

ITEM NO 47
APPLIC NO P/2014/0678/F **Full DATE VALID** 8/14/14
COUNCIL OPINION REFUSAL
APPLICANT Mr Frank King C/O Agent **AGENT** ERES Limited
Mourne House
41-43 Downshire
Road
Newry
BT34 1EE
02830250135

LOCATION 33a Flagstaff Road
Fathom Lower
Newry
Armagh
BT35 8NR

PROPOSAL Retention of existing fuel sales business to include existing hard standing area and portacabin

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

- 1 1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.
- 3 3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.
- 4 4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside
- 5 5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2014/0678/F

Date Received: 14.08.14

Proposal: Retention of existing fuel sales business to include existing hard standing area and portacabin

Location: 33a Flagstaff Road, Fathom Lower, Newry, Armagh, BT35 8NR

Site Characteristics & Area Characteristics:

Site is located 1.7 miles south of Newry within the open countryside within an Area of Outstanding Natural Beauty.

The site comprises of an existing commercial yard/ fuel business known as Fathom Fuels. On site there is an existing portacabin used as an office associated with fuel sales. Immediately adjacent and north of this is a sale/ storage area with two fuel pumps, gas tanks and bagged fuel, this area is covered by a corrugated roof supported by a concrete wall and steel post. An existing shed is located to the western portion of the site which is being used for the storage of fuel and the hard standing is part of the overall commercial yard for storage, sales and distribution.

Site History:

EN/P/2012/0070/CA/01 – Unauthorised change of use from agriculture to storage and sales of fuels, siting of associated office, creation of associated areas of hard standing and concrete base and erection of associated buildings and walls.

Outcome: The enforcement notice wording is amended with a period of 6 months given for compliance. (Informal hearing 27.06.13, decision 29.07.13 - Application site)

P/2012/0070/CA - 31 Flagstaff Road, Fathom Lower (Main Portion), Cloghoge, Newry, Armagh, BT35 8NR, Unauthorised fuel sales yard. (Court action being pursued)

Planning Policies & Material Considerations:

Banbridge/ Newry and Mourne Area Plan 2015: The site is within the open countryside within an AONB - The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015 and should be refused on this basis

Planning Policy and Advice considered: SPPS, PPS2, PPS3, PPS21 and DCAN15

Additional Information Provided:

Information submitted 28th October 2014 includes a letter outlines how proposals meet policy requirements, P1C form and farm maps showing the extent of the holding and land registry maps.

Note: Drawings submitted do not accurately reflect the extent of development on site, the agent has been advised to provide an accurate plan which has yet to be submitted

SPPS and PPS21 (CTY1)

The policy provides a list of non-residential uses which may be deemed acceptable within the countryside; this includes provision for farm diversification in accordance with CTY 11. CTY 1 specifically states that other types of development will be permitted where there are overriding reasons as to why the development is essential and could not be located within a settlement.

Given the commercial nature of proposals this type of development is better suited to an urban location and not an expected use within the open countryside. No overriding reasons have been presented as to why the development is essential at this rural location and could not be located elsewhere within a settlement. Therefore the development fails to meet CTY1 of PPS21

Retailing (SPPS)

The policy emphasises that retailing should be directed towards town centres although consideration is given to appropriate retail facilities such as farm shops, crafts shops or shops to serve tourist/recreational facilities. The retail sale of fuel and related products is not deemed to be an appropriate retailing facility within the countryside. The business operates as a separate entity outside of the farm holding and is not tied to it therefore it is not an acceptable use at this rural location and not in compliance with planning policy. This is a position supported by a decision made by the Planning Appeals Commission in relation to this matter. (2014/E0048)

Farm Diversification (SPPS and CTY11)

DARD in their consultation response dated 26.11.15 confirm that the farm business i.d. has been in existence over 6 years with single farm payments claimed. While the Council do not dispute the active and established nature of the farm business the

land to which the proposal relates as well as adjoining land (which is subject to a separate planning application P/2014/0670/F) are outside the farm holding with both portions of land utilised for commercial enterprise and not for agricultural purposes.

The agent in correspondence dated 28th October 2014 indicates that the 'existing farm yard and fuel sales are intertwined' however the existing fuels sales area and buildings are a separate entity and do not operate in conjunction with the agricultural operations of the farm.

The agent has also stated that the retention of the existing building is necessary as all other buildings on the holding are fully utilised for farming activities and there are no available options available. Given the size and scale of the overall enterprise it is difficult to envisage how proposals could possibly be accommodated elsewhere within the holding without causing adverse impact upon the rural setting. The current site comprising the existing fuel business, hard standing area and portacabin are already inappropriate to its location and detract from the visual appearance of the area. The retention of such will continue to have adverse consequence on this designated area.

Impact to Amenity (4.11 and 4.12 of the SPPS)

Whilst Environmental Health in their consultation response dated 16th September 2014 have raised no concerns. However due to the nature of development at the site including the level of activity the Planning Authority would have concern in terms of potential noise, general nuisance and visual intrusion and would recommend refusal on this basis.

Development within the AONB (SPPS and PPS2)

The overall use, design and appearance of buildings are already out of context with the rural setting of the AONB having an adverse visual impact due to the suburban nature of the development and will continue to do so with its retention.

Consultations:

NIW (04.09.14) - Generic response

NIEA (11.09.14) - Concerns raised regarding disposal of sewerage, consent to discharge required

Environmental Health (16.09.14) - No objection

Transport NI (30.01.15) - No objections raised

DARDNI (26.11.15) – Business i.d. more than 6 years and single farm payments claimed

Objections & Representation

5 neighbour notifications issued

Advertised 26.08.14

No objections received

Consideration and Assessment:

The existing fuel sales business to include existing hard standing area and portacabin are currently unlawful with no evidence presented to indicate that the current uses are lawful, established and immune from enforcement and thus its retention is not justified.

The agent has provided supporting information (letter, farm and land registry maps dated 28th October 2014) to demonstrate how proposals meet the requirements of policy. Despite this there is no exceptional case for the development to be retained within the open countryside and that it could not be located within a settlement thus proposals fail policy requirements of SPPS and PPS21 (CTY1). In consideration of a farm diversification case the proposals are located outside the existing farm holding, operates separately from it and not run in conjunction with any agricultural operations and therefore does not fulfil of policy with this regard (SPPS and CTY11).

Whilst the SPPS identify acceptable retail uses within the countryside these proposals clearly do not meet such criteria and thus fail against policy. The area is designed as an Area of Outstanding Natural Beauty the current commercial enterprise has already eroded the visual quality of this rural location which is predominantly characterised by detached dwellings, agricultural and mountainous landscape that the retention and continuation of such proposals will detract from this designated area and thus is contrary to the SPPS and PPS2. Furthermore despite the consultation from Environmental Health the Planning Authority do have concerns with regard to impact on the amenity of neighbours within the vicinity and recommend it is also refused on this basis.

Overall proposals fail to meet policy requirements of the SPPS, PPS21 (CTY 1 and 11) and PPS2, as outlined above and thus it is recommended to refuse the application.

Recommendation: Refusal

Refusal Reasons:

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm

buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.

3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.
4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside
5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.
6. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.
7. Having notified the applicant under Article 3 (6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015 that further details 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.

Case Officer:

Authorised Officer:



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NEWRY, MOURNE & DOWN COUNCIL

Local Planning Office

Monaghan Row,

Newry,

BT35 8DJ,

Reference: P/2014/0678/F

Applicant Name: Mr Frank King

Proposal: Retention of existing fuel sales business to include existing hard standing area and portacabin

Site Location: 33a Flagstaff Road Fathom Lower Newry Armagh BT35 8NR

Newry, Mourne & Down Local Planning Office intends to refuse this application on the grounds that:

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policy CTY11 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the applicant has not demonstrated that it is to be run in conjunction with the agricultural operations on the farm, it does not involve the re-use or adaptation of existing farm buildings and it has not been adequately demonstrated that there are no other buildings available to accommodate the proposal.

3. The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of the Planning Policy Statement 2, Planning and Nature Conservation in that the site lies within an Area of Outstanding Natural Beauty and the development, use and operations are not sympathetic to the character and appearance of the AONB.

4. The proposal is contrary to paragraphs 6.279 of the Strategic Planning Policy Statement in that the site lies within the open countryside and no special need has been demonstrated to justify relaxation of the strict planning controls exercised in the countryside

5. The proposed development would if permitted harm the living conditions of residents of Flagstaff Road by reason of noise, visual intrusion and general nuisance.

Consideration

Planning Policy Statement 21: Sustainable Development in the Countryside, (PPS 21), Policy CTY 1 sets out a range of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development and 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. The range of acceptable development includes farm diversification proposals in accordance with Policy CTY 11. Policy CTY 1 goes on to say that there are a range of other types of non-residential development that may be acceptable in principle in the countryside and that proposals for such development will be considered in accordance with existing published planning policies.

Policy CTY 11 states that planning permission will be granted for a farm diversification proposal where it has been demonstrated that it is to be run in conjunction with the agricultural operations on the farm. Four criteria are listed under Policy CTY 11, namely:

- (a) the farm or forestry business is currently active and established;
- (b) in terms of character and scale it is appropriate to its location;

- (c) it will not have an adverse impact on the natural or built heritage; and
- (d) it will not result in detrimental impact on the amenity of nearby residential dwellings including potential problems arising from noise, smell and pollution.

The Planning Authority dispute that the development is run in conjunction with the operations on the farm and fails to fulfil criteria (b), (c) and (d).

It is contended that Mr King already uses this existing commercial business in conjunction with his existing farm business. The policy provides no explanation of the requirement “to be run in conjunction with the agricultural operations on the farm” and could have been clearer. Case Law determines that any ambiguity in the policy should be interpreted in the appellant’s favour. This approach is comparable to planning appeal ref: 2009/E029 (**Appendix 1**) where it was judged that an engineering business which ran beside an existing agricultural business would be ran in conjunction with each other.

In a similar fashion, Mr King is actively involved in both his fuel business and his extension farm business. Both essentially operate out of the same premises. It is therefore contended that Mr King fulfils the policy headnote of CTY11.

In terms of character and scale the existing business is located within an existing yard with the porta cabin essentially screened from the road when the access gates are closed. The buildings are also located with a significant example of ribbon development along this part of Flagstaff Road. The buildings are quite easily assimilated into this area and would be difficult to view from any approach. The site is surrounded by much larger agricultural buildings which dwarf the application buildings. In this manner it is felt that the buildings are appropriate in character and scale to this locality. The proposal will not have any detrimental impact on this AONB as the character of this locality has already been irreparably changed. This business is located in the middle of the existing built development and is readily ensconced within it.

It is notable that Environmental Health have issued a consultation response dated 16 September 2014 with no objections to the proposal. In addition to this the Applicant owns the dwellings either side of the application site, including a busy agricultural yard and therefore the only dwellings that will be directly affected by the operation are those in control of Mr King.

Full details of the Applicant's farm maps were submitted to the Department along with this application. The existing farm buildings are located beside the application site. This is the location of the principle group of farm buildings on the holding **Appendix 2** contains an aerial photograph of the existing premises which includes the application site and 4 other existing buildings on the farm. Buildings A, B & C are all full to capacity with either cattle of farm materials and machinery. They are essential for the maintenance of the existing farm enterprise. The unauthorised shed (D) is required for the existing farm enterprise (Application P/2014/0670/F). There is no room within the buildings for additional use. There are therefore no other available buildings anywhere on the holding to use for this diversification project.

It is therefore felt that this application meets the relevant criteria within Policy CTY11 and Planning permission should be forthcoming.

In light of the above submission and the information previously submitted to the Council I would respectfully request that this application be deferred for further consideration.

Yours Sincerely,



Stephen Hughes

ERES Ltd.

APPENDIX 1
Planning Appeal Ref: 2009/E029

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

Appeal Reference:	2009/E029
Appeal by:	James Beattie against an Enforcement Notice dated 16 June 2009.
Development:	Unauthorised use of land for an engineering business.
Location:	24 Strahulter Road, Strahulter, Newtown Stewart, Strabane.
Application Reference:	EN/2009/0217
Procedure:	Written Representations and Accompanied Site Visit on 24 March 2010.
Decision by:	Commissioner Maire Campbell, dated 31 st March 2010.

Grounds of Appeal

1. The appeal was made on grounds (a), (e), (f) and (g) as set out in Article 69 (3) of the Planning (Northern Ireland) Order 1991 (the Order). Ground (e) of appeal was withdrawn in the appellant's Statement of Case. There is a deemed planning application by virtue of Article 71(5) of the Order.

The Notice

2. The Notice identifies an area of land and two of the buildings within that area. These are marked 1 and 2 on the map accompanying the Enforcement Notice. Approval was granted on 6 November 2009, Departmental reference J/2009/0362/F for use of an existing farm building for the storage, packing and distribution of potatoes and vegetables as a farm diversification project. The Department confirmed that its objection was confined to the use of building 1 for an engineering business and stated that the Notice should be corrected at 3, to refer, not to the land, but to building 1. This correction would not result in prejudice to the appellant and accordingly I will make it under Article 70(2) of the Order.

Reasoning

Ground (a) and the deemed planning application

3. The notice site is within the rural area and the Department indicated that the development satisfied many of the criteria set out in policy CTY 11 - Farm Diversification of draft Planning Policy Statement 21: Sustainable Development in

the Countryside. The only requirement of CTY 11 not satisfied is that the diversification scheme is "to be run in conjunction with the agricultural operations on the farm.". Accordingly this is the sole issue in relation to ground (a) and the deemed planning application.

4. The following facts about the existing operation are pertinent to the consideration of the issue in the appeal.
 - The appellant is a farmer and farm maps indicate that he owns, or part owns, more than 40 hectares in the vicinity of the Notice site. He farms barley and potatoes and 20+ acres is let in conacre annually. He has a herd of 10 cattle. He owns all buildings on the Notice site.
 - The buildings, which include a dwelling, identified on the Notice map, were derelict in the 1980s; they had been used by army/police. Building 1 was used by the appellant as a silage pit until 1991 and then was vacant until 2002 when the appellant repaired it (new corrugated iron sheeting and re-plastering of walls) and used it to store potatoes and carry out repairs, welding and general maintenance to farm machinery and equipment. The engineering work was to equipment on his own farm and those of his neighbours. He was assisted by two friends who live locally (within one mile).
 - The appellant now works at farming, including fruit and vegetables on his own farm and at the packaging and distribution business carried out in building 2.
 - The appellant's two friends continued with the engineering business in building 1. They now use the name Pro Fab and have two employees. The appellant has an oral agreement with Pro Fab about the use of building 1 and Pro Fab pays a weekly rent. The range of the work and the clientele now carried out by Pro Fab has not changed since the business was started by the appellant. Pro-Fab does work for the appellant and for this he pays the going rate.
 - The appellant stated that if Pro Fab ceased work, he would continue the engineering business, retaining his original customers (within a distance of 5-10 miles).
5. These facts were not disputed by the Department. It was argued that the development was not sustainable, a requirement of CTY 11 as the appellant only received a rental income and Pro Fab is now in control of the engineering business. The Department stated that the purpose of farm diversification was to provide additional income for farmers but schemes must be sustainable. The policy provided no explanation of the requirement "to be run in conjunction with the agricultural operations on the farm" and could have been clearer. Any ambiguity in the policy should be interpreted in the appellant's favour.

6. In considering whether the Department's objection to the existing development in building 1 should be sustained, I consider the following points to be significant:-
 - the Department accepted that the character and scale of the operation is appropriate to this rural location and that it was otherwise acceptable. This concession addresses the impact on landscape, natural heritage and residential amenity.
 - The appellant is a farmer, agricultural operations are continuing on the larger holding and there is no impediment to agricultural operations continuing on the Notice site, including in the remaining buildings on the Notice site.
 - The operation is largely confined within a building formerly used for agriculture.
 - The engineering operation was started by the appellant, is now run by local people and provides service for local farmers.
7. Taking account of the combination of these factors, I conclude that the operation in building 1 represents a sustainable farm diversification project. I agree with the Department that the policy requirement of "run in conjunction with agricultural operations on the farm" is not clear. The Departmental official was unable to provide any further clarification. I do not consider that this requirement can be read to mean that this farm diversification proposal can only be run by this appellant or that he must have a degree of control higher than that indicated in this appeal.
8. Policy CTY 11 would have applied to the approval granted in building 2 on the Notice site. I note that this approval, though granted to the appellant, does not in any way restrict the management or control of the project. The Department correctly accepted that building 2 and the business in it could be sold by the appellant at any time. The appellant's rebuttal provided an example of a similarly unrestricted approval, Departmental reference K/2008/1055/F dated 9 July 2009. These examples of Departmental approvals reinforce my conclusions in paragraph 7 above.
9. I have not been persuaded by the Department that the sustainability of the present operation, which is otherwise acceptable under CTY 11, would be enhanced if the appellant were dealing with it. I find the Departmental objection not to be sustained and conclude that the existing operation on the Notice site satisfies the requirements of policy CTY 11 of draft PPS 21.
10. To ensure that the operation continues to provide an ongoing rental income for this appellant and in connection with this farm, I consider that he should retain ownership of building 1. A replacement dwelling is under construction just south of the existing building on the Notice site; accordingly I agree with the Department that working hours should be restricted as suggested during oral

proceedings. The Department also suggested that the storage of material should be confined to the Notice site. The site is generally open to Strahulter Road and this is an identified scenic route close to the Owenkillew River leading into the Sperrins. The use of the entire Notice site, which includes the site of the dwelling, for the open storage of engineering materials would be visually unacceptable. I note that the appellant stated that the business does not require outside storage. I conclude that any open storage should be confined to the area in the immediate vicinity of building 1, now cross-hatched on the map which accompanied the Enforcement Notice and which is attached to this decision.

11. The appeal under ground (a) succeeds and the deemed planning application is granted subject to conditions.

Decision

- (i) Part 3 of the Notice is corrected by deleting "the land" and inserting "building number 1 (as indicated on the attached map)".
- (ii) The appeal on ground (a) succeeds and the deemed planning application is granted subject to the following conditions.
 1. Building 1 (as indicated on the attached map) shall be retained in the same ownership as the farm holding considered in this appeal.
 2. No activity associated with the engineering business in building 1 shall be carried out outside the hours of 0800 - 2000 Monday to Friday and 0800-1700 Saturday or at any time on a Sunday.
 3. Open storage associated with the business in building 1 shall be confined to the area cross-hatched on the attached map.
- (iii) The Enforcement Notice is quashed.

COMMISSIONER MAIRE CAMPBELL

APPENDIX 2
Existing Agricultural Buildings and Site



ITEM NO 48
APPLIC NO P/2014/0859/F **Full** **DATE VALID** 10/16/14
COUNCIL OPINION REFUSAL
APPLICANT Brendan Carr **AGENT** O'Callaghan
 Planning 9
 Ballyscandal Road
 Armagh
 BT61 8BL
 02837511714

LOCATION 65 Metres South of 43 Newry Road
 Drumilly
 Belleek.

PROPOSAL Retention of building for agricultural use.

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

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.



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

Delegated Application

Development Management Officer Report		
Case Officer: Gareth Murtagh		
Application ID: P/2014/0859/F		Target Date:
Proposal: Retention of building for agricultural use.		Location: 65 Metres South of 43 Newry Road Drumilly Belleek.
Applicant Name and Address: Brendan Carr		Agent Name and Address: O'Callaghan Planning 9 Ballyscandal Road Armagh BT61 8BL
Date of last Neighbour Notification:		29th October 2014
Date of Press Advertisement:		19th November 2014
ES Requested: No		
Consultations:		
Consultation Type	Consultee	Response
Representations:		
Letters of Support	None Received	
Letters of Objection	None Received	
Petitions and signatures	No Petitions Received	
Number of Petitions of Objection and signatures	No Petitions Received	
Summary of Issues: Site has been the subject of a number of previous applications and enforcement cases, the current application seeks to retain the building for use as an agricultural barn,		

Site Visit Report

Site Location Plan:



Date of Site Visit: November 26th 2015

Characteristics of the Site and Area

1.0 Characteristics of Site

1.1 The site consists of a shed situated to the rear of No. 43 Newry Road, it is just under 6 metres in height and has two roller shutter doors, the submitted floorplan shows it arranged internally into several pens with a loft in one corner. The shed is constructed out of a block wall finished in a smooth render on its lower level, with the upper level and roof finished in green cladding panels.





1.2 The site is not visible from Newry Road due to the setback, it is visible from Mountain Road to the west from which the dwelling and shed appear together in the same field of view. On the day of the site visit a lorry was observed parked in front of the shed.

1.3 Retention of the shed as a domestic garage and store was sought by application P/2010/1330/F, this was refused on February 15th 2012, a subsequent application to retain it as an agricultural machinery store was refused as no need for such a use had been demonstrated, a subsequent appeal to the PAC was dismissed. An enforcement notice requiring the demolition of the shed has been served.

2.0 Characteristics of Area

2.1 The site is located in a rural area approximately 2 miles west of Camlough, it is located in a hollow in the landscape which the Camlough Road passes through in a series of sharp turns.

2.2 The dwelling at No. 43 was first granted Outline Permission for a replacement dwelling under P/2003/1277, with subsequent approval under P/2004/1054. The dwelling constructed did not comply with these approvals and an enforcement case was opened resulting in an application to retain the dwelling, P/2007/0585 which was approved. An application to remove the demolition condition from this approval, P/2008/1294/F was refused.

2.3 Other Development in the vicinity of the site consists of another dwelling with a shed, that is smaller than that of the current application to the east of the site A short distance to the west is the Mountain House Bar.

2.4 The application seeks Full Permission to retain the shed for use as an agricultural building.

3.0 Description of Proposal

3.1 Application seeks Full Permission to retain the shed for use as an agricultural building. The application is accompanied by information stating that the applicant owns a small herd of beef cattle, currently 14 animals.

Planning Assessment of Policy and Other Material Considerations

4.0 Strategic Planning Policy Statement

4.1 The SPPS provides a framework for the preparation of new Local Development Plans by Councils. In relation to agricultural buildings it restates the existing planning policy.

5.0 Banbridge/Newry and Mourne Area Plan 2015

5.1 The site is located with the rural area; no other provisions of the plan are relevant.

6.0 Consultations

6.1 DARD advises that the holding has not been in existence for at least 6 years and no Single Farm Payment has been claimed in that time, it states that the business is classed as CAT3 or hobby farm.

6.2 Transport NI has no objections to the proposal.

7.0 PPS21 Policy CTY 12 Agricultural Buildings

7.1 The site has been the subject of a number of planning applications and enforcement cases over the last decade, the planning appeal related to the use of the shed and yard as an agricultural machinery business, the applicant now claims that this use has ceased and it is used as an agricultural store. Inspections of the site by enforcement officers have obtained photographs of feeders, hay bales and tractors within the shed.

7.2 In order to be acceptable under the policy the farm holding must be active and established for at least 6 years, there have been a number of appeal judgements in which appellants have been able to demonstrate that land was in farming use as part of a different farm holding for the requisite period of time.

7.3 The information submitted by the applicant shows that the farm holding consists of two fields adjacent to the dwelling house; these appear to be largely overgrown and rocky. Other supporting evidence states that there were a total of 10 cattle as part of the herd when the application had been submitted however by December 2014 these had been sold and replaced with 14 cattle. It is also claimed that the FBID was granted over six years ago and the lands were part of a historic farm holding and that the applicant was in the process of having his farm resurveyed by DARD.

7.4 DARD's most recent response dated August 25th 2015 stated that the FBID has not been in existence for at least 6 years and no Single Farm Payment has been claimed in that time, it is also stated that the business was just a Category 3 or hobby farm. The applicant has referred to a number of previous appeal judgements where permission was granted despite the FBID not being in existence for the requisite time, however in all of these cases the appellants were able to demonstrate that the lands in question had been farmed for a length of time in excess of 6 years. The applicant has stated on the P1C form that "this is a historic farm holding," however no documentary evidence has been provided to show how long the lands were farmed for. In the previous appeal the applicant made no reference to any agricultural activities being carried out implying that the use of the lands for this purpose had ceased.

7.5 While CTY 12 refers to a farm holding rather than a farm business as in CTY 10, in the previous cases referred to by the applicant the lands had been part of active holdings whereas in this case there appears to have been a gap in farming activity of indeterminate length. This means that the holding is not established in terms of policy, there does not appear to have been

any agricultural activity performed on the lands in question during the time covered by the enforcement cases and no evidence was ever provided by the applicant.

7.6 The policy also lists a number of criterion which agricultural buildings must comply with, the proposal appears to comply with these as it is of a scale which would be appropriate for the size of the holding, it is of an appropriate character and scale for the location, is not visually prominent due to its setback from the main road, there are no issues of natural or built heritage and no amenity issues as there are no nearby neighbours.

7.7 The policy also lists additional criteria in cases where a new building is proposed, the building predates the creation of the current FBID and it is unauthorised, policy does not necessarily prevent the construction of an agricultural building to serve a newly established holding, however in the cases referred to by the applicant it was demonstrated that the holding in question had been continuously farmed for the requisite period of time.

8.0 Conclusions and Recommendation

8.1 The proposal is situated on an area of ground which has been used for non-agricultural uses for several years with no evidence of farming activity having taken place. The application is the applicant's third attempt to regularise the shed which is the subject of ongoing enforcement action. The agricultural operations appear to have started relatively recently and are of such a small scale that it is categorised as a hobby farm by DARD, in addition there is no evidence that the lands that make up the current holding were ever used for agriculture during this time. The use of the term "historic farm holding" on the P1C form suggests that there was a lengthy period of time during which no agricultural operations were carried out.

8.2 Therefore the proposal fails the requirements of CTY 12 in that it is not proposed on a historic holding and refusal is recommended.

Neighbour Notification Checked

Yes

Summary of Recommendation

The proposal is to retain a building for agricultural use, however the FBID has not been in existence for the requisite period and no evidence has been provided to show that the lands have been used for agriculture for that time. The previous intention to use the building either as a domestic store or for agricultural machinery repairs suggests that no such use was occurring.

Conditions/Reasons for Refusal:

Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.

Case Officer Signature:

Date:

Appointed Officer Signature:

Date:

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

20th September 2016

Dear Sir / Madam,

Reference: P/2014/0859/F
Applicant: Brendan Carr
Proposal: Retention of building for agricultural use.
Site Location: 65 Metres South of 43 Newry Road, Drumilly, Belleek.

1. I refer to the above planning application, which is to be discussed at the Council's planning committee meeting on 28th September 2016.
2. The application was previously included on a "delegated list", with a recommendation to refuse. Additional information was submitted thereafter, and the planning officer's professional report was updated, albeit with a significant omission insofar as the consideration of the application made absolutely no reference to the applicant's fallback position nor to the existence of agricultural permitted development rights. The Council placed absolute emphasis upon its perception that these lands have not been used for agricultural purposes for the last six years and the farm is purportedly not established.

Reason for Refusal

3. The solitary reason for refusal states that:

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policy CTY12 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the existing agricultural holding has not been established for at least 6 years.

4. The Council has accepted that the holding is currently active and therefore the only issue is the applicant's failure to demonstrate that the holding has been active for more than 6 years. However, in this particular context the history of the holding need not necessarily be a determining issue.
5. Additionally, it is highly relevant that the only lawful use of this land is "agriculture". Since there has never been a change in the use of the land, it must be recognised as an agricultural holding and should automatically be recognised as being more than 6 years old.

Agricultural Permitted Development Entitlements

6. I believe that insufficient weight has been given to planning legislation in arriving at the recommendation to refuse permission, because under Part 7 of the Planning (General Development) Order (NI) 2015, the applicant is entitled to avail of the same permitted development rights as any other farmer. The relevant legislation is not conditional upon an applicant having a 6 year old farm business ID, whereas the relevant planning policy carries such an inference. In short, the applicant has a valid fallback position that could see him erect a building of identical dimensions, at this precise location, in the event of this application failing. This is similar to the "Moses" case previously cited in supporting documentation, however it is apparent that insufficient weight has been attributed to same, hence the need to review this application. Put simply, it would be nonsensical to refuse permission when an applicant could simply proceed to carry out this development in the future, without even requiring planning permission.
7. The Council's senior planning enforcement officer has previously agreed with me that a landowner may be able to avail of agricultural permitted development rights despite a farm business not being six years old (established) or active (see letter Appendix 5). This has significant ramifications for the current application because the applicant's fallback position has not been acknowledged within this application.
8. I have appended a total of four emails sent to various planning officers dealing with this case, and I must inform the Council that not one response has been received, while the issue has not even been addressed in the planning report that shows how the issue was purportedly considered in the course of determining the application. The lack of response to my emails and the failure to address the pertinent issue within the planning report makes the current refusal recommendation un-safe and un-sound.



Scope for Deviating from Planning Policy

9. The relevant planning policy indicates that it is not possible to permit proposals for agricultural development unless an applicant's farm business is active and established. However, the policy cannot be interpreted as if it were an immutable rule with a single meaning. Of course, planning authorities can disapply planning policies where circumstances allow, provided the reasons for so doing are made clear. In relation to proposals involving agricultural development, it is important to recognise that the existing policy does not make provision for an individual starting a new farm business. However, planning authorities can look at this on a case by case basis. Indeed, the supporting statement that accompanied this application highlighted no less than four similar planning approvals and planning appeal decisions that would support the approval of this application. It would appear that insufficient weight has been attached to this information.

"Other Evidence of Active Farming"

10. This application is being determined on the basis that the applicant's farm business ID number is not 6 years old, and insufficient evidence has been provided to demonstrate active farming throughout that period (as a means of showing the longevity of the business). However, agricultural operations include "maintaining land in good agricultural and environmental condition". This applicant has undertaken a programme of agricultural improvements for a period in excess of 6 years, and these operations (verified by means of accompanying aerial photographs) are sufficient to verify the longevity of the applicant's farm holding. Attached google imagery shows the field marked A. on aerial photography dated 22/05/10 is in poor agricultural condition having been recently harvested for silage. The next available image taken 23/06/15 shows grass growing on the same field following silage cutting in the spring. This is undertaken annually and the land is ploughed and reseeded every 3 – 4 years. Mr Carr has provided evidence to prove this activity in the form of invoices from his agricultural contractor. (please see attached).
11. The applicant's personal and domestic circumstances have taken a serious downturn, due in part to the stress associated with an enforcement notice directing him to remove this unauthorised shed. I would be grateful, in these circumstances, for a brief adjournment, to see if the applicant can obtain further documentary evidence to verify



his farming operations including maintaining the land in good agricultural and environmental condition.

12. In previous submissions, information was provided to show how current planning policy was not designed to facilitate those just starting out farming. Because the policy was not designed to cater for these scenarios it should not automatically be assumed that such an eventuality is automatically presumed against. It is perfectly legitimate to attach as much or as little weight to planning policy as one sees fit, and the fact that the policy does not neatly address this scenario would appear to be a reason for departing from the policy in this case. Some of the precedents cited in support of the proposal would appear to stand precisely on all fours with the proposal. However, the planning report indicates that in all those cases there was evidence to show that at least the lands had been farmed by a third party in the past. In this case, an affidavit can be submitted to substantiate this fact, and the only reason that DARD has not mapped the land is that Single Farm Payments have never been claimed for its farming in the past.

Environment Minister's position on this matter

13. The Environment Minister drafted a letter to an MLA on 14th August 2013 (see appendix 4), reiterating a legal principle that, where appropriate, planning policy can be outweighed by other material considerations such as the need to accommodate livestock/animal welfare, farming equipment or farm produce. He urged flexibility in the application of policy to support the operational needs of a farm enterprise and expressed concern that if policy forced farmers to sell livestock due to there being no suitable buildings on the holding, it would be contrary to the objectives of PPS 21. In allowing the appeal referred to above (2013/A0066) the PAC stated "As the Minister does not differentiate between planning applications for buildings that are submitted prior to their erection or those that seek retrospective consent for their retention, his advice applies to the current proposal. His advice should likewise apply to this proposal". That being the case, there is no reason why the advice should not be applied to this case.
14. On the basis of the above information, the Council is respectfully requested to reconsider this proposal and refer it to the Council's Planning Committee for discussion.
15. I trust that this information satisfactorily outlines the background to the case and sets out the merits of the proposal in sufficient detail. However, in the event that you



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Chartered Town Planners





require additional information or further clarification, please do not hesitate to contact the undersigned.

Yours faithfully,

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



RTPI
Chartered Town Planner



APPENDIX 1

PRECEDENTS

The planning report indicates that there is no precedent value arising from a number of other planning approvals granted in similar circumstances (the planning officer feels the cases are not comparable because all of those cases involved other parties previously farming the land, thereby adding to the longevity of the holdings in question). However, the reality is that the actual determining principles that were applied to those cases ought to be pertinent to this case also.

K/2012/0509/F – The DOE granted permission for the retention of farm buildings despite the Business not being the requisite 6 years old. The "group recommendation" was formulated on the basis that the "Department accepts that for new farm businesses it is necessary to develop holding facilities for DARD compliance".

(APPLICANT IS ESTABLISHING FARM & DOES NOT HAVE NECESSARY 6 YRS REQUIRED BY CTT 12. HOWEVER DEPT ACCEPTS THAT FOR NEW FARM BUSINESSES IT IS NECESSARY TO DEVELOP HOLDING FACILITIES (SPEEDS ETC FOR DARD COMPLIANCE ON BALANCE THEREFORE DOE ACCEPTS THESE ARE NECESSARY FOR EFFICIENT USE OF HOLDINGS.



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PAC 2013/A0066 – The PAC granted permission for the retention of sheds on the basis that it appeared to stand on all fours with the Department's approval referred to above

However, there is no other persuasive evidence to show that the appellant's lands at Carragh Road were part of a farm holding prior to 31 December 2009.

9. The appellant cited a raft of planning and other government policy that encourages the facilitation of development necessary to achieve the objectives of not only PPS 21 but also other economic and agricultural strategy. The Ministerial Statement on the review of PPS 21, published on 16 July 2013 advocated more opportunity and flexibility in the application of PPS 21. However, the Minister did not propose any relaxation of the policy requirement that the agricultural holding be established for at least 6 years. The aforementioned Minister's letter of 14 August 2013 reiterates the established legal principle that, where appropriate, planning policy can be outweighed by other material considerations such as the need to accommodate livestock/animal welfare, farming equipment or farm produce. He urged flexibility in the application of policy to support the operational needs of a farm enterprise and expressed concern that if policy forced farmers to sell livestock due to there being no suitable buildings on the holding, it would be contrary to the objectives of PPS 21. As the Minister does not differentiate between planning applications for buildings that are submitted prior to their erection or those that seek retrospective consent for their retention, his advice applies to the current proposal.

12. Reference was made to the grant of planning permission for retention of replacement farm buildings near Clogher (K/2012/0509/F) where the applicant's holding had been active and established for just over three years. In considering whether the cases are distinguishable, the following combination of factors is persuasive:



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- The Case Officer accepted that the appellant was “*essentially starting a farm business which would be impossible to do without some form of farm buildings. I do not believe that the spirit or intent of this policy is to restrict new or young farmers who are setting up agricultural businesses from building agricultural sheds for a period of 6 years. The proposal will be necessary for the efficient use of the farm, as the applicant has no other farm buildings*”. Whilst he recommended that the proposal be refused, the Development Control Group concluded that, despite the proposal not meeting the terms of Policy CTY 12 as regards the farm business being established for at least 6 years, the Department accepts that for new farm buildings it is necessary to develop holding facilities for DARD compliance. Therefore, on balance, it acceded that the buildings were necessary for the efficient use of the holding; and
13. The Department did not say that it had misapplied policy in the Clogher case, made a bad decision or that one poor decision does not justify the setting aside of policy requirements. In this particular evidential context where are no distinguishing factors between the two cases, the Department's inconsistency in the interpretation and application of policy is unfair to the appellant. On this basis it has not sustained its reason for refusal.



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APPENDIX 2

Google earth images of holding dated 2010 and 2015

APPENDIX 3

SELECTION OF UNANSWERED EMAILED COMMUNICATION TO THE COUNCIL

APPENDIX 4

MLA letter from Minister dated August 2013

APPENDIX 5

Letter from senior planner to Mr Carr.

APPENDIX 6

Farm Survey Map – Not verified, because applicant does not claim Single Farm Payment

CARR FARM SURVEY NUMBER 2/048/065 FIELDS 2 AND 3

FIELD NO	TOTAL AREA	LAND TYPE	INEL FEATS	MAX EL AREA	CHANGE TYPE	FLD STATUS	HEATHER IND	TOWNLAND
2/048/065/2	0.349	SDA	-		0 DELETED	VERIFIED	-	DRUMILLY
2/048/065/3	0.238	SDA	-		0 DELETED	VERIFIED	-	DRUMILLY



Date Taken: 22/5/10.



Google Earth



Date Taken: 28/6/15.



Colin O'Callaghan

From: Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>
Sent: 25 July 2016 18:23
To: gareth.murtagh@nmandd.org
Cc: pat.rooney@nmandd.org
Subject: P/2014/0859/F Farm Shed at Newry Road, Belleeks

Hi Gareth,

I am just enquiring if you have had an opportunity to discuss this case with Mr David Watson yet, as per your previous communication.

I noted from the planning report that there was still no consideration therein of the issue of fallback and the applicant's permitted development entitlements.

Additionally, David Watson appeared to believe that your case was that the proposal would not be PD because it had not been demonstrated that the development was "reasonably necessary for the purposes of agriculture". David was not sure on this point, and to be fair to him he was only trying to recollect an earlier conversation. I would be grateful for an opportunity to discuss these issues with you because it would appear that the application will be progressed to a Committee meeting, needlessly in my opinion as I believe that if you would outline your concerns to me then at least I could address them, rather than having to rely upon second hand information from David Watson.

I look forward to hearing from you,

Regards,

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

O'Callaghan Planning
Unit 1
10 Monaghan Court
Monaghan Street
Newry
BT35 6BH

T. 028 30835700
m. 07734806045

www.ocallaghanplanning.co.uk

www.facebook.com/Ocallaghanplanning



Colin

From: Colin <Colin@ocallaghanplanning.co.uk>
Sent: Monday, July 4, 2016 6:17 PM
To: 'gareth.murtagh@nmandd.org'
Subject: P/2014/0859/F 43 Newry Road Belleeks

Hi Gareth,

I think it is yourself that's dealing with this application.

I was speaking to David Watson recently and the subject of permitted development rights came up. David was of the view that, in principle, this landowner would have agricultural permitted development rights. However, in the course of a recent conversation he indicated that development management were not satisfied the building is reasonably necessary for the purposes of agriculture. I was unaware of this concern, and was surprised that it had arisen. Would it be possible to get a quick chat with yourself to ascertain the basis for the Council's continued opposition to this proposal?

I am assuming that the application is to be recommended for refusal again, indeed this may already have occurred.

I noted that an addendum to the case officer report has been posted on the planning portal, however I saw no reference to the issue of permitted development rights. I think this, and the issue of fallback, is highly relevant, hence I would be grateful for an opportunity to discuss the application with you...

Regards,

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

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BT35 6AG

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Colin O'Callaghan

From: Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>
Sent: 09 May 2016 17:49
To: gareth.murtagh@nmandd.org
Cc: pat.rooney@nmandd.org; david.watson@nmandd.org
Subject: P'/2014/0859/F Farm shed at Newry Road, Belleeks

Hi Gareth,

You will note the above planning application appeared on today's delegated list. It has been recommended for refusal, because the farm holding has not been established for 6 years.

I had previously raised the issue of a fallback position for the applicant, whereby, if he was forced to remove this shed, agricultural permitted developments would allow him to erect a new building of the same dimensions, at the same location. I felt this should have been given weight as a material consideration in the determination of this planning application however I have not saw any reference to this in the planning report. Perhaps you could revert to me with your thoughts on this matter?

I had discussed this issue, in general, with your Mr David Watson, in the course of a conversation that was not specific to this proposal.

The important thing was that Mr Watson recognised that agricultural PD rights can be exercised where a business is not 6 years old. In that respect, this proposal could have been assessed in the same manner as planning appeal 2002/E005, wherein it was determined that

Even if the enforcement notice were upheld and the slurry tank were removed, the appellant would have the right to re-erect it immediately in the same place. Accordingly, the Commission finds that confirming the notice would serve no useful purpose. It concludes that the appeal on Ground (a) should succeed and that planning permission should be granted.

In light of that determination, which was previously brought to the Council's attention, can you please confirm whether or not you would be available to meet with me to discuss this case before the application proceeds to a formal Committee meeting?

Regards,

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

O'Callaghan Planning
Unit 1
10 Monaghan Court
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BT35 6BH

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Colin O'Callaghan

From: Colin O'Callaghan <Colin@ocallaghanplanning.co.uk>
Sent: 04 April 2016 10:53
To: 'david.watson@nmandd.org'
Subject: RE: P/2008/0171CA 43 Newry Road Belleeks

Hi David,

When considering legal action will you please note the applicant's personal circumstances – the anxiety and stress associated with the unauthorised business led to the collapse of the applicant's marriage and the break up of the family.

- Also, can you give me an indication as to whether or not you would accept my argument regarding fallback in this case (I don't know if the matter was ever brought to the Department/ Council's attention beforehand, and in any case since the applicant did not have a farm map, the Department/Council would not have known that the small building in the adjacent field belonged to the applicant and thus it would not have known that this, combined with the house, could have facilitated the engagement of permitted development rights...

Finally, could I ask if it would be appropriate to refrain from legal application pending the determination of the current planning application and any possible planning appeal?

I would be happy to take a run up and discuss with you for ten minutes if you had the time.

Thanks for coming back so quickly also.

Regards,

Colin

From: david.watson@nmandd.org [mailto:david.watson@nmandd.org]
Sent: 04 April 2016 10:01
To: Colin
Subject: Re: P/2008/0171CA 43 Newry Road Belleeks

Colin,

We have an enforcement case on this one. An Enforcement Notice was served some time ago, we are considering legal action.

David

From: "Colin" <Colin@ocallaghanplanning.co.uk>
To: <david.watson@nmandd.org>,
Date: 03/04/2016 14:05
Subject: P/2008/0171CA 43 Newry Road Belleeks

Hi David,

I hope you have had a nice easter break. Unfortunately for me I have had to start back early!

From the office of the
Minister of the Environment



Department of the
Environment

www.doeni.gov.uk

553

Mervyn Storey MLA
mervynstoreymla@gmail.com

DoE Private Office
8th Floor
Goodwood House
44 - 58 May Street
Town Parks
BELFAST
BT1 4NN

Telephone: 028 902 56019

Email: private.office@doeni.gov.uk

Your reference:

Our reference: COR/681/2013

14 August 2013

Dear Mervyn

Thank you for your e-mail dated 10 July to Minister Attwood regarding concerns raised by local farmers in relation to my Department's interpretation of Policy CTY 12 'Agricultural Buildings' of PPS 21. In relation to the comments you enclose with your email I would make the following points.

CTY12 states that planning permission will be granted for a development on an active and established agricultural or forestry holding where it is demonstrated that it is necessary for the efficient use of the agricultural holding or forestry enterprise. Paragraph 5.56 of the Justification and Amplification to CTY12 states that for the purposes of the policy the determining criteria for an active and established business will be that set out under Policy CTY10. Policy CTY10 requires that the farm business is currently active and has been established 6 years. It is therefore clear that the determining criteria for an active and established farm business for the purposes of CTY12 should be the same as that set out in policy CTY10, including the 6 year criteria.

The Department, in dealing with applications for planning permission, shall have regard to the development plan, so far as material to the application, and to any other material considerations. These considerations include the provisions of planning policy statements and any other considerations relating to the use and development of land. The weighing up of all these factors and the weight to be afforded to each is matter for the decision-maker who must have regard to the individual circumstances of the case. **It is established in law that planning policy may be set aside where other material considerations indicate that this is appropriate. Provided the reasons for setting aside the policy are properly documented and the decision is not perverse then the Department is entitled to act in this way.**

My Department has previously indicated that the needs of accommodating livestock, farming equipment or farm produce are important material considerations that should be taken into account when determining whether permission should be granted. The correspondence attached to your E-mail already identifies instances where the

Department has taken such factors on board and exercised flexibility in order to assist young farmers entering the industry.

The operation of policy CTY12 was addressed through training undertaken as part of the ongoing operational review into PPS21. This training emphasised the need for appropriate flexibility in how the policy is applied in order to support the operational needs of a farm enterprise. It advised that considerations of animal welfare should be taken into account in determining whether planning permission should be granted and specifically highlighted the example of a young farmer taking on a holding with no buildings. I am concerned by the statement that policy CTY12 is now being applied more stringently by my Department. I would be grateful if you could please revert to the authors of the attachment to provide examples that I may investigate further.

I am concerned by the statement that the current policy is forcing some farmers to sell livestock due to their being no suitable buildings available within the farm holding. It would be wrong if the policy was being applied in such a way as in my view that would be contrary to the objectives of PPS21 which include facilitating development necessary to achieve a sustainable rural economy. I would therefore be grateful if you could please advise me of these examples so that I may investigate this matter further.

In relation to your concerns regarding the application of criterion (a), I would advise that the test in the policy is that the development must be necessary for the efficient use of the agricultural holding. It is not a test of absolute need but is instead aimed at facilitating that development which is necessary for the efficient operation of the farm business. As identified in the enclosure with your E-mail this must be assessed on a case by case basis, taking into account the individual requirements of the farm business.

I do not accept that the policy fails to consider the practical requirements of a farm in relation to the siting of new sheds. While the policy seeks to direct new development to locate beside existing farm buildings it also allows for an alternate site away from the existing farm building provided there are no other sites available at another group of buildings on the holding, and where the new building is essential for the efficient functioning of the business or there are demonstrable health and safety reasons for locating away from existing buildings.

I am strongly supportive of the agricultural sector and my Department has been active in eliminating unnecessary red tape to support agriculture in these challenging economic times. Recently announced changes to the agricultural 'permitted development' rights increase the range of agricultural development that no longer needs planning permission. The changes mean farmers will be able to construct buildings up to 500 square metres without the need for a planning application (the equivalent of over 5,000 square feet) subject to certain criteria.

I hope this letter clarifies the position of the Department with respect to the operation of CTY12. I would be grateful if you could please request the authors of the document to provide further details in relation to the points raised above so that I may investigate this matter further and take appropriate action.

Yours sincerely

A handwritten signature in black ink, appearing to read "Mark Durkan". The signature is written in a cursive style with a large initial 'M' and a long, sweeping underline.

MARK H DURKAN MLA
Minister of the Environment

BT35 7JP

Please contact:
Direct Line:Planning Enforcement
02838320185

Dear Mr Brendan Carr

**Nature: Operational Development Enforcement Notice EN/2009/0286 and
Material Change of Use Enforcement Notice EN/2009/0694**

Location: Rear of 43 Newry Road, Drumilly, Belleek, Newry, BT35 7JP

Thank you for letter dated 16th July 2014 about the above and I apologise for the delay in responding to your query.

In response to the first point of your letter I would advise that permitted development rights for farmers are set out in Part 6 of the Planning (General Development) Order (Northern Ireland) 1993 (as amended) (GDO). All farmers are entitled to avail of the permitted development rights set out in Part 6 of this Order.

In response to the second point of your letter I would advise that this shed is not considered to be agricultural permitted development. This has already been conveyed to you in a letter from us dated 27th November 2013. The building would not comply with criteria (d) of part 6 of the GDO as the existing dwelling and the small agricultural shed you refer to are not considered to be a group of principal farm buildings given their physical separation. In any case, following on from a site inspection, the agricultural shed you refer to appears not to be used for agricultural purposes, is abandoned and in state of disrepair.

It is not considered there is a fallback position in this case. This shed was not originally constructed for the purposes of agriculture and if it were to be used for the purposes of agriculture it is not considered permitted development.

I have already advised you in a letter dated 11 July 2014 that the notices are now effective on the site and I have explained why the Department has not pursued prosecution for non-compliance with the notices. Once again I would reiterate there are no time limits for the Department to initiate court proceedings whilst the breach of planning control continues. I advise it is an offence to not comply with an enforcement notice that has taken effect.

If these notices are not complied with in the next 28 days the Department will have

ITEM NO	49			
APPLIC NO	P/2015/0095/F	Full	DATE VALID	2/4/15
COUNCIL OPINION	REFUSAL			
APPLICANT	Mrs Geraldine Fearon C/o Agent	AGENT	ERES Limited Mourne House 41-43 Downshire Road Newry BT34 1EE NA	
LOCATION	140m North-East of No. 61 Foughilletra Road Foughill Etra Jonesborough Armagh BT35 8JE			
PROPOSAL	Erection of farm dwelling and garage			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	0	0
	Addresses Signatures		Addresses Signatures	

- 1 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15
- 2 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.
- 3 The proposal is contrary to the Strategic Planning Policy Statement 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.
- 4 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.
- 5 The proposal is contrary to the Strategic Planning Policy Statement and policy NH6 of Planning Policy Statement 2 Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2015/0095/F

Date Received: 04.02.2015

Proposal: Full permission for the erection of a farm dwelling and garage

Location: 140m North-East of No. 61 Foughilletra Road, Jonesborough, Armagh, BT35 8JE. South East of Council area approximately 1.7KM from Meigh.

Site Characteristics & Area Characteristics:

The site as defined in red on the site location plan takes in a large existing private laneway with the site then spanning over 2 agricultural fields at the top of the laneway. The fields, irregular in shape, contain rough grass, whin hedging and dry stone walls to the boundaries. Then site sits at quite an elevated level and is surrounded by agricultural land and a number of domestic/agricultural properties adjacent to and immediately south of the site. The area is rural in character and the surrounding land form can be described as undulating. The site is located within the Ring of Gullion AONB.

Site History:

N/A

Planning Policies & Material Considerations:

Banbridge Newry and Mourne Area Plan 2015
Strategic Planning Policy Statement for Northern Ireland
Planning Policy Statement 21
Planning Policy Statement 3 / DCAN 15
Planning Policy Statement 2

Consultations:

Rivers Agency – no objections, developer is advised to appoint a competent professional to carry out their own assessment of flood risk due to a small part of the development located on the Surface Water Flood Map.

Environmental Health – no objections although advises dwelling should be moved at least 75m from farm dwellings.

Transport NI – no objections if the information on the Traffic Statement is correct.

NI Water – Generic

DARDNI – DARD number has been in existence for at least 6 years and SFP has been claimed in this period.

Objections & Representations

6 Neighbours Notified and application advertised on 18.02.2015. No objections or representations received.

Consideration and Assessment:

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015

The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for farm dwellings following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015. The site lies within the Rural Area/AONB as designated in the Banbridge Newry and Mourne Area Plan 2015. Whilst permission in this area is restrictive the Plan does not make any specific objections and points towards the retained Planning Policy Statements for decision making in rural areas.

PPS3 – Access, Movement & Parking & DCAN15 – Vehicular Access

Transport NI originally recommended this application for refusal as it was proposed to intensify the use of the lane and site splays of 2.4m x 70m could not be provided. Subsequently Transport NI responded with no objections with regard to this policy, subject to the Traffic Statement being an accurate and true reflection of the traffic pattern at this location. The Traffic Statement firstly relates to 4 dwellings using the lane, which according to the statement accounts for 40 movements a day. However on receipt of the agent's map showing each property identified for the purposes of the Traffic Statement the actual amount of dwellings occupied on the lane equates to 3. This therefore, according to the Traffic Statement, would then amount to a total of 30 movements for dwellings on the laneway. The Traffic Statement states there are two businesses with a combined total of 12 employees and the cumulative total of movements for the businesses combined which includes customers is 132 per day. This information has not been verified. Finally the Traffic Statement accounts for the movements of landowners around the laneway to 40 movements a day. The total movements per day on this lane are 202 and an additional dwelling at 10 movements would cause an increase at 4.95% which is under the 5% threshold.

However given the large volumes of traffic for the lane documented within the Traffic Statement I undertook a traffic survey at lunchtime, which according to the Traffic Statement should be one of the busiest times on the lane as 12 employees leave the premises for lunch and return again after. During this period there were 2 movements noted. Transport NI also conducted a traffic survey on 2 different occasions for half an hour each and noted a combined total of 4 movements. When you consider the Traffic Statement to depict a busy rural laneway with 202 movements a day the figures attained from all the surveys certainly point to a much lower volume of traffic on average. Therefore it is my assessment that the actual traffic movements on this laneway are much lower than 202 which would mean

another dwelling would bring this beyond the 5% increase threshold and as a consequence result in intensification of an existing access.

I revert to Transport NI's original consultation response and contend the proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15

The proposal is also contrary Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.

PPS21 – Sustainable Development in the Countryside

Policy CTY1 restricts new development in the countryside, but makes an exception for farm dwellings which are acceptable if in accordance with policy CTY10. DARD NI has confirmed the Business ID submitted with the application has been in existence for more than 6 years and has claimed subsidies during this period. This satisfies the requirements of CTY 10 (a).

Having completed a history search on all the land identified on the farm maps I am satisfied no development opportunities have been sold off from the holding since 25th November 2008. The proposal is in compliance with (b) of CTY10

Part (c) of CTY 10 requires the new building to be visually linked or sited to cluster with an established group of buildings on the farm. The proposal has not been sited to cluster with or visually linked to existing buildings on the farm and as such fails this policy criterion.

In terms of policy CTY13 the design of the dwelling is a traditional 1.5 storey dwelling with a 7.5m ridge height. The sunroom and porch are both finished in natural stone with the remainder of the walls finished in smooth render. The chimneys have been located internally and on the ridge and the windows have the correct vertical emphasis. In general the design is in keeping with what would be traditionally found in the area. The siting of the dwelling is some 45m set back from the private lane and considering the natural vegetation is unlikely to cause a significantly greater visual impact. However the proposal fails criterion (g) as it is not visually linked or sited to cluster with an existing group of buildings on the farm and consequently fails policy CTY13. With regard to policy CTY14 it is not considered that the proposal would result in build up when the separation distance is considered and ribbon development is not an issue for this site. Environmental Health were consulted in relation to the sewage arrangements and have responded with no objections. Any approval notice would contain a negative condition for the applicant to provide the Council with the consent to discharge before work commences. The proposal is in general compliance with CTY16. Environmental Health has recommended the dwelling be moved at least 75m from the nearby farm due to the potential to cause public health nuisances from odour, noise and pests. This would be dealt with by way of informative to any potential decision notice.

Planning Policy Statement 2

Policy NH6 is applicable as the proposal is within the Ring of Gullion AONB. As the proposal fails to fully meet the policy requirements of acceptable development in the countryside under policy CTY1 of PPS21 the siting of the proposal is unsympathetic to the special character of the AONB in general and to the particular locality. There is no specific conservation or heritage features in the immediate area and the proposal respects local architectural styles, design, materials, boundary features and colour. The proposal fails this policy criteria.

Recommendation:

Refusal

Refusal Reasons

1. The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15

2. The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.

3. The proposal is contrary to the Strategic Planning Policy Statement and policy NH6 of Planning Policy Statement 2 Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

4. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.

5. The proposal is contrary to the Strategic Planning Policy Statement 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.

Case Officer:

Authorised Officer:



Mourne House, 41-43 Downshire Road
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NEWRY, MOURNE & DOWN COUNCIL

Local Planning Office

Monaghan Row,

Newry,

BT35 8DJ,

Reference: P/2015/0095/F
Applicant Name: Mrs Geraldine Fearon
Proposal: Erection of farm dwelling and garage
Site Location: 140m North-East of No. 61 Foughilletra Road Foughill Etra
Jonesborough Armagh BT35 8JE

Newry, Mourne & Down Local Planning Office intends to refuse this application on the grounds that:

1 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of (2.4.. metres x 70. metres) cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15

2 The proposal is contrary to the Strategic Planning Policy Statement and Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since the width of the proposed access is

unacceptable, in accordance with the standards contained in the Department's Development Control Advice Note 15.

3 The proposal is contrary to the Strategic Planning Policy Statement 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.

4 The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm and therefore would not visually integrate into the surrounding landscape.

5 The proposal is contrary to the Strategic Planning Policy Statement and policy NH6 of Planning Policy Statement 2 Natural Heritage in that the siting of the proposal is unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

Consideration

Despite the Council's opinion it is contended that this application site does cluster with an existing group of buildings on the farm holding.

Section 250 of The Planning (NI) Act 2011 defines a "building" as follows:

"building" includes any structure or erection, and any part of a building, (my emphasis) as so defined, but does not include plant or machinery comprised in a building .

I have attached photographs (**Appendix 1**) of existing foundations and walls at the entrance to the field, which under The Planning (NI) Act 2011 constitute buildings. These buildings

fall within the area previously submitted to the Planning Authority by way of a Land Registry Map. These old structures bear the remains of historical buildings on this site and should be considered as buildings under the Planning Act.

This approach has been recently used by the Newry, Mourne and Down Council through the approval of application Ref: **LA07/2015/0783/O** - Site for Dwelling on lands 100m east of 10 Nicholsons Road, Kilkeel. In this application it was accepted that the application clustered with a caravan and the foundations and gable end wall of the dwelling that once occupied the site. The application was also beside an unauthorised shed however this did not form part of the assessment as immunity had not been established for the shed. This precedent has been accepted by the Council and that approach should be repeated in this instance, if only in the interests of fairness.

If the issue of clustering with these buildings relates to the separation distance between the buildings and the proposed site, it is felt that the red line defining the application site is sufficiently large to enable a relocation of the proposed dwelling closer to the existing buildings. It would therefore be possible to discuss this option with the Council if the principle of Development can be agreed.

If an agreement on the re-siting of the proposal closer to the existing buildings can be agreed then a lesser test for integration could be employed in this instance which would also address the issue of siting within an Area of Outstanding Natural Beauty. This is established through case law and given these circumstances it is clear that this application requires further investigation before a decision can be reached.

Policy CTY13 of PPS21 relates to the integration and design of buildings in the countryside. Planning Appeal **2014/A0260 (Appendix 2)** addresses the issue of compliance with Policy CTY13 and The issues at the heart of the 'Hyde' case - *The Department of the Environment v The Planning Appeals Commission* specifically stating "When taking into account the relevant policy and guidance on this matter, I find, on balance, that the failure of the proposal to meet some of the integration requirements of Policy CTY13 are outweighed by its ability

to broadly fall in line with the level of integration required for farm dwellings under Policy CTY10. The first reason for refusal does not therefore weigh against the proposal.”

In the case of Lamont v The Department of the Environment it was found that “The first part of this policy is straightforward: if your farm has been in operation for 6 years AND there have been no relevant selloffs within 10 years from the date of application AND the proposed dwelling will link with or cluster with a group of established buildings on the farm planning permission will be granted.”

This policy is therefore expressively clear and identifies the situation in which an application will be successful.

The final refusal reasons relate to the access issues onto the Foughilletra Road. As the access is difficult a traffic assessment was provided to the Council outlining the existing development along the laneway including potential traffic movements on a daily basis.

Appendix 3 contains maps regarding the use of the existing lane way to this site. I have annotated each development into:

Business (**B**)

Dwelling (**D**)

Replacement Dwelling (**R**)

The Council and Transport NI both carried out surveys on the following dates:

Case Officer Survey - 28th June 2016 from 12.20 - 13.20, 2 movements noted

Transport NI Survey - 24th May 12.15-12.45, 2 movements noted

Transport NI Survey - 16th June 14.30-15.00, 2 movements noted.

The traffic report suggested a potential for approximately 8 movements per hour. Whilst the Case officer assessed the access over an hour and recorded 2 movements, this assessment

was carried out at lunch time when it would be felt that there would be a reduction in traffic movements.

Transport NI carried out their assessments on 2 separate half hour occasions, both times noting 2 vehicle movements, or an average of 4 vehicles per hour. The first assessment was carried out, again at lunch time while the second later in the afternoon.

It is felt that these surveys do not provide a reasonable reflection of the traffic movements on the lane way and it is requested that a more comprehensive analysis is carried out, which will provide a fair reflection of the vehicles movements on this busy laneway.

In light of the above submission and the information previously submitted to the Council I would respectfully request that this application be deferred for further consideration.

Yours Sincerely,

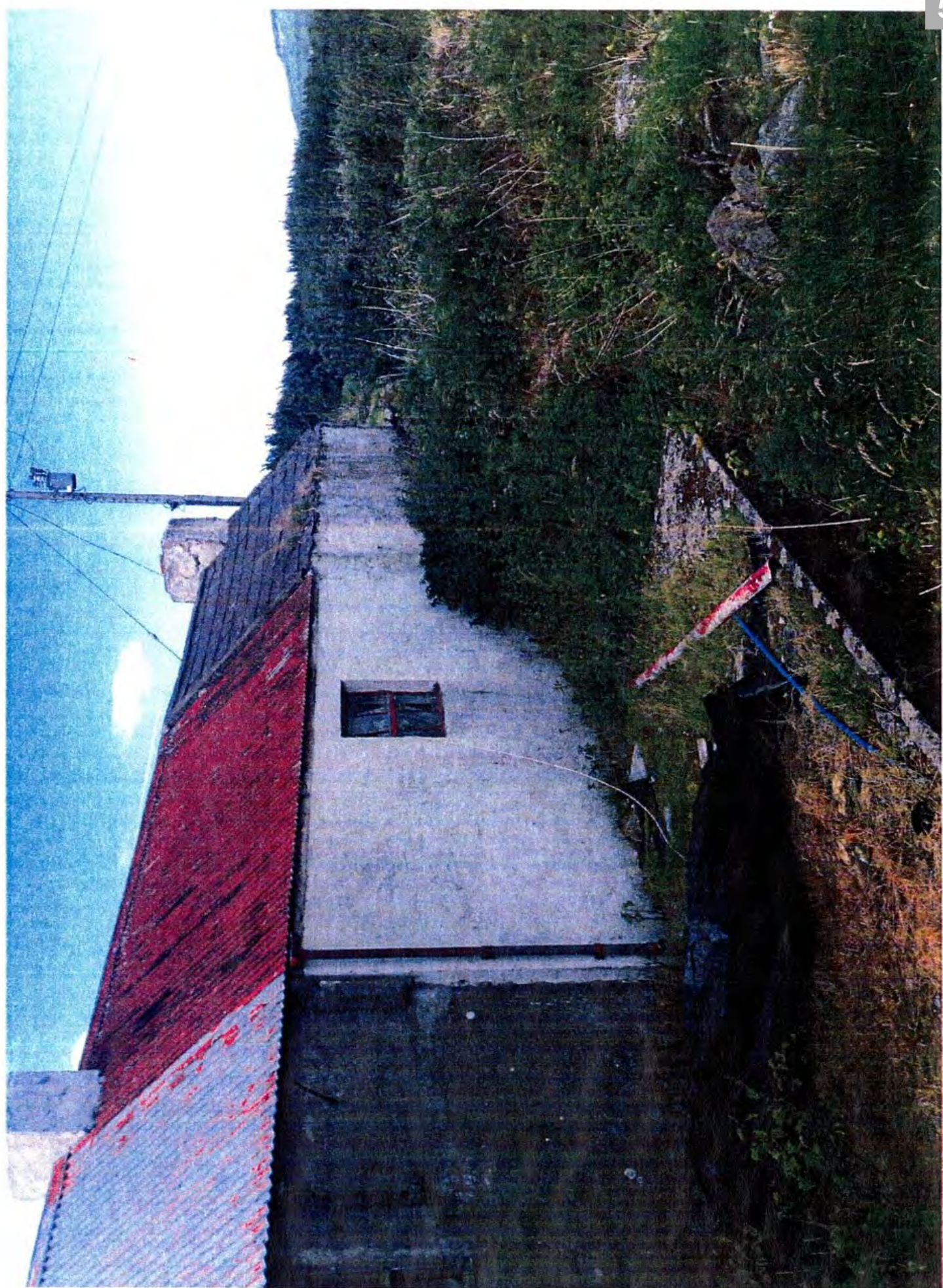


Stephen Hughes

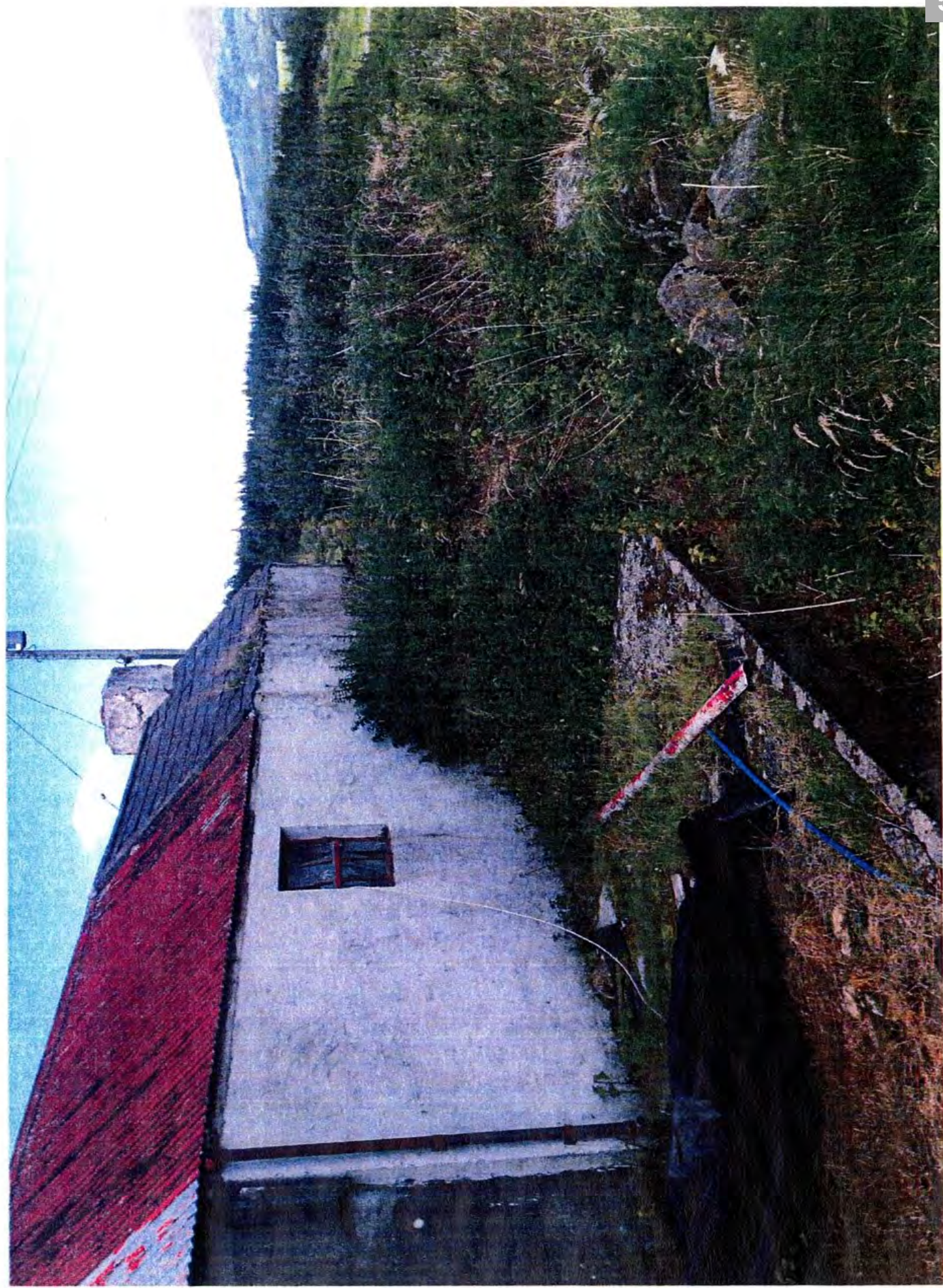
ERES Ltd.

APPENDIX 1
Photographs of Existing Buildings









APPENDIX 2
Planning Appeal 2014/A0260

Commission Reference: 2014/A0260

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PLANNING APPEALS COMMISSION
THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58

Appeal by Mr P Doran against the refusal of full planning permission for a dwelling and detached garage on a farm adjacent and immediately north of No28 Kesh Road, Belleeks, Newry.

Report
by

Commissioner Pamela O'Donnell

Planning Service Reference: P/2013/0896/F
Procedure: Informal Hearing on 2 October 2015

Report Date: 25 April 2016



1.0 BACKGROUND

1.1 The Department of the Environment (DOE) received the application on 6 December 2013 and advertised it in the local press on 24 December 2013. No representations were received. The former Newry and Mourne District Council were consulted on the application on 4 September 2014 and agreed with the Department's opinion to refuse permission. A Notice was issued by the Department on 13 February 2015 refusing full planning permission for the following reasons:-

1. **The proposal is contrary to Policy CTY13 of Planning Policy Statement 21 'Sustainable Development in the Countryside' in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and therefore would not visually integrate into the surrounding landscape.**
2. **The proposal is contrary to Policy CTY14 of Planning Policy Statement 21 'Sustainable Development in the Countryside' in that the dwelling would, if permitted, result in a suburban style build up of development when viewed with existing and proposed buildings and the dwelling would, if permitted, create or add to a ribbon of development along Kesh Road and would therefore result in a detrimental change to the rural character of the countryside.**
3. **The proposal is contrary to 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.**

1.2 The Commission received the appeal on 18 March 2015 and advertised it in the local press on 31 March 2015. No representations were received.

1.3 On 1 April 2015, planning powers were transferred from the DOE to 11 local councils across Northern Ireland. At the date of the appeal, the Planning Authority was Newry, Mourne and Down District Council. While the appeal was lodged under the Planning (NI) Order 1991, it falls to be determined under the Planning Act (NI) 2011.

2.0 SITE AND SURROUNDINGS

2.1 The appeal site is significant in size, irregular in shape and it extends in a westerly direction from the Kesh Road. The site comprises a dwelling and detached garage/outbuilding at No 28, an agricultural building to the rear and south west of No 28 and agricultural land. The proposed dwelling and garage would be located in an area of the site that lies adjacent and to the north of No 28 and fronts onto the public road. This area would be part of a larger agricultural field with two natural boundaries to the west and east. The eastern (or road front) boundary is comprised of a hedge around 2.0m in height, while the western boundary is comprised of hedge around 1.5m in height. There are a number of road front dwellings and agricultural buildings in the surrounding area. The land rises up westwards from the Kesh Road.

3.0 THE COUNCIL'S CASE

- 3.1 Paragraph 1.12 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) indicates that any conflict between the SPPS and retained policy must be resolved in favour of the SPPS in this transitional period. It goes on to say that where the SPPS is silent or less prescriptive on a particular planning policy matter, this should not be judged to lessen the weight to be afforded to the retained policy. While there is little change in relation to policy allowing for a dwelling when there are personal and domestic circumstances to justify such an outcome in the SPPS, the policy for dwellings on farms has changed in the SPPS. It indicates that dwellings on farms must comply with Local Development Plan (LDP) policies regarding integration and rural character. There is no LDP in place at the moment. Accordingly, and in line with paragraph 1.12 of the SPPS, retained policy as set out in Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) should be afforded greater weight in determining the appeal.
- 3.2 The Council acknowledges the Commission's position as set out in appeal 2012/A0270. However, it considers policies CTY13 and CTY14 of PPS21 to be material considerations when assessing a proposal for a dwelling on a farm and the SPPS has clarified this position. The ongoing approach has been to assess proposals under such policies even when a proposal complied with criteria (a - c) of Policy CTY10. This is contrary to the Commission's position. It is acknowledged that the DOE did not challenge the Commission's decision. It is not known why. In this case the proposal does not comply with policies CTY13 and CTY14 of PPS21. It is considered that the position taken by the Council in its assessment and decision reflects that of the 'Hyde' judgement – *The Department of the Environment v The Planning Appeals Commission [2014] NIQB 4*.
- 3.3 The site is visible on approach from the north west and when travelling from this area the site is open and prominent to view. The site is approximately one metre above road level and the landform rises. It is difficult to envisage how a dwelling with associated ancillary works could be adequately integrated and deemed acceptable given that the proposed development would sit above No 28 and the roadside vegetation would offer no degree of enclosure. The vegetation along the road front would be insufficient to enclose the proposal. The proposed development would be located in part of a much larger roadside agricultural field with no means of natural separation between the site and the surrounding land. The site has only two vegetative boundaries along the west and east. However, the eastern or roadside boundary would be removed by visibility splays, even if reduced to 2.4m by 45m. Furthermore, extensive site works would be required to facilitate the proposal given the topography. This would reinforce the prominent nature of the site. Development in this road frontage location would appear dominant in the local landscape and substantial landscaping would be required to adequately integrate it, contrary to Policy CTY13.
- 3.4 Within 220m of the site there are five dwellings, namely Nos 20, 24, 28, 19 and 33 Kesh Road. When travelling northwards from No 20, the proposal would be obvious in the landscape. It would read with Nos 20, 24, 19 and 28 and result in a build up of development. From No 24 Kesh Road travelling north, the proposal would read with Nos 24, 28 and 33. Travelling southwards from No 33, the appeal site appears exposed and any new build therein would be easily read with other dwellings in the vicinity including Nos 19, 28 and 33. When viewing the site immediately adjacent and to the east of its northern boundary, its open nature can be appreciated and from this view the proposal would visually relate with the dwellings at Nos 19, 28 and 20.

- 3.5 The proposal would introduce a suburban design with a large and prominent garden area. When taken with existing dwellings in the area, the cumulative effect would lead to a change in the rural character of the area.
- 3.6 The proposal would create a ribbon of development on approach in either direction along Kesh Road contrary to Policy CTY14. Travelling south, the site would read as a ribbon of development with the dwellings at Nos 20 and 28. In the other direction, it would read with Nos 24 and 28 to create a ribbon of development. These properties have a common frontage to the road. If approved, the appeal proposal would also create a gap site between Nos 24 and 28 Kesh Road. This could potentially pave the way for the further erosion of the rural character of the area.
- 3.7 Policy CTY14 refers to Ribbon Development. In order to prevent duplication, the Council did not include an additional objection under Policy CTY8 of PPS21, which also deals with Ribbon Development. The approved farms dwellings referred to by the Appellant clustered with the established farm buildings and were considered acceptable. As no detailed information was provided in respect of the applications referred to in Appendix six of the Appellant's evidence, the Council cannot comment.
- 3.8 The Council notes that due to restricted mobility, the Appellant requires assistance in running his farm holding. The holding is, however, small and unlikely to require a full time worker. The son has flexible working arrangements and only lives 5 mins drive away. Both he and his mother continue with their part-time employment and neither has had to leave to provide continual care. The argument that the proposal would allow for ease of movement between the two dwellings is not supported by the proposed layout, topography and enclosed boundary. Furthermore, there is existing space within the curtilage of No 28 to accommodate a granny flat. Alternatively, No 28 could be adapted to facilitate the Appellant's needs. The circumstances of this case are not considered exceptional and do not justify a new dwelling.
- 3.9 If the appeal is allowed, the following conditions were proposed on a without prejudice basis:-
- Five year time limit to commence development
 - Visibility splays of 2.4 x 45m
 - Occupancy condition (if necessary)

4.0 THE APPELLANT'S CASE

- 4.1 The Council appears to accept that the proposal meets the criteria of Policy CTY10. However, even though the proposal would visually link and cluster with the established group of buildings on the farm, they consider policies CTY 13 and CTY14 to be engaged. A key issue in the appeal is therefore whether or not the latter policies should apply.
- 4.2 Policy CTY10 is unambiguous in stating that only in exceptional circumstances will policies CTY13 and CTY14 be engaged. The Commission's position on this issue is settled (see 2012/A0270). Accordingly, policies CTY13 and CTY14 are not engaged when a proposal satisfies criteria (a), (b) and the siting requirements of criterion (c) of Policy CTY10. The Commission has been consistent in determining other similar appeals as set out in the following decisions – 2013/A0149, 2013/A0068, 2014/A0113, 2012/A0231, 2013/A0035, 2012/A0318 and 2013/A0114. By choosing to ignore the Commission, the DOE's behaviour

has been unreasonable. If unhappy with the Commission's approach, they should have challenged their decision.

- 4.3 In contrast to the Commission's approach, the single Commissioner decisions in appeals 2014/A0255 and 2014/A0270 proceeded to consider policies CTY13 and CTY14. Decision 2014/A0034 is also inconsistent with the seven decisions listed above. No mention was made of the Commission's corporate position. However, the Commissioner did note that "the failure to meet some of the integration requirements of Policy CTY13 are outweighed by the ability to achieve the level of integration required for farm dwellings under Policy CTY10" which was considered to be the leading policy for such development.
- 4.4 The training programme delivered by the Commission to the DOE in advance of the transfer of planning powers also acknowledged the principle that where a proposal is sited as prescribed in Policy CTY10, then the integration tests of Policy CTY13 are unlikely to be critical. It follows that the same approach must apply to Policy CTY14.
- 4.5 The Appellant would concur with the Council's position regarding the weighing direction within the SPPS and agrees that the weight rests with retained policy, namely PPS21. Therefore, Policy CTY10 of PPS21 should be afforded greater weight than the corresponding policy in the SPPS and in this context, the arguments made above in respect of policies CTY13 and CTY14 remain. However, even if engaged, the proposal would comply with policies CTY 13 and CTY14.
- 4.6 The issues at the heart of the 'Hyde' case - *The Department of the Environment v The Planning Appeals Commission [2014] NIQB 4* related to the acceptability in principle of a particular land use. The issues in this case relate to ancillary environmental tests. There are considerable differences between the two proposals, the relevant policies involved, and indeed in the relationships between the pertinent policies. The Hyde case is not directly comparable to this appeal. That judgement should not be taken to infer that if a proposal complies with the initial requirements of Policy CTY10, policies CTY13 and CTY14 must be taken into account. It is important to acknowledge that the judgement related to a purported procedural flaw by the Commission. The judgement reinforces the fact that a decision maker must show their understanding of a policy, and if departing from it, they are required to demonstrate why it was considered appropriate to depart from the policy. Had the Commissioner outlined a particular justification, Justice Treacy would not have had cause to question whether the decision might have been different. In this case, if the Commission adopts their settled position, the resultant decision would not be open to challenge.
- 4.7 The Hyde judgement found that the approach mandated by Policy CTY1 is that proposals must be assessed against all planning policies and material considerations. In this case, Policy CTY10 makes it clear that policies CTY13 and CTY14 only apply in certain circumstances, but the policies in the Hyde judgement have no such cross-references. Paragraph 5.0 of PPS21 indicates that in the exercise of its responsibility for development management, the Department assesses development proposals against all planning policies and other relevant material considerations. This text does not infer that a decision maker is obliged to consider all policies equally and it does not outline how proposals should be assessed when policies are in conflict. However, it is common sense that if conflict arises and one policy supports the proposal but the other does not, the balance should be tipped in the Appellant's favour provided the proposal would not result in demonstrable harm to interests of acknowledged importance. Clearly, there is an obligation to attribute weight to a series of often competing policies before arriving at a balanced decision. In this case, whether or not there is a requirement to assess proposals

against all policies and considerations, there is a responsibility to consider the weight to be attached to different policies and considerations.

- 4.8 An important consideration in this appeal involves deciding how much weight to attribute to policies CTY13 and CTY14, not necessarily to have no regard to them whatsoever. Policy CTY10 clearly indicates that the aforementioned policies will only be engaged in exceptional circumstances. They would not therefore be engaged in all circumstances and the reason for not engaging the policies in this case is that the leading policy advises that this is the correct approach to take. Policy CTY10 provides the justification for the non engagement of policies CTY13 and CTY14 in exceptional circumstances, unlike the 'normal' circumstances referred to in paragraph 5.0 of PPS21.
- 4.9 Policy CTY1 of PPS21 states that all proposals must be sited and designed to integrate sympathetically with their surroundings and must meet other planning and environmental considerations. It is clear that Policy CTY10 is robust and self contained with respect to other environmental considerations contained in policies CTY13 and CTY14 save when exceptional circumstances occur. This is distinct from the interrelationship between policies AMP10 and CTY11 in the Hyde case. In that case, it was contended that the Commission erred in concluding that because the proposal complied with Policy CTY11, then Policy AMP10 had no bearing. In this case, within Policy CTY10 there is in fact express indication that policies CTY13 and CTY14 are only engaged in exceptional circumstances. Therefore, the Hyde judgement need not attract determining weight in the assessment of this proposal.
- 4.10 The preamble to PPS21 sets out some of the circumstances in which the provisions of PPS21 will take precedence over the provisions of other policies. Clearly this applies within PPS21 also. It is contended that in this case Policy CTY10 takes precedence over policies CTY13 and CTY14, save for exceptional circumstances. The Appellant's case is not that it would be impermissible to take account of policies CTY13 and CTY14, but that it would be Wednesbury unreasonable to attach significant weight to them given the wording of Policy CTY10. While noting *Tesco Stores Ltd v Dundee City Council [2012] PTSR 983* as cited in the Hyde judgement, this case is materially different as there is no suggestion of the decision maker failing to understand the relevant policy or having regard to same.
- 4.11 The site is located in open countryside that has experienced a moderate degree of pressure for new residential development. Housing is typically positioned adjacent to roads and this settlement pattern has been influenced by the availability of services and by the need to avoid building on elevated or sloping terrain. The development pattern ranges from individual dwellings scattered throughout the landscape through to concentrated farm complexes and smallholdings typically sandwiched between the road and sloping ground. The appeal site lies at the bottom of a hillock and the rolling hills and drumlins surrounding the site preclude anything other than filtered views into and through the host field. Consequently, critical views into and through the site are limited to the immediate road frontage. The site is enclosed to the front by a mature hedgerow although it is elevated slightly above the road. Rising terrain functions as a backdrop to the site, while existing buildings, the wider terrain and other natural landscape features combine to ensure that the site is well integrated with its surroundings.
- 4.12 Paragraph 5.59 of PPS21 outlines the main criteria against which the degree of visual impact will be considered. The Development Control Report (DCR) does not indicate that the proposal was assessed in this manner and no weight has been attributed to the fact that the proposal complied with at least two and arguably three of the criteria within paragraph 5.59. The proposal would adhere to the principles set out in paragraph 4.2.1 of the Building on Tradition

document (BOT). A “full frontage” location has been avoided (views would be side on), the site has two boundaries and the proposal would be clustered with a group of buildings on the farm. The combination of factors would mean that prominence would be avoided and the proposal would not rely on new landscaping in order to integrate. In this context, perceived shortcomings in terms of an effective backdrop to the proposal should not be determining. The DCR does not mention the BOT. Whereas Policy CTY13 refers to long, established natural boundaries, this is required to be cross referenced with BOT principles which refer to the preference (my emphasis) for at least two existing boundaries to be in place. The design of the proposal would be appropriate for the site and the locality.

- 4.13 The floor level of the proposal would be generally consistent with that of No 28 and a site elevated above Kesh Road does not mean that sufficient enclosure would not be available. No retaining structures are proposed and the site would be graded. Minimal site works would be required and critical views would be limited. The roadside hedge is not the only boundary and it can be reinstated behind reduced visibility splays.
- 4.14 The proposal would not occupy a ridge top location nor would it breach the skyline. The DCR does not identify any critical views of the proposal and no weight has been given to the rising ground to the rear of the site or that any views would be close to the dwelling and therefore limited. The Council does not appear to acknowledge that a group of buildings such as a farm complex may also provide an opportunity to sensitively integrate a new building, provided it does not adversely impact upon rural character. Paragraph 5.65 of PPS21 refers to flat landscapes and exposed hill areas. However, the site is not located in such an area and the report did not explore this issue. Landscapes vary as described in paragraph 5.58 of PPS21. The proposal, including any necessary site works would blend unobtrusively with the landform, existing trees, slopes and other natural features which provide a backdrop. Critically, the proposal would be sited as prescribed in Policy CTY10. All things considered, it is respectfully contended that the proposal is fully compliant with the requirements of Policy CTY13, even though this particular policy should not be engaged
- 4.15 In appeal 2014/A0034 (referred to previously), it was found that by extending road frontage development, that proposal would have further suburbanised and eroded the rural character of the area, contrary to Policy CTY14. This proposal can be distinguished from that proposal evidentially as well as contextually. In this case there has been no assertion that the proposal is contrary to Policy CTY8 of PPS21 or that the rural character of the area is susceptible to erosion by ribbon development. In fact, this proposal would be adequately separated from nearby developments to prevent coalescence and there is no prospect of this proposal creating a potential infill site.
- 4.16 Planning application P/2013/0079/F had been recommended for refusal under policies CTY8, CTY13 and CTY14 of PPS21. The Councils’ deferred consideration of that case indicates that the proposal was clustered with the only building on the farm and this appears to have carried greater weight than previous concerns relating to the creation of ribbon development, integration and rural character. This is inconsistent and unfair to the Appellant. Paragraph 5 of appeal 2006/A1430 is also relevant with respect to fairness and equity as the application of policy relating to integration and rural character involves the same basic principles.
- 4.17 The DCR states that this proposal would be unduly prominent and given the open and elevated nature of the site it would result in a suburban style build up of development in the area. However, BOT explicitly acknowledges the spatial disposition of buildings on hilly farms and the traditional pattern of development in this area involves development along the lower

contours, typically along roadsides. The existing settlement pattern is such that the majority of buildings front the road with little appreciable set back and the proposal would be no different. Given the substantial buffers between the nearest developments to the north and south of the proposal, 'ribboning' would not be a problem. Paragraph 5.79 of PPS21 advises that a new building in the countryside should adopt the spacing of traditional buildings found in the locality or (my emphasis) integrate sensitively with a group of buildings, such as a farm complex. Despite the either or scenario, the Council have attached absolute emphasis upon the requirement to adopt the spacing of traditional buildings found in the area. The proposal would cluster with an established group of buildings on the farm in accordance with Policy CTY10 and adhere to BOT principles for such proposals. The proposal would also be sited as recommended in Policy CTY14.

- 4.18 The DCR does not detail the extent of intervisibility with other existing and approved development contrary to paragraph 5.78 of PPS21. It does not detail the vulnerability of the landscape and its ability to absorb further development and no weight has been given to the siting, scale and design of the proposal contrary to paragraph 5.79 of PPS21. Furthermore, the DCR does not elaborate on how the proposal could constitute ribbon development. There would be limited intervisibility in this case and the landscape can absorb the proposal having regard to paragraph 5.76 of PPS21. Two adjacent dwellings would not be uncharacteristic of the area and the proposed siting arrangement would be entirely consistent with traditional farm groupings on sloping terrain. Topographical characteristics of this nature typically force developments to be carried out side by side and in this respect, the siting pattern would be reflective of the terrain rather than indicative of 'ribboning'.
- 4.19 The appeal proposal would be much more sensitively sited than the majority of the existing development clusters in the area as seen in the attached photographs. It is clear that the overall intention of PPS21 is to consolidate development at existing farm clusters and the appeal proposal would visually link with the farm complex. Appendix six provides examples of approved farm dwellings adjacent to existing groupings that could result in ribbon development. In those cases, the DOE appears to have attached greater weight to a proposal clustering with a farm group (under Policy CTY10) rather than complying with Policy CTY8. The same approach should be applied to the appeal case.
- 4.20 The personal circumstances advanced ought not to be treated in isolation. The combination of factors ought to outweigh any perceived shortcomings with respect to policies CTY13 and CTY14. The Commission's training to the DOE outlined that there are several routes to permission for an individual dwelling and that an Appellant only needs to succeed on one. Failure to meet policy is not always fatal as an Appellant may sometimes succeed on a combination of factors. Planning Application P/2013/0654/O was approved due to personal circumstances. That application was for a farm dwelling on an alternative site which was not clustered with the farm buildings. The personal circumstances and topography in this case clearly dictate that the new dwelling should be positioned as close to the road and to No 28 as possible.
- 4.21 The Appellant took a stroke five years ago and it has impacted on his ability to walk and read. He requires a walking stick and he is unable to maintain an active role in the maintenance of his farm business. It is therefore imperative that accommodation is available for the person actually engaged in agricultural operations on the farm (the Appellant's son). The Appellant's medical condition is such that he requires a significant level of care and support from his family and while his wife acts as his carer, his needs dictate that he cannot rely on his wife alone. His son combines his farming responsibilities with caring for his father. The Appellant

has five children in total. They help out on the farm. Another son lives around the border on the Dublin road and works in Carlingford.

- 4.22 The reasons behind this proposal are clearly site specific given the requirement to run the farm business. If the appeal is dismissed, the Appellant's hardship would be exacerbated insofar as there would be no one available to attend to duties on the farm at short notice. His son would not be available immediately to assist with any emergencies and administer daily care and support. The Appellant's wife would be forced to leave her employment which she is unable to do so for financial reasons.
- 4.23 There are no alternative solutions available. There is no space to extend the existing dwelling due to its position as it is bounded by the road and by the embankment to the rear. The access arrangements also preclude an extension to the side. A temporary mobile home would offer no respite because the Appellant's condition is long term. In any case, the Appellant's son could not raise his infant child in a mobile home. There are no other buildings on the holding that could be converted to residential accommodation. The proposal is consistent with the requirements of Policy CTY6 of PPS21. Mr Bradley MLA stated that the proposal complied with Policy CTY10 and asked that significant weight be given to the personal circumstances in this case. He had petitioned the Minister for flexibility in respect of the application of PPS21, but acknowledged this had not filtered through to the planning process.
- 4.24 The Appellant was content with the proposed conditions with the provision that an occupancy condition would only be imposed if deemed necessary.

5.0 CONSIDERATION

- 5.1 The main issues in the appeal are: (i) whether the policies relied on by the parties need to be taken into account, (ii) whether the proposal is acceptable in principle in the countryside and (iii) the effect of the proposal on visual amenity and rural character.
- 5.2 While not as detailed as the Appellant's analysis of the site and its surroundings, the DCR sets out the objections to the proposal against the relevant policies. More details were provided in the Council's statement of case and at the Hearing. The evidence is adequate to enable full consideration of the issues involved.
- 5.3 Section 6 (4) of the Planning Act states that where, in making any determination, regard is to be had to the local development plan (LDP), the determination must be made in accordance with the plan unless material considerations indicate otherwise. Section 45 (1) of the Act requires that regard must be had to the local development plan so far as material to the application and to any other material considerations. Under the Planning (Local Development Plans) (Amendment) regulations (NI) 2016, development plans adopted under the 1972 and 1991 Planning Orders operate as LDPs until Councils produce their own plans. Therefore there is a LDP in place presently, namely the Banbridge Newry and Mourne Area Plan 2015 (BNMAP). While it identifies the site in the countryside, there is no specific policy within the BNMAP that is material to this proposal.
- 5.4 Paragraph 1.5 of the SPPS states that its provisions must be taken into account in the preparation of LDPs and are material to all decisions on individual planning applications and appeals. Paragraph 1.10 states that a transitional period will operate until such times as a Plan Strategy for the council area has been adopted. During this transitional period, planning authorities will apply existing policy contained in specified PPS documents (and other

documents) together with the SPPS. Paragraph 1.12 states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. 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 accorded greater weight. It goes on to say that where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies, this should not be judged to lessen the weight afforded to the retained policy.

- 5.5 The SPPS has a subject policy entitled 'Development in the Countryside'. It allows for dwellings on farms subject to the proposed dwelling visually linking or clustering with an established group of buildings on the farm holding. It goes on to say that dwellings on farms must also comply with LDP policies regarding integration and rural character. In this case, the latter requirement can not apply as there are no such LDP policies at present. Retained policy, in respect of development in the countryside, is provided within PPS21. Regarding dwellings on farms, it also requires a new building to be visually linked or sited to cluster with an established group of buildings on the farm. Having compared paragraphs 6.70 and 6.77 of the SPPS with paragraph 3 of Policy CTY1 of PPS21, I see no significant difference. While there are specific references to rural character in the SPPS, this is a planning and environmental consideration covered in Policy CTY1 of PPS21. The SPPS introduces no discernible change of policy relevant to this appeal. Therefore, retained policy applies.
- 5.6 Policy CTY1 of PPS21 sets out the types of development which are considered to be acceptable in principle in the countryside. These include a dwelling based on special personal or domestic circumstances in accordance with Policy CTY6 and a dwelling on a farm in accordance with Policy CTY10. If the proposal accords with either policy, it is therefore acceptable in principle. The evidence from the Council indicates that the proposal satisfies Policy CTY10 in terms of the three criteria in the head note. The proposal is therefore acceptable in principle. The objection is that the proposal fails to comply with policies CTY13, CTY14 and CTY6.
- 5.7 Commission decision 2012/A0270 was taken in June 2013. Since then the 'Hyde' judgement was published in January 2014. The latter judgement referred to *Tesco Stores Ltd v Dundee City Council [2012] PTSR 983*. This states that policy statements should be interpreted objectively in accordance with the language used, read as always in its proper context. Justice Treacy who presided over the Hyde case noted that although 'Tesco' was concerned with the proper interpretation of a development plan, the same considerations apply to the carefully drafted and considered statements of policy embodied in Planning Policy Statements. Justice Treacy states that Policy CTY1 of PPS21 must be read subject to paragraph 5.0. Thus development proposals must be assessed against all planning policies and other material considerations that are relevant to it. While the Hyde case referred to different policies and their inter-relationship, the salient points for this appeal are that neither Policy CTY1 nor CTY10 are self contained and as policies CTY13 and CTY14 set out the criteria for judging the acceptability of new buildings in the countryside, they are therefore relevant. This is contrary to the approach taken in 2012/A0270. In the light of the Hyde judgement, policies CTY13 and CTY14 must be considered and put into the scales when assessing the planning merits of the proposal.
- 5.8 Policy CTY13 of PPS21 relates to the integration and design of buildings in the countryside. It was argued that the site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure contrary to criterion (b) of the policy.

- 5.9 The Justification and Amplification to Policy CTY13 indicates at paragraph 5.62 that a group of existing buildings, such as a farm complex may also provide an opportunity to sensitively integrate a new building provided this does not adversely impact on rural character. Paragraph 5.41 of the Justification and Amplification text to Policy CTY10 implicitly acknowledges that the existing farm group or the application site may not be well landscaped and allows the presence of vegetation to be discounted in assessing visual linkage. While BOT is guidance and not planning policy, it has a role in interpreting PPS21. In offering advice on the general topic of integrating with the landscape, it suggests that developers should look for sites with at least two boundaries and preferably three. It suggests linking with hedges and trees only where the dwelling is to be located away from the existing farm cluster.
- 5.10 It is common case among the parties that the proposal would visually link or be sited to cluster with the established group of buildings on the farm, namely No 28, the detached garage/outbuilding and the agricultural shed. When viewed from surrounding vantage points, the proposal would read as being visually interlinked with the building group with little appreciation of any physical separation that may exist between them. While the appeal site has some integrating features with the vegetation to the west and the presence of the farm buildings further to the south, the provision of sight visibility splays of 2.4m x 45m and the necessary ancillary works would inevitably open the elevated site up to view which would reinforce the visual impact of the proposal. New landscaping (and the reinstatement of hedging behind the visibility splays) would aid with integrating the proposal. However, given the aforementioned combination of buildings and vegetation along two boundaries, it need not be wholly reliant on landscaping. In assessing the proposal, the Council did not take into account the presence of the existing buildings and the potential of the proposal to integrate with them. The overall thrust of PPS21 is to group new development with existing built commitments in the landscape rather than in isolation. When taking into account the relevant policy and guidance on this matter, I find, on balance, that the failure of the proposal to meet some of the integration requirements of Policy CTY13 are outweighed by its ability to broadly fall in line with the level of integration required for farm dwellings under Policy CTY10. The first reason for refusal does not therefore weigh against the proposal.
- 5.11 Policy CTY14 of PPS21 relates to the impact of a proposal on the rural character of an area. It was argued that the proposal would create ribbon development and result in suburban style build up contrary to criteria (b) and (d) of CTY14. Criterion (d) of Policy CTY14 directs the decision maker to Policy CTY8 of PPS21. This relates to ribbon development. While Policy CTY8 was not specifically referred to in the decision notice, ribbon development was and it is cross-referenced with Policy CTY14. I am satisfied that the requirements of CTY8 fall to be considered.
- 5.12 Policy CTY 8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. While the policy does not provide a comprehensive definition of ribbon development, paragraph 5.33 gives examples of instances that can represent ribbon development. It states that a ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.
- 5.13 In this case, the proposal would have common frontage with and visually link with Nos 28 and 20 Kesh Road from around viewpoint 3. When travelling further south, the proposal would share common frontage with Nos 28, 24 and 20 Kesh Road. When travelling north the proposal would share a common frontage with the buildings at Nos 20, 24 and 28 Kesh Road. It would

therefore result in ribbon development. Regardless of whether or not a gap site would be created, the proposal would be contrary to criterion (d) of Policy CTY14 and Policy CTY8. The proposal would visually link with the existing farm buildings. When viewed cumulatively with them and with the other aforementioned buildings including those at No 19 and 33 from viewpoints 1 and 2 it would result in a suburban style build up of development contrary to criterion (b) of Policy CTY14. The Appellant referred to the traditional settlement pattern in the area in support of his case and to certain paragraphs of PPS21. While I would accept there are a number of road front dwellings in the area due to the topography and that PPS21 advocates the consolidation of development, I see nothing in PPS21 or in BOT that endorses ribbon development or suburban style build up. In any event, there may be other alternative sites that the Appellant could consider. For the reasons stated, the proposal fails to comply with policies CTY8 and CTY14.

- 5.14 To supplement his case, the Appellant put forward personal circumstances for consideration. At the Hearing, the Appellant's son indicated that farming is not his main occupation. He works shifts in Norbrook full time. He also stated that he lives nearby in Belleeks. Neither the Appellant's son nor wife have had to curtail their working arrangements to provide care over the five years since the Appellant's stroke. In any event, his son lives only 3-4 miles away and he could be on hand in good time to assist if a medical emergency were to arise. The personal circumstances advanced were not supported with medical evidence from a health professional detailing the level of care required. Furthermore, there is sufficient space available around either side of No 28 to provide an annex or extension for additional accommodation if necessary. I fail to see how the existing access arrangements, which includes separate access points to either side of the house, would preclude this. If one has to close, the other access would still be available. For the reasons stated, the personal circumstances do not satisfy Policy CTY6 and, in themselves, they do not justify setting aside the environmental objections to the proposal.
- 5.15 In the absence of details around the circumstances advanced in planning application P/2013/0654/O, my consideration remains unchanged. Planning approval P/2013/0079 does not appear to meet the policy requirement as there was no established group of farm buildings in that case. It is not in the public interest to replicate such decisions and this one example does not justify approving the appeal proposal. The Appellant referred to a number of other planning applications and provided site location maps in appendix six of his evidence. Photographs of the area were also enclosed. In appeal 2012/A0270, ribbon development was not an issue. No argument was put forward to suggest that any of the examples cited had the same physical context as the appeal proposal. Given this and in the absence of detailed information pertaining to the circumstances of each case, I am not persuaded they are directly comparable to the appeal proposal. The issues in this appeal are specific to this site, the surrounding area and the personal circumstances advanced. An inconsistent approach in the application of policy has not been demonstrated. I do not therefore accept that the Appellant has been unfairly treated.
- 5.16 I acknowledge that the proposal broadly complies with the integration requirements of policy as specified. However, this finding and the personal circumstances advanced do not outweigh the failure of the proposal to meet Policy CTY14 and overcome the issues of ribbon development and suburban style build up.

6.0 RECOMMENDATION

- 6.1 For the reasons stated, I find the second reason for refusal to be sustained and to be determining. The arguments advanced in respect of Policy CTY6 do not overcome this failing. I therefore recommend to the Commission that the appeal be dismissed.

This recommendation relates to - Drawing No 01 (1:2500 OS site location map) and Drawing No 02 Ref 620.P01 (site layout, elevations and floor plans at various scales) both stamped refused by the DOE on 13 February 2015

List of Appearances

Planning Authority:- Ms P Manley (Newry & Mourne District Council)
Mr A Donaldson (Newry & Mourne District Council)

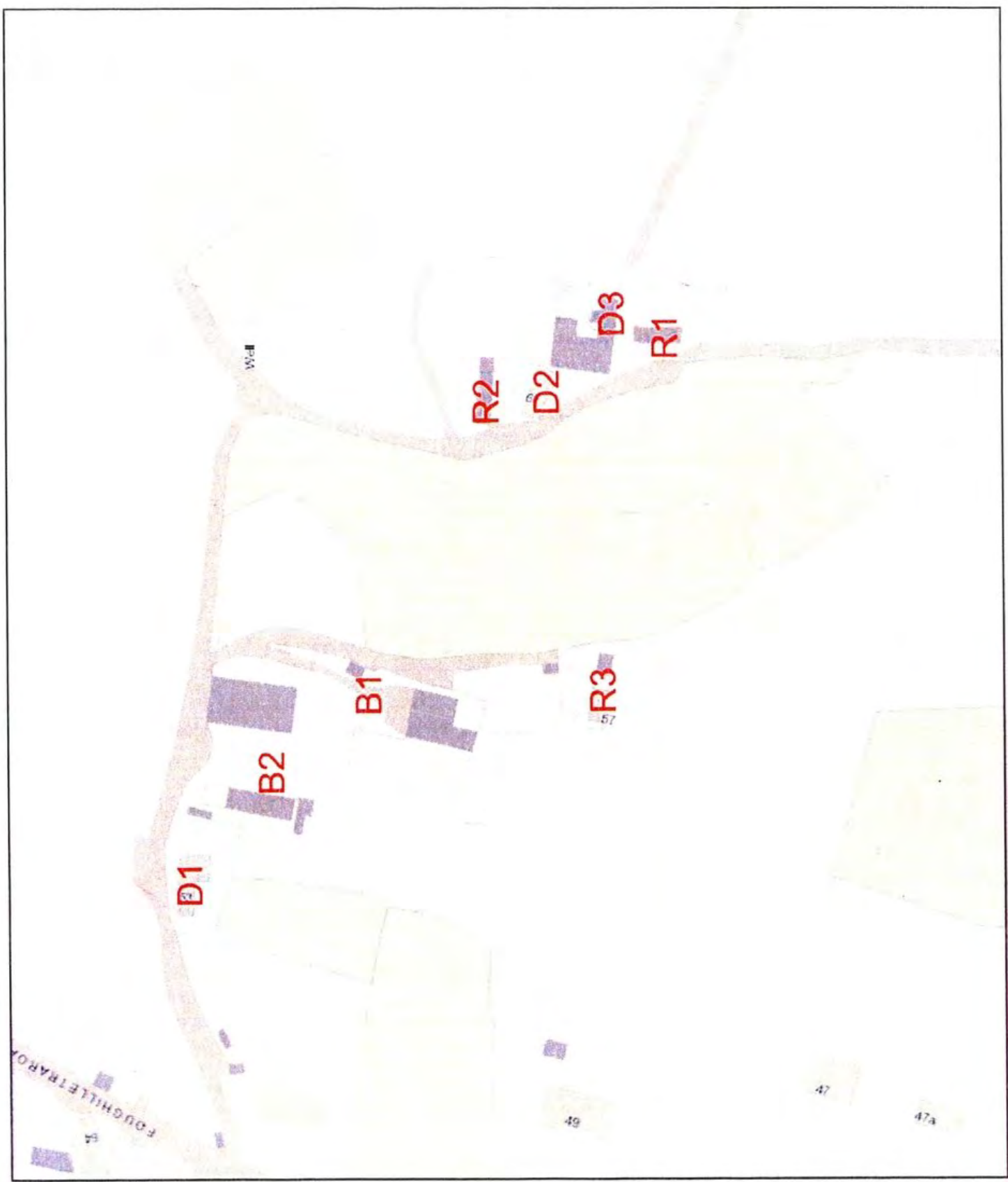
Appellant:- Mr C O'Callaghan (Agent)
Mr D Bradley (MLA)
Mr P Doran (Appellant)
Mr C Doran (Appellant's son)

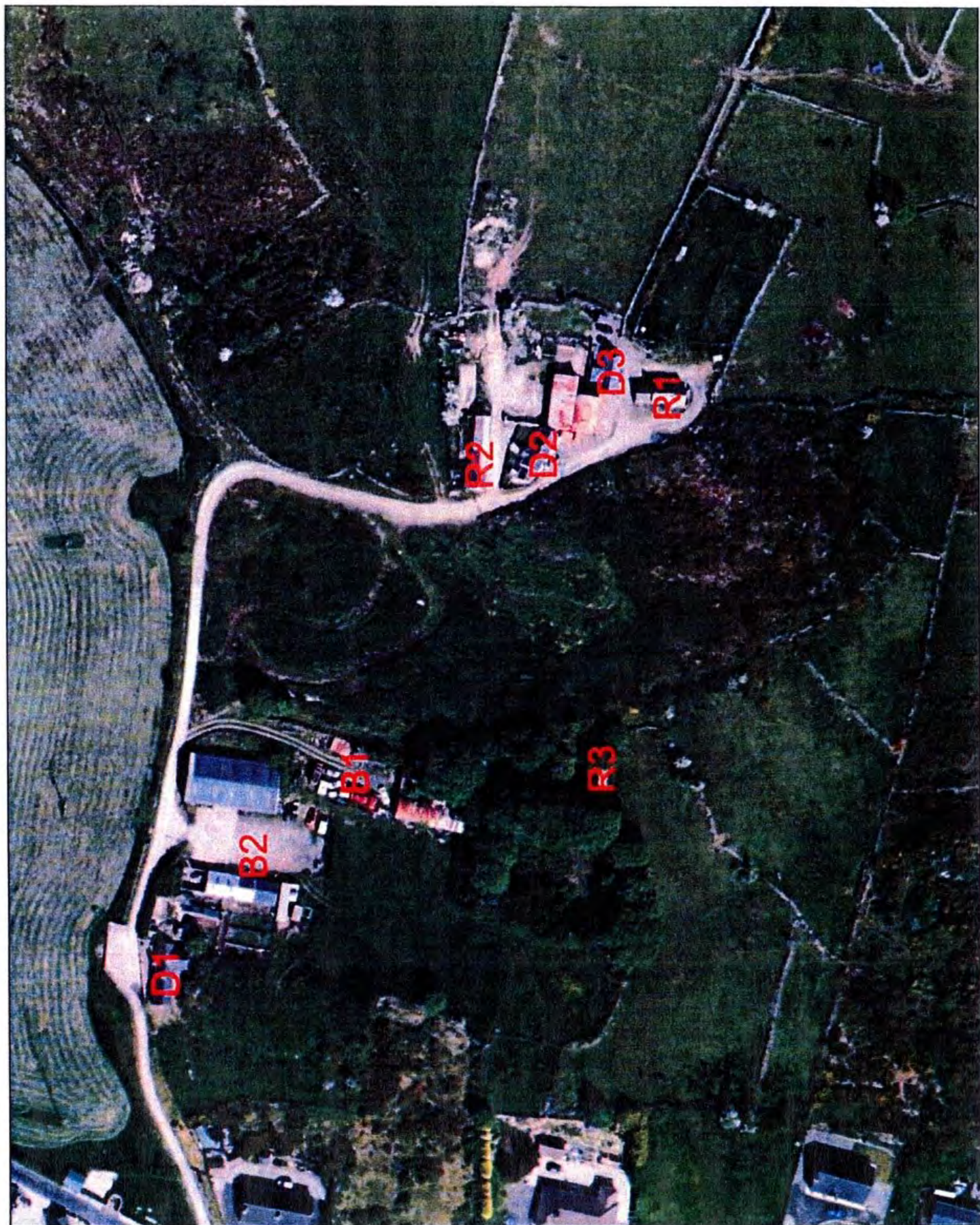
Documents

Planning Authority:- "A" Statement of case (Newry & Mourne District Council)
"A1" Post Hearing comments on the Hyde judgement
"A2" Planning History re P/2013/0079/F

Appellant "B" Statement of case (Mr C O'Callaghan)
"B1" Post Hearing comments on the Hyde judgement

APPENDIX 3
Existing Development on Laneway





ITEM NO	50				
APPLIC NO	P/2015/0136/F	Full	DATE VALID	1/30/15	
COUNCIL OPINION	REFUSAL				
APPLICANT	Mr L Magennis	AGENT	O'Callaghan Planning Unit 1 Monaghan Court, Newry BT35 6BH 02837511714		
LOCATION	43 Forkhill Road Ellisholding Newry.				
PROPOSAL	Use of existing first floor offices for Class A (2) Use (Financial and Professional Services)				
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions	
	0	0		0	0
			Addresses	Signatures	Addresses
			Signatures		
			0	0	0 0

1. 1. The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.
2. 2. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference:

P/2015/0136/F

Date Received:

19.02.2015

Proposal:

Use of existing first floor offices for Class A (2) Use (Financial and Professional Services).

Location:

The site is located at 43 Forkhill Road, approx. 2 miles SW of Newry City Centre.

Site Characteristics & Area Characteristics:

The site is a commercial yard located North of Newtowncloghogue. At the Northern section of the yard is a large building which houses a window business and an exhaust business. A car sales business is located to the south. The site is located in a rural area which has become under significant development pressure for commercial activity within the site itself and in the immediate vicinity.



Image 1 – Application Site

Site History:

- P/2013/0064/F - Retention of change of use of part of vehicle workshop to business for manufacture and supply of windows and doors. 43 Forkhill Road, Newry. Permission granted on 22.08.2013.
- P/2013/0140/F-Retention of and change of use of land for car sales. 43a Forkhill Road, Newry. Under consideration.
- LA07/2015/0579/F-Proposed retention of existing buildings for the retail selling of household fuel and vehicle fuel and fuel pump. Permission refused on 05.05.2016.

Refusal reasons:

1. The proposal is contrary to Paragraph 6.279 of the Strategic Planning Policy Statement in that the proposal seeks to carry out the retail sale of fuels in a countryside location and it is not one of the types of retailing considered appropriate in a rural area.
 2. The proposal is contrary to the Policy PED 3 of the Department of the Environment's Planning Policy Statement 4, Planning and Economic Development, in that the development does not involve the utilisation of existing, authorised buildings on the site.
- P/2012/0175/CA-Change of use to car wash, vehicle fuel sales and ancillary shed. 43 Forkhill Road, Newry. Court action being pursued.
 - P/2009/0013/CA - Use of part of commercial yard for car sales and installation of ancillary workshop and office buildings.43a Forkhill Road, Newry. Court action being pursued.

Planning Policies& Material Considerations:

This planning application has been assessed under the Banbridge, Newry and Mourne Area Plan 2015, the Strategic Planning Policy Statement (SPPS) for Northern Ireland and Planning Policy Statement 21, Sustainable Development in the Countryside.

Consultations:

The consultation responses are outlined below:

- Transport NI – 27.05.2016 content subject to conditions.
- Newry Mourne and Down District Council Environmental Health Department – No objections. (5 August 2016).

Objections & Representations

Three neighbour notifications were issued on 04 August 2015 and the application was advertised in the local press on 04 March 2015. No representations were received.

Consideration and Assessment:

Banbridge Newry and Mourne Area Plan 2015

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside the settlement limits of Newry City and Newtowncloghogue as illustrated on map 3/01. There are no specific policies in the Plan relevant to the determination of the application which directs the decision maker to the operational policies of the SPPS.

Strategic Planning Policy Statement (SPPS) for Northern Ireland.

In this instance the proposal is change of use to Class A2 offices. Class A2 offices is defined in the Planning (Use Classes) Order (Northern Ireland) 2015 - "*Class A2 - Financial, professional and other services use for the provision of services which it is appropriate to provide in a shopping area, where the services are provided principally to visiting members of the public including— (a) financial services; or (b) professional services.*" The definition specifically refers to Class A2 as providing services to visiting members of the public in shopping areas. A shopping area is not defined in the legislation although as a rule of thumb I would consider town centres to fit the definition of shopping areas. Therefore the relevant section of the SPPS which is applicable to this application is Town Centres and Retailing. Paragraph 6.273 states planning authorities must adopt a town centre first approach for retail and main town centre uses. In this instance the proposal falls within the category of main town centre uses. The application site as outlined above is outwith the settlement limit of the nearby village of Newtowncloghogue and Newry City and thus contrary to the thrust of this policy. There is no policy support in the SPPS for the proposed development in a countryside location, therefore refusal is recommended.

Recommendation:

Refusal

Refusal Reasons:

1. The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.
2. The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.

Case Officer Signature:
Date: 13th September 2016
Authorised Officer Signature:
Date:

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

21st September 2016

Dear Sir / Madam,

Your Ref: P/2015/0136/F
Location: 43 Forkhill Road, Ellisholding, Newry
Proposal: Use of existing first floor offices for class A(2) use (Financial and Professional services)

1. The above planning application has been recommended for refusal and it is to be presented to the Council's planning committee on 28th September 2016. The reasons for refusal are set out as follows:

The proposal is contrary to Paragraph 6.273 of the Strategic Planning Policy Statement in that the proposal seeks change of use to Class A2 offices in a countryside location and it is not a type of development considered appropriate in a rural area.

The proposal is contrary to the Local Development Plan as it falls outside the Town Centre Boundary / retail area as designated in the Banbridge / Newry and Mourne Area Plan 2015.

2. I believe that a number of important considerations have been overlooked or given insufficient weight in the assessment of the proposal, hence this request for re-consideration. I would also point out that the Council's failure to display the professional planning report on the planning portal has also impacted adversely upon my ability to address the actual refusal recommendation in full.



RTPI
Chartered Town Planners



Delays experienced in processing the application

3. At the outset, I must emphasise the considerable delay that has affected this application. The application involved a minor change of use of a small part of an existing building. There had been a previous enforcement case undertaken in respect of this use, and the landowner ultimately complied with the planning authority's enforcement team. However, the speed and vigour with which the enforcement case progressed have not been replicated in the handling of the present application.
4. This application was preceded by an earlier, unsuccessful, application. However, it was considered that the planning policy context had changed considerably since the date of the previous case, hence the submission of this application.
5. Around eight months after this application was submitted, the Strategic Planning Policy Statement was published.
6. It is clear that the Council considers the SPPS should be applied to each individual planning application throughout the open countryside. This issue will be addressed in due course. However, it is respectfully contended that the Council should exercise flexibility in the handling of this case, and recognise that had the application been processed in a timely manner the SPPS would not have been a material consideration. The Council is empowered to take such a course of action, as a matter of practice.

Initial Rationale behind Submission of Application

7. After the last application was refused on this site, it became apparent that the local planning authority had exercised the provisions of Policy CTY 4 of PPS 21 in granting permission for the change of use from a commercial unit to a day nursery at Unit 7/8 Cloghogue Business Park, Forkhill Road, Newry (P/2013/0578/F, approved on 16th January 2014).
8. Like this site, the approved development referred to is located in the open countryside, within an established business park. The professional planning report P/2013/0578/F outlines the Department's rationale for the approval. It is notable that the Department did not feel the need to assess the original building's suitability. In the event that suitability would be a consideration under this proposal, this submission has outlined how there is no defined typology of building that is suitable for conversion (which



explains why the Department did not deem it necessary to carry out such an appraisal within the above mentioned approval).

9. In the above case appropriateness was a consideration, however the Department found that the proposed use was appropriate since it involved a community facility that would serve the local rural population. Notwithstanding that this proposal may not necessarily be considered equitable on that basis, appropriateness falls to be determined on a case by case basis. The DC group recommendation noted that "this application proposes a change of use from a commercial unit to a day nursery within an existing business park. This is considered acceptable in this location".
10. The precedent value of the above application is significant. In planning terms, while precedent is frequently cited as a reason to oppose a proposal (in cases where repeat decisions would undermine a particular asset, feature, policy or strategy), conversely, the granting of a planning approval can frequently generate a legitimate public expectation that where such circumstances prevail then planning permission may subsequently be granted for the same reasons. Refusal to grant permission for a proposal under circumstances similar to those which allowed another approval to be granted is generally considered administratively unfair, and in this case it is contended that the approval granted in Cloghoge Business Park lends substantial weight to my assertion that Policy CTY 4 contains the appropriate justification for this proposal. On that basis, the application could have been approved long before the SPPS was first published, and the Council's delay in processing the application has unfairly prejudiced this applicant.

Weight to be attributed to a planning policy

11. There appears to be a common perception in this Council that where the SPPS does not explicitly mention a specific type of development, then there is in fact no provision for that type of development. However, planning policy does not need to be adhered to slavishly, particularly where planning authorities' wider goals are not compromised. In this respect, the *Lamont* judicial review is particularly relevant. Therein, it was stated that:

"Of course, the Planning Service need not 'slavishly' follow the policy. The policy is one of many under the Planning Policy Statement 21 which focuses on sustainable development in the countryside. Within PPS21 a number of like



situations are grouped together, for example, proposals for dwellings on farms. The policy indicates the preferred approach to these like cases in order to achieve the broader social and environmental goals relating to development in the countryside. However, the policy itself, and much case law on this and similar issues, acknowledges that no policy can take into account the myriad considerations that may arise in individual fact scenarios that arise in the broad policy area. No planning policy can anticipate the personal, environmental, logistical etc. circumstances of all the individual planning applications made under the policy that need to be considered. However, what is contained in the policy, which cannot be ignored is the thrust of the desired result of the policy”.

“In short compass, the policy should be adhered to where possible. It can and should be disapplied in circumstances where there is good reason to do so for example if strict adherence to the policy would damage some other important interest unacceptably and a balance needs to be struck. It is entirely lawful for the department to choose to disapply or modify a policy. The key test for when a department can be said to have lawfully disapplied a policy is found in *EC Gransden + Co. Ltd and Falkbridge Ltd. v Secretary of State for the Environment*:

... It seems to me, first of all, that any policy, if it is to be a policy which is a proper policy for planning purposes, must envisage that in exceptional circumstances the minister has the right to depart from that policy. If the situation was otherwise it would not be a statement of policy but something seeking to go beyond that and, bearing in mind the terms of section 29 of the Town and country Planning Act of 1971, it would be an improper attempt to curtail the discretion which is provided by the Act, which indicates that in determining planning applications regard is not only to be had to the provisions of the development plan so far as material, but also to any other material considerations.”

SPPS

12. I would emphasise the fact that while the SPPS superseded PPS 5, it is an overarching, strategic framework document. It does not set out prescriptive tests, unlike other Planning Policy Statements, and its provisions have not been intended for application on



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a case by case basis, pending the adoption of Local Development Plans. The SPPS does not detail the limitations to the types of development that will be acceptable in the open countryside nor does it set out an exhaustive list of typologies (or indeed policy requirements to be complied with). Instead, and until such times as a Plan Strategy for the Newry, Mourne and Down Council area has been adopted, a transitional period will operate. Within this period, in instances where the SPPS is silent or less prescriptive on a particular planning policy matter than retained policies this should not be judged to lessen the weight to be afforded to the retained policy.

13. While the SPPS is less prescriptive than PPS 5 in terms of retailing in the open countryside, PPS 5 is not a "retained Policy". Within PPS 21, which has been retained, there is no operational presumption against small scale office use in the open countryside, when it comes to proposals involving the conversion of established buildings, particularly those located wholly within the confines of long established rural enterprises. Consequently, the SPPS' relative silence in relation to particular form of development means that greater weight should automatically be attributed to the retained policy (i.e. Policy CTY 4 of PPS 21).
14. Although PPS 1 is no longer a retained Policy, subsequent to the publication of the SPPS, its presumption in favour of development has also been retained within the SPPS. This is confirmed in the SPPS' paragraph 3.8, where it is stated that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted unless the proposed development will cause demonstrable harm to interests of acknowledged importance. Consequently, where there is doubt in relation to any issue, or an apparent gap in policy coverage, the balance must be tipped in favour of an applicant.
15. In this particular case, the SPPS is silent in relation to this proposal, whereas Policy CTY 4 of PPS 21 does not preclude this type of development. Therefore, any doubts surrounding the SPPS' perceived lack of support for this specific proposal need not be given determining weight as a material consideration in the determination of this planning application.
16. Critically, the SPPS "does not seek to promote any one of the three pillars of sustainable development over the other. In practice, the relevance of, and weight to be given to social, economic and environmental considerations is a matter of planning judgement in any given case".



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17. The SPPS is relevant to retailing insofar as it directs retail uses to town centres, while it states that “the development of inappropriate retail facilities in the open countryside must be resisted”.
18. The refusal reason states that the proposal is contrary to para. 6.273 of the SPPS. However, this simply states that “planning authorities must adopt a town centre first approach for retail and main town centre uses”. This does not equate to a moratorium on small office development, within an existing commercial complex in the open countryside.
19. The reason for refusal indicates that the proposal is not a “type of development considered appropriate in a rural area”. Equally, it is not prescribed as an inappropriate form of development in a rural area. In this respect, the SPPS would appear to be silent, or less prescriptive, than the retained Policy (CTY 4 of PPS 21) and thus that policy’s permissive provisions can justifiably be engaged to approve this proposal, in the same manner this policy formed the justification for the approval of a commercial unit in a nearby commercial complex, (as detailed in this submission).
20. It follows that since the Policy is not prescriptive, what should be considered appropriate must be determined on a case by case basis.
21. At the heart of this matter is the supposition that the countryside is not an appropriate location for unfettered urban uses. However, this proposal does not fall into that category because it is located within an existing commercial building that is surrounded by other commercial / waste operations, and the use of the premises could also be further controlled by way of condition, to prevent the sale of convenience goods or similar, as necessary.
22. Additional safeguards could be imposed if necessary, to prevent the future subdivision of the premises, or the change to another use falling within the same categorisation (to prevent the premises from changing to an unfettered use in the future).
23. The proposal is contained wholly within an existing / established building. It would have no impact whatsoever upon the vitality and viability of the nearest settlement’s town centre, and it has not caused nor is it likely to cause a change to the rural character of this area of countryside.



24. Pragmatic approaches to the determination of complex planning applications recognise the limitations of assessing a proposal against a single policy, or attributing determining weight to a single policy owing to some purported shortcoming in respect thereof. A well-established principle in planning practice dictates that it is not necessary to slavishly follow or adhere to a single policy and an application can often succeed due to a combination of factors.

Rural Brownfield Development / Previously Developed Land

25. In land use planning, special dispensation is frequently given in the consideration of proposals involving brownfield development in urban areas, because this is a more sustainable form of development. Unfortunately, planning publications do not extend such provisions into the consideration of proposals involving the re-use of previously developed land in the open countryside.
26. The Council has a duty to secure the orderly development of land in urban and rural areas, and to promote the rural economy. Notwithstanding this proposal's small scale, there are clearly economic benefits to be accrued through the approval of this application. Importantly, approval of the application would not prejudice the rural amenity of this area of countryside. Attached to this submission is an example of a senior planning manager taking a decisive action and approving an application despite the failure to comply with planning policy.
27. It would not be in the public interest for the subject building to lie vacant or not to be used to its full potential. The scale of the development is modest and it is not unreasonable to suggest a use that can be contained wholly within an existing building, which will, in turn secure its maintenance and upkeep. In these circumstances I believe that approval of the application can be justified without fear of establishing a precedent that would force the approval of other applications that are purportedly contrary to planning policy.

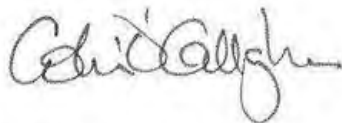


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28. In the event that you require any additional information, please do not hesitate to contact me.

Yours Faithfully,



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

APPENDIX 1

AREA PLANNING MANAGER'S CONSIDERATION OF APPLICATION P/2010/0537/F



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ITEM NO	51		
APPLIC NO	P/2015/0162/F	Full	DATE VALID 3/5/15
COUNCIL OPINION	REFUSAL		
APPLICANT	Denis Robb 68 Concession Road Culloville Newry BT35 9AR	AGENT	PJD Design Ltd 16 Fane Grove Culloville Newry BT35 9JW 07842417460

LOCATION Lands approx 41m West of No 54 Edenappa Road
Jonesborough
Co Armagh

PROPOSAL Proposed erection of farm dwelling.

REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	2	0	0	0

Addresses		Signatures	
0	0	0	0

- 1 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
- 2 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy 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 or health and safety reasons exist to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm. It has also not been demonstrated that there is verifiable plans exist to expand the farm business at the existing building group to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm.
- 3 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and the proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.
- 4 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 would therefore result in a detrimental change to further erode the rural character of the countryside.
- 5 The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy NH6 of Planning Policy Statement 2, Natural Heritage in that the siting of the proposed dwelling is unsympathetic to the special character of the Area of Outstanding Natural Beauty in this particular locality.



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agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: P/2015/0162/F

Date Received: 27.02.2015

Proposal: Full permission for a proposed erection of farm dwelling.

Location: *Lands approx 41m West of No 54 Edenappa Road, Jonesborough Co Armagh. The proposal is within the South Armagh area approximately 1 mile south of Jonesborough.*

Site Characteristics & Area Characteristics:

The site is located at lands approximately 41m West of No 54 Edenappa Road, Jonesborough. The site as defined in red on the site location plan takes in a portion of agricultural land that is situated along the road frontage. The southern boundary of the site consists of sparse hedging and post and wire fencing. Post and wire fencing can also be found on the roadside boundary with stone / masonry walls found on the northern boundary and the western boundary remaining undefined. The area is rural in character with development pressure stronger on the opposite side of the road. A single storey dwelling is located at the south of the site and 2 are located to the north. The site lies within the AONB as depicted in the Banbridge Newry and Mourne Area Plan 2015.

Site History:

N/A

Planning Policies & Material Considerations:

*Banbridge Newry and Mourne Area Plan 2015
Strategic Planning Policy Statement for Northern Ireland
Planning Policy Statement 21
Planning Policy Statement 3 / DCAN 15
Planning Policy Statement 2*

Consultations:

*Environmental Health – no objection.
Transport NI – following amendments, no objection.
NI Water – Generic*

DARDNI – DARD number has been in existence for at least 6 years and SFP has been claimed in this period.

Objections & Representations

5 Neighbours Notified and the application was advertised on 18.03.2015. Letters of objection were received from Nos. 48 and 51 Edenappa Road. These objections will be discussed in detail at the end of the report.

Consideration and Assessment:

Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015

The Strategic Planning Policy Statement is a material consideration for this application however as there is no significant change to the policy requirements for farm dwellings following the publication of the SPPS and it is arguably less prescriptive, the retained policy of PPS21 will be given substantial weight in determining the principle of the proposal in accordance with paragraph 1.12 of the SPPS Strategic Planning Policy Statement / Banbridge Newry and Mourne Area Plan 2015. The site lies within the Rural Area / AONB as designated in the Banbridge Newry and Mourne Area Plan 2015. Whilst permission in this area is restrictive the plan does make provision for development if it is in compliance with prevailing policy.

*PPS3 – Access, Movement & Parking & DCAN15 – Vehicular Access Standards
Following amendments, Transport NI has no objections with regard to these policy criteria.*

PPS21 – Sustainable Development in the Countryside

Policy CTY1 restricts new development in the countryside, but makes an exception for farm dwellings which are acceptable if in accordance with policy CTY10. DARD NI has confirmed the Business ID submitted with the application has been effective for at least 6 years and SFP has been claimed during this time. The application therefore meets the policy criteria for CTY 10 (a).

A history search on the lands shown on the DARD maps submitted show no other possible development opportunities could have been sold off from the holding and as such the application meets criteria (b) of CTY10.

The proposal is not visually linked or sited to cluster with an established group of buildings on the farm. The farm maps provided show the existing farm holding located off the Concession Road, near Cullaville, this is confirmed in the supporting case by the agent. A farm dwelling should therefore, according to the policy, be visually linked or sited to cluster with the existing farm buildings on Concession Road unless there is demonstrable health and safety reasons or verifiable plans to expand the farm business. The health and safety reasons referred to are qualified in the justification and amplification in paragraph 5.43 of CTY10 where it states, the applicant will be required to submit appropriate and demonstrable evidence from a competent and independent authority to justify the siting. Examples given include the Health and Safety Executive or Environmental Health. The agent has made reference to surface water flooding on the laneway and the expansion of his equine and agricultural business as justification for the siting some 10 miles from the

existing farm buildings. However the agent has failed to submit evidence from a competent or independent authority to confirm this position and has also failed to show verifiable plans for expansion which can include valid planning permissions, building control approvals or contractual obligations. With regard to the flooding issue, correspondence from Rivers agency (dated 25th April 2016 on file) confirmed it would have no reason to objection due to surface water on the laneway and surrounding lands. For this reason the application fails to adequately justify the siting of the farm dwelling away from the existing farm buildings in relation to the criteria set out in paragraph 5.42 of CTY10. The application fails policy (c) of CTY10.

In terms of CTY13/14, the critical views of the proposed dwelling will be on the approach to the site in both directions as well as at the site itself. Particularly when approaching from the south the site is particularly exposed. Only one boundary of any significance exists (southern) leaving the site relying heavily on new landscaping for integration and lacking in a suitable degree of enclosure. In terms of CTY14 specifically the application site, when viewed with existing buildings in the immediate area would result in a suburban style build up of development and as such would further erode the rural character of the area. For the reasons mentioned above the proposal is therefore contrary to CTY 13 and 14 of PPS21. Environmental Health were consulted in relation to the sewage arrangements and have responded with no objections. The proposal is in general compliance with CTY16.

Policy NH6 of PPS 2 Natural Heritage is applicable as the site lies within the AONB. The siting of the proposed dwelling, given its lack of integration is unsympathetic to the special character of the AONB of the particular locality and as such is contrary to (a) of Policy NH6. There are no adverse impacts on existing heritage in the area and the design of the dwelling is in keeping with local architectural styles.

Letters of objection were received from Nos. 48 and 51 Edenappa Road which were identical letters. Concerns have been raised with regard to CTY8/10/13 and 14 of PPS21 and also PPS3. CTY8 is not applicable for this application as the proposal seeks permission for a farm dwelling and not an infill opportunity. CTY13 and 14 have been discussed in detail and the Council contends that this application fails both policies for the above reasons. In terms of objections with regard to CTY10 and the site not being clustered with existing farm buildings, the Council contends this to be the case as it forms the basis of one of the refusal reasons. Concerns have also been raised in terms of site splays and land ownership. Transport NI has confirmed the site splays shown are acceptable; however whether these would be released would be a matter between both parties. In terms of the land ownership dispute the Council has made an effort to obtain confirmation from the agent with regard to landownership. Correspondence appears to show the agricultural land in their possession but makes no reference to site splays. In any case ownership is a civil issue and the proposal as submitted fails the basic planning criteria as documented above.

Recommendation:
Refusal

Refusal Reasons

- 1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**
- 2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy 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 or health and safety reasons exist to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm. It has also not been demonstrated that there is verifiable plans exist to expand the farm business at the existing building group to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm.**
- 3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape and the proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.**
- 4. 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 would therefore result in a detrimental change to further erode the rural character of the countryside.**
- 5. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland (SPPS) and policy NH6 of Planning Policy Statement 2, Natural Heritage in that the siting of the proposed dwelling is unsympathetic to the special character of the Area of Outstanding Natural Beauty in this particular locality.**

Case Officer:

Authorised Officer:

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

ITEM NO	17			
APPLIC NO	P/2014/0894/F	Full	DATE VALID	10/29/14
COUNCIL OPINION	REFUSAL			
APPLICANT	Hilary McCamley 3 Whinnbloom Villas Mayobridge		AGENT	B Dinsmore RIBA 24a Duke Street Warrenpoint BT34 3JY 02841753698
LOCATION	Lands fronting Mayvale Court Newry Road Mayobridge (to the rear of 3 Whinnbloom Villas (off Chapel Hill Road) and adjacent and north-east of 8 Mayvale Court)			
PROPOSAL	Erection of dwelling			
REPRESENTATIONS	OBJ Letters	SUP Letters	OBJ Petitions	SUP Petitions
	0	0	1	0
	Addresses Signatures		Addresses Signatures	
	14		14 0 0	

- The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, will have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.



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

Referral to committee: Application recommended for refusal

Application Reference: P/2014/0894/F

Date Received: 30.01.14

Proposal: Erection of dwelling

Location: Lands fronting Mayvale Court, Newry Road, Mayobridge (to the rear of 3 Whinbloom Villas (off Chapel Hill Road) and adjacent and north-east of 8 Mayvale Court)

Site Characteristics & Area Characteristics:

The application site comprises of a rear garden (0.022ha) of No. 3 Whinnbloom Villas fronting onto an existing residential development of Mayvale Court which is located within the development limits of Mayobridge. Ground at the site slopes down from the rear of No.3 from SE to NW with boundaries defined by ranch fencing (NE) with fence and shrubs along the S and W boundaries.

Site History:

Application Site: P/2014/0231/O - Site for dwelling. Fronting Mayvale Court and to the rear of No.3 Whinnbloom Villas, Mayobridge. Refusal 06.06.14

(Reason: The proposal is contrary to Policy QD 1 (Criteria a, c, & h) and Policy QD 2 of the Department's Planning Policy Statement 7: Quality Residential Environments, Policy LC1 (Criteria b) of the Department's Addendum to PPS7 : Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, would have inadequate separation distance from existing dwellings and would not provide sufficient rear private amenity space.)

Adjacent and immediately N of site: P2013/0207/RM -, Erection of dwelling. To the front of Mayvale Court and to the rear of No.2 Whinnbloom Villas, Mayobridge

Planning Policies & Material Considerations:

Policy/ Guidance Considered - SPPS, PPS3, PPS6, PPS7, PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, PPS8, PPS12, DCAN8, DCAN 15, Parking Standards, Creating Places, PSRNI (DES2)

Area Plan - Site is within the development limits of Mayobridge on unzoned land. The principle of the proposal is not contrary to the adopted area plan

PPS3 and PPS6: TransportNI (03.12.14) and NIEA (18.12.14) in their consultation response have raised no objections

SPPS, PPS7 (QD1): Criteria a, c, f, h and PSRNI: DES 2

Planning approval has been granted for individual sites to the rear gardens of No. 1 and 2 Whinnbloom fronting and accessing onto Mayvale (P/2013/0207/RM) whilst this establishes a degree of precedent this proposal must be considered on its own merits.

The site in comparison to the other two is not as deep and is significantly smaller (0.022ha) than the plot sides immediately to the N (Rear of No. 2 Whinnbloom: 0.0431ha and rear of No.01 Whinnbloom: 0.039ha) thus any development at the site will be squeezed in and will not respect the surrounding context of development.

Separation distances between the site and the neighbouring development range from a minimum of 5m to a maximum 10m. The inadequate separation distance is observed between the site and Nos. 3 Whinnbloom (10m), No.8 Whinnbloom (7m) 8 Mayvale (6.5m) and the proposed dwelling immediately to the north thus causing resultant adverse amenity issues between properties. Whilst 'Creating Places' indicate a minimum separation of 10m with an enhanced separation distance recommended on sloping sites (to which this should apply) proposals fall short of requirements and thus the site is unable to absorb development without adverse impact. Plots to the N of the site are much larger and deeper that issues with this regard are not as consequential.

As a sloping site extensive levels of excavation or fill is likely to be required in order to create a level platform with development appearing visually intrusive in the street scheme resulting in the loss of amenity to surrounding properties. Works required in order to develop the site will include the removal of existing trees/ shrubs which currently soften the visual impact of the rear garden area, the loss of existing landscaping features will expose the site and harden its visual appearance, therefore development will be unable to adequately integrate into its surroundings without adverse visual impact.

Development within such a constrained site will cause a loss of amenity to surrounding properties due to overshadowing, overbearing impact on the street scheme and loss of daylight. The position of the access and driveway immediately beside the proposed dwelling will also cause a loss of privacy and nuisance to the neighbouring property.

Whilst open space provision can be adequately achieved for both the existing (110.5 sqm) and the proposed dwelling (83sqm) it is questionable how useable and private these areas are given the inadequate separation distances, with each area of amenity space experiencing loss of privacy and overlooking between properties.

Due to the constrained nature of the site no provision can be made for future arrangements within the site for e.g. to extend the property or provide ancillary buildings such as a garage, shed etc. As well as this the shape of the site means it cannot respect the building line established by the adjacent approvals.

Whilst two in-curtilage parking spaces have been shown within the scheme (these currently meet the recommended dimensions of spaces as per guidance of 'Parking Standards') the position of the drive/ parking areas is tight to the boundary of the neighbouring dwelling and given level difference it is difficult to ascertain how this could be achieved without encroachment on the neighbouring boundary and therefore may compromise the capability of achieve adequate parking standards

SPPS and Addendum to PPS7 – Safeguarding the Character of Established Residential Areas: LC1

The application fails to meet all the criteria of QD1 of PPS7 as well as that of LC1. Whilst there is not necessarily a difficulty in terms of density with adding an additional dwelling on this site as the dwellings at Mayvale Court are built on smaller plots. The nature of the constrained plot size and depth marks this apart from the neighbouring development (i.e houses to the north) and thus development at this location will require the removal of existing and established vegetation, building at this location cannot comply with the established building line set by approvals immediately adjacent and north accompanied with insufficient separation distances raise amenity issues and overall development at this location will harm the overall character and environmental quality of the area as there would be insufficient separation distance between the house and existing dwellings.

PPS12 - Housing in Settlements

The proposal fails the first planning control principle in that the increase in density cannot be achieved without town cramming. Proposed development will clearly erode local character, environmental quality and residential amenity by squeezing a house into a plot and placing it too close to existing dwellings with an inevitable adverse impact to amenity as a result.

Consultations:

NIEA (18.12.14) – No concerns

Environmental Health (16.12.14) – No objection in principle

TransportNI (03.12.14) – No objection

NIW (11.12.104) – No objections, generic response

Objections & Representations

13 Neighbour notifications, date advertised 09.11.14 and readvertised 09.12.14
(Amended address)

Objections:

7 Mayvale Court (21.08.15)

Issues: Access point from site will cross onto a private shared drive

Residents of 1,3, 4,5, 7, 8 and 9 Mayvale Court, 14 signatures (11.12.14)

Issues: Traffic from new dwelling will encroach onto a private road and there will be no consent given to trespass onto this private road, access from a concealed entrance onto the only safe play area for children of Mayvale Court, extra traffic and congestion, duration of build heavy machinery moving through Mayvale Court negative impact on impact to character and quality of life resultant in health and safety inhibiting access to own homes

Access onto the private drive is outside the red line of the application site as well as the ownership and control of the applicant. The agent was made aware of this via telephone call on 13.10.15 and responded by email on 16.10.15 the agent has advised that DRD Roads Service (i.e. TransportNI) hold a bond on the whole of the road which will shortly be adopted. Disputes over landownership lie outside the remit of the Council and within a legal jurisdiction. TransportNI have raised no concerns with regard to road safety. Whilst residents have concerns during the build with respect to additional traffic and health/safety issues any impact is likely to be experienced on a temporary basis and the developer will have statutory obligations with regard to health and safety which lie outside the remit of the Planning Authority's control.

Consideration and Assessment:

Overall proposals fail policy tests with regard to the Strategic Planning Policy Statement for Northern Ireland, PPS7 (QD1), PSRNI:DES 2, PPS7 (Addendum: Safeguarding the Character of Established Residential Areas) and PPS12 in that as a rear garden within an existing housing development is of insufficient size and depth to accommodate a new dwelling along with ancillary works will have an adverse visual impact on the street scheme. Development will result in the loss of established vegetation, has insufficient separation distances from surrounding dwellings and will cause adverse amenity issues for the future occupier as well as neighbouring properties due to loss of privacy and overlooking as well as having an overbearing impact, overshadowing and loss of daylight to surrounding properties.

Objections submitted have been considered however concerns raised lie outside the remit of the Planning Authority.

For the reasons outlined above it is recommended to refuse the application.

Recommendation:

Refusal

Refusal Reasons/ Conditions:

The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, would have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.



Dwelling to rear of No. 1 Whinnbloom



Dwelling to rear of No. 1 Whinnbloom and adjacent site to rear of No. 2 Whinnbloom (foundations)



Proposed site and end of cul-de-sac of Mayvale



Site adjacent and N of application site



Site adjacent and N of application site (Site to right of photo)



Site adjacent and N of application site, application site to rear of No. 3 Whinnbloom (undeveloped rear garden) and No. 8 Mayvale



Application site and W boundary



Application site, W boundary and No. 8 Mayvale



Rear garden of No. 3 Whinnbloom and application site



Rear garden of No. 3 Whinnbloom and application site



W boundary of site, No. 8 Mayvale (to right of photo)



Foundations in site immediately adjacent and north (note level differences)



Rear gardens of 2 and 3, development adjacent and north of site



Application site (existing rear garden of No. 3)

DSC02261

DSC02262



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E

DSC02266



Front of No. 8 Mayvale looking E



Front of No. 8 Mayvale looking E (Plots to rear of 1 and 2 Whinnbloom visible)



Dwelling to rear of no. 1 Whinnbloom

DSC02270



Window view from No. 8 Mayvale



Rear garden of No. 3 Whinnbloom



Rear garden of No. 3 Whinnbloom



Rear garden of No. 3 Whinnbloom with established vegetation (Mayvale to NW)



Boundary to No. 8 Mayvale

REPRESENTATION AGAINST RECOMMENDATION TO REFUSE

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

Application Reference: P/2014/0894/F

Application Date: 29th October 2014

Site Location Land Fronting onto Mayvale Court, Newry Road,
Mayobridge (to the rear of No. 3 Whinbloom Villas,
Chapel Hill Road)

Proposal: Erection of a Detached Dwelling

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

Refusal Reasons:

1. *The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland, Policy QD 1 (Criteria a, c, f & h of the Planning Policy Statement 7: Quality Residential Environments, Policy LC1 of PPS7 (Addendum): Safeguarding the Character of Established Residential Areas, and Planning Control Principle 1 of the Departments Planning Policy Statement 12: Housing in Settlements, in that the applicant has failed to demonstrate that the proposal will create a quality and sustainable residential environment as the dwelling would not respect the context of the area, will have inadequate separation distance from existing dwellings and its development will result in loss of amenity through loss of privacy, overlooking, overshadowing and loss of sunlight.*

It should be noted that my initial representation dated 5th May 2016 was submitted without the benefit of a Planners Professional Report which subsequently appeared on Planweb on 23rd June 2016. That representation stands. However I have taken the opportunity at the end of this representation to address specific issues raised in the Planners Professional Report.

1. Strategic Planning Policy Statement for Northern Ireland September 2015

The proposal is in keeping with Strategic Planning Policy Statement for Northern Ireland (e.g.) sub-section 6.136 of housing in settlement states:

“6.136 The policy approach must be to facilitate an adequate and available supply of quality housing to meet the needs of everyone; promote more sustainable housing development within existing urban areas; and the provision of mixed housing development with homes in a range of sizes and tenures. This approach to housing will support the need to maximise the

use of existing infrastructure and services, and the creation of more balanced sustainable communities.”

Sub section 6.137 goes on to discuss increased housing density, sustainability, good design and balances communities. All of which this application conforms to.

2. Policy QD1 (Criteria a, c, f and h) of Planning Policy Statement (PPS) 7.

This proposal is not contrary to criteria a, c, f and h, of Planning Policy Statement 7.

- a. Mayvale Court is a development of four pairs of semi-detached dwellings and two detached dwellings (1 no. partly built). The proposal occupies the remaining gap site and completes this development around an adopted road. The proposal is wholly appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance in as much as the proposed dwelling is of similar size and finish to its neighbours.
- c. There is no public open space within the current development! Adequate private open space is in accordance with statutory requirements. Indeed, the site is larger and has more private amenity space than-any of the dwellings in Mayvale Court, with two exceptions. This is part of this particular settlement character. Additional planted areas are indicated on the block plan to soften the visual impact and assist with its integration.
- f. The proposal fully meets parking provision standards.
- h. The design and layout and orientation of the proposal have been carefully considered to minimise effect on existing properties. There is no overlooking, there is no loss of light, no overshadowing, noise or any other disturbance.

The proposal therefore conforms in full to all criteria referred to under PPS7 : Quality Residential Environments.

3. Addendum to PPS7 : Safeguarding The Character of Established Residential Areas

Policy LC1 provides that Planning Permission will be granted for the infill of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD1 of PPS7 are met. Planning Services have queried four of these criteria which I believe I have demonstrated compliance with above. Planning applications must satisfy three further criteria under Policy LC1.

- a. Density: I do not believe 1 no. additional dwelling will increase density significantly.

- b. Pattern of development: This proposal is fully in keeping with the overall character and environmental quality of this established residential area.
- c. Size: the dwelling area is in accordance with Annex A.

Principle 1 of PPS12 : Housing in Settlements

I fail to understand how this application does not comply with principle 1 which promotes increased density in locations which benefit from high accessibility and public transport facilities.

Great care has been taken to ensure that local character, environmental quality and amenity are not significantly eroded. Rather its form, shape, massing and layout will respect those of adjacent housing and safeguard the privacy of existing residents.

Specific Response to issues raised in Professional Planners Report under SPPS Addendum to PPS7 – Safeguarding the Character of established Residential areas

1. The Planner is incorrect in his claim in relation to site size. The proposed site is larger than plots 2, 3, 4, 5, 6 & 8 Mayvale Court and the site of the detached dwelling at no. 11. The proposal is not therefore 'squeezed'.
2. - The minimum separation distance between application site and no. 3 Whinbloom is 10m.
 - The application site is also below no. 3.
 - There is no No. 8 Whinbloom?
 - The minimum separation distance 'between gables' between application site and No. 8 Mayvale is approximately 7m.
 - Proposed dwelling to the North is gable on.

I do not accept the Planners separation distance argument.

3. The Planner discussed levels of excavation being unacceptable. This will be no greater than the site to the north as the photograph attached demonstrates. In terms of visual impact the proposal provides for replacement trees and shrubs to retain a soft visual impact.
4. I fail to see how the proposal will cause any loss of amenity to surrounding properties due to overshadowing, overbearing impact on the street scheme, or, loss of daylight. The access to driveway is no different to those already in existence and conforms with Transport NI standards.
5. The Planner recognizes the fact that private open space, (83 sq m), is more than adequately catered for. – Yet asserts that the dwelling is squeezed! -

6. Site constraints are no different from neighbouring properties in Mayvale Court. Ancillary shed would be very easily accommodated. – There is no building line! –
7. Parking provision will be accommodated by lowering this section of the site to the same as the site to the north.

Conclusion

Attached is a 1 : 1250 ACE Map of Mayvale Court including the proposed dwelling in context with all of its neighbours. This layout demonstrates how the proposal

- Respects the context of the area.
- Has adequate separation distance from existing dwellings.
- Will not result in loss of amenity through loss of privacy.
- Will not overlook, overshadow, or cause loss of sunlight to any other dwellings.

In the Development Officers Professional Planning Report for the adjoining site under P/2013/0207/RM the Planning Officer noted that she had concerns about the scale of the proposal and amenity space on the site. However, she also considered that the proposal would not have any negative impact on the neighbouring dwelling in terms of overlooking. On balance she saw fit to approve. The proposed dwelling under this application is smaller in scale. The site on which the dwelling, to the north at no. 11 sits is even smaller with less amenity space. Planning Services also saw fit to approve this dwelling.

Finally,	Transport NI	-	No objection
	NIEA	-	No Concerns
	Environmental Health	-	No objection
	NIW	-	No objection

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

SIGNED:



BERNARD DINSMORE
Chartered Architect

21 SEPTEMBER 2016



Level difference can be accommodated by minimal cutting as demonstrated by foundations of part built property to the north.

ACEmap® Single

Printed: 04/05/2016 Customer Ref:

Scale: 1:1,250

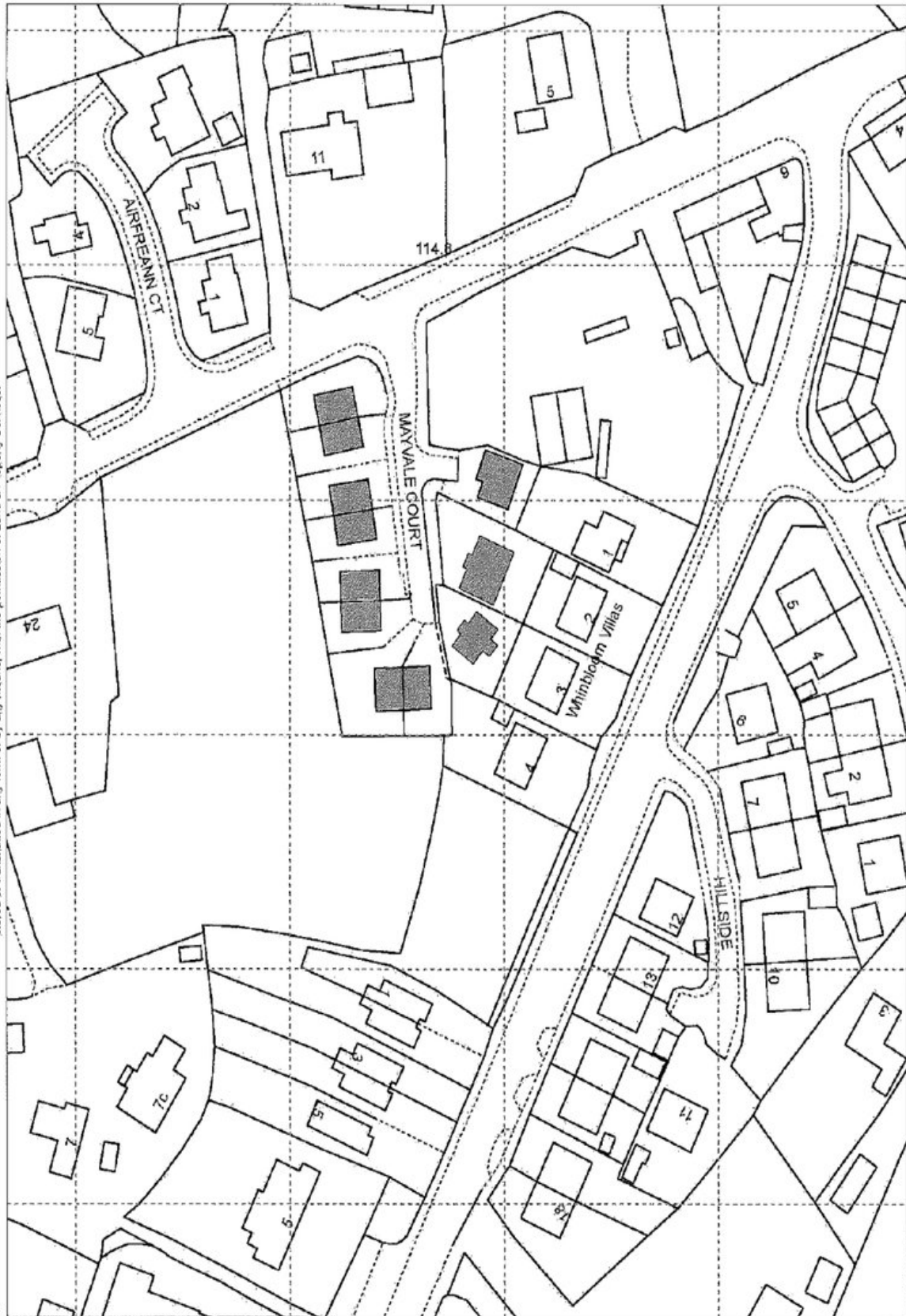
Order no. ORD24598

Centre Point (Easting, Northing): 315489, 327066

Plan No. 26706NW

9 MAYVALE COURT, MAYO, MAYOBRIDGE, BT34 2GY, 187317411

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Newry, Mourne & Down District Council – August 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

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	1,389
May	549	331	222	86	147	1,335
June	511	249	195	77	146	1,178
July	501	221	196	78	151	1,147
August	480	204	162	99	144	1,089

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

Newry, Mourne & Down District Council – August 2016

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4. Decisions issued per month

Decisions Issued

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

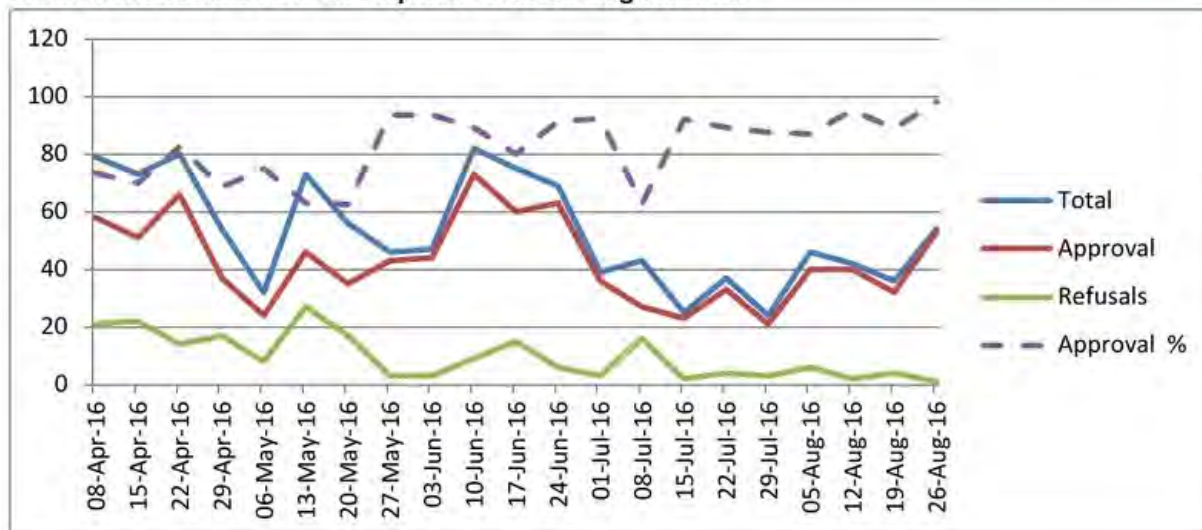
5. Decisions Issued YTD

Month 2016	Number of Decisions Issued	Average processing Time	Breakdown of Decisions	
April	168	35.52 weeks	Approvals (156)	93%
			Refusals (12)	7%
May	342	33 weeks	Approvals (324)	95%
			Refusals (18)	5%
June	640	34 weeks	Approvals (587)	92%
			Refusals (53)	8%
July	781	33.4 weeks	Approvals (115)	82%
			Refusals (26)	18%
August	961	37.67	Approvals (170)	94%
			Refusals (10)	6%

Newry, Mourne & Down District Council – August 2016

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DECISIONS ISSUED FROM 1 April 2016 to 31 August 2016



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

Newry, Mourne & Down District Council – August 2016

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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
Totals	169	110	59

*2 Applications called in by DfI

8. Appeals

Area	Number of current appeals
Newry & Mourne	13
Down	4
TOTAL	17

Newry, Mourne & Down District Council – August 2016

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9. Statutory Targets Performance Data

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

	Major applications (target of 30 weeks)			Local applications (target of 15 weeks)			Cases concluded (target of 39 weeks)		
	Number decided / withdrawn ¹	Average processing time ²	% of cases processed within 30 weeks	Number decided / withdrawn ¹	Average processing time ²	% of cases processed within 15 weeks	Number brought to conclusion ³	"70%" conclusion time ³	% 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%
August	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Sept	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Oct	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Nov	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Dec	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Jan	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Feb	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Mar	-	0.0	0.0%	-	0.0	0.0%	-	0.0	0.0%
Year to date	10	109.6	10.0%	753	26.8	24.4%	71	78.7	47.9%

Source: NI Planning Portal

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.

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

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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

Current Appeals

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AUTHORITY Newry, Mourne and Down

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

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

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

Current Appeals

641

ITEM NO 3
Planning Ref: P/2014/0303/O **PAC Ref:** 2016/A0005
APPELLANT Michael Horner
LOCATION Adjacent To And North Of 36 Belmont Road
 Kilkeel
PROPOSAL ^{Newrv}
 Erection of Infill Dwelling and Detached Garage

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

ITEM NO 4
Planning Ref: R/2013/0347/F **PAC Ref:** 2016/A0010
APPELLANT Mr & Mrs Peter O'Hare
LOCATION Adjacent 15 Blacks Lane Glasdrumman Ballynahinch (Amended
 Address)
PROPOSAL Proposed general purpose agricultural/forestry shed and part
 retrospective access arrangements, foundation and hard standing area.

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

Current Appeals**642**

ITEM NO	5		
Planning Ref:	P/2015/0097/F	PAC Ref:	2016/A0011
APPELLANT LOCATION	Carlingford Lough Pilots Ltd Adjacent To 92 Greencastle Pier Road Greencastle		
PROPOSAL	Kilkeel Retention of existing office		

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

ITEM NO	6		
Planning Ref:	P/2014/0853/F	PAC Ref:	2016/A0041
APPELLANT LOCATION	S Meade 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			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

643

ITEM NO 7
Planning Ref: P/2015/0103/F **PAC Ref:** 2016/A0048
APPELLANT Mr Joe O'Hare
LOCATION Between 47 And 47a Ballintemple Road
 Ballintemple
 Newry
PROPOSAL Retention of existing agricultural building and access

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

ITEM NO 8
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

Current Appeals

644

ITEM NO 9
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

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

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

Current Appeals

645

ITEM NO 11
Planning Ref: LA07/2015/0292/C **PAC Ref:** 2016/A0071
APPELLANT Mr Thomas W Meaney
LOCATION 40m North West Of 55 Magheralone Road
 Ballynahinch
PROPOSAL Proposed new infill dwelling and 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

ITEM NO 12
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 ^{Newrv} 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

Current Appeals

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ITEM NO 13
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 ^{Newry}
 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

ITEM NO 14
Planning Ref: P/2014/1049/O **PAC Ref:** 2016/A0077
APPELLANT Tracy McKenzie
LOCATION Adjacent And N Of No.9A Corcreechy Road Newry BT34 1LR
PROPOSAL Site for dwelling and garage (infill)

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

Current Appeals

647

ITEM NO	15		
Planning Ref:	LA07/2015/0342/C	PAC Ref:	2016/A0084
APPELLANT LOCATION	Patsy Malone Approximately 110 Metres North East Of 151 Ballydugan Road Downpatrick		
PROPOSAL	Replacement dwelling		

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

ITEM NO	16		
Planning Ref:	LA07/2015/0542/F	PAC Ref:	2016/A0094
APPELLANT LOCATION	Mr R L Annett 150 Metres Southwest Of No 20 Council Road Kilkeel		
PROPOSAL	RT34 AND 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			

Current Appeals

648

ITEM NO	17	PAC Ref:	2016/A0095
Planning Ref:	LA07/2016/0556/C		
APPELLANT	J & J McKibbin		
LOCATION	40m Southeast Of 181 Moyad Road Kilkeel		
PROPOSAL	RT34 4HI Site for dwelling and garage		

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

ITEM NO	18	PAC Ref:	2016/A0106
Planning Ref:	LA07/2015/0455/F		
APPELLANT	Fergal O'Hanlon		
LOCATION	15 Kearney Crescent Whitecross		
PROPOSAL	Armagh Retention of part boundary walls piers and railings		

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



Appeal Decision

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

649

Appeal Reference:	2015/A0247
Appeal by:	James and John McKibben
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Dwelling and Garage
Location:	85m NE of Moyad Road, Kilkeel
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2016/0048/F
Procedure:	Written representations
Decision by:	Commissioner J.B. Martin dated 25 July 2016

Decision

1. The appeal is allowed and full planning permission is granted subject to the 3 conditions set out below.

Reasoning

2. Article 20 of the Planning (General Development Procedure) Order (NI) 2015 states the Council shall determine the application within 8 weeks beginning from when the application was received by the Council. The application was submitted to the Council 11 January 2016 and the appeal against its non determination within the subsequent 8 week period was made by the appellant under the provisions of Section 60 of the Planning Act (NI) 2015 (the Act).
3. In its letter of response to lodgement of the appeal the Council informed the Commission it had no objections to any aspect of the appeal proposal, subject to the following matters being covered by conditions:-
 - (1) The time period for commencement of the proposed development.
 - (2) The provision of access visibility splays.
 - (3) The gradient of the access.
 - (4) A consent to discharge effluent and
 - (5) Landscaping of the site boundaries.
4. Given the Council's stated position I have only its proposed conditions to consider.

5. The 5 year period for commencement of the proposed development is the standard requirement of Section 61 of the Act. In regard to visibility splays, drawing No.2 referred to by the Council, shows acceptable splays of 4.5m by 90m as 'existing', and therefore their retention should be conditioned. Provision of satisfactory access gradients is a matter properly controlled by the provisions of the 1993 Roads (NI) Order and does not require a planning condition.
6. Policy CTY 16 does not suggest that a planning condition is required to secure the submission of an application for consent to discharge effluent under the Water (NI) Order 1999. The Council have not pointed to any problems regarding effluent discharge that might result in an application being denied by the Northern Ireland Environment Agency (NIEA). In such circumstances, as the Justification and Amplification text to CTY 16 indicates, it is for the NIEA, rather than the planning authority, to control this particular aspect of the proposed development under provisions in the Water (NI) Order 1999. In the interests of visual amenity a condition is required to secure the planting which is proposed on the site boundaries.

Conditions

- (1) The scheme of planting as set out on the proposed site plan dated December 2015 shall be carried out during the first planting season after the dwelling is occupied. Trees or shrubs dying, removed or becoming seriously damaged within 5 years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Council gives written consent to any variation.
- (2) The existing visibility splays of 4.5m by 90m at the access to the site, as shown on the proposed site plan dated December 2015, shall be permanently retained.
- (3) The development shall be begun before the expiration of 5 years from the date of this permission.

This decision relates to the 1/2500 scale site location map; the 1/500 scale site plan and the 1/100 scale elevation and floor plans.

COMMISSIONER J.B. Martin

List of Documents

Planning Authority

Letter of Response' dated 19 April 2016

Appellant

Statement of Case and Comments



Appeal Decision

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652

Appeal Reference:	2015/A0246
Appeal by:	Mr Eamon Clerkin
Appeal against:	The refusal of outline planning permission
Proposed Development:	Retirement Dwelling on Farm
Location:	285m East of 127 Kilbroney Road, Rostrevor
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	P/2014/0296/O
Procedure:	Written Representations with Accompanied Site Visit on 6 July 2016
Decision by:	Commissioner Mark Watson, dated 3 August 2016

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is the principle of development.
3. The Banbridge, Newry & Mourne Area Plan 2015 (BNMAP) is the statutory local development plan for the proposal. In it, the site lies in the countryside and to the west of a Site of Local Nature Conservation Importance (SLNCI). No objection has been raised in regard to the potential impacts on the Rostrevor River SLNCI and I consider that the development would not be liable to have an adverse effect on the nature conservation interests of the SLNCI. Policy CVN1 of BNMAP is met as is the plan read as a whole. BNMAP directs the reader to Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) for development proposals in the countryside. The site also lies in the Mourne Area of Outstanding Natural Beauty.
4. In respect of the appeal development there is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' and those of PPS21. PPS21 remains the applicable policy context to consider the proposed development under.
5. Policy CTY1 of PPS21 states that there are 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 goes on to state that planning permission will be granted for an individual dwelling house in the

countryside in six cases. One of these cases is a dwelling on a farm in accordance with Policy CTY10. It follows that if the development complies with Policy CTY10 it will comply with Policy CTY1 of PPS21.

6. The site comprises a portion of an agricultural field situated approximately 260m to the east of the Kilbroney Road. It lies on the valley floor and is accessed off an existing stoned laneway. The site lies across the Cross River, a small river that runs into the Kilbroney/Rostrevor River to the east. The northern site boundary is defined by a line of mature hedge, whilst the remaining boundaries are undefined. A short distance to the west of the site lies a small wooden stable block. A derelict, stone structure lies approximately 70m to the west on the opposite side of the Cross River on higher ground. The site lies within a rural area with an undulating landform.
7. Policy CTY10 of PPS21 states that planning permission will be granted for a dwelling house on a farm subject to several criteria. Criterion (a) requires that *the* farm business (my emphasis) is currently active and has been established for at least 6 years. The holding comprises approximately 6.6 hectares of land, purchased by the Appellant in 2010. The land in question was previously owned by the Taylors, who let it in conacre to Messrs James and Aidan Rice. They claimed Single Farm Payment on the land under their own business ID number 649035 until June 2012. Details of their payment claims for 2009, 2010 and 2011 were provided.
8. It was confirmed that the Appellant has a farm business ID number (656278) but that it has not been established for 6 years. Further information confirmed that the Appellant was allocated this ID number in September 2011. The Appellant's documentary evidence pertaining to his own business ID number is dated April 2013 onwards. Whilst a farm map dated 11 August 2009 was submitted, this was in the Taylors' name and at that time the records indicate that the James and Aidan Rice were claiming single farm payment. Whilst the land has clearly been farmed for some time, remains in good agricultural condition, and I accept the Appellant is engaged in farming activity, the evidence is that until late 2011 the land was farmed under a separate farm business, that of James and Aidan Rice, even if they took the land in conacre from the Taylors. The subsequent creation of a new farm business ID number for the Appellant's business suggests that the land was at that point in essence subdivided from a separate farm business, that of James and Aidan Rice.
9. The Appellant's representative referred to Departmental advice from May 2010 which referred to buying an established farm business. That is not the situation in this case, where a new farm business has been created and the dwelling is sought under that particular business. In appeal decision 2014/A0116 at land 50m NE of 8 Killowen Village, Rostrevor, the Appellant was not a farmer but the case submitted effectively sought a dwelling under the adjacent farmer's business, which was found to be active and established for the requisite period. That case would not justify the appeal development, as although the land now belonging to the Appellant has been farmed for more than 6 years, the evidence does not demonstrate that this was done under the Appellant's own farm business for that period of time. I find that criterion (a) of Policy CTY10 is not met.

10. Criterion (b) of CTY10 requires that there have been 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. The Taylors' written statement says that prior to their selling the land, no sites were sold off. This only accounts for up to 2010 when the Appellant acquired the land. The Appellant supplied his own written statement that no sites have been sold off the farm since farm business number was bought, which evidence shows was September 2011.
11. The Council pointed to the planning permission granted on 13 March 2014 (ref. P/2013/0651/F) for a replacement dwelling on the holding. The application was submitted by Mr Frank Clerkin, the Appellant's brother. The Article 22 certificate that accompanied the application was also in Mr Frank Clerkin's name and indicated that the site in question was owned by Mr Frank Clerkin.
12. Paragraph 5.40 of PPS21 states that planning permission will not be granted for a dwelling under Policy CTY10 where a rural business has recently sold-off a development opportunity from the farm, such as a replacement dwelling. It goes on to state that for the purposes of Policy CTY10, 'sold-off' will mean any development opportunity disposed from the farm holding to any other person, including a member of the family. Irrespective of whatever arrangement may have taken place between the Appellant and his brother, the approved replacement dwelling site appears to belong to the Appellant's brother, not the Appellant. The farm business is in the sole name of the Appellant and the approved replacement site is shown as being within the Appellant's farm business on his farm map (Field 21). It therefore follows that the replacement dwelling site has been disposed from the holding within the last 10 years of the date of the application. The Appellant did not provide proof of land ownership in relation to the entirety of the holding, including the replacement dwelling site, to demonstrate otherwise. From the evidence provided I find that criterion (b) of CTY10 is not met.
13. Criterion (c) requires that the new building is visually linked for 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. The access to the proposed dwelling would utilise the existing stoned laneway, thus this policy preference is met. In respect of the visual test element of the criterion, the stone derelict on the holding is not an established building for the purposes of this policy. The structure has four walls, but both gable peaks are missing. It has no roof and it cannot provide any meaningful form of storage or shelter as one would nominally expect a building to provide. Whilst it may have been sufficiently intact to meet the replacement criteria under Policy CTY3 of PPS21, for the purposes of CTY10 it cannot count as being an established building on the holding. In any event given its disposition in relation to the appeal site, the appeal dwelling would not be visually linked or sited to cluster with the derelict structure, or the new dwelling that would replace the derelict when the permission is implemented.
14. The other structure on the holding comprises a small wooden stable block. I am told this was erected approximately 4 or 5 years ago, although the Appellant did not recall precisely when. The structure is used most of the year for stabling horses, but during the lambing season it accommodates sheep and lambs. There is no planning permission for the building and no certificate of lawfulness of existing use or development to demonstrate that it has achieved immunity from enforcement action.

15. An argument was advanced that the structure would constitute agricultural permitted development as it was within 75m of the farm house. The farm house referred to is the derelict stone structure. The derelict is not a farm house but a derelict structure. The dwelling approved as its replacement has not been constructed. I am not persuaded that the structure could have benefitted from permitted development rights under Part 6 of the Planning (General Development) Order (NI) 1993, the legislation that would have applied at the time of construction. The structure was not designed for the purposes of agriculture and was not within 75m of the nearest part of a group of principal farm buildings. Similarly, the structure would not avail of permitted development rights under Part 7 of the Planning (General Permitted Development) Order (NI) 2015 for the same reasons and for the fact it would be the first building on the unit. As the building is unauthorised it cannot be counted an established building on the farm holding.
16. There are no established buildings on the farm holding for the proposed dwelling to cluster or be sited to group with. Criterion (c) of Policy CTY10 is not met. Policy CTY10 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 at the farm business at the existing building group. No arguments were presented under the exceptional test. The development does not comply with Policy CTY10 read as a whole.
17. As the development fails to comply with Policy CTY10 it also fails to meet Policy CTY1 of PPS21. There are no overriding reasons why the development is essential and could not be located in a settlement. The reason for refusal is sustained and determining. The appeal must fail.

This decision relates to the drawing entitled Site Plan & Location Plan numbered 2723sp Revision A dated 11 February 2015 submitted with the application.

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:

Mrs L Grant (Newry, Mourne & Down District Council)

Mr P Smyth (Newry, Mourne & Down District Council)

Appellant:

Mr A Cole (Cole Partnership)

Mr E Clerkin (Appellant)

List of Documents

Newry, Mourne & Down District Council:

'A' Planning Authority's Statement of Case & Appendices.

'B' Rebuttal Statement

'D' Post site visit evidence – email containing date of allocation of farm business
ID number for Appellant

Appellant:

'C' Statement of Case & Appendices (Cole Partnership)



Appeal Decision

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657

Appeal Reference:	2016/A0005.
Appeal by:	Mr Michael Horner.
Appeal against:	The refusal of outline planning permission.
Proposed Development:	Infill Dwelling and detached Garage.
Location:	Adjacent to and north of 36 Belmont Road, Kilkeel.
Planning Authority:	Newry, Mourne & Down District Council.
Application Reference:	P/2014/0303/O
Procedure:	Written representations and accompanied site visit on 10 August 2016.
Decision by:	Commissioner Mark Watson, dated 24 August 2016.

Decision

1. The appeal is dismissed.

Claim for Costs

2. A claim for costs was made by Newry, Mourne & Down District Council against the Appellant. This claim is the subject of a separate decision.

Reasons

3. The main issues in this appeal are:
 - The principle of development; and
 - its potential impacts on the visual amenity and rural character of part of the Mourne Area of Outstanding Natural Beauty (AONB).
4. The Banbridge, Newry & Mourne Area Plan 2015 (BNMAP) operates as the statutory local development plan for the proposal. In it, the site lies within the countryside. The BNMAP offers no specific policy or guidance in respect of the proposed single dwelling and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development.
5. The site comprises a portion of agricultural land on the western side of Belmont Road. It sits slightly above the level of the road along the frontage and slopes upwards steadily towards a hillock in the middle. The frontage is defined by a grassed bank and hedge. The northern and western boundaries are defined by a mature hedgeline, whilst the southern boundary is defined by a ranch style fence. The site lies adjacent and north of No. 36, a single storey dwelling with a yard and

outbuilding to its side and rear. To the south of No. 36 there is a dwelling under construction. It has reached the subfloor stage. There is a mobile home on land to the rear of No. 36. To the north of the site sits No. 38, a chalet bungalow. The site lies in a rural area with an undulating landform. It also lies within the Mourne AONB.

6. Policy CTY1 of PPS21 states that there are 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 goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. It follows that if the development complies with CTY8 it will comply with Policy CTY1 of PPS21.
7. Policy CTY8 of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Policy CTY8 states that an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy states that for its purposes, the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
8. The Appellant considered that the appeal site was such a gap site, falling within a substantial and continuously built up frontage comprising the approved site, No. 36, its outbuilding and No. 38. The approved dwelling to the south of No. 36 was constructed only to sub floor level at the time of the site visit. Whilst it was stated that it would be finished early next year I must judge the appeal site and surrounding environment as it stands at the time of making the appeal decision. Although development on the approved site has commenced, there is no building on the site, merely the footings and subfloor for one. It does not present as a building taken in the ordinary sense of the word and cannot count as a building within the frontage.
9. The outbuilding belonging to No. 36, despite its slightly higher ridge level, reads as being subordinate to and part of No. 36 given its overall design and position relative to the host dwelling. It does not present as being a separate building along the road frontage. Consequently there are only two buildings, Nos. 36 and 38, which have a frontage to Belmont Road. The appeal site cannot be considered to represent a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage. Given my conclusions elsewhere in this decision relating to integration and rural character, it also does not meet the other planning and environmental requirements element of the policy. The proposed development does not meet the exception under Policy CTY8 of PPS21. The site currently serves as an important visual gap between the existing dwellings, arising from its elevated topography and position on the curve in the road. Development of the site would result in the creation of ribbon development, comprised of No. 36, the appeal dwelling and No.

- 38 when viewed both directions travelling along this part of Belmont Road. The proposed development does not comply with Policy CTY8.
10. I was informed that a senior planning officer had told the Appellant's representative that if the foundations were laid for the approved dwelling south of No. 36, it would count as a building. Reference was also made to a previous DoE decision at Carrogs Road, Newry, where I am informed the Department accepted that an approved site with only foundations laid constituted a building for the purposes of Policy CTY8. Whilst anecdotal in nature, even if these matters were the case, I do not agree that in-situ foundations on site constitute a building for reasons already given elsewhere in this decision. Nor would it be in the public interest to perpetuate poor decision making. I note the Ministerial statement that included reference to Policy CTY8 but its contents would not persuade me that the objections to the development under this policy should be set aside.
 11. As the development does not meet CTY8, it does not meet CTY1. There are no overriding reasons why the development is essential and could not be located in a settlement. The Council's first and second reasons for refusal are sustained.
 12. Policy CTY13 of PPS21 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The site is elevated in nature and any dwelling on the site would require a substantial amount of cutting into the site, as shown on the illustrative sectional drawing accompanying the Appellant's Statement of Case. The extent of the excavation works required is indicative of the site's unsuitability for development. I am mindful of paragraph 5.64 of PPS21 which states that a new building that relies on significant earthworks, such as mounding or cut and fill for integration will be unacceptable. Given the elevated topography and despite the existing boundary vegetation, the site lacks sufficient enclosure to integrate a dwelling and garage, even one of the design suggested by the Appellant. Although longer distance views of the dwelling and garage travelling south on Belmont Road towards the site would be partly obscured by No. 38, this effect would diminish the closer one gets to the site and the development would nonetheless appear as a prominent feature in the landscape due to the site's elevated nature and position on the curve of the road. The appeal development would not visually integrate into the landscape, even if it would sit no higher in the landscape than No. 38 following the excavation process. This would not justify the development, which I find contrary to Policy CTY13 of PPS21. The third reason for refusal is sustained.
 13. Policy CTY14 of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to or further erode the rural character of an area. Although the locality has experienced some degree of built development, the site serves as an important visual gap between existing buildings. Approval of the appeal dwelling would result in a consolidation of buildings along this part of Belmont Road, resulting in a suburban style build-up of development. It would also create ribbon development for reasons outlined earlier. The Council considered that the appeal dwelling would not respect the traditional pattern of development in the area. However, given the mixture of roadside dwellings and those set slightly back from the roadside in the immediate locality, I am not persuaded that a dwelling sited as suggested in the Appellant's illustrative layout would be at odds with this. Nonetheless, for the

reasons given above the development would still result in a further erosion of the rural character in this area. The development is contrary to CTY14 and the Council's reason for refusal is sustained to the extent specified.

14. Policy NH6 of Planning Policy Statement 2 – Natural Heritage (PPS2) 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 and all of three criteria are met. The Council's objections fell under the first criterion; that the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality. Siting the dwelling on the appeal site would require cutting into the site in order to achieve any level of acceptable integration, an unacceptable solution in the first instance and even then it would still give rise to issues already addressed earlier in this decision. Although the scale of the proposed dwelling would not be objectionable, its siting is such that it would not be sympathetic to the special character of the Mourne AONB in general and of the particular locality given the resultant impacts of the development and harm to the rural character of the area. The development does not fully meet criterion (a) of Policy NH6 of PPS2 and given the critical nature of this deficiency, the policy read as a whole. The fifth reason for refusal is sustained.
15. Whilst the Appellant's representative sought a further opportunity to discuss the proposed development, the appeal decision must be based upon the evidence submitted during the process. The appeals process is not one which allows for further negotiation subsequent to the conclusion of proceedings, even if circumstances prevented the Appellant's representative from attending the site visit.
16. As the Council's reasons for refusal have been sustained to the extent specified and are determining, the appeal must fail.

This decision is based on the 1:2500 scale Site Location Plan numbered 01 submitted with the application.

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:- Mrs L Grant
Ms O Rooney

List of Documents

Planning Authority:- 'A' Statement of Case & Appendices

Appellant:- 'B' Statement of Case & Appendices (J M Kearney,
Architectural Design Service)



Appeal Decision

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663

Appeal Reference:	2016/A0009
Appeal by:	Mr Declan Mc Parlan
Subject of Appeal:	The refusal of outline planning permission
Proposed Development:	Dwelling and garage
Location:	Adjacent to No.63 Ballycoshone Road, Rathfriland
Planning Authority:	Newry, Mourne & Down District Council
Application Reference:	P/2014/0798/O
Procedure:	Written representations and Commissioner's site visit on 2 nd August 2016
Decision by:	Commissioner Julie de-Courcey, dated 8 th August 2016

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is acceptable in principle in the countryside and its effect on the locality's character and appearance.
3. The site is outwith a Special Countryside Area as defined in the local development plan, Banbridge, Newry & Mourne Area Plan 2015. In the "Countryside and Coast" section of Volume 1 of the plan, it refers to Planning Policy Statement 21: 'Sustainable Development in the Countryside' (PPS 21) as setting out planning policies for development in the countryside.
4. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS), which came into effect in September 2015, is material to all decisions on individual planning applications and appeals. There is no conflict or change in policy direction between its provisions and those of PPS 21 in respect of the appeal proposal. It retains policy for the countryside within existing planning policy documents until a new plan strategy for the Council area has been adopted. Accordingly the operational requirements of the policies contained in PPS 21 are material to the assessment of this appeal.
5. The 1.4ha appeal site comprises the northern section of a field. The appellant's latest evidence indicated that the proposed buildings would be located in the site's south-western corner. The proposal is being considered on this basis.

6. The Council is content that the proposal complies with criteria (a) and (b) of Policy CTY 10 of PPS 21. However, it is considered to be inconsistent with criterion (c), which requires that the proposed buildings be 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.
7. On the opposite side of the road to the appeal site is a range of farm buildings with a concrete yard in the foreground. The proposed development would adjoin No.63 Ballycoshone Road, which is the dwelling associated with the farm business. The public road separates the farm buildings from the farm dwelling, which is set some 25m to the south-east. Criterion (c) refers to buildings on a farm as opposed to solely farm buildings. Albeit that No.63 Ballycoshone Road is a building on the farm, it does not read as part of the established group of buildings by virtue of separation distance and the intervening public road. The proposed buildings' curtilage would be undefined on two sides and the public road would separate them from the farm group. They would not cluster with the established group of buildings on the farm and form an integral part of it. Paragraph 5.41 of PPS 21 says that, when viewed from surrounding vantage points, a proposed dwelling must read as being visually interlinked with the established group of buildings on the farm with little appreciation of any physical separation that may exist between them. Whilst the proposed buildings would be seen in proximity to the farm group, the physical separation between them would be readily apparent. Therefore, the proposal does not satisfy this requirement.
8. Criterion (c) of Policy CTY 10 refers to exceptional circumstances where 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. The appellant said that the proposed buildings' siting was dictated by flooding of the lands on the side of the road where the farm group is located. The River Bann runs approximately 80m to the west of it and an extract from the Rivers Agency flood map shows those buildings and more than half the holding's land east of the river and west of Ballycoshone Road to be within the present day floodplain. One of the appellant's photos shows the farmyard and part of the public road just north-east of its entrance as inundated with floodwater. In the round this evidence demonstrates health and safety reasons as to why the proposed development merits consideration under the exceptional provisions of Policy CTY 10.
9. The Department of Agriculture and Rural Development's 2013 Scheme Map is based on aerial photos of lands within the farm business. They refer to townlands, not road names. There does not appear to be another group of buildings on the farm or out-farm. However, this evidence is dated and the appellant did not engage with the policy requirement that an alternative site will be considered provided there are other sites available at another group of buildings on the farm or out-farm. On the basis of the evidence presented, the proposal does not come within the exceptional circumstances allowed for by Policy CTY 10.
10. The appellant considered that the proposed development is necessary to meet special personal or domestic circumstances in accordance with Policy CTY 6. The Council said that, by virtue of Article 59 (1) of the Planning Act (Northern Ireland) 2011, new evidence on this matter should not be admitted to the appeal process.

However, Article 59 (2) states that nothing in the preceding subsection affects any requirement or entitlement to have regard to any other material consideration. Special personal or domestic circumstances are such a material consideration. As the Council has had the opportunity to comment on the appellant's evidence thereon there is no prejudice to it in me considering the issue.

11. Policy CTY 6 of PPS 21 says that, subject to satisfying two criteria, planning permission for a dwelling in the countryside will be granted for the long-term needs of the applicant, where there are compelling, and site-specific reasons for this related to his personal or domestic circumstances. The appellant said that within the last few years a neighbour's child attending a birthday party at the family home chased a ball through their gates and was killed in a road traffic accident. Consequently the family feel that they can no longer live there and need to move back home to be beside parents at No. 63 Ballycoshone Road. This evidence is not indicative of a compelling and site-specific need for the proposed development, that it is a necessary response to the particular circumstances of the case and that genuine hardship would be caused if planning permission were refused. Accordingly, the proposal does not comply with Policy CTY 6.
12. Policy CTY 8 of PPS 21 says that planning permission will be refused for a building which creates or adds to a ribbon. From static and transient views, the proposed buildings would be seen side-by-side with No. 63 Ballycoshone Road, each dwelling served by a separate entrance. This would create a ribbon of development, which would be detrimental to the countryside's character, appearance and amenity.
13. The Council considered that the proposal would not satisfy the requirements of criteria (a), (b) and (c) of Policy CTY 13 of PPS 21. A post and wire fence defines both the roadside boundary of the site's south-western corner and its common boundary with No. 63 Ballycoshone Road. From the south-western extent of the Council's defined critical view, vegetation on the site's north-eastern and south-eastern boundaries would not provide enclosure for the proposed buildings. They would be seen to occupy a roadside plot cut out of a larger field. Whilst planting could be used to define their curtilage, this would take time to establish and mature in order to provide a suitable degree of enclosure. Nearing the site, the buildings would increasingly be seen against the sky and would be poorly integrated and prominent. The appeal site has a road frontage of approximately 90m and a hedgerow on top of a roadside bank would screen views of the proposed buildings from the opposite approach until the point where it finishes. From this point, the backdrop of No. 63 Ballycoshone Road would not provide satisfactory integration and they would be prominent due to the lack of enclosure.
14. With regard to Policy CTY 14 of PPS 21, the Council considered the proposal to be at odds with criteria (a), (b) and (d). For reasons already set out, the proposed buildings would be unduly prominent in the landscape and would create a ribbon of development contrary to criteria (a) and (d). The Council described Nos. 61 and 63 Ballycoshone Road as incongruous in the landscape. Nevertheless they are part of the context against which the proposal's impact on rural character must be assessed. On the approach from the south-west, the farm group is seen to the west of Ballycoshone Road and the appeal site forms a visual break between it and No. 63. The proposed buildings would erode this gap. The resultant line of

development, moreover when seen in the cumulative context of No.61 Ballycoshone Road, would result in a suburban style of build-up and further erode the area's rural character contrary to criterion (b).

15. The appellant referred to an instance of development that he considered to be at odds with Policies CTY 1, CTY 8, CTY 10, CTY 13 and CTY 14. Other than the planning application reference number only a photo was supplied to corroborate this contention. As the decision was made in 2013, that the site is now within the jurisdiction of another planning authority and the intervening statutory change in weight to the provisions of the development plan, are not distinguishing considerations. The photo shows a dwelling of low elevation with swathes of vegetation in the foreground and taller buildings to the rear, seemingly on higher ground. On the basis of the information supplied, I cannot determine whether there was inconsistency in the application of Policies CTY 1, CTY 8 and CTY 10 between that site and the appeal proposal. The Council said that issues of integration and rural character were assessed and found acceptable. The submitted evidence is not persuasive that Policies CTY 13 and CTY 14 have been applied in an inconsistent manner.
16. As the proposal is not one of the types of development that is acceptable in principle in the countryside and there are no overriding reasons why it is essential and could not be located in a settlement, it is contrary to Policy CTY 1 of PPS 21. Therefore, all four of the Council's reasons for refusal are sustained.

This decision is based on the Site Location Map at scale 1:2,500.

COMMISSIONER JULIE DE-COURCEY

List of Documents

Planning Authority:	"A"	Statement of Case & appendices
	"B"	Rebuttal
Appellant:	"C"	Statement of Case
	"D"	Rebuttal