

July 27th, 2020

**Notice Of Meeting**

You are invited to attend the Planning Committee Meeting to be held on **Wednesday, 29th July 2020** at **10:00 am** in **Newry Leisure Centre**.

**Committee Membership:**

- Councillor R Burgess (Chair)
- Councillor J Tinnelly (Deputy Chair)
- Councillor P Brown
- Councillor S Doran
- Councillor G Hanna
- Councillor V Harte
- Councillor M Larkin
- Councillor D Murphy
- Councillor D McAteer
- Councillor G O'Hare
- Councillor G Stokes
- Councillor J Trainor

# Agenda

## 1.0 Apologies

## 2.0 Declarations of Interest

## 3.0 Declarations of Interest in relation to para. 25 of Planning Committee operating protocol - Members to be present for entire item

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### *For Agreement*

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## 4.0 Minutes of Planning Development Committee Meeting held on Wednesday 1 July 2020. (Attached)

📎 *Planning Committee Minutes . 01.07.2020.pdf*

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### *For Consideration and/or Decision*

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

📎 *Addendum list - 29-07-2020.pdf*

*Page 8*

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### *Development Management - Planning Applications for determination*

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## 6.0 P/2010/0904/F - Erection of farm dwelling to include retention of existing foundations - 45 metres north of 18 Ballinasack Road, Mullaghbawn. (Case Officer report attached)

Rec: REFUSAL

- A request for speaking rights has been received from Owen McGinty in objection to the application. (Submission attached)
- A request for speaking rights has been received from Colin O'Callaghan, agent, Elena Martin, applicant's daughter and Eugene Martin, applicant in support of the application. (Submission attached)

📎 *P-2010-0904-F - Ballinasack Rd Mullaghbawn.PDF*

*Page 9*

📎 *P 2010 0904 F - Ballinasack Road.pdf*

*Page 18*

📎 *P 2010 0904 O McGinty - Objector.pdf*

*Page 20*

## 7.0 LA07/2015/0054/F - Proposed poultry laying shed for up to

**8,000 birds and 3m Dia feeder bin - 355m SE of No. 23 Keel Point Dundrum. (Case Officer report attached).**

Rec: REFUSAL

- A request for speaking rights has been received from Hayley Dallas, Les Ross Planning on behalf of The National Trust in objection to the application. (Submission attached)
- A request for speaking rights has been received from Philip Shields, Murlough Farm in support of the application. (Submission attached).

📎 *LA07\_2015\_0054\_F\_Keel Point.pdf*

*Page 32*

📎 *LA07.2015.0054.F - Philip Shields - in support.pdf*

*Page 45*

📎 *LA07 2015 0054 - Ross Planning - Nat Trust - Obj.pdf*

*Page 46*

**8.0 LA07/2018/0680/F - 2 No. additional broiler poultry houses with 3 No. feed bins and associated site works (to contain 37,000 broilers each, 74,000 in total, raising the overall site capacity to 148,000 broilers) - Land approx. 420m SE of 8 Seaforde Road, Downpatrick. (Case Officer report attached).**

Rec: REFUSAL

- Addendum list

📎 *LA07\_2018\_0680\_F\_Seaforde\_poultry sheds.pdf*

*Page 48*

**9.0 LA07/2019/0953/F - Proposed 2 no. broiler poultry sheds to replace 2 no. existing poultry sheds (to contain 74,000 broilers, taking the total farm capacity to 148,000 broilers) with 4 no feed bins, 2 no. gas tanks, 1 no. underground wash tank and retention of weighbridge, biomass boiler shed and associated pellet bins, water tank, site office, access and associated site works - Lands at 123 Magherahamlet Road, Ballynahinch. (Case Officer report attached).**

Rec: APPROVAL

- A request for speaking rights has been received from Jim Wells on behalf of Mary McCann in objection to the application. (Submission attached).
- A request for speaking rights has been received from Councillor Brown in objection to the application.

📎 *LA07-2019-0953-F Magherahamlet Road (Poultry Sheds).pdf*

*Page 60*

**10.0 LA07/2020/0377/F - Restoration and refurbishment of existing building for community use providing new meeting rooms, kitchen and universal toilets to both ground and first floor. Installation of photovoltaics to rear roof. Construction of new steel fire escape stair to rear. Change of use for Class C1 'Dwelling house' to Class D1 'Community use'. - 16 The Square, Rostrevor. (Case Officer report attached).**

Rec: APPROVAL

- Addendum list

**11.0 LA07/2020/0587/F - The proposed works involve some demolition works of internal walls with new build works to provide a new entrance lobby, toilet facilities and storage. There will be no change to the current usage as it will be used as a bowling pavilion and meeting room - Kilkeel Bowling Pavilion, Mourne Esplanade, Kilkeel. (Case Officer report attached).**

Rec: APPROVAL

- Addendum list

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**For Noting**

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**12.0 Historic Actions Tracking Sheet. (Attached)**

**13.0 June 2020 Planning Committee Performance Report. (Attached)**

**14.0 Curent Appeals and Decisions. (Attached)**



# **NEWRY, MOURNE & DOWN DISTRICT COUNCIL**

## **Minutes of the Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 1 July 2020 at 10.00am in Newry Leisure Centre and via Skype**

**Chairperson:** Councillor R Burgess

**Deputy Chairperson:** Councillor J Tinnelly

**In attendance:** **(Committee Members)**  
 Councillor P Brown  
 Councillor S Doran  
 Councillor G Hanna  
 Councillor V Harte  
 Councillor M Larkin  
 Councillor D McAteer  
 Councillor D Murphy  
 Councillor G O'Hare  
 Councillor G Stokes  
 Councillor J Trainor (via Skype)

**(Officials)**  
 Mr C Mallon Director, Enterprise, Regeneration & Tourism  
 Mr A McKay Chief Planning Officer  
 Mr M Keane Senior Planning Officer (via Skype)  
 Mr F O Connor Legal Advisor  
 Ms N Largey Legal Advisor  
 Ms S Taggart Democratic Services Manager (Acting)  
 Ms C McAteer Democratic Services Officer  
 Ms P McKeever Democratic Services Officer

### **P/044/2020: APOLOGIES AND CHAIRPERSON'S REMARKS**

No apologies were received.

### **P/045/2020: DECLARATIONS OF INTEREST**

Councillor Doran declared an interest in Item 8 – Planning Application LA07/2019/1279/F.

### **P/046/2020: DECLARATIONS IN ACCORDANCE WITH PLANNING COMMITTEE PROTOCOL PARA. 25 – MEMBER TO BE PRESENT FOR ENTIRE ITEM**

There were no declarations in relation to Paragraph 25 of Planning Committee Operating Protocol – Members to be present for entire item.

## **MINUTES FOR CONFIRMATION**

### **P/047/2020: MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 3 JUNE 2020**

**Read:** Minutes of Planning Committee Meeting held on Wednesday 3 June 2020. **(Copy circulated)**

**AGREED:** **On the proposal of Councillor Hanna seconded by Councillor Brown it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 3 June 2020 as a true and accurate record.**

## **FOR DISCUSSION/DECISION**

### **P/048/2020: ADDENDUM LIST**

**Read:** Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 1 July 2020. **(Copy circulated).**

**AGREED:** **On the proposal of Councillor Doran seconded by Councillor McAteer it was agreed to approve the Officer recommendation in respect of the following applications listed on the addendum list for Wednesday 1 July 2020: -**

**LA07/2018/0820/F** - Erection of detached single dwelling with associated parking and landscaping - lands to the rear of nos 1 and 2 Sally Gardens and 31 to 35 Mourne Rise, Newcastle. **APPROVAL**

**LA07/2019/1691/F** - Training pitch and ball wall court with associated floodlighting, retaining walls, perimeter paths, ball stops and fencing - 65 Longstone Road, Moneydarragh More, Annalong. **APPROVAL**

## **DEVELOPMENT MANAGEMENT - PLANNING APPLICATIONS FOR DETERMINATION**

### **P/049/2020: PLANNING APPLICATIONS FOR DETERMINATION**

**Item 7 – Planning Application LA07/2020/0185/F – 2 No. Stables – lands adjoining and 30m north east of 5 Drumnaconnell Road, Saintfield** - Mr McKay advised that following discussions with the agent, Planning had agreed to issue an approval with delegated authority to Officers.

**AGREED:** **On the proposal of Councillor Trainor seconded by Councillor O'Hare it was agreed, following discussions with Planners and Agent to issue an approval in respect of Planning Application LA07/2020/0185/F.**

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

The following applications were then determined by the Committee:-

**(1) LA07/2019/1279/F**

(Councillor Doran withdrew from the meeting)

**Location:**

lands adjacent to 27 Islandmoyle Road, Cabra, Newry

**Proposal:**

New access and laneway to serve dwellings 27, 29 and 31 Islandmoyle Road

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point presentation:**

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

Michael Sands, DfI Rivers was in attendance via Skype to comment on queries pertaining to potential flood risk.

**Speaking rights:**

**(via Skype)**

In support

Colin O'Callaghan, agent, presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

**Issues raised:**

- Mr O'Callaghan was not aware of any incidences of flooding at the site.
- Mr O'Callaghan advised there were some blind spots on the existing shared laneway and it would not accommodate two vehicles passing each other.
- Mr Sands advised DfI Rivers flood maps did not show a flood plain only because the area was below the catchment threshold for water course modelling, but he considered it to be a fluvial floodplain.
- The application was not for agricultural access therefore permitted development rights did not apply.
- The reference to the application to DfI Rivers regarding culverting was new information that had not previously been presented to the Committee and therefore could not be considered; Planning Officials to discuss with DfI the impact of culverting on river modelling separately.
- Planning considered it was important the water course modelling was carried out to dispel any concerns raised by DfI Rivers.
- It was unfortunate that no proper modelling had been carried out as evidence to show this was in a floodplain area.

Councillor Hanna proposed a site visit take place in order to see the area more fully. Councillor Trainor seconded the proposal.

Ms Largey advised that a Councillor had made a proposal in relation to the flooding issue and whether or not this should be added to the proposal.

Councillor Stokes said the issue of water course modelling was pivotal to this application and Councillor Hanna advised he was happy to include this in his proposal and that the issue be included with the site visit.

The proposal was put forward using instant messaging on Skype and the results were as follows:

FOR:	6
AGAINST:	5

The proposal was declared carried.

**Agreed: On the proposal of Councillor Hanna seconded by Councillor Trainor it was agreed that a site visit take place and that the issue of water course modelling be included with the site visit.**

(Councillor Doran rejoined the meeting)

## **(2) LA07/2020/0005/F**

### **Location:**

3 Edentrumly Road Upper, Ballydulany, Mayobridge, Newry

### **Proposal:**

Proposed change of house type from dwelling and garage under planning reference P/2008/0181/RM

### **Conclusion and Recommendation from Planning Official:**

Refusal

### **Power-point presentation:**

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

### **Speaking rights (via Skype)**

#### In support

Cormac McKay, agent and Paul O'Donaghue, applicant's father presented in support of the application, detailing and expanding upon a written statement that had been circulated to Members.

### **Issues raised:**

- The applicant had commenced construction work on the access and visibility splays prior to the planning permission expiry date of 14 May 2010.

- An energy performance rating had been unexpectedly requested by Building Control which resulted in work on site having to cease and the applicant was unable to get the digger driver back on site until 25 May 2010.
- The applicant believed he had complied with regulations in that building works had commenced prior to the expiry date of 14 May 2010.

Councillor Larkin proposed to issue an approval in respect of Planning Application LA07/2020/0005/F contrary to Officer recommendation on the basis that the applicant considered he had complied with regulations by commencing works prior to the expiry date of 14 May 2010.

Councillor Hanna seconded the proposal.

**Agreed: On the proposal of Councillor Larkin seconded by Councillor Hanna it was unanimously agreed to issue an approval in respect of Planning Application LA07/2020/0005/F contrary to officer recommendation on the basis that works had commenced on site prior to the expiry date of 14 May 2010 and the applicant considered he had complied with regulations.**

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

Councillor Burgess advised that for the duration of his term as Chair he would take all questions from Members before accepting a proposal.

Ms Largey advised that as the Planning Committee was a quasi-judicial committee, all public speakers must be heard before a proposal was made.

## **FOR AGREEMENT**

### **P/050/2020: REPORT DATED 1 JULY 2020 – PLANNING COMMITTEE SITE VISITS**

Read: Report dated 1 July 2020 from Mr A McKay re: Site Visits – Planning applications deferred by previous meetings of the Planning Committee and seeking the agreement of Members with regard to the manner in which applications deferred for site visits by the previous Planning Committee were to be progressed. (Copy circulated)

Mr Mallon advised protocol regarding site visits would be drawn up by Health and Safety department to ensure Committee were adhering to guidelines when on site.

Under current Covid 19 guidelines it would be acceptable to have all 12 Committee Members and Officers at site visits as they would be in the open air and maintaining the required social distancing measures.

**AGREED: On the proposal of Councillor Larkin seconded by Councillor McAteer it was agreed to progress the outstanding applications as outlined in the report to a conclusion.**

**It was agreed Mr Mallon to liaise with Health and Safety department to draw up protocol with regard to site visits**



**which would enable all 12 Members of the Committee to attend, if available.**

**FOR NOTING**

**P/051/2020: HISTORIC ACTION SHEET**

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

**AGREED: It was unanimously agreed to note the Planning Historic Action Sheet.**

**P/052/2020: REPORT DATED 1 JULY 2020 – PLANNING LISTS PUBLISHED ON COUNCIL WEBSITE**

Read: Report dated 1 July 2020 – Planning Lists published on Council website. The report advised Members of the Planning Committee of changes to the details published in the weekly planning lists of new applications received and decisions issued so that, in line with the GDPR and Data Protection Act 2018, the name and address of the applicant and/or agent have been removed from the weekly lists circulated to members and published on the Council website. **(Copy circulated)**

**AGREED: It was agreed to note the report dated 1 July 2020 – Planning lists published on Council website.**

**P/053/2020: EXEMPT INFORMATION – UPDATE ON PLANNING SERVICE IMPROVEMENT**

On the proposal of Councillor Trainor, seconded by Councillor Brown, it was agreed to exclude the public and press from the meeting during discussion on this item.

Read: Report dated 1 July 2020 from Mr D Fitzsimon, Planning Consultant, re: update on Planning Service Improvement and outputs to date. **(Copy circulated)**

Councillor Brown proposed and Councillor Trainor seconded to come out of closed session.

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

**AGREED: On the proposal of Councillor Hanna seconded by Councillor Brown it was agreed to note the Update on Planning Service Improvement report.**

**P/054/2020: ATTENDANCE OF MEMBERS AT  
PLANNING COMMITTEE MEETINGS:**

In response to queries from Members as to whether it was acceptable for Members of the Planning Committee to participate in the meetings via skype, Mr Mallon provided confirmation that Councillor Trainor could attend at home due to personal circumstances, otherwise all members should be in attendance at NLC. He said this would be considered on a meeting by meeting basis.

The Meeting concluded at 12.00 noon.

For confirmation at the Planning Committee Meeting to be held on Wednesday 29 July 2020.

**Signed: \_\_\_\_\_ Chairperson**

**Signed: \_\_\_\_\_ Chief Executive**

## Item 5 – Addendum List

### Addendum list - planning applications with no representations received or requests for speaking rights – Planning Committee Meeting on Wednesday 29 July 2020

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

**LA07/2018/0680/F** - 2No additional broiler poultry houses with 3No feed bins and associated site works (to contain 37,000 broilers each, 74,000 in total, raising the overall site capacity to 148,000 broilers) - Land approx. 420m SE of 8 Seaforde Road, Downpatrick **REFUSAL**

**LA07/2020/0377/F** - Restoration and refurbishment of existing building for community use providing new meeting rooms, kitchen and universal toilets to both ground and first floor. Installation of photovoltaics to rear roof. Construction of new steel fire escape stair to rear. Change of use from Class C1 'Dwelling house' to Class D1 'Community Use' - 16 The Square, Rostrevor **APPROVAL**

**LA07/2020/0587/F** - The proposed works involve some demolition works of internal walls with new build works to provide a new entrance lobby, toilet facilities and storage. There will be no change to the current usage as it will be used as a bowling pavilion and meeting room - Kilkeel Bowling Pavilion, Mourne Esplanade, Kilkeel **APPROVAL**

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





**Application Reference:** P/2010/0904/F

**Date Received:** 19.07.2010

**Proposal:** Erection of farm dwelling to include retention of existing foundations

**Location:** 45 metres north of 18 Ballinasack Road, Mullaghbawn

#### **Site Characteristics & Area Characteristics:**

The site is located in the open countryside outside of any settlements and within the Ring of Gullion Area of Outstanding Natural Beauty (AONB) as designated in the Banbridge Newry and Mourne Area Plan 2015. The site is located on the elevated and minor Ballinasack Road. The site currently encompasses foundational work and steel caging and is currently located below the level of the road (approximately 3 metres below) but is situated above the level of the dwelling at No.18 (approximately 5 to a maximum of 10 metres in parts) and is approximately 45 metres to the north of No.18. The site is bounded by post and wire fences with low hedges to the front of the site. The surrounding area is rural in character and is characterised by farm groups and single houses.

#### **Site History:**

**P/2003/0168/O – Site for dwelling and garage was approved on 20<sup>th</sup> June 2003.**

**P/2006/2002/F – Erection of dwelling was approved on 11<sup>th</sup> January 2008.**

**P/2010/0108/CA – Enforcement case opened with complaints regarding unauthorised commencement of works on the site. This case was closed on 9.3.17.**

#### **Consultations:**

DARD/ DAERA – several consultation response received.

3.10.12 – (DARD) – Farm Business ID in existence for more than 6 years and no single farm payment or DARD support claimed in the last 6 years.

5.12.17 – (DAERA) – Farm Business ID in existence for more than 6 years and no single farm payment or Areas of Natural Constraint Payment or Agri Environment Scheme Payment in the past year.

6.3.19 – (DAERA) – Farm Business ID in existence for more than 6 years with the Farm Business ID allocated on 12.3.93 and it is a Category 1 Business ID. The farm business has not claimed payments through the Basic Payment Scheme or Agri Environment Scheme in each of the last 6 years, with no claims made in any of

these years. The application site is not on lands for which payments are currently being claimed by the farm business. The land is currently let out to another farmer.

DFI Roads – Content subject to conditions and informatives on 9.4.19.

NI Water – Content subject to informatives on 11.4.19.

Environmental Health – Satisfactory arrangements must be made for the effectual disposal of foul sewage. Recommended that full planning approval not be granted until NIEA is satisfied that consent to discharge can be issued in respect of this proposal. Other septic tank and energy efficiency informatives recommended.

### **Objections and representations:**

13 objections received

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

Banbridge Newry and Mourne Area Plan 2015

Strategic Planning Policy Statement (SPPS) for Northern Ireland

Planning Policy Statement 21 – Sustainable Development in the Countryside

Planning Policy Statement 2 – Natural Heritage

Planning Policy Statement 3 – Access, Movement and Parking

DCAN 15 – Vehicular Access Standards

Building on Tradition – Design Guide for Rural Northern Ireland

### **Consideration and Assessment:**

It is first necessary to outline the long and complex history with regards to this application site. Outline approval was granted on this site for a house on 20<sup>th</sup> June 2003 under planning reference P/2003/0168/O. Subsequently on 11<sup>th</sup> January 2008 a full application for the erection of a dwelling was granted under planning application reference P/2006/2002/F with a one year time limit to commence development. On February 19<sup>th</sup> 2010, the Department of Environment opened an enforcement case P/2010/0108/CA on the site in response to complaints regarding unauthorised commencement of works on the site. On May 20<sup>th</sup> 2010 the Department served a planning contravention notice on the landowner and in response the applicant stated that he had started work on the site in autumn 2009. This date would have been beyond the time limit of the previous approval which

should have commenced by 11<sup>th</sup> January 2009. On 19<sup>th</sup> July 2010, the Department received the current application for the erection of a dwelling to include retention of existing foundations. The proposed description has since been amended to erection of farm dwelling to include retention of existing foundations.

Over the period from July 2010 to November 2011, objections as well as amended plans and additional information were submitted to the Department. Then on 8<sup>th</sup> December 2011 the application was presented to the legacy Council as an approval and was subsequently deferred. The application was then reconsidered by the Department and it was agreed that there was no evidence to prove that work started on the site in accordance with the previous application approved. This recommendation for refusal was then deferred at Council on 10<sup>th</sup> February 2012. A meeting was then held between the Department and the applicant/ agent in May 2012 and the applicant/ agent contended that they had an active farm and agreed that they would submit farm maps as well as a P1C farm form so that a case could be made for a farm dwelling approval on the site.

A P1C form as well as a farm map were submitted to the Department in May 2012. DARD were consulted on this information and on 3<sup>rd</sup> October 2012 they confirmed that the Business ID had been in existence for more than 6 years, however single farm payment or less favoured allowances had not been claimed in the last six years. The application was then re-assessed by the Department and it was considered that there was an established farm and erroneously that the site complies with Policy CTY 10 and approval was recommended. This recommendation was then deferred by the Council on 7<sup>th</sup> March 2013. Following this deferral, a meeting was held between the Department and the objectors in May 2013 and the information raised in the meeting was considered and a further assessment was made and the application was again recommended as an approval and was agreed by the Council on 8<sup>th</sup> August 2013, however the approval did not issue due to a further review by the former Planning Department.

On 7<sup>th</sup> September 2016, a meeting was held between the Planning Department and the new planning agent as well as the applicant and a Councillor. The issues raised in this meeting related to the complex history of the application site as well as arguments as to why the application should be approved.

Subsequently, on 24<sup>th</sup> November 2016, an amended proposed site layout as well as an existing site layout survey and cross section were submitted by the new planning agent. The intention was then for the application to be quickly assessed by the Planning Department however this was held back due to the Planning Department requesting legal opinion on the issue of active farming in general terms on all such affected planning applications.

When this application was first recommended as an approval in 2011, the former Planning Department were recommending approval on the basis that the previous approval had commenced however this recommendation was deferred by the legacy Council. Following a reassessment of the proposal in 2012 it was realised by the Planning Department that no evidence was submitted to prove that the works started prior to the previous approval lapsing and so the application was then recommended as a refusal and was deferred by the Council.



The now Planning Department has assessed and considered the issue of commencement of the previous planning approval. The previous full permission was granted on 11<sup>th</sup> January 2008 with condition 1 requiring that the development hereby permitted shall be begun before the expiration of 1 year from this date. Condition 4 also required that the vehicular access including visibility splays and any forward sightline shall be provided in accordance with the approved plans, prior to the commencement of any other works or other development hereby permitted. This pre-commencement condition 4 was not complied with and currently in 2019 the access, splay and forward sightline have not been completed or indeed were never implemented on the site. Failure to comply with condition 4 means that the permission has lapsed and has not commenced. Furthermore, aerial photography as well as superimposed drawings provided by the former agent show that the foundational work is built in the wrong position on the site and is not in accordance with the approved plans and so the permission has not commenced. Additionally, the applicant has previously stated that he started work on the site in autumn 2009 which would have been after the one year expiry date of the previous approval which would have been 11<sup>th</sup> January 2009. In light of this, the Planning Department consider that the previous approval on the site was not commenced and this permission has lapsed. At a meeting in May 2012 the applicant and former agent appeared to accept that the previous approval had not commenced and said that had a small active farm and Business number and subsequently a P1C form and farm map were submitted for consideration and assessment in May 2012 and the proposal was also amended to the erection of farm dwelling to include retention of existing foundations.

Article 45 of the Planning Act (NI) 2011 states that subject to this part and section 91 (2), where an application is made for planning permission, the Council or, as the case may be, the Department, in dealing with application, must have regard to the local development plan, so far as material to the application, and to any other material considerations. As per the current statutory development plan – the Banbridge Newry and Mourne Area Plan 2015, the site lies in the open countryside within the AONB.

In September 2015, a new Strategic Planning Policy Statement was produced which applies to the whole of Northern Ireland. It must be taken into account in the preparation of Local Development Plans (LDP) and is material to all decisions on individual planning applications and appeals. However, a transitional period will operate until such times as a Plan Strategy for the whole of the Council area has been adopted. Paragraph 1.12 of the SPPS 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 i.e. where there is a change in policy direction, clarification or conflict with the existing policies then the SPPS should be afforded greater weight. However, where the SPPS is silent or less prescriptive on a particular planning policy matter than the retained policies this should not be judged to lessen the weight to be afforded to the retained policy.

This application is described as being the erection of a farm dwelling, the SPPS does not contain any new direction in relation to this type of proposal, therefore under the provisions of Paragraph 1.12 it is the retained policy which is afforded greater weight in this case.

## PPS 21 Sustainable Development in the Countryside:

Policy CTY 1 restricts new development in the countryside, but makes an exception for farm dwellings which are acceptable if in accordance with Policy CTY 10. Under Policy CTY 10 planning permission will be granted for a dwelling house on a farm where all the listed criteria A to C are complied with as well as the requirements of CTY 13, 14 and 16. Under Criteria A it must be demonstrated that the farm business is currently active and has been established for at least 6 years. In their latest consultation response DAERA have confirmed that the farm Business ID has been in existence for more than 6 years which satisfies the establishment section of criteria A. However, DAERA have also confirmed that no basic payment scheme or agri environment scheme have been claimed by the farm business in any of the last 6 years and no claims made in any of these years. They also highlight that the application site is not on land for which payments are currently being claimed by the farm business and this response demonstrates that the farm Business is not currently active. Importantly DAERA also state that the land is currently let out to another farmer. The P1C form also indicates that the applicant currently lets the land in conacre to another farmer. As the land is let in conacre the farm business is not active and it is incorrect to suggest that conacre letting is sufficient to establish a business. Lands let in conacre do not and cannot satisfy the test that the landowner is in an active farm business. The landowner is a landlord, that is the essence of conacre. As a consequence this proposal does not comply with Criteria A in that, it has not been demonstrated that the farm business is currently active.

Under Criteria B of CTY 10 no dwellings or development opportunities out-with settlements have been sold off from the farm holding within 10 years from the date of this application. The Planning Department has no concerns with regards to this criteria.

Under Criteria C of CTY 10 it must be demonstrated that the proposed new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be from an existing lane. The proposal is contrary to criteria C as it is not visually linked or sited to cluster with an established group of buildings on the farm. There is no existing building groups on the farm as verified by the farming statement provided in this application. In later correspondence, the former agent referred to a building in a state of ruin within the farmland situated in field 7 of the farm maps. This ruin is some 340 metres away from the proposal and regardless the ruin does not equate to an established group of buildings on the farm. Furthermore, the proposal does not meet the exceptionality clause of criteria C in that it has not been demonstrated that 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 or that verifiable plans exist to expand the farm business at the existing building groups to justify an alternative site not visually linked or sited to cluster with an established group of buildings on the farm. The proposal fails to comply with policy CTY 10 and as a consequence does not comply with Policy CTY 1 in that there are no overriding reasons why this development is essential in this rural location and could not be located within an settlement.

Policy CTY 13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is

an appropriate design. A new building is unacceptable if any of the Criteria A to G are applicable. It is considered that the proposal will be a prominent feature in the landscape, the site lacks long established boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape, it relies primarily on the use of new landscaping for integration, ancillary works do not integrate with their surroundings and the proposed dwelling is not visually linked or sited to cluster with an established group of buildings on the farm. The site is open and exposed with little in the way of screening and is elevated in nature in relation to the surrounding topography. Furthermore, it is the proposed intention to infill/ raise the levels in the site by up to 3 metres which will further exacerbate issues of prominence on the site and any little screening that there is will be removed and it will not be possible for the proposal to integrate if approved. Sight splays, access and forward sight line work will be required to the front of the site which will further expose the issues of integration and prominence and primarily new landscaping would be required and relied upon for integration of the entire site. The ancillary works which would be required to facilitate the proposal, and in particular the infilling would not integrate with their surroundings. Also, as previously mentioned under Policy CTY 10, the proposal is not visually linked or sited to cluster with an established group of buildings on the farm.

Under Policy CTY 14, planning permission will be granted for a new building in the countryside where it does not cause demonstrable change to, or further erode the rural character of the area and a new building will be unacceptable if any of the criteria A to E apply. It is considered that the proposal is contrary to this policy as the building would, if permitted be unduly prominent in the landscape, result in a suburban style build-up of development when viewed with existing and approved buildings, creates a ribbon of development and the impact of ancillary works would damage the rural character. As the proposal is contrary to criteria D in that it creates a ribbon of development then the proposal is also contrary to Policy CTY 8 of PPS 21 which is the primary policy for assessing ribbon development in that the proposal would, if permitted, result in the creation of ribbon development along the Ballinasack Road.

The objector has raised concerns with regards to septic tanks and soakaways under Policy CTY 16, however, 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.

### **Planning Policy Statement 2: Natural Heritage**

Policy NH6 of Planning Policy Statement 2 is applicable as the application is located within the Ring of Gullion AONB. The siting of the proposal is considered unsympathetic to the special character of the AONB in general and of the particular locality due to its inability to group with existing buildings on the farm.



### **Planning Policy Statement 3: Access, Movement and Parking**

No concerns are raised with regards to this planning policy and DFI Roads have confirmed that they are content with this proposal subject to appropriate conditions and informatives.

#### **Objections/ Representations:**

13 objections have been received on this application. All of these objections have been received from a representative of the owner of the house to the south of the proposed site.

The issues raised are as follows:

- Inaccuracies in drawing scales;
- Septic tank and soakaway concerns;
- Detrimental impact on local amenity;
- Excessively obtrusive and adversely intrusive to land and skylscapes;
- Hugely intrusive and adversely intrusive to occupiers of No.18;
- Misleading information;
- Previous report lacking in care;
- Contravention of PPS 21;
- Does not meet with Policy CTY 1, 10, 13, 14 and 16 and it is not visually linked and clustered, is not an active farm and is prominent in the landscape;
- Foundations not in accordance with previous approvals;
- Contrary to PPS 4 and PPS 7;
- Negligence on the part of the former Planning Department;
- Should be a legal challenge/ judicial review and
- Land rented to another party and not operated as a farm business.

All of the issues raised in these objections have been fully considered in the assessment of this planning application. The majority of the points raised by the objector are relevant and have been reflected in the concerns raised throughout this report and have also been reflected in the below refusal reasons. Discrepancies with regards to scale of drawings and misleading information have now been corrected and resolved and a recommendation can be made on this basis of the information submitted. Issues raised regarding PPS 4 and PPS 7 are the incorrect policy with regards to this proposal. It is considered by the Planning Department that the proposal, if approved would not cause a detrimental impact on the amenity of No.18 and would not be intrusive on this property. It is considered that the separation distance of approximately 41 metres at the closest point between the proposed house and the existing house coupled with the re-orientation of the house so that the front of the proposed house faces the main Ballinsack Road is enough along with tree planting to ensure there will be no overlooking or negative, dominant impact on No.18.

**Recommendation:**

Refusal is recommended as the proposal is contrary to the SPPS, PPS 21 and PPS 2.

**Refusal Reasons:**

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

2. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 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 farm business is currently active;
- The proposed new building is visually linked or sited to cluster with an established group of buildings on the farm and that 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 or that verifiable plans exist to expand the farm business at the existing building groups 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 and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the creation of ribbon development along Ballinasack Road.

4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:

- The proposed building is a prominent feature in the landscape;
- The site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape;
- It relies primarily on the use of new landscaping for integration;
- Ancillary works do not integrate with their surroundings; and
- It is not visually linked or sited to cluster with an established group of buildings on the farm.

5. The proposal is contrary to the Strategic Planning policy Statement for Northern Ireland and Policy CTY 14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:

- The building, would, if permitted be unduly prominent in the landscape;



- Result in a suburban style build – up of development when viewed with existing and approved buildings;
- It creates a ribbon of development and
- The impact of ancillary works would damage rural character.

6. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland 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.

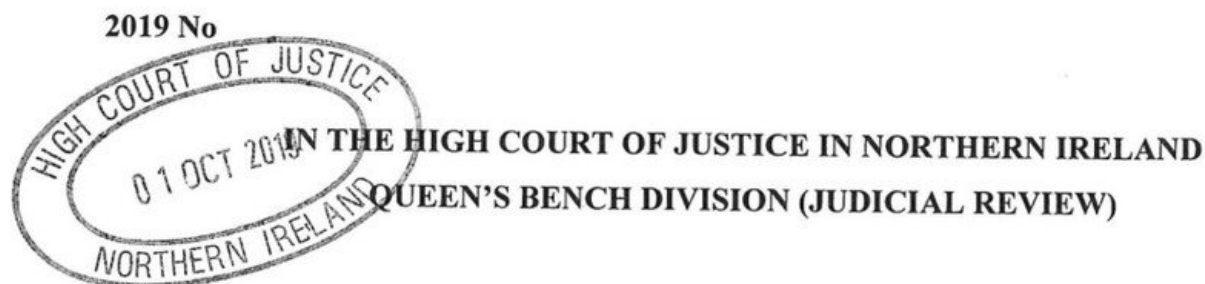
**Case Officer**

**Authorised Officer**

- This application has been called before the Council's planning committee owing to the fact that a recent planning approval granted in respect of same was rescinded following an application for Judicial Review, by a third party (objector). The judgement was that the application would be brought back to the Council for re-determination. The application for judicial review was conceded was because the reasons advanced for overturning officers' recommendation were not deemed to be sufficiently strong planning grounds for departing from planning policy.
- The background to this matter is that planning approval was granted on this site as far back as 2003. Full planning permission was granted in 2008. The 2008 planning approval had a restricted time limit attached. While many other planning applications had restricted time limits, this practice is aware of a substantial number of applicants who received the full 5 year period to commence development, even in circumstances where policy had changed. The applicant was therefore prejudiced as a result of his restricted time limit (albeit he was not alone). The NI Planning portal was not updated and it presently indicates the 2008 permission had a 5 year time limit. We accept that the planning approval notice is the lawful document in this respect however this does give an indication as to the confused timeline. Further the effect of the time restriction was to limit the development to a period of 7 months outside the 5 years on outline. This clearly was unduly restrictive and an unreasonable time restraint. Further it is unclear as to what the legal basis for such a restrictive timeframe for development was given that the deadline for a full application was 20/06/08. Also, at that time the applicant's state of mind was fragile, having lost a son in tragic circumstances.
- When the applicant implemented his permission, a complaint was made that his permission had already expired. In order to regularise the situation, the applicant submitted a new planning application. Because of a change in policy, it was stated by a senior planning officer that the only grounds under which he could have relied at that time were farming (the applicant had an active and established farm business). Initially, the application was recommended for refusal. However, after the submission of additional information it was recommended for approval. It was presented to the legacy Council on this basis. A decision was "deferred" to enable consideration of objections from the applicant's brother. After this occurred the application was brought back to legacy Council again (with a recommendation to approve). This process was repeated once more, and at the last Council meeting the legacy Council voted to endorse the Planning Service's recommendation to approve the application. Unfortunately, the approval did not issue. Further objection followed from the applicant's brother's representative. The applicant considers these objections were vexatious however it transpires they were effective insofar as they did cause the Planning Service to sit on the application and not issue the approval notice, contrary to protocol and due process. The applicant was again prejudiced, by the previous planning authority's failure to act timely upon the corporate recommendation to approve an application.
- The application was left on a shelf for a prolonged period. No action was taken for a number of years. Then, in 2016, it was decided to link this application with a number of others under review (but not having previously recommended for approval or presented to a committee with a recommendation to approve [that was ratified]). A legal opinion was sought on whether or not this application actually met the criteria for approval as a farm dwelling. Again, the applicant was prejudiced and we argue he suffered maladministration insofar as if due process had been followed he would have been the recipient of a planning permission long before the approach to farm dwellings was re-evaluated (in light of decisions on planning appeals etc. that had been arrived at after Mr Martin's application ought to have been approved). The crux of the matter is Mr Martin was prejudiced by precedents established AFTER his planning application should have been approved. Clearly that is administratively unfair.
- A number of matters now arise. The principle of natural justice dictates that where a commitment has been given by a public service to an applicant that his application will be approved, this commitment should be honoured. The applicant clearly held a legitimate expectation his application would be approved. Natural justice also dictates that an objector ought not to be allowed repeated opportunities to submit late objections. Finally, effective public service dictates that due process ought to have been followed and the legacy Council's ratification of Planning Service's approval recommendation ought to have triggered the issuing of the approval notice to the applicant.

- These failures all point to a serious miscarriage of justice upon the applicant. His interests have been unfairly prejudiced and in the interests of administrative fairness his application ought to be approved. The simple fact of this matter is that had protocol been observed this application would have been long decided by the time legal opinion was sought on the definition of an active farmer (with the view taken that Mr Martin was no longer an active farmer).
- Against this backdrop it is now said that Mr Martin's application does not comply with (current interpretation of) planning policy. This does not mean that refusal is automatic. Planning case law (the **Lamont** judgement in particular) indicates that it is perfectly lawful to depart from planning policy: 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 (e.g. natural justice / administrative fairness in this case) unacceptably and a balance needs to be struck. It is entirely lawful for the Council to choose to disapply or modify a policy. The key test for when a decision-maker 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.
- Now that we have established that it is perfectly lawful for a decision-maker to depart from planning policy, we submit that in the event the Council remains of the view that this proposal is contrary to current policy, the policy can be departed from for a number of reasons. Members are legally compelled to acknowledge that they are departing from policy but are simply required to put forward sound planning reasons for the disapplication of policy. The Planning Department throughout this application have continuously recommended approval. The departure from CTY10 (Farm dwellings) is the only relatively new policy consideration in this case and the Planning department have previously given planning permission to applications which do not meet the full requirements of CTY10 (see planning applications P/2014/0525/O and P/2015/0156/O).
- We submit that the prejudice the applicant suffered, not always at the hands of this Council, was administratively unfair. Just because this Council was not responsible for the earlier injustices does not mean it cannot act now to provide recourse. The reasons for departing from policy are:
  - To provide recourse to an applicant whose planning application was subject to review AFTER a decision had been reached to approve the application (that review finding that it did not comply with policy, based upon happenings that occurred AFTER his application ought to have been approved);
  - To provide recourse to an applicant whom unjustly was subjected to a restricted time limit in an earlier planning approval, and whose application is still recorded on the NI planning portal as having a five year life time;
  - In recognition of the fact that this Council has established a substantial precedent, in which new applicants have been granted permissions in substitution for permissions argued by officials to have been rendered spent on the basis of errant or un-timely works, or where works took place without pre-commencement conditions being fulfilled. There are at least 45 other applicants falling into this category in this District, and it would be administratively unfair to treat this applicant any differently from those and to deny his permission. In one case, an applicant was granted permission for a new house in substitution for a permission that previously expired without any works occurring (LA07/2016/0716/F). This precedent has to be taken into account in the determination of this planning application;
  - In recognition of the fact that the applicant commenced his works in good faith, at a time of personal turmoil but in a climate of confusion. The building works are contained within the original red line of the application site and are not significantly far from the original approved position. The enforcement case was closed - if the development was so detrimental then enforcement action would have been pursued.
  - In recognition that the applicant's personal circumstances at that time were such that a genuine oversight occurred, and in recognition of the applicant's present ill-health.
- **These combination of factors outweigh the purported failure to comply with current planning policy and approval is there justifiable.**





**In the matter of an application by James Martin for leave to apply for Judicial Review**

**And in the matter of a decision by Newry and Mourne District Council made on 2 July 2019**

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**ORDER 53 STATEMENT**

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**1. The Applicant**

1.1 The Applicant is James Martin, who resides at 18 Ballinsack Road, Mullaghbawn, Newry BT35 9XT. The Applicant was an objector to the grant of planning permission by the Respondent Council on 2 July 2019.

**2. The Respondents**

2.1 The Respondent is Newry, Mourne and Down District Council, Planning Office, O'Hagan House, Monaghan Row, Newry, BT35 8DL.

**3. The Impugned Matter**

3.1 The matter being challenged is the decision of the Respondent, notified by letter of 2 July 2019, to grant planning permission:

Location: 45 metres north of 18 Ballinsack Road, Mullaghbawn, Newry

Proposal: Erection of farm dwelling to include retention of existing foundations

Ref: No: P/2010/0904F

#### **4. The Relief Sought**

4.1 The Applicant seeks the following primary relief:

- (a) An order of certiorari quashing the impugned decision, and a declaration that the said decision is unlawful and of no effect.
- (b) Costs.

#### **5. Grounds of Challenge**

5.1 The Respondent, in making the impugned decision:

- (a) Failed to take into account relevant considerations, and/or took into account irrelevant considerations;
- (b) Acted unlawfully and in contravention of Section 45 of the Planning Act (NI) 2011, in that it made the impugned decision contrary to or without giving adequate or any weight to relevant Planning Policies;
- (c) Acted unlawfully and in contravention of s 6(4) of the Planning Act (NI) 2011 in that it made the impugned decision contrary to or without giving adequate or any weight to the material Development Plan, namely the Banbridge Newry and Mourne Area Plan 2015, whereby the site lies in the open countryside and within an Area of Outstanding Natural Beauty, thereby contravening the requirement enshrined in
- (d) Failed to give adequate or any reasons for the impugned decision;
- (e) Acted irrationally.

5.2 The particulars of the above Grounds of Challenge are:

- (a) The decision is incompatible and fails to have regard to:
  - i. PPS 21 (Sustainable Development in the Countryside) CTY 10, CTY 13, CTY 14 and CTY 16;
  - ii. PPS 2 (Natural Heritage);

(b) PPS 21, CTY 10 requires that “(a) the farm business is currently active and has been established for at least 6 years;”

- i. As concerns the impugned decision, the premises have not been operating as a “farm business” but rather the land has been rented to another party.

(c) PPS 21, CTY 10 requires that “(c) the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane. Exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm, and where there are either:

- demonstrable health and safety reasons; or
- verifiable plans to expand the farm business at the existing building group(s).”

- i. As concerns the impugned decision, the new building is not “visually linked or sited to cluster with an established group of buildings” and the only other disused buildings are sited on another piece of land. There are no “health and safety” reasons for siting a building in this location.

(d) PPS 21, CTY 13 provides that: “A new building will be unacceptable where: “it is a prominent feature in the landscape”

Justification and Amplification Notes provide that “5.61 New buildings that would read as skyline development or occupy a top of slope/ridge location or otherwise be a prominent feature in the landscape will be unacceptable.”

- i. As concerns the impugned decision, the proposed building breaks the skyline from all directions.

(e) PPS 21, CTY 13 provides that “(b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or the site has post and wire fencing to one side and post and rail to another. (c) it relies primarily on the use of new landscaping for integration;”

- i. As concerns the impugned decision, the site is completely reliant on new landscaping and even that consists of a row of conifers to obscure the neighbouring dwelling.

(f) PPS 21, CTY 13 further provides against “(d) ancillary works [that] do not integrate with their surroundings; or Ancillary works [that] are a blot on an existing landscape. An embankment that will cause water escape onto the neighbouring dwelling from hard-standings, surface water drainage and the flow from any treatment plant. (e) the design of the building is inappropriate for the site and its locality;”

Justification and Amplification, Note 5.64 provides: “While new tree planting for integration purposes will be considered together with existing landscape features,..... Similarly a new building that relies on significant earthworks, such as mounding or cut and fill for integration will be unacceptable.”

Justification and Amplification, Note 5.70 provides: “Applicants are encouraged to submit a design concept statement setting out the processes involved in site selection and analysis, building design, and should consider the use of renewable energy and drainage technologies as part of their planning application....”

- i. As concerns the impugned decision, it is for an obtrusive ten-person dwelling and the subject proposed premises fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop;
- ii. As concerns the impugned decision, there are no existing trees, building or natural features that might mitigate its negative aesthetic impact. The

landscape and location of the proposed dwelling render impossible any degree of “enclosure” of the dwelling. The proposed dwelling will “occupy a top of slope location” and would be “a prominent feature in the landscape”.

- iii. As concerns the impugned decision, the volume and proximity of the proposed building to the public road renders it more obtrusive and damaging to public amenity.

(f) PPS 21, CTY 14 provides that: A new building will be unacceptable where:

- it is unduly prominent in the landscape; or
  - it results in a suburban style build-up of development when viewed with existing and approved buildings; or
- i. As concerns the impugned decision, the proposed building breaks the skyline from all directions.
  - ii. As concerns the impugned decision, the application premises is 35m on the horizontal from an existing dwelling and constitutes suburbanization of the countryside.

(g) PPS 212, CTY 14 provides that against the grant of permission where the application “(c) does not respect the traditional pattern of settlement exhibited in that area; or (d) it creates or adds to a ribbon of development (Policy CTY 8);

- i. As concerns the impugned decision, the application premises’ proximity to 18 Ballinasack Road has a negative impact on the character of the countryside and is contrary to the said policy.

(h) PPS 21, CTY 14 provides against (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.



- i. As concerns the impugned decision, the extent of earthworks on a relatively small site will result in huge changes to the slope and contours of the site.
- (i) PPS 21, CTY 16 provides that “Planning permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem. Applicants will be required to submit sufficient information on the means of sewerage to allow a proper assessment of such proposals to be made. In those areas identified as having a pollution risk development relying on non-mains sewerage will only be permitted in exceptional circumstances.

Justification and Amplification, 5.92 provides that: “Under the Water (Northern Ireland) Order 1999, the consent of the Northern Ireland Environment Agency is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata.”

Justification and Amplification 5.93 provides that: “However planning applications for development in the countryside relying on non-mains sewerage .....such cases consultation will be undertaken with the Northern Ireland Environment Agency.”

Justification and Amplification 5.94 provides that: “The number and type of on-site sewage treatment plants which will be acceptable in a particular area will be determined by the sub-soil conditions, the sensitivity and capacity of the receiving watercourse and the vulnerability / sensitivity of water catchment areas. In addition such installations should be located at least 15 metres away from any dwelling and soakaways should not drain across the curtilage of any neighbouring property.”

Justification and Amplification, Note 5.95 provides: “Planning permission will be refused for development relying on non-mains sewerage where the physical arrangements proposed for on-site sewage treatment are unsatisfactory or in cases where ‘Consent to Discharge’ under the Water

Order .....these will be highlighted in the relevant development plan for the area.”

Justification and Amplification 5.96, provides: “If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application.”

Justification and Amplification Note 5.97, provides: “In other cases, applications involving the use of non-mains sewerage, including outline applications, .....information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved.”

Justification and Amplification 5.98, provides: “Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, .....application site or otherwise within the applicant’s control and therefore subject to any planning conditions relating to the development of the site.”

Justification and Amplification Note 5.99, provides: “The Department of the Environment Planning Service has powers under the Planning General Development (NI) Order 1993.... permission will normally be refused on the basis of insufficient information to properly determine the proposal.”

- i. As concerns the impugned decision, no such consent has been sought or granted.
- ii. As concerns the impugned decision, there has been no assessment whether “the arrangements for the treatment of effluent would create or add to a pollution problem”.
- iii. As concerns the impugned decision, there has been no soil testing and no examination of how surface, foul and waste-water treatment will be managed. All water will flow onto the land of the lower level neighbouring property.

- iv. As concerns the impugned decision, the extent of information on drawings is negligible and the installation cannot be assessed or constructed from the information provided.
  - v. As concerns the impugned decision, no evidence of a Consent for Discharge has been provided.
  - vi. As concerns the impugned decision, none of the data suggested in this Note 5.97 has been provided.
  - vii. As concerns the impugned decision, the party applying for permission did not provide detailed dimensioned drawings.
  - viii. As concerns the impugned decision, proper and detailed information in respect of a sewage treatment system has not been sought by any statutory body.
- (j) PPS 2, Policy NH6 is applicable because the application is located in the Ring of Gullion Area of Outstanding Natural Beauty.
- i. As concerns the impugned decision, the siting the proposal is unsympathetic to the special character of the AONB in general and of the particular locality due to its inability to group with existing buildings on the farm.
- (k) Pursuant to the Development Plan, namely the Banbridge Newry and Mourne Area Plan 2015, the site lies in the open countryside and within an Area of Outstanding Natural Beauty.
- i. As concerns the impugned decision, the decision does not appear to take any account of the fact the site lies in the open countryside and within an Area of Outstanding Natural Beauty, pursuant to the Banbridge Newry and Mourne Area Plan 2015. The Applicant repeats the specifics of the individual breaches of planning policy, above, under this ground. The impugned decision is contrary to section 6(4) of the Planning Act (NI) 2011;

- (l) The Respondent in making the impugned decision has failed to take into account, and/or failed to give adequate or sufficient weight to representations and other relevant material:
  - i. The Respondent does not appear to have accorded any or adequate weight 13 objections received to the proposed grant of planning permission.
  - ii. The Respondent does not appear to have accorded any or adequate weight to the Case Officers Report.
- (m) Adequate reasons have not been given to the decision;
  - i. The Respondent has not provided a reasoned basis, or an adequately reasoned basis for its decision, and has not provided reasons or adequate reasons why the Area Plan, the Planning Policy Statements, the Objections, and the Case Officer's report have been disregarded or departed from.
- (n) The impugned decision is in all the circumstances irrational.
  - iv. The impugned decision was made contrary to the Area Plan, the Planning Policy Statements, the Objections, and the Case Officer's Report and was irrational.

## 6. Expedition

The Applicant does not request specific expedition.

## 7. Human rights: declaration of incompatibility

- (a) No declaration of incompatibility is sought.

## 8. Service

8.1 It is hereby certified that this Statement and all accompanying documents were:

- (a) Served on the Respondent, Newry, Mourne and Down District Council at Belfast City Council, Legal & Civil Service Department, City Hall, Belfast BT1 5GS on 30<sup>th</sup> day of September, 2019 by first class post
- (b) Mr. Gene Martin c/o Mark Tumilty, 6 Glenvale Road, Newry, Co. Down, BT34 2JX on the 30<sup>th</sup> day of September, 2019 by first class post.

#### **9. Interested Parties**

The party who applied for the impugned planning will be served with this application.  
That parties' details are:

Mr. Gene Martin  
c/o Mark Tumilty  
16 Glenvale Road,  
Newry,  
Co. Down,  
BT34 2JX.

#### **10. Legal Aid**

The Applicant is not an assisted person.

#### **11. Protective Costs**

The application is an "Aarhus Convention case" for the purposes of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 ('the 2013 Regulations'). The Applicant accordingly requests that the Respondents, if they dispute this, make the appropriate application, setting out their grounds, at the earliest stage.

#### **12. PAP Requirements**

I, the solicitor whose signature appears at the end of this document, certify that the PAP requirements of the JR Practice Direction have been

fully observed. The Applicant's PAP letter was sent on 12<sup>th</sup> August, 2019 and the Respondent's PAP response was sent on 25<sup>th</sup> September, 2019, copies are attached.

### **13. JR Practice Direction**

I, the solicitor whose signature appears at the end of this document, certify that there has been full compliance with the JR Practice Direction.

### **14. Proposed Litigation Timetable**

The Applicant's proposed litigation timetable is as follows:

- (a) Respondent's replying affidavit within 21 days, namely on or before 22 October 2019
- (b) Applicant's rejoinder affidavit within a further 21 days, namely on or before 12 November 2019
- (c) Hearing on week commencing 9 December 2019

### **15. Legal Representation**

Name of Applicant's solicitor:

Thomas Carey  
Donaghy Carey Solicitors  
45-47 Rosemary Street  
Belfast BT1 1QB  
Tele. No.: 02890238222  
E-mail address: [tc@donaghycarey.com](mailto:tc@donaghycarey.com)

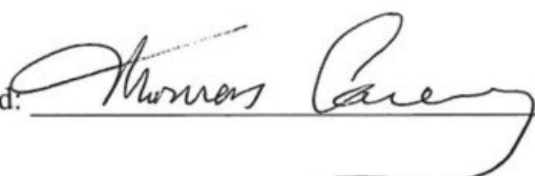
Name of Applicant's Counsel: Richard Shields

Name of Legal Representative of Proposed Respondents:

Louise Coll,  
Belfast City Council,  
Legal & Civil Service Department,

City Hall,  
BT1 5GS.  
Tele. No.: 028 90 320202  
E-mail address: [louise.coll@belfastcity.gov.uk](mailto:louise.coll@belfastcity.gov.uk)

**16. Signature Of Responsible Solicitor**

Signed: 

[MUST BE THE SOLICITOR PERSONALLY RESPONSIBLE]

of Donagy Carey

Solicitors for the Applicant

Solicitor's email address: [tc@donaghycarey.com](mailto:tc@donaghycarey.com)

Dated this 18<sup>th</sup> day of October, 2019

Signed: 

Donaghy Carey Solicitors  
45-47 Rosemary Street  
Belfast BT1 1QB  
Solicitors for the Applicants

To interested party:

Mr. Gene Martin  
c/o Mark Tumilty  
16 Glenvale Road,  
Newry,  
Co. Down, BT34 2JX





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

**Application Reference:** LA07/2015/0054/F

**Date Received:** 19.02.2015

**Proposal:** The application is for full planning permission for a proposed poultry laying shed for up to 8,000 birds and 3m Dia feeder bin.

**Location:** The application site is located approx 355m SE of No 23 Keel Point Dundrum.



**Site location plan**



**Site Characteristics & Area Characteristics:**

The application site is located at Keel Point and is accessed via an existing laneway. The site is comprised of a relatively flat portion of land, which contains within it a number of large agricultural sheds, which are used as poultry sheds.

**Site History:**

TPO/1994/0014 Murlough Keel Point, Dundrum Tpo Confirmed 08.03.1995

R/2013/0423/F Adjacent To 23 Keel Point, Dundrum, Proposed New Dwelling & Garage Permission Granted 04.02.2015

R/2012/0395/O Adj To 23 Keel Point Road, Dundrum, Newcastle,  
Proposed Farm Dwelling And Garage Permission Granted 27.06.2013



R/2011/0252/F Approximately 300m South East 23 Keel Point, Dundrum, Proposed Alterations And Extension To Existing Chicken House Permission Granted 07.11.2011

R/2010/0893/F Murlough Farm Keel Point Dundrum. Proposed Change Of Use From An Existing Barn To A Dwelling House To Include Proposed Extensions (Additional Information) (Amended Plans) Permission Granted 19.04.2013

R/2009/0111/F 23 Keel Point, Dundrum, Proposed Second Dwelling On Existing Farm. Application Withdrawn 06.10.2010

R/2006/0051CA Land To The Rear Of 25 Keel Point, Dundrum Change Of Use Enforcement Case Closed

R/2005/1128/F 23 Keel Point, Dundrum, Newcastle. Change Of Use From Farm Buildings To Bio-Fuel Production. Permission Granted 05.02.2007

R/2005/1109 Murlough Farm, Dundrum, Co Down. Change Of Use From An Agricultural Building To A Bio Diesel Plant. Pre Application Enquiry - Non Committal

R/2005/0816/O Site Adjacent To No 23 Keel Point, Dundrum. Proposed Farm Retirement Dwelling. Permission Refused 07.07.2006

R/2005/0196CA Lands Approx 50m Southeast Of 25 Keel Point, Murlough Lower, Dundrum, Down, The Unauthorised Use Of Land For The Siting Of A Mobile Home Enforcement Case Clo2s3e.0d3.2012

R/2003/0124CA Site To The West Of 25 Keel Point, Dundrum. Unpermitted Building Enforcement Case Closed

R/2003/0123CA To The Rear Of Murlough Farm, 25 Keel Point, Adjacent To Dundrum Nature Reserve, Dundrum, Downpatrick Operational Devt Enforcement Case Closed

R/1993/0201 Murlough Farm Murlough Dundrum Alterations To Dwelling And New Conservatory Permission Granted

R/1991/0274 Adj To 21 Keel Point Dundrum Farm Residence With Guest Accommodation Permission Refused

R/1989/0904 Address Unknown. No O.S. Address Point Falls Within This Polygon Historical Application

R/1985/0450 Site 2 Murlough Farm, Dundrum, Newcastle. Farm Dwelling Permission Granted

R/1985/0449 Site No 3 Murlough Farm Dundrum Newcastle. Farm Dwelling Permission Granted

Pla2/6/014/94 Land At Murlough, Keel Point, Dundrum TPO Confirmed 24.05.1995

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

The application site is located outside the settlements in the open countryside and within the AONB as designated in the Ards and Down Area Plan 2015 and as such the SPPS is the relevant policy document, which is read in conjunction with :-

Strategic Planning Policy Statement for Northern Ireland (SPPS)

Planning Policy Statement 2 Natural Heritage

Planning Policy Statement 3 Access, Movement and Parking

Planning Policy Statement 21 Sustainable Development in the Countryside;

Policy CTY 1 Development in the Countryside

Policy CTY 12 Agricultural and Forestry Development.

Policy CTY 13 Integration and Design of Buildings in the Countryside

Policy CTY 14 Rural Character

### **Consultations:**

NI Water – statutory response

Transport NI (Now known as DFI Roads) – No objections based on the information given in Q22 of form P1 that there is no increase in visitors and persons to the site.

NIEA Water Management – now content (03/11/17- response)

NIEA - Land, Soil & Air – The installation will have a capacity below the threshold (i.e. 40,000 bird places) therefore it will not require a permit under the Pollution Prevention and Control (Industrial Emissions) Regulations (NI) 2013 (The PPC (IE) Regulations).

NIEA – Natural Heritage Division – advise that it acknowledges that the mitigation proposed by the applicant in this case will lead to significant reductions in emissions from the facility, however, those reductions will not be sufficient to reduce deposition of Nitrogen and emissions of ammonia to below the appropriate critical load and level. It cannot therefore exclude the potential for cumulative or in-combination effects. It is for the planning authority to determine the impact of the project on the integrity of the site by way of the HRA process.

Historic Environment Division – No objections

DAERA – No objections

Environmental Health – no objections subject to conditions

SES – object to the proposal

## Objections & Representations

In line with statutory requirements two neighbours have been notified on 24.03.2016, 21.06.2018 and again with additional information on 28.11.2019. The application was advertised in the Mourne Observer 29.04.2015 and again on with an amended proposal description on 11.12.2019. Four letters of objection have been received in relation to the proposal. Three of which are from the same objector.

Stephen Armstrong objects to the proposal

- 4 large existing chicken houses are cited with 110m from his property. He states he has had issues with flies and smells.
- Proposal is to increase the size of the shed closest to his property, which would profoundly affect the enjoyment of his house and gardens
- Proposed development is located less than 50m from Murlough Nature reserve ASSI boundary
- Access road constructed without planning approval.
- Issues regarding access and Tree Preservation Order.
- Applicant cited health and safety reasons for his own dwelling not being cited closer to the chicken sheds.

Letter from National Trust who object to the scheme on the basis of harm it would cause to Murlough Natural Reserve.

This is a summary of issues, the letters are available to view in full on the planning portal.

## Consideration and Assessment:

The SPSS states in relation to Agriculture and Forestry development provision should be made for development on an active and established (for a minimum 6 years) agricultural holding or forestry enterprise where the proposal is necessary for the efficient operation of the holding or enterprise. New buildings must be sited beside existing farm or forestry buildings on the holding or enterprise. An alternative site away from existing buildings will only being acceptable in exceptional circumstances. Policy CTY 1 of PPS 21 identifies a range of types of development that are, in principle, considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is an agricultural shed in accordance with Policy CTY12.

## Environmental Impact Assessment

The application falls within Schedule 2 1c - The carrying out of development to provide for intensive livestock installations (unless included in Schedule 1). It is considered that the impact of the proposal can be fully assessed via the normal planning and consultative process and subject to meeting the relevant policies, that any necessary mitigating measures can be agreed during the assessment of the application to ensure that there are no adverse impacts on the environment and local population. The likely environmental effects are not considered so significant to warrant an Environmental Statement.

## PPS 21 – Sustainable development in the Countryside

With regard to non-residential development, CTY 1 states that planning permission will be granted in the countryside in nine instances, one of which is agricultural development in

accordance with PPS 21 policy CTY 12. The latter indicates that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that it complies with stated criteria. Paragraph 5.56 of PPS 21 advises that "for the purposes of this policy (i.e. CTY 12) the determining criteria for an active and established business will be that set out under policy CTY 10". Criterion (a) of CTY 10 refers to a farm business being currently active and having been established for at least 6 years. The amplification text states that an applicant will be required to provide a DARD business ID number along with other evidence to prove active farming. CTY 12 refers to development on an active and established holding. The Justification and Amplification section states that for the purposes of this policy the determining criteria for an active and established business will be that set out under Policy CTY10.

Policy CTY10 advises that

-the farm business is currently active and has been established for at least 6 years;

The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.

Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that:

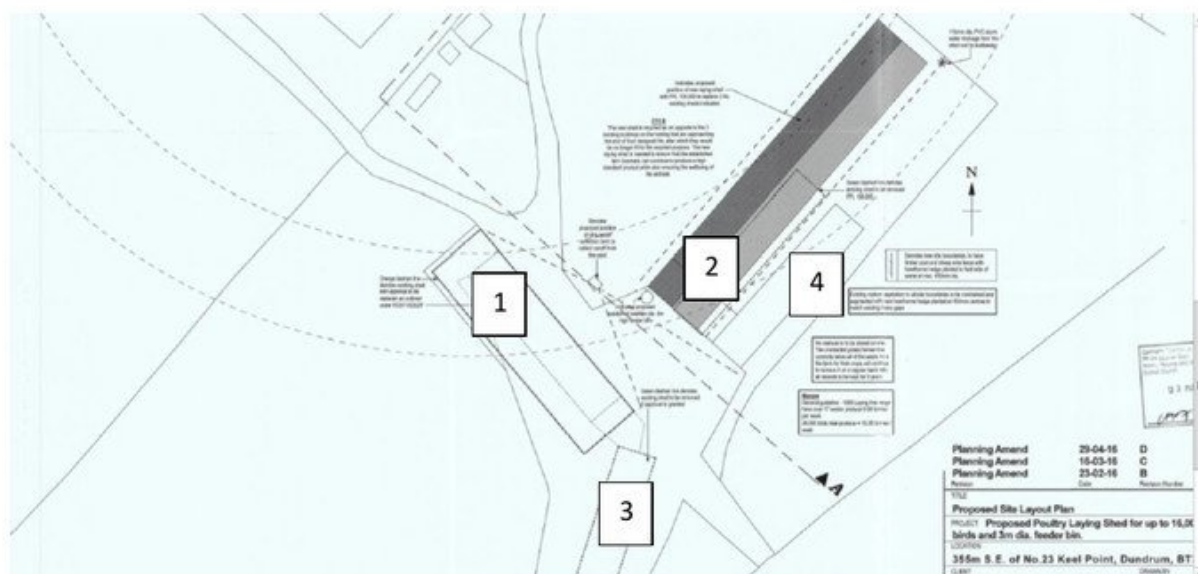
**a) It is necessary for the efficient use of the agricultural holding.**

Details of this farm business accompany this application including form P1C which has details of the farm business number and maps to accompany the farm business. DARD (Now DAERA) has confirmed that the business is active and has been established for at least 6 years. This is an established poultry farm with existing houses currently active and operational. In terms of expansion of the business it is accepted that it is necessary for the efficient use of the agricultural holding. Therefore the applicant has an active and established farm business.

**b) It is appropriate to the location in terms of character and scale.**

The proposal was initially submitted for a proposed poultry shed to house up to 16,000 birds along with a feeder bin. However, throughout the processing of the application the proposal was amended to house 8,000 birds. The agent advises that there are 4 existing poultry sheds on site, each housing 4,000 birds. The proposal proposes 2 poultry houses each housing 8,000 birds. The proposal involves the removal of an existing shed which currently houses 6,000 birds with a new shed which measures 16m wide x 86m long in the footprint of the previous shed. It is also worth noting that the applicant intends to 'fit out' another previously approved shed approved under R/2011/0252/F. So while it doesn't form part of this application as such, it does have a bearing on the overall impacts of ammonia levels which is looked at further in this report. The annotations on drawing ref 14-65-04 Rev D refers to the replacement of two of the sheds (dotted line), retention of the other 2 sheds including the fit out approved under R/2011/0252/F. This would mean there could potentially be 3 no poultry sheds on site.





### Existing Poultry Houses on Site

- 1 Poultry house approved under R/2011/0252/F. Annotation suggests its implementation if this application is approved.
- 2 Poultry House to be removed and new Poultry House constructed
- 3 Poultry house to be removed upon approval of this application
- 4 Poultry house to remain according to drawing

The proposed shed measures 7m height (eaves 3.8m), with the rest of the building measuring 6m in height (eaves 2.8m). The finishes include corrugated iron roof painted green, with the walls to be finished with cedar timber siding painted green. This type of building would be typical of the rural area and is to be built on the footprint of an existing chicken shed, albeit much larger in scale, built adjacent to the existing farm buildings. The materials and finishes are sympathetic to the rural area. The prevalence of these types of poultry sheds in the rural is becoming more and more widespread, and it would not be unusual to find this type of building in the rural area.

### c) It visually integrates into the local landscape and additional landscaping is provided as necessary.

The proposal is sited to cluster with existing established adjacent poultry houses to the west and south. The site is well screened from the surrounding road network including the main Newcastle Road and Keel Point as it is accessed off an existing laneway. The sheds can be viewed from the adjacent Murlough Nature Reserve which is also considered a public vantage point. It is acknowledged that the shed will be greater in size and scale than the sheds which



are already in situ. Account has to be taken that this shed is replacing an existing shed on the same footprint albeit greater in size and scale. Given the intervening vegetation, combined with its low profile and set back from the road and the fact that these types of buildings are now typical in the rural area would mean that it would be very difficult to refuse on this basis, therefore on balance it is deemed that the proposed building could be integrated into the landscape.

**d) It will not have an adverse impact on the natural or built heritage;**

The application site lies adjacent to Murlough SAC/ASSI and within 7.5km of Ballykilbeg SAC/ASSI, Corbally ASSI, Lecale Fens SAC, Tyrella and Minerstown ASSI, Ballybannan ASSI, Castlewellan Lake ASSI, Shimna River ASSI and Eastern Mourne SAC/ASSI (hereafter referred to as the designated sites) which are of international and national importance and are protected by Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) and The Environment (Northern Ireland) Order 2002.

Natural Environment Agency (NED) has recognised that there are significant challenges for both the Department and the sector in permitting agricultural expansion in areas where the Critical Loads and Levels are currently exceeded. Following acquisition of DAERA specific legal advice on DAERA's operational policy, NED have considered the proposal, as per the application (detailed within P1 form), including any direct/indirect impacts on associated farm activities.

NED has considered the impacts of the proposal, as per the application, on the designated sites and, in their response dated [16/11/2018], is content that the proposal, is in line with DAERA's operational protocol on nitrogen emissions. However, NED advises that due regard is given, by the competent authority, Newry, Mourne and Down District Council, to the recommendations outlined below when undertaking a Habitats Regulations Assessment on Murlough SAC, Lecale Fens SAC and Eastern Mourne SAC to ensure compliance with the requirements of the Habitats Regulations and The Environment (Northern Ireland) Order 2002.

SES has queried this position that NIEA NED has taken.

*'APIS indicates that the background level of ammonia for Murlough SAC exceeds the Critical Level (CLE) for this site. The process contribution from this 'project' is predicted to be 5% of the CLE. Does NIEA, in its role as Statutory Nature Conservation Body, consider that the potential for an adverse effect on site integrity of Murlough SAC as a result of this project can be excluded such that no reasonable scientific doubt remains as to the absence of such effects?'*

**NIEA responded 23/05/2019**

The Department acknowledges that the mitigation proposed by the applicant in this case will lead to significant reductions in emissions from the facility, however, those reductions will not be sufficient to reduce deposition of Nitrogen and emissions of ammonia to below the appropriate critical load and level. The Department cannot therefore exclude the potential for cumulative or in-combination effects. It is for the planning authority to determine the impact of the project on the integrity of the site by way of the HRA process.

## SES responded to NIEA 10/02/2020

Shared Environmental Service (SES) has considered the nature, scale, duration and location of the project and advise the following:

The amended P1 form (24/10/2019) states '*Proposed poultry laying shed for up to 8,000 birds & 3m dia feeder bin*'. However, this is out of step with the most recent Air Quality Impact Assessment (AQIA) (14/09/2018), which assesses 2 units, incorporating ammonia reduction mitigation with each unit housing 8,000 birds (16,000 birds in total) (pp 4, Table 1). One shed, previously approved under R/2011/0252/F, is proposed to be 'fitted out' as below. Such mitigation, were it to be accepted, must be implemented via planning condition (however, see below).

The AQIA assessed both sheds as operating with manure belt removal systems and *MagixX-L Big Dutchman* air treatment systems. SES has made enquiries outwith this application, regarding the suitability of *MagixX-L* in free range layer units and presently consider its efficacy is not established. SES question the validity of the 70% ammonia reduction value as used in the AQIA. Even if the reduction value was agreed, the predicted ammonia (NH<sub>3</sub>) process contribution (PC) of 5% Critical Level (CLE) at Murlough SAC is considered to be of such a magnitude *that it is not possible to ascertain no adverse effect on the integrity of the site*.

This is because NIEA recommend a 1µg/m<sup>3</sup> Cle for Murlough SAC while the background level is already exceeded in proximity to the holding (2.17µg/m<sup>3</sup>). Additionally, NIEA has stated '*...the features of Murlough SAC/ASSI must be considered in relation to the whole site area due to the interdependent relationship of all the site habitats and features. Murlough SAC/ASSI cannot be subdivided into habitat areas, as suggested within the AQIA (14/11/17) and as such must be assessed as a whole*' (NIEA 15/06/17).

NIEA has further advised SES that while acknowledging '*...the mitigation proposed by the applicant in this case will lead to significant reductions in emissions from the facility, however, those reductions will not be sufficient to reduce deposition of Nitrogen and emissions of ammonia to below the appropriate critical load and level...*' (23/05/19) [emphasis added]

They conclude, in light of the foregoing, SES cannot ascertain that it will not adversely affect the integrity of Murlough SAC.

## Latest response from NIEA dated 12 June 2020

NIEAs assessment of the proposal is based on the details provided of a poultry house for layers with a litter belt removal system as reflected in the AQIA. Due to no change in the information submitted in relation to the application NED's previous response of 23 May 2019 still remains valid.

Policy NH 1 of PPS 2 Natural Heritage states that where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Department shall make an appropriate assessment of the implications for the site in view of the site's conservation objectives. Appropriate mitigation measures in the form of planning conditions may be imposed. In light of the conclusions of the assessment, the Department

shall agree to the development only after having ascertained that it will not adversely affect the integrity of the site.

Policy NH 3 states that planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to the habitat network, or special interest of:

- an Area of Special Scientific Interest;
- a Nature Reserve;
- a National Nature Reserve; or
- a Marine Nature Reserve.

A development proposal which could adversely affect a site of national importance may only be permitted where the benefits of the proposed development clearly outweigh the value of the site. In such cases, appropriate mitigation and/or compensatory measures will be required.

On balance, given the view of SES who are acting on behalf of the Competent Authority, the Planning Authority is taking a precautionary approach as it cannot ascertain that the proposal will not adversely affect the integrity of Murlough SAC.

The proposal is contrary to PPS 21 Policy CTY 12(d) and PPS 2, policies NH1 and NH 3.

**e) It will not result in a detrimental impact on the amenity of residential dwellings outside the holding.**

The nearest residential property is approx. 120m away a number of letters of objection have been received from the residents at 25 Keel Point the letter details:

*Health issues, Pests, Smell, TPO along boundary of laneway and Access constructed without approval*

A further email was sent by the objector, detailing that they think it is unfair to site the building closer to their property when in another planning application the applicant stated that it would be unhealthy to live close to the chicken sheds. They have stated that the application should be approved, but it should be sited further away from their home and sited 20/30m to SE on the site of the second existing shed.

Environmental Health were consulted as part of the processing of the application. They responded by stating that due to the close proximity to a residential property there are concerns that this property may be adversely impacted due to odour from the proposed poultry house.

Letters from Irwin Carr Consulting, dated 20 September 2017 and 25 October 2017, were thus submitted to deal with odour issues. In essence it states that there will be no storage of poultry litter on the proposed site and that all poultry litter will be taken directly from the poultry house to a consented Anaerobic Digestion Plant at regular intervals. This was confirmed by way of an EPA (Environmental Protection Agency) letter from an EPA Inspectorate confirming Abbeylara Peat is a bona fide company and will take and use the poultry manure from the unit at Keel Point Dundrum (Letter dated 5/11/2019). This is however contrary to the annotations

on drawing ref R/2011/0252/F which states that the contracted potato farmer will remove manure from the site on a regular basis with all records being kept for 5 years.

Environmental Health have however based their comments on the EPA Inspectorate letter and are now content with the proposal subject to conditions being added to any decision notice.

### **PPS 21 - CTY 13 - Policy CTY 13 – Integration and Design of Buildings in the Countryside**

Policy CTY 13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of appropriate design.

A new building will be unacceptable where:

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

As mentioned previously the proposal will have a greater visual impact on the landscape. However, given the low profile nature of the building, it is considered that the form of, and finishes to, the building are not out of keeping or incongruous in the rural area, this combined with its set back from the road and the fact that it will be clustered with the other sheds, and that these types of buildings are now typical in the rural area would help aid its integration into the landscape. A landscaping condition requiring full planting could therefore be used in this case.

### **PPS 21 - CTY 14 – Rural Character**

Policy CTY 14 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. A new building will be unacceptable where:

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



The site is an established poultry business, it is deemed that the addition of this further poultry shed and ancillary works would not cause unacceptable damage to the rural character of the area.

## PPS 2 Natural Heritage

### Policy NH 1 – European and Ramsar Sites – International

This policy states that planning permission will only be granted for a development proposal that either individually or in combination with existing and / or proposed plans or projects, is likely to have a significant effect on:

- a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
- listed or proposed Ramsar Site

Where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Department shall make an appropriate assessment of the implications for the site in view of the site's conservation objectives. Appropriate mitigation measures in the form of planning conditions may be imposed. In light of the conclusions of the assessment, the Department shall agree to the development only after having ascertained that it will not adversely affect the integrity of the site.

In exceptional circumstances, a development proposal which could adversely affect the integrity of a European or Ramsar Site may only be permitted where:

- there are no alternative solutions; and
- the proposed development is required for imperative reasons of overriding public interest; and
- compensatory measures are agreed and fully secured.<sup>26</sup>

As part of the consideration of exceptional circumstances, where a European or Ramsar site hosts a priority habitat or priority species listed in Annex I or II of the Habitats Directive, a development proposal will only be permitted when:

- it is necessary for reasons of human health or public safety or there is a beneficial consequence of primary importance to the environment; or
- agreed in advance with the European Commission.

### Policy NH 3 - Sites of Nature Conservation Importance - National

Similarly, Policy NH 3 states that planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to the habitat network, or special interest of:

- an Area of Special Scientific Interest;



- a Nature Reserve;
- a National Nature Reserve; or
- a Marine Nature Reserve

A development proposal which could adversely affect a site of national importance may only be permitted where the benefits of the proposed development clearly outweigh the value of the site.

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

SES concerns with the proposal have been documented earlier in the report.

Thus as the proposal stands it is contrary to Planning Policy Statement 2: Natural Heritage, Policy NH1 and NH 3 in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites.

### **PPS 3 : Access, Movement and Parking**

PPS 3 sets out matters pertaining to roads to be considered in determining a planning application. PPS 3 states that the potential impacts that a development may have on the efficiency of the public road network or on road safety is an important material consideration.

The proposal is already served by an existing access onto Keel Point, therefore policy AM 2 is applicable which states that planning permission will only be granted for a development involving direct access, or the intensification of the use of an existing access onto a public road where:

- (A) Such access will not prejudice road safety or significantly inconvenient the flow of traffic;

Following consultation with Transport NI, and based on the information on the P1 form, Transport NI have no objections to the proposal.

### **PPS 6 – Planning Archaeology and the Built Heritage**

The former World War II airfield of RAF Murlough is located in close proximity to this proposed development. This airfield is listed in the Defence Heritage Project database (DHP) and is protected by Policy BH2 of PPS 6. Historic Environment Division: Historic Monuments (HED: HM) have received additional information from the developer (a desktop survey of the application site highlighting its military history and surviving associated features, and accompanied by current and historic photographs of the application site) and are satisfied there will be no impact upon the defence heritage site.

HED: HM has therefore assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

## Summary

It is evident that the environmental information considered by NIEA and SES is being interpreted differently. The Planning Authority cannot ascertain the environmental information to contain complete, precise and definitive findings capable of excluding all reasonable scientific doubt as to the effects of the proposal under consideration on the protected habitats on species and habitats outside of the protected areas. Taking into account all material considerations including the objections and the consultee responses and having considered all relevant planning policy the application is contrary to policy for the reason stated below.

## Recommendation

Refusal

**This refusal notice relates to the following plans: 01, 03 REV D, 04 REV D**

Site location Plan 01

Proposed Floor Plans, Elevations, Sections & Access 03 Rev D

Proposed Site layout 04 Rev D

## Refusal reasons:

1. The proposal is contrary to Strategic Planning Policy Statement 2015 (SPPS) and Policy NH 1 and NH3 of Policy Statement 2: Natural Heritage, in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites.
2. The proposal is contrary to Strategic Planning Policy Statement 2015 (SPPS) and PPS 21 Policy CTY 12 (d) in that it has not been demonstrated that the proposal will not have an adverse impact on the natural heritage.

Case Officer

*C Moane*

Date 01/07/2020

Appointed Officer

A. McAlarney

Date 01 July 2020

# Submission from Philip Shields, Murlough Farm

To whom it may concern,

I am looking to apply for speaking rights for a few different reasons.

Pre covid I arranged a meeting with Mr. McKay , a local political representative, a member of the Ufu policy team and myself. At this meeting we were told by Mr. McKay that this application was awaiting on new guidance coming out and that no decisions would be taken on it without first informing us of them or contacting us for a reply, which all attending the meeting can verify. Unfortunately this has not turned out to be the case on either count, as no one had written to me or contacted me about a decision on this application or asked for a response for consideration, something I'm very disappointed with. This is in total violation of the assurances given to us from Mr. McKay.

Secondly the planning office seem to be treating this as a brand new enterprise and not a replacement of an existing free range poultry unit. This is a business which has been in existence on this site from 1995 and the amount of birds are staying the same it's just a more modern environmentally friendly unit we are looking to install.

The planning response team from daera have actually stated in their report on the 23rd of May 2019 " the department acknowledges that the mitigation proposed by the applicant will lead to significant reductions in emissions from the facility". So here I am in the ridiculous situation of trying to reduce emissions from my site by up to 70% and daera agreeing with the figures and the planning office looking to refuse it even though it is a government target to reduce emissions.

This is being treated as a new development by the planning office even though the replacement house is going over the footprint of the existing house and are not taking into consideration that the older house is no longer going to be there, rather they are adding the emissions of the replacement on top of the existing which makes no sense whatsoever.

We are looking to create efficiencies on our farm so that we will be able to market all our eggs locally rather than rely on the wholesale market in England where the majority of our eggs get sent at the minute, this new system would give significant benefits locally in both environmental and economic terms. Firstly the ammonia levels would be reduced by up to 70% plus we would then be looking to employ to extra people on the farm to help with the extra grading of eggs and delivering locally we would be doing.

We can of course continue with our older system which will be emitting a lot more ammonia which is something the government has a target to reduce plus with the current system being a lot more labour intensive there will not be the scope for creating employment in the grading and delivering side.

To me it is incomprehensible that the council and planning office which is meant to be looking to reduce emissions and create employment is looking to stop me do this very thing. Here is a farmer actually coming looking to reduce ammonia emissions by up to 70% and the planning office is looking to refuse it even though it is a government target.

Mark Keane  
Planning Department  
Newry Mourne & Down District Council  
Monaghan Row  
Newry  
BT35 8DT

22 July 2020

Our ref: NTR002

Your ref: LA07/2015/0054/F

by post & email

Dear Mark

**LA07/2015/0054/F**

**Proposed poultry shed, 355m SE of No.23 Keel Point, Dundrum Bt33 0NQ**

**Objection**

We write on behalf of The National Trust in objection to this proposal.

The Trust owns and manages Murlough National Nature Reserve and objects to the proposal on grounds the proposal would cause harm to this sensitive and protected environment. We note that the application is recommended for refusal at the forthcoming Planning Committee meeting, we support this recommendation and urge the Committee to refuse the application.

Murlough National Nature Reserve is an ancient landscape of sand dunes beaches and woodland which is home to a diverse range of flora and fauna, including 23 species of butterfly and one of the last strongholds of the endangered marsh fritillary. The Reserve is a tourist attraction and some 250,000 people visit annually to enjoy the boardwalk path through the dunes. The whole area, including the application site, is part of the designated AONB. This is a special place, worthy of protection to ensure the landscape character is protected and the natural ecology is conserved.

The proposal is part of an existing farmyard which was established without express planning consent. We have not visited the premises, but online aerial photography shows a poly tunnel style poultry house on the site. As acknowledged by the applicant, the existing poultry house has past its live-span and is not fit for purpose. The abandonment of this building presents an opportunity to ensure any new use of the site is compliant with environmental standards and planning policy. While the historic use of the site is relevant, it is of limited material weight in the present planning consideration due to the fact express planning permission was not granted in the past. Any new proposal must fully comply with the current policies and standards that apply to this projected and vulnerable area.

The starting point for consideration of the application is the fact the site is designated as an AONB, it is also surrounded by the Murlough Special Area of Conservation (SAC), the Murlough Area of Special Scientific Interest (ASSI) and is adjacent to the Murlough National Nature Reserve. These designations



limit the potential for development on the site. Policy CTY12 allows new agricultural buildings in the countryside, but only if it is demonstrated they meet the policy criteria which includes:

- 'it will not have an adverse impact on the natural or built heritage; and
- it will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.'

Despite the fact the application was lodged more than five years ago, the applicant has failed to demonstrate the proposal is consistent with these requirements of the policy. The consultation responses received from DAERA Natural Heritage and Shared Environmental Services highlight the inherent inconsistencies and errors in the information submitted in support of the application. Clearly the application has not demonstrated that the ammonia impacts of the proposal are acceptable, indeed on the basis of the information submitted, it seems likely there is no practical way of developing the proposal in a manner that would be compliant in ammonia impact terms. For this reason the application does not meet the requirements of the Natural Habitats Regulations and is clearly contrary to a fundamental aspect of planning policy, clearly it must planning permission must be refused.

The objection letters submitted by the residents of the nearby dwelling is also of significant weight in the determination. The letters highlight the problems the old poultry houses caused in terms of odour and pests. The applicant has failed to demonstrate the proposal is acceptable in residential amenity terms, so it is also contrary to this part of the policy criteria.

The residents objection also highlights the contradicting nature of the recent applications made by the applicant, on one hand requesting a new dwelling is sited well-away from the poultry unit due to odour and amenity issues while, on the other hand, now seeking a new poultry house development on the site. This is a matter of significant weight and confirms the unpleasant and unacceptable characteristics of the proposal.

The Trust is also concerned that the visual impacts of the proposal will be harmful to the special qualities of this AONB landscape and the tourist amenity enjoyed within the Nature Reserve. A general principle of planning policy is that new development cannot rely on proposed new planting to affirm its acceptability. On the basis of the comments set out in your report to the Committee, it seems the application fails this test and therefore we ask the Council to include this issue as a reason for refusal.

In summary, the proposal would cause unacceptable harm to the fragile environment of the Murlough Nature Reserve and the Trust wishes to confirm its support for the recommendation to refuse.

Kind regards.

Yours sincerely



Hayley Dallas

[hdallas@rossplanning.co.uk](mailto:hdallas@rossplanning.co.uk)





Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2018/0680/F

**Date Received:** 04.05.2018

**Proposal:** The application is for full planning permission for 2No additional broiler poultry houses with 3No feed bins and associated site works (to contain 37,000 broilers each, 74,000 in total, raising the overall site capacity to 148,000 broilers).

**Location:** The application site is located on Land approx. 420m SE of 8 Seaforde Road Downpatrick.



Site location plan

#### **Site Characteristics & Area Characteristics:**

The site is located to the SE of Seaforde. The site is accessed off the Seaforde Road and comprises a concrete laneway. The site already accommodates two existing broiler houses (containing 74,000 birds), four feed bins, two gas tanks, biomass boiler shed and fuel bin, office and changing building and an existing concrete yard area. The site is bound to the north by an existing area of woodland. The proposed sheds would be positioned beside two existing sheds which lie to the east of the site. The surrounding land is rural in character with a number

of dispersed single dwellings in the countryside. The settlement limit of Seaford is approx. 260m west of the site.

#### **Site History:**

R/2014/0685/F | Land approx. 470m SE of 8 Seaforde Road, Downpatrick | Proposed 2No. Broiler Poultry Sheds with 4No. Feed Bins, 2No. Gas Tanks, a Biomass Boiler Shed with Fuel Bin and an Office, Changing and Standby Generator Building (To contain in total 74,000 Broilers) | Permission Granted 19.03.2015.

LA07/2018/0008/PAN | Lands approximately 420 metres south east of 8 Seaforde Road, Naghan, Downpatrick | Lands approximately 420 metres south east of 8 Seaforde Road, Naghan, Downpatrick | Permission Granted | Proposal Of Application Notice Is Acceptable.

#### **Enforcement**

LA07/2015/0024/CA | To The Rear Of 16 Kennel Road, Naghan, Seaforde, Downpatrick | Alleged unauthorised earth works, erection of two sheds, new access and laneway | Enforcement case Closed 10.07.2015.

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

The application site is located outside the settlements in the open countryside as designated in the Ards and Down Area Plan 2015. The following planning policies have been taken into account:

Regional Development Strategy

Strategic Planning Policy Statement for Northern Ireland (SPPS)

Planning Policy Statement 2 Natural Heritage

Planning Policy Statement 3 Access, Movement and Parking

Planning Policy Statement 21 Sustainable Development in the Countryside;

- Policy CTY 1 Development in the Countryside
- Policy CTY 12 Agricultural and Forestry Development.
- Policy CTY 13 Integration and Design of Buildings in the Countryside
- Policy CTY 14 Rural Character

Ards and Down Area Plan (2015)

#### **Consultations:**

NI water – Application to NIW is required to obtain approval to connect. Applicant does not have a foul discharge. Applicant is proposing to discharge surface water to a swale.

Transport NI – No objections subject to conditions

DAERA – No objections

Rivers Agency – No Objections - It should be brought to the attention of the applicant that the responsibility for justifying the assessment and accepting any flood risk rests with the developer and his/her professional advisors.

Environmental Health – State that The Northern Ireland Environment Agency (NIEA) are responsible for permitting this process under the current Pollution Prevention and Control (PPC) regime; therefore conditions for the control of odour and noise should be contained within any such permit granted by the NIEA

NIEA Water Management – No Objection subject to a condition and informatives

NIEA - Land, Soil & Air – **No objection** The Industrial Pollution and Radiochemical Inspectorate advises that the applicant will be required to apply for and be granted a PPC permit variation prior to stocking the proposed poultry housing.

NIEA – Natural Environment Division – contrary to PPS 2

Shared Environmental Services – contrary to policy

### Objections & Representations

In line with statutory requirements no neighbours were required to be notified. The application was advertised in the Down Recorder and Mourne Observer 23.05.2018 and again with due to the receipt of an Environmental Statement Addendum. Six letters of objection have been received via email. Only one of the 6 objectors included their address which is in Jordanstown, Clough.

The objection letters are detailed and raise a number of issues including:-

- The environmental information is significantly flawed as it does not contain complete precise and definitive findings capable of excluding all reasonable scientific doubt as to the effects of the project under consideration on the protected habitats on species and habitats outside of the protected areas.
- The HRA undertaken by SES are based on inappropriate screening policy. The Moy Park Litter Utilisation Strategy (MPLUS) agreed by NIEA is cited by SES for their decision not to undertake a full stage 2 HRA.
- The MPLUS provides no certainty as to the destination of the waste produced, therefore its adverse impact on protected sites is unknown which is in contra to Article 6(3) of the Habitats Directive, which states that the assessment must be free of lacunae.
- The MPLUS agreement, as a Policy adopted by NIEA, did not have a Strategic Environmental Assessment complete at the time of its approval as required by law.
- The MPLUS agreement includes export of waste to another Member State. However, no evidence of Export Agreements and Approvals, permits or licences being in place especially post Brexit.
- No evidence that the Planning Authority has consulted with another Member State as per ESPOO Convention regarding the Transboundary impact of this project and therefore this failure to consult by the Competent Authority is in contravention of the Planning (Environmental Impact Assessment) Regulations.



- The Anaerobic Digester plants cited as potential processing facilities for the waste from this project did not have Environmental Impact Assessments nor habitats Assessments completed at the time of their planning approval and therefore may be operating unlawful. In addition it has not been determined if the waste from these plants will have an adverse impact on protected sites.
- The screening policy of not undertaking an in-combination or cumulative Assessment is flawed. Failure to take account for peak ammonia emissions during emptying the units and fails to include any emissions from MPLUS destinations for the waste generated by this project.
- In NI non regulated intensive agricultural sites are screened out from appropriate Assessment by SES.
- Current intensive agriculture, must have appropriate Assessment to include Cumulative and In -combination impacts on projects and plans on European sites in NI, in other Member States and in particular Trans-boundary sites. With the total additional waste from these intensive forms of agriculture containing increased levels of Nitrogen and Phosphates.
- Unlawful Anaerobic Digestors due the failure to take account of Appropriate Assessment
- Environmental information is flawed as it only considers one harmful emission which is Ammonia.
- Concerns regarding ecological damage which is already occurring at present
- European Court of Justice Ruling C-117/00 ECR I-5335 against the Republic Of Ireland which concluded that Habitats subject to degradation must be given time to recover. The addition of further pollutants by this project and others, even if they are individually less than 1% of the Process Contribution, does not dispel all reasonable scientific doubt as to the effects of this project on the protected species habitat types and species.
- Given the level of gaps of evidence in contravention of Annex IV of the EIA Directive and the degree of maladministration, it would be unlawful for the Planning Authority to approve this project.

These are the main points from the letters, but a full copy of the objection letters are available to view on the planning portal.

### **Consideration and Assessment:**

Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6 (4) states that the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

### **SPPS**

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

retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.

The SPPS states in relation to Agriculture and Forestry development provision should be made for development on an active and established (for a minimum 6 years) agricultural holding or forestry enterprise where the proposal is necessary for the efficient operation of the holding or enterprise. New buildings must be sited beside existing farm or forestry buildings on the holding or enterprise. An alternative site away from existing buildings will only being acceptable in exceptional circumstances. Policy CTY 1 of PPS 21 identifies a range of types of development that are, in principle, considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is an agricultural shed in accordance with Policy CTY12.

### Major Development

The proposal constitutes Major development in accordance with The Planning (Development management) Regulations (Northern Ireland) 2015 in terms of criteria 1 -EIA Development and criteria 9 All other development.

A Proposal of Application Notice (PAN) was submitted (LA07/2018/0008/PAN). The mandatory public consultation required under section 27 of The Planning Act (Northern Ireland) 2011 was held on Tuesday 30<sup>th</sup> January 2018 and Tuesday 20<sup>th</sup> February 2018 at Seaforde Young Farmers hall, Newcastle Road, Seaforde. Notification of said event appeared in the local papers as required.

A PACC (Pre-Application Community Consultation Report was submitted and is included in Annex 1 of the Environmental Statement.

### Environmental Impact Assessment

The application falls within Category 17 (a) of Schedule 1 of The Planning (EIA) Regulations (NI) 2017. Category 17 identifies that development will require an EIA where it comprises:  
*Installations for the intensive rearing of poultry or pigs with more than*

*(a) 85,000 places for broilers or 60,000 places for hens;*

An Environmental Statement was submitted and accompanied the Planning application.

### Description of the Proposal

The application proposes two additional poultry houses designed for rearing chickens for meat production, with a maximum capacity of 37,000 birds per house (74,000 total) raising the overall site capacity to a maximum of 148,000 broilers. The proposal also includes other ancillary development namely 3 feed bins and two gas tanks.

### PPS 21 – Sustainable development in the Countryside

With regard to non-residential development, CTY 1 states that planning permission will be granted in the countryside in nine instances, one of which is agricultural development in accordance with PPS 21 policy CTY 12. The latter indicates that planning permission will be granted for development on an active and established agricultural holding where it is



demonstrated that it complies with stated criteria. Paragraph 5.56 of PPS 21 advises that “for the purposes of this policy (i.e. CTY 12) the determining criteria for an active and established business will be that set out under policy CTY 10”. Criterion (a) of CTY 10 refers to a farm business being currently active and having been established for at least 6 years. The amplification text states that an applicant will be required to provide a DARD business ID number along with other evidence to prove active farming. CTY 12 refers to development on an active and established holding. The Justification and Amplification section states that for the purposes of this policy the determining criteria for an active and established business will be that set out under Policy CTY10. Policies CTY 13 and CTY 14 will also be considered.

Policy CTY10 advises that

-the farm business is currently active and has been established for at least 6 years;

The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.

Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that a number of criteria are met:

- (a) it is necessary for the efficient use of the agricultural holding or forestry enterprise;
- (b) in terms of character and scale it is appropriate to its location;
- (c) it visually integrates into the local landscape and additional landscaping is provided as necessary;
- (d) it will not have an adverse impact on the natural or built heritage; and
- (e) it will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.

In cases where a new building is proposed applicants will also need to provide sufficient information to confirm all of the following:

- there are no suitable existing buildings on the holding or enterprise that can be used;
- the design and materials to be used are sympathetic to the locality and adjacent buildings; and
- the proposal is sited beside existing farm or forestry buildings.

This is an established poultry farm with two existing houses currently active and operational to the east of the proposal. The applicant states that there are no suitable existing buildings on the applicants holding. Moy Park are unable to utilise existing agricultural buildings to house broiler chickens. This is because no general purpose agricultural shed or livestock shed would be built to the specifications insisted upon for efficient, climate controlled and cost effective poultry production.

The proposal seeks to introduce two new houses within the established Moy Park poultry farm and is considered necessary in order to facilitate additional bird capacity on-site as part of the wider Moy Park expansion programme.

a) It is necessary for the efficient use of the agricultural holding.

Details of this farm business accompany this application including form P1C which has details of the farm business number and maps to accompany the farm business. DARD (Now DAERA) has confirmed that the business is active and has been established for at least 6 years. This is an established poultry farm with two existing houses currently active and operational to the east of the proposal. Therefore the applicant has an active and established farm business. In terms of expansion of the business it is accepted that it is necessary for the efficient use of the agricultural holding.

b) It is appropriate to the location in terms of character and scale.

The proposal is for two proposed poultry sheds to house up to 37,000 birds per house. The poultry houses are to be located immediately adjacent and to the west of the two existing poultry houses, using the existing access from Seaforde Road. The buildings measure approx. 85.8m x 20.7m with a ridge height of 5.7m. The roof and walls comprise of green box profile metal sheeting, matching the existing houses at the site. The materials and finishes are sympathetic to the rural area. The prevalence of these types of poultry sheds in the rural is becoming more and more widespread, and it would not be unusual to find this type of building in the rural area.

c) It visually integrates into the local landscape and additional landscaping is provided as necessary.

The proposal will have a greater visual impact on the landscape. However, given the low profile nature of these buildings, it is considered that the form of, and finishes to, the building are not out of keeping or incongruous in the rural area. The proposal is sited to cluster with the existing adjacent poultry houses to the east. The site is well screened from the surrounding road network including Kennel Road and Seaforde Road. The area of woodland planting and the intervening topography, combined with its set back from the road and the fact that these types of buildings are now typical in the rural area will ensure that it integrates into the landscape.

d) It will not have an adverse impact on the natural or built heritage:

The application site is within 7.5 km of Murlough ASSI/SAC, Corbally ASSI (part of Lecale Fens SAC), Hollymount ASSI/SAC, Ballykilbeg ASSI/SAC, Ballybannan ASSI, Black Lough (Down) ASSI and Woodgrange ASSI (hereafter referred to as the designated sites) which are of international and national importance and are protected by Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) and The Environment (Northern Ireland) Order 2002.

Natural Environment Division and Shared Environmental Services have been consulted regarding the proposal. NED objects to the proposal as it likely to have an adverse impact on the conservation objectives of the designated sites. PPS 2 is therefore considered.

*NIEA's Position on Nitrogen Emissions*

Reducing ammonia emissions across Northern Ireland is a key Departmental priority, however, there are significant challenges for the Department in permitting agricultural expansion in areas where the Critical Loads and Levels are currently exceeded.

NIEA NED has considered the potential impacts of the proposal on the designated site in terms of Alteration of vegetation community structure within designated sites due to the release of nitrogen emissions. This can negatively impact habitat and supporting species of designated sites.

In line with DAERA's current operational protocol, NED will only accept an additional loading capacity of 10% of the Critical Level for designated sites that are located within 7.5km of the proposal. This includes potential incombination impacts of other installations that could contribute nitrogen emissions. The applicant has submitted an Air Quality Impact Assessment (dated, February 2019). Table 15 details the modelled ammonia concentration, i.e. the Process Contribution (PC), from the proposal at the following designated sites which are within 7.5km of the proposal; Murlough SAC/ASSI, Corbally ASSI (part of Lecale Fens SAC), Hollymount SAC/ASSI, Ballykilbeg SAC/ASSI, Ballybannan ASSI, Black Lough (Down) ASSI, Woodgrange ASSI. For each of these sites the Process Contribution has been calculated as <1% of the Critical Level. This is in line with DAERA's operational protocol. However, NED note within Table 14 of the previous AQIA (dated, 9th June 2017), which was based on 4 sheds, the figures presented appear to be double the Highest PC for some sites, while slightly over double for other sites. Murlough SAC/ASSI was 0.020µg/m<sup>3</sup> in the 2017 AQIA and 0.009µg/m<sup>3</sup> in the 2019 AQIA. It can be assumed that modelling half as many sheds, as detailed within the most recent AQIA, would lead to PCs being halved. Therefore, a figure of 0.010µg/m<sup>3</sup> would be the likely PC for the critical level of Murlough SAC/ASSI. When this is combined with the PC of other agricultural facilities within a 7.5km radius of Murlough ASSI/SAC the total PC is above the additional loading threshold of 10%.

NED has serious nature conservation concerns with this proposal and advises that it may be contrary to Planning Policy Statement 2: Natural Heritage, Policy NH 1, in that development would, if permitted, have the potential to have an unacceptable adverse impact on the conservation objectives of the designated sites. NED also has serious nature conservation concerns with this proposal as it is contrary to Planning Policy Statement 2: Natural Heritage, Policy NH 3, in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites. The applicant should be made aware that Murlough ASSI/SAC, which is located within 7.5km of the proposed development, has reached environmental capacity for nitrogen emissions.

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

SES notes NIEA Natural Environment Division's (NED) concerns regarding the veracity of the AQIA (15 August 2019) and consequently its advice to the Council that the proposal is likely to have an adverse impact on the conservation objectives of Murlough ASSI/SAC.

Council is advised that it is not possible to ascertain beyond reasonable scientific doubt that the proposal will not have lasting adverse effects on the integrity of Ballykilbeg SAC,

Hollymount SAC and Murlough SAC in light of the conservation objectives for the sites. Additionally, it is not possible to ascertain the absence of adverse effects on Lecale Fens SAC in light of NEDs AQIA concerns.

NIEA also stated that they had considered the objection letters. NEDs response remained the same as that issued on the 6<sup>th</sup> July 2018 and therefore still objects to the proposal as it currently stands.

Thus as the proposal stands it is contrary to Planning Policy Statement 21 Policy CTY 12 (d). The proposal would also be contrary to PPS 2: Natural Heritage, Policies NH1 and NH3, in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites.

e) It will not result in a detrimental impact on the amenity of residential dwellings outside the holding.

The key environmental issues associated with the operation of poultry farms are (a) the potential impacts of emissions (odour, dust, ammonia) on sensitive receptors and (b) utilisation of manures.

Litter utilisation: Sustainable utilisation of litter is a critical environmental aspect of the operation of the farm, particularly since the cumulative impact of poultry litter generated by this and other proposals may be significant. The applicant has submitted an additional document "Litter Utilisation Information", uploaded 10/05/2018, which states that the litter produced on this installation will be exported for landspreading in RoI, combustion for energy production and disposal via anaerobic digestion. This litter will be utilised according to the Moy Park's updated Litter Utilisation Strategy. No specific details were presented as to where this poultry litter would be exported to.

Air quality impacts: The applicant has submitted an "Air Quality Impact Assessment" dated 9<sup>th</sup> June 2017. This report indicates that the impacts of emissions of odour and ammonia on sensitive receptors (i.e. third party dwellings) are likely to be acceptable. It is noted that the dwelling at 16 Kennel Road has not been included in the assessment. However, air quality impacts at this location are unlikely to differ significantly from those predicted at its immediate neighbour (14 Kennel Road), which is included in the assessment.

Informative Should planning permission be granted, the Inspectorate recommends that the following informative is attached to the approval notice: "The applicant will be required to obtain a Pollution Prevention and Control (PPC) permit variation prior to first operating the expanded installation."

Environmental Health were also consulted as part of the planning process. They state that The Northern Ireland Environment Agency (NIEA) are responsible for permitting this process under the current Pollution Prevention and Control (PPC) regime; therefore conditions for the control of odour and noise should be contained within any such permit granted by the NIEA.

On this basis it is deemed that the proposal will not result in a detrimental impact on the amenity of residential dwellings outside the holding.



## **PPS 21 - CTY 13 - Policy CTY 13 – Integration and Design of Buildings in the Countryside**

Policy CTY 13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of appropriate design.

A new building will be unacceptable where:

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

As mentioned previously the proposal is sited to cluster with the existing adjacent poultry houses to the east. The site is well screened from the surrounding road network including Kennel Road and Seaforde Road. The area of woodland planting and the intervening topography, combined with its set back from the road and the fact that these types of buildings are now typical in the rural area will ensure that it integrates into the landscape.

## **PPS 21 - CTY 14 – Rural Character**

Policy CTY 14 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. A new building will be unacceptable where:

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

The site is an established poultry business, it is deemed that the addition of these two further poultry sheds and ancillary works would not cause unacceptable damage to the rural character of the area.

## **PPS 2 : Natural Heritage**

### **Policy NH 1 – European and Ramsar Sites – International**

This policy states that planning permission will only be granted for a development proposal that either individually or in combination with existing and / or proposed plans or projects, is likely to have a significant effect on:



- a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
- listed or proposed Ramsar Site

Similarly Policy NH 3 states that planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to the habitat network, or special interest of:

- an Area of Special Scientific Interest;
- a Nature Reserve;
- a National Nature Reserve; or
- a Marine Nature Reserve

A development proposal which could adversely affect a site of national importance may only be permitted where the benefits of the proposed development clearly outweigh the value of the site.

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

SES concerns with the proposal have been documented earlier in the report.

Thus as the proposal stands it is contrary to Planning Policy Statement 2: Natural Heritage, Policy NH1 and 3, in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites.

### **PPS 3 : Access, Movement and Parking**

PPS 3 sets out matters pertaining to roads to be considered in determining a planning application. PPS 3 states that the potential impacts that a development may have on the efficiency of the public road network or on road safety is an important material consideration.

The proposal is already served by an existing access onto the minor Seaforde Road, therefore policy AM 2 is applicable which states that planning permission will only be granted for a development involving direct access, or the intensification of the use of an existing access onto a public road where:

- (A) Such access will not prejudice road safety or significantly inconvenient the flow of traffic;

Following consultation with Transport NI, it is considered the access complies satisfactorily with the criteria above.

## Revised PPS 15 – Planning and Flood Risk

The applicant submitted a Drainage Assessment to demonstrate that the proposed development is not predicted to be subject to pluvial flooding and to examine the potential to safely discharge surface water from the proposed site without increasing the risk of flooding within the site or elsewhere. In assessment of the proposal and the submitted Drainage Assessment a consultation was carried out with Rivers Agency, who have advised the Planning Authority that there are no issues relating to FLD 1 and 3.

### Summary

Taking into account all material considerations including the objections and the consultee responses and having considered all relevant planning policy the application is contrary to policy for the reason stated below.

### Recommendation

Refusal

**This refusal notice relates to the following plans: 01, 03, 04**

### Refusal reasons:

1. The proposal is contrary to Strategic Planning Policy Statement 2015 (SPPS) and Policies NH 1 and 3 of Policy Statement 2: Natural Heritage, in that development would, if permitted, have an unacceptable adverse impact on the conservation objectives of the designated sites.
2. The proposal is contrary to Strategic Planning Policy Statement 2015 (SPPS) and PPS 21 Policy CTY 12 (d) in that it has not been demonstrated that the proposal will not have an adverse impact on the natural or built heritage.

Case Officer *C Moane*

Date 01/07/2020

Appointed Officer *McAlarney*

Date 01 July 2020



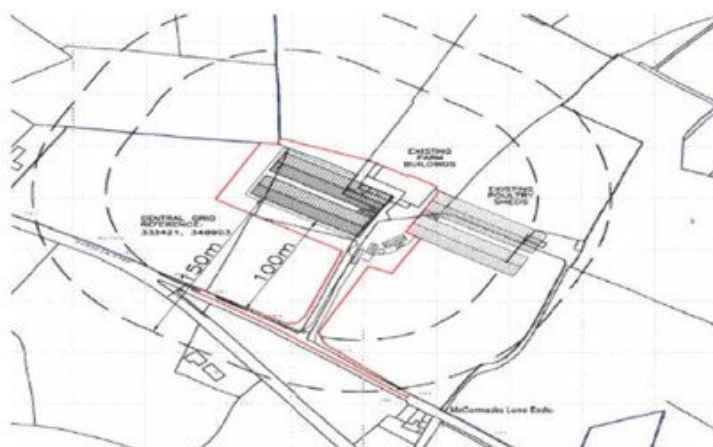
**Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin**  
**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2019/0953/F

**Date Received:** 14th June 2019

**Proposal:** Proposed 2no Broiler Poultry Sheds to replace 2no Existing Poultry Sheds (to contain 74,000 broilers, taking the total farm capacity to 148,000 broilers) with 4no feed bins, 2no gas tanks, 1no underground wash tank and retention of weighbridge, biomass boiler shed and associated pellet bins, water tank, site office, access and associated site works

**Location:** Lands at 123 Magherahamlet Road Ballynahinch



**Site Characteristics & Area Characteristics:**

The site is comprised of a 1.37 hectare portion of land, which is currently occupied by a derelict dwelling and associated out buildings. The site is immediately adjacent the existing poultry sheds to the east of the site. The site is accessed directly from Magherahamlet Road via an existing and improved laneway.



The site and the land immediately surrounding it is relatively flat. The boundaries of the site are defined by mature trees and hedges

The topography of the surrounding area is typically flat agricultural land, there are, however, a number of detached single dwellings and farm holdings dispersed throughout the area.

### **Site History:**

Q/2009/0328/O - 123 Magherahamlet Road, Dunbeg Upper, Ballynahinch - Site for replacement dwelling and garage - PERMISSION GRANTED 20.11.2009

Q/2010/0042/F - Adjacent to 123 Magherahamlet Road, Ballynahinch - Erection of farm dwelling and garage - PERMISSION GRANTED 20.04.2010

LA07/2016/0699/F - Land at 123 Magherahamlet Road, Ballynahinch - Proposed 2no broiler poultry sheds with 4no feed bins, 2no gas tanks, office and changing building (to contain in total 74,000 broilers) PERMISSION GRANTED - 28.04.2017

LA07/2017/0821/O - 123 Magherahamlet Road, Moneynabane, Ballynahinch, Co Down, BT25 2JS to location adjacent and east of 196 Dundrum Road, Moneynabane, Dromara - Proposed off site replacement dwelling and garage – Pending

LA07/2018/1309/PAN - Lands at 123 Magherahamlet Road, Ballynahinch, - Proposed 2no broiler sheds to replace two existing poultry sheds (to contain 74,00 birds taking the total farm capacity to 148,000 birds) with 4no feed bins 2no gas tanks, 1no underground wash tank and retention of weighbridge, biomass boiler house and associated pellet, water tank, site office access and associated site works

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

I have assessed the proposal against the following relevant policies:

- Regional Development Strategy (RDS)
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- The Banbridge, Newry and Mourne Area Plan 2015
- Planning Policy Statement 2 – Natural Heritage
- Planning Policy Statement 3 – Access Movement and Parking
- Planning Policy Statement 15 – Planning and Flood Risk
- Planning Policy Statement 21 – Sustainable Development in the Countryside

BNMAP 2015 – the site is located within the rural area outside any defined settlement area.

### **Consultations:**

It was considered necessary in the assessment of the proposal to consult with Environmental Health, Northern Ireland Water, DAERA, Rivers, NIEA, SES, DfI Roads from which no objections have been received.



## Objections & Representations

A number of objections have been received regarding the proposal and a brief summary of the issues raised is provided below.

The owner / occupier of 94 Magherahamlet Road objects to the proposal on the grounds that the proposal combined with that existing is excessive and questions its sustainability. In addition, concerns are also raised regarding animal welfare, air pollution, noise and general disruption to the area and its residents.

Anonymous objection has raised concerns about offensive odour from the existing sheds and the potential for this to increase with the approval of two more sheds.

Anonymous objection has raised concerns about the appearance of the existing sheds in the landscape, along with issues regarding nuisance of smell, noise and light pollution.

Anonymous – objects to the proposal on the grounds of odour, noise and light pollution, lack of integration and impact on the environment.

Cllr Patrick Brown objects to the proposal on the grounds that it is unsuitable for the area, and would increase the adverse effects currently impacting residents of the area i.e. odour, noise and light pollution.

Jim Wells MLA – raises issues regarding the scale of the development and its potential impact on traffic progression along this rural road, and on the countryside.

Friends of the Earth raise concerns about the cumulative impact of the proposal given its proximity immediately adjacent an existing facility. In addition, they are concerned about the impact of ammonia emissions.

## Consideration and Assessment:

Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6 (4) states that the determination must be made in accordance with the Plan unless material considerations indicate otherwise.

### SPPS

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

The SPPS states in relation to Agriculture and Forestry development provision should be made for development on an active and established (for a minimum 6 years) agricultural holding or forestry enterprise where the proposal is necessary for the efficient operation of the holding or enterprise. New buildings must be sited beside existing farm or forestry buildings on the holding or enterprise. An alternative site away from existing buildings will only being acceptable in exceptional circumstances. Policy CTY 1 of PPS 21 identifies a range of types of development that are, in principle, considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of these is an agricultural shed in accordance with Policy CTY12.

### Major Development

The proposal constitutes Major development in accordance with The Planning (Development management) Regulations (Northern Ireland) 2015 in terms of criteria 1 -EIA Development and criteria 9 All other development.

A Proposal of Application Notice (PAN) was submitted LA07/2018/1309/PAN. The mandatory public consultation required under section 27 of The Planning Act (Northern Ireland) 2011 was held on Tuesday 18th October 2018 at Spa Golf Club Grove Road Ballynahinch. Notification of said event appeared in the local papers as required.

A PACC (Pre-Application Community Consultation Report) was submitted and is included in Appendix 1 of the Environmental Statement.

### Environmental Impact Assessment

The application falls within Category 17 (a) of Schedule 1 of The Planning (EIA) Regulations (NI) 2017. Category 17 identifies that development will require an EIA where it comprises:

Installations for the intensive rearing of poultry or pigs with more than

- (a) 85,000 places for broilers or 60,000 places for hens;

An Environmental Statement was submitted and accompanied the Planning application.

### Description of the Proposal

The proposal seeks full planning permission for the erection of Proposed 2no Broiler Poultry Sheds to replace 2no Existing Poultry Sheds (to contain 74,000 broilers, taking the total farm capacity to 148,000 broilers) with 4no feed bins, 2no gas tanks, 1no underground wash tank and retention of weighbridge.

### PPS 21 – Sustainable development in the Countryside

With regard to non-residential development, CTY 1 states that planning permission will be granted in the countryside in nine instances, one of which is agricultural development in accordance with PPS 21 policy CTY 12.

CTY 12 indicates that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that it complies with stated criteria. Paragraph 5.56 of PPS 21 advises that “for the purposes of this policy (i.e. CTY 12) the determining criteria for an active and established business will be that set out under policy CTY 10”.

Criterion (a) of CTY 10 refers to a farm business being currently active and having been established for at least 6 years. The amplification text states that an applicant will be required to provide a DARD business ID number along with other evidence to prove active farming.

CTY 12 refers to development on an active and established holding. The Justification and Amplification section states that for the purposes of this policy the determining criteria for an active and established business will be that set out under Policy CTY10. Policies CTY 13 and CTY 14 will also be considered.

Policy CTY10 advises that

-the farm business is currently active and has been established for at least 6 years;

The applicant will therefore be required to provide the farm's DARD business ID number along with other evidence to prove active farming over the required period.

### CTY 12

Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural or forestry holding where it meets the list criteria. It is therefore necessary for the farm holding to be active and established as set out in Policy CTY 10. In this case it is noted that the applicants farm is active and established and therefore complies with the initial criterion.

Proposals are also expected to demonstrate that

- (a) It is necessary for the efficient use of the agricultural holding or forestry enterprise
- (b) In terms of character and scale it is appropriate to its location
- (c) It visually integrates into the local landscape and additional landscaping is provided as necessary
- (d) It will not have an adverse impact on the natural or built heritage; and
- (e) It will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.

In assessment of the criterion

- (a) It is necessary for the efficient use of the agricultural holding or forestry enterprise

It is noted that the applicant considers the buildings are necessary for the efficient use of the holding as there are no suitable buildings on the farm that can be used. The applicant (Mr Colin Kane) considers the proposal to be in line with the "Going for Growth" strategic plan prepared by the NI Agri- Food Strategy Board and Moy Park Farm Expansion programme.

The new buildings are required to meet the requirements of Moy Park, who insist upon efficient, climate-controlled buildings for cost effective poultry production. The proposal seeks to create two new houses within this established Moy Park poultry farm, run by the applicant and is considered necessary in order to facilitate additional bird capacity on site as part of the wide Moy park expansion programmed.

- (b) In terms of character and scale it is appropriate to its location

In consideration of the character, siting, scale and design of the proposed dwellings, it is noted that the buildings are purpose built and therefore the character and scale are appropriate for the nature of the development. They are noted to be 20m x 85m (1700sqm) in size and are therefore substantial buildings. They are noted to have low elevation with a maximum ridge height of 5.6m and will be finished with juniper green cladding with smooth render blockwork base.

- (c) It visually integrates into the local landscape and additional landscaping is provided as necessary

The buildings will be positioned immediately west of the existing sheds which are of similar size and design. The buildings are to be positioned on relatively flat land, approximately 100m from the public road behind a mature boundary. It is considered given all of the above and in light of that already existing that, while the buildings are substantial, their low elevation,

position from the road and design allow them to integrate into the surrounding landscape satisfactorily.

(d) It will not have an adverse impact on the natural or built heritage

The site is not affected, nor does it impact on any built heritage within the area.

In terms of the assessment of natural heritage interests and potential problems arising from noise, smell and pollution, the application was considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) by Shared Environmental Service on behalf of Newry, Mourne and Down District Council.

Having considered the nature, scale, timing, duration and location of the project SES have concluded that the proposal will not have an adverse effect on site integrity of any European site.

They note in their assessment of the proposal in its construction phase, that there is no pathway to any designated site. The nearest mapped open watercourse is approx. 170 m to the south with another the same distance to the north east.

In assessment of the proposal when operating, SES note that there is no pathway to any designated site either from the poultry houses or from litter disposal which is to Tully Biogas Plant. The nearest international site is Murlough SAC at 12.7 km. This is significantly beyond the NIEA advised distance for consideration of nitrogen deposition. Litter will be exported to Tully Biogas Plant.

In assessment of designated site, NIEA NED advised the Planning Authority that the application site is within 7.5km of Black Lough (Down) ASSI, Ardglass ASSI & Slieve Croob ASSI which are of national importance and are protected by The Environment (NI) Order 2002.

NED is content that the proposal, as described is in line with DAERA's operational protocol on nitrogen emissions

(e) It will not result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.

As noted above, several objections have been received regarding this proposal. Neighbouring residents are concerned about the potential problems arising from noise, smell and pollution.

The key environmental issues associated with the operation of poultry farms are

(a) the potential impacts of emissions (odour, dust, ammonia) on sensitive receptors and

(b) utilisation of manures.

#### Litter utilisation:

Sustainable utilisation of litter is a critical environmental aspect of the operation of the farm, particularly since the cumulative impact of poultry litter generated by this and other proposals may be significant. The applicant has submitted an additional document "Litter Utilisation Information", dated 13<sup>th</sup> June 2019, which states that the litter produced on this installation will be exported for land-spreading in RoI, combustion for energy production and disposal via anaerobic digestion. This litter will be utilised according to the Moy Park's Litter Utilisation Strategy. The litter from this farm will be utilised through Tully Biogas plant in Ballymena.

#### Air quality impacts:



The applicant has submitted an "Air Quality Impact Assessment" dated 11<sup>th</sup> November 2019. This report concludes that the odour, ammonia, dust and bioaerosol emissions produced from the proposal would be within the appropriate limit levels and should not be considered negative determining factors in assessment of the proposal and that any areas of ecological interest will not be adversely affected by the proposal.

In assessment of these reports and indeed all the supporting information, the Planning Authority carried out consultations with various bodies to inform the decision-making process.

It is noted that

NIEA Land, Soil and Air confirm that a PPC Permit was issued to the applicant in April 2018 permitting the rearing of 148,000 poultry in 4 houses

NIEA Natural Environment Division have considered the impact of the proposal on the designated site and on the basis of the information provided confirmed that the proposal is in line with DAERA's operational protocol on nitrogen emissions

Environmental Health were also consulted as part of the planning process. They state that The Northern Ireland Environment Agency (NIEA) are responsible for permitting this process under the current Pollution Prevention and Control (PPC) regime; therefore conditions for the control of odour and noise should be contained within any such permit granted by the NIEA.

Environmental Health also considered the proposed lighting and advised provided only that proposed for installation as stated in 3.10, page 17 of the Environmental Statement (single low-wattage light fitting on the gable of each shed) they would have no objections.

On this basis it is deemed that the proposal will not result in a detrimental impact on the amenity of residential dwellings outside the holding.

CTY 12 continues that in cases where a new building is proposed applicants will also need to provide sufficient information to confirm all of the following

- There are no suitable existing buildings on the holding or enterprise that can be used
- The design and materials to be used are sympathetic to the locality and adjacent buildings; and
- The proposal is sited beside existing farm or forestry buildings.

In assessment of these criterion, the applicant has advised that there are no suitable buildings on the existing farm which can be used. It is considered that the design and materials of the proposal are considered to be acceptable, typical of its use and are to be located beside existing buildings on the farm.

In conclusion, therefore, it is considered that the proposal is necessary for efficiency of the farm business, the siting of the buildings is satisfactory, and their development would not result to demonstrable harm to interests of acknowledged importance.

It is considered therefore that the proposal complies satisfactorily with the requirements of CTY 12.

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

Policy CTY 13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of appropriate design.

A new building will be unacceptable where:

- (a) it is a prominent feature in the landscape; or

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

As mentioned previously above the proposed buildings are typical of agricultural buildings in the rural area. They will be sited to cluster with the existing adjacent poultry houses to the east. The site is set back from the public road and well screened by mature vegetation. It is considered therefore that the proposal complies satisfactorily with CTY 13.

#### PPS 21 - CTY 14 – Rural Character

Policy CTY 14 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. A new building will be unacceptable where:

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

The site is an established poultry business, it is deemed that the addition of these two further poultry sheds and ancillary works would not cause unacceptable damage to the rural character of the area.

#### PPS 2: Natural Heritage

##### Policy NH 1 – European and Ramsar Sites – International

This policy states that planning permission will only be granted for a development proposal that either individually or in combination with existing and / or proposed plans or projects, is not likely to have a significant effect on:

- A European site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
- A listed or proposed Ramsar Site.

Likewise, policy NH3 – Sites of Nature Conservation Importance – National states that planning permission will only be granted for a development proposal that is not likely to have an adverse effect on the integrity, including the value of the site to the habitat network, or special interest of

- An area of Special Scientific Interest (ASSI);
- A Nature Reserve;
- A National Nature Reserve; or
- A Marine Nature Reserve

As indicated above the Planning Authority has sought advice from SES and NIEA with regard to assessment of the designations which impact the site and it has been concluded by both bodies that the proposal will not have a detrimental impact on the relevant designated sites listed above.

#### PPS 3: Access, Movement and Parking

PPS 3 sets out matters pertaining to roads to be considered in determining a planning application. PPS 3 states that the potential impacts that a development may have on the efficiency of the public road network or on road safety is an important material consideration.

The site is located along the minor Magherahamlet Road therefore, Policy AMP 2 is applicable which states that planning permission will only be granted for a development involving direct access, or the intensification of the use of an existing access onto a public road where :

- (A) Such access will not prejudice road safety or significantly inconvenient the flow of traffic;

Following a consultation with Transport NI, it is considered that the proposed access complies satisfactorily with the criteria above

#### PPS 15: Planning and Flood Risk

In assessment of drainage and flood risk a consultation was carried out with DfI Rivers, who have advised the Planning Authority that there are no issues relating to FLD 1, 2, 4 or 5. In an assessment of a Drainage Assessment produced by Flood Risk Consulting date April 2019, DfI Rivers accept its logic and have no reason to disagree with its conclusions – FLD 3 has therefore been complied with.

### **Summary**

Having assessed the proposal against the various planning policies and material considerations which apply to the application and taking into account the input of the Councils consultees, it is determined that the proposal is acceptable in planning terms.

### **Supporting Information**

The following supporting documents were considered as part of this proposal

Forms P1, P1c, P1A, Farm Maps, Drainage Assessment, Transport Assessment, Farm Management Plan, Moy Park Broiler House Expansion Plan, Litter Utilisation Info, Environmental Statement and non-technical supplement, Air Quality Impact Assessment

### **Drawings**

The Drawings considered as part of this assessment are as follows

18101-01, 18101-03, 18101-04 & 18101-05

## Recommendation

Approval

### Conditions:

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

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

2. The development hereby permitted shall take place in strict accordance with the following approved plans 18101-01, 18101-03, 18101-04 and 18101-05

Reason: To define the planning permission and for the avoidance of doubt.

3. The maximum number of chickens within the proposed facilities shall not exceed 37,000 broilers per house.

Reason: In order to control the number of chickens at this facility

4. A suitable buffer of 10 metres shall be maintained between the location of all construction works including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc and the swale/any watercourses within the application site.

Reason: To protect the integrity of designated sites.

5. All contaminated run-off (from the facility and concrete apron) shall be directed to an appropriate collection tank, with no overflow or outlet to any waterway or soakaway.

Reason: To protect the integrity of designated sites.

6. All litter from the proposed facility shall be utilised as detailed within the Moy Park Litter Utilisation Strategy (date stamped, 13.06.2019).

Reason: To ensure an orderly use / disposal of the litter.

7. The poultry sheds shall be fitted on each gable end with a single low-wattage light fitting. All external lighting will be downward facing and protected with a cowl to reduce light spill as detailed in paragraph 3.10 on page 17 of the Environmental Statement accompanying this application.

There shall be no use of high intensity security lighting or external lighting outside of normal working hours.

Reason: To protect the amenity of the neighbouring residents

8. The existing natural screenings of the site, as shown on 18101-03 shall be retained unless necessary to prevent danger to the public in which case a full explanation along with a scheme for compensatory planting shall be submitted to and agreed in writing with the Council, prior to removal.

Reason: To safeguard the amenities of neighbouring occupiers and in the interests of visual amenity and to ensure that the proposed development does not prejudice the appearance of the locality.

9. The newly created boundary to the NW of the site shall be defined by native trees and shrubs of mixed woodland species along the inside of a timber and wire boundary fence. The new boundary planting shall be allowed to grow on to a minimum height of



2m and retained thereafter. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.

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

Case Officer: Claire Cooney

Date: 08.07.2020

Authorised Officer:

Date:

Submission received from Mary McCann – LA07/2019/0953/F

Living directly opposite and 130m from the two existing poultry houses whilst they have operated for the last two years has been an ongoing nightmare. Should this site be allowed to double in size and be located even closer to my property will only make living in my home totally unbearable.

I can only anticipate as bad as the current impacts of the two existing sheds are, the effects are only going to be twice as bad with two additional sheds. When the smell currently effects my home on average 2 days a week, two additional sheds will increase this to 4 days a week.

The existing poultry sheds produce ongoing significant adverse impacts that directly impacts upon my family's ability to enjoy our home.

**Prolonged offensive odour** – as the nearest property the smell effects my home the most. The farm operator does not live onsite and the site is unmanned most of the time. Therefore, no one more than me is fully aware of and experiences the full extent of the very significant offensive smell that comes from this site. How am I meant to measure the extent of the smell? When smell issues are raised with NIEA it takes them days to come out to investigate and naturally the original smell that was reported has dispersed. The reality of the ongoing smell means my family are unable to open the windows, hang clothes on the washing line or enjoy our garden on a daily basis.

**Intensive Intrusive Lighting** – the use of several high intensity security lights at the site was originally raised in initial objections to this planning application. Furthermore a site visit would have easily identified the existence of these lights (1) the gable of the office building (2) on a green hayshed to the rear of the site (3) at the bottom of the lane of the site – all of which are directly in front my property and are not 'low wattage bulbs'. They luminate at all hours of the night and early morning shining through my windows.

**Noise nuisance during unsociable hours** – Lorries waiting 50m from my home to enter the site at 7am, chickens being taken from the site in multiple lorries and forklifts at 3-6am this process lasts for hours.

**Dust** – On a weekly basis the front windows and cars at my home are covered in a fine white dust that never occurred before these sheds were erected.

**Litter** – There are very concerning discrepancies relating to the disposal of litter from this site. The existing poultry sheds planning application LA07/2016/0699/F contained litter disposal information and this planning application LA07/2019/0953/F contains an Environmental Statement stating all the litter will be disposed of in the Republic of Ireland. Yet submissions to NIEA Integrated Pollution Prevention and Control (IPPC) permit P0536/16A for 2018 and 2019 states that the final destination of litter is 500 tonnes disposed of in Northern Ireland.

<https://apps.dera-ni.gov.uk/IPRI/docs/P0536-16A%20Colin%20%20Nathan%20Kane%202019%20Annual%20report%20%20PRTR.pdf>

It is of serious concern that officials assessing this planning application have not identified this significant contradiction.

In the past when I have made fully reasonable and legitimate complaints of smell and noise from the site to the Northern Ireland Environment Agency responsible for regulating the site I have been meet with a reluctance to meaningfully enforce the conditions of the PPC permit.

Furthermore, shortly before the current LA07/2019/0953/F planning application was submitted to the Council I received a solicitors letter from the operators of the site threatening legal action if I continued to raise complaints to the relevant authorities about my concerns with the site. I consider this as a deliberate attempt to intimidate me from raising concerns with the site. I have been left with no other option other than to put up with it.

Having experienced and lived with the significant adverse impacts from two poultry sheds, permitting two additional sheds in such close proximity to un-associated third-party dwellings where detrimental impacts are already causing a significant nuisance and demonstratable harm to the amenity of residents homes by way of odour, dirt, dust, noise and light pollution can only escalate the already significant existing impacts.

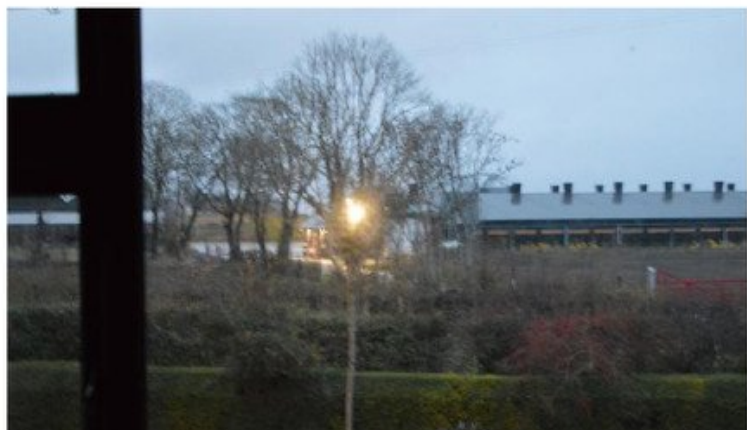
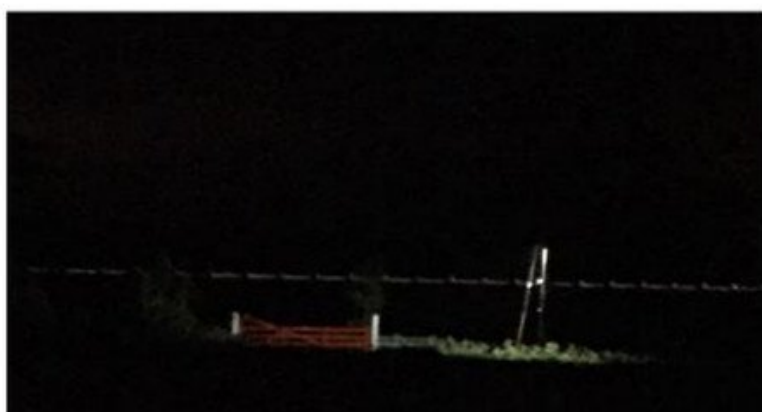
I would urge the Planning Committee members to please consider what it would be like living in these conditions day in day out and not being able to do anything about it other than put up with it.

Please be clear my issues are entirely with the significant impacts the sheds are causing to me, my family, and my home. These sheds should and could be located elsewhere in an area where the impacts are significantly less.

Please see below examples of the intrusive lighting form the site.



< Dromore - Dromara 30 May 01:20 Edit





**Councillor Patrick Brown**  
**Alliance Party of Northern Ireland**  
 5c Gaol Lane  
 Downpatrick  
 BT30 6BD  
 E-Mail: [patrick.brown@nmandd.org](mailto:patrick.brown@nmandd.org)  
 Tel: 07971783252



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

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## **Objection letter for LA07/2019/0953/F, 123 Magherahamlet Road**

1<sup>st</sup> July 2019

To Whom It May Concern:

I am writing to formally record my objection to the planning application listed above for 2 new broiler sheds at 123 Magherahamlet Road.

I initially objected to this application in 2016 with significant misgivings about the size of the development which was proposed to house over 140,000 broiler chickens and the negative impact this development would have on the surrounding area including through noise and air pollution. Unfortunately this development was granted planning permission subject to a number of conditions and it was also significantly reduced in size to accommodate the slaughter of 74,000 live animals.

It is clear that in applying for this new development on the same site the applicant is attempting to fulfil the scale of the initial planning application for 144,000 chickens. I stand totally opposed to this on a matter of principle as I believe it makes a mockery of the planning system in general. How can someone simply reduce the size of their initial application in order to be granted planning permission, only to re-apply for the full size a few years later when things have settled down?

Specifically this application is inappropriate under PPS21 Sustainable development in the countryside as the extent of the development would be unsuitable within the AONB and would increase (in fact, could double), the adverse impacts being experienced by local residents as a result of the existing development.

This includes but is not limited to:

- Noise pollution from large vehicles and farm machinery entering and exiting the site outside of social hours including past 10pm, causing significant disturbance to neighbours
- Light pollution from vehicles and lighting at the farm left on well into the night which shine right into local residents' homes
- Smell pollution from the chicken farm itself, which is easily carried on the wind and is quite evident as soon as you approach the boundary of the farm

In addition, I am of the understanding that the applicant has since planning permission was granted for his original development, been in breach of a number of conditions placed on them by the Planning Department, listed below. This allegedly includes under conditions:



@Paddy\_JBrown



[www.facebook.com/cllrpatrickbrown](https://www.facebook.com/cllrpatrickbrown)

Ag freastal ar an Dún  
 agus Ard Mhacha Theas  
 Serving Down  
 and South Armagh





4. Lack of a bat survey carried out. Having written previously to the Planning Department's enforcement office, I never received any confirmation that a bat survey was carried out 24 hours prior to demolition and submitted to the Department within 2 weeks.

And under informatives:

2. Disposal of poultry litter. There is photographic evidence that the applicant has not been disposing of poultry litter in the appropriate manner. Doing so would require the applicant to fully cover any vehicles containing litter leaving the premises. This has not been done on a number of occasions.

Given the clear concerns around development in the countryside, ongoing pollution and its negative impact on local residents and possible breach of planning conditions, I would ask that planners do not grant permission for this additional and unnecessary development on this site.

Best,  
Cllr. Patrick Brown  
Rowallane Ward – Alliance Party  
Newry, Mourne and Down District Council



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

**Application Reference:** LA07/2020/0377/F

**Date Received:** 26 February 2020

**Proposal:** Restoration and refurbishment of existing building for community use providing new meeting rooms, kitchen and universal toilets to both ground and first floor. Installation of photovoltaics to rear roof. Construction of new steel fire escape stair to rear. Change of use from Class C1 'Dwelling house' to Class D1 'Community Use'.

**Location:** The application site is located at 16 The Square, Rostrevor

**Site Characteristics & Area Characteristics:**

This site is located within the centre of Rostrevor Village on the main Square. The application site is part of a terrace and has frontage on to the Square and extends to the rear adjacent to an existing apartment block – Sangster's Court. The building is owned by the Council and used by the local community for the last number of years accommodating the Rostrevor Men's Shed project. The building is two storeys in height. To the rear of the building the external yard is used for growing vegetables and a storage container is located on eastern boundary. The building is of special architectural interest although it is not listed and contributes to the character of the Conservation Area.

The site is located within the development limits of Rostrevor, Rostrevor Conservation Area, Area of Archaeological Potential as defined on the Banbridge, Newry & Mourne Area Plan 2015 (BNMAP.) There are a number of Listed Buildings in the site vicinity on the opposite side of the Square to the south. Rostrevor Church to the east is also a designated Archaeological Site and Monument (DOW 054:010).

**Site History:**

LA07/2018/0754/PAD	Proposed demolition of No. 16 The Square and replacement in a new 2 storey GP Surgery with associated car parking to the rear.
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### **Planning Policies & Material Considerations:**

- The Regional Development Strategy (RDS) 2035
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015 (BNMAP)
- PPS3 – Access, Movement & Parking DOE Parking Standards
- PPS6 – Planning, Archaeology and the Built Heritage
- DCAN 15 – Vehicular Access Standards
- A Planning Strategy for Rural Northern Ireland (Policies DES2 & SP18)
- Living Places Urban Stewardship and Design Guide
- Rostrevor Conservation Area (DOE NI) 1979

### **Consultations:**

DFI Roads	At present the proposed car park to the front of the development is currently always utilised to the maximum, therefore the applicant will require to provide additional off street car parking in accordance with the current parking standards.
HED	No objection
NI Water (Strategic)	Generic response

### **Objections & Representations**

17 neighbours were notified on 4 May 2020. The application was advertised in the local press on 18 March 2020. No representations were received.

### **Consideration and Assessment:**

#### **Strategic Planning Policy Statement (SPPS) for Northern Ireland**

Community facilities in my opinion are a function of most villages across Northern Ireland. In terms of the principle the location is acceptable. The proposed change of use involves internal alterations for meeting rooms, kitchen, bathroom, photovoltaics to the rear roof and fire escape at the rear. Any changes externally are to the rear only and this is to provide a fire escape. There will be no external alterations to the front façade, therefore the building will retain its current appearance within the Conservation Area setting within The Square. The changes internally and externally can be easily re-adapted and dismantled should the use revert back to a dwelling in the future. I am of the opinion that the proposed use accords with the SPPS as considered above.

#### **Banbridge, Newry and Mourne Area Plan 2015**

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

settlement limit of Rostrevor, Rostrevor Conservation Area and Area of Archaeological Potential.

Policy ECU 1: Education, Health, Community and Cultural uses states that planning permission will be granted for these uses within the settlement development limits provided all the following are met:

- there is no significant detrimental effect on amenity or biodiversity;
- the proposal does not prejudice the comprehensive development of surrounding lands, particularly on zoned sites;
- the proposals are in keeping with the size and character of the settlement and its surroundings;
- where necessary, additional infrastructure is provided by the developer;
- there are satisfactory access, parking and sewage disposal arrangements.

I am satisfied the above criteria has been met, furthermore the plan states unforeseen demand for new community facilities may arise over the lifetime of the plan and accordingly a flexible approach is required in considering such development within the settlement limits in order to make the most effective use of existing facilities. In this instance I consider that the proposed change of use which involves mainly internal alterations for meeting rooms, kitchen, bathroom, photovoltaics to the rear roof and fire escape at the rear will cause no detriment to the surrounding context and will enhance the availability of community facilities in Rostrevor.

The building has been in use as a community facility housing the Rostrevor Men's shed project since 2012, evidence has been provided to support this and is available on the planning application file. Therefore this is outside any enforceable time period. The number of attendees visiting and using the building during this period at any one time are 12 people. There are no staff using the building as those using the facility open and close the building via a keypad access code. Presently the users of the site walk to the facility as it is people from Rostrevor Village using the building, this will not change. In terms of Parking Standards the proposal does not neatly fall into the community facilities noted however I would expect there to be at least 1 space per 3 people. This means there should be 4 spaces for the facility. There is no parking associated with the proposal however as mentioned these numbers have been using the building since 2012 which is not enforceable. There is a Council owned public car park immediately adjacent to the building to accommodate a small overflow. A bus stop is also nearby to assist users via public transport.

## **PPS 6 Planning Archaeology and the Built Heritage**

### *Policy BH11 Development affecting the setting of a listed building*

Historic Environment Division: Historic Buildings were consulted as the site is opposite a listed building Kilbroney Church. HED have considered the impacts of the



proposal on the listed building and advised that the proposal complies with the SPPS and PPS 6. In summary, I am content that the proposal accords with Policy BH11.

*Policy BH12 New Development in a Conservation Area*

The proposed development does not impact upon the character or appearance of area, there are no changes to the front elevation facing The Square, changes are to the rear and I am content these will not impact on the Conservation Area. The majority of changes are internal refurbishments and it allows the building to be brought back into use. The development will not result in environmental problems such as noise, nuisance or disturbance as outlined discussed above. In summary, I am content that the proposal accords with Policy BH 12 and the guidance set out in Rostrevor Conservation Area Guide.

*Policy BH 14 Demolition in a Conservation Area*

The areas of the building to be demolished includes internal walls on the ground and first floor to make way for internal room re-configuration. The slate and lead on sections of the roof are also to be removed and replaced. I consider these elements which are to facilitate the change of use are not contrary to the paragraphs 6.18 and 6.19 of the SPPS and BH 14 of PPS 6. The improvements and restoration of external finishes are welcomed. There is no need to condition a timescale between demolition and re-development as the areas to be demolished are not visible and they will not mar the conservation area.

**Recommendation:** Approval

**Conditions:**

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

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

The development hereby permitted shall take place in strict accordance with the following approved plans: 1827-PL-01, 1827-PL-02, 1827-PL-03, 1827-PL-04, 1827-PL-05, 1827-PL-06, 1827-PL-07, 1827-PL-08, 1827-PL-09, 1827-PL-10, 1827-PL-11, 1827-PL-12, 1827-PL-13, 1827-PL-14, 1827-PL-15, 1827-SU-104.

Reason: To define the planning permission and for the avoidance of doubt.

**Informative**

It is expected there will be no staff visiting the site and visitor numbers are limited to a maximum of 12 people.

**Case Officer Signature: C. McCoy**

**Date: 6 July 2020**

**Authorised Officer Signature:**

**M Keane**

**Date: 06-07-2020**



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

**Application Reference:** LA07/2020/0587/F

**Date Received:** 24/04/2020

**Proposal:** The proposed works involve some demolition works of internal walls with new build works to provide a new entrance lobby, toilet facilities and storage. There will be no change to the current usage as it will be used as a bowling pavilion and meeting room.

**Location:** Kilkeel Bowling Pavilion, Mourne Esplanade, Kilkeel, Co. Down, BT34 4DB

**Site Characteristics & Area Characteristics:**

The application site relates to Kilkeel Bowling Pavillion located within the settlement limit of Kilkeel. The existing building is single storey and the bowling green is located to the east of the building, the site is enclosed by palisade fencing. A car park is located to the main building and the site is also adjoined by a playpark and tennis courts. The site is zoned as a Major Area of Existing Open Space and is also within an Area of Outstanding Natural Beauty.



*Application Site*

### Planning Policies & Material Considerations:

This application will be assessed under the following policy considerations:

- Strategic Planning Policy Statement (SPPS)
- Banbridge, Newry and Mourne Area Plan (2015)
- Planning Policy Statement 8- Open Space, Sport and Outdoor Recreation

### Site History:

- **LA07/2015/0021/LDP-** Proposed location for 2 no Public Art/Interpretive pieces at site adjacent to Mourne Esplanade comprising of lands adjacent and North east of Nos 1-4 & 61 Manse Road as well as adjacent & south of No 31 Mourne Esplanade, Kilkeel BT34 4DB. Permitted development.
- **P/2013/0866/F-** Proposed amenity improvements to include change of use - existing kickabout area to become car park, existing seating area upgraded and adult fitness equipment provided, car park lining to existing car parks, perimeter fencing provided to existing playing field, removal of existing bollards and fencing provided to Mourne Esplanade Boundary, provision of site lighting, seating and bins and interpretation panels adjacent to Mourne Esplanade comprising of lands adjacent and north east of nos 1-4 and 61 Manse Road as well as adjacent and south of no 31 Mourne Esplanade, Kilkeel. Permission granted 25/04/2014.
- **P/2006/1943/F-** Environmental Improvements to include hard & soft landscaping and car parking at Mourne Esplanade, Kilkeel. Permission granted 15/01/2007.
- **P/1978/0984-** Erection of pavilion for bowling club at Mourne Esplanade, Kilkeel. Permission granted.
- **P/1975/1022-** proposed playing fields at Mourne Esplanade, Kilkeel. Permission granted

**Consultations:** No consultations were considered necessary.

### Objections & Representations:

One neighbour was notified of the application it was advertised in two local papers with a statutory expiry date was 10/06/2020. No objections or representations have been received.

### Assessment

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is the Banbridge, Newry and Mourne Area Plan 2015. The application site is located in the settlement development limit of Kilkeel on lands zoned as a major area of open space. The Area Plan states that These areas and any other areas of existing open space, sport and outdoor recreation are safeguarded under Policy OS 1 in PPS 8 - Open Space, Sport and Outdoor Recreation.

Policy OS1 of PPS8 states that development that would result in the loss of existing open space or land zoned for the provision of open space will not be permitted. An exception will be permitted



where it is clearly shown that redevelopment will bring substantial community benefits that decisively outweigh the loss of the open space.

The proposal is for a small scale extension to the existing building located at the bowling pavilion and will allow for the continued use of the site for outdoor activities. The existing bowling green will be unaltered and the extension will allow for a betterment of the facilities for the community. The proposal is considered to be in accordance with Policy OS1.

Policy ECU1 of the Area Plan is also applicable to this application. It states that planning permission will be granted for education, health, community and cultural uses within settlement development limits provided all the following criteria are met:

- there is no significant detrimental effect on amenity or biodiversity;
- the proposal does not prejudice the comprehensive development of surrounding lands, particularly on zoned sites;
- the proposals are in keeping with the size and character of the settlement and its surroundings;
- where necessary, additional infrastructure is provided by the developer;
- there are satisfactory access, parking and sewage disposal arrangements.

The proposal will have no impact on amenity or biodiversity and will have no impact on the zoning of the surrounding area (major area of existing open space). The extension is small scale and is in keeping with the size and character of the settlement. The existing car park and disposal arrangements are satisfactory and will remain unchanged.

**Recommendation:** Approval

**Conditions:**

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

Reason: As required by Section 61 of the Planning Act (Northern Ireland) 201

2. The development hereby permitted shall take place in strict accordance with the following approved plans: NM112-B-1-20, NM112-B-1-21, NM112-B-1-22.

Reason: To define the planning permission and for the avoidance of doubt.

**Informatives:**

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

<p><b>Case Officer Signature:</b> E.Hart</p> <p><b>Date:</b> 08/07/2020</p>
<p><b>Appointed Officer Signature:</b> M Keane</p> <p><b>Date:</b> 10-07-2020</p>

**TRACKING ACTION SHEET ARISING FROM PLANNING COMMITTEE MEETINGS**

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
		<b>PLANNING MEETING – 1 AUGUST 2018</b>			
LA07/2017/1261/0	Thomas Mageean – proposed dwelling and garage – site abutting 20 Junction Road, Saintfield	<b>Defer application to enable the Council's Legal Advisor to consider issues raised regarding ownership of the application site (Mr Thomas Mageean); the farm business in the name of Mr Bernard Mageean, who takes land in conacre from his brother and this farm business being altered by adding the applicant as an additional member of the business and in so doing have the applicants buildings at No. 20 Junction Road included within the farm business criterion © of CTY10</b>	Annette McAlarney	<b>Await legal advice.</b>	N
		<b>PLANNING MEETING – 29 AUGUST 2018</b>			
LA07/2017/0821/0	Mr C Kane - Proposed off site replacement dwelling and garage - 123 Magherahamlet Road, Moneynabane, Ballynahinch.	<b>Defer application for further discussion between agent/applicant and planning officers re: new information submitted and issues raised at the Planning Committee Meeting</b>	Annette McAlarney	<b>Issues raised at Planning Committee referred to the outcome of an application which has yet to be</b>	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
				submitted to planning. In line with Committee wishes we have to await the submission of this application and its conclusion before returning to consider the current deferred application. Contact made with agent re progress on potential new application which has yet to be submitted. Meeting to be convened. Agent advised on 19 March 2019 that the application for the 2no broiler houses was to be submitted within the next 3 weeks. No application has been received at time of update 29/04/2019.	



Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
				<b>No application submitted to date 04/06/2019</b>  <b>Application for poultry houses received LA07/2019/0953/F on 13/06/2019 Being processed.</b>	
		<b>PLANNING MEETING - 13 FEBRUARY 2019</b>			
LA07/2015/0149/F	Change of use of building to provide storage and distribution of fuel with alterations and new bulk fuel tank in yard – site between 54 and 58 Edenappa Road, Jonesborough	<b>Withdrawn by the Planning Department to allow further consultation to be completed</b>	A Davidson	<b>Remains under consideration</b>	N
		<b>PLANNING MEETING – 26 JUNE 2019</b>			
LA07/2018/0930/F	New build residential development of 1 No. apartment block consisting of 13 No. 3P2B apartments, 12 No. 2PIB apartments and 1 No.	<b>Defer for a site visit</b>	M Keane	<b>Site visit held – 08-07-2019 – application returned to July Committee Meeting – agreed to</b>	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
	2PIB wheelchair apartment (26 apartments in total) with 19 No. basement parking spaces 2.0 – 41 Belfast Road, Newry			<b>defer</b> for further discussions between applicant/planning officers to see if an acceptable proposal can be agreed and decision making powers be delegated to Planning Officers Amended plans now received for reconsultation, NN and reconsideration.  <b>Negotiations ongoing with applicant to resolve TNI concerns.</b>	
		<b>PLANNING COMMITTEE MEETING – 24 JULY 2019</b>			
LA07/2018/1787/F	Proposed extension to existing Materials Recovery Facility Building – 23 Downpatrick Road, Killough	<b>Defer this application, which the Committee agreed was an exception under FLD 1, and refer the completed Flood Risk Assessment to Rivers Agency to be reviewed.</b>	A McAlarney	<b>Application to come back to Committee</b>  <b>Under consideration.</b>	N
		<b>PLANNING COMMITTEE MEETING – 17 SEPTEMBER 2019</b>			

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2018/0860/F	Proposed replacement dwelling (amended drawings) – 45 metres NE of No. 14 Rath Road, Clonallon Glebe tb Warrenpoint	<b>Defer for further discussion between Planning Officers and agent/applicant – additional information to be provided</b>	M Keane	<b>Amended plans now received for reconsultation, NN and reconsideration. Further supporting info now received for consideration.</b>	N
		<b>PLANNING COMMITTEE MEETING – 16 OCTOBER 2019</b>			
LA07/2019/0773/0	Dwelling – to rear of 71 Church Street, Downpatrick	<b>Withdraw from the addendum list for a meeting with Planners, applicant and agent</b>	A McAlarney	<b>Meeting to be convened with CPO and Agent/applicant</b>	N
<b>PLANNING COMMITTEE MEETING 8 JANUARY 2020</b>					
LA07/2019/1302/F	Dwelling with associated parking and amendment of application R/2011/0794/F to remove parking area for apartments and replace with shared amenity space – rear of nos 65-69 South Promenade Newcastle	<b>Withdrawn from addendum list and re-present at February Meeting</b>	A McAlarney	<b>Site visit to be arranged</b>	N
LA07/2019/1362/0	Infill dwelling and garage – adj and immediately south of 64 The Heights, Loughbrickland	<b>Withdrawn from addendum list and re-present at February Meeting</b>	A McAlarney	<b>Site visit to be arranged</b>	N
LA07/2019/1221/F	Proposed guest house tourist accommodation and associated	<b>Defer for site visit and further discussion to take place with</b>	A McAlarney	<b>Withdrawn from February agenda for</b>	N

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
	site works – land 10m NW of 180 Tullybrannigan Road, Newcastle	<b>applicant, agent and Planners re: correct planning category for the proposal. Traffic survey to be submitted and evidence that 2 x 45m sight visibility splays were achievable and within the control of the applicant</b>		<b>more work to be done on the proposal</b>  <b>Agent has submitted additional info. Application is under consideration.</b>	
<b>PLANNING COMMITTEE MEETING 11 MARCH 2020</b>					
LA07/2019/1087/0	Replacement dwelling and garage – approx. 50m NE of 21 Drakes Bridge Road, Crossgar	<b>Defer for a site visit – date to be agreed</b>	A McAlarney	<b>Site visit to be arranged</b>	
LA07/2019/1134/0	Replacement dwelling – 90 Manse Road, Darraghclose, Crossgar	<b>Defer for a site visit – date to be agreed</b>	A McAlarney	<b>Site visit to be arranged</b>	
LA07/2019/1644/0	Replacement dwelling – lands at and located to the west of 24 Crabtree Road, Ballynahinch	<b>Defer for agent to consult with applicant if they would be prepared to extend the curtilage to the rear of the existing building to accommodate a replacement dwelling.</b>  <b>Officers to then issue the decision under delegated authority</b>	A McAlarney	<b>Awaiting Agent to provide timeframe for submission of Info.</b>	



Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2019/1455/F	New access to dwelling in substitution to that approved under planning ref: LA07/2018/0118/F – 30m SE of 8 Outlacken Road, Belleeks, Newry	<b>Defer for further discussions and agent/applicant to provide evidence to show that the former approved existing access is no longer available to the applicant and that under Policy an alternative access can be granted</b>	A Davidson		
LA07/2019/1449/F	Proposed infill dwelling and detached garage under PPS21 – site adjacent to and 50m south of 29 Foughilletra Road, Jonesborough	<b>Defer for a site visit – date to be agreed</b>	A Davidson		
LA07/2018/0048/F	Demolition of existing barns and construction of new building self-catering holiday letting unit, in substitution of previously approved conversion LA07/2015/1030/F – Lands 10m NW of 56 Levellyreagh Road, Rostrevor	<b>Defer for a site visit – date to be agreed</b>	M Keane		
LA07/2019/1551/0	Proposed 1 ½ storey dwelling and garage – immediately east of 15 Mill Road, Hilltown	<b>Defer for further investigation regarding status of the buildings on site and farm ownership and take back to Committee for decision</b>	M Keane		
<b>PLANNING COMMITTEE MEETING 3 JUNE 2020</b>					

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
LA07/2019/1258/F	Retention of change of use for ground floor café with two treatment rooms and ancillary services - Ground floor unit 12 Seaview, Warrenpoint	<b>Defer for a site visit – date to be agreed</b>	M Keane		
<b>PLANNING COMMITTEE MEETING 1 JULY 2020</b>					
LA07/2019/1279/F	New access and laneway to serve dwellings 27, 29 and 31 Islandmoyle Road – lands adjacent to 27 Islandmoyole Road, Cabra, Newry	<b>Defer for a site visit – date to be agreed</b>	M Keane		

# Newry, Mourne & Down District Council – June 2020

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## 1. Live Applications

MONTH 2020/21	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
March, April & May	338	989	242
June	164	965	232

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

Month 2020/21	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
May	540	207	103	43	96	989
June	562	171	101	40	91	965

## 3. Live applications per Case Officer

Month 2020/21	Average number of Applications per Case Officer
May	53
June	66

## 4. Decisions issued per month

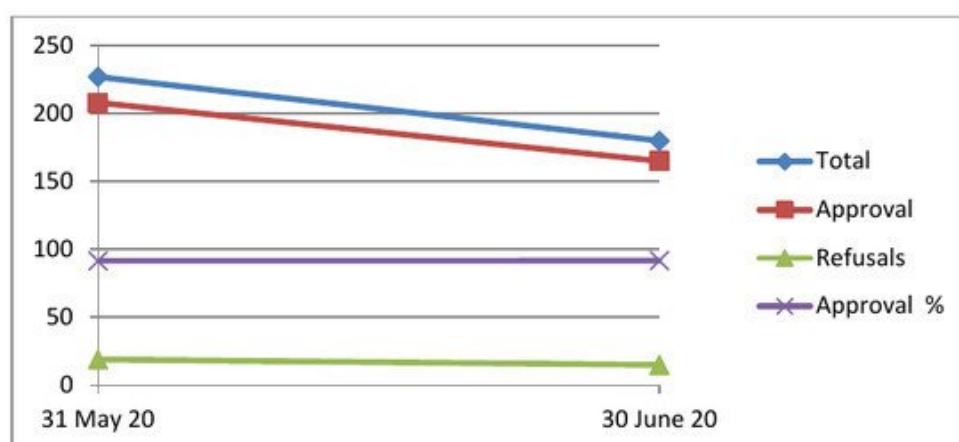
Month 2020/21	Number of Decisions Issued	Number of Decisions Issued under delegated authority
March, April & May	227	216
June	180	166

## 5. Decisions Issued YTD

Month 2020/21	Number of Decisions Issued	Breakdown of Decisions	
March, April & May	227	Approvals (208)	92%
		Refusals (19)	8%
June	407	Approvals (373)	92%
		Refusals (34)	8%

## Newry, Mourne & Down District Council – June 2020

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### 6. Enforcement Live cases

Month 2020/21	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+ys	Total
March, April & May	180	177	174	89	35	91	746
June	229	168	175	95	35	89	791

### 7. Planning Committee

Month	Number of Applications presented to Committee	Number of Applications Determined by Committee	Number of Applications Withdrawn/ Deferred for future meeting	Number of Officer recommendation overturned
3 June 2020	15	15	0	6
1 July 2020	5	4	1	1
<b>Totals</b>	<b>20</b>	<b>19</b>	<b>1</b>	<b>7</b>

### 8. Appeals

Planning Appeal Commission Decisions issued during period 1 June 2020 to 30 June 2020

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Withdrawn
Newry & Mourne	15	1	0	1	0
Down	16	0	0	0	0
<b>TOTAL</b>	<b>31</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>



## Newry, Mourne &amp; Down District Council – June 2020

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## Statutory targets monthly update - May 2020 (unvalidated management information)

## Newry, Mourne and Down

Major applications (target of 30 weeks)					Local applications (target of 15 weeks)				Cases concluded (target of 39 weeks)					
	Number received	Number decided/ withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 30 weeks		Number received	Number decided/ withdrawn <sup>1</sup>	Average processing time <sup>2</sup>	% of cases processed within 15 weeks		Number opened	Number brought to conclusion <sup>3</sup>	"70%" conclusion time <sup>3</sup>	% of cases concluded within 39 weeks
April	1	-	0.0	0.0%		61	3	18.2	33.3%		9	18	146.8	33.3%
May	1	-	0.0	0.0%		76	91	24.2	16.5%		1	69	228.2	14.5%
June	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
July	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
August	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
September	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
October	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
November	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
December	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
January	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
February	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
March	0	-	0.0	0.0%		0	-	0.0	0.0%		0	-	0.0	0.0%
Year to date	2	-	0.0	0.0%		137	94	23.6	17.0%		10	87	204.9	18.4%

Source: NI Planning Portal

## Notes:

1. CLUDS, TPOS, NMCS and PADS/PANs have been excluded from all applications figures

2. The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn. The median is used for the average processing time as any extreme values have the potential to inflate the mean, leading to a result that may not be considered as "typical".

## Newry, Mourne & Down District Council – June 2020

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*3. The time taken to conclude an enforcement case is calculated from the date on which the complaint is received to the earliest date of the following: a notice is issued; proceedings commence; a planning application is received; or a case is closed. The value at 70% is determined by sorting data from its lowest to highest values and then taking the data point at the 70th percentile of the sequence.*

## Current Appeals

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**AUTHORITY** Newry, Mourne and Down

<b>ITEM NO</b>	<b>1</b>		
<b>Planning Ref:</b>	P/2014/0920/F	<b>PAC Ref:</b>	2019/A0065
<b>APPELLANT</b>	Mr Brian Mulholland	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	To The Rear Of 37A Ballyholland Road Ballyholland Lower		
<b>PROPOSAL</b>	Newry Retention of existing agricultural shed, hardstanding, agricultural laneway and earthen embankments		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	27/06/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>2</b>		
<b>Planning Ref:</b>	LA07/2018/0496/	<b>PAC Ref:</b>	2019/A0069
<b>APPELLANT</b>	Eugene Stranney	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	149 Ballydugan Road Downpatrick RT30 RHH		
<b>PROPOSAL</b>	Change of use of existing garage, study & games room to a dwelling as ancillary to the main existing dwelling		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	04/07/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

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<b>ITEM NO</b>	<b>3</b>		
<b>Planning Ref:</b>	P/2014/0427/O	<b>PAC Ref:</b>	2019/A0106
<b>APPELLANT</b>	Joseph McGivern	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	To The Rear And South Of 2 Berkley Grove Warrenpoint		
<b>PROPOSAL</b>	Site for dwelling (amended plans)		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	27/08/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>4</b>		
<b>Planning Ref:</b>	LA07/2018/1023/	<b>PAC Ref:</b>	2019//A0112
<b>APPELLANT</b>	Mr & Mrs D Sloan	<b>DEA</b>	The Mournes
<b>LOCATION</b>	10 Tullybrannigan Brae Newcastle		
<b>PROPOSAL</b>	Loft conversion & rear 1.5 storey extension with integral single storey garage with utility room to side & rear of dwelling		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/09/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

98

<b>ITEM NO</b>	<b>5</b>		
<b>Planning Ref:</b>	LA07/2018/1758/	<b>PAC Ref:</b>	2019/A0121
<b>APPELLANT</b>	Around A Pound	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	19 Church Street Warrenpoint		
<b>PROPOSAL</b>	Retrospective shop sign with static exterior illumination		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	18/09/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>6</b>		
<b>Planning Ref:</b>	LA07/2019/0462/	<b>PAC Ref:</b>	2019/A0126
<b>APPELLANT</b>	Mr Colm Watters	<b>DEA</b>	Slieve Gullion
<b>LOCATION</b>	118 Cullaville Road Crossmaglen		
<b>PROPOSAL</b>	Newrv Erection of replacement dwelling house, ancillary site works and landscaping		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	20/09/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

99

<b>ITEM NO</b>	<b>7</b>		
<b>Planning Ref:</b>	LA07/2017/1213/	<b>PAC Ref:</b>	2019/A0143
<b>APPELLANT</b>	Tullyherron Farm Feeds	<b>DEA</b>	Slieve Gullion
<b>LOCATION</b>	38 Tullyherron Road Mounthorris Armagh		
<b>PROPOSAL</b>	Retention of extension to existing farm feeds business, including extension to hard standing area, storage buildings silos and associated works.		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	16/10/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>8</b>		
<b>Planning Ref:</b>	LA07/2019/1056/	<b>PAC Ref:</b>	2019/A0150
<b>APPELLANT</b>	Felix McEvoy	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	60m South East Of No 36 Derryneill Road Ballyward Castlewellan		
<b>PROPOSAL</b>	Proposed holiday chalet with retention of sub structure as commenced on site		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	24/10/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

100

<b>ITEM NO</b>	<b>9</b>		
<b>Planning Ref:</b>	LA07/2019/0181/	<b>PAC Ref:</b>	2019/A0155
<b>APPELLANT</b>	Anthony Flanagan	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	152 Ballylough Road Castlewellan		
<b>PROPOSAL</b>	2 Storey side and rear extension to provide ancillary accomodation (Retrospective)		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	04/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>10</b>		
<b>Planning Ref:</b>	LA07/2019/1313/	<b>PAC Ref:</b>	2019/A0159
<b>APPELLANT</b>	EDB Construction Ltd	<b>DEA</b>	Newry
<b>LOCATION</b>	58 Armagh Road Newry		
<b>PROPOSAL</b>	Demolition of existing building and erection of apartment development		
<b>APPEAL TYPE</b>	DC - Non Determination of a Planning Application		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	13/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

101

<b>ITEM NO</b>	<b>11</b>		
<b>Planning Ref:</b>	LA07/2018/0995/	<b>PAC Ref:</b>	2019/A0168
<b>APPELLANT</b>	Ian Taylor	<b>DEA</b>	Slieve Croob
<b>LOCATION</b>	Site South-east Of 123b Ballylough Road Castlewellan		
<b>PROPOSAL</b>	Replacement dwelling previously approved under application R/2011/0332/F with new access		
<b>APPEAL TYPE</b>	DC - Conditions of Approval		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	19/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>12</b>		
<b>Planning Ref:</b>	LA07/2019/0866/	<b>PAC Ref:</b>	2019/A0169
<b>APPELLANT</b>	EDB Construction Ltd	<b>DEA</b>	Newry
<b>LOCATION</b>	Lands Opposite Numbers 20-24 Watsons Road Newry		
<b>PROPOSAL</b>	Proposed residential development comprising 20 No dwellings (18 Semi-detached and 2 detached) change of house type in respect of Approval P/2006/1117/F.		
<b>APPEAL TYPE</b>	DC - Non Determination of a Planning Application		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	19/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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**Current Appeals****102**

<b>ITEM NO</b>	<b>13</b>		
<b>Planning Ref:</b>	LA07/2019/0990/	<b>PAC Ref:</b>	2019/A0181
<b>APPELLANT</b>	The Trustees Of Newry I.N.F.	<b>DEA</b>	Newry
<b>LOCATION</b>	To Rear Of No. 2 John Mitchell Place Newry		
<b>PROPOSAL</b>	RT34 2RP Erection of illuminated signage (pixel pitch on road fronting elevation of commercial premises)		
<b>APPEAL TYPE</b>	DC - Advertisement Consent		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	03/12/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>14</b>		
<b>Planning Ref:</b>	LA07/2019/0149/	<b>PAC Ref:</b>	2019/A0187
<b>APPELLANT</b>	Liam Phillips	<b>DEA</b>	Downpatrick
<b>LOCATION</b>	Adjacent To 11 Saul Road Downpatrick		
<b>PROPOSAL</b>	Proposed Dwelling		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	06/01/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

103

<b>ITEM NO</b>	<b>15</b>		
<b>Planning Ref:</b>	LA07/2018/0901/	<b>PAC Ref:</b>	2019/A0188
<b>APPELLANT</b>	Mrs Eileen Gribben	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	74m South Of No. 50 Castlewellan Road Ballyaughian		
<b>PROPOSAL</b>	Hilltown Proposed site for farm dwelling and garage		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps with Site Visit</b>	<b>Date Appeal Lodged</b>	23/12/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>16</b>		
<b>Planning Ref:</b>	LA07/2018/0442/	<b>PAC Ref:</b>	2019/A0190
<b>APPELLANT</b>	Mr M McCartan	<b>DEA</b>	The Mournes
<b>LOCATION</b>	12-14 Seacliff Close Ballaghbeg		
<b>PROPOSAL</b>	Newcastle Retrospective approval for existing constructed dwelling at 14 and approval for new dwelling at 12 incorporating new road layout and turning head (Road layout approved by Road Service Engineer)		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	20/12/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

104

<b>ITEM NO</b>	<b>17</b>		
<b>Planning Ref:</b>	LA07/2018/1975/	<b>PAC Ref:</b>	2019/A0192
<b>APPELLANT</b>	Joanna Groves	<b>DEA</b>	Downpatrick
<b>LOCATION</b>	To The Rear Of 15A Lisoid Road Rossglass With Access From Ballylig Road		
<b>PROPOSAL</b>	Rossglass Dwelling		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	23/12/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>18</b>		
<b>Planning Ref:</b>	LA07/2019/0811/	<b>PAC Ref:</b>	2019/A0194
<b>APPELLANT</b>	C McManus	<b>DEA</b>	The Mournes
<b>LOCATION</b>	Land Adjacent To 177 Dundrum Road Newcastle		
<b>PROPOSAL</b>	Proposed temporary mobile accommodation		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	06/01/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

105

<b>ITEM NO</b>	<b>19</b>	<b>PAC Ref:</b>	2019/A0212
<b>Planning Ref:</b>	LA07/2019/1334/	<b>DEA</b>	Slieve Croob
<b>APPELLANT</b>	Chris Magorrian		
<b>LOCATION</b>	37 Drumnacnagher Road Crossgar		
<b>PROPOSAL</b>	Extension to dwelling and detached garage/store		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	04/02/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>20</b>	<b>PAC Ref:</b>	2019/A0218
<b>Planning Ref:</b>	LA07/2019/1329/	<b>DEA</b>	Rowallane
<b>APPELLANT</b>	Mr And Mrs H Coulter		
<b>LOCATION</b>	SE 7 Old Saintfield Road Creevycarnonan Saintfield		
<b>PROPOSAL</b>	Dwelling and garage		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	13/02/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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**Current Appeals****106**

<b>ITEM NO</b>	<b>21</b>		
<b>Planning Ref:</b>	LA07/2016/1502/	<b>PAC Ref:</b>	2019/A0232
<b>APPELLANT</b>	Robert Cairns	<b>DEA</b>	The Mournes
<b>LOCATION</b>	7-9 Newry Street Kilkeel		
<b>PROPOSAL</b>	BT34 4DN Extension to existing public house to include additional lounge and smoking area		
<b>APPEAL TYPE</b>	DC - Refusal of LB Consent		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	02/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>22</b>		
<b>Planning Ref:</b>	LA07/2015/1364/	<b>PAC Ref:</b>	2019/A0233
<b>APPELLANT</b>	Mr Robert Cairns	<b>DEA</b>	The Mournes
<b>LOCATION</b>	7 And 9 Newry Street Kilkeel BT34 4DN		
<b>PROPOSAL</b>			
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	02/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

107

<b>ITEM NO</b>	<b>23</b>		
<b>Planning Ref:</b>	LA07/2019/0691/	<b>PAC Ref:</b>	2019/A0238
<b>APPELLANT</b>	Paul Fitzsimons Esq	<b>DEA</b>	Rowallane
<b>LOCATION</b>	65m South East 47 Saintfield Road Crossgar		
<b>PROPOSAL</b>	RT30 9HY Proposed infill dwelling and garage		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	03/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>24</b>		
<b>Planning Ref:</b>	LA07/2018/1453/	<b>PAC Ref:</b>	2019/A0246
<b>APPELLANT</b>	Miss M. Byrne	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	25 Lower Knockbarragh Road Rostrevor		
<b>PROPOSAL</b>	RT34 3DP Proposed replacement dwelling (amended plan)		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	09/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

108

<b>ITEM NO</b>	<b>25</b>		
<b>Planning Ref:</b>	LA07/2019/1755/	<b>PAC Ref:</b>	2019/A0247
<b>APPELLANT</b>	David Sweeney	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	Between Nos 36 & 38a Greenan Road Newry		
<b>PROPOSAL</b>	RT34 204 Erection of infill dwelling		
<b>APPEAL TYPE</b>	DC - Conditions of Approval		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>26</b>		
<b>Planning Ref:</b>	LA07/2019/1130/	<b>PAC Ref:</b>	2019 /A0248
<b>APPELLANT</b>	Mr James Rogan	<b>DEA</b>	The Mournes
<b>LOCATION</b>	Site Adjacent To 33 Dunwellan Park Newcastle		
<b>PROPOSAL</b>	New end terrace Dwelling with associated site works		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

109

<b>ITEM NO</b>	<b>27</b>	<b>PAC Ref:</b>	2019/A0248
<b>Planning Ref:</b>	LA07/2019/1130/	<b>DEA</b>	The Mournes
<b>APPELLANT</b>	Mr James Rogan		
<b>LOCATION</b>	Site Adjacent To 33 Dunwellan Park Newcastle		
<b>PROPOSAL</b>	New end terrace Dwelling with associated site works		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	10/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>28</b>	<b>PAC Ref:</b>	2019/A0254
<b>Planning Ref:</b>	LA07/2019/0984/	<b>DEA</b>	Downpatrick
<b>APPELLANT</b>	Mr S McMullan		
<b>LOCATION</b>	Approx 180m W Of No 32 Myra Road Downpatrick		
<b>PROPOSAL</b>	Proposed off site replacement dwelling		

<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>		<b>Date Appeal Lodged</b>	16/03/2020
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

110

<b>ITEM NO</b>	<b>29</b>		
<b>Planning Ref:</b>	LA07/2019/0907/	<b>PAC Ref:</b>	2019/E0050
<b>APPELLANT</b>	EDB Construction Ltd	<b>DEA</b>	Newry
<b>LOCATION</b>	Site 5 Of Approval P/2006/1117/F On Watsons Road 100m West Of No. 26 Lis Ard Court		
<b>PROPOSAL</b>	Newry Erection of approved dwelling on site 5 of approval P/2006/1117/F		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Informal Hearing</b>	<b>Date Appeal Lodged</b>	19/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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<b>ITEM NO</b>	<b>30</b>		
<b>Planning Ref:</b>	LA07/2019/1216/	<b>PAC Ref:</b>	2019/E0053
<b>APPELLANT</b>	Mary Rooney	<b>DEA</b>	Crotlieve
<b>LOCATION</b>	80A Kilbroney Road Rostrevor RT34 3RI		
<b>PROPOSAL</b>	Dwelling		
<b>APPEAL TYPE</b>	DC- Refusal of Planning Permission		
<b>Appeal Procedure</b>	<b>Written Reps</b>	<b>Date Appeal Lodged</b>	28/11/2019
<b>Date of Hearing</b>			
<b>Date Statement of Case Due for Hearing</b>			
<b>Date Statement of Case Due - Written Representation</b>			
<b>Date of Site Visit</b>			

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## Current Appeals

111

ITEM NO	31	PAC Ref:	2019/E0059
Planning Ref:	LA07/2019/0876/	DEA	Downpatrick
APPELLANT	Mr Michael Trainor		
LOCATION	42b And 42c Clanmaghery Road Tyrella		
PROPOSAL	Downpatrick 2 no dwelling units		
APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure		Date Appeal Lodged	20/01/2020
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

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# Appeal Decision

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

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<b>Appeal Reference:</b>	2019/E0044
<b>Appeal by:</b>	Mrs Anne Marie Quinn
<b>Appeal against:</b>	The refusal of an application for a Certificate of Lawfulness of Existing Use or Development
<b>Development:</b>	Use of a building as a dwelling
<b>Location:</b>	20A Cranfield Road, Kilkeel
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	LA07/2019/0746/LDE
<b>Procedure:</b>	Written representations and Commissioner's site visit on 11 <sup>th</sup> June 2020
<b>Decision by:</b>	Commissioner Diane O'Neill, dated 17 <sup>th</sup> June 2020

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## Decision

1. The appeal is dismissed.

## Reasons

2. Section 169 of the Planning Act (Northern Ireland) 2011 makes provision for the issuing of a certificate of lawfulness for an existing use or development (CLEUD). Section 169(1) states that if any person wishes to ascertain whether any existing use of buildings or other land is lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use. Section 169(2) indicates that for the purposes of this Act uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.
3. Section 131(2) of the Act states that for the purposes of this Act, the issue of an enforcement notice or the service of a breach of condition notice constitutes taking enforcement action. There is no current enforcement notice in force on the appeal site nor has planning permission been granted for the development. Section 132 sets out time limits and states that where there has been a breach of planning control, which Section 131 identifies as being carrying out development without the planning permission required or failing to comply with any condition or limitation subject to which planning permission has been granted, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. In the case of an application for a CLEUD, the onus is on the applicant to provide evidence of the lawfulness of the specified use or development. It has to be decided whether the submitted evidence is sufficient to

demonstrate, on the balance of probabilities, that the building had been used continuously for the stated use for a period of 5 years or more at the time of the application. A CLEUD could also be granted if it were demonstrated that residential use of the building had accrued lawfulness at some stage in the past and that this residential use had not been abandoned or replaced by another use at the time the LDC application was made.

4. The application for a CLEUD was received by the Council on 10th May 2019, in accordance with Section 169 of the Act. The application sought to certify that the use of the building as a dwelling was lawful on 10<sup>th</sup> May 2019. The material date for the purpose of this appeal is therefore 10<sup>th</sup> May 2014. The Council refused to certify that the use was lawful as they considered that it had not been in use as a dwelling house for the five year period up to and including the date of the application.
5. On Form LDC 1, which requires a full description of the existing use, operation or activity to which this application relates, the appellant stated that it was an 'existing dwelling'. Although the planning authority amended this description to 'use of a building of temporary construction as a dwelling', the use to be considered is still as a dwelling. Although the appellant gave her address as No.20 Cranfield Road on the appeal form, application Form LDC 1 which was submitted to the Council stated that she resides as No.24A Cranfield Road and at the time of my site visit her tenant was present at No.20 Cranfield Road.
6. The appeal building is located to the rear of a single storey dwelling and detached garage at No.20 Cranfield Road. The single storey appeal building has smooth rendered walls, a brick finished base and a tiled roof. It comprises of a living room, kitchen, bathroom, three bedrooms and a hallway. It was evident from my site visit that considerable damage has been caused to some of the ceilings within the building.
7. The appellant's evidence included the following:
  - Undated photographic evidence of a fitted bathroom and kitchen; photos, said to be dated from approximately 1997, of the front door, kitchen and living room
  - Google street view image dated August 2008 of the dwelling and garage at No.20 Cranfield Road and the appeal building to the rear of the property
  - A tenancy agreement made on 27<sup>th</sup> September 2012 between the appellant and Mr Andrius Deniginis for the letting of 'the bungalow and gardens to the rear of No.20 Cranfield Road'. A handwritten note stated that the contract terminated on 20<sup>th</sup> December 2015
  - An undated letter from Mr Hugh John Quinn of No.24A Cranfield Road confirming that he lived in the property from 2016 until March 2019. He stated that as it was flood damaged he was no longer able to reside there
  - A letter from a teacher, Ms Eileen Trainor, dated 4<sup>th</sup> April 2019 confirming that she visited the property on a few occasions 9 years ago
  - A letter from Dr Loretta Gribben, dated 4<sup>th</sup> July 2019, stating that she visited the property which she says has been there for at least the past 7 years
8. The appellant claimed that the documentation illustrated that the building has been in place for at least 5 years and was not of prefabricated construction however it is



the use as a dwelling which needs to be demonstrated. The photographic evidence from April 1997 may show residential use at that time but does not demonstrate that it was continuous from that period or from the material date of 10<sup>th</sup> May 2014 and there was no evidence of rates or any other household bills to demonstrate ongoing use as a dwelling.

9. The Council accepting that the tenancy agreement is evidence of residential use from September 2012 until December 2015 does not prove that it was in such use until the material date of 10<sup>th</sup> May 2019. The section of the agreement which requires a witness to countersign it was also not completed. Although a tenancy agreement might not have been necessary for Mr Quinn, his letter was not supported with other evidence, such as domestic utility bills, despite him being a relative who currently resides at the same address as the appellant (provided on application Form LDC 1). The period of non-occupation from March 2019 up until the date of the application on 10<sup>th</sup> May 2019 may not in itself be crucial or fatal to the CLEUD application however from my site visit there was no evidence of the water damage repair works having been carried out, no documentation was provided relating to this damage or resultant work and this has to be considered together with the vague evidence in relation to the occupation of the property from an undefined date in 2016 until March 2019. The authors of the letters are from reputable professions however the evidence does not state who was being visited at the property with Ms Trainor's visits predating the period of the tenancy agreement, the length of time that the person was residing there or whether the residential use was continuous over the required period. An internal inspection of the property by the planning authority may have demonstrated that it is a habitable building however it does not demonstrate the duration of its occupation.
10. I am satisfied, on the balance of probability, that the totality of the submitted evidence does not demonstrate that the use of the building on this site was continuous for a period of 5 years prior to 10<sup>th</sup> May 2019. The Council's decision to refuse to issue a CLEUD was well founded.

**COMMISSIONER DIANE O'NEILL**

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**List of Documents**

Planning Authority  
(Newry, Mourne and Down District Council):-

Statement of Case PA 1  
Rebuttal PA 2

Appellant (Design 3-agent):-

Statement of Case A 1  
Rebuttal A 2