

**ITEM NO** 22  
**APPLIC NO** LA07/2016/0732/O Outline **DATE VALID** 6/6/16  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Mrs Mary Carr 74 Chapel Road **AGENT** Blueprint  
 Killeavy Architectural 79  
 Newry Chapel Road  
 BT35 8JZ Killeavy  
 Newry  
 BT35 8JZ  
 07855978205

**LOCATION** Lands to the rear and south of No. 6 Railway Road  
 Meigh  
 Killeavy  
 Newry  
 BT35 8JU

**PROPOSAL** Proposed erection of a farm dwelling

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

- 1 The proposal is contrary to Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm.
- 3 The proposal is contrary to Policy 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.
- 4 The proposal is contrary to Policy CTY15 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would if permitted mar the distinction between the defined settlement limit of Meigh and the surrounding countryside and result in urban sprawl.
- 5 Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details regarding access were required to allow the Council to determine the application, and having not received sufficient information, the Council refuses this application as it is the opinion of the Council that this information is material to the determination of this application.



Comhairle Ceantair  
**an Iúir, Mhúrn  
agus an Dúin**

**Newry, Mourne  
and Down**  
District Council

**Application Reference: LA07/2016/0732/O**

**Date Received: 24.05.2016**

**Proposal: Proposed erection of a farm dwelling**

**Location: Lands to the rear and south of No. 6 Railway Road Meigh Killeavy**

**Site Characteristics & Area Characteristics:**

**Site History:**

No relevant history

**Planning Policies & Material Considerations:**

*The site is located within the countryside area just beyond the settlement limit boundary of Meigh as defined in the Banbridge, Newry and Mourne Area Plan 2015.*

*The Strategic Planning Policy Statement (SPPS)*

*The Banbridge/Newry and Mourne Area Plan 2015*

*Planning Policy Statement 3*

*Planning Policy Statement 21*

**Consultations:**

**NIW- statutory**

**TransportNI- RS1 condition**

**DAERA- see report below**

**Environmental Health- no comments- discharge consent**

## **Objections & Representations**

*No. of neighbours notified= 5*

*Advertised= 13.06.2016*

*No. of representations received=0*

## **Consideration and Assessment:**

*The proposal is for the erection of a dwelling on the farm. The proposal is considered under CTY 10 of PPS 21.*

*The applicant has supplied the following information on the P1 C form:*

*The owner of the farm holding and applicant is Mrs Mary Carr and she resides at 74 Chapel Road, Killeavy.*

*The farm has been established for over 10 years and the applicant Mrs Mary Carr has a DARD business number (624338 allocation prior to 2000 and that she makes a single farm payment return to DARD).*

*The holding is 8.73 hectares, the applicant has a herd no and has approx. 15 acres silage cut approximately 3 times annually.*

*From the information provided on the P1C form and the comments from the consultation with DARD the Council can ascertain that the farm business is currently active and has been established for more than 6 years. Awaiting maps to check the history/opportunities on the holding. Agent states applicant has confirmed that the map submitted shows the only lands in the applicant's ownership the remaining map only states the applicants entitlements in terms of SFP and it is not available to the Department- Council. The farm map submitted shows 2.81 hectares of the total 8.73 hectares. The Council has insufficient information to make an informed decision with the remaining lands not being identified.*

*The proposed site is approximately a mile away from where the business is registered, 74 Chapel Road. It is noted that there are a number of farm buildings located around this address.*

*The application site is positioned besides one building which lies within the settlement limit and this one building does not appear within the applicants ownership or farm business. Therefore the proposal will not visually link or cluster with an established group of buildings on the farm. The policy states that exceptionally, consideration may be given to an alternative site elsewhere on the*



*farm, provided there are no other sites available at another group of buildings on the farm or out-farm, and where there are either, demonstrable health and safety reasons or verifiable plans to expand the farm business at the existing building group. No additional information has been presented as part of the application. In my opinion the proposal is contrary to CTY 10.*

*If the principle of development was to be accepted I am of the opinion that a dwelling appropriately conditioned will not be a prominent feature in the landscape and this is ensured by the natural boundaries and topography surrounding the site.*

*The proposal as stated above will not be visually linked or sited to cluster with an established group of buildings on the farm.*

*The proposal will not result in build up and respects the traditional pattern of settlement exhibited in the area. The proposal appropriately sited will not create or add to ribbon of development.*

*CTY15 is also relevant in this case. The principle of drawing a settlement limit is partly to promote and partly to contain new development within that limit and so maintain a clear distinction between the built up area and surrounding countryside. Development of this site would mar this distinction and create urban spawl.*

#### **Recommendation:**

***Refusal- awaiting additional farm map to check histories.***

***Refusal- Proposal contrary SPPS, CTY1, CTY10, CTY13, CTY 15 and Insuff Info***

**The proposal is contrary to 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.**

**The proposal is contrary to SPPS and Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm.**

**The proposal is contrary to 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.**

**The proposal is contrary to Policy CTY15 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would if permitted mar the distinction between the defined settlement limit of Meigh and the surrounding countryside and result in urban sprawl.**

**Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details regarding access were required to allow the Council to determine the application, and having not received sufficient information, the Council refuses this application as it is the opinion of the Council that this information is material to the determination of this application.**

.....

.....

(Mary Carr)  
 174 Chapel Rd.  
 Nether, Newry  
 BT35 812

Nov. 16<sup>th</sup> 2016

To who it may concern,

I am writing regards my 'Planning Application' no. - LA07/2016/0732/0. for a house on my farm.

I was disappointed and saddened that you found it not suitable for planning - I feel now at my age. I would like to live in the Village - I am 80 years old. (born July 28<sup>th</sup> 1936) I would feel more secure there - as most of my friends live in or near the Village. I was 'broken into' a number of years ago. and another attempted 'break in' two years ago. as a result I had to take sleeping tablets since.

I may not always be able to drive and therefore I could walk to the stores for food etc. and the new Doctors clinic, that is being built there, all would be in my favour.

Hoping you can reconsider my Application

Sincerely Mary Carr.

<b>ITEM NO</b>	<b>23</b>			
<b>APPLIC NO</b>	LA07/2016/0889/F	Full	<b>DATE VALID</b>	7/4/16
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>			
<b>APPLICANT</b>	Telefonica UK Limited 260 Bath Road Slough SL1 4DX		<b>AGENT</b>	Taylor Patterson C/o Ross Planning 9a Clare Lane Cookstown BT80 8RJ
				NA
<b>LOCATION</b>	Lands 157m south west of Fernhill House 83 Clonallan Road Warrenpoint BT34 3QQ			
<b>PROPOSAL</b>	Proposed 25m telecommunications mast to carry 3No antennae and 2No. radio dishes, and associated works including 3No. equipment cabinets and site compound			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	55	0	0	0
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			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0





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**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0889/F

**Date Received:** 04/07/2016

**Proposal:**

Proposed 25m telecommunications mast to carry 3No antennae and 2No. radio dishes, and associated works including 3No. equipment cabinets and site compound.

This development involves the erection of a 25m high lattice tower painted green/brown with three antennae and three RRU's at the top and two transmission dishes. An ISC cabinet and two RBS cabinets will be erected on concrete bases south of the mast. The compound will be finished in gravel and secured by a 1.1m high stock proof fence with a 1.0m wide entrance gate.

**Location:**

Lands 157m south west of Fernhill House, 83 Clonallon Road, Warrenpoint, BT34 3QQ.

The site is located approximately 1.0 mile north-east of Warrenpoint and approximately 2.5 miles north-west of Rostrevor.

**Site Characteristics & Area Characteristics:**

This rural site is located in a small elongated field measuring approximately 19.0m by 82.0m. The site itself is relatively flat and runs along the Clonallon Road. Access to the site is currently through an agricultural gate located on the south-eastern area of the site. Although the application site is a small part of a larger field, in the context of this application, due to the field being small and elongated it is important to highlight the boundaries of the field as opposed to the site. The eastern boundary of the site (with the Clonallon Road) is comprised of post and wire fencing and a number of large mature trees approximately 15m to 20m tall. The northern, western and southern boundaries are comprised of dense mature trees approximately 15m tall. Public views of the site are most prevalent from the Clonallon Road but the mature vegetation largely screens public views of the site. The ground of the site is primarily comprised of weeds and scrub grass. A watercourse is located to the west of the field in which the site is set.

The site is located outside of settlement development limits, as defined in the Banbridge / Newry and Mourne Area Plan 2015. The site itself is unzoned however it does lie within the Mourne Area of Outstanding Natural Beauty. There are no historic sites or monuments in close proximity to the site. South of the site, on the

approach to the site, the roadside boundary is comprised of trees for approximately 245m which helps to screen the site from public views. The nearest dwellings to the application site are:

1. 83 Clonallon Road – approximately 167m north-east of the site.
2. 9 Ballydesland Road – approximately 190m north-west of the site.
3. 83 Clonallon Road – approximately 216m south-east of the site.
4. 15 Donaghaguy Road – approximately 273m south-west of the site.
5. 5 Ballydesland Road – approximately 317m west of the site.

### Site History:

No previous planning applications have been submitted on this site. The site has however been the subject of two enforcement files:

1. P/2007/0058CA – Alleged unauthorised infilling of land – enforcement case closed as reduced to scale and no longer expedient.
2. P/2007/0153CA – Alleged unauthorised infilling of land – enforcement case closed as not expedient.

### 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.
- DCAN 15 – Vehicular Access Standards.
- PPS 10 – Telecommunications.
- DCAN 14 – Siting and Design of Radio Telecommunications Equipment.
- PPS 21 – Sustainable Development in the Countryside.

### Consultations:

The following consultation responses have been received for this planning application:

- The Joint Radio Company – 29/07/2016 – No objection.
- Environmental Health – 03/08/2016 – No objections in principle.
- OFCOM – 05/08/2016 – Two companies within a 500m radius.
- Transport NI – 09/08/2016 – No objections.
- PSNI Information and Communications Service – 12/08/2016 – No technical safeguarding objection to the proposal.
- Arqiva – 09/09/2016 – No adverse comments to make.
- Rivers Agency – 28/09/2016 – No reason to object.

### Objections & Representations

This planning application was advertised in the local press on 08/07/2016. There was an error in the description of the proposed application and it was re-advertised in the local press on 22/08/2016. There were no neighbours required to be notified of this planning application by letter. In total, 43 letters of objection have been received regarding this planning application from 18 different addresses. Out of the objections, 41 were standard letters and there were 2 other letters. An additional objection was received in writing and later that objector sent a letter to the Council to

confirm they wished to withdraw their objection. Eight letters of objection were resubmitted after the planning application was re-advertised.

In the standard letters of objection the key issues raised were:

1. It was alleged there had been illegal infilling of the site – this had been the subject of previous enforcement cases as discussed above.
2. Concerns were raised that the fill has caused the floodplain of a river to be impeded – Rivers Agency confirmed in its response dated 28/09/2016 that the site is not within the 1 in 100 year fluvial flood plain. Beyond the boundary of the development site, the landowner is required to maintain a working strip for the adjacent watercourse, though this cannot be conditioned through this application due to the red line boundary.
3. Clarification was sought to ascertain if the land of the site has been rezoned as industrial land – The site is not zoned in the Banbridge / Newry and Mourne Area Plan 2015 and has not been rezoned.
4. Concerns were raised with regards to PPS 10 – the proposal will be assessed against this policy in the section below.
5. Issues were raised over the effect of the proposal on bats foraging along the hedgerow – no evidence of the presence of wildlife has been submitted to the Council and the proposed structure does not involve moving parts and all surrounding trees are to be retained except for possibly one tree.
6. Concerns were raised over question 7 in the P1 were the applicant selected they had not received any pre application advice from Council – There was no formal pre-application discussion however the applicant has submitted details showing that informal contact was made with the Council, Councillors and MLAs.
7. It is argued that brownfield sites should have been considered as viable alternatives – Information submitted to the Council shows that six alternative sites were examined prior to the submission of this planning application.

An objection was submitted and personal details were supplied and asked to be redacted. The main objections specified in this letter were:

1. The objector was not notified of the planning application by letter – their property is not eligible for a letter of neighbour notification for this planning application.
2. The fencing surrounding the mast is not suitable as it would not restrict access by people. A higher fence would be unsightly in an AONB – DCAN 14 allows smaller fences in rural areas.
3. Wildlife surveys were not conducted – the applicant has indicated they are unaware of any protected wildlife and no information contrary to this has been received by the Council.
4. The application fails to identify a change of use from agricultural land to industrial land – the description of the application is appropriate.
5. Concerns were raised over question 7 in the P1 were the applicant selected they had not received any pre application advice from Council – There was no formal pre-application discussion however the applicant has submitted details showing that informal contact was made with the Council, Councillors and MLAs.
6. Concerns were raised over potential impacts of the proposal on flooding – As discussed above, Rivers Agency was consulted and expressed no reasons for refusal from a flood risk perspective.



7. It was alleged there had been illegal infilling of the site – this had been the subject of previous enforcement cases as discussed above.
8. No proposed levels have been submitted on the drawings – scaled drawings have been submitted with the application.

Another objection has been received with objections based on personal health conditions. The contents of this letter have been considered, however proof of compliance with ICNIRP Public Exposure Guidelines have been submitted as part of this application. Paragraph 6.29 of PPS 10 states:

*“The planning system is not the place for determining health safeguards. It is for the Department of Health, Social Services and Public Safety (DHSSPS) to decide what measures are necessary to protect public health.”*

Paragraph 6.30 of PPS 10 continues to discuss health concerns and mentions that if concerns are raised about the health effects of exposure to electromagnetic fields, it is not necessary for the Department [Planning Authority] to consider this aspect further provided the proposed telecommunications development meets ICNIRP guidelines in all aspects – in keeping with the view of DHSSPS. As a declaration has been submitted as proof the development is in compliance with the ICNIRP guidelines, these health concerns are not the responsibility of the Planning Authority.

### **Consideration and Assessment:**

#### Banbridge / Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently under the remit of the Banbridge / Newry and Mourne Area Plan 2015 as the new Council has not yet adopted a local development plan. Using the above plan, the site is unzoned, located outside of settlement limits and is inside the Mourne Area of Outstanding Natural Beauty. There are no specific policies in the plans that are relevant to the determination of the application so the application will be considered under the operational policies of the SPSS and PPS 10. The impact of the development on the AONB will be considered under PPS 2.

#### The Strategic Planning Policy Statement for Northern Ireland (SPSS)

Paragraph 6.243 of the SPSS discusses that when considering telecommunications development, planning authorities are to consider the effects on visual amenity and environmentally sensitive features and locations. Applicants are therefore required to submit sufficient information to demonstrate that these considerations have been thoroughly assessed and mitigated. New masts are only to be considered where site sharing is not feasible or offers an improved environmental solution. Operators are encouraged to site share.

Overall there is no conflict between the provisions of the SPSS and the current policy provisions in Policy TEL 1 of PPS 10, therefore the proposed development will be assessed under PPS 10.

#### PPS 21 – Sustainable Development in the Countryside

Policy CTY 1 of PPS 21 specifies a range of development types which, in principle, are considered to be acceptable in the countryside. Policy CTY 1 identifies that

telecommunications development may be acceptable in principle in the countryside, however such proposals are to continue to be considered in accordance with existing published planning policies. PPS 21 directs assessment of the proposed development to PPS 10.

#### PPS 10 – Telecommunications

Policy TEL 1 of PPS 10 permits proposals for telecommunications development where such proposals, together with any necessary enabling works, will not result in unacceptable damage to or harm to environmentally sensitive features or locations. Developers of telecommunications infrastructure are required, under Policy TEL 1, to demonstrate that the proposed development have regard to technical and operational constraints and that the proposed development has been sited and designed to minimise visual and environmental impact.

Supplementary information, submitted as part of the planning application, discusses that no existing masts exist nearby that could be upgraded and therefore a new site was required for a new mast. The supplementary information identifies six sites that could have been used to improve the mobile phone network in the Warrenpoint area. The reasons for not selecting any of these sites have also been included in their statement. Urban sites were investigated but it was determined that the proposed site offered the best solution. The undulating character of the landscape was identified as a significant consideration in this area and therefore a significantly elevated site was required to ensure that reasonable coverage is provided.

Telecommunications masts have the potential to be visually intrusive. The natural screenings of the site will help minimise the impact of the proposed development. The mast itself will be viewable along a short stretch of the Clonallon Road. Due to the existing screenings in the area, this will be primarily restricted to when a member of the public is adjacent to the site. The existing boundaries of the site will however help to minimise the visual impact of the structure. There will be public views of the antenna as this is 25m above ground level and will be higher than the surrounding trees. The antenna will be viewable from road sections including the Ballydesland Road and Dallan Road but the impact of any visual views will not unduly affect visual amenity. The proposed location avoids sensitive features and locations of archaeological, built or natural heritage value.

Proposals for the development of a new telecommunications mast will only be considered acceptable under Policy TEL 1 where it has been demonstrated that the above requirements have been met and where it is reasonably demonstrated that:

- (a) The sharing of an existing mast or other structure has been investigated and is not feasible.

As discussed above, it has been declared in the Supplementary Information that there are no existing masts nearby and therefore a no opportunity exists to upgrade an existing mast and as a result of this, a new mast is required. The Sitefinder Database has been used to identify mobile phone base stations in the Warrenpoint Area. It is however important to note that this database has not been updated since May 2012 following the withdrawal of voluntary information on the location of mobile base station sites from mobile network operators. Using this out of date information, there are four masts identified in the Warrenpoint area and all four are located along the A2 on the

entrance to Warrenpoint: three are located in the port and 1 is located close to the roundabout at the end of the dual carriage way. Both Vodafone and O2 have a mast in the port area. A site nearby was examined but determined that this location was too close to the existing cell site to enhance the coverage in the area. Using the information provided, I am satisfied that it has been demonstrated that the sharing of existing masts has been investigated and would not be feasible.

- (b) A new mast represents a better environmental solution than other options. Other options have been investigated, including siting antennas on buildings, and have been deemed to be not viable options. The undulating landscape in the area has been identified as a challenge which has led to the requirement of an elevated site to ensure reasonable coverage is provided. Measures have been taken to minimise the visual and environmental impact of the proposed development and these will be considered below. The mast is to be shared by Vodafone and O2, the sharing of masts is encouraged by Policy. This sharing of masts creates environmental benefits in that fewer masts are therefore required.

Policy TEL 1 requires Code System Operators to include in applications for telecommunications development:

- (1) Information about the purpose and the need for the particular development including a description of how it fits into the operator's wider network. The proposed mast will be used by both O2 and Vodafone to meet the rise in demand for 3G and 4G services. Both companies have pledged to close the urban/rural digital divide and provide 98% of users' indoor coverage on 2G or 3G in contrast to the c66% of the population who currently receive indoor coverage on 3G.
- (2) Details of the consideration given to measures to mitigate the visual and environmental impact of the proposal. The tower/mast will be R&T Swann lattice and painted green/brown. This is also in keeping with DCAN 14 which recommends the use of '*appropriate colouring having regard to the local context and backdrop of the site.*' In this instance the painting the tower/mast in green or brown would be appropriate and would help the structure visually integrate with the surrounding trees. The equipment housing will be grey in colour and given the limited views of this housing, it is deemed to be acceptable. As discussed previously, the site is well enclosed and the structure will be able to be viewed along a short stretch of the Clonallon Road and these works are deemed acceptable to ensure the proposed development is not visually intrusive.
- (3) As this proposal relates to a mobile telecommunications base station:
- Its location has been clearly defined, the height of the antennae is 23m above ground level, the top of the antennae is 25m above ground level, the frequency is 4G 800MHz Cellular, the modulation characteristics are 4G (800 or 2600) – 64 QAM and the power output is 800 MHz Cellular Band-31dBW.



- A declaration that the base station, when operational will meet the ICNIRP guidelines for public exposure to electromagnetic field has been received.

Policy allows the granting of planning permission for telecommunications development where a number of criteria have been satisfied. In this case the applicant has demonstrated the need of telecommunications development to serve an area with poor coverage and therefore provide enhanced mobile access with the economic and social benefits that brings. The mast is to be shared between O2 and Vodafone and it has been demonstrated that no existing masts can be used and alternative locations have been explored. Overall the proposed development will have a visual impact but it will not unduly impact visual amenity in the area.

#### PPS 2 – Natural Heritage

Policy NH 6 of PPS 2 states that planning permission for 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 is unlikely to have a significant adverse impact on the AONB.

With regards Policy NH 5, the proposed development is unlikely to result in an unacceptable adverse impact on, or damage to, habitats, species or features as the proposed development involves the erection of a structure which does not move and all trees are to be retained except for possibly one.

#### **Recommendation:**

*Approval*

#### **Conditions:**

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

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

#### **Informatives:**

1. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.
2. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
3. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.
4. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such

as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

5. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
6. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.
7. Where an undesignated watercourse flows through or adjacent to a development site, it is strongly advised that a working strip of appropriate width is retained to, in future, enable riparian landowners to fulfil their statutory obligations/responsibilities.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**



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**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2016/0889/F

**Date Received:** 04/07/2016

**Proposal:**

Proposed 25m telecommunications mast to carry 3No antennae and 2No. radio dishes, and associated works including 3No. equipment cabinets and site compound.

This development involves the erection of a 25m high lattice tower painted green/brown with three antennae and three RRU's at the top and two transmission dishes. An ISC cabinet and two RBS cabinets will be erected on concrete bases south of the mast. The compound will be finished in gravel and secured by a 1.1m high stock proof fence with a 1.0m wide entrance gate.

**Location:**

Lands 157m south west of Fernhill House, 83 Clonallon Road, Warrenpoint, BT34 3QQ.

The site is located approximately 1.0 mile north-east of Warrenpoint and approximately 2.5 miles north-west of Rostrevor.

**Site Characteristics & Area Characteristics:**

This rural site is located in a small elongated field measuring approximately 19.0m by 82.0m. The site itself is relatively flat and runs along the Clonallon Road. Access to the site is currently through an agricultural gate located on the south-eastern area of the site. Although the application site is a small part of a larger field, in the context of this application, due to the field being small and elongated it is important to highlight the boundaries of the field as opposed to the site. The eastern boundary of the site (with the Clonallon Road) is comprised of post and wire fencing and a number of large mature trees approximately 15m to 20m tall. The northern, western and southern boundaries are comprised of dense mature trees approximately 15m tall. Public views of the site are most prevalent from the Clonallon Road but the mature vegetation largely screens public views of the site. The ground of the site is primarily comprised of weeds and scrub grass. A watercourse is located to the west of the field in which the site is set.

The site is located outside of settlement development limits, as defined in the Banbridge / Newry and Mourne Area Plan 2015. The site itself is unzoned however it does lie within the Mourne Area of Outstanding Natural Beauty. There are no historic sites or monuments in close proximity to the site. South of the site, on the



approach to the site, the roadside boundary is comprised of trees for approximately 245m which helps to screen the site from public views. The nearest dwellings to the application site are:

1. 83 Clonallon Road – approximately 167m north-east of the site.
2. 9 Ballydesland Road – approximately 190m north-west of the site.
3. 83 Clonallon Road – approximately 216m south-east of the site.
4. 15 Donaghaguy Road – approximately 273m south-west of the site.
5. 5 Ballydesland Road – approximately 317m west of the site.

### **Site History:**

No previous planning applications have been submitted on this site. The site has however been the subject of two enforcement files:

1. P/2007/0058CA – Alleged unauthorised infilling of land – enforcement case closed as reduced to scale and no longer expedient.
2. P/2007/0153CA – Alleged unauthorised infilling of land – enforcement case closed as not expedient.

### **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.
- DCAN 15 – Vehicular Access Standards.
- PPS 10 – Telecommunications.
- DCAN 14 – Siting and Design of Radio Telecommunications Equipment.
- PPS 21 – Sustainable Development in the Countryside.

### **Consultations:**

The following consultation responses have been received for this planning application:

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- Environmental Health – 03/08/2016 – No objections in principle.
- OFCOM – 05/08/2016 – Two companies within a 500m radius.
- Transport NI – 09/08/2016 – No objections.
- PSNI Information and Communications Service – 12/08/2016 – No technical safeguarding objection to the proposal.
- Arqiva – 09/09/2016 – No adverse comments to make.
- Rivers Agency – 28/09/2016 – No reason to object.

### **Objections & Representations**

This planning application was advertised in the local press on 08/07/2016. There was an error in the description of the proposed application and it was re-advertised in the local press on 22/08/2016. There were no neighbours required to be notified of this planning application by letter. In total, 43 letters of objection have been received regarding this planning application from 18 different addresses. Out of the objections, 41 were standard letters and there were 2 other letters. An additional objection was received in writing and later that objector sent a letter to the Council to

confirm they wished to withdraw their objection. Eight letters of objection were resubmitted after the planning application was re-advertised.

In the standard letters of objection the key issues raised were:

1. It was alleged there had been illegal infilling of the site – this had been the subject of previous enforcement cases as discussed above.
2. Concerns were raised that the fill has caused the floodplain of a river to be impeded – Rivers Agency confirmed in its response dated 28/09/2016 that the site is not within the 1 in 100 year fluvial flood plain. Beyond the boundary of the development site, the landowner is required to maintain a working strip for the adjacent watercourse, though this cannot be conditioned through this application due to the red line boundary.
3. Clarification was sought to ascertain if the land of the site has been rezoned as industrial land – The site is not zoned in the Banbridge / Newry and Mourne Area Plan 2015 and has not been rezoned.
4. Concerns were raised with regards to PPS 10 – the proposal will be assessed against this policy in the section below.
5. Issues were raised over the effect of the proposal on bats foraging along the hedgerow – no evidence of the presence of wildlife has been submitted to the Council and the proposed structure does not involve moving parts and all surrounding trees are to be retained except for possibly one tree.
6. Concerns were raised over question 7 in the P1 were the applicant selected they had not received any pre application advice from Council – There was no formal pre-application discussion however the applicant has submitted details showing that informal contact was made with the Council, Councillors and MLAs.
7. It is argued that brownfield sites should have been considered as viable alternatives – Information submitted to the Council shows that six alternative sites were examined prior to the submission of this planning application.

An objection was submitted and personal details were supplied and asked to be redacted. The main objections specified in this letter were:

1. The objector was not notified of the planning application by letter – their property is not eligible for a letter of neighbour notification for this planning application.
2. The fencing surrounding the mast is not suitable as it would not restrict access by people. A higher fence would be unsightly in an AONB – DCAN 14 allows smaller fences in rural areas.
3. Wildlife surveys were not conducted – the applicant has indicated they are unaware of any protected wildlife and no information contrary to this has been received by the Council.
4. The application fails to identify a change of use from agricultural land to industrial land – the description of the application is appropriate.
5. Concerns were raised over question 7 in the P1 were the applicant selected they had not received any pre application advice from Council – There was no formal pre-application discussion however the applicant has submitted details showing that informal contact was made with the Council, Councillors and MLAs.
6. Concerns were raised over potential impacts of the proposal on flooding – As discussed above, Rivers Agency was consulted and expressed no reasons for refusal from a flood risk perspective.

7. It was alleged there had been illegal infilling of the site – this had been the subject of previous enforcement cases as discussed above.
8. No proposed levels have been submitted on the drawings – scaled drawings have been submitted with the application.

Another objection has been received with objections based on personal health conditions. The contents of this letter have been considered, however proof of compliance with ICNIRP Public Exposure Guidelines have been submitted as part of this application. Paragraph 6.29 of PPS 10 states:

*“The planning system is not the place for determining health safeguards. It is for the Department of Health, Social Services and Public Safety (DHSSPS) to decide what measures are necessary to protect public health.”*

Paragraph 6.30 of PPS 10 continues to discuss health concerns and mentions that if concerns are raised about the health effects of exposure to electromagnetic fields, it is not necessary for the Department [Planning Authority] to consider this aspect further provided the proposed telecommunications development meets ICNIRP guidelines in all aspects – in keeping with the view of DHSSPS. As a declaration has been submitted as proof the development is in compliance with the ICNIRP guidelines, these health concerns are not the responsibility of the Planning Authority.

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

##### Banbridge / Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently under the remit of the Banbridge / Newry and Mourne Area Plan 2015 as the new Council has not yet adopted a local development plan. Using the above plan, the site is unzoned, located outside of settlement limits and is inside the Mourne Area of Outstanding Natural Beauty. There are no specific policies in the plans that are relevant to the determination of the application so the application will be considered under the operational policies of the SPSS and PPS 10. The impact of the development on the AONB will be considered under PPS 2.

##### The Strategic Planning Policy Statement for Northern Ireland (SPSS)

Paragraph 6.243 of the SPSS discusses that when considering telecommunications development, planning authorities are to consider the effects on visual amenity and environmentally sensitive features and locations. Applicants are therefore required to submit sufficient information to demonstrate that these considerations have been thoroughly assessed and mitigated. New masts are only to be considered where site sharing is not feasible or offers an improved environmental solution. Operators are encouraged to site share.

Overall there is no conflict between the provisions of the SPSS and the current policy provisions in Policy TEL 1 of PPS 10, therefore the proposed development will be assessed under PPS 10.

##### PPS 21 – Sustainable Development in the Countryside

Policy CTY 1 of PPS 21 specifies a range of development types which, in principle, are considered to be acceptable in the countryside. Policy CTY 1 identifies that

telecommunications development may be acceptable in principle in the countryside, however such proposals are to continue to be considered in accordance with existing published planning policies. PPS 21 directs assessment of the proposed development to PPS 10.

#### PPS 10 – Telecommunications

Policy TEL 1 of PPS 10 permits proposals for telecommunications development where such proposals, together with any necessary enabling works, will not result in unacceptable damage to or harm to environmentally sensitive features or locations. Developers of telecommunications infrastructure are required, under Policy TEL 1, to demonstrate that the proposed development have regard to technical and operational constraints and that the proposed development has been sited and designed to minimise visual and environmental impact.

Supplementary information, submitted as part of the planning application, discusses that no existing masts exist nearby that could be upgraded and therefore a new site was required for a new mast. The supplementary information identifies six sites that could have been used to improve the mobile phone network in the Warrenpoint area. The reasons for not selecting any of these sites have also been included in their statement. Urban sites were investigated but it was determined that the proposed site offered the best solution. The undulating character of the landscape was identified as a significant consideration in this area and therefore a significantly elevated site was required to ensure that reasonable coverage is provided.

Telecommunications masts have the potential to be visually intrusive. The natural screenings of the site will help minimise the impact of the proposed development. The mast itself will be viewable along a short stretch of the Clonallon Road. Due to the existing screenings in the area, this will be primarily restricted to when a member of the public is adjacent to the site. The existing boundaries of the site will however help to minimise the visual impact of the structure. There will be public views of the antenna as this is 25m above ground level and will be higher than the surrounding trees. The antenna will be viewable from road sections including the Ballydesland Road and Dallan Road but the impact of any visual views will not unduly affect visual amenity. The proposed location avoids sensitive features and locations of archaeological, built or natural heritage value.

Proposals for the development of a new telecommunications mast will only be considered acceptable under Policy TEL 1 where it has been demonstrated that the above requirements have been met and where it is reasonably demonstrated that:

- (a) The sharing of an existing mast or other structure has been investigated and is not feasible.

As discussed above, it has been declared in the Supplementary Information that there are no existing masts nearby and therefore a no opportunity exists to upgrade an existing mast and as a result of this, a new mast is required. The Sitefinder Database has been used to identify mobile phone base stations in the Warrenpoint Area. It is however important to note that this database has not been updated since May 2012 following the withdrawal of voluntary information on the location of mobile base station sites from mobile network operators. Using this out of date information, there are four masts identified in the Warrenpoint area and all four are located along the A2 on the



entrance to Warrenpoint: three are located in the port and 1 is located close to the roundabout at the end of the dual carriage way. Both Vodafone and O2 have a mast in the port area. A site nearby was examined but determined that this location was too close to the existing cell site to enhance the coverage in the area. Using the information provided, I am satisfied that it has been demonstrated that the sharing of existing masts has been investigated and would not be feasible.

- (b) A new mast represents a better environmental solution than other options. Other options have been investigated, including siting antennas on buildings, and have been deemed to be not viable options. The undulating landscape in the area has been identified as a challenge which has led to the requirement of an elevated site to ensure reasonable coverage is provided. Measures have been taken to minimise the visual and environmental impact of the proposed development and these will be considered below. The mast is to be shared by Vodafone and O2, the sharing of masts is encouraged by Policy. This sharing of masts creates environmental benefits in that fewer masts are therefore required.

Policy TEL 1 requires Code System Operators to include in applications for telecommunications development:

- (1) Information about the purpose and the need for the particular development including a description of how it fits into the operator's wider network.  
The proposed mast will be used by both O2 and Vodafone to meet the rise in demand for 3G and 4G services. Both companies have pledged to close the urban/rural digital divide and provide 98% of users' indoor coverage on 2G or 3G in contrast to the c66% of the population who currently receive indoor coverage on 3G.
- (2) Details of the consideration given to measures to mitigate the visual and environmental impact of the proposal.  
The tower/mast will be R&T Swann lattice and painted green/brown. This is also in keeping with DCAN 14 which recommends the use of '*appropriate colouring having regard to the local context and backdrop of the site.*' In this instance the painting the tower/mast in green or brown would be appropriate and would help the structure visually integrate with the surrounding trees. The equipment housing will be grey in colour and given the limited views of this housing, it is deemed to be acceptable. As discussed previously, the site is well enclosed and the structure will be able to be viewed along a short stretch of the Clonallon Road and these works are deemed acceptable to ensure the proposed development is not visually intrusive.
- (3) As this proposal relates to a mobile telecommunications base station:
- Its location has been clearly defined, the height of the antennae is 23m above ground level, the top of the antennae is 25m above ground level, the frequency is 4G 800MHz Cellular, the modulation characteristics are 4G (800 or 2600) – 64 QAM and the power output is 800 MHz Cellular Band-31dBW.



- A declaration that the base station, when operational will meet the ICNIRP guidelines for public exposure to electromagnetic field has been received.

Policy allows the granting of planning permission for telecommunications development where a number of criteria have been satisfied. In this case the applicant has demonstrated the need of telecommunications development to serve an area with poor coverage and therefore provide enhanced mobile access with the economic and social benefits that brings. The mast is to be shared between O2 and Vodafone and it has been demonstrated that no existing masts can be used and alternative locations have been explored. Overall the proposed development will have a visual impact but it will not unduly impact visual amenity in the area.

#### PPS 2 – Natural Heritage

Policy NH 6 of PPS 2 states that planning permission for 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 is unlikely to have a significant adverse impact on the AONB.

With regards Policy NH 5, the proposed development is unlikely to result in an unacceptable adverse impact on, or damage to, habitats, species or features as the proposed development involves the erection of a structure which does not move and all trees are to be retained except for possibly one.

#### **Recommendation:**

*Approval*

#### **Conditions:**

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

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

#### **Informatives:**

1. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.
2. This permission does not alter or extinguish or otherwise affect any existing or valid right of way crossing, impinging or otherwise pertaining to these lands.
3. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973, and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.
4. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such

as diversion, culverting, bridging; or placing any form of structure in any watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

5. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
6. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.
7. Where an undesignated watercourse flows through or adjacent to a development site, it is strongly advised that a working strip of appropriate width is retained to, in future, enable riparian landowners to fulfil their statutory obligations/responsibilities.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

Further to our previous correspondence and in keeping with protocol, please find below the points that we will be speaking about within our allotted time.

We will discuss:

- the character of the site;
- site selection procedure;
- the need for both voice and data telecommunication coverage in the Warrenpoint Area;
- benefits of the proposal to local people and businesses; and
- a response to the objectors concerns.

During our presentation we will also use visual aids, which I have attached.

I trust this is satisfactory, however if you require any further information please do not hesitate to contact me.

Kind regards

Hayley

**Hayley Dallas**

Ross Planning

9a Clare Lane . Cookstown . County Tyrone . BT80 8RJ

Tel 028 8676 4800 . Fax 028 8676 1500

[www.rossplanning.co.uk](http://www.rossplanning.co.uk)

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SITE LOCATION MAP - 1:2500

ACCESS TO NEW RADIO SITE VIA PROPOSED NEW HARDCORE GRAVEL ACCESS TRACK



SITE LOCATION MAP - 1:50000



SITE PHOTO

NOTES

1. Cell Site Reference - 75525
2. Cell Name - WARRENPOINT CENTRAL
3. For further details refer to sketch site layout plan (TPS/243/75525-Dwg 200)

**4. GRID REFERENCES:  
123016 476845**

5. DIRECTIONS:

From Belfast M1 heading towards Lisburn. Exit towards Sprucefield. At Sprucefield Roundabout, take the 2nd exit onto A1. At Hillsborough Roundabout, take the 2nd exit onto Hillsborough Rd/A1. Take the slip road to A28/A25/A2/Newry. At the roundabout, take the 2nd exit onto Belfast Rd. Turn left onto Damolly Rd. Turn right onto A25. At the roundabout, take the 1st exit onto Hilltown Rd/B8. Turn right onto Bridge Rd/B7. Turn left onto Ballydesland Rd. Turn left onto Ballyrussell Rd. Turn left onto Clonallan Rd. The radio base site will be in the field to the left.



A	First Issue.	SK	JP	30/03/16
REVISED	DESCRIPTION	BY	CHK	DATE
CELL NAME				
WARRENPOINT CENTRAL				
CELL ID				
001	205789	75525	NA	NA

O<sub>2</sub>  
CTIL



TAYLOR PATTERSON

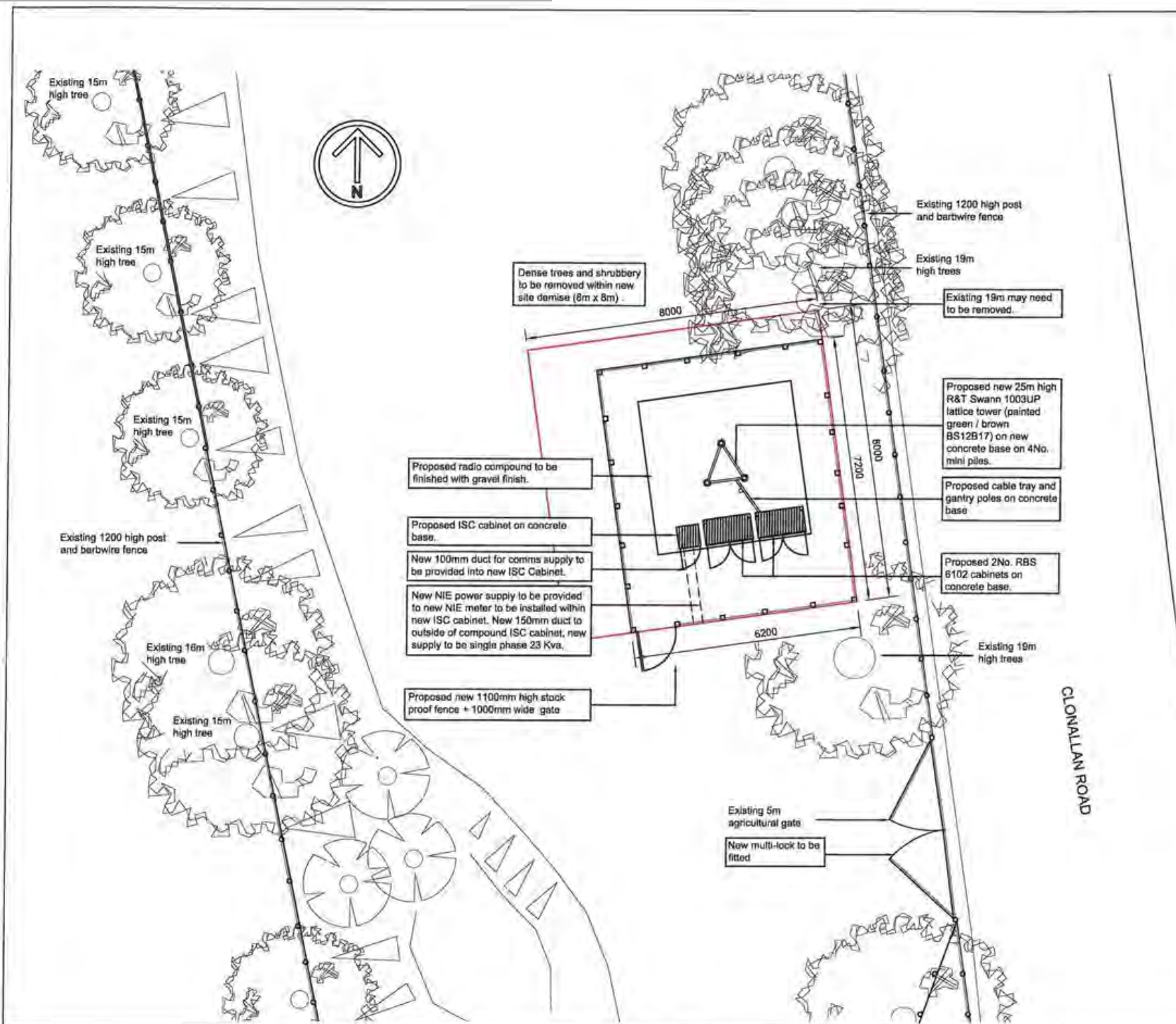
CHARTERED BUILDING SURVEYORS  
THE STUDIOS, FIRST FLOOR, BLOCK A  
89 HOLYWOOD ROAD, BELFAST, BT4 3BD  
PHONE: 028 9065 9555 FAX: 028 9065 9222  
ADMIN@TAYLORPATTERSON.CO.UK

PROJECT:  
PROPOSED RADIO SITE AT COPSE TO  
WEST OF CLONALLAN ROAD, WARRENPOINT  
CO. DOWN BT34 3QQ

PROJECT NO:  
TPS243/75525  
TITLE:  
PLANNING  
SKETCH LOCATION MAP

DWG NO.	REV.	SCALE	DATE
100	A	NA	30/03/2016
DRAWN BY:	SK	CHECKED BY:	JP





**NOTES**

1. Cell Site Reference - 75525
2. Cell Name - WARRENPOINT CENTRAL
3. New NIE power supply to be provided to new NIE meter to be installed within new ISC cabinet. ISC cabinet new supply to be single phase 23 Kva.
4. Reported partially filled ground. Geotechnical investigation required.

A	First issue.	SK	JP	DATE
REVISION	DESCRIPTION	BY	CHK	DATE
CELL NAME				
WARRENPOINT CENTRAL				
CELL ID				
CTA	REP	VICARAGE		
205769	75525	NA		

**O<sub>2</sub>  
CTIL**



TAYLOR PATTERSON

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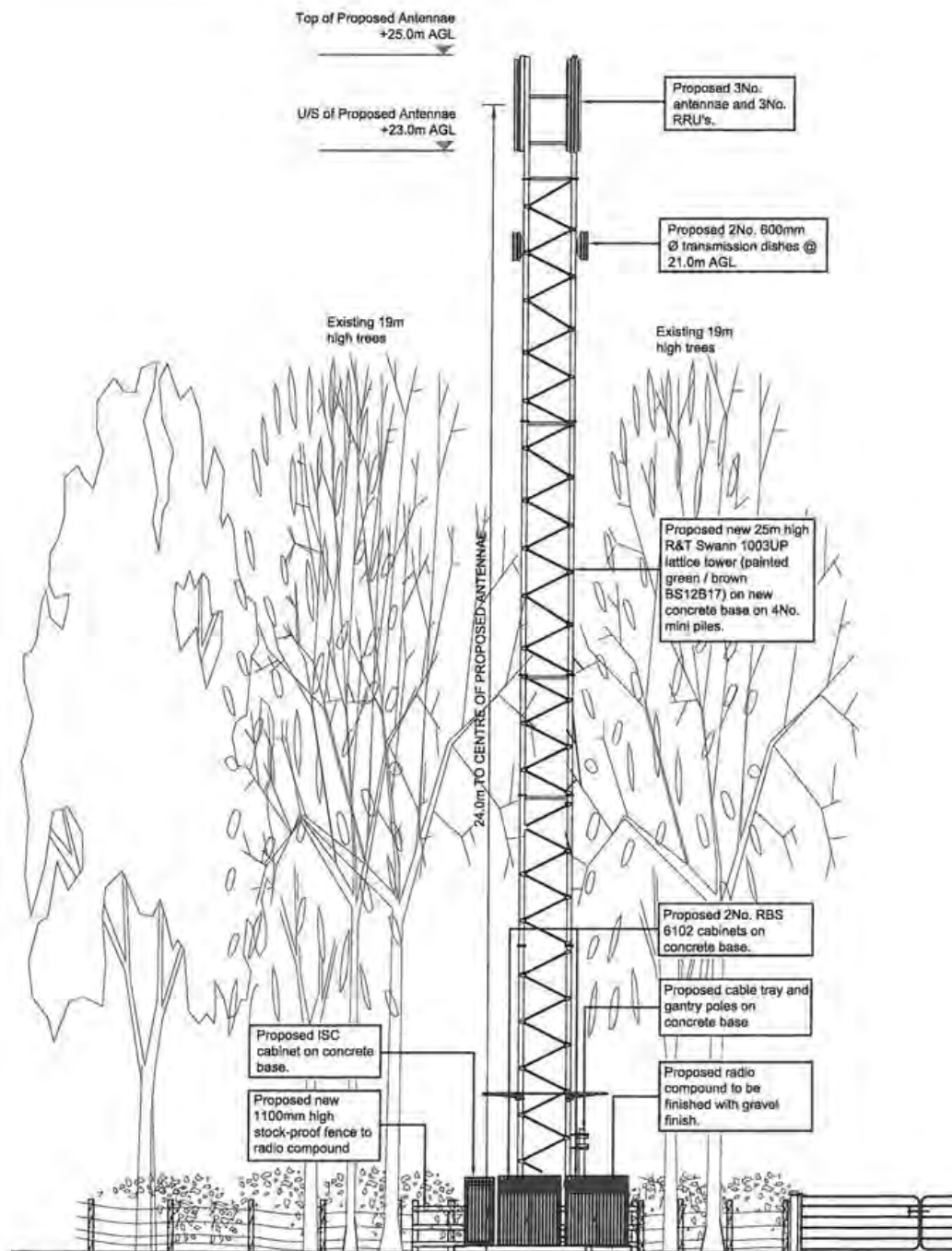
PROPOSED RADIO SITE AT COPSE TO  
WEST OF CLONALLAN ROAD, WARRENPOINT  
CO. DOWN BT34 3QQ

PROJECT NO: \_\_\_\_\_  
TPS243/75525  
TITLE: \_\_\_\_\_  
PLANNING  
SKETCH SITE PLANS

DWG NO.	REV.	SCALE	DATE
200	A	1:100	30/03/2016

DRAWN BY: SK CHECKED BY: JP





NOTES

1. Cell Site Reference - 75525
2. Cell Name - WARRENPOINT CENTRAL

A	First Issue.	SK	JP	30/3/15
REVISION	DESCRIPTION	BY	CHK	DATE
CELL NAME				
WARRENPOINT CENTRAL				
CELL I.D.				
STL	TRF	VENDOR		
205769	75525	NA		

O<sub>2</sub>  
CTIL



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PROPOSED RADIO SITE AT COPSE TO  
WEST OF CLONALLAN ROAD, WARRENPOINT  
CO. DOWN BT34 3QQ

PROJECT NO:  
TPS243/75525

TITLE  
PLANNING

SKETCH SITE ELEVATIONS

PROPOSED

DWG NO.	REV.	SCALE	DATE
300	B	1:100	30/03/2015

DRAWN BY	CHECKED BY
SK	JP

<b>ITEM NO</b>	<b>26</b>			
<b>APPLIC NO</b>	LA07/2016/1045/F	Full	<b>DATE VALID</b>	8/4/16
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Mr & Mrs A. Quinn 32 Aughanduff Road Mullaghbawn Newry BT35 9YD		<b>AGENT</b>	Marcus Bingham 9 Tullyquilly Road Rathfriland BT34 5LR  028 4063 8842
<b>LOCATION</b>	32 Aughanduff Road Mullaghbawn Newry BT35 9YD			
<b>PROPOSAL</b>	Demolition of existing dwelling and outbuildings and erection of new replacement dwelling and detached garage			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	0	0	0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0
			<b>Addresses</b>	<b>Signatures</b>
			0	0

- The proposal is contrary to Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside as the dwelling which it is proposed to replace is vernacular makes an important contribution to the heritage, appearance and character of the locality and is capable of being made structurally sound and improved.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference: LA07/2016/1045/F**

**Date Received: 02.08.2016**

**Proposal: Demolition of existing dwelling and outbuildings and erection of new replacement dwelling and detached garage**

**Location: 32 Aughanduff Road Mullaghbawn Newry BT35 9YD**

**Site Characteristics & Area Characteristics:**

The site is located along the Aughanduff Road. There is an existing two storey dwelling sited close to the roadside. The dwelling is of an old traditional style with a small rounded roofed shed to the front forming part of the roadside boundary. The dwelling is of a stone construction with a natural slate roof and brick chimneys. Access to the dwelling is via an existing vehicular access to the northern corner of the site.

The proposal is for a replacement dwelling into the adjoining agricultural field. The natural topography of the land rises steeply in a westerly direction. The boundary with the dwelling south of the site is defined by a rendered wall. This dwelling and site are sited approx. 2 metres above the proposed site.

**Site History:**

No planning history for this particular site.

**Planning Policies & Material Considerations:**

The site is located within the countryside and An Area of Outstanding Natural Beauty as defined in the Banbridge, Newry and Mourne Area Plan 2015.

*SPPS*

*PPS 21*

**Consultations:**

*TransportNI- request plan*

*NIEA WMU- no objections*

*NIEA NH- concerns regarding bats, badgers and wild birds- biodiversity checklist to be requested/possible surveys*

*NIW- statutory*



## Objections & Representations

*No. of neighbours notified= 4*

*Advertise expiry=9/9/16*

*No. of representations received=0*

## Consideration and Assessment:

The site is located within the countryside therefore the provisions of PPS 21 apply to this particular case.

It is the applicant's intention to replace the existing two storey traditional dwelling with a single storey chalet bungalow.

The building is considered to have a number of vernacular qualities and is vernacular in design. The dwelling is not listed but is vernacular and makes an important contribution to the heritage, appearance and character of the locality.

The policy seeks to help retain vernacular houses and promote their sympathetic renovation and continued use rather than replacement. The policy states that planning permission will only be granted where it is demonstrated that it is not reasonable capable of being made structurally sound or otherwise improved. The onus is on the agent to demonstrate the above and no evidence has been submitted since our request on the 8<sup>th</sup> Sept 2016.

If the principle of replacement was to be accepted, the proposed off site location and increase in the residential curtilage would be acceptable as it would result in access and amenity benefits. The curtilage should be reduced to the lower portion of the site to aid the integration of the dwelling on site.

The proposal as stated above is to replace the existing two storey dwelling with a single storey chalet bungalow. Having considered the overall size of the new dwelling the proposal would not have a visual impact significantly greater than the existing.

The dwelling creates a good solid to void ratio with the windows having a vertical emphasis. The proposal is linear and simple in form with a small front storm porch. The roof is pitched and to be finished in a black slate. The walls are to be a smooth render with a natural stone to dress the porch. Having considered the design and the surrounding builds the proposal is appropriate to its rural setting.

The proposal seeks to demolish the existing dwelling and provide a new entrance in its location. As the existing dwelling is currently occupied the proposal will not result in any intensification to the access arrangements.

It is noted that TransportNI have requested amendments regarding, sightlines, septic tank location mini 10m from road edge, drainage and gradient details at the access point.



Having considered the above I am of the opinion the proposed dwelling could not be considered as a prominent feature in the landscape given the surrounding development. This is also ensured by the natural boundaries and topography surrounding the site. The proposal involves up to 2 metres of excavation which is quite substantial however the applicant intends on grading the lands and constructing a retaining wall around 0.6 metres in height which is considered acceptable. The design of the dwelling as discussed above is in my opinion appropriate of the site and its locality.

The proposal is for a replacement dwelling and therefore will not be visually linked or sited to cluster with an established group of buildings on a farm.

The proposal will not result in build up as it would replace the existing dwelling. The dwelling and associated works will not cause a detrimental change to, or further erode the rural character of the surrounding area.

NIEA Natural Heritage note records that the application site has masonry structures, trees and hedgerow habitat occurring within or adjacent to the application site and has the potential to support a variety of species including but not limited to bats, badgers and wild birds which may be affected by this application.

If the Council is mindful of accepting the principle of replacement a biodiversity checklist should be complete and forwarded to NIEA for further consultation.

**Recommendation:**  
**Refusal- contrary to SPPS & CTY 3 of PPS 21**

***The proposal is contrary to the SPPS Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside as the dwelling which it is proposed to be replaced is vernacular and makes an important contribution to the heritage, appearance and character of the locality and is capable of being made structurally sound and improved.***

.....  
.....  
.....  
.....

<b>ITEM NO</b>	<b>28</b>			
<b>APPLIC NO</b>	P/2013/0279/F	Full	<b>DATE VALID</b>	4/3/13
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>			
<b>APPLICANT</b>	Herbert Bailie 31 Cavanakill Road Newtownhamilton BT35 7PR		<b>AGENT</b>	NRG 54 Elmwood Avenue Belfast BT9 6AZ 07733552747

**LOCATION** 230m North of 31 Cavanakill Road  
Newtownhamilton  
Co Armagh  
BT35 7PR

**PROPOSAL** Erection of wind turbine with a maximum output not exceeding 250 kW (Amendment of previous application P/2011/0239/F to allow increase in turbine hub height from 32 metres to 40 metres, no change in rotor diameter (30 metres) and increase in maximum height to tip from 47 metres to 55 metres)

<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>		<b>SUP Petitions</b>	
	15	0	0		0	
			<b>Addresses</b>	<b>Signatures</b>	<b>Addresses</b>	<b>Signatures</b>
			0	0	0	0



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

Committee

Application Reference: P/2013/0279/F

Date Received: 03.04.2013

Proposal: Erection of wind turbine with a maximum output not exceeding 250 kW (Amendment of previous application P/2011/0239/F to allow increase in turbine hub height from 32 metres to 40 metres, no change in rotor diameter (30 metres) and increase in maximum height to tip from 47 metres to 55 metres). The proposal also includes a control room at ground level - a rectangular flat-roofed structure measuring 10.4m x 4.5m and 3.7m high. It is split in half internally with an external door to each section.

Location: 230m North of 31 Cavanakill Road, Newtownhamilton, Co Armagh

Site Characteristics & Area Characteristics:

The site is located in a rural upland area off Cavanakill Road, approximately 2 miles south east of Newtownhamilton. The site is in open bogland at the head of an agricultural lane which serves the applicant's house/farm and another dwelling. The turbine site is over 200m north of the nearest dwelling (No 31). Field boundary features near the site are limited, though views of the turbine will be from longer range given its location at some distance from the public road network and existing dwellings. The turbine will be visible in the landscape from the A25 Newry Road to the north and at various points on the Cavanakill Road to the south. These views are generally long-range and while the turbine would appear on the skyline, this will be softened by the foreground open landscape and the backdrop of forest in 2 directions.

The rural area surrounding the site is of an upland nature with long range views across rolling hills and moorland. The area is zoned as Countryside Policy Area on the draft

Banbridge, Newry and Mourne Area Plan 2015. Development in the area consists of dispersed farmsteads and single dwellings, but the main land use activity is agriculture. There is one other wind turbine in the local area at 4 Cavanakill Road, near the junction with Newry Road - a 6kw 15m domestic turbine - approved under application P/2008/0721/F.

#### Site History:

P/2011/0239/F - Planning permission was granted for a wind turbine at this location in July 2012 - this turbine was to have a hub height of 32 metres and rotor diameter of 30 metres, the total height to the tip is 47 metres.

#### Planning Policies & Material Considerations:

Planning permission was granted under planning reference P/2011/0239/F for a wind turbine at this location in July 2012. This extant approval will be a material consideration in the determination of this proposal. It is proposed to increase the hub height to 40 metres and the rotor diameter will stay the same. The overall height of the turbine will increase to 55 metres.

Therefore it is critical to assess whether or not the increase in hub height is likely to result in any significant impact.

Planning policies relevant in the determination of this proposal include:

- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- PPS2 Planning and Nature Conservation
- PPS3 Access, Movement and Parking
- PPS18 Renewable Energy

The following are also relevant considerations:

- Best Practice Guidance to PPS18 Renewable Energy
- Northern Ireland Environment Agency Publication 'Wind Energy Development in Northern Ireland's Landscapes (Supplementary Planning Guidance to Accompany PPS18)'
- Development Control Advice Note 15: Vehicular Access Standards is also a relevant consideration.

The Banbridge/Newry and Mourne Draft Area Plan 2015: The site is located in the countryside.

Policy RE 1 Renewable Energy Development of PPS18 states:



Development that generates energy from renewable resources will be permitted provided the proposal, and any associated buildings and infrastructure, will not result in an unacceptable adverse impact on:

(a) public safety, human health, or residential amenity;

There is no evidence to suggest the proposed wind turbine will create an adverse impact on public safety or human health. Residential amenity concerns are addressed below.

(b) visual amenity and landscape character;

Please refer to consideration under criteria i.

(c) biodiversity, nature conservation or built heritage interests;

The proposal will not impact negatively on nearby bat populations - NIEA 16th May 2013

(d) local natural resources, such as air quality or water quality;

This proposal will have no impact on natural resources such as air or water quality.

(e) public access to the countryside.

Public access to the countryside will not be affected by this proposal.

The policy also states applications for wind energy development will also be required to demonstrate all of the following:

(i) that the development will not have an unacceptable impact on visual amenity or landscape character through: the number, scale, size and siting of turbines;

In accordance with 'Wind Energy Development in Northern Ireland's Landscapes' the supplementary guidance to accompany PPS18 the site is located within Landscape Character Area (LCA) 68 Carrickatuke Hills. The overall sensitivity of this LCA is medium. This application proposes a wind turbine with a hub height of 40 metres (52 metres to tip). The visual impact of this wind turbine has been assessed from various vantage points in the surrounding area. (See photos on file)

The turbine is located within an area forestry as well as undulating landscape. As planning permission has been granted previously for a turbine on this site the critical issue is whether the proposed increase of 8 metres to the tip of the machine is critical.

The landscape is capable of absorbing this increase without any negative visual effect on the environment.

(ii) that the development has taken into consideration the cumulative impact of existing wind turbines, those which have permissions and those that are currently the subject of valid but undetermined applications.

There are no wind turbines in the vicinity of this application that could potentially be viewed in conjunction with it and the principal of this development has been established.

(iii) that the development will not create a significant risk of landslide or bog burst;

There is no evidence to suggest there is a risk of landslide or bog burst.

(iv) that no part of the development will give rise to unacceptable electromagnetic interference to communications installations; radar or air traffic control systems; emergency services communications; or other telecommunication systems;

A number of organisations were consulted to assess the impact of the proposal on communications installations, telecommunication systems and emergency services communications. These include:

- Joint Radio Company
- OFCOM
- Arqiva
- Defence Infrastructure Organisation Land Management and Disposals NI
- NI Water Windfarms
- PSNI Information and Communications Services

None of these organisations raised any objections to this proposal.

To ensure the proposed wind turbine will have no negative impact on air traffic control systems, the following bodies were consulted:

- National Air Traffic Services
- Civil Aviation Authority
- Belfast International Airport
- Defence Infrastructure Organisation Safeguarding Department

None of these organisations raised any concerns regarding the proposal.

(v) that no part of the development will have an unacceptable impact on roads, rail or aviation safety.

Roads Service have no comment to make on this proposal



There is no rail network in close proximity to this proposal.

Consultations were carried out with the following bodies to assess the impact of the proposed turbine on aviation safety:

- Belfast International Airport
- Civil Aviation Authority
- National Air Traffic Services
- Defence Infrastructure Organisation Safeguarding Department

None of these bodies raised any objections in relation to aviation safety.

(vi) that the development will not cause significant harm to the safety or amenity of any sensitive receptors (including future occupants of committed developments) arising from noise; shadow flicker; ice throw; and reflected light.

As there is no proposed increase in rotor diameter, there will be no greater impact resulting from this proposal than that of the previous in terms of shadow flicker or reflected light.

Environmental Health Department have been consulted on this application and having received a noise impact assessment have carried out their assessment as to whether or not the proposed increase in height will impact upon any sensitive receptors.

They have carried out a full assessment of the information provided taking into account objections and have raised no further objection outlining a number of planning conditions.

Ice throw is not considered to present a major concern in Northern Ireland.

(vii) that above-ground redundant plant (including turbines), buildings and associated infrastructure shall be removed and the site restored to an agreed standard appropriate to its location.

If this wind turbine application is to be approved it is recommended the following condition should be attached to the decision notice:

- All above ground structures shall be dismantled and removed from the site 25 years from the date when the wind turbine is commissioned to the electricity grid or shall be removed if electricity generation has ceased on site for a period of 6 months (unless further consent has been granted).

Reason: To restore the habitat and maintain the landscape quality of the area. This condition will ensure the proposal complies with this requirement.

### Consultations:

Environmental Health (11.04.14) - Additional information and objectors correspondence considered. Conditions set out

Belfast International Airport (04.06.13) - No safeguarding objection

EMR (24.05.13) - No objection

NIEA (16.05.13) – No objections raised, suggested conditions/ informatives

Arqiva (13.05.13) – No objection

Transport NI (Roads) (01.05.13) – No objection

MOD (07.05.13) – No objection

PSNI (03.05.13) – No objection

OFCOM (24.04.13) – BT, MP & E Trading Company Ltd, PSNI identified within 500m radius search

NIW –No objection

NATS (24.04.13) – No objection

### Objections & Representations

12 Neighbour notifications

Advertised initially 03.05.13 and readvertised 17.05.13 due to a revised description

15 Objection letters to this proposal have been submitted (by the owners of 4 properties) the main issues that have been highlighted are; integration, rural character, noise, cumulative impact, technical issues relating to noise data, contamination of land and animal welfare.

A further email of objection from Pat Galbraith was received 03.02.15 raising further issues with regard to misleading information provided within the original case officer, a temporary anemometer erected without permission, original planning permission approved without noise report, roads have asked for access to be improved elsewhere but have no comment, correspondence forwarded to environmental health as previously there had been factual inconsistencies with information provided.



#### Consideration:

The principal of development has been agreed at this location by the grant of planning permission under reference P/2011/0239/F. In terms of visual, integration or rural character it is not considered that the increase in hub height is critical in terms of visual impact or its effect on the character of the area. Environmental Health have been consulted on submitted information as well as objectors correspondence and have raised no further objection subject to planning conditions. NIEA have no major objections but have suggested conditions/ informatives.

The original case officer assessment of the application site is as observed the overall content is not misleading. Any unauthorised structures erected at the site without the benefit of planning permission will be open to enforcement action. Whilst no noise report was submitted with the original application the officer did query the potential for noise disturbance for the nearest dwellings a letter was submitted by the agent justifying this position and Environmental Health raised no further concerns at the time. Furthermore Environmental Health were furnished with objectors letters and additional information and have raised no further comments, all matters of concerns have already been addressed with conditions to be attached to a decision notice . Transport NI (Roads Service) must have had no concerns in relation to the proposed access otherwise improvements in standards would have been sought.

#### Consideration and Assessment:

A number of objections have been received and have been taken into account in the processing of the application and considered above. The principal of development for a wind turbine has been previously agreed through the grant of planning permission under P/2011/0239/F. The increase in height will not cause demonstrable harm in terms of visual impact or effect the character of this area. Environmental Health have suggested a number of conditions within their consultation response as part of their consultation, with regard to noise impact Environmental Health have suggested a number of planning conditions which should be conditional to the grant of permission. In light of this it is recommended to approve the application.

Recommendation: Approval

#### Conditions:

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

Reason: Time Limit.

2. The level of noise emissions from the wind turbine hereby permitted (including the application of any tonal penalty when calculated in accordance with the procedures described on pages 104 - 109 of ETSU-R-97) shall not exceed values set out in Table 1 below. Noise limits for any dwellings which lawfully exist or have planning permission for construction at the date of this consent but are not listed in Table 1 shall be represented by the physically closest location listed in the tables unless otherwise agreed by the Planning Authority.

Table 1: Noise Limits dB LA90 for All Periods

Property Standardised wind speed at 10m height (m/s) within the site averaged over 10-minute periods

	5	6	7	8	9	10
31 Cavanakill Road, Newtownhamilton	34.3	36.6	38.9	41.3	41.4	41.6
29 Cavanakill Road, Newtownhamilton	29.9	32.2	34.5	36.9	37	37.2
15 Cavanakill Road, Newtownhamilton	30	32.3	34.6	37	37.1	37.3
39 Newry Road, Newtownhamilton	27.4	29.7	32	34.4	34.5	34.7
33 Newry Road, Newtownhamilton	26.9	29.2	31.5	33.9	34	34.2

Reason: To control the noise levels from the development at noise sensitive locations.

3. Within 4 weeks of a written request by the Planning Authority, following a noise complaint from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind turbine operator shall, at his/her expense employ a suitably qualified and competent person, to assess the level of noise emissions from the wind farm at the complainant's property following the procedures described in Pages 102-109 of ETSU-R-97. Details of the noise monitoring survey shall be submitted to the Planning Authority for written approval prior to any monitoring commencing. The Planning Authority shall be notified not less than 2 weeks in advance of the date of commencement of the noise monitoring.

Reason: To control the noise levels from the development at noise sensitive locations.

4. The wind turbine operator shall provide to the Planning Authority the results, assessment and conclusions regarding the noise monitoring required by Condition 3, including all calculations, audio recordings and the raw data upon which that assessment and conclusions are based. Such information shall be provided within 3 months of the date of the written request of the Planning Authority under condition 3 unless, in either case, otherwise extended in writing by the Planning Authority.

Reason: To control the noise levels from the development at noise sensitive locations.



5. Within 4 weeks from receipt of a written request from the Planning Authority, following an amplitude modulation (AM) complaint to it from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind turbine operator shall submit a scheme for the assessment and regulation of AM to the Planning Authority for its written approval. The scheme shall be in general accordance with:
- Any guidance endorsed in National or Northern Ireland Planning Policy or Guidance at that time, or in the absence of endorsed guidance,
  - Suitable published methodology endorsed as good practice by the Institute of Acoustics; or in the absence of such published methodology,
  - The methodology published by Renewable UK on the 16th December 2013; and implemented within 3 months of the written request of the Planning Authority unless otherwise extended in writing by the Planning Authority.

Reason: To control the levels of AM from the development at noise sensitive locations.

6. All above ground structures shall be dismantled and removed from the site 25 years from the date when the turbine is commissioned to the electricity grid or shall be removed if electricity generation has ceased on site for a period of 6 months (unless further consent is granted).

Reason: To ensure that the structures do not adversely affect the amenity of this rural area after the end of their operational life.

7. During both the construction and operational phase, there shall be no storage of material on the adjacent peatland habitat which is located 15 metres north east of the proposed turbine.

Reason: To prevent any adverse impacts on Priority Habitats.

8. The developer must notify UK DVOF & Powerlines at the Defence Geographic Centre with the following information prior to development commencing:

- a. Precise location of development.
- b. Date of commencement of construction.
- c. Date of completion of construction.
- d. The height above ground level of the tallest structure.
- e. The maximum extension height of any construction equipment.
- f. Details of aviation warning lighting fitted to the structure(s).

You can e-mail this information to UK DVOF & Powerlines at [icgdgc-prodaisafdb@mod.uk](mailto:icgdgc-prodaisafdb@mod.uk), or post it to:

D-UKDVOF & Power Lines  
Air Information Centre  
Defence Geographic Centre  
DGIA  
Elmwood Avenue  
Feltham  
Middlesex  
TW13 7AH

Reason: In the interests of aviation safety.

#### Informatives

1. This decision relates to the stamped approved drawing Nos 01, 02 and 03 which were received on 3rd April 2013.
2. The site and surrounding environs contains habitat features suitable for bats. Bats are a European Protected Species under the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) and are subject to a strict level of protection. To minimise risk to bat populations, advice from published guidelines regarding bats and wind turbines is to maintain a 50 metre buffer between the tip of the turbine blade and the existing habitat features (including trees and hedgerows) on site. Further information can be found on our website:  
[http://www.doeni.gov.uk/niea/landhome/plan/advice\\_and\\_information.htm](http://www.doeni.gov.uk/niea/landhome/plan/advice_and_information.htm)
3. The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly kill, injure or take any wild bird. It is also an offence to intentionally or recklessly: take, damage or destroy the nest of any wild bird while that nest is in use or being built; or take or destroy an egg of any wild bird. If any person intentionally or recklessly disturbs any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or disturbs dependent young of such a bird they shall be guilty of an offence. Any person who knowingly causes or



permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence. It is therefore advised that tree and hedge loss should be kept to a minimum and removal should not be carried out during the bird breeding season between 1st March and 31st August.

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

Case Officer:

Authorised Officer:

<b>ITEM NO</b>	<b>29</b>			
<b>APPLIC NO</b>	P/2014/0322/F	Full	<b>DATE VALID</b>	4/7/14
<b>COUNCIL OPINION</b>	<b>APPROVAL</b>			
<b>APPLICANT</b>	Mr Danny Fegan		<b>AGENT</b>	C D Consulting Unit 54 Enniskillen Business Centre 21 Lackaghboy Road Enniskillen BT74 4RL 028 67723028
<b>LOCATION</b>	Lands 350m East of 72 Drumlough Road Drumgath Rathfriland.			
<b>PROPOSAL</b>	Proposed installation of a wind turbine on a tubular tower of up to 40 metre height with blades to 54.4 metre (to tip height)			
<b>REPRESENTATIONS</b>	<b>OBJ Letters</b>	<b>SUP Letters</b>	<b>OBJ Petitions</b>	<b>SUP Petitions</b>
	25	0	1	0
			<b>Addresses</b>	<b>Signatures</b>
			3	3
			<b>Addresses</b>	<b>Signatures</b>
			0	0



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** P/2014/0322/F

**Date Received:** 7<sup>th</sup> April 2014

**Proposal:** Proposed installation of a wind turbine on a tubular tower of up to 40 metre height with blades to 54.4 metre (to tip height)

**Location:** Lands 350m East of 72 Drumlough Road, Drumgath, Rathfriland.  
The site is located approximately 1 mile NE of Mayobridge.

**Site Characteristics & Area Characteristics:**

The site sits approximately 350 metres east of from No. 72 Drumlough Road and is accessed from the road via an agricultural laneway which will be extended to the turbine location. The lane runs from Drumlough Road in an easterly direction to the site where the land rises steeply. The site is on a steep hillside which sits approximately 50 metres above Drumlough Road with land to the east rising also. The site is two fields back from Drumlough Road some 400 metres and the field in which the site is located is steep with hawthorn and gorse hedgerow.

The site is located in a rural area approximately 1 mile NE of Mayobridge. The site is outside settlement limits on the Banbridge, Newry and Mourne Area Plan 2015 and is unzoned. The surrounding area is rural in character with the predominant land use being agriculture, with undulating topography. This site is located just outside the Mournes and Slieve Croob Area of Outstanding Natural Beauty.

**Site History:**

There have been no previous applications on the site. This application was previously recommended for refusal based on potential noise impact and cumulative impact with other existing and proposed turbines. These issues have now been addressed by submission of a noise assessment and visual montages.

**Planning Policies & Material Considerations:**

- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Banbridge, Newry & Mourne Area Plan 2015
- PPS2 – Natural Heritage
- PPS3 – Access, Movement and Parking
- PPS18 – Renewable Energy
- PPS18 Best Practice Guidance
- Wind Energy Development in Northern Ireland’s Landscapes

**Consultations:**

- NATS – Responded 16th April 2014 - No safeguarding objections to the proposal.
- Belfast International Airport – Responded 23rd April 2014 – No objections to the proposal.
- NI Water – Windfarms - Responded 23rd April 2014 – No objections to the proposal.
- Arqiva - Responded 28th April 2014 - No objections to the proposal.
- PSNI Information and Communications Services - Responded 2nd May 2014 – no objection.
- Ofcom - Responded 2nd May 2014 – They stated that the “Republic of Ireland Administration” link is within 500 metres of the proposal. Neither Ofcom nor Comreg.ie were able to give a contact number or email address in order to consult them.
- UK Crown Bodies DIO LMS- Responded 30th May 2014 – No objections to the proposal.
- NIEA Natural Heritage - Responded 30th June 2014 –No concerns.
- UK Crown Bodies Safeguarding- Responded 12th August 2014 – No objections to the proposal but stated informatives to be inserted if this proposal were approved.
- Environmental Health - Responded 1st May 2014 – Requested a noise assessment and upon receipt of such they were reconsulted. They responded on 7th October 2014 – the simplified assessment shows the proposal exceeds the limit and therefore a full assessment was requested. A detailed noise impact assessment was submitted on 5<sup>th</sup> March 2015 and demonstrated that the most stringent lower fixed limit of ETSU-R-97 will not be exceeded at sensitive receptors. Environmental Health had no further objections and provided conditions for noise emissions and amplitude modulation on 8<sup>th</sup> April 2015.
- Transportni - Responded 22nd October 2014 - No objections to the proposal

**Objections & Representations:**

The application was advertised in local papers on 25<sup>th</sup> April 2014 and again on 20<sup>th</sup> March 2015 (following receipt of the noise impact assessment). It was advertised for a third time on 29<sup>th</sup> July 2016 (following a change to the red line with regard to



access). Two neighbouring properties were notified on 16<sup>th</sup> April 2014. Letters of objection were received from 25 different addresses in the locality, most of these being a copy of the same letter template. The issues raised include the visual impact, adverse health impacts, electromagnetic interference, shadow flicker, noise, the site being within the AONB, impacts on protected species, effect on property values and traffic disruption. All neighbours and objectors were notified when the detailed noise assessment and the amended red line were submitted. No further objections were received.

**Consideration and Assessment:**

The main issues to be considered are the benefits of renewable energy generation, visual impacts on the landscape, impacts on natural heritage and implications for residential amenity and communication networks.

The proposal exceeds the threshold of Category 3(J) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations. The Department of the Environment determined on 16<sup>th</sup> April 2014 that an Environmental Statement would not be required as the environmental effects were not likely to be significant.

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located outside settlement limits on the above Plan, and is unzoned. There are no specific policies in the Plan that are relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS and the retained PPS18.

The SPPS (paragraph 6.224) operates a broadly similar approach to PPS18 for renewable energy schemes, though 'appropriate' rather than 'significant' weight is to be given to the environmental, economic and social benefits of renewable energy (paragraph 6.225). With that exception, and since the SPPS is generally less prescriptive, the retained policy of PPS18 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS. This proposal is considered to meet the five main criteria of policy RE1 of PPS18 as follows:

- (a) There will be no adverse impacts on public safety, human health or residential amenity. It is at sufficient distance from public roads in the case of fall over. TransportNI has no objections under PPS3 to the use of the existing access lane from Drumlough Road. The main issue for consideration here is noise from the turbine. The nearest noise sensitive receptors are between 340m and 500m away. A noise impact assessment was submitted in March 2015 and demonstrates that the lower fixed limit in ETSU-R-97 will not be exceeded at any neighbouring residential property. Therefore Environmental Health is content with the proposal in terms of noise impact, subject to standard conditions on noise emissions and the procedure for addressing any noise complaints.
- (b) A structure of the height proposed will have a visual impact in the landscape, though in this case its impact is mitigated by the backdrop of a rising landform to

the rear from critical viewpoints to the northern side. This will ensure that only the top half of the structure breaks the skyline. From the south, the landform will screen much of the structure. The NIEA document, *Wind Energy Development in Northern Ireland's Landscapes* provides guidance on the types of wind development that can be generally accommodated in each of Northern Ireland's landscape character areas. This site is just within LCA 72 – Slieve Roosley. It has an high sensitivity to wind energy development, though this site is located in one of the less sensitive parts of the LCA (the lower lying foothills to the west and north). It further recommends that the upland ridges are avoided, as in the case of this proposal. In view of the guidance available for this area, the proposal is considered to be well sited and scaled and should not harm visual amenity or landscape character.

- (c) Wind turbines can potentially impact on protected species including birds and bats. Given the siting of the turbine, NIEA is content that there is an adequate buffer between it and the linear features that bats may use. Therefore they have no concerns. NIEA has provided standard informatives on protected species. The proposal is not contrary to this criterion or PPS2. There are no nearby historic monuments or built heritage features.
- (d) The turbine should not harm local natural resources such as air or water quality.
- (e) The turbine is to be located within private farmland and it will not affect public access to the countryside.

The proposal has also been assessed against the specific requirements for wind energy development as follows:

- (i) As only one turbine is proposed it will not have an unacceptable impact on the visual amenity of the landscape through the number of turbines proposed and its scale and siting is considered appropriate for the area.
- (ii) As there were three relevant wind turbine proposals in the immediate area, the applicant was asked to provide a visual analysis of the three proposals to assist consideration of their cumulative impact (A fourth application at Tamary Road to the south – P/2014/0077/F – was withdrawn in September 2014). The three applications were situated approximately 1km apart with a higher area of land between them. This proposal is on the lowest site with the greatest backdrop of higher land. Application P/2012/0342/F for a wind turbine with 41 metre hub height at Leode Quarry to the SE was approved on 24<sup>th</sup> January 2013. The third application for a 30m hub height at Tamary Road 1km to the south of this site (P/2013/0938/F) was refused by the Council on 27<sup>th</sup> June 2016 based on its individual visual impact on the locality and the Mourne AONB. Of the three turbines proposed, the current application is considered to have the best siting and the least visual impact due to the screening and backdrop provided by the landform. It will read with the higher turbine at Leode Quarry, but the third proposal at Tamary Road has been refused and will not be erected. The remaining two turbines can be absorbed successfully into the local landscape without adverse cumulative impact given their juxtaposition at opposite sides of the rocky outcrop.
- (iii) This is a gently sloping site in a lowland landscape, so there is no risk of landslide or bog burst.

- (iv) Various organisations were consulted to establish whether the proposal would cause unacceptable electromagnetic interference. There have been no objections from Arqiva, Belfast International Airport, Defence Estates, National Air Traffic Services, NI Water, OFCOM or PSNI.
- (v) The development will not impact on road, rail or aviation safety. A condition will be attached to ensure that an aviation warning light is installed at the highest point of the hub.
- (vi) As discussed above, there will be no adverse noise impact on any sensitive receptors. There are no dwellings within the theoretical area (10 times the rotor diameter and 130° either side of north) that could be affected by shadow flicker.
- (vii) A condition will be attached to ensure that any above-ground redundant plant will be removed and the site restored within 6 months of the operational use of the turbine for electricity generation ceasing.

The concerns raised by the objectors have been considered above, but as the proposal has been found to comply with the relevant policies, these concerns cannot be given determining weight. There are no dwellings in the area that could be affected by shadow flicker and the submitted noise report has demonstrated compliance with the lower fixed limit in ETSU-R-97 at all noise sensitive receptors. There is no evidence of other adverse health impacts and key consultees have no concern regarding electromagnetic interference. NIEA has confirmed that bats and other protected species will not be affected by the proposal. Any traffic disruption during the construction phase will be for a limited time only and is outweighed by the environmental benefits of the proposal. The site is not actually within the designated boundary of the Mourne and Slieve Croob AONB, so policy NH6 of PPS2 cannot be applied. Effects on the value of individual properties are not a material planning consideration.

The environmental benefits of this clean energy project are given considerable weight in this determination. New overhead lines may be required for exporting the energy generated to the grid. These will be the subject of a separate application, but it is considered that any adverse effects on landscape character would be outweighed by the environmental benefits of renewable energy. The scheme fully complies with policy RE1 and paragraph 6.224 of the SPPS and should be approved.

**Recommendation:** Approval

**Conditions:**

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

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

2. The level of noise emissions from the wind turbine hereby permitted (including the application of any tonal penalty when calculated in accordance with the

procedures described on pages 104 - 109 of ETSU-R-97) shall not exceed values set out in Table 1 below. Noise limits for any dwellings which lawfully exist or have planning permission for construction at the date of this consent but are not listed in Table 1 shall be represented by the physically closest location listed in the tables unless otherwise agreed by the Council.

**Table 1: Noise Limits dB LA90 for All Periods**

Property	Standardised wind speed at 10m height (m/s) within the site averaged over 10-minute periods								
	4	5	6	7	8	9	10	11	12
H1 – 72 Drumlough Rd	30.3	31.5	32.8	34.0	35.2	36.5	37.7	39.0	40.2
H2 – 69 Drumlough Rd	28.2	29.4	30.7	31.9	33.2	34.4	35.6	36.9	38.1
H3 – South of 62 Drumlough Rd	29.3	30.6	31.8	33.0	34.3	35.5	36.8	38.0	39.2
H4 – 32A Tamary Hill	27.4	28.6	29.9	31.1	32.3	33.6	34.8	36.1	37.3
H9 – 76 Drumlough Rd	29.0	30.2	31.5	32.7	33.9	35.2	36.4	37.7	38.9

Reason: To control the noise levels from the development at noise sensitive locations.

3. Within 4 weeks of a written request by the Planning Authority, following a noise complaint from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind turbine operator shall, at his/her expense employ a suitably qualified and competent person, to assess the level of noise emissions from the wind farm at the complainant's property following the procedures described in Pages 102-109 of ETSU-R-97. Details of the noise monitoring survey shall be submitted to the Planning Authority for written approval prior to any monitoring commencing. The Planning Authority shall be notified not less than 2 weeks in advance of the date of commencement of the noise monitoring.

Reason: To control the noise levels from the development at noise sensitive locations.

4. The wind turbine operator shall provide to the Planning Authority the results, assessment and conclusions regarding the noise monitoring required by Condition 3, including all calculations, audio recordings and the raw data upon which that assessment and conclusions are based. Such information shall be provided within 3 months of the date of the written request of the Planning Authority under condition 3 unless, in either case, otherwise extended in writing by the Planning Authority.

Reason: To control the noise levels from the development at noise sensitive locations.



5. Within 4 weeks from receipt of a written request from the Planning Authority, following an amplitude modulation (AM) complaint to it from the occupant of a dwelling which lawfully exists or has planning permission at the date of this consent, the wind turbine operator shall submit a scheme for the assessment and regulation of AM to the Planning Authority for its written approval. The scheme shall be in general accordance with:
- Any guidance endorsed in National or Northern Ireland Planning Policy or Guidance at that time, or in the absence of endorsed guidance,
  - Suitable published methodology endorsed as good practice by the Institute of Acoustics; or in the absence of such published methodology,
  - The methodology published by Renewable UK on the 16th December 2013;

and implemented within 3 months of the written request of the Planning Authority unless otherwise extended in writing by the Planning Authority.

Reason: To control the levels of AM from the development at noise sensitive locations.

6. The developer must notify UK DVOF & Powerlines at the Defence Geographic Centre with the following information prior to development commencing:
- a. Precise location of development.
  - b. Date of commencement of construction.
  - c. Date of completion of construction.
  - d. The height above ground level of the tallest structure.
  - e. The maximum extension height of any construction equipment.
  - f. Details of aviation warning lighting fitted to the structure(s)

This information can be sent by e-mail to UK DVOF & Powerlines at [icgdgc-aero@mod.uk](mailto:icgdgc-aero@mod.uk) or by post to:

D-UKDVOF & Power Lines  
 Air Information Centre  
 Defence Geographic Centre  
 DGIA  
 Elmwood Avenue  
 Feltham  
 Middlesex  
 TW13 7AH

Reason: In the interests of aviation safety.

7. The developer shall install a Low/Medium (Low if its less than 45m above ground level or Medium if it is more than 45m above ground level) Intensity, Omnidirectional, Night Vision Compatible, Steady Red Obstacle light at the highest point of the hub. The light should be lit 24 hours a day, seven days a week.

Reason: To warn low flying aircraft that there is an obstacle at this location.

8. The wind turbine hereby permitted shall be removed and the site restored to its former condition within 25 years of the date of this permission, or within 6 months of the cessation of electricity generation at the site, whichever is the sooner.

Reason: To allow the Council to maintain control over this temporary form of development and reconsider the proposal in light of the circumstances then prevailing.

**Case Officer Signature:**

**Date:**

**Appointed Officer Signature:**

**Date:**

<b>ITEM NO</b>	<b>30</b>			
<b>APPLIC NO</b>	P/2014/0972/O	Outline	<b>DATE VALID</b>	11/25/14
<b>COUNCIL OPINION</b>	<b>REFUSAL</b>			
<b>APPLICANT</b>	Edward Ryan 15 Ryanstown Road Newry BT34 2NG		<b>AGENT</b>	Patrick Larkin 1 Bankside Shinn Newry BT34 1PG 02840638832

**LOCATION** 15 Ryanstown Road  
Newry  
BT34 2NG

**PROPOSAL** Site for dwelling (additional information submitted)

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

- 1 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.
- 2 The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the farm business is currently active and has been established for at least six years.
- 3 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that
  - the building would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings; and
  - the building would, if permitted not respect the traditional pattern of settlement exhibited in that area;
  - and would therefore result in a detrimental change to further erode the rural character of the countryside.





Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2014/0972/O

### **Addendum**

This addendum relates to the letter dated 21/10/2016 received from the applicant's agent.

The letter highlights a number of points raised in the case officer report.

This addendum is structured in the same way as the letter to easily cross reference the text.

Paragraph 1 and 2 –background information - no comment.

#### Paragraph 3

The agent states that within PPS 21 there is no indication that the previous 6 years farming activity must be continuous. On the contrary, Criterion (a) of CTY 10 states "the farm business is currently active and has been established for at least 6 years". (underlining my emphasis)

It is clear from the information submitted during the processing of this application that at the time the application was made on 25/11/2014 the farm was not active. The farm remained inactive until 21/06/2016 when it became apparent (as the application was recommended as a refusal) that it would be necessary to show animal movements (3No. sheep were bought) thereby showing the farm to be 'active' once again.

Paragraph 5.38 of the amplification of CTY 10 states that in relation to the 'active and established' business "The applicant will therefore be required to prove the farms DARD business ID number along with other evidence to prove active farming over the required period".

The Council do not dispute that Mr Ryan was an 'active farmer' from around 2007 – 2014. The farming activity clearly ceased on 25/10/2014 when the last sheep was moved.

While O'Callaghan Planning has stated that there is no requirement for the farming activity to be continuous the Planning Authority would dispute this as paragraph 5.38



of CTY 10 requires the farm to be active over the required period. No information has been submitted to show that Mr Ryan undertook any farming activities during this time in the absence of livestock.

#### Paragraph 4

The text the agent has taken from appeal 2010/0283 is an extract of a longer paragraph, the remaining text is critical to the appeal decision. The underlined section shows the text that was provided whilst the remainder of the paragraph provides the wider context.

*Paragraph 7. Although the appellant has not been involved in the keeping of livestock for a continuous period of six years his evidence demonstrates that he has been keeping livestock intermittently during that time and that there is an attendant vet. In addition he has purchased goods from local suppliers and used them in a manner would be consistent with the farming activities as outlined in his letter of 13<sup>th</sup> August 2010 to the Department. These activities clearly fall into the broader definition of agriculture which includes maintaining the land in good agricultural and environmental condition.*

It is clear in this appeal that although the farmer kept livestock intermittently, he was engaged in other farming activities.

#### Paragraph 5 and 6

Whilst there is no specification as to the level of activity over the 6 years in appeal 2012/A0241, it is clear that there was always some form of horticulture occurring to keep the business running.

#### Paragraph 7

Essentially this farm was active from 2007 – 2014 and then there was a period of 20 months where there was no activity. The business appears to have been 'reactivated' on 21/06/2016 when 3No. sheep were bought.

#### Paragraph 8

The letter notes that Mr Ryan did not keep livestock from October 2014 – June 2016 due to the applicants personal circumstances. It continues that this agricultural land was maintained in good condition. Regardless of this it is clear that there was no other farming activity during this period other than keeping livestock (albeit extremely limited numbers). No evidence or information of any other farming activity has been provided to cover this period.

#### Paragraph 9, 10 and 11

The reference provided by the agent P/2012/0854/O relates to the Quays Shopping Centre, Newry. I assume this is an error.

Regardless, the email correspondence included appears to relate to another planning application where, although no live stock was kept, the Council accepted the farmer was still 'active' through other farming activities.

#### Paragraph 12 and 13

The text here relates to siting and whilst the provisions of CTY 10 apply to Dwelling on Farms, I am not convinced that this application meets the principal of being considered as a 'farm dwelling'. I still consider the proposed site to represent build up.

#### Paragraph 14

The text notes that this proposal will consolidate an existing cluster. This is not the case. This would fall under Policy 2a which is not relevant to this proposal.

#### Conclusion

This application has been submitted for assessment as a dwelling required under CTY 6 – Personal Circumstances.

The processing has been significantly delayed as the nature of the application has fundamentally changed over the course of its assessment. The applicant now seeks permission for a dwelling under CTY 10 – Dwellings on Farms.

On considering all of the evidence presented, I am **not** convinced that:

- a) Genuine hardship would be caused if planning permission is refused under CTY 6; or
- b) That the applicant meets the criteria set out under CTY 10 for Dwellings on Farms as he has received a negative response from DARD and the business has not been **active** for the required period.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2014/0972/O

**Date Received:** 15<sup>th</sup> November 2014

**Proposal:** Site for dwelling (personal circumstances CTY 6)

**Location:** 15 Ryanstown Road, Newry

**Site Characteristics & Area Characteristics:**

The site consists of the rear garden of Number 15 Ryanstown Road, a detached single storey dwelling that is part of a group of 3 dwellings along the western side of the road. The site slopes sharply down away from the road, the presence of the dwelling and its associated detached garage means that the rear garden is not readily visible from the road. The garden is bounded by a post and wire fence however the adjacent garden, which is separated from it by a laneway, has a mature hedge along its boundary.

The site is located approximately 4 miles south east of Newry, it is situated on the eastern side of a valley above Greenan Lough. The area has experienced a significant degree of development pressure in the vicinity of the site in recent years with a number of dwellings having been constructed along both sides of Ryanstown Road. The Road itself is very narrow and does not experience significant traffic volumes.

Application seeks OPP for a dwelling and garage, a case of personal circumstances has been submitted.



Site located to the rear of No. 15 Ryanstown Road





#### Site History:

There is no relevant site history.

#### Planning Policies & Material Considerations:

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

#### Consultations:

Transport NI – initial consultation had a negative response but a revised site location map was submitted and the response dated 21/08/2015 has no objections subject to the details listed on the RS1 form

NI Water – No objections standard advice

Environmental Health Department – no objections

DARD - Countryside Management Compliance Branch – noted that the farm business ID on form P1C has not been in existence for more than 6 years and that there has been no single farm payments in the last 6 years.

### **Objections & Representations**

7No. neighbours notified 16/12/2014 and 30/09/2015. Initial advertisement 9/12/2014, re-advertisement 5/10/2015. No objections or representations received.

### **Consideration and Assessment:**

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

The SPPS states at Paragraph 3.8 that the “guiding principle for Planning Authorities in determining planning applications is that sustainable development should be permitted, having regard to the development Plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance”.

The SPPS states at Paragraph 6.73 that the following strategic policy must be taken into account in the determination of planning applications. A number of circumstances are listed and these include : A dwelling where there are personal and domestic circumstances. The text states ***“Provision should be made for a dwelling to meet the long term needs of a person where there are compelling and site specific reasons related to the persons personal or domestic circumstances, and where there are no alternative solutions to meet the particular circumstances of the case”***.

Under PPS 21, Policy CTY 1 Development in the Countryside, assesses the need for this proposal within the rural area. The policy notes that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

#### *Extract from previous Case Officer Report*

Cases relating to personal need are assessed under CTY 6

Policy CTY 6 Special Personal and Domestic Circumstances

"Planning permission will be granted for a dwelling in the countryside for the long term needs of the applicant, where there are compelling, and site specific reasons for this related to the applicant's personal or domestic circumstances and provided the following criteria are met:

(a) the applicant can provide satisfactory evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused; and

(b) there are no alternative solutions to meet the particular circumstances of the case, such as: an extension or annex attached to the existing dwelling; the conversion or reuse of another building within the curtilage of the property; or the use of a temporary mobile home for a limited period to deal with immediate short term circumstances.

All permissions granted under this policy will be subject to a condition restricting the occupation of the dwelling to a named individual and their dependents."

The personal circumstance in this case relate to a family member who is suffering from a degenerative illness, the proposed dwelling is intended to allow another member of the family to live on site to assist with the provision of care for this person. No information has been provided as to where this person currently lives or if alternative arrangements have been considered, the nature of the condition means that the level of care necessary will increase in the future. The site is located in a remote area accessed only by a minor road which may prove difficult in wintry conditions in case the carer needed to access the dwelling. In relation to criteria (a) the hardship in this case would appear to be that there is currently only one family member available to provide regular care, the other family member cannot always be there as she does not live in close proximity to the site.

#### ADDITIONAL

Fresh information about the personal circumstances was received following a request from the Council. The proposed occupant of the dwelling resides in Newry with her husband and son in Bankside and works in Warrenpoint, this is located several miles away to the north adjacent to the A25 Newry-Rathfriland Road. It is foreseen that there will need to be care provided on a long term basis, and given the carer's own family, this makes a mobile home impractical. The dwelling is sited on a restricted curtilage and is small scale and is therefore considered too small to upgrade to provide the required additional facilities or a granny flat annex.

However it is not considered that the circumstances presented represent a compelling justification for a new dwelling nor has it been satisfactorily demonstrated that all other alternatives have been considered and are not feasible.

#### End of extract

The Council has not been presented with evidence that a new dwelling is a necessary response the particular circumstances of Mr and Mrs Ryan and that genuine hardship would be caused if planning permission were refused.

I am not convinced that the applicant has explored all available options.

It is unclear whether a care package has been sought for Mrs Ryan that would assist in the daily care requirements.



There is no evidence that a property/alternative accommodation closer to No.15 Ryanstown Road could be sought for Mr and Mrs Ryans daughter and her family nearby.

There is no evidence to demonstrate conclusively that the only possible location for Mr and Mrs Ryans daughter to live is the application site. As Mr and Mrs Ryans daughter works during the day the level of care she is able to provide is limited to mornings and evenings.

It has been suggested that as Mr and Mr Ryans son-in-law works night shifts he could assist in care while he is at home during the day on his rest periods.

The applicant has continued to submit more and more information and has now fundamentally changed the type of planning application that has was originally submitted. This has resulted in significant delays in the processing of the application as several statutory consultees have been reconsulted. In trying to be helpful, the Planning Department has entered into discussion with the agent on the basis of a dwelling on a farm. This type of application is assessed under Policy CTY 10 of Planning Policy Statement 21. Under normal circumstances this fundamental change in the application submitted would not be entertained by the Planning Department but given the length of time the application has been in the system and the nature of the original application, an exception has been made.

### **Farm Dwelling under CTY 10**

DARD has been consulted and a negative response has been received in respect of both the active and established nature of the farm.

Recent PAC decisions acknowledge that there is no requirement to provide a business ID under CTY 10, but they have emphasised the need for an applicant to provide the farms DARD business ID number in order to demonstrate that the business is active and established. The PAC position appears to be that in the absence of a business ID number, a holding will not, in most cases, be regarded as an active and established farm holding.

The agent has submitted information to state that the farm business was formed on 7<sup>th</sup> March 2007 (which is over the 6 years required by CTY10). The business is registered as an 'unknown' category. The farm does not claim single farm payments therefore no maps have been issued to it. The letter dated 11/04/2016 states that whilst DARD distinguished between different categories of farm business, PPS 21 does not.

The information provided by the agent states that the farm business does not own any fields and that Mr Ryan has received subsidies in the past for farming Less Favoured Areas. These activities were all undertaken on third party lands. This is why DARD cannot provide maps of the land farmed by Mr Ryan as those maps

would be sent to the land owner. DARD has provided the agent information showing the applicants claim history - the form is blank because the Less Favoured Area claims were so long ago.

Whilst PPS 21 does not prescribe a 'minimum' level of agricultural activity the response by DARD does not confirm any established business. Mr Keith Johnston from DARD has confirmed by email that the business ID was set up in 2007 and that the business number is still valid. The reason for the 'No' response on the consultation is because the farm business activity was so limited and restricts the herd keeper to a very small number of livestock. The business cannot claim DARD support payments.

In the absence of SFP's from DARD, the agent has provided land registry maps. This is a method that has been accepted on other applications for farm dwellings.

Questions 2 and 3 on the P1C form confirm that there are "no sheep in the flock at present (but land maintained in good agricultural and environmental condition). Although SFP subsidies have been claimed, subsidies for Less Favoured Areas has claimed in the past".

From the herd book information submitted, it appears that Mr Ryan carried out some farming around 2007 - 2014. The 'Sheep Moved Out List 1/1/2000 – 28/7/2015 shows that 46No sheep were moved in an effort to demonstrate 'continuous active farming'. The first movement was 24/03/2007 and last sheep movement was 25/10/2014.

A movement document from DARD shows that 3No. sheep were bought by Mr Ryan on 21/06/2016.

This leaves a gap of almost 2 years where there was no farming activity.

The information submitted shows that a farm business was formed on 07/03/2007. It does not demonstrate that the business was continually active beyond this date.

The agent notes that the applicants farming credentials can be verified by DARD. Critically DARD has responded that the farm is not established and there have been no SFP's claimed in the last 6 years.

On the information submitted I do not accept that this is an active and established farm business. I understand that many years ago Mr Ryan took land in conacre and had a small flock of sheep.

I understand that no land is taken in conacre at present.

The final position from DARD is that (i) the farm business has not been in existence for more than six years (although I accept there is a farm business ID) and (ii) no single farm payment or other specified allowances have been claimed in the last six years.

The information provided is insufficient to persuade me that the farm business has been active for a continuous period of more than six years.

### **Siting/Integration**

PPS 21 – CTY 1 states that all proposals for development in the countryside must be sited and designed to integrate sympathetically and meet other planning and environmental considerations.

Policy CTY 14 assesses the impact this proposal will have on the rural character of the immediate area. There is a significant number of dwellings all in close proximity to one another and are all intervisible (Nos 11, 13 and 15). The development of the proposed site would create backland development. This is not a feature of the surrounding area and would result in suburban style build up.

### **Recommendation:**

The Council has not been presented with evidence that a new dwelling is a necessary response the particular circumstances of Mr and Mrs Ryan and that genuine hardship would be caused if planning permission were refused.

I consider the proposed site to be contrary to CTY 6, CTY 10 (no active and established farm) and CTY14 (rural character).

### **Refusal**

1. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY6 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not provided satisfactory long term evidence that a new dwelling is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused and it has not been demonstrated that there are no alternative solutions to meet the particular circumstances of this case.
2. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policies CTY1 and CTY10 of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the farm business is currently active and has been established for at least six years.



3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that

- the building would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings; and
- the building would, if permitted not respect the traditional pattern of settlement exhibited in that area;

and would therefore result in a detrimental change to further erode the rural character of the countryside.

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



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2014/0972/O

### **Addendum**

This addendum relates to the letter dated 21/10/2016 received from the applicant's agent.

The letter highlights a number of points raised in the case officer report.

This addendum is structured in the same way as the letter to easily cross reference the text.

Paragraph 1 and 2 –background information - no comment.

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The agent states that within PPS 21 there is no indication that the previous 6 years farming activity must be continuous. On the contrary, Criterion (a) of CTY 10 states "the farm business is currently active and has been established for at least 6 years". (underlining my emphasis)

It is clear from the information submitted during the processing of this application that at the time the application was made on 25/11/2014 the farm was not active. The farm remained inactive until 21/06/2016 when it became apparent (as the application was recommended as a refusal) that it would be necessary to show animal movements (3No. sheep were bought) thereby showing the farm to be 'active' once again.

Paragraph 5.38 of the amplification of CTY 10 states that in relation to the 'active and established' business "The applicant will therefore be required to prove the farms DARD business ID number along with other evidence to prove active farming over the required period".

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of CTY 10 requires the farm to be active over the required period. No information has been submitted to show that Mr Ryan undertook any farming activities during this time in the absence of livestock.

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*Paragraph 7. Although the appellant has not been involved in the keeping of livestock for a continuous period of six years his evidence demonstrates that he has been keeping livestock intermittently during that time and that there is an attendant vet. In addition he has purchased goods from local suppliers and used them in a manner would be consistent with the farming activities as outlined in his letter of 13<sup>th</sup> August 2010 to the Department. These activities clearly fall into the broader definition of agriculture which includes maintaining the land in good agricultural and environmental condition.*

It is clear in this appeal that although the farmer kept livestock intermittently, he was engaged in other farming activities.

#### Paragraph 5 and 6

Whilst there is no specification as to the level of activity over the 6 years in appeal 2012/A0241, it is clear that there was always some form of horticulture occurring to keep the business running.

#### Paragraph 7

Essentially this farm was active from 2007 – 2014 and then there was a period of 20 months where there was no activity. The business appears to have been 'reactivated' on 21/06/2016 when 3No. sheep were bought.

#### Paragraph 8

The letter notes that Mr Ryan did not keep livestock from October 2014 – June 2016 due to the applicants personal circumstances. It continues that this agricultural land was maintained in good condition. Regardless of this it is clear that there was no other farming activity during this period other than keeping livestock (albeit extremely limited numbers). No evidence or information of any other farming activity has been provided to cover this period.

#### Paragraph 9, 10 and 11

The reference provided by the agent P/2012/0854/O relates to the Quays Shopping Centre, Newry. I assume this is an error.

Regardless, the email correspondence included appears to relate to another planning application where, although no live stock was kept, the Council accepted the farmer was still 'active' through other farming activities.



#### Paragraph 12 and 13

The text here relates to siting and whilst the provisions of CTY 10 apply to Dwelling on Farms, I am not convinced that this application meets the principal of being considered as a 'farm dwelling'. I still consider the proposed site to represent build up.

#### Paragraph 14

The text notes that this proposal will consolidate an existing cluster. This is not the case. This would fall under Policy 2a which is not relevant to this proposal.

#### Conclusion

This application has been submitted for assessment as a dwelling required under CTY 6 – Personal Circumstances.

The processing has been significantly delayed as the nature of the application has fundamentally changed over the course of its assessment. The applicant now seeks permission for a dwelling under CTY 10 – Dwellings on Farms.

On considering all of the evidence presented, I am **not** convinced that:

- a) Genuine hardship would be caused if planning permission is refused under CTY 6; or
- b) That the applicant meets the criteria set out under CTY 10 for Dwellings on Farms as he has received a negative response from DARD and the business has not been **active** for the required period.

Newry, Mourne and Down Council  
Planning Department  
Monaghan Row  
Newry  
BT35 8DJ

16<sup>th</sup> November 2016

Dear Sir / Madam,

**Re: Planning Application: P/2014/0972/O**  
**Applicant Name: Edward Ryan**  
**Proposal: Site for dwelling**  
**Site Location: 15 Ryanstown Road Newry BT34 2NG**

1. The above planning application has been recommended for refusal and it is to be presented to the Council's planning committee on 23<sup>rd</sup> November 2016. I would be grateful if the Committee could take note of this request to speak in support of the applicant, and furthermore if it could give due consideration to the content of this submission in determining the application.
2. The justification for the approval of the application is based upon a combination of factors including a sound farming case and the applicant's compelling personal and domestic circumstances.
3. The application was previously recommended for refusal. A concern relating to roads safety has previously been overcome however other fundamental concerns remain.
4. I have provided significant pieces of additional information in recent times. At the outset, the Council was not satisfied that the proposal could be judged as a dwelling on a farm however this point was later conceded when other examples of this approach being taken were highlighted, and the Council also appears to have acknowledged that a farm map has not been issued to the applicant because he is not in receipt of Single Farm Payments.



**RTPI**  
Chartered Town Planner



5. Similarly, the Council originally refused to accept that the applicant's Farm Business ID was issued more than 6 years ago however this point was also conceded upon DARD's verification of same. Previously, the Council attached great weight on the small number of livestock on the farm, however there was a later acceptance that the level of farming activity is not an issue for consideration under PPS 21.
6. The critical issues now are the planning department's assessment that a farm business ID must be continuously active across the preceding six year period.
7. The planning report acknowledges that Mr Keith Johnston from DARD has confirmed by email that the business ID was set up in 2007 and that the business number is still valid. The reason for the "no" response on the consultation is because the farm business activity was so limited and because the category of ID number assigned to the applicant restricts the herd keeper to a very small number of livestock. The business cannot claim DARD support payments.
8. The Council has noted that at the date upon which a P1C form was issued, it was stated that there were no sheep in the flock at present.
9. In short, the Council now acknowledges that "Mr Ryan carried out some farming around 2007 - 2014. The Sheep Moved Out List 1/1/2000 - 28/7/2015 shows that 46No sheep were moved" in or out of the flock. This type of agricultural activity is consistent with Policy CTY 10 of PPS 21.
10. Contrary to the planning report, this information was not submitted to demonstrate continuous agricultural activity, but merely to show that there was some agricultural activity ongoing at the relevant dates.
11. The planning report acknowledges that "The first movement was 24/03/2007 and last sheep movement was 25/10/2014" while "A movement document from DARD shows that 3 No. sheep were bought by Mr Ryan on 21/06/2016". The report states that "This leaves a gap of almost 2 years where there was no farming activity." The actual gap in livestock movements was 20 months.
12. The planning report states that "The information submitted shows that a farm business was formed on 07/03/2007. It does not demonstrate that the business was continually active beyond this date". The fact that the word continually was underlined in the





- planning report confirms that a test was applied in the assessment of this application that is not actually set out in the policy.
13. The planning report stated that the “agent notes that the applicants farming credentials can be verified by DARD. Critically DARD has responded that the farm is not established”. This statement is factually incorrect, given DARD confirmed in an email that the Business ID was established more than 6 years ago.
  14. The case officer recorded her understanding that many years ago Mr Ryan took land in conacre and had a small flock of sheep. She then highlighted her understanding that no land is taken in conacre at present, however that is not a determining factor.
  15. The planning report records that the “final position from DARD is that (i) the farm business has not been in existence for more than six years (although I accept there is a farm business ID) and (ii) no single farm payment or other specified allowances have been claimed in the last six years. The information provided is insufficient to persuade me that the farm business has been active for a continuous period of more than six years”.
  16. The planning officer accepted that there is a Business ID and DARD verified that this ID number has been established for more than 6 years, but yet the Council fail to accept that the farm business is established and that it is currently active. The absence of Single Farm Payment is not determining, and it is of greater importance that the applicant has shown movements of sheep dating back 9 years to the present day, albeit with a 20 month gap. This gap ought not to be given determining weight owing to the fact that this was during the period when the applicant’s wife was undergoing treatment and he had no help on the farm.
  17. Additionally, a reasonable person would recognise that the land has been managed in good agricultural and environmental condition, which is of itself recognised as active farming.
  18. My key concern is the Council’s reference to a continuous period of 6 years’ active farming, because this is not a requirement that is set out or even alluded to in Policy CTY 10 of PPS 21.



**RTPI**  
Chartered Town Planners



19. I addressed this issue in a recent paper to the Council, and this was appraised in an Addendum to the most recent planning report. This Addendum again relies upon a nonexistent requirement to farm continuously for six years, notwithstanding that the policy simply states that a farm business must be active and established.
20. In the addendum, the planning offer recorded that Criterion (a) of CTY 10 requires the farm business to be currently active and that it must have been established for at least 6 years. The laying out of this sentence confirms that there are two particular tests to be applied: one to ensure the business is established, and one to show the business is currently active.
21. Unfairly and unreasonably, the Addendum then proceeded by emphasising the fact that at the date upon which the application was submitted “the farm was not active”. However, the application is now over two years old and it is currently active.
22. The Addendum indicates that the farm was not active when the application was submitted. However, had the case officer’s actual photographs showing the site inspection been included in the planning report (as opposed to Google Streetview images) these would have shown that the land was clearly maintained in good agricultural and environmental condition at that time (and it is clear even from the images provided in the current planning report that the land was maintained in good agricultural and environmental condition throughout). It is also important to note that the Business is actually more than 9 years old, although the previous grants issued were so far back that details of same could not be obtained now.
23. The Addendum acknowledges that “The Council do not dispute that the applicant was an active farmer from around 2007 until 25<sup>th</sup> October 2014”. Given the business is currently active, this should have been sufficient.
24. This application was made in November 2014, whereas the last sheep was purportedly moved out on 25<sup>th</sup> October 2014. At that time, the gap was but a mere calendar month and notwithstanding that there followed a 20 month period within which no sheep were kept on the farm, this situation cannot reasonably be regarded as one whereby a farm business ceased and then became re-active.



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25. At the foot of the Addendum's opening page, the Council again refused to accept my assertion that the Policy does not require the farming activity to be continuous, despite earlier acknowledging the separate requirements to be currently active and established.
26. In my most recent submission to the Council I drew the case officer's attention to the case of planning appeal 2012/A0241, wherein it was determined that "whilst Policy CTY10 requires that the business be currently active and established for 6 years, I do not agree with the suggestion this implies that there be a continuous and consistent level of activity over the requisite period of time. There is no specification of the level of activity that should take place within the policy". Based upon the limited evidence available in relation to that case, the Council would appear to have acted with undue haste in asserting that "it is clear that there has always been some form of horticulture occurring to keep the business running".
27. The Council has indicated that this Business was "reactivated" when an additional 3 sheep were acquired after an earlier break of 20 months within which no livestock were kept on the farm. Just as a particular land use would not normally expect to be regarded as having been abandoned after a period of non use of 20 months, this Farm Business cannot be presumed to have been abandoned after such a short time, when it had traded continually throughout the preceding 7 years.
28. In my recent correspondence I provided details of a similar approach being taken to another application in this locality. Unfortunately I provided an incorrect reference, and the correct reference should have been P/2014/0854/O. The Council assumed that in that case active farming was demonstrated through provision of proof of other activities. However, I have no recollection of the provision of any such information and I can verify that there was in fact a small gap in the keeping of livestock on that farm. Given the issue was not determining in that case, it should not undermine this proposal's prospects.

#### **Rural Character**

29. It has been said that the proposal would result in "backland development". This term is more commonly associated with development in urban areas, and it is referred to in Development Control Advice Note 8 Housing in Existing Urban Areas. The term is not referred to in PPS 21, and while the term "tandem development" was referred to in the PSRNI document that PPS 21 superseded, that term was used in the context of Policy



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DES 2, which related to development in settlements. In short, even if this was considered "backland development" this is not highlighted within PPS 21 as being an unacceptable trait. In any case, the key consideration here is that the proposal is siting so as to visually link and cluster with an established group of buildings on the farm. This consideration ought to have outweighed any purported shortcomings in terms of Policy CTY 14 although the Council's recent Addendum indicates that the proposal still represents a suburban style pattern of settlement.

30. In concluding, I hope the Council agrees that this submission provides the appropriate justification for the approval of this planning application however in the event that any further information is required, please do not hesitate to contact the applicant, his agent or the undersigned.

Yours faithfully,



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



**RTPI**  
Chartered Town Planner



### Policy CTY 10 – Dwellings on Farms

Planning permission will be granted for a dwelling house on a farm where all of the following criteria can be met:

- (a) the farm business is currently active and has been established for at least 6 years;
- (b) no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. This provision will only apply from 25 November 2008; and
- (c) the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane. Exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm, and where there are either:
  - demonstrable health and safety reasons; or
  - verifiable plans to expand the farm business at the existing building group(s).

In such circumstances the proposed site must also meet the requirements of CTY 13(a-f), CTY 14 and CTY 16.

Planning permission granted under this policy will only be forthcoming once every 10 years.

A proposal for a dwelling by those involved in the keeping and breeding of horses for commercial purposes will also be assessed under the criteria set out in this policy.

#### Justification and Amplification

Extract from Policy CTY 10 of PPS 21, confirming the absence of the word “continuous” from criteria a, which is important since this is the key shortcoming identified in the planning report.



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## APPENDIX 1

PAC Decision 2012/A0241

Perusal of this document confirms the absence of any conclusive evidence to show that horticultural activities were continually undertaken on the site for 6 years.

It is also clear that the Department considered that the site formed part of the Appellant's garden centre business and therefore did not fall under horticultural use at all.

A key extract from that determination was that "Whilst these applications in themselves are not demonstrative of there being a horticultural business on the site over the requisite period and I accept that the Department changed its opinion in relation to criterion (a) since X/2010/0409/O, the consistency of approach through submission of the applications adds minor weight to the Appellant's case that horticultural activity was ongoing on the site for some time". I have deliberately underlined the words some time, to rebut the Council's assertion that there had "always" been horticultural activity being undertaken at that site.

While one witness did indicate that the site had been in constant use for a nursery, the PAC were satisfied that the appellant's horticultural activities had been taking place on the site for over 6 years, even though at times at a low level of activity. Whilst Policy CTY10 requires that the business be currently active and established for 6 years, the Commissioner categorically ruled out the suggestion this implies that there be a continuous and consistent level of activity over the requisite period of time.



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## APPENDIX 2

Extract from Newry, Mourne and Down Council's assessment of planning application P/2014/0854/O

Additional information recieved on May 19th in response to a request by the Department contains a list of all movements in and out of the herd since records began in 1998, it shows that movements occurred in every year following 1998 until 2012, it is stated that the farmer experienced health problems in 2012-13 and therefore there were no animals in the herd. However it has been reestablished since 2013. details of sorders of supplies for agricultural products in 2014-15 have also been submitted.

This extract from the planning report indicated that the farm business was re-established in 2013, and that details of orders for supplies for 2014-2015 were also submitted. Critically, these orders did not cover the period 2012-2013, within which there were no livestock movements. Accordingly, this extract proves that, contrary to the Council's current rationale for taking no cognisance of its own earlier decision, there was in fact no alternative evidence provided to demonstrate that the farm was active in the brief period within which no livestock were kept.



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**ITEM NO** D1  
**APPLIC NO** P/2013/0349/F Full **DATE VALID** 5/2/13  
**COUNCIL OPINION** REFUSAL  
**APPLICANT** Mr Cannice Mc Keown 16 **AGENT** Bernard Dowdall  
 Lisgarvagy Architect 04  
 Lislea Shorts Court  
 Newry 71 Clanbrasil St  
 BT35 9J7 Dundalk  
 Co. Louth  
 00353 87 6657148

**LOCATION** 35m East of 23 Lissaraw Road Camlough Newry BT35 7HL

**PROPOSAL** One single storey dwelling house and associate domestic garage with new vehicular access + all assoc. Site works

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

- The proposal is contrary to the SPPS, Policy CTY 1 and CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not represent a gap site within a substantial and built up frontage that respects the existing development pattern along the frontage in terms of siting and plot size.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference: P/2013/0349/F**

**Amended plans Date Received: 02.05.2013**

**Proposal: One single storey dwelling house and associate domestic garage with new vehicular access + all assoc. Site works**

**Location: 35m East of 23 Lissaraw Road Camlough Newry BT35 7HL**

**Consultations**

**EH- see below**

**TransportNI- no objection sub to cons**

**NIW- statutory**

**No objections or representations received.**

**Addendum to case officer report- council meeting date: Thursday 10<sup>th</sup> Oct 2013**

Application previously considered and grouped by the Department and presented to the council with the opinion to refuse, see report attached to file.

The application was refused on PPS 1- Amenity as the proposed site is located within 75 m of a working farm and would give rise to issues of on noise and odour as stated in Environmental Health's consultation response.

The application was held for 5 days following the meeting. A letter was lodged by the applicant's uncle received by the Department on the 18<sup>th</sup> Oct 2013. The letter stated that the applicant Canice is employed and assists on the farm and that the land was given by him some time ago so that his nephew Canice could live on the farm.

Given the relationship between the applicant and the owner of the neighbouring farm and that the comments from EH are solely recommendations, it is considered that any issues of amenity arising from noise and odour will be resolved between the applicant and his uncle.

The proposal was previously considered by the case officer as a gap site- see DC Report. It is noted that the case officer has a re-assessment on file following the



council meeting on the submission of information sent in on the 16/10/13 and 17/10/13. This re-assessment is a change in opinion and states that as P/2009/0354/F has been implemented, an infill opportunity does not exist given potential private amenity and access issues. It also states that the proposal is contrary to CTY 8 in that the plot size and siting is not in keeping with the existing settlement pattern. This opinion was discussed and the Snr Officer at the time had stated that it is unlikely that there is sufficient space to construct the current proposal given the developments that have begun. Enforcement was to be informed as the access to the dwelling to the rear of the site has not been constructed in accordance with the approved plans.

There are a number of issues regarding the overlapping of neighbouring sites. Planning approvals; P/2007/1349/F (applicant's uncle) to the west of the application site and P/2009/0354/F (applicant's) to the north and rear of the application have accesses which overlap each other and in turn cross over the proposed access under consideration. The agent has stated that issues regarding the access to his previous approval and his uncles site can be dealt with through a subsequent application. It must be noted at this stage that the access arrangements and splays for both sites which were part of a pre-commencement condition have not been enacted. This is a separate matter to be resolved by the applicants. It has also been noted that part of the site approved under P/2007/1349/F, has been included within the proposed application site. The applicant has stated within the P1 form that he is in ownership and control of all lands outlined in red, this has not been disputed.

Although there appears to be issues with the commencement of the previous approvals on site, the council must consider the proposal with respect to such approved development. To the north of the site previous issues raised with regards to the private amenity between the two sites, I feel could be resolved through a proposed landscaping plan given the separation distance between the units. As stated there has been no dwelling constructed to the rear and with concerns regarding commencement it is considered unreasonable to consider this approval as accompanying development to the rear.

The proposed site is to have a frontage of 19.5 metres. This frontage consumes most of the frontage of the previous approval P/2007/1349/F leaving a frontage of 7 metres. The existing dwelling to the left no. 25 has a frontage of 88m, the agricultural sheds to the right have a frontage of 59 metres and the dwelling and outbuildings beyond the agricultural sheds have a frontage of 47 metres. Given the existing plot sizes it is felt that the proposed site does not respect the existing development pattern along the road frontage in terms of plot size. The dwelling is to be sited approx. 50 metres back from the roadside, the dwelling to the left no. 25 sits 15 metres and the agricultural sheds and dwelling sit 15-16 metres away from the road edge. The proposed siting at 50 metres back from the roadside does not respect the existing dwelling pattern in terms of siting. Having considered all of the above and the extend of the red line, I do not accept that a gap exists within an otherwise substantial and continuously built up frontage that respects the existing development pattern along the frontage in terms of size, siting and plot size.

Refusal- SPPS and CTY 1& CTY 8 of PPS 21

The proposal is contrary to the SPPS, Policy CTY 1 and CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not represent a gap site within a substantial and built up frontage that respects the existing development pattern along the frontage in terms of siting and plot size.

.....

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Newry, Mourne and Down Council  
Planning Department  
O'Hagan House  
Monaghan Row  
Newry  
BT35 8DJ

16<sup>th</sup> November 2016

Dear Sir / Madam,

**Your Reference:** P/2013/0349/F  
**Proposal:** Erection of dwelling  
**Location:** 35m East of 23 Lisseraw Road, Camlough

1. The above planning application has been recommended for refusal and it is to be discussed at the Council's planning committee meeting on 23<sup>rd</sup> November 2016. I am hereby requesting permission to speak on behalf of the applicant at the said meeting, and I would be grateful if the Committee would take account of this submission in its consideration of the proposal.
2. At the outset, I wish to point out that I recently attended a meeting with two planning officers, to discuss the case. It was agreed at the meeting that the officials would revert to me with feedback on a number of points I raised at the meeting. There was an understanding that this would occur before the application proceeded to a recommendation in order to enable me to respond in writing to any issues as may have arisen. On 31<sup>st</sup> October 2016 I issued a brief paper to the Council, however this was intended to deal with a solitary issue and not all of the issues identified by the planning officials at the said meeting. It is a matter of regret that I did not receive a formal response prior to this application being scheduled for refusal at the forthcoming Committee meeting.
3. By way of background, this application has previously been recommended for refusal. At that time, the corporate opinion of the planning authority had been that this site did in fact constitute a small gap, for the purposes of Policy CTY 8 of PPS 21, however the critical issue was this dwelling's position relative to nearby farm buildings (it was deemed that the dwelling would suffer an unreasonably low amenity level,



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- notwithstanding that farm dwellings are expected to be situated beside agricultural buildings. Although this application was not submitted as a farm dwelling, it was pointed out that since the applicant was engaged in agricultural operations on his uncle's farm, he would not suffer diminished amenity levels. It was also pointed out that another dwelling had previously been approved in closer proximity to the farm buildings than this proposal, hence this proposed dwelling would not suffer from poor amenity levels).
4. It is pertinent that even when the application was previously recommended for refusal, under the provisions of PPS 1, the Council's Environmental Health Department did not recommend refusal. In that respect, I find it peculiar that the previous planning report has been removed from the planning portal, notwithstanding that the current report sets out the Council's present position on the relevant matters.
  5. Until relatively recently, the applicant was advised that although the previous refusal reason had been addressed and overcome, given the verification of the applicant's status within his uncle's farm business, the proposal was now unacceptable due to the presence of "accompanying development to the rear" of this site (i.e. foundations that have been laid to another approved site belonging to the applicant). It was due to this concern that the recent submission was issued (setting out my understanding of the relevance of "accompanying development to the rear"). However, the applicant was advised in a recent telephone call that the application was now being recommended for refusal, not owing to amenity concerns as originally stated, nor due to the purported presence of accompanying development to the rear (as had most recently been stated) but for a different reason altogether. In that context, it was unreasonable to refuse the application without reverting to the applicant as had originally been agreed.
  6. Other concerns emerged in relation to the issue of accesses overlapping (to this site, the approved site to the rear and the approved site to the side). However, this issue ought not to have been determining because if this proposal overlapped any of the previous approvals it would be the only one that can lawfully be progressed since subsequent revisions to the accesses to the other two sites would require fresh approvals.
  7. The current planning report indicates that a senior planning Officer had stated (in October 2013, when the application was discussed at an internal meeting) that it is unlikely that there is sufficient space to construct the current proposal given the developments that have begun. As mentioned above, that conclusion was unjustified because if this proposal overrode an earlier approval, then it is the previous approval



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that cannot lawfully be completed, irrespective of whether or not it has commenced. If either of the earlier approvals had to be modified to take account of this proposal, the Council had the power to refuse permission for either of those schemes, if in fact such were necessary, however it was unreasonable to refuse this proposal on the grounds that it might jeopardise an applicant's ability to complete other approved development. In short, this application ought to have been determined on the basis of its own merits.

8. The present planning report indicates that "there are a number of issues regarding the overlapping of neighbouring sites. Planning approvals; P/2007/1349/F (applicant's uncle) to the west of the application site and P/2009/0354/F (applicant's) to the north and rear of the application have accesses which overlap each other and in turn cross over the proposed access under consideration. The agent has stated that issues regarding the access to his previous approval and his uncle's site can be dealt with through a subsequent application. It must be noted at this stage that the access arrangements and splays for both sites which were part of a pre-commencement condition have not been enacted. This is a separate matter to be resolved by the applicants".
9. On the one hand, the report indicates that the Council has "issues" regarding overlapping accesses (with previous approvals) and yet it continues by emphasising "that the access arrangements and splays for both sites which were part of a pre-commencement condition have not been enacted". The inference here is that the previous permissions have not been lawfully commenced. On that basis, the Council's "issues" regarding overlapping sites ought not to unduly influence the outcome of this planning application. Indeed, the planning report acknowledges that the issue of commencement "is a separate matter to be resolved by the applicants".
10. The current refusal recommendation has placed an inordinately high emphasis upon the width of the plot of the proposed site whereas the policy headnote to Policy CTY 8 makes absolutely no mention of plot width and there is no assumed test therein relating to plot width alone. Rather, the facts that are required to be considered, cumulatively, are size, scale, siting and plot size.
11. Building on Tradition was published as supplementary guidance to PPS 21. While it is not an operational planning policy, it is material to the determination of individual planning applications and appeals. Although the document has not been specifically referred to in the current planning report, it is assumed that the reference to plot width has been





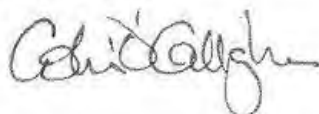
- derived from Building on Tradition's guidance. However, Building on Tradition cannot be relied upon as if it were a planning policy, and there is no justification for relying upon Building on Tradition's design principles as if it contained a set of rules with singular meanings.
12. On Page 71 of Building on Tradition, a series of design principles have been set out to deal with the issue of gap sites. This states, inter alia, that:
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
  - When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots
  - Sometimes ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
  - A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.
13. In relation to the first bullet point set out above, it is important to recognise that the policy does not state that where the gap frontage is longer than the average ribbon plot, the gap will be unsuitable for infill – it only indicates that it may be unsuitable. Likewise, the guidance does not state that a gap can only be infilled with one or two houses if the average frontage of the new plot(s) equates to the average plot width in the existing ribbon (this is relevant to Point 4). Clearly, there will be other instances where a gap can be infilled if the average plot does not equate to the average plot width in the existing ribbon. Furthermore, the word "equates" cannot, in this context, be interpreted as if it means that the new plot width must precisely equate with this figure. Clearly, this will be a matter of discretion, with a judgement to be applied on a case by case basis. Similarly, where there is no consistent building set back, this does not automatically mean that a new dwelling will not be approved.
14. It has been stated that the proposed siting (at 50 metres back from the roadside) does not respect the existing development pattern in terms of siting. However, there is a clear opportunity to move the dwelling forward on the site, if necessary, and doing so would not unduly prejudice the potential amenity afforded to prospective occupants of the adjacent approved site (which the Council has indicated cannot be completed because of the purported failure to comply with a pre commencement condition).





15. In concluding, I would point out that at one point in time recently, the Council is reported to have indicated to the applicant that he could have one dwelling or the other – this proposal, or the previously approved dwelling to the rear. If such an offer is still available, the applicant has indicated that he would be content to pursue this application and to foresake the previous approval.
16. In light of the forgoing, the Committee is respectfully requested to approve this development. Notwithstanding, in the event that there are any site specific queries, or further information is required, please do not hesitate to contact the applicant, his agent or the undersigned.

Yours faithfully,



.....  
**Colin O'Callaghan**  
Chartered Town Planner  
Bsc Hons Dip TP MRTPI



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

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### 1. Live Applications

MONTH 2016	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April	138	1,389	436
May	121	1,335	455
June	162	1,178	418
July	106	1,147	425
August	131	1,089	405
September	133	1,048	394
October	132	1,026	392

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

Month 2016	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April	583	370	222	66	148	<b>1,389</b>
May	549	331	222	86	147	<b>1,335</b>
June	511	249	195	77	146	<b>1,178</b>
July	501	221	196	78	151	<b>1,147</b>
August	480	204	162	99	144	<b>1,089</b>
September	472	182	150	97	147	<b>1,048</b>
October	462	172	135	103	154	<b>1,026</b>

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

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### 3. Live applications per Case Officer

Month 2016	Average number of Applications per Case Officer
April	58
May	56
June	47
July	46
August	44
September	40
October	41

### 4. Decisions issued per month

Month 2016	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	168	163
May	174	169
June	298	273
July	141	114
August	180	162
September	160	140
October	145	122

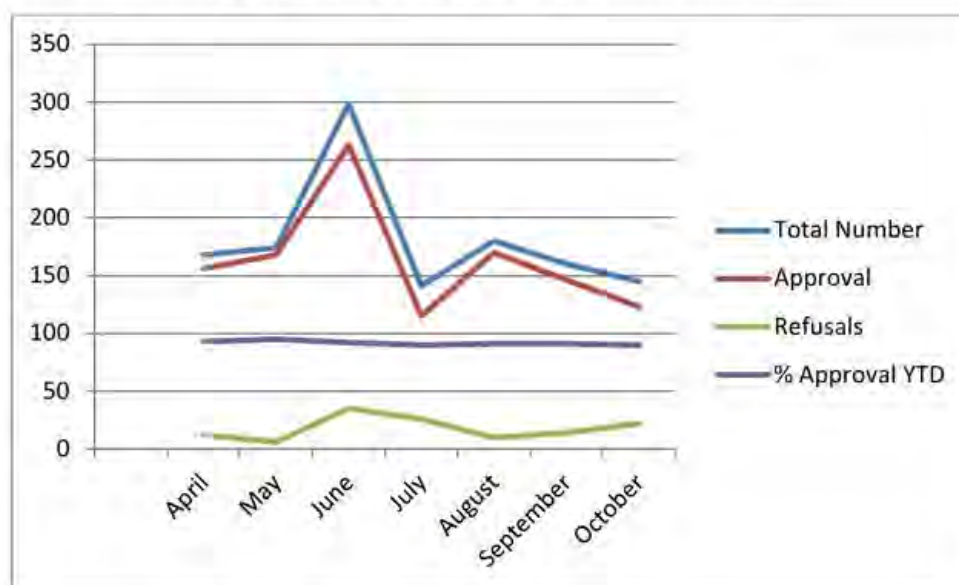


## Newry, Mourne & Down District Council – October 2016

### 5. Decisions Issued YTD

Month 2016	Number of Decisions Issued	Average processing Time	Breakdown of Decisions	
			Approvals	Refusals
April	168	35.52 weeks	Approvals (156)	93%
			Refusals (12)	7%
May	342	33 weeks	Approvals (324)	95%
			Refusals (18)	5%
June	640	34 weeks	Approvals (587)	92%
			Refusals (53)	8%
July	781	33.4 weeks	Approvals (702)	90%
			Refusals (79)	10%
August	961	37.67	Approvals (872)	91%
			Refusals (89)	9%
September	1,121	37.67	Approvals (1018)	91%
			Refusals (103)	9%
October	1,266	31.79	Approvals (1141)	90%
			Refusals (125)	10%

DECISIONS ISSUED FROM 1 April 2016 to 31 October 2016



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

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### 6. Enforcement

#### Live cases

Month 2016	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+ yrs	Total
April	185	119	97	56	23	78	558
May	190	113	101	58	24	77	563
June	217	119	104	56	27	79	602
July	220	117	94	64	28	77	600
August	231	125	87	72	32	75	622
September	240	129	86	83	35	77	650
October	248	129	90	84	34	80	665

### 7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/Deferred for future meeting
13 April 2016	14	11	3
27 April 2016	10	5	5
11 May 2016	15	13	2
26 May 2016	17	12	5
8 June 2016	13	9	4
29 June 2016	35	25	10
6 July 2016	22	9	13*
3 August 2016	27	14	13
10 August 2016	4	2	2
31 August 2016	12	10	2
28 Sept & 5 Oct 2016	59	31	28
26 October 2016	30	21	9
<b>Totals</b>	<b>258</b>	<b>162</b>	<b>96</b>

\*2 Applications called in by DfI

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

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### 8. Appeals

#### Planning Appeal Commission Decisions issued during October 2016

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Other decisions
Newry & Mourne	18	5	2	2	1*
Down	5	1	0	1	0
<b>TOTAL</b>	<b>23</b>	<b>6</b>	<b>2</b>	<b>3</b>	<b>1</b>

\*Enforcement Notice Terms varied

### 9. Statutory Targets Performance Data

#### Statutory targets monthly update to April to September 2016

(unvalidated management information)

Newry, Mourne and

Down

	Major applications (target of 30 weeks)			Local applications (target of 15 weeks)			Cases concluded (target of 39 weeks)		
	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 30 weeks	Number decided / withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 15 weeks	Number brought to conclusion <sup>3</sup>	"70%" conclusion time <sup>3</sup>	% of cases concluded within 39 weeks
April	3	42.6	33.3%	164	31.0	18.9%	13	37.2	69.2%
May	2	149.3	0.0%	168	25.5	23.8%	31	92.5	45.2%
June	4	68.9	0.0%	285	27.0	22.5%	2	0.0	0.0%
July	1	159.2	0.0%	133	22.4	36.8%	25	83.4	44.0%
Aug	3	90.0	0.0%	173	19.4	42.8%	-	0.0	0.0%
Sept	6	163.4	0.0%	158	19.5	42.4%	7	42.0	71.4%
Oct	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Nov	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Dec	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Jan	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Feb	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Mar	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
<b>Year to date</b>	<b>19</b>	<b>121.4</b>	<b>5.3%</b>	<b>1,086</b>	<b>25.0</b>	<b>30.0%</b>	<b>79</b>	<b>65.6</b>	<b>50.6%</b>

Source: NI Planning Portal



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

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### Note

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

## Current Appeals

361

**AUTHORITY** Newry, Mourne and Down

**ITEM NO** 1  
**Planning Ref:** P/2014/0303/O **PAC Ref:** 2016/A0005  
**APPELLANT** Michael Horner  
**LOCATION** Adjacent To And North Of 36 Belmont Road  
 Kilkeel  
 Newry  
**PROPOSAL** Erection of Infill Dwelling and Detached Garage

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

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**ITEM NO** 2  
**Planning Ref:** P/2014/0853/F **PAC Ref:** 2016/A0041  
**APPELLANT** S Meade  
**LOCATION** To The Immediate North And East Of 16 Rostrevor Road  
 Hilltown.  
**PROPOSAL** Retention of two light industrial units, erection of three light industrial units.

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Informal Hearing** **Date Appeal Lodged** 01/07/2016  
**Date of Hearing** 16/09/2016  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

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## Current Appeals

362

**ITEM NO** 3  
**Planning Ref:** P/2015/0121/O **PAC Ref:** 2016/A0058  
**APPELLANT** Mr O Slane  
**LOCATION** Land 30m North West Of 1 Tullyet Road  
 Newtownhamilton  
**PROPOSAL** Proposed site for infill dwelling and detached garage.

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

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**ITEM NO** 4  
**Planning Ref:** P/2015/0210/F **PAC Ref:** 2016/A0063  
**APPELLANT** Mr Brendan McNamee  
**LOCATION** Immediately North East And Opposite No.62  
 Carran Rd  
 Crossmanlen  
**PROPOSAL** Retention of metal fence, gates, granite piers and granite kerbs to front  
 boundary of property

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

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## Current Appeals

363

<b>ITEM NO</b>	<b>5</b>		
<b>Planning Ref:</b>	LA07/2015/0286/C	<b>PAC Ref:</b>	2016/A0066
<b>APPELLANT LOCATION</b>	Ms Edel Rooney Site Approximately 20 Metres South West Of 10 Head Road Moyad		
<b>PROPOSAL</b>	Annalonn Site for dwelling with detached garage (gap site)		

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

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<b>ITEM NO</b>	<b>6</b>		
<b>Planning Ref:</b>	LA07/2015/0292/C	<b>PAC Ref:</b>	2016/A0071
<b>APPELLANT LOCATION</b>	Mr Thomas W Meaney 40m North West Of 55 Magheralone Road Ballynahinch		
<b>PROPOSAL</b>	Proposed new infill dwelling and garage		

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

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## Current Appeals

364

**ITEM NO** 7  
**Planning Ref:** P/2015/0236/F **PAC Ref:** 2016/A0073  
**APPELLANT** Mr Francis McGuinness  
**LOCATION** Lands To The Rear Of No 41 Newtown Road  
 Killeen  
**PROPOSAL** <sup>Newrv</sup>  
 Extension to existing dwelling curtilage and erection of domestic  
 garage.

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

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**ITEM NO** 8  
**Planning Ref:** P/2015/0221/F **PAC Ref:** 2016/A0074  
**APPELLANT** Mr Francis McGuinness  
**LOCATION** Adjacent And South Of No 41 Newtown Road  
 Killeen  
**PROPOSAL** <sup>Newrv</sup>  
 Erection of Vehicle Maintenance Shed and retention of existing yard for  
 the storage of vehicles.

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

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## Current Appeals

365

<b>ITEM NO</b>	<b>9</b>		
<b>Planning Ref:</b>	P/2014/1049/O	<b>PAC Ref:</b>	2016/A0077
<b>APPELLANT LOCATION</b>	Tracy McKenzie Adjacent And N Of No.9A Corcreechy Road Newry BT34 1LR		

**PROPOSAL** Site for dwelling and garage (infill)

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

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<b>ITEM NO</b>	<b>10</b>		
<b>Planning Ref:</b>	LA07/2015/0342/C	<b>PAC Ref:</b>	2016/A0084
<b>APPELLANT LOCATION</b>	Patsy Malone Approximately 110 Metres North East Of 151 Ballydugan Road Downpatrick		
<b>PROPOSAL</b>	Replacement dwelling		

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

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### Current Appeals

**ITEM NO** 11  
**Planning Ref:** LA07/2015/0542/F **PAC Ref:** 2016/A0094  
**APPELLANT** Mr R L Annett  
**LOCATION** 150 Metres Southwest Of No 20 Council Road  
 Kilkeel  
**PROPOSAL** RT34 ANP  
 Agricultural Building, yard and access from Council Road

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 09/08/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 12  
**Planning Ref:** LA07/2016/0556/C **PAC Ref:** 2016/A0095  
**APPELLANT** J & J McKibbin  
**LOCATION** 40m Southeast Of 181 Moyad Road  
 Kilkeel  
**PROPOSAL** RT34 AH1  
 Site for dwelling and garage

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 10/08/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

## Current Appeals

367

<b>ITEM NO</b>	<b>13</b>		
<b>Planning Ref:</b>	LA07/2015/0455/F	<b>PAC Ref:</b>	2016/A0106
<b>APPELLANT LOCATION</b>	Fergal O'Hanlon 15 Kearney Crescent Whitecross		
<b>PROPOSAL</b>	<sup>Armagh</sup> Retention of part boundary walls piers and railings		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>22/08/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>14</b>		
<b>Planning Ref:</b>	LA07/2015/0921/C	<b>PAC Ref:</b>	2016/A0107
<b>APPELLANT LOCATION</b>	Noel McLoughlin Adjacent And Immediately South Of No 5 Greenan Lough Road And Fronting Mullavat Road		
<b>PROPOSAL</b>	<sup>Newry</sup> Dwelling and domestic garage on gap site		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>24/08/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

368

<b>ITEM NO</b>	<b>15</b>		
<b>Planning Ref:</b>	LA07/2015/1246/C	<b>PAC Ref:</b>	2016/A0112
<b>APPELLANT</b>	Terence J O'Hare		
<b>LOCATION</b>	60m North West Of No 25 Church Rock Road Carrickbracken		
<b>PROPOSAL</b>	Camrouh Replacement dwelling and garage on farm land		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>31/08/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>16</b>		
<b>Planning Ref:</b>	LA07/2015/0546/F	<b>PAC Ref:</b>	2016/A0118
<b>APPELLANT</b>	Jane Magee		
<b>LOCATION</b>	Approx 70m South East 71 Ardglass Road Ballyhornan		
<b>PROPOSAL</b>	Downpatrick Retention of building with alterations to be used as farm shed and animal handling facility in substitution for agricultural building granted permission under R/2007/1021/F. (additional information)		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>13/09/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

369

**ITEM NO** 17  
**Planning Ref:** LA07/2015/1109/F **PAC Ref:** 2016/A0125  
**APPELLANT** Noel Mckinely  
**LOCATION** Adjacent To No.24 And Opposite Nos 19 And 20 Tudor Mews  
 Upper Dromore Road  
 Warrenpoint  
**PROPOSAL** Proposed 2 No. Apartments

**APPEAL TYPE** Plg Refusal: permissions

**Appeal Procedure**

**Date Appeal Lodged**

**Date of Hearing**

**Date Statement of Case Due for Hearing**

**Date Statement of Case Due - Written Representation**

**Date of Site Visit**

**ITEM NO** 18  
**Planning Ref:** R/2014/0576/F **PAC Ref:** 2016/A0127  
**APPELLANT** Mr D Orr  
**LOCATION** West Of 109 Barnamaghery Road  
 Crossgar  
**PROPOSAL** Erection of wintering shed for livestock and retention of existing fodder  
 storage shed on part foundation of original shed on site.

**APPEAL TYPE** Plg Refusal: permissions

**Appeal Procedure**

**Date Appeal Lodged**

22/09/2016

**Date of Hearing**

**Date Statement of Case Due for Hearing**

**Date Statement of Case Due - Written Representation**

**Date of Site Visit**

## Current Appeals

370

<b>ITEM NO</b>	<b>19</b>		
<b>Planning Ref:</b>	LA07/2015/0969/C	<b>PAC Ref:</b>	2016/A0129
<b>APPELLANT</b>	Liam McDonnell		
<b>LOCATION</b>	Approx 50m South East Of No 41a Aughnagun Road Derryleckagh Newry Co. Down		
<b>PROPOSAL</b>	Dwelling and Garage on infill site		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>28/09/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>20</b>		
<b>Planning Ref:</b>	P/2014/0649/O	<b>PAC Ref:</b>	2016/A0135
<b>APPELLANT</b>	Mr Joseph Walls		
<b>LOCATION</b>	60 Metres East Of No.20 Sandbank Road Hilltown County Down BT34 5XU		
<b>PROPOSAL</b>	Site for Farm Dwelling (amended address)		

<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>13/10/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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### Current Appeals

371

**ITEM NO** 21  
**Planning Ref:** P/2014/0678/F **PAC Ref:** 2016/A0139  
**APPELLANT** Mr Frank King  
**LOCATION** 33a Flagstaff Road  
 Fathom Lower  
**PROPOSAL** <sup>Newry</sup> Retention of existing fuel sales business to include existing hard standing area and portacabin

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 17/10/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**

**ITEM NO** 22  
**Planning Ref:** P/2014/0670/F **PAC Ref:** 2016/A0140  
**APPELLANT** Mr Frank King  
**LOCATION** Lands To The Rear Of No. 33 Flagstaff Road And Associated Farm Complex (shed Approx. 45 Metres To The West Of Existing Dwelling With Hardstanding Extending Approx. 50 Metres Further West And jRetention of existing shed and hard standing area for agricultural purposes (revised address and plans)  
**PROPOSAL**

**APPEAL TYPE** Plg Refusal: permissions  
**Appeal Procedure** **Date Appeal Lodged** 17/10/2016  
**Date of Hearing**  
**Date Statement of Case Due for Hearing**  
**Date Statement of Case Due - Written Representation**  
**Date of Site Visit**



## Current Appeals

372

<b>ITEM NO</b>	<b>23</b>		
<b>Planning Ref:</b>	LA07/2015/0308/C	<b>PAC Ref:</b>	2016/A0142
<b>APPELLANT LOCATION</b>	David And Maura De Mello In Front Of 113 Dunmore Road Ballynahinch.		
<b>PROPOSAL</b>	Replacement dwelling and refurb of outhouse		
<b>APPEAL TYPE</b>	Plg Refusal: permissions		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	<b>18/10/2016</b>
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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**PAC Reference :** 2016/E0004

**Departmental  
Reference :** LA07/2016/0204/LDP

**Development :** Confirmation that completion of works approved under planning permission P/2006/1444/F for alterations and extensions to dwelling will be lawful because construction work commenced within the 5 year period permitted under Condition 1.

**Location :** lands at No.44 Bettyshill Road, Newry (formerly addressed as No.186 Bettyshill Road).

**Appellant :** Mr Eugene McQuillan

**Appeal Type :** LDC Appeal

**Commission  
Decision Issued :** 31/10/2016

**Commission  
Decision :** Allowed



# Enforcement Appeal Decision

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

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<b>Appeal Reference:</b>	2015/E0053
<b>Appeal by:</b>	Mr & Mrs C O'Hare
<b>Appeal against:</b>	An Enforcement Notice dated 12 February 2016
<b>Alleged Breach of Planning Control:</b>	Unauthorised dwelling
<b>Location:</b>	Land at 13 Newtown Road, Newry
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Authority's Reference:</b>	P/2011/0032/CA
<b>Procedure:</b>	Hearing on 23 August 2016
<b>Decision by:</b>	Commissioner Pamela O'Donnell, dated 11 October 2016

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## Grounds of Appeal

1. The appeal was brought on Grounds (a), (b), (c), (d), (e), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011.

## The Notice

2. The Enforcement Notice (EN) specifies the alleged breach as Operational Development and it is described as an "*unauthorised dwelling*". The requirement to "*demolish the unauthorised dwelling*" clearly relates to the alleged breach and tells the recipient, in unambiguous terms, what must be done to rectify this. The EN goes on to state that "*This notice does not preclude the subsequent construction of a garage in accordance with planning approval P/2008/1374/F*". This option is available to the Appellants in any event so the EN need not have referred to it. Notwithstanding this, the additional statement is factual and its inclusion does not render the EN misleading.

## Ground (b)

3. It is for the Planning Authority to identify the alleged breach and in this case, the EN alleges an unauthorised dwelling. The EN presupposes a separate free standing dwelling on the appeal site operating independently from the main dwelling at No 13 Newtown Road. Under this ground of appeal, the key issue is whether the alleged breach had occurred when the EN was issued.
4. There can be occasions where a free standing building provides overspill living accommodation ancillary to and associated with a dwelling on the same site. The distinction between a separate dwelling and ancillary residential accommodation is also recognised in the Addendum to Planning Policy Statement 7 'Residential Extensions and Alterations' (AdPPS7). Paragraph 2.11 thereof states that where permission is granted it will be subject to a condition that the extension will only be

used for ancillary residential purposes in connection with the main dwelling and not as a separate unit of accommodation. The Appellants argue that the appeal building is ancillary residential accommodation; not a separate dwelling unit

5. The building sits to the rear and side of No 13 and is occupied by Mr O'Hare's parents. The evidence indicates that they spend a substantial amount of time in the main dwelling in taking meals, watching TV, looking after children and general household activities. Mr O'Hare also submitted evidence at the Hearing that his parents suffered health problems and that their living nearby enables him to provide care while allowing his parents a degree of independence. While the appeal building is self contained, there is no physical boundary between it and No 13 and as such, there is freedom of movement between both. Furthermore, the garden area is shared between the two buildings as is the parking space. Accordingly, there has been no sub-division of the planning unit to create an independent dwelling. Rather, the evidence indicates that the structure functions as ancillary accommodation. For the reasons stated, the Council are incorrect in stating that the alleged breach is an unauthorised dwelling.
6. Section 144 (2) of the Planning Act 2011 empowers the Commission to correct any misdescription, defect or error in an EN if it is satisfied that the correction can be made without injustice to the Appellant or Planning Authority. In this case, it would be unjust if the Appellant was faced with a different allegation to that which is described on the EN. The appeal on ground (b) therefore succeeds. Accordingly, there is no need to consider the remaining grounds of appeal.

The decision on the appeal is as follows:-

- The appeal on Ground (b) succeeds and the EN is quashed.

**COMMISSIONER PAMELA O'DONNELL**



2015/E0053

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**List of Appearances**

Planning Authority:-	Ms T Reid (Newry, Mourne & Down Council) Ms C Miskelly (As above) Mr G Murtagh (As above)
Appellant(s):-	Mr C O'Callaghan (Agent) Mr C O'Hare (Appellant)
Third Parties:-	None

**List of Documents**

Planning Authority:-	"A"
Appellant(s):-	"B"
Third Parties:-	N/A



# Enforcement 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

<b>Appeal Reference:</b>	2015/E0055
<b>Appeal by:</b>	Mr Patrick Connolly
<b>Appeal against:</b>	An enforcement notice dated 24 <sup>th</sup> February 2016
<b>Alleged Breach of Planning Control:</b>	The unauthorised: Change of use of lands from agriculture to the parking of vehicles; Creation of hardstanding to form a yard; Creation of an access; Creation of earthen bank; Change of use of agricultural land for the storage of inert materials; Change of use of agricultural and for the storage of building materials: and Change of use of agricultural land for the storage of end of life vehicles
<b>Location:</b>	Land opposite 72 Rathfriland Road, Newry
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Authority's Reference:</b>	P/2012/0197/CA
<b>Procedure:</b>	Hearing on 15 <sup>th</sup> September 2016
<b>Decision by:</b>	Commissioner Julie de-Courcey dated 10 <sup>th</sup> October 2016

## Grounds of Appeal

1. The appeal was brought on Grounds (a), (b), (c), (d), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 [the Act]. There is a deemed planning application by virtue of Section 145(5).

## The Notice

2. Section 144(2) of the Act empowers the Commission to correct any misdescription, defect or error in the enforcement notice (the Notice) or vary its terms if it is satisfied that the correction or variation can be made without injustice to either the appellant or Council.
3. The Council said that there was previously a field gate in the roadside field's south-west corner where access to the site subject of the Notice is currently taken. This is why it is seeking cessation of its use as opposed to stopping it up. On this basis the breach is wrongly described as unauthorised creation of an access. This error could be remedied by varying Paragraph 3 (c) of the Notice to refer to the unauthorised use of an access by buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant's business. This correction has attendant implications for the breach described in Paragraph 3 (a) of the Notice as the unauthorised change of use of lands from agriculture to the

parking of vehicles. Its amendment to refer to buses, mini-buses, coaches and End of Life Vehicles and any vehicles associated with the appellant's business would not unduly fetter use of his property. These corrections would not prejudice the Council's position that the appellant does not have an established (*my emphasis*) business at No. 72 Rathfriland Road. There is no persuasive evidence that these amendments would cause injustice to the appellant.

4. Paragraph 4 (b) of the Notice requires the unauthorised creation of a hardstanding to form a yard is remedied by removing the hardstanding yard and restoration to its former condition by re-soiling with 150mm of topsoil and re-seeding in grass. Reference to the specified area's former condition is extraneous as there is no evidence that the required works would equate to what existed on this part of the site prior to the breach. For clarity and the avoidance of any doubt as to precisely what the appellant would have to do to remedy the breach, the wording could be amended to delete reference to the affected land's former condition. There is no persuasive evidence that this variation would prejudice either the appellant or Council.

## Reasoning

### The appeal on Ground (b)

5. Paragraph 3 (d) of the Notice relates to the alleged unauthorised creation of an earth bank. Regardless of whether the earth bank grew incrementally on an unplanned basis as stockpiled soil was mounded as opposed to being deliberately formed, these operations constitute "development" as set out in Section 23(1) of the Act. As this element of the alleged breach of planning control has taken place and the other six matters set out on the Notice have also occurred, the appeal on ground (b) fails.

### The appeal on Ground (c)

6. The appellant considered that the breaches of planning control alleged in Paragraphs 3 (d) and (e) of the Notice, namely creation of the earth bank and the change of use of a specified area from agricultural to the storage of inert materials, benefitted from permitted development rights by virtue of Article 3, Part 7, Class A (b) of The Planning (General Permitted Development) Order (Northern Ireland) 2015. This legislative provision relates to the carrying out on agricultural land comprised in an agricultural unit of any excavation or engineering operation reasonably necessary for the purposes of agriculture within that unit.
7. The appellant said that he owns 3 acres of land including the site subject of the Notice and adjoining land, in addition to other farm land 5-6 miles away. He advised that he has no livestock and that his farming activity is low intensity with occasional cuts of silage, works to improve drainage and other maintenance and improvement works to improve the agricultural quality of the land. Whilst a Department of Agriculture, Environment & Rural Affairs Business ID number would not necessarily be the only means of showing the land to be part of an agricultural unit, he presented no alternative evidence that this is the case. In this evidential context, it is not possible to properly consider whether the works are reasonably necessary for the purposes of agriculture within that unit and the reliance on the

cited permitted development rights is unjustified. Accordingly, the appeal on ground (c) fails.

### The appeal on Ground (d)

8. In accordance with Section 132(1) of the Act, no enforcement action in respect of the alleged breaches of planning control arising from operational development may be taken after the end of the period of 5 years beginning with the date on which the operations were substantially complete. Section 132(3) applies to the alleged material changes of use and provides that no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.
9. The former Department of Environment served an Enforcement Notice in respect of the 7 alleged breaches of planning control on 19<sup>th</sup> March 2015. That Notice bore the same date as the date of service. As it was to take effect on 16<sup>th</sup> April 2015, unless an appeal was made against it beforehand, the Department was in breach of legislative provisions in that the Notice was served within 28 days of the date specified on it as the date on which it is to take effect. The Notice was subsequently withdrawn.
10. In accordance with Section 132(4)(b) of the Act, the Council can take further enforcement action in respect of any breach of planning control if, during the period of 5 years ending with that action being taken, it or the Department has taken or purported to take enforcement action in respect of that breach. Notwithstanding that the earlier Notice was withdrawn, thus denying the recipients the opportunity to appeal and for it to be entered as a statutory charge against the land, the Department purported to take enforcement action in respect of the breaches. Therefore, in order to succeed on ground (d), the appellant must show that, on the balance of probabilities, either operational development was substantially complete at 19<sup>th</sup> March 2010 or the change of use of the land took place prior to that date and has continued on the same basis since then.
11. The site subject of the Notice comprises the entirety of a roadside field and the western portion of a larger field to the rear. On 8<sup>th</sup> February 2013 the appellant signed Certificate A of the planning application form on behalf of East West Coaches who were seeking permission for the construction (*my emphasis*) of a bus parking area on the roadside field. The present use of the land was said to be a "vacant field". As he was professionally represented, it is reasonable to expect that the agent completed the form diligently and accurately. However, the application was submitted on foot of a complaint lodged with the Department in November 2012 about creation of a parking area for buses. This was investigated on site the next month and followed by a warning letter to East West Coaches in January 2012. This chain of events suggests that the then use of the site subject of the ensuing planning application and the details of the proposed development were wrongly or carelessly described by the then applicant's agent.
12. The Council submitted an aerial aerial photo that shows the site subject of the Notice on 1<sup>st</sup> September 2010. This shows:
  - Two large vehicles parked within the area outlined red on the map accompanying the Notice. From the level of detail on the photo, it is impossible to discern if it is parked cars, stored ELVs or builders' materials



that are present in the approximate positions identified B and C on the map. As this is a snapshot of a single period in time, it is not possible to say whether the parking of vehicles was periodic or continuous from that date forward. Comparison of the photo to the number of vehicles parked within the area outlined in red at the time of my site visit would suggest that the intensity of use of the site for that purpose has changed materially in the intervening 6 years. Similarly, even if ELVs were stored within the specified area on that date, there has also been a material change in the scale and intensity of this use compared to my observations on site. The intervening intensification of the uses operating on the site at that date would also have had implications for the intensification of use of the access;

- At any rate, the photo was taken more than 5 months after the critical date of 19<sup>th</sup> March 2010. The appellant tabled no evidence to suggest that the material changes of use alleged at Paragraphs 3(a), (c), (f) and (g) of the Notice took place before 19<sup>th</sup> March 2010 and continued on the same basis since then. Therefore, on the balance of probabilities, the evidence is not persuasive that these breaches have achieved immunity;
- Topsoil has been stripped off most of the area that is hatched yellow on the map accompanying the Notice. To succeed on this ground of appeal, the appellant would have to show that the works were substantially complete before the critical date. Again, as the photo shows the situation over five months later, the evidence is not persuasive that it is more likely that not that this operation had achieved immunity from enforcement action by 19<sup>th</sup> March 2015;
- The photo appears to show vegetation along most of the boundary between the two fields. However, as it is impossible to discern whether this is atop the earth bank, it is not persuasive that, on the balance of probabilities, this operational development was substantially complete by 19<sup>th</sup> March 2010; and
- There is no indication that the storage of inert materials had commenced in the approximate position shown hatched blue on the map accompanying the Notice. This suggests that the use started after 1<sup>st</sup> September 2010 and had not achieved immunity by 19<sup>th</sup> March 2015.

13. In all, the appeal on ground (d) fails.

### **The appeal on Ground (a) and the Deemed Planning Application**

14. The deemed planning application is defined by the breaches set out in the Notice. The main issues to be considered are: the acceptability of the principle of this development in the countryside; whether it would prejudice road safety or significantly inconvenience the flow of traffic; and whether it would adversely affect the intrinsic environmental value and character of a designated Local Landscape Policy Area (LLPA).
15. Section 6 (4) of the Planning Act (Northern Ireland) 2011 states that determination under this Act must be made in accordance with the local development plan (LDP), unless material considerations dictate otherwise. The LDP in this case is the Banbridge, Newry and Mourne Area Plan 2015 (BNMAP). The site lies outside the

- adopted Settlement Development Limit for Newry. Volume 1 of the Plan does not provide specific policy for economic development in the countryside but refers to Planning Policy Statement 4: "*Planning and Economic Development*" (PPS 4) as setting out current regional planning policy for economic development uses.
16. The Strategic Planning Policy Statement for Northern Ireland "*Planning for Sustainable Development*" (SPPS) was published on 28 September 2015. Its provisions are material to decisions on individual planning appeals. The SPPS sets out transitional arrangements that will operate until the Council has adopted a Plan Strategy for its area. During this transitional period planning authorities will apply the SPPS, the retained policy documents listed in paragraph 1.13 and the Departmental planning documents referred at paragraph 1.14 thereof. PPS 4 and Planning Policy Statement 21: "*Sustainable Development in the Countryside*" (PPS 21) are material to consideration of this appeal. As there is no conflict or change in policy direction between the provisions of the SPPS and those of the cited PPSs in respect of this proposal, the operational requirements of the policies contained in regional planning policy are material to the consideration of this appeal.
  17. Policy CTY1 of PPS 21 states that there is a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It adds that planning permission will be granted for non-residential development in the countryside and lists nine such examples. One of these is industry and business use in accordance with PPS ). Policy PED 2 thereof states that proposals for economic development uses will be permitted in the countryside where they comply with any of four specified policies, PED 3 to PED 6 inclusive. The appellant considered the proposal to be consistent with Policy PED 3 of PPS4. This states that the expansion of an established economic development use in the countryside will be permitted where the scale and nature of the proposal does not harm the rural character or appearance of the local area and there is no major increase in the site area of the enterprise. It follows that if the proposal complies with Policy PED 3 of PPS 4, it will also comply with Policy CTY 1 of PPS 21.
  18. The appellant lives in No. 72 Rathfriland Road opposite the site subject of the Notice. Immediately south of his dwelling is an office building sited within a concreted yard. At the time of my site visit (around 4pm on a school day) there were 6 small buses/coaches and 7 cars; some of them taxis, parked there. On the northern side of the dwelling and associated domestic buildings, are 3 conjoined buildings that the appellant alleges are also used in conjunction with his taxi and bus/coach business. In one, a minibus was being serviced/repaired and in the second was a similar parked vehicle. The third building was not available for internal inspection.
  19. The appellant said that he had a "*fairly long established*" taxi business, set up before 2005, and that diversification into mini-buses, buses and coaches, took place in or around 2009. He added that he had an Operator's Licence for Ace mini-buses since 1997. The current business seems to be run as East West Coaches and no explanation was given as to Ace's relationship with that business or, if it was run from this site, for how long. Whilst there is no policy requirement for the appellant to be in possession of a certificate of lawfulness of an established use or development in respect of the business that he is seeking to expand, no further supporting evidence was submitted to corroborate his contention that the

yard and buildings adjoining No.72 Rathfriland Road are an established economic development use in the countryside.

20. On the other hand, account has been taken of the following factors:

- The Council's aerial photo from September 2010 shows the current yard and buildings at No. 72 Rathfriland Road. Although only a snapshot of a single moment in time, upwards of two dozen vehicles of varying sizes were parked within the dwelling's curtilage and the area allegedly used in association with the bus and taxi business. Some were either lorries or coaches;
- In February 2013 when the planning application was submitted by East West Coaches of No.72 Rathfriland Road for the construction of a bus parking area on part of the site subject of the current Notice. The accompanying Block Plan referred to the yard area to the south on No.72 Rathfriland Road as being for "bus parking";
- The Department's third reason for refusal of the 2013 planning application, which was based on Policy PED 3 of PPS 4, related solely to the proposal's harm to the rural area's character and appearance and the major increase in the site area of the enterprise. If the Department had considered that Policy PED 3 did not apply in principle, as the proposal did not involve the expansion of an established economic development use in the countryside, it is reasonable to expect that this perceived short-coming would have been made explicit in the reason for refusal;
- The Council's claim that the Department had not considered there to be an established business is somewhat at odds with evidence from the applicant that was quoted in the planning officer's associated report; and
- The second reason for refusal related to Policy PED 2 of PPS 4. The Council's contention that the Department found that there were no exceptional circumstances to permit the development in accordance with that policy is not persuasive that the third reason for refusal should not have been included. The Department might have considered that although there was an established economic development use in the countryside, the proposal did not comply with Policy PED 3 in the round given its relative scale and visual impact. In such circumstances, it would still have been appropriate to engage Policy PED 2 given that its final paragraph allows for the consideration of exceptional circumstances where a proposal does not comply with any of Policies PED 3 – 6 inclusive.

21. When considered in the round and on the balance of probabilities, this cumulative evidence suggests that it is more likely than not that the appellant's business was established at No. 72 Rathfriland Road prior to 1<sup>st</sup> September 2010. Therefore, Policy PED 3 of PPS 4 may provide support for the proposal subject of the deemed planning application subject to consideration of site-specific matters.

22. The end of life vehicles (ELVs) are "cannibalized" for spare parts used in the repair and maintenance of the appellant's fleet of operational vehicles. However, no explanation was given as to how creation of the earth bank and the storage of inert



and builders' materials are part of the expansion of the established economic development use namely taxis, bus and coach hire.

23. Setting aside the area at No.72 Rathfriland Road that the appellant's dwelling and its curtilage occupies, the site subject of the Notice is at least twice the size of the area comprised within the established business. Albeit that Policy PED 3 of PPS 4 does not stipulate what constitutes a major increase in the site area of the enterprise and taking account of the space-extensive nature of the storage of buses and coaches and ELV for repair and maintenance purposes, it is reasonable to consider this magnitude of expansion as such. The policy does not require that the physical extent of this expansion be evident from public views. Indeed, its visual impact is a separate consideration.
24. The use of part of the site for the parking of vehicles is evident from views along the site frontage and on the approach from the north, albeit filtered by vegetation. In contrast, relative elevation and boundary vegetation screen views of the established business use at No. 72 Rathfriland Road from public view when travelling along that road. If the deemed application were allowed, the appellant would be content to comply with a condition for supplementary planting on any or all of the site boundaries. However, this vegetation would take time to establish and mature and, in the intervening period, the scale and nature of the proposal would continue to harm the rural character and appearance of the local area.
25. Policy PED 3 provides for the major expansion of an existing industrial enterprise that does not meeting the preceding policy provisions provided that it satisfies three criteria. Having already found that the development would undermine rural character, it is at odds with the third criterion. As the appellant did not consider the proposal to involve the major expansion of an existing industrial enterprise, no evidence was presented to demonstrate that its relocation is not possible for particular operational or employment reasons or that the proposal would make a significant contribution to the local economy. Considered in the round, the proposal subject of the deemed planning application does not comply with Policy PED 3 of PPS 4.
26. There was no persuasive evidence as to the exceptional circumstances that would bring the proposal within the ambit of the final paragraph of Policy PED 2 of PPS 4. As no case was made as to why the development is essential and could not be located in a settlement and it does not accord with the provisions of PPS 4, the proposal is also contrary to Policy CTY 1 of PPS 21.
27. Policy AMP 2 of Planning Policy Statement 3: "*Access, Movement & Parking*" (PPS 3) says that planning permission will only be granted for a development proposal involving the intensification of the use of an existing access onto a public road where it will not prejudice road safety or significantly inconvenience the flow of traffic. Paragraph 1.2 of Development Control Advice Note 15: "*Vehicular Access Standards*" (DCAN 15) defines intensification as occurring when a proposed development would increase the traffic flow using an access by 5% or more. In light of the number of seemingly roadworthy vehicles parked on the site, let alone potential traffic associated with the other storage uses, it is reasonable to conclude that the traffic flow would be at least 5% greater than when the access was a field gate.



28. Transport NI considered that visibility splays of 4.5m x 80m are required to serve the site. As it lies outside the city's 40mph speed limit and the national speed limit prevails on the stretch of Rathfriland Road off which the site is served, I am not persuaded that average traffic speeds are less than 37mph. Transport NI's X distance is predicated on the access serving between 60 and 100 vehicles per day and the appellant did not challenge this evidence. As it seems reasonable given the nature of the appellant's business, the X distance would need to be 4.5m as required by Table A of DCAN 15. Looking at the second line of Table B of DCAN 15 and given my observations of the speed of vehicles passing the site and the location of the access relative to the 40mph speed limit, Transport NI's required X distance seems conservative. 90m is considered to be more reasonable. Whilst most of the accommodation works to achieve these standards could probably be carried on to the northern side of the access on roadside verge and land owned by the appellant, there is no indication that he has control over land to the south.
29. Aside from the deficiency in visibility for vehicles emerging from the site, the proposal subject of the deemed planning application could also prejudice road safety and significantly inconvenience the flow of traffic in that the access is not of sufficient width to allow a coach entering the site to pass one emerging. This could result in a vehicle waiting on the road to facilitate that emerging from the site. The appellant provided no evidence to show how he could address these deficiencies in the access arrangements within a reasonable time frame. Accordingly the proposal is contrary to Policy AMP 3 of PPS 3 in that it could prejudice road safety or significantly inconvenience the flow of traffic.
30. The sites lies within BNMAP Designation NY 122 Local Landscape Policy Area Rathfriland Road/Hilltown Road. Plan Policy CVN 3 Local Landscape Policy Areas says that within LLPAs, planning permission will not be granted to development proposals that would be liable to adversely affect their intrinsic environmental value and character, as set out in Volumes 2 and 3 of the Plan. The features or combination of features that are identified as contributing to the environmental quality, integrity or character of that area are the Crown Mound Motte and Bailey, its setting and views and an area of nature conservation interest, including river corridor and associated vegetation. The Council was concerned about the proposal's impact on views from the Crown Mound Motte and Bailey to the south-east of the site. However, as it was unsure whether there is public access to the feature, there is no persuasive evidence that the proposal would adversely affect outward views of the archaeological feature's setting. Nevertheless, on the approach from the north along Rathfriland Road, the use of the site subject of the Notice for commercial purposes is evident and adversely affects the intrinsic character of the setting of this constituent feature of the LLPA. Accordingly the proposal is contrary to Policy CVN 3 of BNMAP.

### **The appeal on Ground (f)**

31. Account has been taken of the undisputed evidence that the inert material has been spread and compacted since the Notice was issued. The issue of the expediency of pursuing this breach is at the Council's discretion and it did not seek to delete this breach and attendant remedy from the Notice. Given the extent of the area covered by inert material, I am not persuaded that the breach is so minimal that the remedy is excessive.

32. The Notice has been varied at Paragraphs 3 (a) and (c) to correct misdescriptions in two of the breaches. The attendant remedies need to be similarly amended to ensure consistency and avoid over-enforcement. To this end:
- The remedy set out in Paragraph 4 (a) should refer to the parking of buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant's business rather than just the parking of vehicles; and
  - The remedy set out in Paragraph 4 (c) should refer to cessation of use of the access by buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant's business.
33. The appeal on ground (f) succeeds to the extent of these variations.

### **The appeal on Ground (g)**

34. The appellant's challenge on this ground was in respect of the time-scales for the remedies set out in paragraphs 4 (b), (d) and (e) of the Notice as follows:
- Paragraph 4 (b). The appellant provided no specific evidence of a shortage of screened topsoil. However, as the optimum grass seeding season is coming to an end and given the extent of the area to be sown, it is reasonable to extend the period for removal of the hardstanding yard, re-soiling with 150mm topsoil and re-seeding in grass from 90 days to 6 months as this would coincide with the start of the new season; and
  - Paragraphs 4 (d) and (e). The appellant sought an extension of the period for removal of the earth bank and inert materials from 60 days to 6 months. However, he provided no persuasive evidence as to why screening of inert materials and their removal to a licensed site could not reasonably be achieved within the periods for compliance specified on the Notice. As these do not fall short of what should reasonably be allowed, there is no justification for varying the Notice in these respects.
35. The appeal on ground (g) succeeds to the extent that Paragraph 4 (b) is varied.

### **Decision**

The decision is as follows:

- a) The Notice is corrected at Paragraph 3 (a) so that the breach is described: *"The unauthorised change of use of the lands outlined in red on the attached site location plan, from agricultural use to the parking of buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant's business";*
- b) The Notice is corrected at Paragraph 3 (c) so that the breach is described: *"The unauthorised use of an access, whose approximate position is identified A on the attached plan, by buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant's business";*

- c) The Notice is corrected at Paragraph 4 (b) so that the remedy reads: “*Remove the hardstanding yard, whose approximate position is hatched yellow on the site location plan, by re-soiling with 150mm of topsoil and reseeding in grass....*”;
- d) The appeal on Ground (b) fails;
- e) The appeal on Ground (c) fails;
- f) The appeal on Ground (d) fails;
- g) The appeal on Ground (a) fails and the deemed planning application is refused;
- h) The notice is varied so that:
- Paragraph 4 (a) reads: “*Permanently cease the parking of buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant’s business on the site outlined in red on the attached site location plan; within 60 days from when the notice takes effect*”;
  - Paragraph 4 (c) reads: “Cease the use of the access, whose approximate position is identified A on the attached site location plan, by buses, mini-buses, coaches, End of Life Vehicles and any vehicles associated with the appellant’s business; within 60 days from when the Notice takes effect”; and
  - The appeal on Ground (f) succeeds to that extent.
- i) The period for compliance is varied in respect of paragraph 4(b) of the Notice from 90 days to: “*...within 6 months from when the notice takes effect*”. The appeal on Ground (g) succeeds to that extent; and
- j) The notice, as so corrected and varied, is upheld

## COMMISSIONER JULIE DE-COURCEY

**List of Appearances**

Planning Authority: Ms T Reid, Newry, Mourne & Down District Council  
Ms C Miskelly, Newry, Mourne & Down District Council

Appellant: Mr C O'Callaghan, O'Callaghan Planning

**List of Documents**

Planning Authority: "A" Statement of Case & appendices  
"B" Copy of Enforcement Notice dated 19<sup>th</sup> March 2015  
"C" Extract from OSNI Orthophotography  
"D" Draft conditions





# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0041
<b>Appeal by:</b>	Mr S Meade
<b>Appeal against:</b>	Refusal of Full Planning Permission
<b>Proposed Development:</b>	Retention of two light industrial units and erection of three light industrial units.
<b>Location:</b>	To the immediate north and east of 16 Rostrevor Road Hilltown
<b>Planning Authority:</b>	Newry, Mourne and Banbridge District Council
<b>Application Reference:</b>	P/2014/0853/F
<b>Procedure:</b>	Informal Hearing on 16 <sup>th</sup> September 2016.
<b>Decision by:</b>	Commissioner Helen Fitzsimons on 3 <sup>rd</sup> October 2016

## Decision

1. The appeal is dismissed.

## Reasons

2. At the hearing the Planning Authority withdrew its objections based on the width of the pedestrian footway. The remaining main issues in this appeal are whether the proposed development would have an adverse impact on the safety and convenience of road users; if it would have an adverse impact on residential amenity and whether it would harm the amenities of the Mournes Area of Outstanding Natural Beauty (AONB).
3. The appeal site lies within the settlement limits of the village of Hilltown as designated by the Banbridge Newry and Mourne Area plan 2015. The plan contains no policies or designations specific to the appeal site. Planning Policy Statement 3 'Access Movement and Parking' (PPS 3) is a material consideration in this appeal.
4. Policy AMP 2 of PPS 3 states that planning permission will only be granted for a development proposal involving direct access or the intensification of the use of an existing access, onto a public road where it meets two stated criteria. The Planning Authority raised objections under criterion (a) such access will not prejudice road safety or significantly inconvenience the free flow of traffic. The policy also states that the acceptability of access arrangements will be assessed against the Department's published guidance, and adds that consideration will be given to five identified factors. Development Control Advice Note 15 (DCAN 15) is published guidance that supports PPS 3 and is material in this appeal. Both the Planning Authority and objectors raised concerns regarding the proposed access to the appeal site.

5. The Planning Authority is entitled to attribute whatever weight to it sees fit to a consultation response. Whether or not it took into account other material considerations raised by the appellant this is a matter between him and the Planning Authority.
6. The Planning Authority's final evidence is that the B class Rostrevor Road carries approximately 3700 vehicles per day (vpd), with an estimated speed of traffic using the road in the vicinity of the appeal site to be in and around 27 miles per hour (mph). There are no nearby junctions that adversely affect the proposed access; the site is on the outside of a bend; and vertical alignment is level. The appellant estimates that some 43 vehicles will visit the appeal site per day and this was not disputed by the Planning Authority.
7. Paragraph 1.2 of DACN 15 states that a well – designed access is important for the safety and convenience of all road users – those proceeding on the public road as well as those using the access. Paragraph 2.1 of DCAN 15 says that good visibility is essential to enable drivers emerging from the minor road to see and be seen by drivers proceeding along the priority road. Tables A and B of DCAN 15 advise of the standards to be applied to new and existing accesses in order to achieve good visibility and to protect the safety and convenience of road users.
8. Table A of DCAN 15 (X - distance) requires that for an access with traffic flow of up to 60vpd, as is the case in this appeal, the minimum X - distance is 2.4m. However, where traffic speeds on the priority road are below 37mph this can be reduced to 2m. As traffic speeds on the priority road are 27 mph a X- distance of 2m is appropriate.
9. Table B (Y - distance) requires account to be taken of the volume of traffic attracted to the access and that of the priority road. Note 2 of table A clarifies that traffic volumes are per day and refer to the total combined flow in both directions. I was given no evidence sufficient to persuade me to set this aside in favour of an analysis of traffic flow in individual directions, therefore I do not accept the appellant's arguments and conclusions based on this premise. The appeal site access with a flow of up to 60vpd on a priority road with a volume of daily traffic in excess of 3000 vpd at speeds of 27mph would, in the Planning Authority's view, attract a Y distance of some 45m in each direction and I agree. I note there is no bracketed figure on a priority road carrying this volume of traffic. Because of the road alignment to the north east a Y distance of 34m only is achievable on the right hand side emerging (RHS) and this is substandard.
10. Notwithstanding the appellant's arguments regarding the operation of the appeal site outside peak flow hours; traffic volume and speed and that Transport NI have resisted the provision of speed bumps; at my site visit I noted that traffic begins to accelerate away from the junction of the Rostrevor Road with Main Street building speed as it approaches the appeal site; and that the entrance to the appeal site is not visible until at the bend in the road on approach from the north east. The combination of this increase in speed and poor visibility could give rise to a situation where drivers approaching the appeal site may have to brake heavily because of vehicles, and in particular large, slow, heavy goods vehicles, emerging from the proposed access. I also note that I had to edge onto the carriage in order to see clearly whether or not vehicles were approaching from the bend in north



east and I consider that that the provision of a 34m sight line would not overcome the need for this manoeuvre . All of this would have an adverse impact on the safety and convenience of road users. I do not accept that the presence of a built up area means that drivers will take account of exit points, lane ways, forecourts and residential properties as the expectation of users on the priority road is that they have priority over users of minor roads. Because of this I must conclude that the visibility as proposed is insufficient to allow vehicles using the proposed access to see and be seen by vehicles travelling from the north east along the priority road, and as a consequence the access would be unacceptably substandard. As there is little or no traffic using the access at present, and given the lack of firm evidence regarding volumes of traffic using it in the past I attach little weight to the appellant's arguments that lack of recorded accidents in the location of the access favour the appeal proposal. The Highway Code stopping distances referred to only take account of optimum conditions and are not persuasive. Because of all of this I cannot be satisfied that the use of the access as proposed would not give rise to conditions that would prejudice road safety.

11. The Planning Authority's evidence and assessment of the proposed access arrangements appear to me to have inherently taken into account the nature and scale of the development; the character of existing development; the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase. I am satisfied that the other factors set out at bullet points one, two, four and five at Policy AMP 2 of PPS 3 have been taken into account in so far as they are relevant to the appeal proposal and that consideration of them informed the access requirements.
12. Bullet point four of Policy AMP 3 relates to the contribution of the appeal proposal to the creation of a quality environment, including the potential for urban/village regeneration. Regarding the benefits of the appeal proposal as identified by the appellant, at the time of my site visit the appeal site was relatively tidy and showed little signs of vandalism. I do not accept that a vacant site in this high density urban location within the Mourne AONB has a detrimental impact on the AONB itself or tourist routes through it. I accept there may be times when anti-social behaviour has occurred and could occur on the appeal site. I agree planting would enhance the appearance of the appeal site and its general location and I accept that the proposal could generate up to ten new jobs which would be of value to the local economy. However, none of these factors taken either individually or in combination with each other are sufficient to persuade me that my concerns regarding the road safety matters associated with the intensification in use of the appeal site's access can be set aside in favour of this appeal.
13. The site adjacent to the appeal site is even closer to the bend in the Rostrevor Road and would also been unable to provide adequate visibility to the RHS emerging from any new access proposed for it.
14. The appellant suggested that a temporary planning permission for a period of five years could be granted. In my mind a five-year period is not a temporary timescale but is more akin to a permanent planning permission and I do consider such a time period appropriate. Because of the proposed time period suggested this proposal is entirely distinguishable from the two temporary planning permissions recently granted (one of 12 months and one of 24 months) by the

Planning Authority and relied upon by the appellant in support of his suggestion. As a consequence of this and all of my reasoning set out above, the Planning Authority has sustained its remaining reason for refusal. The objectors' concerns regarding road safety are also upheld.

15. An objector to the appeal proposal alleged that noise and air pollution were being emitted from the two units it is proposed to retain for light industrial purposes. At my site visit I observed that in addition to the two existing units one of the proposed units had been constructed. However, none of the three units were occupied and as they are unauthorised they attract a nil use. I did note the existence of a fourth unit on the appeal site which was being used for car repairs however, this unit is not the subject of this appeal and is not before me. I observed no car sales; fires or burning of waste. The description of development is sufficient to ensure use of the units for light industrial purposes within the confines of Class B2 of the Planning (Use Classes Order) (Northern Ireland) 2015 and detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash, dust or grit should not arise. The objector's other concerns are not determining in this appeal.

This decision relates to the 1:500 scale site layout plan bearing the Planning Authority's date stamp 30<sup>th</sup> October 2015 and the 1:100 scale drawings entitled 'proposed shed'.

**COMMISSIONER HELEN FITZSIMONS**



**2016/A0041**

**List of Documents**

Planning Authority: - PA1 Written Statement (Newry, Mourne and Banbridge District Council)

Appellant: - A 1 Written Statement

3<sup>rd</sup> Parties:- OBJ 1Written Statement

**Attendances**

Planning Authority:- Mrs L Grant Newry, Mourne and Banbridge District Council

Mr O Loughlin, Transport NI

Appellant:- Mr C O Callaghan, O'Callaghan Planning



# Appeal Decision

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<b>Appeal Reference:</b>	2016/A0048
<b>Appeal by:</b>	Mr J O'Hare
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposed Development:</b>	Retention of agricultural building and access
<b>Location:</b>	Between Nos 47 and 47a Ballintemple Road, Newry
<b>Planning Authority:</b>	Newry, Mourne & Down District Council
<b>Application Reference:</b>	P/2015/0103/F
<b>Procedure:</b>	Written representations and accompanied site visit on 20 September 2016
<b>Decision by:</b>	Commissioner Pamela O'Donnell, dated 4 October 2016.

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## Decision

1. The appeal is dismissed.

## Reasoning

2. The main issue is whether the appeal development is acceptable in principle in the countryside.
3. The site is in the rural area and within an Area of Outstanding Natural Beauty as designated in the Banbridge, Newry and Mourne Area Plan 2015. There is no specific policy in the plan material to the appeal development. The policy context for determining the appeal is provided by Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21). While the Strategic Planning Policy Statement for Northern Ireland (SPPS) replaces the definition of agricultural activity given in paragraph 5.39 of PPS21, there is no material difference between the two as to what can constitute agricultural activity.
4. Policy CTY1 of PPS21 sets out the types of development considered to be acceptable in principle in the countryside. These include agricultural and forestry development in accordance with Policy CTY12. It is clear that if a proposal complies with Policy CTY12, it will meet the terms of Policy CTY1.
5. Policy CTY12 states that planning permission will be granted for development on an active and established agricultural holding. Paragraph 5.56 of PPS21 states that the determining criteria for an active and established business will be that set out under Policy CTY10. This requires that the farm business is currently active and has been established for at least six years. The applicant is required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.

6. The Appellant's evidence indicates that the farm business number was obtained on 30 August 2013. He also has a Herd Number (244650) issued by DARD on 19 August 2010. He states that there are currently six cattle registered to the farm business and this is corroborated by a Herd List provided, dated 27 July 2016. Cattle were on the holding at the site visit along with some sheep. For these reasons, it is accepted that the holding is currently active.
7. The Land Registry information provided by the Appellant refers to a particular folio comprising a plot of land in the townland of Ballintemple. It indicates that the registered owner on 21 October 2008 was Mr Joseph O'Hare of 4 Moorhill Road in Newry. In the absence of an accompanying map, I cannot be certain that the land in question is on the holding or that the Appellant has been the owner of the holding since October 2008. The assertion that the land has been maintained in good agricultural condition is not supported by this or by other documentary evidence. The Appellant also states that his land was let out to Mr Robert Johnston (Farm Business No. 651604) and that he derived rental payment for this arrangement. There is no requirement that the farm business be carried out by the Appellant over the requisite period. However, if the land was farmed under another farm business, the Appellant cannot rely on a separate farm business to demonstrate that his farm business is established. In any event, no timeframes or other evidence in the form of rental agreements for example was provided to substantiate this claim.
8. The Herd information submitted covers a three year period from September 2010 to September 2013. The final position from DARD is that (i) the farm business (654517) has not been in existence for more than six years and (ii) no single farm payment or other specified allowances have been claimed in the last six years. It is the longevity of the holding rather than the current owner's business that is critical and the onus is on the Appellant to provide sufficient information to demonstrate compliance with the policy. In this case, while the Appellant was involved in herd movements over a three year period from 2010-2013 and again more recently, he only acquired a farm business number in September 2013. There is no persuasive evidence of any active farming on the holding from that time until the more recent herd movements. The information provided is insufficient to persuade me that the farm business has been active for a continuous period of more than six years. Even though the appeal development meets the five listed criteria of Policy CTY12, it fails to meet the fundamental policy requirement of Policy CTY12.
9. Where a new building is proposed, the Appellant is required to confirm that the development complies with three bullet points. The farm map supplied illustrates that there are no suitable existing buildings on the holding that could be used. While the appeal development is set back from the farm buildings, there are no intervening structures. Furthermore, the subject shed reads with the farm buildings and is located nearby them. Accordingly, it is considered that the appeal development is sited beside the existing farm buildings. As such, and given there were no objections to the design and materials used, I find that the appeal development complies with the three bullet points of the policy. There were no objections regarding the access to the shed.
10. While the appeal development complies with the three specified bullet points and criteria (a) to (e) of Policy CTY12, it does not meet its fundamental requirement. The holding is not active and established in accordance with the policy and no

overriding reasons have been put forward to show that the development is essential. The reason for refusal is sustained and the appeal therefore fails.

11. Compliance with planning policy is in the public interest and is a matter of acknowledged importance. The failure of this proposal to meet the requirements of policy means that it would result in demonstrable harm.

This decision relates to: Drawing No PL-01 Site Location Map, Existing Floor Plan, Elevations, Site Plan and Photographical Analysis at various scales stamped refused by the Council 25 February 2016.

**COMMISSIONER PAMELA O'DONNELL**



**List of Appearances**

Planning Authority:-	Ms P Manley (Newry, Mourne & Down Council) Mr A Donaldson (as above)
Appellant(s):-	Mr S Hughes (Agent, ERES Limited) Mr J O'Hare (Appellant)
Third Parties:-	None

**List of Documents**

Planning Authority:-	"A" Statement of Case
Appellant(s):-	"B" Statement of Case
Third Parties:-	N/A



# Appeal Decision

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<b>Appeal Reference:</b>	2015/A0150.
<b>Appeal by:</b>	Mr Rob and Mrs Paige Jennings.
<b>Appeal against:</b>	The refusal of full planning permission.
<b>Proposed Development:</b>	Restoration and extension to a dwelling.
<b>Location:</b>	Land 200m north of 97 Crossgar Road, Saintfield.
<b>Planning Authority:</b>	Newry, Mourne & Down District Council).
<b>Application Reference:</b>	R/2015/0089/F.
<b>Procedure:</b>	Informal Hearing on 9 March 2016.
<b>Decision by:</b>	Commissioner Pauline Boomer dated 17 October 2016.

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal is whether the conversion of the appeal building to residential use is acceptable and whether the introduction of a new access onto the Protected Route would prejudice the free flow of traffic and conditions of general safety.
3. The appeal site lies in the open countryside in the Ards and Down Area Plan 2015. There is no specific policy in the plan that is material to this proposal. Whilst I note that the reasons for refusal refers only to conflict with PPS21 Policies, account has to be taken of up to date regional policies which are relevant. The Strategic Planning Policy Statement for Northern Ireland Planning for Sustainable Development (SPPS) was published on 28<sup>th</sup> September 2015 and is material to all appeals. The transitional arrangements set out in Paragraph 1.10 of the SPPS indicate that until such times as a Plan Strategy for the whole council area has been adopted, planning authorities will apply existing policy within Planning Policy Statements that have not been cancelled together with the SPPS. The relevant planning context is the SPPS, Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 3: Access, Parking and Movement (PPS3) as well as Supplementary Planning Guidance : Buildings in Tradition.
4. The SPPS retains the policy provisions of PPS21. Policy CTY 1 of PPS21 lists the range of types of development which in principle are considered acceptable in the countryside, one of which is the conversion and reuse of an existing building in accordance with Policy CTY4. The appeal building represents a one room structure with a single door opening in its north western elevation. Finished in stone, with a 3<sup>3</sup>/<sub>4</sub> walls intact, it has a slate roof rising to a ridge height of 4.85m

above ground level. The appellant argued that the appeal proposal finds support in Policy CTY 4.

5. Policy CTY4 states that planning permission will be granted to proposals for the sympathetic conversion, with adaptation if necessary, of a suitable building (*my emphasis*) for a variety of alternative uses, including use as a single dwelling, where this would secure its upkeep and retention. Paragraph 6.73 of the SPPS however in stating that provision should be made for the sympathetic conversion and re-use, with adaptation if necessary, of a locally important building (*my emphasis*) as a single dwelling effectively offers a revision of Policy CTY4. The matter of potential conflict arising between the SPPS and retained existing policies is addressed in Paragraph 1.12 of the SPPS. It states that where the SPPS introduces a change of policy direction and/or provides a policy clarification that would be in conflict with the retained policy, the SPPS should be afforded greater weight in the assessments of individual planning applications. The weighting direction in the SPPS indicates that 'locally important building' must take precedence in the first instance over the term "suitable building" in Policy CTY4 of PPS21.
6. The SPPS does not define "locally important" but lists examples such as former school houses, churches and older traditional barns and outbuildings. I consider that these cited examples typically relate to buildings that generally have some design, architectural or historic merit. I nonetheless accept that this is not a definitive list and that there may be other factors that would result in a particular building being of importance to a locality. The appellant argues that the building is 'locally important' as it formed part of a historic farmstead known as McElwaines farm. OS maps were submitted showing that the original farmstead comprised three small roadside buildings with a farmhouse abutting the appeal building enclosed within a restricted roadside plot. Whilst the appeal building is the only one still standing, there are ruined remains of the other two roadside structures still evident. No evidence has been presented to confirm that this farm grouping had any historical significance in the local area. I must consider the appeal building and site in its current condition and as it is overgrown with vegetation and given its small size and scale, I find that the appeal building has little visual impact in the landscape despite its proximity to the public road. It has no distinctive features and whilst the appellant argues that it represents a vernacular building as it has a simple built form which predates 1925, I agree with the Local Planning Authority (LPA) that it fails to meet most of the criterion listed for vernacular buildings in Annex 2 of PPS21. In any case the SPPS does not indicate that such buildings are locally important.
7. The appellant has referred me to the Supplementary Guidance document Buildings in Tradition where Section 3.3 is entitled Locally Important Buildings. However whilst this offers only guidance, it deals specifically with locally important dwellings which are not considered suitable for replacement when assessed against Policy CTY3, rather than a conversion assessed against Policy CTY4 which is now before me. In this historical and visual context, I am not persuaded that the appeal building is a locally important building and conclude that its conversion to a dwelling is not supported by the SPPS.



8. Whilst I do not therefore have to consider whether or not the appeal building is "suitable" for conversion, I have to assess whether or not the appeal proposal complies with the seven criteria listed under Policy CTY4.
9. Only criterion (a) refers to structural issues and the LPA withdrew its objections on these grounds. The LPA considers that the appeal proposal fails to comply with criteria (b) and (c) of Policy CTY4.
10. Criterion (c) requires that any extension is sympathetic to the scale, massing, architectural style and finishes of the existing building. The appeal proposal seeks to increase the footprint from approximately 35m<sup>2</sup> to 76m<sup>2</sup> measured externally whilst raising the roof by up to 0.5m to 5.2m above ground level to accommodate 1<sup>st</sup> floor bedrooms. In so doing, the proposed development would provide a modest two bed unit finished in traditional materials. Notwithstanding the scale of the extensions permitted elsewhere and referred to me by the appellant, these were considered against the policy requirements at that time and the particular circumstances of each case. Whilst I acknowledge that the appeal proposal represents a significant increase in footprint, the scale of the building would not be readily apparent within the existing curtilage, given its lowlying position, its orientation gable end and close to the road and the level of enclosure available. In these site specific circumstances, I am satisfied that the scale of the building now proposed would be appropriate at this location. I agree with the appellant that the increase in height is visually insignificant.
11. The use of traditional materials such as stone and slate reflect the architectural style of the existing structure. The appeal proposal seeks to block up the one original opening and introduce additional windows, doors and roof lights necessary to meet Building Control standards and provide a minimum standard of accommodation. Whilst the northern elevation is finished in lime rendered, this aspect has limited visibility and does not detract from the overall appearance. The additional openings have been finished in red brick banding which shows a consistency and continuity of building materials in the area, especially on the neighbouring Rowallane Estate. I am therefore satisfied that the proposed extension is sympathetic to the scale, massing, architectural style and finishes of the existing building and find no conflict with criteria (c).
12. Criterion (b) requires that the conversion would maintain and enhance the character and architectural features, design and setting of the existing building and not have an adverse effect on the character and appearance of the building. I have already found that the proposed extension would be sympathetic to the style of the existing building. Whilst doubling its footprint and increasing its height, the resulting form remains modest in scale and traditional in form. The existing vegetation along the northern boundary of the appeal site obscure views of the appeal building on the approach from Saintfield until crossing the site frontage from where only the existing gable wall would be visible. Long distance views of the enlarged structure would be available on the approach from Crossgar from where it would be read against a backdrop of mature trees and rising ground. I am therefore satisfied that the proposed conversion would maintain the design and appearance of the existing building.



13. However the proposed development seeks to remove existing boundaries and enlarge the curtilage of the original farmgroup, extending into the adjacent field. This is required in order to provide a new access positioned 35m south east of the appeal building and so allow for the provision of the required sightlines of 2.4m by 160m. Whilst the historical maps show a small tight knit grouping and restricted curtilage extending 33m along the road frontage, the appeal proposal seeks to increase the frontage to approximately 60m frontage. The existing roadside hedge would be removed and repositioned behind the sightlines and whilst it is proposed to replace this hedge and introduce new planting along the south-eastern boundary, this would take time to mature and provide effective enclosure. In the meantime, the construction of the new access with a sweeping driveway, extensive gravelled area and much larger garden area would create a suburban arrangement which would be clearly visible on the approach from Crossgar and does not reflect the traditional character of the original building. I therefore find that the appeal proposal fails to respect the character of the appeal building and its setting and in so doing, would have an adverse effect on the character and appearance of the building. In this respect, I find that the proposed development conflicts with criterion (b).
14. The appellant has referred me to the Minister's Statement which encourages flexibility in interpretation of Policy CTY4 and has raised the issue of consistency in decision making in general. He has sought to draw comparisons with a number of previous planning permissions and appeals and whilst providing me with some details, these are not sufficient to enable me to draw a meaningful comparison with the appeal proposal. In any case, they were all made in the context of a suitable building as set out in Policy CTY4 rather than assessed against SPPS policies and cannot therefore be considered as being directly comparable to this appeal proposal. I cannot therefore attach weight to these previous decisions by the Department and the Commission.
15. I am not persuaded that the appeal building is a locally important building and have found that the proposed development does not find support in criterion (b) of Policy CTY4. 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. Even if the appearance and architectural merit of the building was enhanced by its extension and conversion to a dwelling as argued by the appellant, this factor would not outweigh the objection to the proposal in principle under the SPPS and Policy CTY4. I therefore conclude that there are no overriding reasons why the development is essential. Accordingly, to the extent specified, the LPA has sustained its first reason for refusal.
16. The appeal site abuts the Crossgar Road which is a Protected Route (PR). Whilst there is an existing narrow access to the north west of the appeal building, this is currently used for agricultural purposes only by a tenant farmer. Policy AMP3 states that the Department will restrict the number of new accesses and control the level of use of existing access onto Protected Routes. Policy AMP3 identifies four exceptions when permission will be granted for direct access onto the Protected Route which includes criterion (d); other categories of development. A new vehicular access to serve the dwelling is now proposed with the existing access to be blocked up which would result in an intensification of use. Both the LPA and the appellant agreed that if the appeal proposal did not find support in

Policy CTY4, it did not fall within one of the other types of development considered acceptable under Policy AMP3. As I have found that the proposed development conflicts with the SPPS and Policy CTY4, it is also at odds with Policy AMP3. The LPA has therefore sustained its 2nd reason for refusal.

17. As both reasons for refusal have been sustained to the extent specified, the appeal must fail.

This decision relates to the following drawings all stamped refused by the LPA on 23/9/15

Drg. PO1 1:2500 site location plan  
Drg. PO4A 1:100 floor plans and elevations; and  
Drg. PO2B 1:500 existing and proposed block plan

**COMMISSIONER PAULINE BOOMER**

**2015/A0150****LIST OF APPEARANCES**

LPA            Ms J. McVeigh (Newry Mourne and Down District Council)

Appellant    Mr D.Broderick (TSA Planning)  
                  Mr N. Cromie (Taylor & Boyd Engineers)  
                  Mr & Mrs Jennings

**LIST OF DOCUMENTS**

LPA 1            Council's Statement of Case and Appendices

APP 1            Appellant's Statement of Case and Appendices  
APP 2            Planning history for H/12/0268/F submitted t the hearing

## Record of meetings between Planning Officers and Public Representatives

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DATE OF MEETING	PLANNING OFFICER'S NAME/S	PUBLIC REPRESENTATIVE'S NAME
8/01/2016	A McKay, P Rooney, D Watson	Seán Rogers MLA, Cllr Willie Clarke, Cllr Mark Murnin
12/01/2016	P Rooney, M Keane	Cllr Stephen Burns
14/01/16	A McKay	Margaret Ritchie MLA
20/01/2016	P Rooney	Cllr Cadogan Enright
25/01/2016	D Watson	Margaret Ritchie MLA
27/01/16	M Keane	Seán Rogers MLA
17/02/16	Jacqui McParland	Declan McAteer
19/02/16	Jacqui McParland	Jarlath Tinnelly
22/02/16	Jacqui McParland	Michael Ruane
22/02/16	Jacqui McParland	Gillian Fitzpatrick
24/02/16	David Watson	Seán Rogers MLA
25/02/16	Andrew Hay, James King	Seán Rogers MLA
25/02/2016	Annette McAlarney	Seán Rogers MLA
25/02/16	Anthony McKay	Margaret Ritchie MLA
26/02/16	M Keane	Cllr McGrath
15/03/16	J McParland	Cllr M Ruane
16/03/2016	J McParland	Sean Rogers
25/03/16	A Davidson	Cllr Taylor
30/03/16	J McParland	Seán Rogers MLA
5/4/16	A McKay	Seán Rogers MLA
8/4/16	A McKay	Margaret Ritchie MLA
12/04/2016	Annette McAlarney	Cllr Curran
14/04/2016	J McParland	Cllr Declan McAteer
25/04/2016	J McParland	Cllr Tinnelly
27/04/2016	J McParland	Cllr Tinnelly
28/04/2016	Annette McAlarney	Cllr Burgess
29/04/2016	Annette McAlarney	Cllr McGrath
18/05/2016	Annette McAlarney	Cllr Curran
23/05/2016	A McKay	Cllr Ó Gribín
10/6/16	P Rooney & J McParland	Carla Lockhart MLA
14/06/2016	J McParland	Cllr Quinn
14/06/2016	J McParland A McKay P Rooney	Cllr Tinnelly
15/6/16	P Rooney	Cllr G Fitzpatrick
15/06/2016	P Rooney A McKay	Harold McKee MLA, J Tinnelly & G Fitzpatrick
16/06/2016	J McParland	Cllr Quinn
20/06/2016	Clare Miskelly	Cllr Dermot Curran
21/06/2016	J McParland	Cllr Taylor
21/06/2016	J McParland	Cllr Hanna
27/06/2016	J McParland	Cllr Tinnelly



## Record of meetings between Planning Officers and Public Representatives

404

30/06/2016	A McKay	Margaret Ritchie MP
4/07/2016	Andrew Hay	Jim Shannon MP
08/07/2016	J McParland	Cllr Quinn Cllr Doran
14/07/2016	P Rooney	Cllr W Clarke
21/07/2016	Anthony McKay	Margaret Ritchie MP
26/7/2016	J McParland	Sean Doran
27/07/2016	J McParland	J Tinnelly
08/08/2016	J McParland	J Tinnelly
8/08/16	A Hay M Keane	Colin McGrath MLA
11/08/16	Andrew Hay	Cllr Walker Cllr Curran
25/08/16	Anthony McKay	Cllr O'Gribin
30/08/16	Pat Rooney	Cllr Ruane
1 /9/16	Anthony McKay	M Ritchie MP
02/09/2016	A McAlarney Mark Keane	Cllr Willie Clarke
02/09/2016	A McAlarney	Cllr Willie Clarke
06/09/2016	Pat Rooney/Andrew Davidson	Cllr Terry Hearty
08/09/2016	Annette McAlarney Catherine Moane	Colin McGrath MLA
08/09/2016	Pat Rooney	Cllr David Taylor MLA and Danny Kennedy MLA
14/9/16	Pat Rooney	Cllr Terry Hearty
14/9/16	Anthony McKay	Wm Erwin MLA
15/09/2016	Pat Rooney	Cllr Terry Hearty
23/09/2016	Pat Rooney/Andrew Davidson	Harold McKee MLA, David Taylor MLA
29/09/2016	Pat Rooney	Cllr Terry Hearty
11/10/16	Andrew Davidson	Cllr Tinnelly
13/10/16	Andrew Hay	Margaret Ritchie MP
14/10/16	Pat Rooney & Andrew Davidson	Justin McNulty MLA
14/10/2016	Jacqui McParland	Cllr B Quinn
17/10/2016	Annette McAlarney	Cllr Curran
18/10/2016	Jacqui McParland	Cllr Doran