enable it to be used as a dwelling, while maintaining the vernacular appearance.

Recommendation:

Refusal is recommended

Refusal Reasons:

1. The proposal is contrary to the SPPS and Policy CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building to be replaced constitutes a vernacular rural building, the loss of which would be detrimental to the heritage, appearance and character of the locality.
2. The proposal fails to comply with the SPPS and PPS2, Policy NH2: Species protected by Law in that it has not been demonstrated that the proposal will not have an unacceptable adverse impact on Protected Species, due to insufficient information being provided.

Informatives:

The drawing number to which this decision relates is: LA07/2019/1134/O 01.

Case officer:**Authorised by:****Date:**

Planning Committee Schedule of 11th March 2020

Planning reference: **LA07/2019/1134/O**

Proposal: **Replacement Dwelling & Garage.**

Applicant: **Mr B Mageean**

Location **90 Manse Road Darraghcross.**

Recommendation: **Refusal**

Reasons

- 1. The proposal is contrary to the SPPS and Policy CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building to be replaced constitutes a vernacular rural building, the loss of which would be detrimental to the heritage, appearance and character of the locality.**
- 2. The proposal fails to comply with the SPPS and PPS2, Policy NH2: Species protected by Law in that it has not been demonstrated that the proposal will not have an unacceptable adverse impact on Protected Species, due to insufficient information being provided.**

Site Description

The application site comprises a portion of an agricultural field which contains 2 No old dwelling and reads as one structure or as a semidetached dwellings. There is an agricultural access serving this field and the site is bounded by trees & a hedging along the eastern side boundary of the site. The site is located opposite Darraghcross GAC and is located just outside the village of Darraghcross.

The site is located in the countryside as defined in the Ards and Down Area Plan 2015. The surrounding area is mainly rural, made up of largely agricultural land.

Site History

R/2005/0804/O - 88 & 90 Manse Road, Darragh Cross, Crossgar.

Change of use from former buildings to dwelling.

Appeal Allowed

Planning Policies & Considerations

RDS, SPPS, PPS 21, PPS3, Ards & Down Area Plan 2015, Building on Tradition (Guidance Document).

Consultations and Representations

The following consultations were carried out –

Water Ni - No objections

Dfi Roads - No objections

NIEA – NED has concerns with this proposal and considers that in the absence of further information, the proposal would be contrary to the Habitats Regulations, Planning Policy Statement 2: Natural Heritage and the Strategic Planning Policy Statement for Northern Ireland in that the development would be likely to harm bats and insufficient information has been submitted to establish otherwise.

Following notifications of the relevant neighbours and advertisement in the local press no objections to the proposal were received either.

Assessment of reasons for Refusal

Refusal Reason 1

The dwelling which is the subject of the application is located in the countryside as defined in the Ards & Down Area plan 2015 being the current Area Plan covering the site location.

As the replacement opportunity is located in the countryside it is essential that any replacement be on the same site and as such the proposal is compliant with SPPS and Policy CTY1 of Planning Policy Statement 21 Sustainable Development in the Countryside and as such could not be located in a settlement.

The proposal is compliant with the requirement of Policy CTY3 Replacement Dwellings which states that Planning permission will be granted for a replacement where the dwelling to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact.

In this situation the subject dwelling not only has the four external walls intact it also has an existing roof supported on existing timber beams and is located to a similar building which has the same characteristics.

The building is single storey and of stone built status with an existing slate roof similar to the existing structure which exists to the left of the subject site (as viewed from the public road) of the current application and many buildings that this Council's Planning Department have considered acceptable as replacement opportunity, it is clear that the existing structure is acceptable as a structure that meets the criteria for replacement under the current policy and it must be stated on this basis that the adjacent structure also meets the current policy thus the structures that exist on this site affords the opportunity for two replacement opportunities of which only one is a subject of this application.

The reason for refusal put forward states that the current proposal constitutes a vernacular rural building the loss of which would be detrimental to the heritage, appearance and character of the locality.

The applicant would state that the current structures which exist on the site of which one is the subject of this proposal will continue to deaerate if he is not allowed to be replaced with a building to meet modern needs.

The current structures contribute little to the local area as they stand as derelict dwellings contributing nothing to the surrounding area and have no heritage and their appearance and character of the existing structures would not be detrimental to the locality rather they could be considered eyesores and if not replaced will deter-ate over the coming years.

Refusal Reason 2

It is contested that this reason is not sustainable as the Planning Department consider that as Refusal Reason No1 is not acceptable in principal, there for it is not considered necessary to put the applicant to the added expense of commissioning this full emergency /re-entry survey as sought by NIEA.

The contention that the structure which is clearly part of an existing semi-detached structure that exists on the site must be retained and can only be extended or altered and cannot be replaced is at variance with this reason for refusal as it is the writers contention

that the structure which exists will need a full emergency /re-entry to fulfil this recommendation from the officer.

The officers appear to have ignored that the existing structure that exists on the site is only part of the overall existing structure which is clearly two dwelling units.

The applicant would contest that the structures can be replaced and this proposal is the first step in dealing with one such structure and he contests that the requirements of NIEA can be met if the 1st Reason for refusal is overcome.

Overview

The site structure that is subject of this application exhibits the essential characteristics of a replacement dwelling as does the building adjacent.

The applicant wishes to replace the structure with a suitably designed modern building and it is his future intention to do similarly with the adjacent dwelling and if this is not the case then the buildings will fall into further di-repair and become an even greater eye-sore.

In relation to refusal reason No2 it is considered that these issues can be dealt with by our ecology expert Dr Richard Ayre going forward.

Conclusion

We would respectfully ask the Planning Committee to overturn this recommendation and grant Planning Permission for the development as applied for.



Comhairle Ceantair
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agus an Dúin

Newry, Mourne
and Down
District Council

Application Reference: LA07/2019/1644/O

Date Received: 27th January 2020

Proposal: Replacement Dwelling

Location: Lands at and located to the west of 24 Crabtree Road Ballynahinch

Site Characteristics & Area Characteristics:



The site is located along the minor Crabtree Road, Ballynahinch. It is comprised of a 1.7-hectare portion of land, which contains a two storey dwelling and associated out-buildings to the eastern side of the road and a large green field site to the western side of the road.

The dwelling is located immediately adjacent the public road and is separated by a grass verge. The adjacent out-buildings are enclosed by low walls, gates and mature vegetation.

The green-field site is relatively flat and defined on northern and western boundaries by mature vegetation.

The site is located within the rural and is surrounded by agricultural land, there are however, single dwellings and farm groups dispersed throughout the surrounding area.

Site History:

There is no previous history for this site.

Planning Policies & Material Considerations:

In assessment of this proposal regard shall be given to the Strategic Planning Policy Statement (SPPS), Ards and Down Area Plan 2015, PPS 21 (CTY 3), in addition, to the history and any other material consideration.

The application was advertised initially in the local press on 27.11.2019

Consultations:

In assessment of the application consultations were considered necessary with DfI Roads, Environmental Health and Northern Ireland Water.

Objections & Representations

No objections or representations have been received from neighbours or third parties of the site

Consideration and Assessment:**PPS 21**

Policy CTY 1 of PPS 21 lists a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of instances when planning permission will be granted for an individual dwelling house are outlined. The applicant seeks a replacement dwelling in accordance with CTY 3. It automatically follows that if the proposal complies with CTY 3, it will comply with CTY 1.

SPPS

The Strategic Planning Policy Statement for NI Ireland (SPPS) is material to all decisions on individual applications. The SPPS retains policies within existing planning policy documents until such times as a Plan Strategy for the whole of the Council Area has been adopted. It sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

The SPPS is more prescriptive than the retained policy in PPS 21 in relation to replacement dwellings and so it carries greater weight in the assessment of this application. Accordingly, the test as set out in paragraph 6.73 is that any

replacement dwelling must be located within the existing curtilage where practicable and must not have visual impact significantly greater than the existing dwelling. In these circumstances, greater weight must be attached to the tests set out in Paragraph 6.73 of the SPPS.

Policy CTY 3

Policy CTY 3 of PPS 21 provides the policy context and states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact.

In assessment of this initial criterion, it is considered that the dwelling exhibits the essential characteristics of a dwelling and all external structural walls are substantially intact.



Policy CTY 3 provides criteria for instances where a non-listed vernacular building is present, the Planning Authority do not consider this building to be vernacular and therefore the policy requirements relating to this are not applicable in this case.

In addition, to the above, proposals for a replacement dwelling will only be permitted where 5 additional criteria are met.

In assessment of this, the dwelling to be replaced is noted to be a substantial two-storey dwelling which is located to the eastern side of Crabtree Road. It forms part of a 6.2 hectare holding, which also contains a number of ancillary buildings which appear to have been formerly used for agriculture and 5 neighbouring fields.

There is no objection in principle to the replacement of the existing dwelling, the applicants are seeking to position the new dwelling on an alternative siting in the field opposite and west of the site.

CTY 3 states that the proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either

(A) the curtilage is so restricted that it could not reasonable accommodate a modest sized dwelling, or

(B) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits

The applicants' justification for the relocation of the dwelling relates to

- The restricted curtilage and
- Odour from neighbouring farm

At present the existing dwelling has a footprint of 106sqm positioned approximately 2m from the road edge. There is no dispute that the plot depth immediately surrounding the dwelling is restricted ranging from 8.1m to the northern side of the dwelling to 10.7m to the southern side. At present there is a narrow concrete yard which extends around the dwelling which is retained by a wall, with higher ground to the rear and east. There is however additional land to the north and south of the dwelling which currently contains associated out buildings.

The applicants consider that the site could not accommodate a modest sized dwelling while incorporating rural characteristics such as setbacks, defensible space and gardens similar to the character of other dwellings along Crabtree Road and in doing so would require a retaining wall significantly higher than the existing which would have a significant impact on the local character and environment. The applicants consider that the above would also require excavation of land towards underground slurry tanks located to the rear of 28 Crabtree Rd which is undesirable due to the potential for underground contamination and the risk this may post to future residents.

The applicant is also concerned about odour and fumes from the above-mentioned slurry tank stating that the previous occupants left the dwelling because of it and the property has since fallen into disrepair.

They have submitted an Odour Impact Assessment in support of their concerns.

The critical issue in this appeal is whether or not a replacement dwelling can be provided within the existing curtilage and the adjoining areas or if the off-site replacement as proposed by the applicant represents the only feasible option within the existing holding.

The Planning Authority acknowledge that the plot is restricted in depth but this is more than adequately compensated for by the overall length of the frontage which extends to 81m.

The existing dwelling is located approximately 78m from the offending slurry tank. Environmental Health, normally recommend that dwellings are positioned no less than 75m away from agricultural buildings and therefore it is considered that the existing dwelling is within the parameters deemed acceptable. Nevertheless, the applicants consider the potential odour from the neighbouring tank to be a significant problem and their Odour Impact Assessment does support the view that the proposed siting opposite the existing would reduce the potential odour levels.

In consideration of this Environmental Health have been consulted and have advised the Planning Authority that the proposed alternative site would be less affected by any potential smell nuisance, but they have not said that the dwelling should be located there.

It is considered that a dwelling positioned within the land immediately adjacent the existing curtilage of the dwelling, to the north of site would represent a suitable alternative given that it too is outside the area most affected by odour.

In assessment of all of the above, it is therefore considered that the land outlined in red on the eastern side of Crabtree Road is large enough to accommodate a modest sized dwelling designed specifically for this plot.

Policy requires the overall size of the new dwelling should allow it to integrate into the surrounding landscape and not have a visual impact significantly greater than the existing building. As this is an outline application the proposed design and layout is not before the Planning Authority at present, however, given the open nature of the proposed site, there is concern that a dwelling would have a visual impact which is significantly greater than the existing dwelling, as will be discussed below in consideration of CTY 13.

It is considered that all necessary services could be provided without significant adverse impact on the environment or character of the locality.

DfI Roads have indicated to the Council through their consultation response that there are no objections in principle to the proposal subject to provision of a plan in accordance with the RS1 form which requires visibility splays of 2.4m x 70m.

Policy CTY 13

CTY 13 of PPS 21 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.

A new building will be unacceptable where:

(A) It is a prominent feature in the landscape; or

- (B) The site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
- (C) It relies primarily on the use of new landscaping for integration; or
- (D) Ancillary works do not integrate with their surroundings; or
- (E) The design of the building is inappropriate for the site and its locality; or
- (F) It fails to blend with the landform, existing trees, buildings, slopes and other nature features which provide a backdrop;

As discussed above the proposal seeks outline planning permission therefore the proposed design is not currently before the council.

However, regardless of design, any dwelling erected within this green field site would lack a suitable degree of enclosure, due to the flat, open nature of the site and its lack of established natural boundaries, particularly when viewed on approach from the south-east along Crabtree Road.



In addition and as noted above, the required visibility splays for this site are 2.4m x 70m, implementing these splays would result in the loss of the existing roadside vegetation and further exposure of the site. While new planting may be proposed it will inevitably take a considerable length of time to mature and in the interim would not mitigate the impact of new development.

I find therefore that the proposal fails to comply with the requirements of CTY 13 and will be refused on this basis.

CTY 14 – Rural Character

Planning permission will be granted for a building in the countryside where it does not cause a detrimental change to or further erode the rural character of the area.

A new building will be unacceptable where:

- (A) It is unduly prominent in the landscape; or
- (B) It results in a suburban style build-up of development when viewed with existing and approved buildings or
- (C) It does not respect the traditional pattern of settlement exhibited in that area or
- (D) It creates or adds to a ribbon of development; or
- (E) The impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.

In assessment of this policy and as indicated above it is considered that a dwelling on this site would be unduly prominent.

It is also noted from the submission, that the applicant seeks to retain the existing building. It is considered that retention of this building would contribute to the accumulation of the buildings within the immediate area and consequently detract from the rural character of the area.

On this basis it is considered that the proposal to erect an off-site replacement, while retaining the existing dwelling would be contrary to CTY 14 of PP21.

Recommendation:

Having assessed the proposal against the various planning policies and material considerations which apply to the application and taking into account the input of the Councils consultees, it is determined that the proposal is unacceptable in planning terms. The applicant has not demonstrated that the proposed off-site replacement is the only feasible option within the existing holding. In addition, the proposed off site location would result in a dwelling which would have visual impact significantly greater than the existing dwelling.

The proposal is therefore recommended for refusal on the basis of the following reasons.

Refusal Reasons:

1. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed replacement dwelling is not sited within the established curtilage of the existing dwelling and it has not been shown that the alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

2. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that it is unable to provide a suitable degree of enclosure for a dwelling to integrate into the landscape and the proposal would rely primarily on the use of new landscaping for integration.
3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the accumulation of buildings within the immediate area would result in a detrimental change to the rural character of the countryside.

Signed

Date

Signed

Date

PLANNING REFERENCE: LA07/2019/1644/O

SUPPORTING STATEMENT – By Carlin Planning Ltd

CTY3: Replacement Dwellings: The first refusal reason states that the proposal is contrary to the SPPS and Policies CTY1 and CTY3 of Planning Policy Statement 21 in that the proposed replacement dwelling is not sited within the established curtilage of the existing dwelling and it has not been shown that the alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

Policy CTY3 states that a proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either: (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

The first refusal reason relates to (b); however, it is submitted that the proposed development meets both points (a) and (b). The policy requires that one of the bullet points is met.

The application proposed an off-site replacement dwelling. The application was supported by an Odour Impact Assessment (Gasses and Emissions) prepared by specialist odour consultants (MCL Consulting). It raised serious concerns regarding the location of a replacement dwelling in close proximity to the slurry tank located to the rear of no. 28 Crabtree Road, which is outside the ownership and control of the applicant.

The Odour Impact Assessment concludes that: *"The results clearly indicate that a replacement dwelling located within the extent of No.24 Crabtree Road would be regularly subjected to odour values greater than 30uE/m3, which would be considered as potentially offensive for future occupants...in conclusion this assessment recommends that the alternative replacement dwelling site is adopted in order to ensure that future occupants will not be subjected to excessively offensive odour generated by the farm complex"* (p6). The Consultation response from the Environmental Health Department dated 15th January concluded that *"Environmental Health Department would agree from the odour report provided that the alternative replacement dwelling site would be less affected by any potential smell nuisance"*. The officers report limits the weight to be attached to this response on the basis that Environmental Health have recommended a minimum 75m separation from slurry tanks in the past (whilst the existing building is only 78m away from the slurry tank). The report then notes that Environmental Health have not stated that the dwelling 'should' be located on the alternative site. Statutory consultees have an important role in the development management process, and it should not be expected that they draft their responses in such direct terms. The response clearly indicates that the alternative site would be less affected by odour which is consistent with the policy requirement that *'an alternative position nearby would result in demonstrable...amenity benefits'*.

A replacement dwelling within the curtilage of the existing dwelling does not provide a suitable environment for the applicant due to the odour and gases generated by the slurry tank / farmyard which is outside of their control. This would severely impact upon the health and wellbeing of those living in the proposed dwelling. It is important to note that the gasses from slurry tanks can negatively impact on human health and the issue is not solely related to 'smell'. This cannot be justified when there is a much safer and more appropriate site available on the opposite side of Crabtree Road. It has clearly been demonstrated that the proposed site would have demonstrable amenity benefits as it will be less impacted by gasses/odours/emissions therefore the policy has been met.

CTY 3 also states that an exception will be granted when *'the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling'*. CTY3 states that *"'curtilage' will mean the immediate, usually defined and enclosed area surrounding an existing or former dwelling house"*. The officers report acknowledges that the curtilage of the existing dwelling is extremely restricted. The existing dwelling sits less than 2m from Crabtree Road (Figure 1). There is a retaining wall located 3m to the rear of the dwelling (Figure 2), with a steep slope rising from west to east beyond the retaining wall. The distance between Crabtree Road and the rear boundary wall ranges between 8.1m and 10.7m which is not suitable for a modest replacement dwelling. The officers report states that

*'the critical issue in this **appeal** is whether or not a replacement dwelling can be provided within the existing curtilage and the adjoining areas or if the off-site replacement as proposed by the applicant **represents the only feasible option within the existing holding**'.* Council should be careful not to replace planning policy with statements made by the Planning Appeals Commission in the context of site-specific planning appeals. The statement above goes beyond what is required by both the SPPS and PPS21, and strays into the realms of creating a new policy, which is wholly inappropriate. The case officer suggests that the most appropriate location for the new dwelling is outside the existing curtilage on the adjacent site which currently accommodates several outbuildings. This site is not available for a replacement dwelling as these outbuildings are still in use by the applicant who has an active farm in the area.

Evidence was also provided by the applicant, highlighting significant surface water run-off from the rising land to the rear which would negatively impact on a replacement dwelling if it was located within the existing curtilage. There is no reference to this within the case officers report.



Policy CTY 13 – Integration and Design of Buildings in the Countryside: The second refusal reason states that the proposal is contrary to the SPPS and Policy CTY13 of PPS 21 in that it is unable to provide a suitable degree of enclosure for a dwelling to integrate into the landscape and the proposal would **rely primarily on the use of new landscaping for integration**. The most appropriate location for the dwelling is to the rear of the field. The landform in this area rises to the north and west and has existing vegetation on both sides which would enable a dwelling to integrate into the countryside. The landform blocks all views into the site when travelling south on Crabtree Road. When travelling north on Crabtree Road, the rising land and vegetation to the rear will provide a suitable degree of integration, ensuring that the dwelling does not break the skyline and appear prominent in the landscape. The application is in outline therefore no detail of the design has been provided. The case officers report concludes that the proposed dwelling would be unduly prominent, however the proposed site is large enough and well screened to sensitively integrate a new dwelling.

CTY14 - Rural Character: The Case Officers report also concludes that the retention of the existing building would contribute to the accumulation of buildings within the immediate area. The proposal to retain the existing building was based on it having 'vernacular' qualities, however as the case officer has deemed that this is not the case, then the applicant is content to demolish the building and this can be conditioned on a planning approval.

Conclusion: The case officers report concludes that 'the applicant has not demonstrated that the proposed off site replacement is the only feasible option within the existing holding', however this is not the test that needs to be applied under the SPPS or PPS21, CTY 3. The report acknowledges that the curtilage of the existing dwelling is too restricted to accommodate a modest dwelling and amenity benefits have been demonstrated, therefore Policy CTY3 has been met. Expert advice of the odour specialists and Councils Environmental Health Department should not be disregarded. It is important that all relevant material considerations are considered so that a robust planning decision can be made.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2019/1189/F

Date Received: 1st August 2019

Proposal: Temporary mobile home

Location: Land 25m East of 113 Ballagh Road, Newcastle

Site Characteristics and Area Characteristics:

The application site comprises a detached storey and a half dwelling accessed via a concrete driveway. It is surrounded with garden areas and landscaped areas. To the front of the dwelling is an area of hardstanding for parking provision. Further east on the site near the road are a number of outbuildings.

The site is in the countryside and not within any defined settlement limit. The dwelling is one of a number of dwellings located fairly close together along this stretch of the Ballagh Road. To the rear west of the site, land levels increase steeply.

Site History

P/2005/0455/F – 113 Ballagh Road

Erection of replacement dwelling

Permission Granted 08/08/05

Planning Policies and Material Considerations:

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

Consultations:

DFI Roads were consulted as part of the application. No objection is raised to the proposal following receipt of amended plans.

Objections & Representations:

The application was advertised in the local press on 21st August 2019 which expired on 4th September 2019 and neighbour notifications sent on 15th August 2019 expired on 29th August 2019. To date there have been no objections received in relation to the proposal.

Consideration and Assessment:

The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. Paragraph 1.12 states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS. However, it is added that where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy. The SPPS retains certain existing planning policy statements and amongst these is Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21). 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' is also retained and provides relevant planning guidance.

Policy CTY9: Residential caravans and mobile homes states that planning permission may be granted for a residential caravan or mobile home, for a temporary period only, in exceptional circumstances.

These exceptional circumstances include:

- The provision of a temporary residential accommodation pending the development of a permanent dwelling; or
- Where there are compelling and site-specific reasons related to personal or domestic circumstances.

All permissions will normally be subject to a three-year time limit. However, this may be extended having regard to the particular circumstances of the case. It is set out that the siting of a mobile home will be subject to the same planning and environmental

considerations as a permanent dwelling. Permission will depend on the ability to integrate the unit within an existing building group and screen the unit from public view.

Permission is sought for the erection of a temporary mobile home which would house the applicant's elderly parents on site.

The proposed mobile home would sit to the front of the dwelling, in an area of flat lawn enclosed with stone walling. It would be set back some 40m from the Ballagh Road. The mobile home would not be visible from the road owing to the mature hedging and trees along the front of the site and the presence of outbuildings which would block any views. The mobile would have a width of 4.3m and a depth of 12.9m. It would have a low-pitched roof.

Officers consider that the proposed mobile home would be able to visually integrate into the site without being visible from public view. There is only a limited view of the main house at present and these are from fleeting glances at specific viewpoints. Given the presence of outbuildings on site and tall mature hedging to the roadside frontage of the site, the mobile home would not be visible from any views from Ballagh Road. The application seeks a temporary permission for 5 years. It is considered that as the building would be able to be removed, and the ground restored to its original condition, there would not be any materially harmful impact upon the visual amenity of the area as a result of this permission.

The mobile home proposed would not result in any harm to the residential amenity of any adjacent property by way of overbearing impact, loss of light, outlook or privacy given the separation distances to the closest properties.

In terms of the need for such development, the supporting statement from the agent sets out that the applicant's parents who are 93 and 91 currently live in Carryduff, some 40-50 minutes away. The applicant's father has been responsible for the care of his mother, however owing to his advancing years, he is no longer able to carry out these caring responsibilities alone. This application seeks to provide a solution whereby the applicants parents can be near their son whilst still maintaining some amount of independence in a mobile home. In regards the particular circumstances of the case, the applicant seeks this permission for 5 years which is longer than the normal 3-year time limit imposed with temporary permissions. The reasoning behind this is to allow for 5 years of care for the applicant's parents rather than just 3 years normally permitted under a temporary permission. The applicant would remove the mobile home after this 5 years.

Officers consider that there is no compelling or site-specific information submitted that explains why the applicant's parents need to be housed in a separate mobile on his site rather than either moving in with the applicant or renting a property further down

the road in Newcastle. Whilst it is acknowledged that the applicant wants his parents to be close by, this has not been explained in terms of a specific caring need or through the submission of further information. This additional site-specific info was sought from the agent on several occasions between 18th November 2019 to 17th January 2020 but was not received.

DFI Roads were consulted as part of this application as the proposal might lead to an increase in the number of vehicle journeys per day. Following receipt of an amended plan, they have no objections to the proposal.

Unfortunately, given the lack of compelling and site-specific information demonstrating the need for the mobile home on this particular site, it is not considered that the proposed development would constitute an exceptional circumstance and as such, would fail to comply with Policy CTY9 of PPS21.

Recommendation:

As such, refusal is recommended

Refusal Reasons:

1. The proposal is contrary to the 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 fails to comply with Policy CTY9 of PPS21 in that there are no compelling or site-specific reasons for the need for this mobile home, and this would therefore not be an exceptional circumstance.

Informatives:

The drawing numbers to which this decision relates are: LA07/2019/1189/01 - 03

Case officer:**Authorised by:****Date:**



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

Newry, Mourne
and Down
District Council

Application Reference: LA07/2019/1455/F

Date Received: 30.09.2019

Proposal: New access to dwelling in substitution for that approved under Planning Application LA07/2018/0118/F.

Location: 30m southeast of number 8 Outlackan Road, Belleek, Newry

Site Characteristics & Area Characteristics:

The site is located off Outlackan Road, approximately 30m west of existing dwelling 8 Outlackan Road. The site is an agricultural field. The site is bounded to the south by a fence consisting of concrete pillars and wiring. The northern and eastern extents of the site are naturally screened with a range of mature vegetation.

The site is located approx. 2.6 miles east of Newtownhamilton. It is located in the countryside as defined in the Banbridge, Newry and Mourne Area Plan 2015.

The proposal involves the creation of a new concrete laneway access off Outlackan Road to the dwelling as approved under Planning Application LA07/2018/0118/F. Included in the proposal is a planting scheme along the road and on the new laneway also.

Date of Site Visit: 06.11.2019

Site History:

LA07/2018/0118/F – Retirement dwelling and garage on farm. Permission Granted.

P/2009/0790/RM – Erection of farm retirement dwelling and detached garage – Permission Granted

P/2007/1022/O – Site for Farm retirement dwelling and detached garage. Permission Granted.

Objections and Representations: 2 neighbours were notified of the proposal on 05.11.2019 and the application was advertised in local press on 23.10.2019. No objections or representations were submitted.

Consultations:

DFI Roads – No objection to the proposal

Planning Policies and Material Considerations

The Banbridge, Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP.

Strategic Planning Policy Statement (SPPS)

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

Planning Policy Statement 21 – Sustainable Development in the Countryside

Policy CTY 1 states a range of types of development which in principle are considered to be acceptable in the countryside, although it does not set out a specific policy for new accesses in the countryside. However, the policy headnote states "all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings." I feel the creation of a new access when there is an existing access would be to the detriment to the countryside and potentially lead to a dangerous precedent for accesses in rural areas. The new access does not integrate sympathetically with the surrounding area and therefore the proposal therefore is contrary to CTY 1.

The previous planning application LA07/2018/0118/F was granted approval using the existing laneway which serves the main farm holding. CTY 10 – Dwellings on farms was the policy against which the previous application was assessed. Criteria (c) of CTY 10 outlines that the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access should be obtained from an existing lane. Whilst the applicant has outlined that there has been a family feud with the residents of number 8 Outlacken Road, insufficient information has been supplied to outline why the existing laneway is not practicable. The proposal is contrary to criteria (c) of CTY 10.

CTY 8 outlines that permission will be refused for a building which creates or adds to a ribbon of development. CTY 14 refers to rural character. Development is not permitted in the countryside where it causes a detrimental change to, or further erodes the rural character of an area. Development is unacceptable where it creates or adds to a ribbon of development. The proposal contributes to ribbon development along Outlacken Road and is therefore contrary to CTY 8 and CTY 14 of PPS 21.

CTY 13 relates to the integration of developments in the countryside. A proposal will be unacceptable where it is a prominent feature in the landscape; it fails to blend with the landform, existing trees or buildings which provide a backdrop. The proposal is contrary to CTY 13 in that it fails to blend with the landform and is a prominent feature in the landscape.

PPS 3 – Access, Movement and Parking

Policy AMP 2 – Access to Public Roads outlines that planning permission will only be granted for a development involving direct access onto a public road where:

- a) Such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
- b) The proposal does not conflict with Policy AMP 3 Access to Protected Routes.

DFI Roads have been consulted in regards this policy and are content that the proposed access is satisfactory.

Recommendation:

Refusal

Refusal reasons:

1. The proposal is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal is not sited and designed to integrate sympathetically with the surrounding countryside.
2. The proposal is contrary to criteria (c) of CTY 10 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the existing laneway is practicable and a new access is not deemed necessary.
3. The policy is contrary to the SPPS and CTY 8 and CTY 14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal adds to ribbon development.
4. The policy is contrary to the SPPS and CTY 13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that it fails to blend with the landform and is a prominent feature in the landscape.

Case Officer:

Authorised Officer:

**LA07/2019/1455/F – new access to dwelling in substitution to that approved under planning ref:
LA07/2018/0118/F – 30M SE of 8 Outlecken Road, Belleeks, Newry**

The proposal was initially approved under LA07/2018/0118/F, in this approval the application used the existing laneway for access to the proposed dwelling from the Outlecken Road. Our client does not have a right of way on this laneway as it was not included in his inheritance when divided among a number of relatives in recent months. We feel that the need for the new access is necessary as there is no alternative in the planning report it states that this application is contrary to CTY10 we feel that yes the laneway in question is practicable but as it is not in our clients ownership so cannot be used, this leaves no alternative but to create a new access as outlined in red on the site location maps.

In the report it is also suggested that the new access is contrary to CTY10 and CTY13, Again the access is necessary as detailed above, and our client will keep the access running alongside the Sothorn existing boundary, with new planting to the other side of the proposed laneway to match the existing native hedgerow and trees, the entrance of the proposed new access can achieve adequate visibility splays and the proposed access is to be kept to traditional style with no prominent features of large walls or piers, the access will be in keeping with CTY 1 and designed to integrate sympathetically with the surrounding local landscape.

Thanks in advance

John Collins

Collins and Collins
Architectural Consultants
2 Marcus Street
Newry
BT34 1AZ



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2019/1449/F

Date Received: 26.09.2019

Proposal: Proposed infill dwelling and detached garage under PPS21 CTY.

Location: Site adjacent to and 50m south of 29 Foughilletra Road, Jonesborough, BT35 8JE.

Site Characteristics & Area Characteristics: The site is located on the Foughilletra Road, situated approximately 1 mile from Jonesborough. The topography of the site rises up from the main road. The site lies outside the settlement limit for Jonesborough village but does lie within the designation of an Area of Outstanding Natural Beauty (AONB).

Site History: N/A

Date of Site Visit: 06/11/2019

Planning Policies and Material Considerations:

Banbridge Newry Mourne Area Plan 2015

Strategic Planning Policy Statement for Northern Ireland

Planning Policy Statement 21 – Sustainable Development in the Countryside

Planning Policy Statement 2 – Natural Heritage

Consultations:

DFI Roads – Content subject to conditions

NI Water – Generic Response

Objections and Representations:

3 neighbours were notified on 30.10.2019. The proposal was advertised in local press on 23.10.2019. No objections or representations have been submitted for consideration.

Consideration and Assessment:

The Banbridge, Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP.

Strategic Planning Policy Statement (SPPS)

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

Planning Policy Statement 21 – Sustainable Development in the Countryside

Policy CTY 1 refers to a range of development which in principle are acceptable in the countryside. This development includes infill dwellings if they meet the criteria set out in CTY8.

Policy CTY 8 – Ribbon Development

Policy CTY 8 outlines the criteria which must be met in order to grant planning permission for an infill site. Planning permission will be refused for a building which creates or adds to a ribbon of development. An exception will only be made 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 meets the existing development pattern along the frontage in terms of size, scale, siting and plot size.

For the purpose of this policy, the definition of a substantial and built-up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear. It is considered there are two buildings with frontage along Foughilletra Road at numbers 31 and 23. Consideration was given to other buildings along the road, but it is considered that these do not have road frontage, just access points on to the main road. Therefore, the site lacks a substantial and continuously built-up frontage.

An exception to ribbon development will be permitted where the proposed gap site is sufficient only to accommodate up to a maximum of two houses. The gap between dwellings with a road frontage is 167m which is large enough for more than 2 dwellings.

The proposal fails both elements of the policy criteria outlined above. The proposal would, if permitted, result in the addition of ribbon development along Foughilletra Road. I consider therefore, that the proposal fails policy CTY 8.

Policy CTY 1 – Development in the Countryside

The proposal does not meet the cases outlined in CTY 1 for planning permission. With no overriding reasons why this development is essential and could not be located in a settlement it is considered that the proposal is also contrary to policy CTY 1.

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

Planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of appropriate design. The proposal complies with CTY 13.

Policy CTY 14 – Rural Character

Planning permission is only granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. This proposal, if permitted, would create a ribbon of development. It is considered that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside.

CTY 16 – Development Relying on Non-Mains Sewerage

Planning permission will only be granted for development relying on non-mains sewerage where the applicant can demonstrate that this will not create or add to a pollution problem. It is desirable for new development to connect to mains services wherever possible.

Planning Policy Statement 2 – Natural Heritage

The site lies within the Ring of Gullion Area of Outstanding Natural Beauty. Policy NH 6 refers to AONBs. It highlights that planning permission for a new development will only be granted where it is of an appropriate design, size and scale for the locality and all of the following criteria are met:

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

Development proposals in AONBs must be sensitive to the distinctive special character of the area and the quality of their landscape, heritage and wildlife. I consider that the proposal is contrary to NH 6 in that the siting of the proposal is not sympathetic to the special character of the AONB through the creation of build-up.

Recommendation:

Refusal

Reasons for refusal:

1. The proposal is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons

why this development is essential in this rural location and could not be located within a settlement.

2. The proposal is contrary to the SPPS and Policy 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 Foughilletra Road.
3. The proposal is contrary to the SPPS and to Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted, add to a ribbon of development, which would therefore result in a detrimental change to further erode the rural character of the countryside and contribute to build-up in the area.
4. The proposal is contrary to the SPPS and PPS 2 NH 6 in that the siting of the proposal is not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

Case Officer:

Authorised Officer:

Representation Against Recommendation to Refuse

Application Ref:	LA07/2019/1449/F
Application Name:	Trina-Marie & Mark Mooney
Site Location:	Site adjacent to and 50m south of 29 Foughilletra Road, Jonesborough BT35 8JE
Proposal:	proposed infill dwelling and detached garaged under PPS 21, CTY 8
Consultations:	Transport NI have no objections to the proposal.

Reasons for refusal are cited as follows:

1. *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 would, if permitted, result in the addition of ribbon development along Foughilletra Road.*
3. *The building would, if permitted, add to a ribbon of development, which would therefore result in a detrimental change to and further erode the rural character of the countryside and contribute to build-up in the area.*
4. *The siting of the proposal is not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.*

The main issue is whether or not the proposal may be considered as an exception under CTY8 (i.e.)

...."A small gap site sufficient to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage. (A line of three or more buildings along a road frontage) provided this meets the existing development pattern along the frontage in terms of size, scale, siting and plot size"

I say this proposal meets this criteria.

- Figure 1 clearly shows there to be a distinct frontage of at least five buildings. Planning Services consider there are only two.
- Planning Services have taken their measurements of the gap site between no's 23 and 31 Foughilletra Road. I contend that the gap site is in fact between no. 25a and no. 29.
- Planning Services opine that a small ranch style fence along the gable of no. 25a precludes it from having frontage to the road. I disagree. The ranch fence is a simple device to keep cattle away from the building. 25a is also connected directly to Foughilletra Road and displays the characteristics of a dwelling fronting onto it.
- Planning Service discount no. 29 as part of the built-up frontage. I contend that no. 29 and its outbuildings display characteristics of roads frontage and is connected directly to Foughilletra Road.

I consider that this site complies with policy CTY 8.

If CTY8 is satisfied, then reasons for 1-3 for refusal are not sustainable. In relation to reason no. 4 the applicant is willing to work with Planning Services to agree an appropriate design.

BD 4TH March 2020

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Printed: 14/11/2018 Customer Ref:

Centre Point (Easting, Northing): 305782, 318114

FOUGHILLETRA ROAD, FOUGHILL ETRA, JONESBOROUGH, BT35 8JE, 185918738

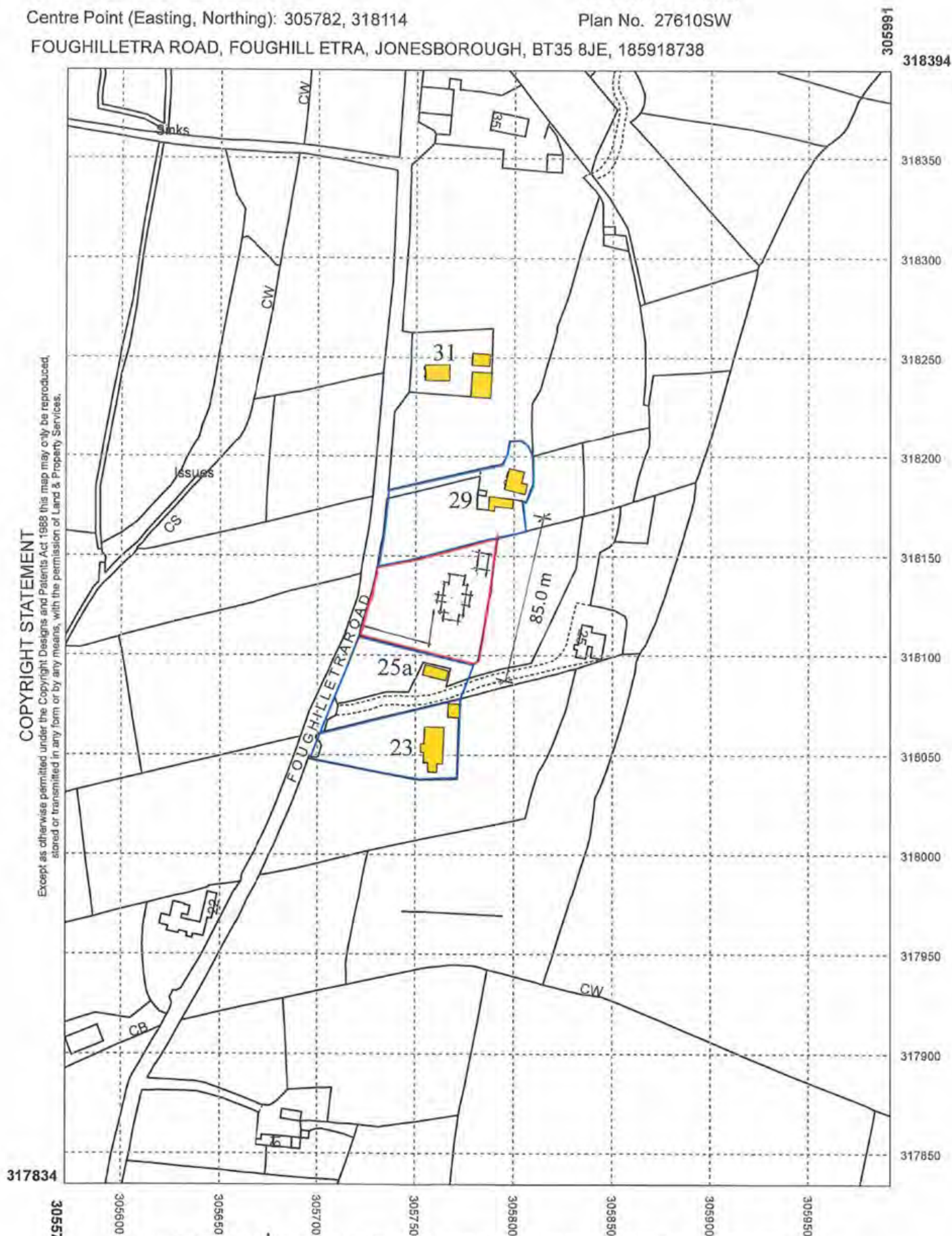
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Order no. ORD62975

Plan No. 27610SW

126

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Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2018/0048/F

Date Received: 21 December 2017

Proposal: Demolition of existing barns and construction of new build self-catering holiday letting unit, in substitution for barn conversion approved under application LA07/2015/1030/F

Location: The application site is located 10 metres north west of 56 Levalleyreagh Road, Ballyagholy, Rostrevor

Site Characteristics & Area Characteristics:

The site is located close to the junction between the Ballyvally Road and the Levalleyreagh Road. The gradient of the site gently increases away from the Ballyvally Road in a southerly direction. Presently there are two buildings located on the site. The first building appears to have previously been used as an agricultural store and is located in the middle of the site and this building has a smooth concrete rendered finish and corrugated tin roof. The second building is located along the eastern boundary with no.56 Levalleyreagh Road and appears to have been previously used partially for storage and a piggery. The building on the eastern boundary is long and narrow and has been constructed using concrete blocks and has a corrugated tin roof. The site is generally laid in grass with an access lane from the road to between the two buildings. The site is irregular in shape. The eastern boundary comprises the long agricultural building and a mature hedge comprises the western boundary with the Ballyvally Road. There is no physical boundary at the southern elevation of the site.

Site History:

LA07/2015/1030/F Change of use of existing agricultural building to holiday letting unit. Permission granted 11 October 2016.

P/2009/1578/F Erection of a farm dwelling and garage. Permission granted on 11/06/2010.

Planning Policies & Material Considerations:

This planning application has been assessed under:

- The Regional Development Strategy 2035
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Banbridge / Newry & Mourne Area Plan 2015
- PPS 2 – Natural Heritage
- PPS 3 – Access, Movement and Parking
- PPS 16 – Tourism
- PPS 21 – Sustainable Development in the Countryside
- DCAN 15 – Vehicular Access Standards
- Building on Tradition, A Design Guide for Rural Northern Ireland

Consultations:

DAERA: Farm business is active and established

DFI Roads: No objection subject to conditions

NI Water: Generic response received

Objections & Representations

Five neighbour notifications were issued on 15 January 2018. The application was advertised in the local press on 24 January 2018. No representations were received.

Consideration and Assessment:

Banbridge, Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is the Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside development limit and is within the Mournes AONB.

Strategic Planning Policy Statement (SPPS)

The SPPS states that the guiding principle should be to ensure policies and proposals facilitate appropriate tourism development in the countryside (such as appropriate farm diversification schemes, the re-use of rural buildings and appropriate redevelopment and expansion proposals for tourism purposes) where this supports rural communities and promotes a healthy rural economy and tourism sector. Where there is no suitable site within a settlement a new build hotel, guest house, or tourist hostel may be appropriate on the periphery of a settlement subject to meeting normal planning requirements. Other acceptable tourist development in the countryside may include appropriate self-catering accommodation, particularly in areas where tourist amenities and accommodation have become established or likely to be provided as a result of tourism initiatives, such as the Signature Projects, or a new or extended holiday park that must be a high quality and sustainable form of tourism development.

PPS 21 Sustainable Development in the Countryside

The application site is located within the countryside. Policy CTY 1 outlines the types

of development which in principle are considered to be acceptable in the countryside. It states that planning permission will be granted in the countryside for farm diversification proposals in accordance with Policy CTY11 and tourism proposals in accordance with PPS 16.

CTY 11 Farm Diversification

Planning will be granted for a farm diversification proposal where it is demonstrated it is run in-conjunction with agricultural operations on the farm.

- (a) DAERA have been consulted on the farm business, and have confirmed that the applicant is a formal member of the farm business. The farm business is currently active and has been established for 6 years.
- (b) In terms of character and scale the development is appropriate to its location.
- (c) I consider there will be no adverse impacts on natural or built heritage.
- (d) The proposal will not have an adverse impact on the natural or built heritage and is unlikely to impact on neighbouring residential amenity.

The application fails to satisfy the criterion requiring that only **proposals which involve the re use or adaptation of existing farm buildings will be acceptable**. The current proposal is for a new build unit of self-catering accommodation. The exceptions clause refers to a new building being permitted where there is no existing buildings available to accommodate the use. It is clear that the onus is on the applicant to provide this information. The applicant has provided a supporting statement outlining the structural condition of the existing buildings. The crux of the issue is that whilst the redevelopment of the existing buildings will cost more versus a new build development this is not the policy test. In this case where there are existing buildings they should be re-used and adapted where necessary to bring them up to current building standards.

Planning Policy Statement 16- Tourism

Proposals for tourism development in the countryside will be facilitated through PPS16 and other planning policy documents that provide scope for tourism development in the countryside.

TSM5 Self Catering Accommodation in the Countryside

TSM 5 relates to self-catering accommodation in the countryside. Planning approval will only be granted for self-catering units of tourist accommodation in any of the circumstances a – c;

- (a) *one or more new units all located within the grounds of an existing or approved hotel, self-catering complex, guest house or holiday park;*
- (b) *a cluster of 3 or more new units are to be provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right;*
- (c) *the restoration of an existing clachan or close, through conversion and / or*

replacement of existing buildings, subject to the retention of the original scale and proportions of the buildings and sympathetic treatment of boundaries. Where practicable original materials and finishes should be included.

As the current proposal is for a singular unit of self-catering accommodation on a farm holding, not attached to an existing hotel, self-catering complex, guest house or holiday park it does not comply with (a) or (b) this policy. The proposal does not involve the restoration or replacement of a clachan or close and therefore fails to comply with (c).

The proposal fails to satisfy the requirements of PPS 16 Policy TSM5.

Recommendation: Refusal

Refusal Reasons:

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

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that it does not involve the re-use or adaptation of existing farm buildings and it has not been demonstrated that the existing buildings cannot be adapted to meet the requirements of other statutory agencies.

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy TSM 5 of Planning Policy Statement 16, Tourism in that

- A) The proposal is not located within the grounds of an existing or approved, hotel, self-catering complex, guest house or holiday park;
- B) The proposal does not involve the creation of three or more new units provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right;
- C) The proposal does not involve the restoration of an existing clachan or close, through conversion and / or replacement of existing buildings.

Case Officer Signature:

Date:

Authorised Officer Signature:

Date:

- This tourist accommodation will be run in conjunction with agricultural operations on an active and established farm. Therefore, the relevant policy for assessment of this proposal is Policy CTY 11 of PPS 21 – Farm Diversification, **NOT** TSM 5 of PPS 16 as has been cited by officials - Paragraph 5.2 / Page 10 of PPS 16 confirms Policy CTY 11 of PPS 21 is the appropriate test for farm diversification proposals involving the reuse or adaptation of existing farm buildings, or exceptionally a new building on a farm.
- The principle of the tourist accommodation has already been established under the previous planning approval for the barn conversion (LA07/2018/0048/F).
- As stated by the planning officer in the professional report, the proposal is in conformity with the initial 4 policy tests (criterion a, b, c & d) contained within CTY 11, as the proposal is on a currently active and established farm, the character and scale are appropriate to its location, it will not have an adverse impact upon the natural or built heritage of the area and there will be no detrimental impact on the amenity of nearby residents. Officers do not have any objections to the 'new build' element of the proposal in terms of integration or its impact on rural character or the AONB. The objection is to the principle of new-build only, as distinct from conversion (which has already been permitted).
- There is no dispute that within Policy there is a preference for the re-use or adaptation of existing farm buildings in all farm diversification schemes; this protects further erosion of rural character and protects the integrity of the countryside. However, it is a preference only, and provision is available for new builds. Policy clearly states that where *'there is no existing building available to accommodate the proposed use, either because they are essential for the maintenance of the existing farm enterprise, are clearly unsuitable for adaptation and re-use or cannot be adapted to meeting the requirements of other statutory authorities'*, exceptionally, a new build can be permitted.
- The applicant has proven the existing buildings are not "reasonably" suitable for conversion: in preparation for commencement of the approved conversion it became apparent that the extent of works necessary is such that the project is not practicable or viable as a conversion. In any case, the level of intervention would be so extensive and there would be so little of the original structures remaining that this could not truly be called a conversion hence the applicant's re-application for it as a new build.
- The applicant has engaged a structural engineer, who has certified that the existing structure cannot practicably or viably be retained and upgraded. This report and the applicant's extensive supporting evidence appear to have been dismissed in 2 lines - as a cost-saving exercise, and no consideration given to the engineer's evidence relating to the structural integrity of the building. For this reason we ask that the committee review the evidence at this stage with a view to determining the building's suitability for re-use and adaptation.
- Officers' assessment has been inflexible and unyielding. Officers have applied a higher test than is laid out in Policy – wrongly disregarding the cost of refurbishment and opining "this is not a material consideration". *"There is no legal definition for material considerations; however they are held to include all the fundamental factors involved in land-use planning. Essentially a material consideration is one which is relevant to making a planning decision as to whether to grant or refuse an application for planning permission. Material considerations will vary depending on the specific circumstances of each case"*. Officers' actions are *ultra vires* insofar as they have failed to give any weight to a key material consideration.
- Officers handled the application inconsistently with two other applications handled by this practice, both of which were approved. In one case (P/2015/0243/F, at Dorsey, South Armagh) no technical information was needed to demonstrate that none of the existing outbuildings were incapable of being

converted. A more recent approval was granted (Q/2014/0374/F, approved in March 2019) to another client of ours who sought to replace a dilapidated outbuilding in situ, as a holiday chalet. While that case (Bann Road, Castlewellan) was protracted, even in that instance we were not required to submit an engineer's report. Officers accepted at face value that the building was not practicably or viably capable of being converted; Their professional report referred to the building we sought to demolish and replace with a new-build unit – *"Building to be demolished to make way for new build tourist let. Building is in poor structural condition and would not be able to be converted"*. Officers have been alerted to this inconsistency and have failed to respond to queries asking why this applicant is being treated differently to the applicants at Dorsey and Castlewellan.

- As mentioned, officers are intent on applying policy stringently and are applying tests that are not set out in Policy. At one point, officers indicated that they consulted with Building Control, who purportedly advised that the building can actually be converted. When asked for this evidence, none was forthcoming and it was later inferred that the consultation was oral and not actually recorded.
- Officers feel the crux of the issue is that whilst the redevelopment of the existing buildings will cost more versus a new build development - this is purportedly not the policy test. However, officers are compelled to exercise their judgement and be reasonable - one must consider whether something is practicable and reasonably capable of being converted, not rely upon the narrowest definition of the term "cannot be adapted".
- Officers have not fully articulated the actual issues. For example, the approved / refurbished building would include just over 200 linear metres of walls. Of that, a maximum of 45 metres would be pre-existing. 123 linear metres of structural walls would be added to the buildings, with a further 39 linear metres of internal / stud walls. These totals relate to single-leaf only, and if cavities are to be constructed, the linear metreage will almost double, meaning only 45 linear metres out of 360 will be original (provided none of this collapses during the construction process – which is inevitable). This scale of intervention is indicative of a new building rather than a true refurbishment, particularly when one considers new foundations being added, new floors laid and new roof structures and coverings added.
- There was a comparable case at Bettyshill Road, Ballyholland in recent years (Appeal Ref 2016/E0004). That applicant received permission for an extension to a building. The building was actually demolished and left at sub floor level. It was Building Control's opinion that to reconstruct the dwelling amounted to a new dwelling. No planning conditions were imposed on the planning permission preventing or restricting the demolition of internal or external walls of the dwelling or specifying a period for completion. The PAC held that *"When viewed together the decision notice and approved drawings accept a substantial redevelopment of the dwelling on the site, one which could not be carried out without removing the roof or demolition substantial parts of the walls of the original dwelling"*.
- This applicant wishes to do things by the book and not to leave anything to chance.
- Officers have failed to give weight to the likely failure of a retaining wall to the rear of the building they wish preserved and converted. This wall will become un-stable in the event the old building is remodeled as per the extant permission. In reality, the old building needs demolished so the wall can be repaired and then construction can proceed on the new building. Health and safety considerations have been ignored.
- In light of the foregoing, Members' consideration is necessary in order that a balanced decision is arrived at, and one that is consistent with other decisions in this District. In fact, Members' consideration is necessary even to reach a legal decision, given the unlawful ignoring of a material consideration by officers.



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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2019/0850/F

Date Received: 23 May 2019

Proposal: Erection of a house and the demolition of existing house

Location: The site is located at 10 Meeting House Lane, Kilkeel

Site Characteristics & Area Characteristics:

The application site is located at 10 Meeting House Lane, Kilkeel. The site is accessed via Bridge Street and located to the rear of the existing properties which front on to Newcastle Street. The site is currently overgrown and derelict with an old dwelling in situ that is to be demolished. It is located to the north of a car park and graveyard which serves a local church. To the west of the application site is Victoria Mews and to the north is Rooney Park, residential developments which back on to Meeting House Lane. The site is enclosed to the north by wire fencing and a 1 metre wall. The eastern boundary of the site is overgrown and remains undefined.

Site History:

LA07/2017/0742/F Proposed erection of two houses and the demolition of existing house. 10 Meeting House Lane, Kilkeel. Permission granted

Planning Policies & Material Considerations:

This planning application has been assessed against the following:

- Regional Development Strategy 2035
- Banbridge, Newry and Mourne Area Plan 2015
- Strategic Planning Policy Statement (SPPS) for Northern Ireland
- PPS 2 – Natural Heritage
- PPS 3 Access, Movement and Parking
- PPS 7 Quality Residential Environments
- The Addendum to PPS 7 – Safeguarding the Character of Established Residential Environments

- Development Control Advice Note 15: Vehicular Access Standards
- DCAN 8 – Housing in Existing Urban Areas
- Creating Places

Consultations:

DFI Roads If the proposed dwelling to be replaced could be reasonably occupied at present or following minor modification and there is no intensification to the existing access, DFI Roads has no further objection to this application. If this is not the case then please re-consult.

NIW Generic response received

Objections & Representations

54 neighbour notifications were issued on 7 January 2019, additional neighbours were identified and neighbour notifications were issued on 6 August 2019. Following amendments further neighbour notifications were issued on 9 October 2019. The application was advertised in the local press on 12 June 2019. A solicitor's letter was received on 13 October 2019 outlining concerns that the access transverses across land not in the ownership of the applicant. The case officer previously raised this issue with the agent. An amended certificate on the P1 form was submitted on 7 October 2019 and notice was served on the landowner of No.8 Meeting House Lane, Kilkeel. Landownership is not a matter for the planning authority and rests as a civil issue between landowners. No other issues were raised in the objection.

Consideration and Assessment:

Banbridge, Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is the Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located in the settlement development limits of Kilkeel. There are several plan designations which are applicable to the application site including the following: the Mourne AONB, Area of Archaeological Potential and the Area of Townscape Character KL 29 (access only).

Strategic Planning Policy Statement (SPPS) for Northern Ireland

As there is no significant change to the policy requirements for the residential development following publication of the SPPS, the retained planning policy is PPS7 Residential Environments. This policy will be given consideration in determining the proposal in accordance with paragraph 1.12 of the SPPS.

Planning Policy Statement 7 Quality Residential Environment

Policy QD1 sets out criteria which proposals for residential development must

conform to. This application has been assessed against the following relevant criteria:

- Criteria (A)** The proposal is located the rear of an existing residential area which consists of a mixture of two storey semi-detached dwellings. The history of this site indicates that the demolition of the existing house is to allow for two semi-detached dwellings adjacent and southeast of the current site. When assessed in the context of the existing area and surrounding area the layout appears too tight and restrictive to allow an additional dwelling under the current application. The plots of surrounding residential areas have semi-detached dwellings with garden areas to the front and rear. The application site has no front garden with parking at the side and restrictive rear gardens that fails to allow for any future development such as an extension. The layout also fails to provide a minimum separation distance of 10m to the common boundary with the dwellings at Rooney Park. In summary the layout of the proposed dwelling fails to respect the existing context and results in overdevelopment of the site. For the reasons outlined Criteria A has not been met.
- Criteria (b)** There are no impacts on features of archaeological or built heritage.
- Criteria (c)** Given the nature of the development public open space is not a requirement. The current application proposes to erect a dwelling on the area granted as communal open space in the previous application LA07/2017/0742/F. The two dwellings approved in 2017 have 71 sqm and 68 sqm rear amenity space. The application site has approx. 62 sqm rear amenity space (the parking areas have not been included in this calculation). In the previous application (LA07/2017/0742/F) it was accepted that whilst one of the dwellings failed to meet the 70sqm threshold set out in Creating Places there was a reasonable amount of communal open space on the northern boundary to offset this. This is no longer the case. I consider when the application site is viewed with the dwellings approved in 2017 there is inadequate private rear amenity and inadequate landscaping along the common boundary with the adjacent dwelling approved that would be required to soften the visual impact of the proposed development.
- Criteria (d)** The provision of local neighbourhood facilities is not applicable to this application given the scale of development.
- Criteria (e)** Given the scale of the development, a movement pattern is not required.

- Criteria (f)** The scheme has an adequate level of space for parking and the manoeuvring of vehicles. Transport NI have no objection.
- Criteria (g)** The design of the development includes coloured render finish with black roof tiling, oak painted doors and black Upvc rainwater goods and windows. I am content these material options complement scheme approved in 2017 and the surrounding area. Criterion is met.
- Criteria (h)** The design and layout of the proposed dwelling will create an unacceptable adverse impact on the proposed dwellings granted approval in terms of privacy. The separation distance is 0.5m (at the front) from the common boundary to the southeast, this is unacceptable. The boundary treatment along this common boundary consists of a 1.8m fence and will create a “hemmed in” effect and to my mind generally appear unsightly in the overall quality of the residential scheme. The two-storey side projection is a large blank wall and will create a sense of dominance when viewed from the adjacent proposed property to the southeast, which is undesirable. For the reasons outlined Criteria H has not been met.
- Criteria (i)** I am content that the proposal will not give rise to crime or antisocial behaviour and it should promote personal safety in the same regard as the existing dwellings. Criteria I is met.

In summary the proposal fails to meet Policy QD 1 Criteria A, C and H.

Addendum to PPS 7 Safeguarding the Character of Established Residential Area Policy LC 1

The proposal fails to meet Policy LC 1 Criteria B in that the proposed development fails to respect the existing pattern of development, overall character and environmental quality of the established residential area.

PPS 2 – Natural Heritage Policy NH 6

Policy NH 6 states that planning permission for a new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality. The proposed development fails to respect the patterns of development of the surrounding area in terms of layout, size and scale which is not sympathetic to the character of the Mourne AONB.

Recommendation: Refusal

Refusal Reasons:

1. The proposal is contrary to Policy QD1 of Planning Policy Statement 7: 'Quality Residential Environments' in that it has not been demonstrated through the submitted plans that the development would create a quality and sustainable residential environment. The proposed development fails to meet the requirements of QD1 in that it has not been shown:
 - (a) that the development respects the surrounding context and is appropriate to the character of the site in terms of layout, scale, massing and appearance of buildings;
 - (c) adequate provision is made for private open space.
 - (h) that the design and layout will not cause/create unacceptable adverse impacts on existing or proposed properties in terms of privacy.
2. The proposal is contrary to Planning Policy Statement 7, Policy LC 1 in that the development fails to meet criteria (b) of the policy:
 - (b) the pattern of development is in keeping with the overall character and environmental quality of the established residential area.
3. The proposal is contrary to paragraph 6.187 of the Strategic Planning Policy Statement for Northern Ireland and Policy NH6 of Planning Policy Statement 2, Natural Heritage, in that the site lies in a designated Area of Outstanding Natural Beauty and the development is of an inappropriate layout, scale and size for the locality and is out of keeping with pattern of development and the special character of the Mourne AONB.

Case Officer Signature:

Date: 11 February 2020

Authorised Officer Signature:

Date:



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

Application Reference: LA07/2019/1551/O

Date Received: 22 October 2019

Proposal: Proposed 1 1/2 storey dwelling & garage

Location: The application site is located immediately east of 15 Mill Road, Hilltown

Site Characteristics & Area Characteristics:

The application site is located outside the settlement limit of Hilltown within the countryside area. The site comprises a roadside agricultural field located adjacent to the main farm dwelling 15 Mill Road. At the address registered to the farm there is one dwelling (15 Mill Road), an unauthorised mobile home with a white trailer located to the rear on south eastern boundary, a similar white trailer is also set within the application site (see images below).





The site is enclosed by mature hedgerows on the eastern and western boundaries with the roadside boundary enclosed by a 1 metre dashed wall and pillar with a farm gate providing access. The southern boundary is defined by wire fencing.

Site History: No planning history on application site or farm lands.

Planning Policies & Material Considerations:

This planning application has been assessed against the following policies:

- The Banbridge, Newry and Mourne Area Plan 2010,
- Strategic Planning Policy Statement (SPPS) for Northern Ireland,
- PPS21 Sustainable Development in the Open Countryside,
- PPS3 Access, Movement and Parking,

- DCAN 15 Vehicular Access Standards, and
- The Building on Tradition Sustainable Design Guide.

Consultations:

DFI Roads – No objection subject to conditions

NI Water – Generic response received

DAERA – Farm Business established for more than 6 years and claims made for the requisite timeframe.

Objections & Representations

One neighbour notification was issued on 19 November 2019. The application was advertised in the local press on 6 November 2018. No representations were received.

Consideration and Assessment:

The Banbridge, Newry and Mourne Area Plan 2010

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is the Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside the development limits of a designated settlement. There are no specific policies in the Plan relevant to the determination of the application which directs the decision maker to the operational policies of the SPPS, and the retained policies of PPS 2, PPS 3 and PPS21.

Strategic Planning Policy Statement (SPPS)

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

PPS21 – Sustainable Development in the Countryside

Policy CTY 1 states a range of types of development which in principle are considered to be acceptable in the countryside. This includes farm dwellings if they meet the criteria set out in CTY10.

CTY10 – Dwellings on Farms

Criteria A) DAERA has confirmed in their consultation response that there has been an active farm business for over 6 years and payments have been made to the farm business for Single Farm Payment (SFP), Less Favoured Area Compensatory Allowances (LFACA) or Agri Environment schemes in the last 6 years.

Criteria B) requires that no dwellings or development opportunities have been sold off the farm holding since the introduction of draft PPS21 in November 2008. Having

carried out a site history search on the farm holding I am content that no dwellings or development opportunities have been sold off the farm holding, therefore criteria (b) is met.

Criteria C) requires the new building to be visually linked or sited to cluster with an **established group of buildings on the farm and not a building** (*my emphasis*). As described previously in this report (page 1) the buildings on the farm consist of the farm dwelling No. 15 Mill Road and an unauthorised mobile home with a trailer container located on the south eastern boundary and a trailer located to the rear of the application site (images 1-3). The only building which is of permanent construction is the farm dwelling No. 15 Mill Road, the other structures cannot be relied upon to satisfy criteria C of the policy. It has not been demonstrated that there are farm buildings located elsewhere on the farm. Overall I find that the proposal fails to comply with the requirements of criterion (c) and thus does not represent a development that is acceptable in principle in the countryside under Policy CTY10.

CTY10 also states "the proposed site must also meet the requirements of CTY13 (a-f), CTY14 and CTY16.

I consider that a proposed dwelling on the application site could be accommodated as there are well established boundaries to the east and west provide a degree of integration. The proposed site does not primarily rely on new landscaping for integration. The proposed site fails criteria (g) of CTY 13 in that the site is not visually linked or sited to cluster with an established group of buildings on the farm. The proposed dwelling would also create a ribbon of development and would contribute to a localised sense of build up in the area.

CTY 8 Ribbon Development

Policy CTY8 of PPS21 says that planning permission will be refused for a building which creates or adds to a ribbon. Paragraph 5.33 of the amplification test of PPS8 states that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.

There are two dwellings in the immediate context of the site No.15 Mill Road (adjacent to the application site (west)) and No. 17 Mill Road (east) with farm buildings between them. A proposed dwelling on the application site would have a strong visual connection with the nearest dwelling (No.15) when approaching the site from the east and travelling in either direction along the Mill Road, there would be a transient awareness of the proposed buildings on the application site with this and the other dwelling (No.17) to the east. This would create a ribbon of development, which would be detrimental to the countryside's character, appearance and amenity.

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) and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Mill Road.
3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside in that it has not been demonstrated that the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm and access to the dwelling is not obtained from an existing lane.
4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the 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.
5. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwelling would, if permitted add to a ribbon of development and would therefore result in a detrimental change to the rural character of the countryside.

Case Officer Signature:

Date: 28 January 2020

Authorised Officer Signature:

Date:

PROPOSED SITE DOR 1 AND A HALF STOREY DWELLING & GARAGE IMMEDIATELY EAST OF 15 MILL ROAD, HILLTOWN, NEWRY FOR MR CAMERON MAGOWAN

YOUR REF LA07/2019/1551/O

The above application is an application for a dwelling on a farm. DEARA have confirmed that the farm is active and established and Planning have confirmed that all their criteria have been met and that the farmer is **entitled** to a dwelling on his farm.

The chosen site is beside the main farmhouse and 2 adjacent buildings and will use the existing access and laneway to the farmhouse. To locate beside the existing farm sheds and yard is not possible in this instance as any access via the existing lane would pass through the active farmyard and the only area where a house could possibly be located is a holding area for machinery, round bales of silage and livestock when required.

Although Planning have listed 5 reasons for refusal the hub of their reasoning is that the proposed site is not beside a group of buildings on the farm. In the Case Officers report they refer to the 2 buildings beside the farmhouse as being "trailers". This interpretation is totally incorrect as the buildings are now permanent. One is used as a domestic store and the other as a cattle house. In a former life the buildings were containers but now they have been redesigned and adapted into buildings. This practice is common on farms throughout Newry, Mourne & Down District where farmers adapt what they have to meet a need on site.

The closest building to the farmhouse has a concrete block and hardcore base and an electricity supply. It has been on site for over 10 years and is used as a domestic store for the benefit of the dwelling and must be deemed a building irrespective of the type of construction.

The second building in the paddock adjacent to the farm dwelling and within the application site, has been insitu for over 5 years and is used as a cattle house. It is fixed to the ground and sits on a stone base. This is evident on site where you can see the area where cattle stand and the manure in the building.

The Case officers report is incorrect in that they describe both buildings as "trailers". They refer to a towbar which is not a towbar but the handle of the roller shutter door, they refer to trailer lights but these are small reflectors left from the previous use and they refer to the base of concrete blocks which is in our opinion a permanent base. As for the building in the paddock there are no detailed photographs on the Report to show the use of the building and the stone base. The definition of the word "**trailer**" is "a container on wheels which is pulled behind a car or other vehicle" **whereas** the legal definition of the word "**building**" is "any structure that has roof and walls especially a permanent structure. It can be any structure that is designed or intended for support of person, animals or property having a permanent roof that is supported by columns or walls". The buildings on site have been redesigned from their original purpose through the removal of any wheels or

means of transport, being placed on a permanent base and in the case of the domestic building having an electricity supply installed.

The Case Officer also refers to the unauthorised mobile home on the site. This is where the applicant and his family currently reside as he works on the farm and is in effect on call constantly. It is his intention to remove this mobile home when his new dwelling is complete.

If the principal of a group of buildings on the farm is established then the remaining reasons for refusal are not sustainable. Any new dwelling would have an access and lane shared with the farmhouse, have an acceptable degree of enclosure, integrate into the landscape and not have an adverse impact on the landscape.

If the Committee are still in doubt as to the suitability of the chosen site or the fact that the structures under discussion are indeed buildings then they are welcome to visit site.



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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2018/1612/F

Date Received: 18/10/2018

Proposal: Erection of 1 No. storage and distribution warehouse with associated office, to include all site and access works

Location: Lands at Loughway Business Park approximately 50m East and South of Unit 9a Loughway Business Park Newry

Site Characteristics & Area Characteristics:

Characteristics of site:

The Lands outlined in red are irregular in shape located at the southern-most end of Loughway Business Park. Access to the site is served by the exiting road that serves the business park. The site currently defined by unpainted grass/shrub generally level on level ground. The southern boundary of the site is within close proximity to the Newry river, with the western boundary adjacent to Newry Canal. The southern and western boundaries are defined by levees, with no defined northern or eastern boundaries.

Characteristics of area:

The application site is located within the outer limits of the settlement limit of Newry, zoned for economic development (NY70: Map No 3/02a, Banbridge/ Newry and Mourne Area Plan 2015) and adjacent to an ASSI. The site is located within a existing and well established business park. The immediate area is characterised by a mixture of industrial units of varies sizes and uses.



Views onto the site looking north



Views onto the site looking east



Views onto the site looking north east



Views onto the site looking south east

Site History:

LA07/2018/0164/PAN - Lands at Loughway Business Park approximately 50m east and south of Unit 9a Loughway Business Park Newry BT34 2TH. Proposed erection of 1 no. storage and distribution warehouse with associated office, to include all site and access works

LA07/2017/1510/F - 9C Loughway Business Park Greenbank Industrial Estate Newry. Proposed warehouse. Permission granted.

LA07/2017/0036/F - 75m East of 8A Loughway Business Park Warrenpoint Road Newry. Site for the storage of building equipment and materials with 2.50m high palisade perimeter fence and 4.00m wide entrance gates. Permission granted.

P/2009/0942/F - 10a Loughway, Greenbank Industrial Estate, Newry. Erection of showroom/shop and warehouse. Permission granted.

P/2007/0187/F - 228 metres south of Gerry Brown park, Ballnacraig Way, Greenbank Industrial Estate, Newry. Erection of industrial unit for tile showroom and warehouse. Permission granted.

P/2007/0274/F - 400 metres south east of Gerry Brown Park, Greenbank Industrial Estate, Newry, and adjacent to Units B, C and D, Loughway Business Park, Newry. Erection of 7 No. Industrial Units. Permission granted.

P/2007/0407/F - 250 metres south of Gerry Brown Park, Ballnacraig Way, Greenbank Industrial Estate, Newry. Erection of office block. Permission granted.

Planning Policies & Material Considerations:

This application will be assessed under the following policy considerations:

- Strategic Planning Policy Statement (SPPS)
- Banbridge, Newry and Mourne Area Plan (2015)
- NI Regional Development Strategy (2035)
- Planning Policy Statement 2- Natural Heritage
- Planning Policy 3- Access, Movement and Parking
- Planning Policy 4- Planning and Economic Development
- Planning Policy 6- Planning Archaeology and Built Heritage
- Planning Policy Statement 15- Planning and Flood Risk

Supplementary Planning Guidance

- Parking Standards

Consultations:

Environmental Health (NM&D) – No objections in principal.

DFI Rivers – No objections + Schedule 6 drainage consent

NIEA – No objections subject to Planning Conditions and Informatives

SES – No objections subject to planning conditions

Loughs Agency – No objections

NI Water Strategic Operations – Available capacity

DFI Roads – No objection

HED – Content with proposal

Objections & Representations:

14 Neighbours within close proximity of the site were notified on 09/11/2018 & 06/06/2019. This application was advertised in the local press on 29/10/2018 & 10/06/2019. No objections or representations have been received. An amended scheme which reduced the ridge height of the proposal was received 25/02/2020. Given the nature of the amendments, re-neighbour notification was not required.

Consideration and Assessment:

Proposal of Application Notice was considered acceptable on 06/02/2018 under reference LA07/2018/0164/PAN. The Pre-application Community Consultation Report which accompanied with this application meets the legislative requirements for a major application, as specified in the Planning Act 2011 (Northern Ireland).

The application was considered against Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (NI) 2017. It was determined under regulation 10 (A) that the planning application does not require to be accompanied by an Environmental Statement.

The RDS seeks to promote economic developments opportunities across the region and concentrating on Hubs. The spatial framework, Newry is identified as a main hub location within Northern Ireland.

Banbridge Newry and Mourne Area Plan 2015 (BNMAP)

The site is located within the settlement limit of Newry and on land zoned for Economic Development NY70. The key site requirements for these developments require:

- *Access shall be from the Greenbank Industrial Estate access roads;*
- *A 3-5 metre belt of trees of native species shall be planted on the western and southern boundaries of the site in order to screen the development from the Newry Canal and Carlingford Lough;*
- *The Transport Assessment will examine the junction of the Greenbank Industrial Estate with the A2.*

The original submission date stamped 18 Oct 2018 proposed a 3-5m belt along these boundaries, however DFI Rivers required a 5m river maintenance along the Knox-Peebles Drain and a 10m maintenance strip is being provided from the bottom of the existing bank line of the Newry River. Consequently, the proposal is only able to achieve a 2m planting strip along the southern boundary, which falls short of a site requirement. Given the request from DFI Rivers, in this instance the Planning Department consider that on balance, the need for this working strip takes precedence over this key site requirement. The other key site requirements for this zoning has been met.

The BNMAP confirms Class B4 uses acceptable on land zoned for Economic Development the proposal is compliance with the BNMAP, furthermore, ensuring the application is consistent with policy SMT 2.

Planning Policy Statement 4

This proposal involves the erection one large building, with the vast majority of floor space being used as storage and distribution, with a small office and show room area. The primary use of this building is considered B4 Use Class - Storage and Distribution as per the Planning (Use Classes) Order (NI) 2015.

PPS 4 PED 1 (Economic Development in Settlements) provides more direction regarding this and states that *"a development proposal for a Class B4 storage or distribution use will be permitted in an area specifically allocated for such purposes in a development plan"*.

As discussed above, the proposed site is located within lands currently zoned for Economic Development NY70. The BNMAP confirms Class B4 uses acceptable on land zoned for Economic Development. Therefore, this proposal is considered acceptable in principal.

The proposal is expected to meet all the criteria of policy PED 9 (considered below) in addition to the above provisions.

(a) Compatible with surrounding land uses –

The site is located within an existing and well-established business park.

(b) it does not harm the amenities of nearby residents;

The proposal will not harm the amenities of nearby residents to an unacceptable level. Environmental Health has raised no objections.

(c) The natural or built heritage will not be compromised by the proposal.

Natural heritage features have also been considered, and subject to conditions and informatives protection should be afforded to natural heritage and European Sites;

(d) it is not located in an area at flood risk and will not cause or exacerbate flooding;

The site is located within a identified flood plain. The proposal has been deemed an exception with DFI Rivers having no objections with the proposal. Furthermore, the applicant has received Schedule 6 consent from Dfi Rivers to discharge storm water.

(e) it does not create a noise nuisance;

Conditions will be imposed if required on any approval notice to prevent possible noise nuisance from operations and deliveries;

(f) it is capable of dealing satisfactorily with any emission or effluent;

A negative condition will ensure the proposal is connected to the sewer and agreed by NIW prior to the commencement of development.

(g) the existing road network can safely handle any extra vehicular traffic the proposal will generate or suitable developer led improvements are proposed to overcome any road problems identified;

DFI Roads has no objections to the proposal with regard to the existing road network.

(h) adequate access arrangements, parking and manoeuvring areas are provided;

There is adequate access arrangements, parking and manoeuvring areas. DFI Roads has no objections.

(i) a movement pattern is provided that, insofar as possible, supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way and provides adequate and convenient access to public transport;

The proposal is in general compliance insofar that is practical and proportionate to the proposal.

(j) the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;

The proposed building has a gross floor space of approx. 9165m² which is considered substantial in size. The original design proposed a ridge height of 14.5m above finished floor level. Giving the siting of this building, character and design of other units within the vicinity, a reduced ridge height was formally requested. Amended plans received on 25 Feb 2020 now show a proposed ridge of 12.0m above ground floor level. The proposal now meets the requirements of this criterion.

(k) appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;

The site has been appropriately enclosed by fencing. The building, fencing and planting will ensure that areas of outside storage will be adequately screened from public view.

(l) is designed to deter crime and promote personal safety; and

The proposal is designed to deter crime and promote personal safety.

(m) in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape.

As the proposal is not within the countryside this criterion is not applicable.

In conclusion the proposal is considered to meet the policy requirements in full of PED 9 of PPS4 and DES 2 of PSRNI.

The proposed showroom and office space will be ancillary to the main storage and distribution business on site and is of a very small scale which only equates to approx. 1.5% of floor space, it is considered acceptable in this instance.

Planning Policy Statement 15

This application is located within the flood plain, therefore the agent was requested to demonstrate that the application is an exception to FLD 1 of PPS 15. Following additional information, the Planning Department deemed that this application meets the exception tests of Policy FLD1 of Revised PPS15, in that, *'the application proposal is of overriding sub-regional economic importance'*. *The proposal meets the requirements of FLD 1.* The applicant originally had a planting strip located along the southern and western boundaries. However, in order to meet the requirements of FLD 2 a working strip was required. The proposal now meets the requirements of FLD 2. The applicant has received Schedule 6 consent from DFI Rivers local area office to discharge a total of 17 l/s of storm water to the Knox-Peebles Drain and the existing 450mm diameter culvert located on the Western boundary of the proposed site. The proposal meets the requirements of FLD 3. DFI Rivers confirmed that the proposal meets the requirements of FLD 4 and FLD 5.

Planning Policy Statement 3

DFI Roads has been consulted with regard to the PPS3 Access, Movement and Parking. The Department has responded with no objections to the proposal. With regards to parking standards the proposal falls short of the requirement for designated commercial parking. However, given the requirement for vehicle parking is well exceeded and there are areas of hardstand showing on the site layout for commercial parking, on balance the proposal is considered to meet the requirements of this policy.

Planning Policy Statement 2

This Planning Policy Statement sets out the planning policies for the conservation, protection and enhancement of our natural heritage. The site is located adjacent to Carlingford Lough ASSI/SPA/Ramsar. NIEA have been formally consulted and are content with the proposal subject to compliance with recommended planning conditions. Shared Environmental Services were formally consulted and have no objections to the proposal subject to recommended planning conditions.

Planning Policy Statement 6

The site was identified to be within the sphere of influence of an Archaeological Site and Monument. HED were formally consulted and in a response dated 18th June 2019 content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Recommendation:

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

Conditions:

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

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

2. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out prior to the occupation of any part of the development in accordance with the details on the approved plans.

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

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

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

4. A detailed Construction Method Statement, for works in, near or liable to affect any waterway as defined by the Water (Northern Ireland) Order 1999, shall be submitted to the relevant authority 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.

5. Development shall not be occupied until surface water drainage works on-site and off-site have been submitted, approved and constructed by developer and the relevant authority.

Reason: To safeguard the site and adjacent land against flooding and standing water.

6. Development shall not be occupied until surface water drainage works on-site and off-site have been submitted, approved and constructed by developer and the relevant authority.

Reason: To safeguard the site and adjacent land against flooding and standing water.

7. Prior to discharge to watercourses, any surface water generated during the construction and operation phases of the development must first pass through appropriate treatment, including attenuation measures, sediment traps and hydrocarbon interceptors.

Reason: To prevent any adverse impacts on the site features of Carlingford Lough SPA/Ramsar.

8. A suitable buffer of at least 10 metres must be maintained between the location of refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc., and the watercourse along the south eastern red line boundary.

Reason: To prevent any adverse impacts on the site features of Carlingford Lough SPA/Ramsar.

9. All refuelling, storage of machinery/spoil, oils and fuels, and concrete mixing and washing areas shall be positioned out with the area of fluvial floodplain.

Reason: To prevent any adverse impacts on the site features of Carlingford Lough SPA/Ramsar.

10. Prior to construction of the outfall structure, a suitable barrier such as a coffer dam, shall be erected around the structure. The barrier shall be adequate to prevent egress of water from the construction site and shall be removed upon completion of all construction activities. The area within the barrier shall be de-watered prior to use of any wet concrete and all water contained thereafter shall be collected for off-site treatment. At no point shall untreated water be discharged from the outfall construction site into the watercourse during the construction phase.

Reason: To prevent any adverse impacts on the site features of Carlingford Lough SPA/Ramsar.

11. No goods, merchandise or other material shall be stationed or displayed on the hardstanding of the premises.

Reason: To safeguard the visual appearance of the premises and of the area generally.

12. The building shall be used only for B4 (Storage or Distribution) and for no other purpose in Use Class Part B: Industrial and Business Uses of the Schedule to the Planning (Use Classes) Order (NI) 2015. The showroom, offices and staff room shall remain as ancillary to this use.

Reason: To prohibit a change to an unacceptable use.

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



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2020/0058/F

Date Received: 30/12/2019

Proposal: This is a section 54 application seeking planning permission to develop land without complying with conditions 03,04,05 and 09 of the previous planning permission LA07/2019/1245/F (seeking removal of conditions).

Location: Approximately 75m SW of 58 Derrymore Road, Newry.

Site Characteristics & Area Characteristics:

The application site is located within the settlement limits of Newry City as defined within the Banbridge / Newry and Mourne Area plan 2015. The site is an area of road verge on the edge of Derrymore Road, the site is positioned adjacent to an existing footpath.

The site is located on the edge of a busy road, adjacent to the site are agricultural fields although there are a number of buildings in the area including residential areas.

Site History:

LA07/2019/1245/F - Approximately 75m SW of 58 Derrymore Road, Newry - Implementation of a pedestrian footpath to join into existing pedestrian footpath – Permission Granted 18-10-2019.

Planning Policies & Material Considerations:

The following policy documents provide the primary planning context for the determination of this application:

- Planning Act (Northern Ireland) 2011
- Banbridge / Newry and Mourne Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 3 – Access, Movement and Parking / DCAN 15

Consultations:

DFI Road – The response states that DFI are content for the conditions to be removed.

Objections & Representations:

The application was advertised on 29/01/2020 and 5 (five) neighbouring properties were notified on 20/01/2020, no representations or objections have been received.

Consideration and Assessment:

Section 54 of the Planning Act 2011 is a power that allows for an application to be made for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. A section 54 application is submitted to and determined by the planning authority which granted the previous planning permission.

The previous application was granted for the 'Implementation of a pedestrian footpath to join into existing pedestrian footpath' the approval included a number of conditions suggested by DFI Roads, this application seeks to have conditions 03, 04, 05 and 09 removed. The previous conditions read;

03. The development hereby permitted shall not be commenced until any (highway structure/retaining wall/culvert) requiring Technical Approval, as specified in the Roads (NI) Order 1993, has been approved and constructed in accordance with BD2 Technical Approval of Highways Structures : Volume 1: Design Manual for Roads and Bridges.

Rivers Agency will require to be consulted regarding the discharge of any storm water into an existing water course prior to commencement of building works on site.

Any telegraph poles / street furniture to be re-sited to the rear of sight visibility splays and to the satisfaction of Transport NI.

Reason: To ensure that the structure is designed and constructed in accordance with BD2 Technical Approval of Highways Structures: Volume 1: Design Manual for Roads and Bridges.

04. The development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted and approved by the Department for Infrastructure Street Lighting Section.

Reason: Road safety and convenience of traffic and pedestrians.

05. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Infrastructure Street Lighting Section.

(These works will be carried out entirely at the developer's expense.)

Reason: To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians.

09. The developer shall contact DFI Roads Traffic Management prior to the commencement of works on the site to agree suitable positions for any existing road

signage and traffic calming measures that will require being relocated as a result of this proposal.

Reason: In the interests of road safety and traffic progression.

Given that the previous conditions had been suggested by DFI Roads a consultation was forwarded, the response received raised no concerns with removal of the conditions and as such it is considered that the conditions are not necessary as part of the previous approval and can be removed. The previous approval can proceed with all the other conditions to be met.

Recommendation: Approval

Conditions:

1. This permission relates solely to the removal of Condition No's 03, 04, 05 and 09 of previous planning permission LA07/2019/1245/F. All other conditions and informatives of LA07/2019/1245/F remain valid and must be adhered in full.

Reason: To ensure that all other conditions of the previous approval are adhered to.

Case Officer:

Date:

Authorised Officer:

Date:



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

Newry, Mourne
and Down
District Council

Application Reference: LA07/2017/0918/F

Date Received: 16 June 2017.

Proposal: Proposed extensions and alterations to existing nursing home to create an additional 38 bedrooms including alterations to existing chapel and convent and all ancillary site works including a total of 41 number spaces.

Location: 1 Home Avenue Newry, Co. Down, BT34 2DL



1.0. Site Characteristics & Area Characteristics:

- 1.1. The subject of the application is a nursing home that is part of a convent complex located on Home Avenue, Newry. The nursing home is a large 3 storey building with a distinctive hipped roof, it is positioned at the eastern side of the convent, adjacent to Chapel Street. There are large flat roofed annexes at each end. As well as the nursing home building there are a number of other buildings in the complex including the convent itself, a private chapel and a laundry building. The convent and chapel are both listed buildings. The western part of the site comprises garden areas for the home and convent.





Chapel Street Elevation

- 1.2. Access to the site is provided from its northern boundary through Home Avenue, a residential street that connects Chapel Street and the Warrenpoint Road. The street is very narrow at its eastern end before widening out adjacent to the nursing home entrance and then narrowing towards its western end. Parking is carried out along both sides of the road in the widest section.





Views from Home Avenue

- 1.3. The site slopes steeply down towards the Warrenpoint Road which is located adjacent to the western boundary. The positioning of the nursing home at the highest part of the site, together with its height mean that it is a prominent landmark building which is readily visible from across South Newry.



View from Warrenpoint Road

- 1.4. The proposal seeks to construct new annexes on the northern and southern ends of the nursing home to provide additional accommodation, conversion of the chapel into additional accommodation and the construction of an internal link between the two buildings. This new structure will also house a larger





2.0. Site History:

LA07/2017/0938/LBC; LA07/2017/0963/LBC. Co-joined applications for Listed Building Consent to carry out works to existing nursing home and laundry building.

3.0. PLANNING POLICY MATERIAL CONSIDERATIONS.

3.1. The planning policy context for this application is provided by:

- Strategic Planning Policy Statement
- Banbridge/Newry and Mourne Area Plan 2015
- Planning Policy Statement 3 Access, Movement and Parking
- Planning Policy Statement 6, Planning, Archaeology and the Built Heritage
- Development Control Advice Note 9, Residential and Nursing Homes
- Parking Standards.

4.0. STATUTORY CONSULTATIONS:

- 4.1.** A number of statutory consultations were issued, following receipt of the application, and their responses were as follows :
- **Environmental Health:** No objections in principle
 - **Rivers Agency:** No Objections
 - **NIEA:** No objections in relation to protected nature sites
 - **Loughs Agency:** No objections
 - **Historic Environments Division:** No objection to final revised details.
 - **Transport NI:** No objections in principle.

5.0. Objections & Representations

- 5.1.** Details of the application, including amended drawings, were advertised in June 2017 and April 2019. Details of the application, including amended drawings, were also notified in July 2017, October 2017, April 2019, August 2019 and February 2020.
- 5.2.** A total of 36 standard letters of objection were received on 19 April 2019. A petition, with 50 signatures, based on the same standard letter of objection was received on 21 August 2019. The issues of concern raised include: traffic congestion along Home Avenue caused by traffic from local schools and a scout hall, removal of remaining sunlight from my house, lack of parking for residents due to staff and visitors at the Home as well as staff from nearby offices, inability of Home Avenue to cope with construction vehicles that would be needed for the development and impact on amenity; and parking during local sports/community events. The objectors also request that Home Avenue should become a one-way street between 8am and 4pm, or for a resident only parking scheme to be implemented.
- 5.3.** These issues were fully considered as part of the Planning Department's assessment of this application in consultation with relevant consultees.

6.0. PLANNING ASSESSMENT & CONSIDERATION.

- 6.1.** In summary the proposal is for an extension to an existing residential nursing home. It seeks to construct new annexes on the northern and southern ends of

the nursing home to provide additional accommodation, conversion of the chapel into additional accommodation and the construction of an internal link between the two buildings. This new structure will also house a larger kitchen block as well as the provision of a new entrance to the east of the existing and 41 car parking spaces.

Banbridge/Newry and Mourne Area Plan 2015

- 6.2.** The site is located within the development limit of Newry. No other policies of the plan are relevant to this application. The proposal is acceptable in the context of the statutory area plan.

Development Control Advice Note 9 (DCAN 9); Residential and Nursing Homes

- 6.3.** This supplementary planning guidance remains in effect until a new area plan is adopted, it applies to all applications for Residential and Nursing Homes, which are now defined in the Use Classes Order 2015.
- 6.4.** Paragraph 1.4 states that proposals for developments of this type usually fall into 3 main categories;
1. New build;
 2. Change of use of an existing building, and;
 3. Extension to an existing institution, (the current proposal is such an application).
- 6.5.** Paragraph 2.1 states that cities, towns and villages are the preferred location for such institutions, paragraph 2.2 sets out that in such areas the Planning Authority will have regard to 6 main criteria: Siting; Location; Traffic Aspects; Amenity; Design and Layout and Landscaping.
- 6.6.** The proposal seeks to extend an existing residential institution within the development limits of Newry. It is, therefore, in a location favoured by the guidance. In relation to the first criteria, the increase in the footprint of the

buildings will be relatively small and will be, for the most part, sited to the south of the complex, away from the adjacent residential dwellings.

- 6.7. The surrounding area is largely residential but there is a Scout Hall at the eastern end of Home Avenue across the road from the site, as well as office premises a short walk away on Warrenpoint Road. The existing home has been operating for at least several decades and is an established part of the urban fabric of this part of Newry.
- 6.8. In relation to the third criteria, DfI Roads has stated that it has no objections to the new vehicular access and proposed access arrangements on the grounds of road safety.
- 6.9. The P1D form, submitted with the application, gives details of the expected increase in staff, residents and vehicles at the Home.

4.

Numbers of Staff/Patients		Existing	Proposed	Total
Patients		48	31	79
Nursing Staff (per shift)	Full time	3	2	5
	Part time	1	1	2
Ancillary Staff (per shift)	Full time	5	3	8
	Part time	2	1	3
Total Staff (per shift)	Full time	8	5	13
	Part time	3	2	5

5.

Average number of vehicles arriving at premises daily	Existing	Expected Increase	Total
Staff	30	18	48
Visitors/Customers	12	7	19
Goods	1	0	1

- 6.10. The proposal involves a total of 79 patients. It involves a total of 13 full -time nursing and ancillary staff per shift and 5 part-time ancillary staff per shift; a total of 18 staff per shift. The published car parking standards recommends parking standards for certain use classes. For nursing homes, it recommends 1 space per 3 nursing and ancillary staff and 1 space per 3 beds. Based on the published car parking standards the proposal would require 6 car parking

spaces per shift and 26 spaces for beds/patients. This is a total requirement of 32 car parking spaces.

It is also acknowledged that DCAN 9 also includes recommended car parking standards for nursing homes, namely: one space per full-time member of staff; one space per 2 part-term member of staff and one space per 3 beds. On the basis of the figures provided, this would mean a requirement for 13 spaces for full time staff, 3 spaces per part time staff and 26 for visitors. This is a total requirement of 41 spaces.

The proposal is based on 41 car parking spaces. The proposal also includes provision for ambulance parking, for people with disabilities, emergency traffic drop off points, and for turning and delivery. DFI Roads has confirmed no objection to the proposal.

- 6.11.** In relation to amenity, Environmental Health has confirmed no objections to the proposal and a residential home would not be expected to create a significant noise nuisance. While the expanded northern annex of the Home will expand the existing use nearer to existing residential properties on Home Avenue, it is considered that this should not have a detrimental impact on existing residential amenity. In addition, the proposed extension will be sited to their east/south east and should not have a detrimental impact in terms of overshadowing or loss of light.
- 6.12.** In terms of design issues, the existing nursing home building and its annexes are already large structures, the proposed extension is considered to fit with the existing scale and design of the nursing home. Historic Environment Division (HED) has also confirmed no objection in terms of impact on the listed building. The proposal also involves a slight re-alignment and reduction in height to 2 portions of the boundary wall along Home Avenue and at the junction of Home Avenue and Warrenpoint Road. This is required to facilitate access improvement and traffic progression. HED has also confirmed no

objection to these proposed revisions. Finally, there will be no landscaping works carried out that will be visible from outside the site boundary.

Planning Policy Statement 3 Access, Movement and Parking

Policy AMP 2 Access to Public Roads

- 6.13.** DfI Roads has stated that it has no objections to the proposed access provisions and internal vehicle circulation arrangements, based as it is on 2 access points. It has also requested the submission of Private Streets Drawings, for approval, showing roads and footpaths to be adopted. This issue can be dealt with by means of a Grampian Condition, if necessary, based on the fact that DfI Roads has confirmed no objections to the proposed access arrangement.
- 6.14.** In relation to the concerns raised by residents, the new car park provision should ensure that vehicles from staff and visitors are accommodated on site and therefore reduce the competition for spaces with residents. While there will still be such competition generated by nearby commercial and sports premises, this raises matters beyond the scope of this application. The suggestions of a one-way system or for residents only parking was referred to DfI Roads for consideration. It confirmed that this issue could not be considered or resolved through this application. It would be a matter for DfI Roads to consider as part of a separate exercise.
- 6.15.** The site is located within the development limit of Newry and it is an existing residential institution that is a prominent part of the urban fabric of Newry. The proposal would provide additional accommodation for the established nursing home, as well as new ancillary buildings. It will provide an enhanced provision of onsite car parking.

7.0. Recommendation:

- 7.1. Having regard to the terms of the statutory plan and other relevant policy considerations and material considerations, approval is recommended with appropriate planning conditions, including those outlined below.

Case Officer.

Date:

Authorised Officer

Date:

Planning Conditions:

1. Time Conditions
2. Access to be provided in accordance with stamped approved detailed plans(date received and drawing number to be specified) prior to the commencement of the proposal, hereby approved.
Reason: To ensure an appropriate and safe public access.
3. Car Parking shown on approved plans shall be fully laid out and retained prior to the proposal hereby, approved, becoming fully operational.
Reason: To ensure an appropriate level of car parking.
4. No site works of any nature or development shall take place until a programme of archaeological work has been implemented, in accordance with a written scheme and programme prepared by a qualified archaeologist, submitted by the applicant and approved by the Department. The programme should provide for the identification and evaluation of archaeological remains within the site, for mitigation of the impacts of development, through excavation recording or by preservation of remains, and for preparation of an archaeological report.
Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.
5. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department for Communities – Historic Environment Division to observe the operations and to monitor the implementation of archaeological requirements.

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

Informative

Please refer to the HED guidance document [Development and Archaeology: Guidance on Archaeological Works in the Planning Process](#) which contains advice on how to fulfil the requirements of the archaeological conditions attached to your planning approval.

- Please allow sufficient time in advance of the commencement of site works for the agreement of the programme of archaeological work document with the planning authority and for your archaeological consultant to obtain an archaeological excavation licence. For guidance on the preparation of the programme of archaeological work please contact:

Historic Environment Division – Heritage Development & Change Branch
Ground Floor

9 Lanyon Place

Belfast

BT1 3LP

Tel: 02890 823100

Email: HEDPlanning.General@communities-ni.gov.uk



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

Newry, Mourne
and Down
District Council

Application Reference: LA07/2017/0938/LBC

Date Received: 16 June 2017.

Proposal: Proposed extensions and alterations to existing nursing home to create an additional 38 bedrooms including alterations to existing chapel and convent and all ancillary site works including a total of 41 number spaces.

Location: 1 Home Avenue Newry, Co. Down, BT34 2DL



1.0. Site Characteristics & Area Characteristics:

- 1.1. The subject of the application is a nursing home that is part of a convent complex located on Home Avenue, Newry. The nursing home is a large 3 storey building with a distinctive hipped roof, it is positioned at the eastern side of the convent, adjacent to Chapel Street. There are large flat roofed annexes at each end. As well as the nursing home building there are a number of other buildings in the complex including the convent itself, a private chapel and a laundry building. The convent and chapel are both listed buildings. The western part of the site comprises garden areas for the home and convent.





Chapel Street Elevation

- 1.2. Access to the site is provided from its northern boundary through Home Avenue, a residential street that connects Chapel Street and the Warrenpoint Road. The street is very narrow at its eastern end before widening out adjacent to the nursing home entrance and then narrowing towards its western end. Parking is carried out along both sides of the road in the widest section.





Views from Home Avenue

- 1.3. The site slopes steeply down towards the Warrenpoint Road which is located adjacent to the western boundary. The positioning of the nursing home at the highest part of the site, together with its height mean that it is a prominent landmark building which is readily visible from across South Newry.



View from Warrenpoint Road

- 1.4. The proposal seeks to construct new annexes on the northern and southern ends of the nursing home to provide additional accommodation, conversion of the chapel into additional accommodation and the construction of an internal link between the two buildings. This new structure will also house a larger

kitchen block as well as the provision of a new entrance to the east of the existing and 41 car parking spaces.





2.0. Site History:

LA07/2017/0938/LBC; LA07/2017/0963/LBC. Co-joined applications for Listed Building Consent to carry out works to existing nursing home and laundry building.

3.0. PLANNING POLICY MATERIAL CONSIDERATIONS.

3.1. The planning policy context for this application is provided by:

- Strategic Planning Policy Statement
- Banbridge/Newry and Mourne Area Plan 2015
- Planning Policy Statement 3 Access, Movement and Parking
- Planning Policy Statement 6, Planning, Archaeology and the Built Heritage
- Development Control Advice Note 9, Residential and Nursing Homes
- Parking Standards.

4.0. STATUTORY CONSULTATIONS:

4.1. Department for Communities (Historic Environment Division).

The application for 'proposed extensions and alterations to existing nursing home to create an additional 31 new bedrooms including alterations to existing chapel and convent and all ancillary site works including an additional 43 new car park spaces' (**LA07/2017/0938/LBC**) impacts upon Convent of Mercy (Grade B+) and Chapel at Convent of Mercy (Grade B1) which are of special architectural and historic importance and protected by Section 80 of the Planning Act (NI) 2011.

Historic Environment Division (HED), Historic Buildings, has re-considered the proposal on the basis of revised drawings published 204/09/2019 and 18/12/2019 respectively and advises that:

- subject to conditions, it satisfies the requirements of paragraph 6.13 of SPPS (NI) 2015 and BH 8 (Extension or Alteration of a Listed Building) of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage.

5.0. Objections & Representations

5.1. Details of the application, including amended drawings, were advertised in June 2017 and April 2019. Details of the application, including amended drawings, were also notified in July 2017, October 2017, April 2019 and August 2019.

5.2. A total of 36 standard letters of objection were received on 19 April 2019. A petition, with 50 signatures, based on the same standard letter of objection was received on 21 August 2019. The issues of concern raised include: traffic congestion along Home Avenue caused by traffic from local schools and a scout hall, removal of remaining sunlight from my house, lack of parking for residents due to staff and visitors at the Home as well as staff from nearby offices, inability of Home Avenue to cope with construction vehicles that would be needed for the development and impact on amenity; and parking during local sports/community events. The objectors also request that Home Avenue

should become a one-way street between 8am and 4pm, or for a resident only parking scheme to be implemented.

- 5.3. These issues were fully considered as part of the Planning Department's assessment of this application in consultation with relevant consultees.

6.0. PLANNING ASSESSMENT & CONSIDERATION.

- 6.1. For full details on the assessment of the accompanying planning application for the proposed extension and alteration to the existing nursing home see file reference number LA07/2017/0918/F. In summary the proposal is for an extension to an existing residential nursing home. It seeks to construct new annexes on the northern and southern ends of the nursing home to provide additional accommodation, conversion of the chapel into additional accommodation and the construction of an internal link between the two buildings. This new structure will also house a larger kitchen block as well as the provision of a new entrance to the east of the existing and 41 car parking spaces.
- 6.2. The planning application is considered acceptable. Having regard to the terms of the statutory plan and other relevant policy considerations and material considerations, approval is recommended with appropriate planning conditions
- 6.3. This application seeks listed building consent for the proposed works. The proposal seeks to carry out conversion and extension works to two listed buildings as part of a redevelopment of the nursing home to provide additional residential accommodation and car parking.
- 6.4. The relevant planning policy document is Planning Policy Statement 6 (PPS 6) 'Planning, Archaeology and the Built Heritage' and, in particular, Policy BH8 'The Alteration or Extension of a Listed Building'.
- 6.5. As outlined above the Planning Department consulted the relevant statutory authority responsible for works to a Listed Building, Historic Environment Division. In the case of this application, HED's remit is limited to the works affecting the listed Chapel and Convent buildings. In its final consultation

response HED has confirmed no objections to the detailed works, including alteration to the boundary wall, subject to the imposition of conditions.

7.0. Recommendation:

- 7.1.** DfC (HED) has stated it has no objections. It is considered that the proposal will help secure the upkeep and viability of the listed buildings by expanding the nursing home to provide additional facilities.
- 7.2.** Having assessed all the material consideration, approval is recommended with appropriate planning conditions

Case Officer.

Date:

Authorised Officer

Date:

Planning Conditions

- 1. Time Conditions
- 2. Prior to commencement of development details shall be submitted and approved in writing by the Council in conjunction with HED of a Fire Safety Strategy and Method Statement for the duration of the works. The works shall be carried out in accordance with the details approved.
- 3. All new external and internal works and finishes and works of making good to the retained fabric, shall match the existing original work adjacent in respect of methods, detailed execution and finished appearance unless otherwise approved in writing by the Council, in conjunction with HED. Detailed finishes schedules and samples are required for approval on any changes proposed.
- 4. Samples of the following materials shall be submitted and approved in writing by the council in conjunction with HED prior to commencement of the relevant works:
 - a) Seamed metal cladding to link between chapel and convent;

- b) New eaves corbel;
- c) New footpath surfacing and edge kerb.

Reason 1, 2 & 3: To ensure that special regard is paid to protecting the special architectural and historic interest and integrity of the building under Section 80 of The Planning Act (NI) 2011.

- 5. No new plumbing, pipes, soil-stacks, flues, vents, ductwork, lighting, security cameras or mechanical and electrical services of any description shall be fixed on the external or internal faces of the building other than those shown on the drawings hereby approved.

Reason: to ensure that special regard is paid to specific architectural features or fixtures and to ensure the fabric is protected from damage during the course of works.

Informatives

Additional information/advice (e.g. on legislation, guidance, contacts, etc.) for planning officer and applicant's awareness:

- 1. Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage.
- 2. Strategic Planning Policy Statement for Northern Ireland (SPPS) – Planning for Sustainable Development.
- 3. BS 7913:2013 Guide to the conservation of historic buildings
- 4. Please also see new HED guidance <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/ourplanning-services-and-standards-framework.pdf>
- 5. Consultation Guide: Historic Buildings & Energy Efficiency, A Guide to Part F of the Northern Ireland Building Regulations 2006.
- 6. Technical Notes - <https://www.communitiesni.gov.uk/publications/11%2B14/11%2B14/type/guidance/topic/10295?search=technical>
- 7. Consultation Guide - A guide to consulting HED on development management applications- <https://www.communities-ni.gov.uk/publications/guide-c-consulting-heddevelopment-management-applications>
- 8. Discussions with Building Control should be initiated at an early stage; changes may be required in relation to fire, sound, thermal insulation, etc that would affect the historic fabric of the building. If such requirements are not

considered in this application and the associated full application, further revisions may be required that may not comply with Policy BH 8 of PPS 6.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

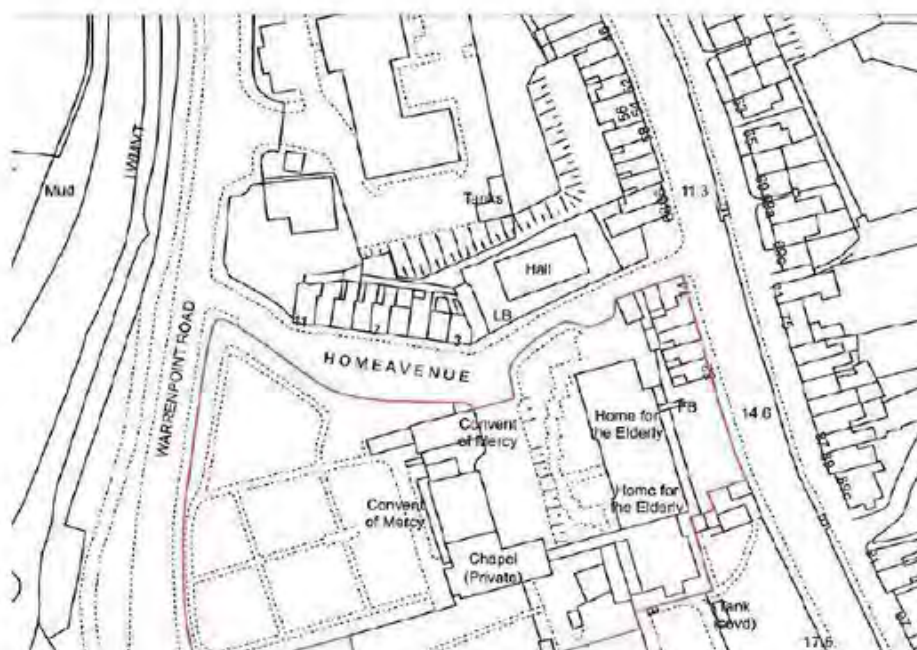
**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2017/0963/LBC

Date Received: 16 June 2017.

Proposal: Proposed refurbishment works to reinstate existing laundry building.

Location: 1 Home Avenue Newry, Co. Down, BT34 2DL



1.0. Site Characteristics & Area Characteristics:

- 1.1. The subject of the application is a laundry building that is part of a convent complex located on Home Avenue, Newry.



Location of Laundry Building within Convent Complex

- 1.2.** The laundry is a two-storey building located adjacent to the northern boundary of the site next to Home Avenue, views of the building from this street are limited by the perimeter wall. The laundry building has fallen into disrepair, with holes have appeared in its roof and part of the wall facing towards the road is covering in ivy.



View from Home Avenue

- 1.3. The application seeks LBC to repair and restore the laundry building to its former state. See details below.



2.0. Site History:

LA07/2017/0938/LBC; LA07/2017/0918/F. Co-joined applications for Planning Permission and Listed Building Consent to carry out works to existing convent to provide additional accommodation.

3.0. PLANNING POLICY MATERIAL CONSIDERATIONS.

- 3.1. The planning policy context for this application is provided by:

- Strategic Planning Policy Statement
- Banbridge/Newry and Mourne Area Plan 2015
- Planning Policy Statement 6, Planning, Archaeology and the Built Heritage

4.0. STATUTORY CONSULTATIONS:

- 4.1.** Consultation was carried out with Department for Communities (Historic Environment Division, Historic Buildings (HED :HB)). It confirmed:

The application for 'Refurbishment works to reinstate existing laundry building' (LA07 2017 0963 LBC) impacts upon Convent of Mercy (Grade B+) and Convent of Mercy Chapel (Grade B1) which are of special architectural and historic importance and protected by Section 80 of the Planning Act (NI) 2011. Historic Environment Division, Historic Buildings (HED:HB) has visited and considered the impacts of the proposal on the buildings and on the basis of the information provided, advise:

- It considers that the proposal satisfies paragraphs 6.12 and 6.13 of SPPS (NI) and Policy BH 8 (Extension or Alteration of a Listed Building) and Policy BH 11 (Development affecting the Setting of a Listed Building) of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage with conditions.
- HED:HB welcome the reinstatement of this building for a functional use within the home complex.

5.0. Objections & Representations

- 5.1.** Details of the application were advertised in July 2017. Details of the application, including amended drawings, were also notified in February 2020.
- 5.2.** A total of 36 standard letters of objection were received, in response to the general planning application for the extension to the nursing home, on 19 April 2019. A petition, with 50 signatures, based on the same standard letter of objection was received on 21 August 2019. The issues of concern raised include: traffic congestion along Home Avenue caused by traffic from local

schools and a scout hall, removal of remaining sunlight from my house, lack of parking for residents due to staff and visitors at the Home as well as staff from nearby offices, inability of Home Avenue to cope with construction vehicles that would be needed for the development and impact on amenity; and parking during local sports/community events. The objectors also request that Home Avenue should become a one-way street between 8am and 4pm, or for a resident only parking scheme to be implemented.

- 5.3. These issues were fully considered as part of the Planning Department's assessment of the overall application in consultation with relevant consultees.

6.0. PLANNING ASSESSMENT & CONSIDERATION.

- 6.1. This application forms part of a wider project to extend and alter the existing nursing home. For full details on the assessment of that accompanying planning application, see file reference number LA07/2017/0918/F. That planning application is considered acceptable. Having regard to the terms of the statutory plan and other relevant policy considerations and material considerations, approval is recommended with appropriate planning conditions.
- 6.2. This application seeks listed building consent for the proposed refurbishment of the existing laundry building which forms part of that building complex. Planning application is not required for the proposed refurbishment works. Listed Building consent is required.
- 6.3. The relevant planning policy document is Planning Policy Statement 6 (PPS 6) 'Planning, Archaeology and the Built Heritage' and, in particular, Policy BH8 'The Alteration or Extension of a Listed Building'.
- 6.4. As outlined above the Planning Department consulted the relevant statutory authority responsible for works to a Listed Building, Historic Environment Division. In the case of this application, HED's remit is limited to the works affecting the listed Chapel and Convent buildings. In its final consultation response HED has confirmed no objections to the detailed works, subject to the imposition of conditions.

7.0. Recommendation:

- 7.1.** DfC (HED) has stated it has no objections. It is considered that the proposal will help secure the upkeep and viability of the listed buildings by expanding the nursing home to provide additional facilities.
- 7.2.** Having assessed all the material consideration, approval is recommended with appropriate planning conditions

Case Officer.**Date:****Authorised Officer****Date:****Planning Conditions**

- Time Conditions
 - windows shall be splice repaired in the first instance.
 - Windows shall be hardwood painted, single glazed and putty fixed, and without ventilator strips.
 - Window replacements shall be identical in each and every respect, to include replication of timber astragals, mullions and frame profiles. Sashes shall be without horns and all windows shall be mitre jointed.
 - Doors shall be timber painted.
 - Roof shall be repaired to retain Welsh natural slate in diminishing courses as exists.
 - Render shall be specified as lime render or plaster.
- Reason: to ensure the works proposed make use of traditional and/or sympathetic building materials and techniques which match or are in keeping with those found on the building and that the architectural details match or are in keeping with the building*
- The boarded stair enclosure and stair shall be repaired and retained
 - The laundry boarded ceiling shall be repaired and retained

Reason: to ensure the essential character of the building and its setting are retained and its features of special interest remain intact and unimpaired.

Informative

Additional information/advice (e.g. on legislation, guidance, contacts, etc.) for planning officer and applicant's awareness:

Legislation & policy

1. The Planning Act (NI) 2011

TRACKING ACTION SHEET ARISING FROM PLANNING COMMITTEE MEETINGS

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
		PLANNING MEETING – 09 MAY 2018			
LA07/2017/1721/F	Millvale Services Ltd – proposed parking for neighbouring Millvale Service Station – Millvale Road, Bessbrook	Defer Planning Application LA07/2017/1721/F to allow for a Health and Safety Report / Road Traffic Report to be conducted as soon as possible and report back to Committee for further consideration of the application.	Pat Rooney	<p>21 day letter issued to agent requesting the said information. Expiry date for info is 9.7.18.</p> <p>Application deferred at meeting on 29 August 2018 until issues raised by SPO have been considered and Planning Officers are to liaise with the agent/applicant at the earliest possible opportunity.</p> <p>Remains under consideration</p>	N
		PLANNING MEETING – 1 AUGUST 2018			

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2017/1261/0	Thomas Mageean – proposed dwelling and garage – site abutting 20 Junction Road, Saintfield	Defer application to enable the Council's Legal Advisor to consider issues raised regarding ownership of the application site (Mr Thomas Mageean); the farm business in the name of Mr Bernard Mageean, who takes land in conacre from his brother and this farm business being altered by adding the applicant as an additional member of the business and in so doing have the applicants buildings at No. 20 Junction Road included within the farm business criterion © of CTY10	Annette McAlarney	Await legal advice.	N
		PLANNING MEETING – 29 AUGUST 2018			
LA07/2017/0821/0	Mr C Kane - Proposed off site replacement dwelling and garage - 123 Magherahamlet Road, Moneywabane, Ballynahinch.	Defer application for further discussion between agent/applicant and planning officers re: new information submitted and issues raised at the Planning Committee Meeting	Annette McAlarney	Issues raised at Planning Committee referred to the outcome of an application which has yet to be submitted to planning. In line with Committee wishes we have to	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
				<p>await the submission of this application and its conclusion before returning to consider the current deferred application. Contact made with agent re progress on potential new application which has yet to be submitted. Meeting to be convened. Agent advised on 19 March 2019 that the application for the 2no broiler houses was to be submitted within the next 3 weeks. No application has been received at time of update 29/04/2019.</p> <p>No application submitted to date 04/06/2019</p>	

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
				Application for poultry houses received LA07/2019/0953/F on 13/06/2019 Being processed.	
		PLANNING MEETING - 13 FEBRUARY 2019			
LA07/2015/0149/F	Change of use of building to provide storage and distribution of fuel with alterations and new bulk fuel tank in yard – site between 54 and 58 Edenappa Road, Jonesborough	Withdrawn by the Planning Department to allow further consultation to be completed	A Davidson	Remains under consideration	N
LA07/2018/0820/F	Erection of a semi-detached pair of dwellings and associated car parking – lands to the rear of Nos 1 and 2 Sally Gardens and 31-35 Mourne Rise Newcastle	Defer to allow revised plans to be considered and ensure a maintenance strip was provided for use by Rivers Agency.	A McAlarney	Applicant has met with Rivers Agency. Planning office has requested updated position from applicant. No response. Proceed to return to May 2019 Committee – DEFER	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
				Application has been amended again by applicant 25/02/2020	
		PLANNING MEETING – 26 JUNE 2019			
LA07/2018/0930/F	New build residential development of 1 No. apartment block consisting of 13 No. 3P2B apartments, 12 No. 2PIB apartments and 1 No. 2PIB wheelchair apartment (26 apartments in total) with 19 No. basement parking spaces 2.0 – 41 Belfast Road, Newry	Defer for a site visit	M Keane	Site visit held – 08-07-2019 – application returned to July Committee Meeting – agreed to defer for further discussions between applicant/planning officers to see if an acceptable proposal can be agreed and decision making powers be delegated to Planning Officers Amended plans now received for reconsultation, NN and reconsideration.	N
		PLANNING COMMITTEE MEETING – 24 JULY 2019			

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2018/1787/F	Proposed extension to existing Materials Recovery Facility Building – 23 Downpatrick Road, Killough	Defer this application, which the Committee agreed was an exception under FLD 1, and refer the completed Flood Risk Assessment to Rivers Agency to be reviewed.	A McAlarney	Application to come back to Committee Under consideration.	N
		PLANNING COMMITTEE MEETING – 17 SEPTEMBER 2019			
LA07/2017/1235/F	Demolition of No. 31 and erection of two shop units on ground floor with 4 No. apartments on first and second floors – No. 31 Cardinal O’Fiaich Square, Crossmaglen	Defer for discussions between agent and Planning Officers to agree a suitable scheme and delegate authority to Planning Officers to issue the decision	A Davidson		
LA07/2018/1670/F	Proposed two storey dwelling with integral garage as a change of house type from approval LA07/2015/1171/F with revised vehicular access from Church Road Road – 30m NE of 6 Main Street, Camlough	Defer for discussions between agent and Planning Officers to agree a suitable scheme and delegate authority to Planning Officers to issue the decision	A Davidson		
LA07/2018/0860/F	Proposed replacement dwelling (amended drawings) – 45 metres NE of No. 14 Rath Road, Clonallon Glebe tb Warrenpoint	Defer for further discussion between Planning Officers and agent/applicant – additional information to be provided	M Keane	Amended plans now received for reconsultation, NN and reconsideration.	N
		PLANNING COMMITTEE MEETING – 16 OCTOBER 2019			

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2019/1031/F LA07/2019/0935/F	Extension to side dwelling – 4 Oldpark Road, Loughinisland	Defer for further discussions between agent/Planners with a view to agreeing a suitably designed extension which would not impact on the streetscene. Planners to be given authority to issue the decision	A McAlarney	Approval issued	Y
PLANNING COMMITTEE MEETING 11 DECEMBER 2019					
LA07/2019/0773/0	Dwelling – to rear of 71 Church Street, Downpatrick	Withdraw from the addendum list for a meeting with Planners, applicant and agent	A McAlarney	Meeting to be convened with CPO and Agent/applicant	N
PLANNING COMMITTEE MEETING 8 JANUARY 2020					
LA07/2019/1302/F	Dwelling with associated parking and amendment of application R/2011/0794/F to remove parking area for apartments and replace with shared amenity space – rear of nos 65-69 South Promenade Newcastle	Withdrawn from addendum list and re-present at February Meeting	A McAlarney	Site visit to be arranged – 6 March 2020	N
LA07/2019/1362/0	Infill dwelling and garage – adj and immediately south of 64 The Heights, Loughbrickland	Withdrawn from addendum list and re-present at February Meeting	A McAlarney	Site visit to be arranged – 6 March 2020	N
LA07/2019/1221/F	Proposed guest house tourist accommodation and associated site works – land 10m NW of	Defer for site visit and further discussion to take place with applicant, agent and Planners re:	A McAlarney	Withdrawn from February agenda for	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
	180 Tullybrannigan Road, Newcastle	correct planning category for the proposal. Traffic survey to be submitted and evidence that 2 x 45m sight visibility splays were achievable and within the control of the applicant		more work to be done on the proposal Awaiting agent to submit information in support of the proposal	

Newry, Mourne & Down District Council – February 2020

197

1. Live Applications

MONTH 2019/20	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	177	1,173	269
May	192	1,196	266
June	155	1,184	264
July	139	1,157	250
August	127	1,108	249
September	110	1,026	241
October	155	981	234
November	149	963	229
December	106	933	221
January	169	945	219
February	144	909	213

Newry, Mourne & Down District Council – February 2020

198

2. Live Applications by length of time in system

Month 2019/20	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	701	203	89	60	120	1,173
May	718	212	81	61	124	1,196
June	718	202	86	57	121	1,184
July	664	243	76	51	123	1,157
August	632	227	77	44	128	1,108
September	574	211	70	45	126	1,026
October	534	213	80	39	115	981
November	522	212	71	40	118	963
December	496	216	70	43	108	933
January	520	206	79	39	101	945
February	515	181	86	33	94	909

3. Live applications per Case Officer

Month 2019/20	Average number of Applications per Case Officer
April	78
May	79
June	73
July	76
August	76
September	76
October	67
November	58
December	57
January	62
February	53

Newry, Mourne & Down District Council – February 2020

199

4. Decisions issued per month

Month 2019/20	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	104	95
May	156	152
June	165	148
July	163	157
August	170	142
September	181	158
October	193	185
November	148	138
December	127	121
January	147	138
February	163	157

Newry, Mourne & Down District Council – February 2020

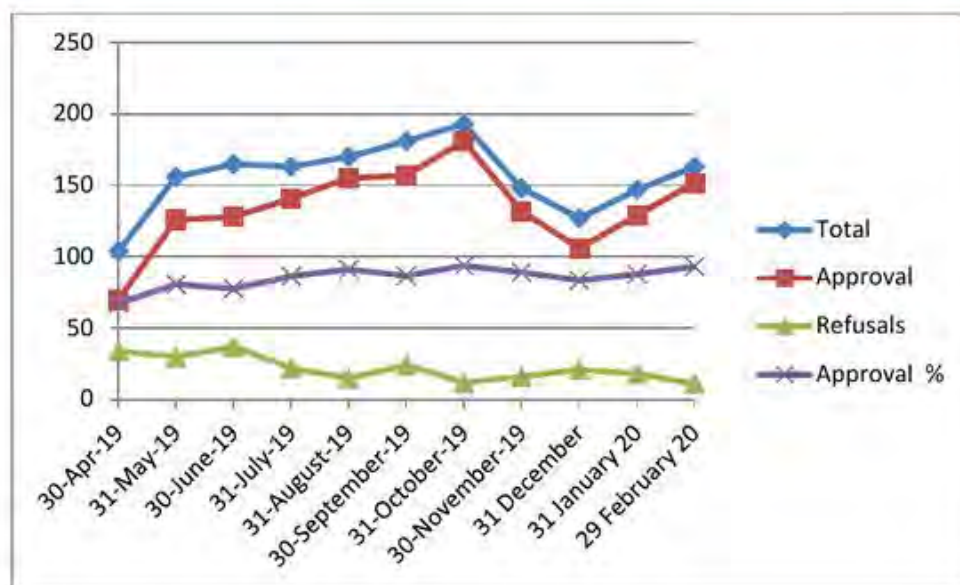
200

5. Decisions Issued YTD

Month 2019/20	Number of Decisions Issued	Breakdown of Decisions	
April	104	Approvals (70)	67%
		Refusals (34)	33%
May	260	Approvals (196)	75%
		Refusals (64)	25%
June	425	Approvals (324)	76%
		Refusals (101)	24%
July	588	Approvals (465)	79%
		Refusals (123)	21%
August	758	Approvals (620)	82%
		Refusals (138)	18%
September	939	Approvals (777)	83%
		Refusals (162)	17%
October	1,132	Approvals (958)	85%
		Refusals (174)	15%
November	1,280	Approvals (1090)	85%
		Refusals (190)	15%
December	1,407	Approvals (1196)	85%
		Refusals (211)	15%
January	1,554	Approvals (1325)	85%
		Refusals (229)	15%
February	1,717	Approvals (1477)	86%
		Refusals (240)	14%

Newry, Mourne & Down District Council – February 2020

201



6. Enforcement Live cases

Month 2019/20	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+ysrs	Total
April	329	230	183	79	63	179	1,063
May	308	247	174	85	62	178	1,054
June	286	249	171	83	61	174	1,024
July	283	261	166	83	60	170	1,023
August	264	256	179	81	55	175	1,010
September	248	264	179	89	45	174	999
October	240	260	169	84	38	164	955
November	244	256	165	89	35	151	940
December	230	251	152	90	35	146	904
January	233	255	144	96	39	146	913
February	229	228	148	96	37	123	861

Newry, Mourne & Down District Council – February 2020

202

7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/ Deferred for future meeting	Number of Officer recommendation overturned
10 April 2019	17	11	6	5
29 May 2019	15	12	3	5
26 June 2019	16	13	3	3
24 July 2019	27	18	9	8
21 August 2019	34	29	5	5
18 September 2019	17	12	5	6
16 October 2019	15	12	3	3
13 November 2019	11	8	3	2
11 December 2019	14	7	7	2
8 January 2020	14	9	5	1
12 February 2020	10	7	3	2
Totals	190	138	52	42

8. Appeals

Planning Appeal Commission Decisions issued during February 2020

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Withdrawn
Newry & Mourne	19	5	5	0	0
Down	14	2	0	2	0
TOTAL	33	7	5	2	0

Newry, Mourne & Down District Council – February 2020

203

Statutory targets monthly update - April 2019 – January 2020 (unvalidated management information)

Newry, Mourne and Down

Major applications (target of 30 weeks)					Local applications (target of 15 weeks)				Cases concluded (target of 39 weeks)					
	Number received	Number decided/ withdrawn ¹	Average processing time ²	% of cases processed within 30 weeks		Number received	Number decided/ withdrawn ¹	Average processing time ²	% of cases processed within 15 weeks		Number opened	Number brought to conclusion ³	"70%" conclusion time ³	% of cases concluded within 39 weeks
April	1	1	51.8	0.0%		163	81	22.0	22.2%		28	66	192.0	30.3%
May	0	1	600.0	0.0%		152	138	21.1	28.3%		29	36	85.4	44.4%
June	2	3	230.8	33.3%		123	145	24.6	22.1%		25	48	114.7	37.5%
July	0	-	0.0	0.0%		110	152	20.2	36.2%		41	44	165.2	29.5%
August	0	2	55.4	50.0%		100	160	22.1	30.0%		24	42	83.5	47.6%
September	1	1	321.0	0.0%		113	166	22.4	24.1%		34	35	185.7	40.0%
October	1	-	0.0	0.0%		117	158	19.2	38.6%		44	73	161.2	31.5%
November	0	2	169.4	0.0%		155	136	24.3	33.8%		24	54	189.2	29.6%
December	1	-	0.0	0.0%		83	112	20.7	40.2%		19	43	121.2	37.2%
January	0	-	0.0	0.0%		86	134	18.7	38.8%		25	24	132.2	25.0%
February	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
March	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
Year to date	6	11	135.8	18.2%		1,227	1,383	21.2	31.6%		294	465	143.1	34.8%

Source: NI Planning Portal

Notes:

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".

Newry, Mourne & Down District Council – February 2020

204

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 2019-2020

205

DATE OF MEETING	PLANNING OFFICER'S NAME/S	PUBLIC REPRESENTATIVE'S NAME
05/04/2019	A McAlarney	Cllr Curran
22/05/2019	A McAlarney	Cllr Curran
04/06/2019	A McAlarney	Colin McGrath
04/06/2019	A McAlarney	Colin McGrath
06/06/2019	A McAlarney	Cllr Andrews
11/06/2019	A McAlarney	Colin McGrath (Dominic O'Reilly)
12/06/2019	A McAlarney	Cllr Walker
18/07/2019	A McAlarney	Cllr Doran
06/08/2019	A McAlarney	Cllr Walker Jim Shannon
12/08/2019	A McAlarney	Cllr McEvoy
13/08/2019	A McAlarney	Cllr McEvoy
16/08/2019	A McAlarney	Cllr Curran
06/09/2019	A McAlarney	Colin McGrath
10/09/2019	A McAlarney	Cllr Burgess
07/10/2019	A McAlarney	Cllr Walker
06/11/2019	A McKay	Chris Hazzard
14/11/2019	A McKay	Colin McGrath
25/10/2019	A McAlarney	Cllr Curran
28/10/2019	A McAlarney	Cllr Walker
06/11/2019	A McKay	Chris Hazzard
14/11/2019	A McKay	Colin McGrath
12/12/2019	A McAlarney	Cllr Andrews
09/01/2020	A McAlarney	Cllr Doran
17/1/2020	A McKay	J Shannon MP
06/02/2020	A McAlarney	Cllr O'Hanlon
14/02/2020	A McAlarney	Cllr Lewis
21/02/2020	A McAlarney	Colin McGrath
21/2/2020	A McKay	Cllr Walker & J Shannon MP
21/2/2020	A McKay	C McGrath MLA

AUTHORITY Newry, Mourne and Down

ITEM NO 1
Planning Ref: P/2014/0920/F **PAC Ref:** 2019/A0065
APPELLANT Mr Brian Mulholland **DEA** Crotlieve
LOCATION To The Rear Of 37A Ballyholland Road Ballyholland Lower
 Newry Down BT34 2LU

PROPOSAL Retention of existing agricultural shed, hardstanding, agricultural
 laneway and earthen embankments

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 2
Planning Ref: LA07/2018/0496/ **PAC Ref:** 2019/A0069
APPELLANT Eugene Stranney **DEA** Slieve Croob
LOCATION 149 Ballydugan Road Downpatrick BT30 8HH

PROPOSAL Change of use of existing garage, study & games room to a
 dwelling as ancillary to the main existing dwelling

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 3
Planning Ref: LA07/2017/1068/ **PAC Ref:** 2019/A0094
APPELLANT Mr And Mrs M Pedan **DEA** The Mournes
LOCATION Between No's 42 And 46 Fair Road Greencastle BT34
 4LS

PROPOSAL Erection of dwelling on gap site

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Informal Hearing **Date Appeal Lodged** #####
Date of Hearing

Date Statement of Case Due for Hearing
 Date Statement of Case Due - Written Representat
 Date of Site Visit

ITEM NO 4
 Planning Ref: LA07/2017/1064/ PAC Ref: 2019/A0096
 APPELLANT Mr Pat McCartan DEA The Mournes
 LOCATION 60 Metres South East Of No. 77 Tullyframe Road Kilkeel
 BT34 4RZ
 PROPOSAL Site for dwelling and garage on equestrian holding

APPEAL TYPE DC- Refusal of Planning Permission
 Appeal Procedure Informal Hearing Date Appeal Lodged #####
 Date of Hearing
 Date Statement of Case Due for Hearing
 Date Statement of Case Due - Written Representat
 Date of Site Visit

ITEM NO 5
 Planning Ref: LA07/2017/1845/ PAC Ref: 2019/A0097
 APPELLANT Mrs Celine McMullan DEA Downpatrick
 LOCATION Between 4 And 8 Ballintogher Road Saul Downpatrick
 BT30 7LB
 PROPOSAL 2no new dwellings and garages and associated site and access
 works

APPEAL TYPE DC- Refusal of Planning Permission
 Appeal Procedure Date Appeal Lodged #####
 Date of Hearing
 Date Statement of Case Due for Hearing
 Date Statement of Case Due - Written Representat
 Date of Site Visit

ITEM NO 6
 Planning Ref: P/2014/0427/O PAC Ref: 2019/A0106
 APPELLANT Joseph McGivern DEA Crotlieve
 LOCATION To The Rear And South Of 2 Berkley Grove Warrenpoint
 PROPOSAL Site for dwelling (amended plans)

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 7
Planning Ref: LA07/2019/1054/ **PAC Ref:** 2019/A0108
APPELLANT EDB Construction **DEA** Newry
LOCATION On Lands Between The Sacred Heart Grammar School And Newry High School Ashgrove Avenue Newry
PROPOSAL Erection of approved dwellings on sites 9 & 10 of approval P/2011/1067/F

APPEAL TYPE DC - Non Determination of a Planning Application
Appeal Procedure Informal Hearing **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 8
Planning Ref: LA07/2017/0078/ **PAC Ref:** 2019/A0111
APPELLANT Mr D Mahon **DEA** Slieve Croob
LOCATION 20m East Of 223a Newcastle Road Seaforde BT30 8NP
PROPOSAL Erection of 3 light industrial units(Additional supporting info received)

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 9
Planning Ref: LA07/2018/1023/ **PAC Ref:** 2019//A0112

APPELLANT Mr & Mrs D Sloan **DEA** The Mournes
LOCATION 10 Tullybrannigan Brae Newcastle

PROPOSAL Loft conversion & rear 1.5 storey extension with integral single storey garage with utility room to side & rear of dwelling

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO 10
Planning Ref: LA07/2018/1758/ **PAC Ref:** 2019/A0121
APPELLANT Around A Pound **DEA** Crotlieve
LOCATION 19 Church Street Warrenpoint

PROPOSAL Retrospective shop sign with static exterior illumination

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Written Reps** **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO 11
Planning Ref: LA07/2019/0462/ **PAC Ref:** 2019/A0126
APPELLANT Mr Colm Watters **DEA** Slieve Gullion
LOCATION 118 Cullaville Road Crossmaglen Newry BT35 9AQ

PROPOSAL Erection of replacement dwelling house, ancillary site works and landscaping

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Written Reps with Site Visit** **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO	12		
Planning Ref:	LA07/2015/1302/	PAC Ref:	2019/A0129
APPELLANT	EDB Construction	DEA	Newry
LOCATION	Lands To Rear Of 11-29 Thomas Street And Adjacent To Access Road To Buttercrane Shopping Centre		
PROPOSAL	Proposed new retail development at ground floor with 4No. 2 bedroom apartments at first floor level, relocation of existing NIE sub-station and provision of associated carparking and landscaping.		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Informal Hearing	Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	13		
Planning Ref:	LA07/2017/1213/	PAC Ref:	2019/A0143
APPELLANT	Tullyherron Farm Feeds	DEA	Slieve Gullion
LOCATION	38 Tullyherron Road Mountnorris Armagh BT60 2UF		
PROPOSAL	Retention of extension to existing farm feeds business, including extension to hard standing area, storage buildings silos and associated works.		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	14		
Planning Ref:	LA07/2019/1056/	PAC Ref:	2019/A0150
APPELLANT	Felix McEvoy	DEA	Slieve Croob
LOCATION	60m South East Of No 36 Derryneill Road Ballyward Castlewellan		
PROPOSAL	Proposed holiday chalet with retention of sub structure as commenced on site		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	#####

Date of Hearing
 Date Statement of Case Due for Hearing
 Date Statement of Case Due - Written Representat
 Date of Site Visit

ITEM NO	15	PAC Ref:	2019/A0155
Planning Ref:	LA07/2019/0181/	DEA	Slieve Croob
APPELLANT	Anthony Flanagan		
LOCATION	152 Ballylough Road Castlewellan		

PROPOSAL 2 Storey side and rear extension to provide ancillary accomodation (Retrospective)

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO	16	PAC Ref:	2019/A0159
Planning Ref:	LA07/2019/1313/	DEA	Newry
APPELLANT	EDB Construction Ltd		
LOCATION	58 Armagh Road Newry		

PROPOSAL Demolition of existing building and erection of apartment development

APPEAL TYPE DC - Non Determination of a Planning Application
Appeal Procedure **Informal Hearing** **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO	17	PAC Ref:	2019/A0165
Planning Ref:	LA07/2019/0450/	DEA	Crotlieve
APPELLANT	Mr Paul Murney		
LOCATION	39 Chapel Hill Road Mayobridge Newry BT34 2EX		

PROPOSAL Retention of Agricultural Shed used for the wintering of animals

and the storage of fodder and farm machinery.

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 18
Planning Ref: LA07/2018/0995/ **PAC Ref:** 2019/A0168
APPELLANT Ian Taylor **DEA** Slieve Croob
LOCATION Site South-east Of 123b Ballylough Road Castlewellan

PROPOSAL Replacement dwelling previously approved under application R/2011/0332/F with new access

APPEAL TYPE DC - Conditions of Approval
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 19
Planning Ref: LA07/2019/0866/ **PAC Ref:** 2019/A0169
APPELLANT EDB Construction Ltd **DEA** Newry
LOCATION Lands Opposite Numbers 20-24 Watsons Road Newry

PROPOSAL Proposed residential development comprising 20 No dwellings (18 Semi-detached and 2 detached) change of house type in respect of Approval P/2006/1117/F.

APPEAL TYPE DC - Non Determination of a Planning Application
Appeal Procedure Informal Hearing **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 20
Planning Ref: LA07/2019/0990/ **PAC Ref:** 2019/A0181

APPELLANT LOCATION The Trustees Of Newry I.N.F. **DEA** Newry
To Rear Of No. 2 John Mitchell Place Newry BT34 2BP

PROPOSAL Erection of illuminated signage (pixel pitch on road fronting elevation of commercial premises)

APPEAL TYPE DC - Advertisement Consent

Appeal Procedure Informal Hearing **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO 21
Planning Ref: LA07/2019/0149/ **PAC Ref:** 2019/A0187
APPELLANT Liam Phillips **DEA** Downpatrick
LOCATION Adjacent To 11 Saul Road Downpatrick

PROPOSAL Proposed Dwelling

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO 22
Planning Ref: LA07/2018/0901/ **PAC Ref:** 2019/A0188
APPELLANT Mrs Eileen Gribben **DEA** Crotlieve
LOCATION 74m South Of No. 50 Castlewellan Road Ballyaughian
Hilltown BT34 5YJ

PROPOSAL Proposed site for farm dwelling and garage

APPEAL TYPE DC- Refusal of Planning Permission

Appeal Procedure Written Reps with Site Visit **Date Appeal Lodged** #####

Date of Hearing

Date Statement of Case Due for Hearing

Date Statement of Case Due - Written Representat

Date of Site Visit

ITEM NO	23		
Planning Ref:	LA07/2018/0442/	PAC Ref:	2019/A0190
APPELLANT	Mr M McCartan	DEA	The Mournes
LOCATION	12-14 Seacliff Close Ballaghbeg Newcastle Co Down BT33 QLH		
PROPOSAL	Retrospective approval for existing constructed dwelling at 14 and approval for new dwelling at 12 incorporating new road layout and turning head (Road layout approved by Road Service Engineer)		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	24		
Planning Ref:	LA07/2018/1975/	PAC Ref:	2019/A0192
APPELLANT	Joanna Groves	DEA	Downpatrick
LOCATION	To The Rear Of 15A Lisoid Road Rossglass With Access From Ballylig Road Rossglass		
PROPOSAL	Dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	25		
Planning Ref:	LA07/2019/0811/	PAC Ref:	2019/A0194
APPELLANT	C McManus	DEA	The Mournes
LOCATION	Land Adjacent To 177 Dundrum Road Newcastle		
PROPOSAL	Proposed temporary mobile accommodation		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	#####

Date of Hearing
 Date Statement of Case Due for Hearing
 Date Statement of Case Due - Written Representat
 Date of Site Visit

ITEM NO	26	PAC Ref:	2019/A0212
Planning Ref:	LA07/2019/1334/	DEA	Slieve Croob
APPELLANT	Chris Magorrian		
LOCATION	37 Drumnaconagher Road Crossgar		

PROPOSAL Extension to dwelling and detached garage/store

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO	27	PAC Ref:	2019/A0218
Planning Ref:	LA07/2019/1329/	DEA	Rowallane
APPELLANT	Mr And Mrs H Coulter		
LOCATION	SE 7 Old Saintfield Road Creevyarnonan Saintfield		

PROPOSAL Dwelling and garage

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO	28	PAC Ref:	2019/E0037
Planning Ref:	LA07/2019/1057/	DEA	Newry
APPELLANT	EDB Construction		
LOCATION	Lands To Rear Of 11-29 Thomas Street And Adjacent To Access Road To Buttercrane Shopping Centre.		

PROPOSAL Completion of retail building granted planning permission by

approvals P/2009/0003/F and P/2011/1020/F.

APPEAL TYPE DC - Non Determination of a Planning Application
Appeal Procedure **Informal Hearing** **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 29
Planning Ref: LA07/2019/0514/ **PAC Ref:** 2019/E0043
APPELLANT Alastair Chestnutt **DEA** The Mournes
LOCATION 177a Kilkeel Road Annalong BT34 4TN

PROPOSAL Retention of existing building

APPEAL TYPE DC- Refusal of CLUD
Appeal Procedure **Informal Hearing** **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 30
Planning Ref: LA07/2019/0746/ **PAC Ref:** 2019/E0044
APPELLANT Anna Marie Quinn **DEA** The Mournes
LOCATION 20A Cranfield Road Kilkeel

PROPOSAL Existing Dwelling

APPEAL TYPE DC- Refusal of CLUD
Appeal Procedure **Written Reps** **Date Appeal Lodged** #####
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representat
Date of Site Visit

ITEM NO 31
Planning Ref: LA07/2019/0907/ **PAC Ref:** 2019/E0050

APPELLANT	EDB Construction Ltd	DEA	Newry
LOCATION	Site 5 Of Approval P/2006/1117/F On Watsons Road 100m West Of No. 26 Lis Ard Court Newry		
PROPOSAL	Erection of approved dwelling on site 5 of approval P/2006/1117/F		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Informal Hearing	Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	32		
Planning Ref:	LA07/2019/1216/	PAC Ref:	2019/E0053
APPELLANT	Mary Rooney	DEA	Crotlieve
LOCATION	80A Kilbroney Road Rostrevor BT34 3BL		

PROPOSAL Dwelling

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			

ITEM NO	33		
Planning Ref:	LA07/2019/0876/	PAC Ref:	2019/E0059
APPELLANT	Mr Michael Trainor	DEA	Downpatrick
LOCATION	42b And 42c Clanmaghera Road Tyrella Downpatrick BT30 8SU		

PROPOSAL 2 no dwelling units

APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure		Date Appeal Lodged	#####
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representat			
Date of Site Visit			



Appeal Decision

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

Appeal Reference:	2018/A0251
Appeal by:	Mr Gordon Graham
Appeal against:	The refusal of full planning permission
Proposed Development:	Proposed change of house type and detached domestic garage.
Location:	Between Nos. 20 and 22 Ulster Avenue, Annalong
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2018/0015/F
Procedure:	Written representations and Accompanied site visit on 20 August 2019.
Decision by:	Commissioner Pauline Boomer, dated 5 February 2020.

Decision

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

Preliminary Issue

2. The appeal proposal was described as "Proposed change of house type and integrated domestic garage" when submitted to the Local Planning Authority (LPA). During the processing of the planning application, the scheme was revised with the integrated garage changed to a detached garage. It is therefore necessary to alter the description to reflect those changes which all parties agreed to.

Reasons

3. The main issue in this appeal is whether the proposed size, scale, massing and design of the proposed dwelling and garage respect the surrounding context and draw upon local traditions.
4. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. The Banbridge Newry & Mourne Area Plan 2015 (BNMAP) operates as a LDP. The appeal site is located within the settlement development limit (SDL) for Annalong but and is not zoned for any particular use and there are no specific policies relevant to the proposed development. It also lies within the Mournes Area of Outstanding Natural Beauty (AONB).

5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. The SPPS retains certain existing planning policy documents and amongst these are Planning Policy Statement 7: Quality Residential Environments (PPS 7), Planning Policy Statement 12: Housing in Settlements (PPS12) and the 2nd Addendum to Planning Policy Statement 7: Safeguarding the Character of Established Residential Areas (APPS7(2)). It also retains Policy DES 2 of the Planning Strategy for Rural Northern Ireland (PSRNI). Creating Places and Development Control Advice Note 8: Housing in Existing Urban Areas (DCAN 8) also provide relevant planning guidance.
6. The LPA and the objectors consider that the appeal proposal does not respect the context and character of the site and surrounding area which all parties acknowledge as an Established Residential Area (ERA) as defined in APPS7(2). Planning application P/2009/0293/F established the principle of a dwelling on the appeal site, the former side garden of the adjacent property at No. 22. A further planning application P/2014/0987/F approved on 12 June 2015 granted planning permission for a 1½-storey dwelling with a single storey rear return and this approval is still live. The appeal proposal seeks to change the house type to introduce a one and a ½-storey dwelling with a similar footprint but with a different form, design and materials.
7. The appeal proposal seeks to introduce a gable fronted 1½-storey dwelling with a single storey rear extension and a detached one and a half storey garage to the rear. It would respect the established front building line of the adjacent properties with the detached garage aligning with the adjacent garage at No 22, abutting the rear boundary. The gradient falls from west to east along Ulster Avenue with the properties stepped down the hill towards Shore Road and the proposed dwelling would respect that established pattern, with the proposed ridgeline lying 0.8m below that of No. 20 and 0.3m above No. 22. Given the narrow plot, the 1½-storey block would extend 6.5m in width and 10m in depth whilst the single storey rear return would have dimensions of 5m by 7m. The proposal seeks to introduce black Donegal stone in the gabled frontage as well as on the eastern elevation of the rear return. The remainder of the property would be finished in render, similar to the garage. The proposed pitched roof of the dwelling would run at right angles to the public road with the garage positioned parallel to it, both finished in black slates/tiles. The LPA acknowledge that the principle of a 1½-storey detached dwelling is established on the appeal site where there is an extant approval represents a valid fallback position for the appellant. However they consider that the design, form and massing as now proposed would be unsympathetic to the character of the ERA, in conflict with the SPPS, Policy QD1 of PPS 7, Policy DES2 of PSRNI, Planning Control Principle 2 (PCP2) of PPS12 and DCAN 8.
8. I will firstly consider the planning policy context against which the LPA considers the appeal proposal should be assessed. Both reasons for refusal refer to conflict with Paragraph 6.137 of the SPPS which directs Councils to promote good design within housing developments in their Local Development Plans (LDPs). Other sections of the SPPS specifically address design issues with Paragraph 4.29 stating that planning authorities should not attempt to impose a particular architectural taste or style arbitrarily. It goes on to say that the aim of the SPPS is to promote or reinforce local distinctiveness, with local design policies and guidance seeking to encourage good design and responsible innovation, originality or initiative. Whilst this LPA has not yet published its LDP or any specific design guidance, it is surprising that it has not referred to the Mournes AONB Design Guide which applies here.

9. The LPA also considers that the appeal proposal offends Policy DES 2 of PSRNI. The headnote of this policy requires that development proposals in towns and villages make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials. The LPA has placed particular emphasis on the section which states that the planning authority does not wish to be prescriptive about architectural style but wishes to see designs which enhance townscape and improve the image of settlements which can mean modern and forward looking designs. The appellant however pointed out that Policy DES 2 goes on to say that where the environment is visually dull more assertive design may be appropriate, which he considers to be most relevant to the appeal site and its environs.
10. The second reason for refusal also refers to PPS12 and the Planning Control Principles (PCPs) which relate to housing developments in settlements rather than single dwellings. I am satisfied that the main operational policy is to be found in Policy QD1 and Policy DES2.
11. The LPA considers that the appeal proposal conflicts with Criteria (a) and (g) of Policy QD1. Criterion (a) requires that development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, landscaping and hard surfaced areas. Criterion (g) seeks to ensure that the design of the development draws upon the best local traditions of form, materials and detailing.
12. In conflicting with criterion (a) of Policy QD1, the LPA considers that the introduction of the proposed dwelling and garage would result in unacceptable damage to the local character of the area. It is therefore critical to determine what defines the character of this ERA before assessing whether or not the appeal proposal is sympathetic to its context. It is noteworthy that Addendum E of APPS7(2)) states that within smaller settlements such as Annalong, ERAs generally display a more intimate character and spatial scale. It goes on to say that in these small villages there is often more local variety in architectural styles and treatments. The LPA has taken a contrary view in their assessment of Annalong, confining the ERA to a small section of Ulster Avenue.
13. The appeal site represents a vacant plot which sits within a row of semi detached pairs of single storey cottages, similar in form to those within the cul de sac opposite. The LPA and the objectors have taken the view that the character is defined solely by these cottages and have disregarded the fact that Ulster Avenue displays a wide range of residential properties which vary significantly in form, size, scale and design. One is aware when driving along Ulster Avenue that it is not dominated by single storey cottages but there is a mix of single storey, 1½-storey and 2-storey properties, introducing a variety of forms and orientation with a wide range of finishes evident. When travelling along Ulster Avenue, the most dominant properties are the four 2-storey properties under construction at No. 17 opposite, the sizeable first floor extension approved to the bungalow at No. 21 and the large redevelopment recently approved at No. 57 Shore Road at the southern end of Ulster Avenue, all of which would appear much more prominent in the street scene than any dwelling on the appeal site. The LPA acknowledged at the site visit that views of the appeal building would be limited, given its restricted frontage and screening by adjacent buildings.

14. I agree with the appellant that when assessing the character of the ERA, one is required to consider the whole of the ERA and not just those properties immediately abutting the appeal site or solely those along Ulster Avenue. Within the wider residential area, there are a variety of house sizes, styles and finishes, particularly the half hipped roofed 1½-storey detached dwellings to the rear in Carragheen Drive with which the appeal proposal would be visually linked. The appellant has referred me to numerous recent approvals in the ERA where new developments did not in any way reflect the size, scale or form of those adjoining properties yet were considered to be in-keeping with the character of the area. Some of these lie within the Area of Townscape Character (ATC) where a higher test applies. Of particular relevance is the large detached dwelling at No. 57 Shore Road which significantly increased the scale of the original building and introduced a group of 3 linked blocks which vary in size, form and design from the adjacent single storey cottages it aligns with. Whilst I acknowledge that that scheme was approved by the Department of the Environment and the LPA is not bound by their decisions, it represent a particularly dominant property in full view when travelling along Ulster Avenue as well as from the shoreline and provides the context against which the appeal proposal must be assessed. Two further developments recently approved by this LPA involved the erection of a replacement dwelling at No. 16 Shore Road and three large detached dwellings at 73 Glasdrumman Road which significantly increased the scale and massing of the original buildings whilst introducing a very contemporary design on prominent sites abutting the shoreline. Whilst I recognise that these latter developments are not visually linked with the appeal site, they demonstrate the range of design features and finishes which the LPA has concluded do respect the surrounding context within the ERA whilst drawing upon local traditions in accordance with the relevant policies and planning guidance. It is in this context that I have to consider whether or not the appeal building would result in unacceptable damage to the local character, in conflict with Criteria (a) and (g) of Policy QD1, Policy DES2 and the SPPS.
15. The LPA and the objectors have raised particular concerns about a number of design features within the appeal building and I shall consider each in turn:-

Scale and massing

As the extant approval allowed for the introduction of a 1½-half storey dwelling and the appeal building introduces a marginally higher ridgeline which sits below that of No. 20 and above that of No. 22, I am satisfied that it respects the existing pattern of development stepping down the hill, unlike No. 21 opposite where a very prominent first floor extension was added projecting well above the original roofline. As recent approvals at Nos. 16 and 57 Shore Road have introduced extensive properties which do not in any way reflect the size, form and massing of the adjacent single storey cottages, I do not consider that the marginal variation as now proposed is inappropriate here.

Gable projection

The appeal building presents a gable fronted projection extending 6m in height with the main entrance in the rear elevation of the frontage block. I note that No. 10 Ulster Avenue is a gable fronted 1½-storey property whilst the bungalows at Nos. 1 and 3 each display a substantial gable fronted projection. Likewise, the redevelopment of No. 57 Shore Road introduced a gable fronted 1½-storey block within the ATC which is clearly visible when travelling along the entire stretch of Ulster Avenue as well as from the shoreline. I am not persuaded that the proposed gable front represents an alien form in the street scene as suggested by the LPA.

Areas of Glazing

The appeal proposal seeks to introduce several areas of glazing in the front elevation which the LPA assesses to be a modern design which is out of keeping with the character of the area. Whilst I note that the adjacent cottages all display modest windows with horizontal emphasis, there are numerous examples where sizeable areas of glazing have been considered appropriate in the vicinity, on more prominent sites such as No. 57 Shore Road and 73 Glasdrummon Road which offer long range views from both the shoreline and the streetscene. In these cases, the use of modern materials such as cladding in addition to more extensive areas of glazing has created a much more contemporary design than is now proposed within the appeal building.

Black Donegal stone

The LPA raised concerns about the introduction of black Donegal stone in the front elevation of the proposed dwelling as well as in the eastern elevation of the rear return which it considers conflicts with Criterion (g). However in their Statement of Case, they have made a fleeting reference to the use of this material but have offered no explanation why they consider it inappropriate in this urban setting. In this evidential context, I am not persuaded that the introduction of stone would create such an incongruous feature as to justify dismissal of this appeal, especially as other properties close by at No. 32 Ulster Avenue and No. 57 Shore Road display some features finished in stone.

16. There is no requirement in the SPPS, Policy QD1 of PPS 7 or Policy DES 2 to imitate or duplicate adjoining buildings as suggested here by the LPA which appears to contradict the approach taken by them in larger scale development in the vicinity referred to above. Whilst the objectors have made passing reference to conflict with Policy NH6 of PPS 2; Natural Heritage, they offered no argument that the appeal proposal fails to respect local architectural styles, design or finishes. I disagree with the LPA and objectors' narrow assessment of the character of Ulster Avenue or the ERA where there is no uniformity of design and existing properties vary significantly in form, size, scale and design. There is no embargo on appropriate contemporary design in the right location and the LPA has failed to explain why the proposed design elements, either individually or collectively, render the overall design unacceptable, especially given the limited visibility of the appeal site in the street scene. I am satisfied that the appeal proposal would draw upon some of the positive aspects of the character and appearance within the ERA and reflect design features evident in other properties. I conclude that it would harmonise with existing properties without causing unacceptable damage to the local character and environmental quality of the area. In this evidential context, I am not persuaded that the appeal proposal would be out of keeping with the established character of this area and therefore find no conflict with the spirit of the SPPS, Policy QD1 or Policy DES2. Neither reason for refusal nor the objectors' concerns in this regard are therefore sustained.
17. The objectors at No. 22 also raised additional concerns about the original proposal, many of which have been addressed by the appellant in submitting revised drawings which reduced the scale of the development. As there is an existing extant approval on the appeal site which introduces a 1½-storey dwelling set a similar distance from the boundary with No. 22, I must therefore consider whether or not the appeal proposal would have a greater impact on the residential amenities of the adjoining property. As only velux windows are proposed in the first floor roof of the rear return,

I am satisfied that no overlooking would result. The footprint and massing is not dissimilar to the approved building and therefore I am not persuaded that it would create a hemmed in feeling or unacceptable overshadowing. Transport NI have raised no concerns about the number of parking spaces available or their accessibility from the public road. Adequate amenity space is available in line with current standards set out in Creating Places. The revised plans redirect the mains foul drain and storm drains within the site. I find that none of the concerns raised by the objectors are of determining weight in this appeal. As the two reasons for refusal and the objectors' concerns have not been sustained, the appeal is allowed, subject to the following conditions.

18. With regards to conditions, in the interests of road safety, it is necessary to attach a condition requiring the provision of the two car parking spaces as shown on the submitted 1:500 block plan prior to the occupation of the dwelling. As no details of the particular stone to be used in the appeal building has been presented, I consider it necessary to attach a condition requiring the submission of stone samples to be agreed in writing by the LPA, prior to the commencement of works on the site. Given the restricted size of the plot, I agree that it is necessary to remove Permitted Development rights to ensure that any future alterations or extensions require separate planning permission.

CONDITIONS

- (1) The development shall be begun before the expiration of five years from the date of this permission
- (2) No development shall commence on site until details and samples of the materials to be used for the external walls have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- (3) Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015, or any Order revoking and/or re-enacting that Order, no extension or enlargement (including alteration to roofs or installation of windows) shall be made to the dwelling house hereby permitted without the grant of a separate planning permission from the Council.
- (4) The development hereby permitted shall not be occupied until two parking spaces have been constructed in accordance with the 1:500 site layout plan date stamped received on 18 May 2018 and shall be permanently retained.

This decision is based on the following drawings, all received by Newry Mourne and Down District Council on the following dates:-

- 1: 2500 site location plan date stamped received on 1 December 2017;
- 1:500 proposed site layout plan date stamped received on 18 May 2018;
- 1:100 proposed floor plans date stamped received on 18 May 2018;
- 1:100 proposed elevations date stamped received on 18 May 2018; and
- 1:100 proposed elevations date stamped received on 18 May 2018.

COMMISSIONER PAULINE BOOMER

2018/A0251

List of Appearances

Planning Authority:- Council	Mr Ashley Donaldson for Newry, Mourne and Down District
Appellants:-	Mr Andy Stephens (agent)

List of Documents

LPA 1	Statement of Case and Appendices from Newry Mourne and Down District Council
APP1:	Statement of Case and Appendices from Appellant.
APP 2	Rebuttal from Appellant.



Appeal Decision

Park House
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Appeal Reference:	2018/A0201
Appeal by:	Mr Jamie Stevenson
Appeal against:	The refusal of an application for full planning permission
Proposed Development:	Dwelling and garage (change of design from that previously approved under R/2015/0060/F)
Location:	80m south east of No 2 School Road, Saintfield
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2018/0410/F
Procedure:	Written Representations with Commissioner's Site Visit on 17 January 2020
Decision by:	Commissioner Pamela O'Donnell, dated 28 February 2020

Decision

1. The appeal is dismissed.

Reasoning

2. The main issue in the appeal is whether the proposal is acceptable in principle in the countryside and whether the design is acceptable,
3. Section 6 (4) of the Planning Act (Northern Ireland) 2011 requires the appeal to be determined in accordance with the Local Development Plan (LDP) unless other material considerations indicate otherwise. Section 45 (1) of the same Act requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. The Ards and Down Area Plan 2015 (ADAP) operates as a LDP for the area wherein the appeal site is located, but offers no specific policies in respect of the development proposed. There are, however, relevant regional policies applicable which are discussed and considered below.
4. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. It also retains certain existing planning policy statements. Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) is amongst the retained documents. Policy CTY1 thereof lists the types of development which are acceptable in principle in the countryside. It goes on to say that planning permission will be granted for an individual dwelling house in six cases. One is a replacement dwelling in accordance with Policy CTY3.
5. Paragraph 6.73 of the SPPS is no more prescriptive than the text of PPS21 in relation to replacement dwellings. Thus, the retained policies of PPS21 take precedence in decision making in accordance with the transitional arrangements

outlined in the SPPS. Policy CTY3 of PPS21 indicates that proposals for all replacement cases will only be permitted subject to certain criteria. The first two are of relevance in this appeal. The first criterion requires that the replacement dwelling should be sited within the established curtilage of the existing building, unless the curtilage is so restrictive that it could not reasonably accommodate a modest sized dwelling or it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits. The second requires that the overall size of the new dwelling should allow it to integrate into the surrounding landscape and that the new dwelling would not have a visual impact significantly greater than the existing building.

6. The appeal site has an extant approval for an off-site replacement dwelling with internal garage (R/2015/0060/F). That was a renewal of a previous permission (R/2009/0707/F). The Council advises that the original dwelling to be replaced, which was located at No 6 School Road, was a single storey rectangular building which stood on a small plot and the planning history would corroborate this. Both approvals allowed the replacement dwelling to be located some 300m south of the existing dwelling. Thus, the principle of an off-site replacement dwelling has been established so the Council's objection on this issue is therefore misplaced. The extension of the curtilage, as now proposed, is to facilitate the larger footprint of the appeal dwelling and detached garage. The Council's objection is therefore captured by the latter part of the second criterion.
7. In the evidential context provided, I am satisfied that there is a fallback position in this case by virtue of approval R/2015/0060/F which remains extant. Although the policy test is that the overall size of the new dwelling should not have a visual impact significantly greater than the existing building, in this case a larger dwelling has been allowed as per approval R/2015/0060/F. Accordingly, a comparison must be made between the appeal proposal and the fallback position in terms of their respective impacts on the environment.
8. The previous permission approved a modestly sized one and a half storey dwelling with a ridge height of around 7.5m. The footprint of that dwelling would be approximately 108 sq.m. There would also be an integral single storey garage. The appeal proposal, by contrast, seeks permission for a larger dwelling with ridge heights ranging from around 5.0m to 6.8m. A detached two storey garage would be located to the side of the dwelling. The proposed garage would measure around 98 sq.m and its ridge height would be some 6.2m high. The footprint of the garage alone would be broadly similar in size to the previously approved dwelling.
9. In light of the dimensions of the development now proposed and given it would extend the built form across the site by some 50m, the appeal proposal would have a visual impact significantly greater than the dwelling approved on the site under application R/2015/0060/F. As indicated above, the proposed garage alone is of a similar size to the footprint of the approved dwelling. The previous approval would have extended development across the site by some 16m. This would be less than half of the built form now proposed. The proposed reduction in ridge height, the revised siting and the staggered layout is noted, but these elements would not satisfactorily mitigate the visual impact given the overall size and scale of the proposal. Even when taking into account the existing and the proposed vegetation, the appeal proposal would have a visual impact significantly greater than the fallback position when viewed from the School and Crossgar Roads, both of which

are valid public viewpoints. Accordingly, the appeal proposal fails to comply with the latter part of the second criterion of Policy CTY3.

10. Policy CTY13 of PPS21 relates to the integration and design of buildings in the countryside. The Council also object to the design of the proposal in that, in their opinion, it would be inappropriate for the site and locality.
11. The proposed dwelling would be irregular in shape with a staggered layout. Ridge heights would vary as described above to create a somewhat elaborate roof profile which would appear as a busy and domineering design feature. Although the surrounding area offers a mix of housing types, the proposed development would draw the eye because of the roof detailing and because it would read as a series of four gable frontage buildings with an additional detached garage. Despite the series of building set-backs, the elongated built form across the site would be appreciable and this would exacerbate the size of the dwelling. Whilst policy allows for contemporary or innovative design, the overall scale of the proposal combined with the complex roofscape and the asymmetrical form means that it would read as a dominant and incongruous feature in the rural landscape.
12. The evidence indicates that the design concept was predicated on clachan style development. These developments comprised nucleated groups of farm houses with landholdings organised communally. As such, the concept mainly emanates from a particular type of settlement pattern. The appeal, however, is in respect of a change of house type and relates to one individual dwelling unit. In my judgment, the application of such a concept has led to a proposal which would read as four units of accommodation in the countryside and the visual impact of this would fall foul of planning policy as described above.
13. The Appellant describes the previous dwelling approved by virtue of application R/2015/0060/F as "pastiche" and frowns on the incorporation of materials and features therein that the 'Building on Tradition' (BOT) document advises designers to avoid. BOT is a guidance document only. Whilst not precluding modern design, it advocates simplicity in form and in roof profiling. It is not intended to be a prescriptive check-list. Designs solutions will be arrived at depending on various matters including policy, site characteristics and context and planning judgment will always come into play. In any event, the provisions of BOT do not outweigh planning policy.
14. The Appellant also refers to a number of planning approvals in the vicinity of the appeal site, but without sufficient details, I am unable to compare them with the appeal proposal. Contrary to the circumstances of this case, in appeal 2016/A0096, it was found that the visual impact of that proposal would not be significantly greater than the dwelling previously approved. Each case falls to be determined on its own merits within its evidential and site specific context and direct comparables are rare. For the reasons stated, the appeal proposal fails to comply with Policy CTY13.
15. The proposal does not represent one of the types of development considered to be acceptable in principle in the countryside. Policy CTY1 of PPS21 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 nearby settlement. There was no persuasive evidence to demonstrate that the proposal is essential. Accordingly, it would also be at odds with Policy CTY1 of PPS21.

16. Having carefully considered the evidence provided, the reasons for refusal have been sustained insofar as stated. The appeal must therefore fail.

This decision is based on Drawing No PD001 – Site Location Plan @ 1:2500 and Block Plan @ 1:500 and Drawing No PD002 – Proposed Plans & Elevations @ 1:100 stamped refused by the Council on 25 January 2019.

COMMISSIONER PAMELA O'DONNELL

2018/A0201

230

List of Documents

Planning Authority:-

"A" Statement of Case
"C" Rebuttal

Appellant(s):-

"B" Statement of Case
"D" Rebuttal



Appeal Decision

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Appeal Reference:	2019/A0064
Appeal by:	Mr Winston McMahon
Appeal against:	The refusal of outline planning permission
Proposed Development:	Proposed dwelling and detached garage (infill site)
Proposed Address:	Approximately 50m north-west of 78 Upper Dromore Road Warrenpoint
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2018/0785/O.
Procedure:	Written Representations and Commissioner's site visit on 12 December 2019
Decision by:	Commissioner Pauline Boomer, dated 19 February 2020.

Decision

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

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside, its impact on the visual amenity and the rural character of the area and the Mourne Area of Outstanding Natural Beauty (AONB).
3. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. The Banbridge Newry & Mourne Area Plan (BNMAP) operates as a LDP. The appeal site is located just outside the designated settlement development limit of Warrenpoint, within the Mourne AONB. The relevant policy context is provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) and Planning Policy Statement 2: Natural Heritage which are identified by the Strategic Planning Policy Statement for NI (SPPS) as retained policy documents.
4. Policy CTY 1 of PPS 21 sets out a range of types of development which in principle are considered to be acceptable in the countryside. During the processing of the planning application, the appellant argued that the proposal was acceptable as part of a gap site in accordance with Policy CTY 8 of PPS 21. Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.32 of its Justification and

Amplification Text states that ribbon development is detrimental to the character, appearance and amenity of the countryside. While ribbon development is not defined in policy, Paragraph 5.33 states that a ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. It clearly states that buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development where they have a common frontage onto a road or are visually linked when viewed from that road.

5. Notwithstanding that ribbon development has been consistently opposed, Policy CTY8 goes on to state that an exception will be permitted for the development of a gap site. This exception relates to 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, provided it respects the existing pattern of development along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy head note defines a substantial and continuously built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear. An exception will be permitted, even where the gap provides relief and a visual break, in the developed appearance of the locality that helps maintain rural character, providing all 4 elements listed above are met.
6. The appeal site is a roadside plot located on the western side of Upper Dromore Road. Whilst the SDL boundary on the opposite side of Upper Dromore Road extends much further north of the appeal site, the town boundary on the western side lies approximately 200m south of the appeal site. Between the SDL boundary and the appeal site there is a substantial Carlingford Lodge Nursing home, a detached single storey dwelling at No. 78 and a 2-storey detached dwelling (identified as Site 3 by the LPA). To the north of the appeal site there is a new one and a half storey dwelling (identified as Site 2) and a group of farm buildings. The appeal site is enclosed by a post and wire fence along the roadside and to the north with a stone wall defining the southern boundary with limited vegetation. The western boundary is undefined, extending into the host field.
7. The 2nd reason for refusal states that the appeal site fails to comply with Policy CTY 8 but does not identify which of the 4 elements it fails to meet. Development has continued on the adjacent plots during the processing of the planning application/ appeal process and circumstances have now changed. There was no dispute that the structure on Site 2 was a building for the purposes of the Policy and that it, along with the building on Site 3 and No. 78, have frontages to the road, leaving a gap which the LPA calculate to be 25m. In his evidential context, I therefore conclude that the first and second elements of Policy CTY 8 are met.
8. The only objection identified by the LPA in its Statement of Case is that the appeal site would have a frontage width of 25m, which they do not consider is reflective of the adjacent plot sizes. Whilst they contend that this is not in keeping with the established plot sizes, they offer limited information to make direct comparisons, providing only an annotated aerial photograph. In any such assessment, account can only be taken of those buildings outside the SDL and those lying within the substantial and continuously built up frontage within which it sits. I agree with the appellant that the frontages alongside range in width from 19m at No. 78 to 40m

at Site 3, with Site 2 presenting a frontage width of 25m. The appeal site with a proposed frontage of 25m would mirror the dimensions of Site 3 and would not differ significantly from the average width which I calculate to be 27m. Whether or not a gap site is suitable for infill development in accordance with Policy CTY8 is a matter of planning judgement, taking into account what one ascertains on the ground and is not merely a mathematical exercise. On this basis I am satisfied that the appeal site would respect the pattern of development along this section of Upper Dromore Road and the third element of Policy CTY8 would be met.

9. Other factors fall to be considered in this particular case. The planning history of the two adjacent plots is relevant when considering whether or not the appeal site represents a suitable infill site. In 2013, a outline planning application for a dwelling on a farm submitted by the appellant was considered under P/2013/0537/O by the former planning authority, The Department of the Environment, incorporating the current appeal site along with the adjacent plot to the south. A subsequent Reserved matters application, P/2014/0040/RM granted approval for a one and a half storey dwelling sited close to the southern boundary. In 2014 a further planning application for an infill dwelling P/2014/0699/O was submitted by the appellant which included the current appeal site and the plot immediately south. Despite the existing gap between buildings extending to 110m in width (given the approved plot alongside was undeveloped), outline planning permission for a single infill site was granted, subject to siting the dwelling close to the southern boundary. Whilst the LPA make a passing reference to Appeal 2016/A0066, the only issue relevant here appears to relate to the gap extending between buildings. A subsequent Reserved Matters application, LA07/2016/0442/RM, saw the curtilage of the infill dwelling then reduced to exclude the appeal site. In so doing, this LPA created a residual plot 25m wide, which I agree with the appellant represents a suitable 2nd infill opportunity.
10. Whilst I acknowledge that the LPA is not bound by the decisions of the former planning authority, account must be taken of the fact that the appeal site has twice formed part of an approved curtilage, with this LPA creating a residual plot within the appeal site by reducing the curtilage approved under LA07/2016/0442/RM.
11. In considering whether or not the appeal proposal would respect the existing pattern of development, it is necessary to consider the context within which the appeal site sits. Although sited outside the SDL of Warrenpoint, the appeal site is visually linked with development inside the SDL which extends on the opposite side of the road. As the appeal site is also intervisible with the substantial nursing home block and two dwellings all of which lie outside the SDL, I agree with the LPA's assessment that it lies in an urban fringe area where the distinction between urban and rural has been marred by approved developments referred to above. The LPA acknowledge that these recent developments have created a more densely packed linear form, introducing a typical suburban buildup of development. Bounded by a public footpath and street lighting on the opposite side of the road and enclosed by suburban type development on two sides, and a farm dwelling and farm buildings immediately to the south, the character and appearance of this area has already been significantly altered by recent developments. I am satisfied that the introduction of a modest dwelling on this appeal site would not erode the character to such an extent that it would justify

dismissal of this appeal. Given its restricted width, I do not consider that it represents a visual break of any significance and if aligned with the adjacent dwellings, it would have limited visual impact, confined to across its frontage. Taking account of its unusual planning history, the suburban character of the surrounding area and its limited visibility, I am satisfied that a dwelling on the appeal site would not significantly erode the character which has already been altered.

12. I have not been persuaded by any of the arguments presented by the LPA to justify their assessment that the appeal site finds no policy support in Policy CTY 8. As I have concluded that the appeal site forms part of the existing line of three or more buildings and respects the existing character, I consider that it does represent a small gap site within a substantial and continuously built-up frontage. In this evidential context, I conclude that the appeal site represents a suitable gap site within the existing roadside development which meets the exceptional test set out in Policy CTY8 and in so doing, finds support in Policy CTY 14. As the appeal proposal complies with Policy CTY8, it also accords with Policy CTY 1. Accordingly, I conclude that the LPA has failed to sustain its first, second and fourth reasons for refusal based on Policies CTY 1, CTY 8 and CTY14.
13. The planning history is particularly relevant when assessing the appeal proposal against Policy CTY 13 of PPS21 which seeks to ensure that any new dwelling integrates into the landscape and Policy NH6 of PPS2 which requires that the siting and scale is sympathetic to the special character of the AONB. The topography and level of enclosure around the appeal site has previously been assessed against these Policies. The LPA has offered little evidence to explain why they consider any dwelling here would be unduly prominent, especially if excavated into the hillside like the adjoining plots. Whilst the appeal site is devoid of vegetation at present, enclosed by a stone wall to the south and a post and wire fence to the north, it offers the same level of enclosure as the two recently approved dwellings alongside. Given the restricted width of plot and restricted visibility on either approach, I am satisfied that any dwelling, if excavated into the hillside with new planting introduced along all boundaries, would not be unduly prominent in the landscape. Similarly, the LPA has not presented any evidence to explain why it reached the conclusion that any dwelling automatically fails Policy NH6 if it does not comply with Policies CTY 8, CTY13 and CTY 14. Whilst I acknowledge that Policy NH 6 affords a higher level of protection within the AONB, the onus lies with the LPA to explain what the special character is in this part of the AONB and why a single dwelling and garage as now proposed would be unsympathetic to that character. Given the LPA's recognition that the appeal site lies in an area where the distinction between urban and rural has been marred, I am satisfied that the introduction of a single dwelling here would not create such a prominent feature in a landscape more reflective of the urban fringe as to justify dismissal of this appeal. In any case, as this is an outline application, the LPA acknowledges that issues of siting and design can be resolved through conditions. I therefore conclude that in the particular circumstances of this site, the appeal proposal would not offend Policy CTY13 or Policy NH6 and the third and fifth reasons for refusal are not sustained.

14. As none of the five reasons for refusal have been sustained, the appeal is allowed.
15. With regards to conditions, given the differential in levels within the appeal site, details of existing and proposed ground levels and finished floor levels should be submitted. The LPA has recommended that a ridge height restriction of 5m be applied but offered no explanation why they consider this necessary. Given that recent approvals have allowed for 1½-storey dwellings on the adjoining plots, I see no reason why a building of similar size, scale and height would not be appropriate here. I therefore consider that the ridge height of the dwelling and garage should not exceed 7m above finished floor level with 0.45m underbuild. I agree with the LPA that a siting condition is necessary to ensure that the dwelling aligns with the established building line, sited within the area shown green on the annotated drawing PAC1. Whilst the LPA has also recommended that Permitted Development rights be removed to require that the Appellant seek planning permission for any extensions or alterations, they again offered no explanation why this was necessary. No similar restrictions were placed on the adjoining plots and I am not persuaded that such a restriction is justified here. Siting within the AONB does not in itself justify additional restrictions being placed on all developments without consideration of site specific issues. In the interest of road safety, sightlines of 2.4m by 90m are required to be provided prior to the commencement of development and permanently retained. In the interest of visual amenity, a landscaping scheme including hard and soft landscaping should be submitted to and agreed with the LPA, introducing native hedgerows and trees around all the boundaries of the curtilage and behind the required sightlines.

Conditions

- (1) Except as expressly provided for by Conditions 2, 3 and 4 the following reserved matters shall be as approved by the Planning Authority – the siting, design and external appearance of the dwelling and the means of access thereto.
- (2) The dwelling and garage hereby permitted shall be sited in and its curtilage restricted to the area shown shaded green on Drawing PAC 1.
- (3) The dwelling and garage hereby permitted shall have a ridge height not exceeding 7m above finished floor level and underbuilding shall not exceed of 0.45m.
- (4) Any application for approval of reserved matters shall include plans indicating floor levels of the proposed dwelling and garage in relation to existing and proposed ground levels, all in relation to an identified datum point on Upper Dromore Road and cross sections through the site. :
- (5) Visibility splays of 2.4m by 90m shall be laid out on Upper Dromore Road before any building operations commence and shall be permanently retained thereafter.
- (6) No development shall take place until there has been submitted to and approved by the Planning Authority a landscaping scheme showing hard and

soft landscaping, including trees and hedgerows to be provided along the boundaries of the proposed curtilage shown shaded green on Drawing PAC1, including to the rear of the visibility splays, the location, numbers species and sizes of trees to be planted within the sites during the first planting season after the dwelling is occupied. Trees or shrubs dying, removed or becoming seriously damaged shall be replaced during the next planting season with others of a similar size unless the Planning Authority gives written consent to any variation.

- (7) Application for approval of reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.
- (8) The development shall be begun before the expiration of 5 years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

This decision is based on Drawing PAC1 and Drg No. 02 1:500 Preliminary site plan date stamped received by the LPA on 15 May 2018.

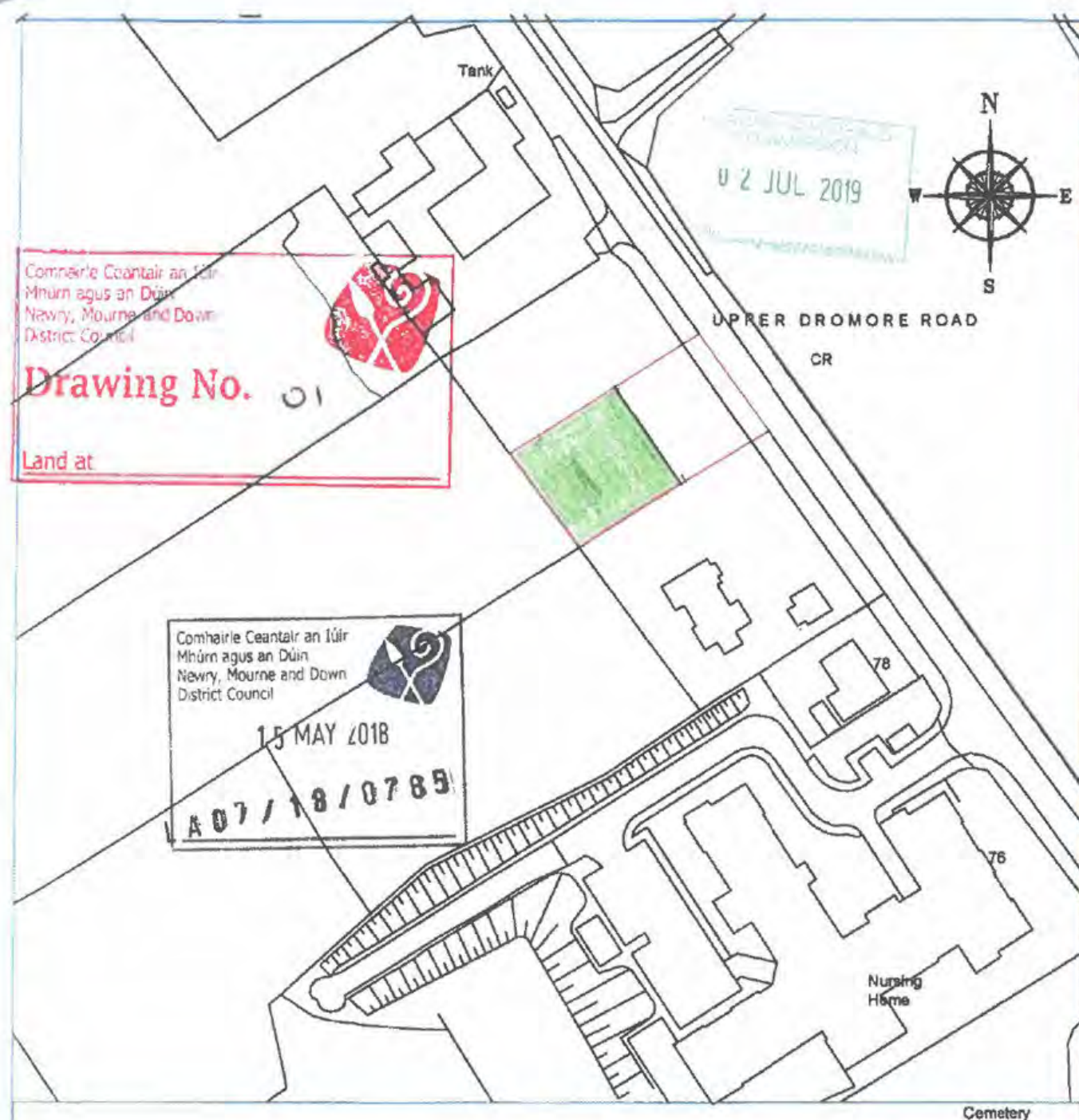
COMMISSIONER PAULINE BOOMER



2019/A0064

237

List of Documents

LPA 1	Statement of Case and Appendix from Newry Mourne and Down District Council
LPA2	Planning histories on adjacent plots
APP1	Statement of Case and Appendices from Appellant
APP2	Rebuttal and Appendix from Appellant



 <p>O'Hare Associates Architectural Consultants Ltd The Masters House Abbey Yard Newry BT34 2EG Tele/Fax 028 30251919 email - info@ohareassociates.co.uk website - www.ohareassociates.co.uk</p>		<p>Client MR. W. McMAHON</p>		 <p>Chartered Institute of Architectural Technologists Registered Practice</p>
<p>Project PROPOSED DWELLING & DETACHED GARAGE AT UPPER DROMORE ROAD WARRENPOINT (APPROX. 50M NORTH WEST OF no. 78)</p>				
<p>job no. 18/01</p>		<p>Drawing Title LOCATION MAP</p>		
<p>Drawing No 01</p>		<p>Scale 1:1250</p>		
<p>Irish Grid Ref: I.G. - 277 - 5NW</p>		<p>Date 23 01 2018</p>		

*Drawing PAC 1 annotated by
Commissioner Boomer*



Appeal Decision

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Appeal Reference:	2019/A0104
Appeal by:	Claire Higgins & Shauna Mageenan
Appeal against:	The refusal of outline planning permission
Proposed Development:	Two dwellings and detached garages
Location:	Between 45 & 49 St Patrick's Road, Raholp
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	LA07/2019/0005/O
Procedure:	Written representations and accompanied site visit on 4 December 2019
Decision by:	Commissioner Brigid McGlinchey, dated 10 February 2020

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside, it would create a ribbon of development and whether it would mar the distinction between the settlement limit and the countryside.
3. The Ards & Down Area Plan 2015 (ADAP) identifies the appeal site as falling within the countryside and positioned just outside the settlement development limits of Raholp. The ADAP does not contain any policies or provisions relevant to the appeal site or the proposal. The relevant policy context is therefore provided by Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21), one of the policy documents retained by the Strategic Planning Policy Statement for Northern Ireland (SPPS).
4. Policy CTY1 of PPS21 sets out the types of development that are, in principle, acceptable in the countryside and will contribute to the aims of sustainable development. The preamble to PPS21 states that, for the purposes of that document, the countryside is defined as land lying outside of settlement limits as identified in development plans. One of the permitted types of development in the countryside is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. The appellants argue that the appeal development represents such a proposal.
5. Policy CTY8 is entitled 'Ribbon Development' and states that planning permission will be refused for a building which creates or adds to a ribbon of development. Paragraph 5.32 of the amplification of the policy states that ribbon development is detrimental to the character, appearance and amenity of the countryside. Whilst the main thrust of Policy CTY8 is to resist ribbon development, it exceptionally permits the development of a small gap site sufficient only to accommodate a maximum of two

houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot sizes and meets other planning and environmental requirements. It goes on to note that for the purposes of the policy the definition of a substantial and continuously built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.

6. The appellants referred to the Written Ministerial Statement 'Review into the operation of PPS21' issued in 16th July 2013 which indicated the need for additional flexibility in how gap sites are defined for the purposes of Policy CTY8. The Minister's Statement however made it clear at the outset that it was not a fundamental review of rural planning policy. In any event, a document creating policy to be followed must be composed within the guidelines set out in the applicable legislation at that time (Planning (NI) Order 1991). The Minister's Statement does not represent any change in policy. The decision maker must have regard to the policy as written and each case must be assessed on its own merits.
7. The appellants argued that there is a substantial and continuously built up frontage comprising the dwelling and garage at No.45 immediately to the west of the appeal site and the buildings associated with No.49 St Patrick's Road to the east. In so doing the appellants are reliant on development inside the settlement development limit of Raholp. The buildings associated with Nos. 45 and 49 do not occupy a rural context in policy terms and therefore cannot be included when considering development proposals under Policy CTY8. Whilst the appellants referred to paragraph 4.30 of the SPPS and paragraph 4.1.0 of the guidance document Building on Tradition (BOT) which specifically refer to 'existing established buildings' this is in the context of assessing the integration of buildings in the countryside. Neither of these paragraphs countenance the consideration of buildings within settlements when assessing Policy CTY8. As the appeal site relies only on development within the settlement limit of Raholp, it does not sit within a line of three or more buildings in the countryside required to meet the definition of a substantial and continuously built up frontage. The proposal therefore does not meet the stated exception to Policy CTY8. I therefore do not have to consider the appeal proposal against the other requirements under the exception tests of Policy CTY8 such as plot size.
8. In considering any proposal for infill development in the context of Policy CTY8, if there is no substantial and continuously built up frontage in the countryside, then there cannot be a development opportunity. I find that the appeal proposal does not qualify as one of the specified types of development considered to be acceptable in principle under Policy CTY1 of PPS21. Policy CTY1 states 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 is no evidence that the proposal is essential. The proposal is therefore contrary to Policy CTY1 and the Council has sustained its first reason for refusal.
9. The settlement of Raholp is linear in form centred on St Patricks Road with the majority of the development situated to the north of the road. The appeal site is positioned to the south of the road between two separate nodules of development. When viewed within the linear settlement of Raholp, the appeal site is screened for the most part by the steep bank and mature hedgerow along the road frontage with the only available view being from the existing gateway adjacent to the boundary with No.45. Paragraph 5.34 of PPS21 refers to gaps that provide relief and visual breaks in the developed appearance of the locality. To my mind, the appeal site is such a gap. The erection of the proposed buildings would result in the loss of the buffer between

Nos. 45 and 49 which would create a continuous row of roadside development. The ADAP indicates that the designated settlement limit of Raholp is drawn to maintain visual breaks within the linear settlement, prevent additional ribbon development and provide for limited opportunities for housing development. I disagree with the appellant's assessment that the development of the appeal site would maintain the visual break. I consider that the infilling of this significant visual gap with two dwellings and garages and the opening up of the site frontage for the provision of the shared access arrangement would extend development into the countryside. The appellant referred to a Judicial Review judgment in 2018 (Citation No. NIQB22) where the judge deemed that a 'ribbon' denotes a strip of developed houses or other buildings. The appeal proposal would be perceived as creating such a ribbon of development and would as a consequence fall foul of Policy CTY8. The Council has sustained its second reason for refusal.

10. Policy CTY15 of PPS21 is entitled 'The Setting of Settlements' and states that planning permission will be refused for development that mars the distinction between a settlement and the surrounding countryside or that otherwise results in urban sprawl. Paragraph 5.84 of the amplification of the policy states that the principle of drawing a settlement limit is partly to promote and partly to contain new development within that limit and to maintain a clear distinction between the built up area and the surrounding countryside. The appeal site is elevated above the level of the road and No.49 and below the level of No.45. I consider that the appeal site provides a visual buffer between the development inside the development limits of Raholp and the countryside especially given the difference in levels of the built form either side. Whilst the appellants have indicated that the proposed dwellings would 1½ storeys to match the scale of buildings on adjoining sites, the proposal as shown in the concept plan would involve removal of part of the roadside embankment and hedge to provide the proposed shared access arrangement opening up an additional view into the site and the development.
11. I consider that the infilling of the existing visual gap would extend urban sprawl into the countryside and harm the setting of Raholp. Whilst I acknowledge that the steep escarpment and hedge to the rear of the appeal site would screen views of the site when viewed from medium and long range perspectives in the countryside, this does not justify extending the urban form into the countryside. I consider that when viewed from both approaches along St Patrick Road, the proposal would mar the distinction between Raholp and the surrounding countryside. The third reason for refusal in respect of Policy CTY15 has been sustained.

This decision is based on the following drawings:-

01 (RevA) - 1:2500 scale Site location plan date stamped received 25/2/19;

02 – 1:500 scale Concept plan date stamped received 28/12/18.

COMMISSIONER BRIGID McGLINCHEY

List of Appearances

Planning Authority:-	C Cooney
Appellant:-	C Higgins L Higgins A Acheson, Agent

List of Documents

Planning Authority:-	C1	Statement of case + Appendices
Appellant:-	A1	Statement of case
	A2	Rebuttal comments



Appeal Decision

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

Appeal Reference:	2019/E0025
Appeal by:	Roger & Simon Foster
Appeal against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	To confirm that the works which were undertaken to construct a building to accommodate heating boilers, associated plant and staff welfare facility and the erection of a vertical storage silo were lawful.
Location:	165m North West of 20 Barkers Road, Newtownhamilton.
Planning Authority:	Newry, Mourne and Down District Council.
Application Reference:	LA07/2019/0459/LDE
Procedure:	Written Representations with Commissioner's Site Visit on 30 January 2020.
Decision by:	Commissioner Mandy Jones, dated 4 February 2020.

Decision

1. The appeal is allowed and the attached Certificate of Lawfulness is granted.

Claim for Costs

2. A claim for costs was made by Rodger and Simon Foster against Newry, Mourne and Down District Council. This claim is the subject of a separate decision.

Reasoning

3. A Lawful Development Certificate (LDC) is a statement specifying what was lawful on a particular date. In accordance with Section 169 (2) of the Planning Act (Northern Ireland) 2011 a use or operations are lawful at any time if : (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no current enforcement notice in place on the appeal site. The onus is on the appellant to establish that the existing building is lawful.

4. The main issue in this appeal is whether or not the appeal building and silo are permitted development in accordance with Part 7 Agricultural Buildings and Operations of the Schedule of Development permitted under Article 3 of The Planning (General Permitted Development) Order (Northern Ireland) 2015.
5. The application for a Certificate of Lawfulness of Existing Use or Development was received by the Council on 21 March 2019. It sought to certify that the works were considered permitted development under the Planning (General Development) Order (Northern Ireland) 2015, under Class A, Part 7 Agricultural Buildings and Operations. This states that development is permitted where the carrying out on agricultural land comprised in an agricultural unit of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operation; reasonably necessary for the purposes of agriculture within that unit.
6. The Council refused to certify that the building and silo were permitted development. On the notice of refusal of the application for Certificate of Lawfulness of existing use or development dated 4 July 2019, the Council cited one reason why they considered the development not to be permitted development. It was considered that the building did not appear to be designed for the purposes of agriculture. In their Statement of case the Council confirmed that there was no dispute that the development met with the other requirements listed in Class A1 of Part 7 of the Schedule. The Council also confirmed that the silo is designed for the purposes of agriculture.
7. The Council argued that given its appearance and uses, it was considered that the building does not appear to be designed for the purposes of agriculture.
8. The appellant's operate a large farm from 2 farmyards at Barkers Road and Blaney Road, close to Newtownhamilton. The farm extends to around 32.71 hectares (81 acres). The appellant's rear pigs and poultry for meat. They also milk a herd of dairy cows and rear calves for replacement heifers or beef. Poultry is kept at both farmyards and the appellant's are contracted to Moypark.
9. The appeal building and silo are directly adjacent to 2 large poultry houses accessed from Barkers Road. One of the poultry houses was constructed in 1994 and the other was constructed in 2015. Along with the poultry houses at Blaney Road, both of the Barker Road poultry houses were initially heated by a gas heating system.
10. I was told that the chicks arrive at the poultry houses as one day old hatchlings and are sent to slaughter at the end of their 6th week. During the first week the poultry houses must be kept at a temperature of 32° C (90°F) 24/7. The heat is then gradually reduced over the next 5 weeks. In early 2016, the appellant availed of the opportunity to heat all 4 poultry houses with a new wood pellet heating system. The heating system burns wood pellets to heat water which is then pumped underground to the poultry houses. The water circulates around the houses and then back to the pellet burners to be re heated. The system required the construction of the appeal building to house boilers, buffer tanks, electronic control panels and associated plant and machinery and a new 32 tonne vertical wood pellet storage silo. I was told that, around the same time Moy Park insisted that all poultry rearing facilities were to be served with staff showering, canteen and toilet facilities.
11. The appeal building has a footprint of 4.0m x 24.0m. It contains a toilet, 2 small changing areas, a canteen, store, water intake area and boiler / plant room. It is single

storey with a pitched roof. External wall finishes are grey roughcast render with a smooth grey plinth and roof finishes are black flat roof tiles with white uPVC fascia and barge detailing. External doors and windows are white uPVC and there is a dark grey metal roller shutter to access the plant room on the long elevation. Adjacent to the appeal building is the 32 tonne vertical wood pellet silo.

12. Part 7, A1 states that development is not permitted by Class A if (c) a building, structure or works not designed for the purposes of agriculture is provided on the land. The building is constructed in traditional blockwork and I was told that this was because it was required to be dry, secure, free from condensation and insulated. I accept that a typical agricultural aesthetic such as standard steel framed building clad with metal single skin cladding would have been an unsuitable construction method to accommodate some of the uses required.
13. The wood pellet silo has a feed pipe which supplies pellets to the heating system in the appeal building. This was not indicated on the application drawings. However, from a site inspection and photographs within the appellant's statement of case it appears that the wood pellet storage silo, heating system within the appeal building and the 2 poultry houses are inextricably linked. As keeping poultry is agriculture and the poultry houses require to be heated, I am satisfied that the specialised heating system is for the purposes of agriculture.
14. An email was included within the statement of case from Stephen Began Innovation and Agri Projects Manager, Moy Park in reference to the appellant's poultry houses at Blaney Road and Barker Road dated September 2019. It states that '*Moypark require its contracted producers to provide shower facilities for bio – security reasons on all new sites or sites which are expanding. Toilet and washing facilities must be provided for workers in all industries and the agricultural sector is no different. Moypark therefore require these facilities to be provided for those who work in poultry houses which are contracted to our company*'. It was stated that as the appellant's are contracted to Moypark they have to comply with their contractual arrangements.
15. Based on the information provided by the appellant and from my site visit inspection of the appeal building, silo, poultry houses and wider farm I consider that the appeal building is reasonably necessary for the purposes of agriculture for housing a specialist heating system for the poultry houses and changing / toilet / canteen facilities for poultry house workers. Even though it does not have a typical agricultural appearance, I am satisfied that the building has been designed for the purposes of agriculture. It complies with Class A of Part 7 of the schedule of the GDPO, and I do not consider it to fall within development which is not permitted by Class A.1 (c) of Part 7 of the GDPO schedule. In the future, if the building was to be used for any other use other than for agricultural then that use would be subject to a separate planning application.
16. I conclude that the agricultural building and silo on the appeal site is therefore lawful development in accordance with Part 7, Class A of the GDPO schedule.

COMMISSIONER MANDY JONES

List of Documents

Planning Authority:	<div data-bbox="576 259 612 293">'A'</div> <div data-bbox="651 259 1155 293">Statement of Case with appendices</div> <div data-bbox="576 297 612 331">'B'</div> <div data-bbox="651 297 772 331">Rebuttal</div>
Appellant:	<div data-bbox="576 443 612 477">'C'</div> <div data-bbox="651 443 1155 477">Statement of Case with appendices.</div> <div data-bbox="576 481 612 515">'D'</div> <div data-bbox="651 481 1235 515">Rebuttal – both from Pat Quinn Planning.</div>

PLANNING ACT (NORTHERN IRELAND) 2011: SECTION 169

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT

The Planning Appeals Commission hereby certifies that on 21 March 2019 the building described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown hatched on the plan attached to this certificate was lawful within the meaning of section 169 of the Planning Act 2011, for the reasons set out in the appeal decision to which this certificate is attached.

Signed

Mandy Jones

COMMISSIONER MANDY JONES

4 February 2020

FIRST SCHEDULE

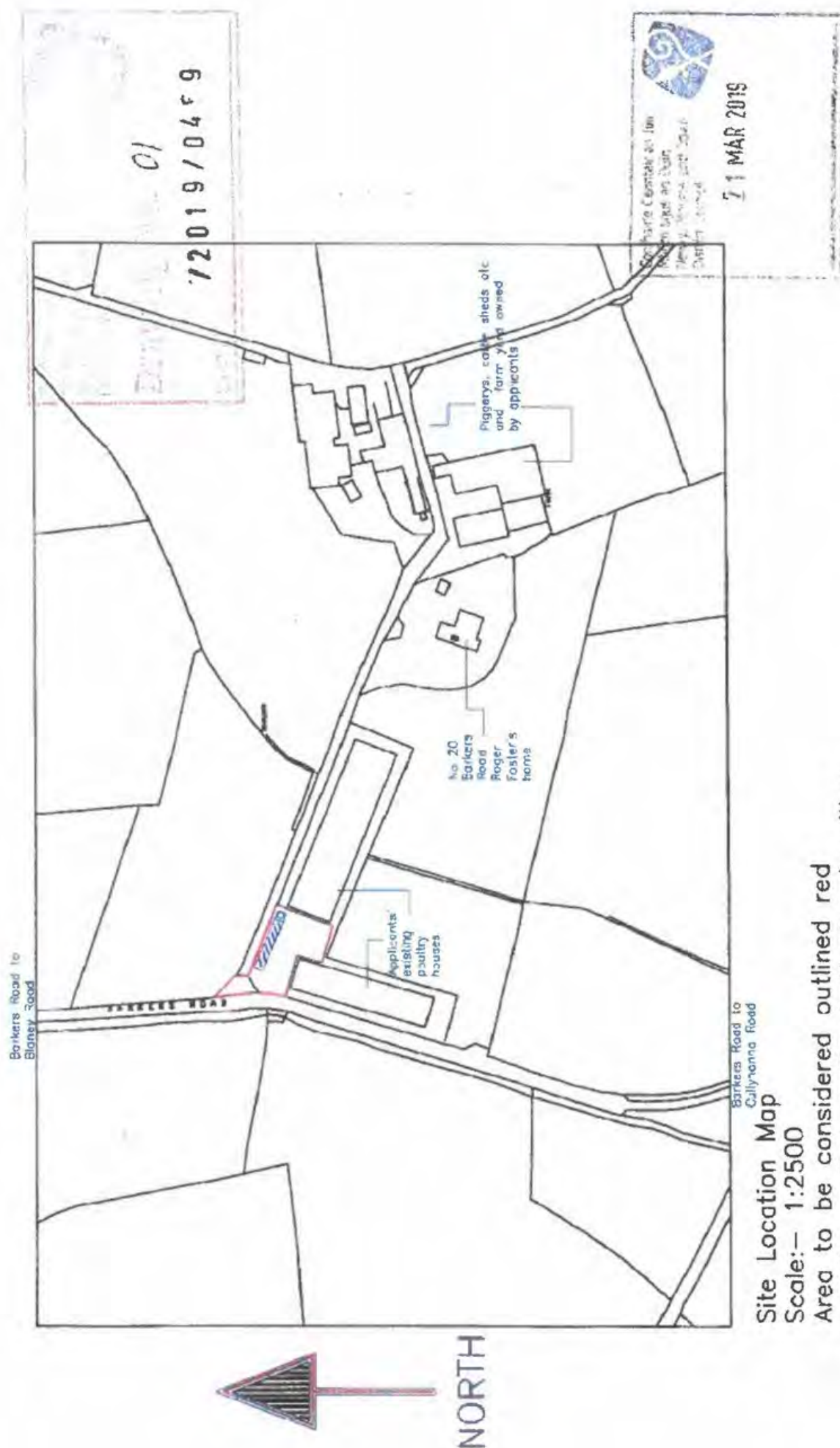
Agricultural Building to accommodate heating boilers, associated plant and staff welfare facility and vertical storage silo as shown on Drawing 01; Site Location Map, Drawing 02; Site Plan, Drawing 03; Floorplans and elevations to existing vertical silo and Drawing 04; Floorplans and Elevations of Existing Building (all drawings date stamped received 21 March 2019 by Newry, Mourne and Down District Council).

SECOND SCHEDULE

165m NW of 20 Barkers Road, Newtownhamilton.

Notes:

- (1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.
- (2) It certifies that the building described in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and, thus, was not liable to enforcement action under section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.
- (3) This certificate applies only to the extent of the building described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner and occupier liable to enforcement action.





Costs Decision

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

Appeal Reference:	2019/E0025
Appeal Against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	To confirm that the works which were undertaken to construct a building to accommodate heating boilers, associated plant and staff welfare facility and the erection of a vertical storage silo were lawful.
Location:	165m North West of 20 Barkers Road, Newtownhamilton.
Claim by:	Rodger and Simon Foster
Claim Against:	Newry, Mourne and Down District Council.
Decision by:	Commissioner Mandy Jones, dated 4 February 2020.

Decision

The claim for costs is denied.

Reasoning

1. In accordance with its publication 'Guidance on Costs Awards in Planning and Related Appeals', the Commission will normally award costs only where all four of the following conditions are met :
 - the claim relates to a relevant type of appeal;
 - the claim is timely;
 - the party against whom the award is sought has acted unreasonably; and
 - the unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

Eligibility

2. The planning application to which the appeal relates was determined under the Planning Act (Northern Ireland) 2011. An appeal was made in accordance with Section 173 against the refusal to certify a Certificate of Lawfulness of Existing Use or Development. The Commission therefore has the power to make an order as to the costs of the parties in accordance with Section 205 of the Act.

Timeliness

3. The claim for costs was made in a timely manner as it was submitted with the appeal papers. Conditions 1 and 2 have been met.

Unreasonable Behaviour.

4. The appellant argues that information submitted with the LDC application explained the purpose of the building was to house a specialist wood pellet heating system for the existing poultry houses. It stated that it was to include boilers, buffer tanks, electronic control panels and associated plant and equipment and a 32 tonne vertical wood pellet storage silo. It also stated that it was to include staff showering, canteen and toilets as required by Moy Park.
5. Within the appellants statement of case the relationship of the adjacent 2 poultry houses, heating system and wood pellet silo was explained. Photographs included show the feed pipe from the silo to the heating system within the appeal building. An email from Stephen Began, Innovation and Agri Projects Manager from Moy Park, dated 2 September 2019 set out the requirements for toilet and washing facilities for poultry workers for businesses which are contracted to Moy Park. I also note that drawings submitted with the LDC application – Floor plans and Elevations - did not show the pipe to transfer the pellets from the silo into the building or any other method of transfer. The relationship between the appeal building and the poultry houses was not indicated. No explanation was given for the external finishes of the appeal building.
6. The onus is on the applicant to establish that the existing building is lawful. It is not for the Council to draw conclusions from limited information available and their own site visit. In my opinion, some critical evidence was not before the Council and they were entitled to conclude as they did. Whether there has actually been unreasonable behaviour in a particular case will be a matter of judgement for the Commission. I do not consider there to have been unreasonable behaviour by the Council or that an unnecessary appeal has been caused. In reaching this conclusion, I consider that no unnecessary expenses have been incurred. No award of costs is made.

COMMISSIONER MANDY JONES

2019/E0025

List of Documents

Claimant: 'A' Claim for Costs by Rodger and Simon Foster.

Respondent: 'B' Response from Newry, Mourne and Down District Council.



Appeal Decision

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

Appeal Reference:	2019/E0026
Appeal by:	Roger & Simon Foster
Appeal against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	To confirm that the works which were undertaken to construct a building to accommodate heating boilers, associated plant and staff welfare facility and the erection of a vertical storage silo were lawful.
Location:	65m SW of 8 Blaney Road, Newtownhamilton.
Planning Authority:	Newry, Mourne and Down District Council.
Application Reference:	LA07/2019/0460/LDE
Procedure:	Written Representations with Commissioner's Site Visit on 30 January 2020.
Decision by:	Commissioner Mandy Jones, dated 4 February 2020.

Decision

1. The appeal is allowed and the attached Certificate of Lawfulness is granted.

Claim for Costs

2. A claim for costs was made by Rodger and Simon Foster against Newry, Mourne and Down District Council. This claim is the subject of a separate decision.

Reasoning

3. A Lawful Development Certificate (LDC) is a statement specifying what was lawful on a particular date. In accordance with Section 169 (2) of the Planning Act (Northern Ireland) 2011 a use or operations are lawful at any time if : (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. There is no current enforcement notice in place on the appeal site. The onus is on the appellant to establish that the existing building is lawful.

4. The main issue in this appeal is whether or not the appeal building and silo are permitted development in accordance with Part 7 Agricultural Buildings and Operations of the Schedule of Development permitted under Article 3 of The Planning (General Permitted Development) Order (Northern Ireland) 2015.
5. The application for a Certificate of Lawfulness of Existing Use or Development was received by the Council on 21 March 2019. It sought to certify that the works were considered permitted development under the Planning (General Development) Order (Northern Ireland) 2015, under Class A, Part 7 Agricultural Buildings and Operations. This states that development is permitted where the carrying out on agricultural land comprised in an agricultural unit of (a) works for the erection, extension or alteration of a building; or (b) any excavation or engineering operation; reasonably necessary for the purposes of agriculture within that unit.
6. The Council refused to certify that the building and silo were permitted development. On the notice of refusal of the application for Certificate of Lawfulness of existing use or development dated 4 July 2019, the Council cited two reasons why they considered the development not to be permitted development. Firstly, it was considered that the building did not appear to be designed for the purposes of agriculture and secondly, the building and silo are located within 75 metres of a dwelling house outside the agricultural operations of the farm. In their Statement of case the Council confirmed that there was no dispute that the development met with the other requirements listed in Class A1 of Part 7 of the Schedule. The Council also confirmed that the silo is designed for the purposes of agriculture.
7. The issues remaining therefore are whether the building has been designed for the purposes of agriculture and whether the building and silo are within 75m of a dwelling house outside the operations of the farm.
8. The appellant's operate a large farm from 2 farmyards at Barkers Road and Blaney Road, close to Newtownhamilton. The farm extends to around 32.71 hectares (81 acres). The appellant's rear pigs and poultry for meat. They also milk a herd of dairy cows and rear calves for replacement heifers or beef. Poultry is kept at both farmyards and the appellant's are contracted to Moypark.
9. The appeal building and silo are adjacent to 2 large poultry houses accessed from Blaney Road. One of the poultry houses was constructed in 1994 and the other was constructed in 1997. To the east are other farm buildings and Mr Simon Fosters home. (one of the appellant's.) Along with the poultry houses at Barker Road, both of the Blaney Road poultry houses were initially heated by a gas heating system.
10. I was told that the chicks arrive at the poultry houses as one day old hatchlings and are sent to slaughter at the end of their 6th week. During the first week the poultry houses must be kept at a temperature of 32° C (90°F) 24/7. The heat is then gradually reduced over the next 5 weeks. In early 2016, the appellant availed of the opportunity to heat all 4 poultry houses with a new wood pellet heating system. The heating system burns wood pellets to heat water which is then pumped underground to the poultry houses. The water circulates around the houses and then back to the pellet burners to be re heated. The system required the construction of the appeal building to house boilers, buffer tanks, electronic control panels and associated plant and machinery and a new 32 tonne vertical wood pellet storage silo. I was told that, around

the same time Moy Park insisted that all poultry rearing facilities were to be served with staff showering, canteen and toilet facilities.

11. The appeal building has a footprint of 4.0m x 24.0m. It contains a toilet, 2 small changing areas, a canteen, store, water intake area and boiler / plant room. It is single storey with a pitched roof. External wall finishes are grey roughcast render with a smooth grey plinth and roof finishes are black flat roof tiles with white uPVC fascia and barge detailing. External doors and windows are white uPVC and there is a dark grey metal roller shutter to access the plant room on the long elevation. Adjacent to the appeal building is a 32 tonne vertical wood pellet silo.
12. Part 7, A1 states that development is not permitted by Class A if (c) a building, structure or works not designed for the purposes of agriculture is provided on the land. The building is constructed in traditional blockwork and I was told that this was because it was required to be dry, secure, free from condensation and insulated. I accept that a typical agricultural aesthetic such as standard steel framed building clad with metal single skin cladding would have been an unsuitable construction method to accommodate some of the uses required.
13. The wood pellet silo has a feed pipe which supplies pellets to the heating system in the appeal building. This was not indicated on the application drawings. However, from a site inspection and photographs within the appellant's statement of case it appears that the wood pellet storage silo, heating system within the appeal building and the 2 poultry houses are inextricably linked. As keeping poultry is agriculture and the poultry houses require to be heated, I am satisfied that the specialised heating system is for the purposes of agriculture.
14. An email was included within the statement of case from Stephen Began Innovation and Agri Projects Manager, Moy Park in reference to the appellant's poultry houses at Blaney Road and Barker Road dated September 2019. It states that '*Moypark require its contracted producers to provide shower facilities for bio – security reasons on all new sites or sites which are expanding. Toilet and washing facilities must be provided for workers in all industries and the agricultural sector is no different. Moypark therefore require these facilities to be provided for those who work in poultry houses which are contracted to our company*'. It was stated that as the appellant's are contracted to Moypark they have to comply with their contractual arrangements.
15. Based on the information provided by the appellant and from my site visit inspections of the appeal building, silo, poultry houses and wider farm I consider that the appeal building is designed for the purposes of agriculture for housing a specialist heating system for the poultry houses and changing / toilet / canteen facilities for poultry house workers. Even though it does not have a typical agricultural appearance, I am satisfied that the building has been designed for the purposes of agriculture. I do not consider it to fall within development which is not permitted by Class A.1 (c) of Part 7 of the GDPO schedule.
16. Part 7, A1 states that development is not permitted by Class A1 if (f) the nearest part of any building or structure so erected or extended is less than 75metres from a dwellinghouse (other than a dwelling house of any person engaged in agricultural operations on that unit). Approval P/2009/1291/RM and P/2005/1334/O for a dwelling is within 75m of the appeal building.

17. The appellant asserted that work started on the appeal building early 2016 and at this time the foundations for the dwelling were in place, however no specific evidence was submitted to substantiate this. The Council did not dispute this, but rather argued that although a dwelling was not fully constructed on the adjacent site the principle of a dwelling had had been approved and implemented and as such this cannot be ignored.
18. At the time the LDC application was submitted on 21 March 2019, the appellant stated that the 'superstructure blockwork to the house is well advanced.' Within the Council's rebuttal statement dated October 2019 they stated that 'the dwelling has a roof and structure and its structure appears to be intact '. At my site visit in January 2020, the walls and roof were complete and windows in place and it appears to be nearing completion.
19. The appellant refers to *Gravesham Borough Council v Secretary of State for the Environment (1982)* which is the authority for the proposition that the distinctive characteristics of a dwelling house is its ability to afford to those who use it, the facilities required for day to day private domestic existence.
20. From the undisputed claims by the appellant it appears that the building operations which existed early 2016 (when appeal building commenced) and March 2019 (when LDC was submitted) did not provide the facilities required for day to day private domestic accommodation and did not constitute a dwelling house. Whilst it appears that the owner intends to complete the dwelling this is irrelevant in determining what actually existed at the time of construction of the appeal building and submission of the LDC. As such, I do not consider it to fall within development not permitted by Class A.1 part (f) of Part 7.
21. I conclude that the appeal building is reasonably necessary for the purposes of agriculture within the unit and complies with Class A of Part 7 of the schedule of the GDPO. It does not fall within development not permitted by Class A.1 (c) or (f) of Part 7 of the GDPO Schedule. The agricultural building and silo on the appeal site are therefore lawful development in accordance with Part 7, Class A of the GDPO schedule.

COMMISSIONER MANDY JONES

List of Documents

- | | |
|----------------------------|--|
| Planning Authority: | 'A' Statement of Case with appendices |
| | 'B' Rebuttal |
|
 | |
| Appellant: | 'C' Statement of Case with appendices. |
| | 'D' Rebuttal – both from Pat Quinn Planning. |

PLANNING ACT (NORTHERN IRELAND) 2011: SECTION 169**CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT**

The Planning Appeals Commission hereby certifies that on 21 March 2019 the building described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown hatched on the plan attached to this certificate was lawful within the meaning of section 169 of the Planning Act 2011, reasons set out in the appeal decision to which this certificate is attached.

Signed

Mandy Jones

COMMISSIONER MANDY JONES

4 February 2020

FIRST SCHEDULE

Agricultural Building to accommodate heating boilers, associated plant and staff welfare facility and vertical storage silo as shown on Drawing 01; Site Location Map, Drawing 02; Site Plan, Drawing 03; Floorplans and elevations to existing vertical silo and Drawing 04; Floorplans and Elevations of Existing Building (all drawings date stamped received 21 March 2019 by Newry, Mourne and Down District Council).

SECOND SCHEDULE

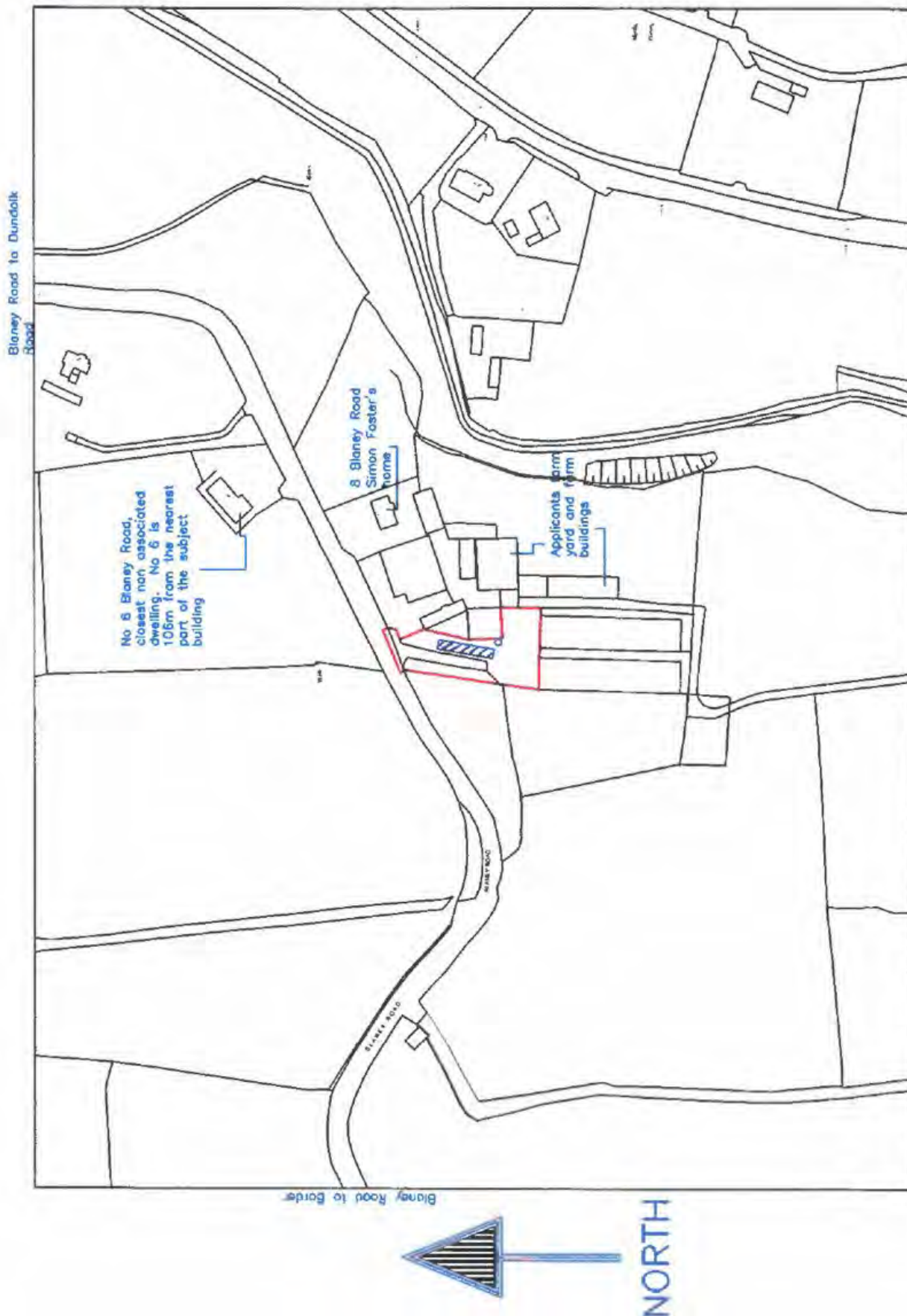
65m SW of 8 Blaney Road, Newtownhamilton.

Notes:

(1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.

(2) It certifies that the building described in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and, thus, was not liable to enforcement action under section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.

(3) This certificate applies only to the extent of the building described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner and occupier liable to enforcement action.



Site Location Map
Scale:- 1:2500
Location:- 8 Blaney Road, Newtownhamilton
OS Ref:- 284 08 NE & SE
Application site outlined red
Subject building and vertical silo shown blue



Costs Decision

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

259

Appeal Reference:	2019/E0026
Appeal Against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	To confirm that the works which were undertaken to construct a building to accommodate heating boilers, associated plant and staff welfare facility and the erection of a vertical storage silo were lawful.
Location:	65m SW of 8 Blaney Road, Newtownhamilton.
Claim by:	Rodger and Simon Foster
Claim Against:	Newry, Mourne and Down District Council.
Decision by:	Commissioner Mandy Jones, dated 4 February 2020.

Decision

The claim for costs is denied.

Reasoning

1. In accordance with its publication 'Guidance on Costs Awards in Planning and Related Appeals', the Commission will normally award costs only where all four of the following conditions are met :
 - the claim relates to a relevant type of appeal;
 - the claim is timely;
 - the party against whom the award is sought has acted unreasonably; and
 - the unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

Eligibility

2. The planning application to which the appeal relates was determined under the Planning Act (Northern Ireland) 2011. An appeal was made in accordance with Section 173 against the refusal to certify a Certificate of Lawfulness of Existing Use or Development. The Commission therefore has the power to make an order as to the costs of the parties in accordance with Section 205 of the Act.

Timeliness

3. The claim for costs was made in a timely manner as it was submitted with the appeal papers. Conditions 1 and 2 have been met.

Unreasonable Behaviour.

4. The appellant argues that information submitted with the LDC application explained the purpose of the appeal building was to house a specialist wood pellet heating system for the existing poultry houses. It stated that it was to include boilers, buffer tanks, electronic control panels and associated plant and equipment and a 32 tonne vertical wood pellet storage silo. It also stated that it was to include staff showering, canteen and toilets as required by Moy Park.
5. Within the appellants statement of case the relationship of the adjacent 2 poultry houses, heating system and wood pellet silo was explained. Photographs included show the feed pipe from the silo to the heating system within the appeal building. An email from Stephen Began, Innovation and Agri Projects Manager from Moy Park, dated 2 September 2019 set out the requirements for toilet and washing facilities for poultry workers for businesses which are contracted to Moy Park. I also note that drawings submitted with the LDC application – Floor plans and Elevations - did not show the pipe to transfer the pellets from the silo into the building or any other method of transfer. The relationship between the appeal building and the poultry houses was not indicated. No explanation was given for the external finishes of the appeal building.
6. The onus is on the applicant to establish that the existing building is lawful. It is not for the Council to draw conclusions from the limited information available and their own site visit. In my opinion, some critical evidence was not before the Council and they were entitled to conclude as they did.
7. In terms of the status of the adjacent dwelling within 75 m of the appeal building, the appellant stated that at the time the appeal building was commenced in early 2016 the foundations had been poured for approval P/2009/1291/RM & P/2005/1334/O. The Council stated that although the dwelling was not fully constructed the principle had been approved and implemented and as such the Council cannot ignore this fact. The Council's interpretation of legislation was that Part 7 Class A.1 (f) of the Schedule for development permitted under Article 3 of the GPDO referred to approvals and implemented approvals. This was a view they were entitled to reach. In my appeal decision I have set out why I disagreed with the Council's interpretation.
8. Disagreement is an expected feature of the appeals process and is not inherently unreasonable. It wasn't until the submission of the statement of case that the appellant referred to relevant case law. Whether there has actually been unreasonable behaviour in a particular case will be a matter of judgement for the Commission. I do not consider there to have been unreasonable behaviour by the Council or that an unnecessary appeal has been caused. In reaching this conclusion, I consider that no unnecessary expenses have been incurred. No award of costs is made.

COMMISSIONER MANDY JONES

2019/E0026

261

List of Documents

Claimant:	'A' Claim for Costs by Rodger and Simon Foster.
Respondent:	'B' Response from Newry, Mourne and Down District Council.



Appeal Decision

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Appeal Reference:	2019/E0043
Appeal by:	Alastair Chestnutt
Appeal against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	Retention of Existing Building
Location:	177A Kilkeel Road, Annalong
Planning Authority:	Newry, Mourne and Down
Application Reference:	LA07/2019/0514/LDE
Procedure:	Informal hearing on 10 January 2020.
Decision by:	Commissioner Mandy Jones, dated 19 February 2020.

Decision

1. The appeal is allowed and the attached Certificate of Lawfulness is granted.

Claim for Costs

2. A claim for costs was made by Alastair Chesnutt against Newry, Mourne and Down District Council. This claim is the subject of a separate decision.

Reasoning

3. A Lawful Development Certificate (LDC) is a statement specifying what was lawful on a particular date. In accordance with Section 169 (2) of the Planning Act (Northern Ireland) 2011 a use or operations are lawful at any time if : (a) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
4. Taking enforcement action is defined in section 131 (2) of the Act. This section also defines 'a breach of planning control' (against which it is possible to take enforcement action) as the carrying out of development without the required planning permission, or failing to comply with any condition or limitation subject to which planning permission has been granted. A breach of planning control becomes immune from enforcement action if no such action has been taken within certain time limits and thus it becomes lawful for planning purposes. There is no current enforcement notice in force on the appeal site nor is there planning permission for the development

described above. In accordance with Section 132 (2) of the Planning Act, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the alleged breach. The onus is on the Appellant to establish that the above specified use is lawful, that is, immune or beyond the 5 year period wherein enforcement action can be taken.

5. The application for a Certificate of Lawfulness of Existing Use or Development was submitted to the Council on 2 April 2019. The material date for the purposes of this appeal is therefore 2 April 2014. The application sought to certify that the dwelling was lawful on 2 April 2019 as it is immune from enforcement action. The Council refused to certify that the appeal building was lawful as they considered the information submitted to be insufficient.
6. This LDC application is for an existing use and an existing operation. On Form LDC1 at question 6 which requires the applicant to provide a full description of the existing use, operation or activity to which this application relates, the applicant noted 'New Dwelling'. The Council amended this to 'Retention of Existing Building'. All parties agreed at the hearing that the correct description is for 'a dwelling'.
7. The appeal site fronts the Kilkeel Road and within it is a dwelling and garage set back approximately 25m from the road. The LDC application does not refer to the garage and I make no comment on it. The dwelling is 2 storey with an L – shaped footprint. Externally it is finished in natural stone with a slate roof. The dwelling was constructed without the benefit of planning permission.
8. In terms of the planning history, I was told that the appeal site formerly comprised a two storey detached dwelling and a stone barn. In May 2009 an application for a change of use of the barn to a one bedroomed apartment, ancillary to the main dwelling was approved. (P/2007/0821/F). An application for the renovation of the existing dwelling was also approved in December 2007 (P/2007/0827/ F). Neither of these were implemented.
9. The appellant's case was that following planning approval for the barn conversion, he decided that the building was too small and was not viable as a conversion project. He then submitted a Building Control application (reference no. FP/2011/0122) for a new dwelling on 18 February 2011, to be located on the siting of the barn. At the same time a planning application was submitted and approved on 17 January 2012 for the replacement of the detached dwelling (P/2011/0172/F). The barn was then demolished and the new dwelling was constructed. Google street view images dated September 2011 show the appeal building under construction.
10. The original dwelling on the site was demolished and the development of the replacement house (P/2011/0172/F) has commenced to the rear of the appeal site. This is at foundation / footing stage. The date of the demolition the original dwelling is unclear however it would appear that it was demolished sometime between September 2011 and June 2016 (according to Google Street view images). A case officer's report dated 9 November 2011 for the replacement dwelling refers to the original two storey dwelling. It states that 'the site consists of a two – storey dwelling that is currently unoccupied and an outbuilding sited to the side of the dwelling'
11. The appellant's evidence included the following:

- Newry and Mourne District Council Building Control, Acknowledgement of receipt of plans for a 'New Dwelling at 117 Kilkeel Road, Annalong' dated 18 February 2011;
- Newry and Mourne Building District Council, Building Control Completion Certificate for 'New Dwelling at 177a Kilkeel Road, Annalong, Newry' dated 12 December 2013 and
- Rates bill for 177A Kikeel Road, dated 25 February 2013, for the period 5 February 2013 – 31 March 2013.

12. The Council argued that they could not be sure that the Building Control Completion Certificate related to the dwelling on the site as no accompanying plans were submitted. Prior to the hearing I requested accompanying building control drawings. At the hearing, the appellant submitted an A4 photocopy excerpt of Ground Floor Plan drg no. 07139A-WD001 rev C and an A4 photocopy excerpt of First Floor Plan, Roof Plan, Sections, Elevations and Details drg no. 07139A-WD002 – both with Building Control Approved stamps dated 11 April 2011 ref: 2011/0122. Contemporaneous A1 prints of these drawings were also submitted. I note that the title panel describes the project as 'Rebuild of existing Cut Stone Barn' and not a new dwelling.
13. There are some differences between the Building Control drawings and what has been built on site, namely the building control drawings show a porch which was not built; minor differences in the footprint and minor differences in the ridge height. However, I am satisfied that the Building Control Completion Certificate relates to the dwelling on site. Newry and Mourne District Council certified that a 'new dwelling' was constructed and completed on 12 December 2013. I am satisfied that there was no other structure on the site at this address which could have been described as a 'new dwelling'.
14. Whilst a single rates bill was submitted dated 25 February 2013, I would have expected to see continuous rates bills / payments to cover the requisite period. I am unaware if the Council ever made enquiries with Land and Property Services to establish the continuous payment of rates. The Council did not query the continuous use of the dwelling for the requisite period.
15. In conclusion, taking all evidence into account I am satisfied that, on the balance of probabilities, the dwelling had been had been constructed and used as such, continuously as described in the CLEUD application in the five years up to 2 April 2019. The dwelling on the appeal site therefore constitutes lawful development. The Council's decision to refuse to issue a certificate was not well founded. The appeal is therefore allowed and the Lawful Development Certificate attached to this decision should be granted.

COMMISSIONER MANDY JONES

List of Appearances

Newry, Mourne and Down District Council
Planning Authority: Gareth Murtagh

Appellant: Tom Wilson – agent.

List of Documents

Planning Authority:	'A'	Statement of Case.
	'B'	Comments

Appellant:	'B'	Statement of Case.
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PLANNING ACT (NORTHERN IRELAND) 2011: SECTION 169

CERTIFICATE OF LAWFULNESS OF EXISTING USE OR DEVELOPMENT

The Planning Appeals Commission hereby certifies that on 2 April 2019 the building described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown cross hatched on the plan attached to this certificate (ref : PAC 1) was lawful within the meaning of section 169 of the Planning Act 2011, for the reasons set out in the appeal decision to which this certificate is attached.

Signed

Mandy Jones

COMMISSIONER MANDY JONES

19 February 2020

FIRST SCHEDULE

Dwelling as shown on Drawing 01; Site Location Map, Drawing 02; Site Plan, Drawing 03; Floorplans, Drawing 04; Sections and Drawing 05; Elevations.(all drawings date stamped received 2 April 2019 by Newry, Mourne and Down District Council).

SECOND SCHEDULE

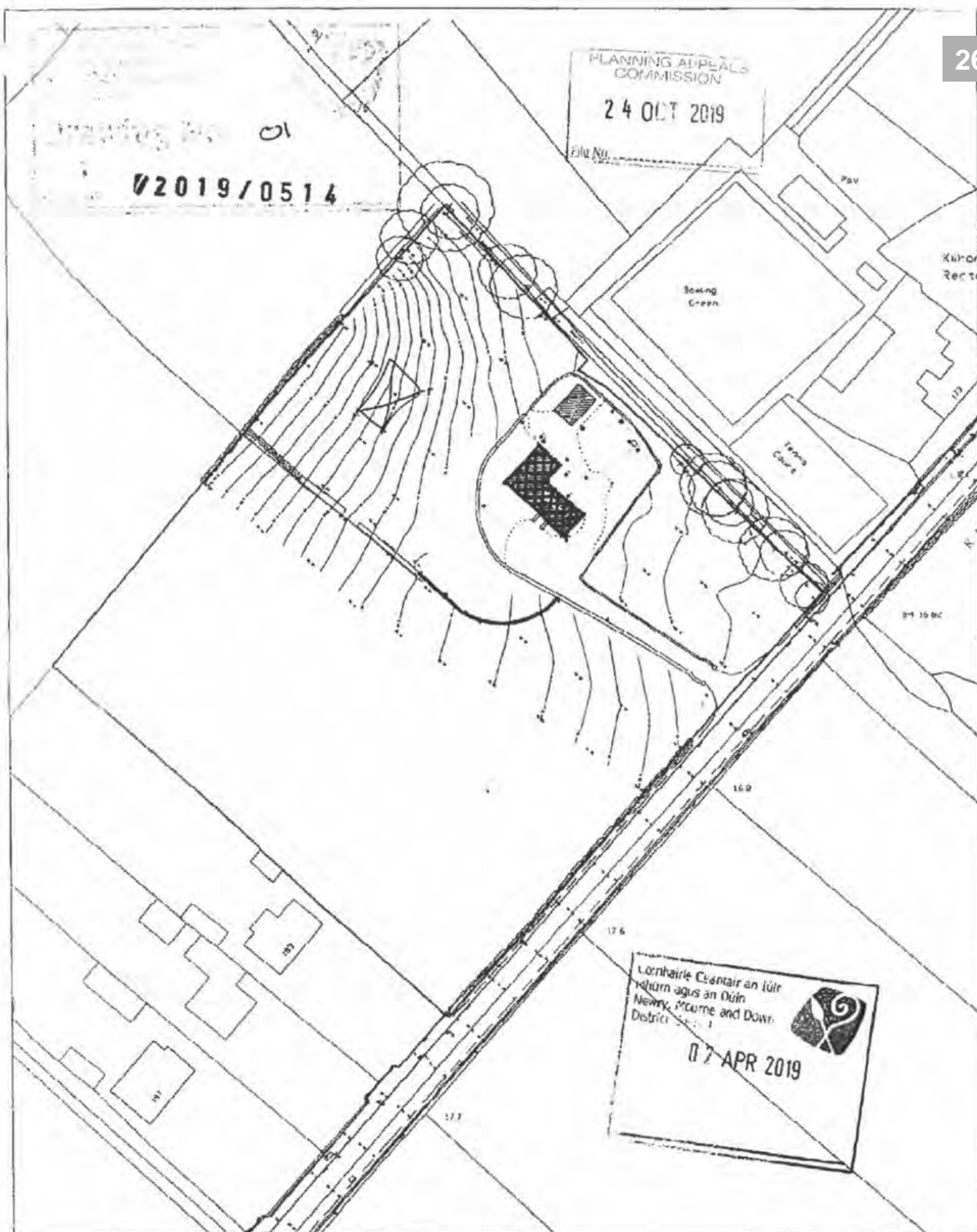
177A Kikeel Road, Annalong

Notes:

(1) This certificate is issued solely for the purpose of section 169 of the Planning Act 2011.

(2) It certifies that the building described in the First Schedule taking place on the land described in the Second Schedule was lawful on the specified date and, thus, was not liable to enforcement action under section 138 or 139 of the Planning Act (Northern Ireland) 2011 on that date.

(3) This certificate applies only to the extent of the building described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use/operations/matter which is materially different from that described or which relates to other land may render the owner and occupier liable to enforcement action.







Costs Decision

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270

Appeal Reference:	2019/E0043
Appeal Against:	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development.
Proposal:	Retention of Existing building.
Location:	177A Kikeel Road, Annalong
Claim by:	Alastair Chestnutt
Claim Against:	Newry, Mourne and Down District Council.
Decision by:	Commissioner Mandy Jones, dated 19 February 2020.

Decision

The claim for costs is denied.

Reasoning

1. In accordance with its publication 'Guidance on Costs Awards in Planning and Related Appeals', the Commission will normally award costs only where all four of the following conditions are met :
 - the claim relates to a relevant type of appeal;
 - the claim is timely;
 - the party against whom the award is sought has acted unreasonably; and
 - the unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

Eligibility

2. The planning application to which the appeal relates was determined under the Planning Act (Northern Ireland) 2011. An appeal was made in accordance with Section 173 against the refusal to certify a Certificate of Lawfulness of Existing Use or Development. The Commission therefore has the power to make an order as to the costs of the parties in accordance with Section 205 of the Act.

Timeliness

3. The claim for costs was made in a timely manner as it was submitted with the appeal papers. Conditions 1 and 2 have been met.

Unreasonable Behaviour.

4. The appellant argued that compelling evidence of immunity from enforcement action had been provided to the Council and they had demonstrated unreasonable behaviour in refusing the Certificate of Lawfulness of Existing use or development.
5. The appellant submitted the following in evidence:
 - Newry and Mourne District Council Building Control, Acknowledgement of receipt of plans for a 'New Dwelling at 117 Kilkeel Road, Annalong' dated 18 February 2011;
 - Newry and Mourne Building District Council, Building Control Completion Certificate for 'New Dwelling at 177a Kilkeel Road, Annalong, Newry' dated 12 December 2013 and
 - Rates bill for 177A Kikeel Road, dated 25 February 2013, for the period 5 Feb 2013 – 31 March 2013.
6. However, no accompanying building control drawings were submitted with either the acknowledgement of receipt of plans or the Completion Certificate. These were presented at the hearing on request. There was also some confusion around the address of the dwelling which was clarified at the hearing.
7. The onus is firmly on the applicant to establish that the existing building is lawful. It is not for the Council to draw conclusions from the limited and incomplete information available. I disagree with the appellant that the information submitted with the LDC application provided compelling evidence. In my opinion, some critical evidence was not before the Council and they were entitled to conclude as they did.
8. Whether there has actually been unreasonable behaviour in a particular case will be a matter of judgement for the Commission. Although, the Council could have requested the accompanying drawings from Building Control directly, they are not required to do so. The appellant is required to submit relevant information to support their case. I do not consider that the Council have demonstrated unreasonable behaviour or that an unnecessary appeal has been caused. In reaching this conclusion, I consider that no unnecessary expenses have been incurred. No award of costs is made.

COMMISSIONER MANDY JONES

2019/E0043

List of Documents

Claimant:

'A' Claim for Costs by Alastair Chestnutt.

Respondent:

'B' Response from Newry, Mourne and Down District Council.