



December 8th, 2022

Notice Of Meeting

You are invited to attend the Planning Committee Meeting to be held on **Wednesday, 14th December 2022** at **10:00 am** in **Boardroom Monaghan Row Newry** and via **Microsoft Teams**.

Committee Membership 2022-2023

- Councillor D McAteer (Chairperson)
- Councillor D Murphy (Deputy Chairperson)
- Councillor R Burgess
- Councillor P Byrne
- Councillor L Devlin
- Councillor G Hanna
- Councillor V Harte
- Councillor M Larkin
- Councillor A Lewis
- Councillor L McEvoy
- Councillor G O'Hare
- Councillor H Reilly

Agenda

1.0 Apologies and Chairperson's remarks.

2.0 Declarations of Interest.

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

Item 6 - a site visit was held on 30 November 2022 – In attendance were Councillors Burgess, Hanna, Harte, Larkin, Lewis, Murphy, O'Hare

4.0 Minutes of Planning Committee Meeting held on 16 November 2022. (Attached).

📎 *Planning Committee Minutes - 16.11.2022.pdf*

Page 1

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

📎 *Addendum list - 14-12-2022.pdf*

Page 13

Development Management - Planning Applications for determination (with previous site visits)

6.0 LA07/2021/1935/F - Construction of a storey-and-a-half detached dwelling within the curtilage of the side garden of 10 Dunbrae - 10 Dunbrae Chancellors Road Newry BT35 8HG. (Case Officer report attached).

REFUSAL






- In line with the Operating Protocol no further speaking rights are permitted on this application (Pat McVarnock and Barney McKevitt agent, will be available to answer any queries Members might have).
- A site visit was held on 30 November 2022 - Councillors Burgess, Hanna, Harte, Larkin, Lewis, Murphy and O'Hare attended

Development Management - Planning Applications for determination

7.0 LA07/2017/1261/O - Proposed dwelling and garage - Site abutting 20 Junction Road Saintfield. (Case Officer report to follow).

REFUSAL






- A request for speaking rights has been received from Mr Conor Fegan, BL; Sheila Curtin, agent and Eugene and Fainant Murray, applicants in support of the application. **(Submission attached)**.

 <i>LA07_2017_1261_Junction road_farmDwelling_Addendum.pdf</i>	<i>Page 14</i>
 <i>Item 7 - LA07-2017-1261-0.pdf</i>	<i>Page 16</i>
 <i>Appendix 1 CoF Saintfield Advice NMDDC 250620 (004).pdf</i>	<i>Page 18</i>
 <i>Appendix 2 Response Letter to Planning 30.08.22 (CoF 250822).pdf</i>	<i>Page 39</i>
 <i>Appendix 3. Annotated Farm Map.pdf</i>	<i>Page 42</i>

8.0 LA07/2019/0868/F - Proposed commercial development comprising ground floor retail unit and first floor creche with associated site works - 107 Camlough Road, Newry, BT35 7EE. (Case Officer report attached).

APPROVAL

- A request for speaking rights has been received from Conor Fegan B.L.; Andrew Ferguson, Fisher Mullan Solicitors and Colin O'Callaghan, agent, objecting to the application. **(Submission attached)**.
- A request for speaking rights has been received from Hayley Wilson; Colin D'Alton, Richard Agus (Road Engineer) and Padraig Mallon (applicant) in support of the application. **(Submission attached)**.

 <i>Commercial Development Camlough Road La07.2019.0868.Ff.pdf</i>	<i>Page 43</i>
 <i>Commercial Development Camlough Road La07.2019.0868.Ff1.pdf</i>	<i>Page 60</i>
 <i>Item 8 - Camlough Road (CoF (071222) (objection).pdf</i>	<i>Page 68</i>
 <i>Objectoin to Camlough Road.pdf</i>	<i>Page 70</i>
 <i>Item 8 - 221214 LA07.2019.0868.F (support).pdf</i>	<i>Page 76</i>

9.0 LA07/2020/1588/F - Development of petrol filling station, 1no. retail unit, 1no. hot food unit, ATM and jet wash with associated access, car parking, landscaping and site works -

**Former St. Patrick's Primary School site, Ardglass Road
Downpatrick. (Case Officer report attached).**

APPROVAL


- A request for speaking rights has been received from Councillor Gareth Sharvin and Gareth Baker, on behalf of residents, in objection to the application
- A request for speaking rights has been received from David Mounstephen, agent, in support of the application. **(Submission attached).**

 *LA07_2020_1588_F PFS Ardglass Road DPK.PDF*

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 *Item 9 - LA0720201588F (Objection).pdf*

Page 97

 *Item 9 - LA07-2020-1588-F (Support).pdf*

Page 99

10.0 LA07/2020/1651/F - Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) (Amended description) 75m north of 18 Ballinasack Road, Mullaghbawn, Newry. (Case Officer report attached).

REFUSAL

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

 *2020 1651 - Ballinasack Road Mullaghbawn...pdf*

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 *Item 10 - LA07 2020 1651 F (support).pdf*

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11.0 LA07/2021/1549/F - Application under section 54 for amendment of condition 03C of planning approval LA07/2018/0244/F as follows: Manufacturing operating hours extended from 7.00 - 23.00 hours Monday to Friday to 24 Hour production, 7 days per week - Unit 11 Milltown Industrial Estate Warrenpoint BT34 3FN. (Case Officer report attached).

APPROVAL

- A request for speaking rights has been received from Matthew McCamley, Matrix Planning, in objection to this application. **(Submission attached).**
- A request for speaking rights has been received from Tom Delahunt, Delahunt Lavery, agents, in support of the application. **(Submission attached).**

 *LA07-2021-1549-F wpoint.pdf*

Page 113

 *Item 11 - LA07-2021-1549-F (objectoin).pdf*

Page 121

12.0 LA07/2022/0210/F - Retention of existing outdoor customer seating area - Ground floor unit, 12 Seaview Warrenpoint BT34 3NJ. (Case Officer report attached).

APPROVAL

- A request for speaking rights has been received from Matthew McCamley, Matrix Planning, in objection to this application. **(Submission attached)**.
- Julie McLarnon, applicant, is unable to attend the meeting but has submitted a written statement. **(Submission attached)**.

LA07-2022-0210-F Wpoint.pdf

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Items 12 and 13 - Seaview Warrenpoint (objection).pdf

Page 138

Items 12 and 13 - Seaview (support).pdf

Page 141

13.0 LA07/2022/0226/F - This is a category 11 section 54 application - Ground Floor Unit 12 Seaview Warrenpoint BT34 3NJ. (Case Officer report attached).

Previous approval for retention of change of use to ground floor cafe unit & 2 no treatment rooms and ancillary services, condition 03 restricted opening hours to Mon-Sat 10.00 to 18.00. This application seeks variation to opening hours to provide opportunity for ticketed events and private catering (see attached sheet for times) 12 Seaview, Warrenpoint, Proposed opening times: Monday to Saturday open to general public 9am to 6pm, Monday to Saturday open for ticketed events 6pm to 10pm Sunday open to general public Midday to 4pm, Open for private guest breakfasts 9am to 11am, Open for ticketed events 4pm-9pm. There are two holiday apartments on the floors above the cafe. The cafe owner would like to open on a Sunday morning to serve breakfasts to the guests staying in the holiday apartments - the cafe would not be open to the general public on Sunday morning.

APPROVAL

- A request for speaking rights has been received from Matthew McCamley, Matrix Planning, in objection to this application. **(Submission attached)**.

LA07-2022-0226-F wpoint.pdf

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14.0 LA07/2022/0273/F - Change of use application from existing shop (Use Class A1) to proposed Amusement Arcade - 54 Market Street Downpatrick Co Down. (Case Officer report attached).

APPROVAL

- A request for speaking rights has been received from Philip Campbell on behalf of Downpatrick Town Committee and Andy Stephens, Planning Consultant, objecting to the application. **(Submissions attached).**
- A request for speaking rights has been received from DEA Councillors Gareth Sharvin and Cadogan Enright, in objection to the application. **(Submissions attached)**
- A request for speaking rights has been received from Carol Gourley, agent, in support of the application. **(Submission attached)**

LA07-2022-0273-F - 54 Market Street - change of use (002).pdf	Page 152
LA07_2022_0273_F_Market St_Addendum.pdf	Page 159
Item 14 - LA07-2022-0273-F P Campbell (objection).pdf	Page 163
Item 14 - objection Andy Stephens.pdf	Page 165
Item 14 - LA07-2022-0273-F DEA Cllr Sharvin (objection).pdf	Page 169
Item 14 - Councillor Enright objection.pdf	Page 171
Item 14 - LA07-2022-0273-F (Support) C Gourley.pdf	Page 172

15.0 LA07/2021/0245/F - Existing toilet block in the car park is to be demolished and replaced with a public beach amenity building accommodating female and male toilets, universal toilet, first aid room, lifeguard store and ground store - Land immediately west of 40 Clanmaghera Road Tyrella Beach. (Case Officer report attached).

APPROVAL

- Addendum list

LA07-2021-0245-F_Tyrella.pdf	Page 173
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16.0 LA07/2021/2131/F - Residential development comprising 46 no. dwellings (16 no. detached and 30 no. semi- detached) - change of house type in respect of approval P/2011/1067/F - Land adjacent and to the west of Sacred Heart Grammar School 10 Ashgrove Avenue Newry BT34 1PR. (Case Officer report attached).

APPROVAL

- Addendum list

17.0 LA07/2022/1034/F - Proposed extension to existing building to include replacement sales area, WC, store and upcycling workshop. Re-roof existing building and build up glass curtain walling with masonry wall and windows and provision of on site parking using existing entrance. Retention of replacement polytunnel and proposed new lean to covered cleaning area. Removal of existing polytunnel and sales area - 1 Council Road Kilkeel BT34 4NP. (Case Officer report attached).

APPROVAL

- Addendum list

LA07_2022_1034_F Kilkeel.pdf

Page 196

18.0 LA07/2022/1157/F - Replacement and widening of existing walkway along Jane's shore to include a new walkway comprised of new hard-standing surface and timber boardwalks, upgraded and replacement stiles, gates, fencing and all associated site works - Jane's Shore River Quoile between A22 Killyleagh Road and A7 Belfast Road Downpatrick. (Case Officer report attached).

APPROVAL

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

LA07-2022-1157-F Janes Shore Trail.pdf

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Item 18.0 Janes Shore - Sarah McDowell Speaking Notes.pdf

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19.0 LA07/2022/1224/F - New, multi-use, non-bitmac, compacted gravel community trails - Corry Wood Station Road Castlewellan Co. Down. (Case Officer report attached).

APPROVAL

- Addendum list

LA07-2022-1224-F Corry Wood Trails (002).pdf

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20.0 Historic Action Sheet. (Attached).

 *Planning HISTORIC TRACKING SHEET - Updated November 2022.pdf*

Page 217

21.0 Planning Committee Performance Report for November 2022. (Attached).

 *November 2022 Planning Committee Performance Report.pdf*

Page 221

22.0 Current appeals and decisions. (Attached)

 *Current Appeals and decisions issued in November 2022.pdf*

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NEWRY, MOURNE & DOWN DISTRICT COUNCIL

Minutes of Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 16 November 2022 at 10.00am in the Boardroom, Monaghan Row, Newry and via Microsoft Teams.

Chairperson: Councillor D McAteer

In attendance: **(Committee Members)**
 Councillor R Burgess (via Teams)
 Councillor P Byrne
 Councillor L Devlin
 Councillor Hanna
 Councillor V Harte
 Councillor M Larkin (via Teams)
 Councillor A Lewis
 Councillor D Murphy
 Councillor L McEvoy
 Councillor G O'Hare
 Councillor H Reilly

(Officials)	
Mr C Mallon	Director of ERT
Mr A McKay	Chief Planning Officer
Mr P Rooney	Principal Planning Officer
Mr A Hay	Principal Planning Officer
Mr F O'Connor	Head of Legal Administration
Ms S Taggart	Democratic Services Manager (Acting)
Ms L Dillon	Democratic Services Officer
Ms L Cummins	Democratic Services Officer
Ms C McAteer	Democratic Services Officer
Ms P McKeever	Democratic Services Officer

P/102/2022: **APOLOGIES AND CHAIRPERSON'S REMARKS**

Apologies were received from Councillor McEvoy.

The Chairperson extended condolences to Councillor Hanna on the recent sad passing of his father Kenny.

P/103/2022: **DECLARATIONS OF INTEREST**

There were no Declarations of Interest.

P/104/2022: DECLARATIONS OF INTEREST IN ACCORDANCE WITH PLANNING COMMITTEE PROTOCOL- PARAGRAPH 25

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

- **Items 6, 7 and 8** – Merchants Quay, Newry - Applications were initially presented at the Planning Committee Meeting on 15 December 2021 - Councillors Devlin, Hanna, Harte, Larkin, Murphy, McAteer, McEvoy and O'Hare were in attendance

Councillor Devlin referred to Item 9 - LA07/2019/1087/O and asked if, as it had been the subject of a site visit in 2020, would it not be included along with Items 6, 7 and 8. Mr McKay said given the passage of time and a change in the Committee Members it had been decided to treat it as a new application.

MINUTES FOR CONFIRMATION

P/105/2022: MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 19 OCTOBER 2022

Read: Minutes of Planning Committee Meeting held on Wednesday 19 October 2022. (Copy circulated)

AGREED: **On the proposal of Councillor Murphy, seconded by Councillor Hanna, it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 19 October 2022 as a true and accurate record.**

FOR DISCUSSION/DECISION

P/106/2022: ADDENDUM LIST

Read: Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 16 November 2022. (Copy circulated)

AGREED: **On the proposal of Councillor Devlin, seconded by Councillor Hanna, it was agreed to approve the Officer recommendation in respect of the following applications listed on the addendum list for Wednesday 16 November 2022:**

- **LA07/2022/0780/F** - Change of use from an existing warehouse to provide a heritage centre, cafe and a multi-use leisure space - Building B Saintfield Community Centre 29 Belfast Road Saintfield
APPROVAL
- **LA07/2022/1212/A** - Wooden Waymarker posts to be installed at various points within Rostrevor - 11 no. locations within Rostrevor
APPROVAL

DEVELOPMENT MANAGEMENT - PLANNING APPLICATIONS FOR DETERMINATION

P/107/2022: PLANNING APPLICATIONS FOR DETERMINATION

Planning Applications LA07/2020/0485/F, LA07/2020/0486/DCA and LA07/2020/0487/LBC were considered together.

(1) LA07/2020/0485/F

Location:

Nos. 46 /47 /49 /50 /51 /52 /53 & 54 Merchants Quay Newry together with Nos 9 /11 /13 /15 & 17 Cornmarket Newry

Proposal:

Major city centre mixed use development scheme comprising of circa 864 m of office space

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:

In support

Mr Barry Owens, agent and Ms Karen McShane, Transport Consultant presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Mr Jason Killen, DfI Roads was in attendance to answer any queries from Members.

(2) LA07/2020/0486/DCA

Location:

Nos 46/49/50/51/52/53 & 54 Merchants Quay Newry

Proposal:

Conservation area consent application for demolition of the former car sales showroom/garage located at Nos 49-54 Merchants Quay and the premises located at No. 46 Merchants Quay, Newry (all designated within Newry Conservation Area)

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:In support

Mr Barry Owens, agent and Ms Karen McShane, Transport Consultant presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Mr Jason Killen, DfI Roads was in attendance to answer any queries from Members.

(3) LA07/2020/0487/LBC**Location:**

47 Merchants Quay, Newry

Proposal:

Proposed LBC application for a material change of use of listed building

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:In support

Mr Barry Owens, agent and Ms Karen McShane, Transport Consultant presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Mr Jason Killen, DfI Roads was in attendance to answer any queries from Members.

Issues Raised:

- Councillor Hanna asked if it was an aspiration or a requirement to provide parking spaces, in response Mr Rooney said it was a requirement of policy to provide adequate parking spaces, the amount of which was a matter for debate, but he said parking provision was relevant in this application.
- The agent advised there were in excess of 800 parking spaces within 350 metres walking distance of the site, 250 of which, according to car parking surveys undertaken, were available between 12 noon and 2.00pm - the busiest time of day.
- Mr Owens said the peak demand for residential car parking typically was evening and night time.
- Ms McShane said four car parking surveys undertaken had all demonstrated adequate parking availability and a car club scheme would also be provided.
- Ms McShane said the proposed development was sustainable, it would be situated across from Newry Bus Station and therefore would encourage more people to use public transport.
- Ms McShane said on-street car parking was subject to 'pay and display' between the hours of 8.00am and 6.00pm after which parking was free. She said the charge per hour was only 40 pence.
- Mr Killen said DfI Roads had concerns regarding congestion in the area, car parking charging and the possibility of some car parks being locked at night. He acknowledged

the retail and office element could be accommodated by the public car parking spaces, however he had concerns regarding public parking availability for the residential element of the development.

- Ms McShane said 4% of the spaces would be allocated to disabled parking.
- Mr Owens said it was important to promote the public transport network in the area, he said modern technology in the form of car parking apps assisted people who wished to use the public car parking spaces and he said the provision of 107 car parking spaces would take up 90% of the development site.
- Mr Rooney said NI Water had expressed strong concerns regarding the issuing of planning permissions with a negative condition attached.
- Ms McShane said they would be happy to provide the 62 car parking spaces as outlined in the original proposal, however, she said there were difficulties in that although the 62 spaces were not being used overnight, they were subject to existing planning permission for the existing development and she said she considered there was not a need for them.
- Ms McShane said there was a £5bn deficit in the sewage system in N. Ireland and it was a Central Government issue. She said in relation to the drainage issue that needed to be addressed, they were exploring compensatory measures e.g. combined sewers in the Newry area, testing the drains and where applicable, installing additional infrastructure to remove the rain water from the sewage system thereby freeing up capacity in the waste water treatment works.
- Ms McShane said by applying a condition prior to commencement of works, measures could be agreed with NI Water to allow the scheme to progress.
- In clarifying how a car pool club would work, Ms McShane said it would work the same way as a bike rental scheme. She said it was growing in popularity and that Derry and Strabane Council operated a car club for their staff. Ms McShane said it was an easy to use per hour rental system and they had been working with Enterprise Car Rental. She said it was steadily growing in N. Ireland and the UK and with regard to the proposed application, the usage would be monitored and add extra capacity if needed.
- Mr Rooney said Planning agreed with the need to reduce the use of cars in city centres and promote a more sustainable way of life, however, he said it was important to look at the current application and consider if it was feasible in terms of self-sufficiency and the concept of 'walk to work from home', as was the case in Belfast.
- Mr Rooney said significant weight was given as part of the planning assessment to the new concept the applicant was promoting, however, he said the issue for the Committee was to determine if the infrastructure existed to allow for the proposed application to proceed.
- Mr Rooney said a measured approach was needed and Planning were prepared to accept a reduced number of car parking spaces whilst acknowledging that public transport was the way forward.
- Mr Rooney acknowledged there were measures to decentralise jobs to different areas in the region which would inevitably increase the critical mass within Newry, however, he said he considered a balanced approach was still needed and it was important to factor in the loss of spaces to the public by the proposed application.
- Councillor Byrne said planning reports indicated an abundance of car parking spaces in Newry, even at the busiest times and he said it would be important to ascertain which car parks closed at night.
- Mr McKay said Planning were fully signed up to sustainable living and accepted the principle of development, but he said a reduced level of off-site parking was still required, such as had been done before in Newcastle and Newry. He said it was a bridging mechanism which, over time could be distinguished. Mr McKay said he did not dispute the abundance of parking, however, he said subsequent schemes could also avail of the public parking.
- Councillor Byrne said he acknowledged subsequent schemes would affect the number of parking spaces available, however he said, car parking surveys carried out prior to

subsequent schemes would reflect the availability of car parking spaces at that time and consequently inform future decisions.

Councillor Hanna proposed to issue an approval in respect of Planning Applications LA07/2020/0485/F, LA07/2020/0486/DCA and LA07/2020/0487/LBC contrary to Officer recommendation on the basis that he considered it was the way forward in terms of sustainable living, it was within an urban area as characterised by the types of buildings proposed and there were 817 car parking spaces available within 350 yards. Councillor Hanna said two conditions should be attached – 1. A car club to be included in the proposal and 2. The sewage disposal method to be addressed as per Planning recommendation. Councillor Murphy seconded the proposal.

Mr O'Connor said he was aware not all Members had been present at previous discussions on these applications and he said it was important Members taking part in the voting process should be satisfied they were fully apprised of all the facts and background of the application.

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

FOR:	9
AGAINST:	0
ABSTENTIONS:	1

The proposal was carried.

AGREED: On the proposal of Councillor Hanna, seconded by Councillor Murphy it was agreed to issue an approval in respect of Planning Applications LA07/2020/0485/F, LA07/2020/0486/DCA and LA07/2020/0487/LBC contrary to Officer recommendation on the basis that the proposed applications would provide sustainable living, it was within an urban area and there was ample parking provision in Newry.

It was agreed to attach conditions to ensure that a car club was included in the scheme and the sewage disposal method was addressed as per Planning recommendation.

(Break 11.22 – 11.30)

(4) LA07/2019/1087/O

Location:

Approx. 50m NE of 21 Drakes Bridge Road, Crossgar

Proposal:

Replacement dwelling and garage

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:

In support

Mr Gerry Tumelty, agent and Mr McKeown presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Issues raised:

- Mr Tumelty read out a sworn statutory declaration by Martin Gill that recalled his visits to the site and recollections of the building having been occupied as a dwelling unit.
- Planning had received a letter, that did not object to or support the application but that stated a family had lived close to the site for a number of generations and the small outbuilding had been used as a calf house and store and had never been a dwelling.
- Mr O'Connor said Members should exercise caution when considering both letters and he said it would have been better to have people in the chamber to give evidence.
- Mr McKay said in determining if a building had ever been inhabited, Planning policy always referred to the existence of chimneys, however, he said it was a judgement call for the Committee to make.
- Mr Tumelty said from the inside of the building it was apparent there had once been a window but at some stage it had been blocked up.

Councillor Hanna proposed to issue an approval in respect of Planning Application LA07/2019/1087/O contrary to Officer recommendation on the basis that he accepted there was sufficient evidence to support the building had formerly been a dwelling and it was sustainable development in the countryside. Councillor Devlin seconded the proposal saying she was satisfied on seeing photographs and on hearing the sworn declaration it had once been a dwelling.

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

FOR:	10
AGAINST:	0
ABSTENTIONS:	1

The proposal was carried.

AGREED:

On the proposal of Councillor Hanna, seconded by Councillor Devlin, it was agreed to issue an approval in respect of Planning Application LA07/2019/1087/O contrary to Officer recommendation on the basis that the building had formerly been a dwelling and it contributed to sustainable living in the countryside.

Planning Officers be delegated authority to impose any relevant conditions.

(5) LA07/2020/1588/F

Location:

Former St. Patrick's Primary School site, Ardglass Road Downpatrick

Proposal:

Development of petrol filling station, 1no. retail unit, 1no. hot food unit, ATM and jet wash with associated access, car parking, landscaping and site works

Conclusion and Recommendation from Planning Official:

Approval

The Chairperson advised Planning Application LA07/2020/1588/F had been removed from the schedule as the representative from the objectors had been unable to attend the meeting.

(6) LA07/2020/1651/F**Location:**

75m north of 18 Ballinasack Road, Mullaghbawn, Newry

Proposal:

Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) (Amended description)

Conclusion and Recommendation from Planning Official:

Refusal

The Chairperson advised Planning Application LA07/2020/1651/F had been removed from the schedule at the request of Councillor Murphy, and to be presented at a future Planning Committee Meeting.

(7) LA07/2021/1549/F**Location:**

Unit 11 Milltown Industrial Estate Warrenpoint

Proposal:

Application under section 54 for amendment of condition 03C of planning approval LA07/2018/0244/F as follows: Manufacturing operating hours extended from 7.00 - 23.00 hours Monday to Friday to 24 Hour production, 7 days per week

Conclusion and Recommendation from Planning Official:

Approval

The Chairperson advised Planning Application LA07/2021/1549/F removed from the schedule as the representative from the objectors had been unable to attend the meeting.

(8) LA07/2021/1869/F**Location:**

between Nos 43 and 45 Donagh Grove Donaghaguy Road Warrenpoint

Proposal:

Proposed infill dwelling

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:

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

Issues raised:

- Mr Cole said there was a mixture of triple detached, semi-detached and detached properties in the development.
- Mr Cole said DfI Roads were content with both the access to the proposed dwelling and the parking for the existing dwelling.

Councillor Murphy proposed to issue an approval in respect of Planning Application LA07/2021/1869/F, contrary to Officer recommendation on the basis that he considered the applicant had made a reasonable case, the proposed site was adequate in size, there were a variety of house types in the development thus ensuring the proposed application would not be out of character in the area and it was a good opportunity to build a home. Councillor Hanna seconded the proposal.

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

FOR:	9
AGAINST:	2
ABSTENTIONS:	0

The proposal was carried.

AGREED:

On the proposal of Councillor Murphy, seconded by Councillor Hanna it was agreed to issue an approval in respect of Planning Application LA07/2021/1869/F contrary to Officer recommendation on the basis that the proposed site was adequate in size, there was a variety of house types in the development and it was a good opportunity to build a home.

(9) LA07/2021/1935/F

Location:

10 Dunbrae Chancellors Road Newry

Proposal:

Construction of a storey-and-a-half detached dwelling within the curtilage of the side garden of 10 Dunbrae

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:

Mr Pat McVarnock, architect and Mr Barney McKevitt, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

Issues raised:

- Mr McKevitt said the removal of the hedgerows on the site had resulted in an increase in the size of the rear amenity space thereby accounting for the discrepancy between what appeared on the Case Officer report and the Agent's report.
- Mr Rooney said Planning had worked with the measurements detailed on the drawings received.
- Mr McKevitt said there were other examples in the development of extensions that had been built, that had resulted in dramatically reducing the garden space.
- Mr McVarnock said the proposal could not be reduced any further – it was a 78 square metre two- bedroom house.

AGREED:

On the proposal of Councillor Larkin, seconded by Councillor O'Hare it was unanimously agreed to defer Planning Application LA07/2021/1935/F for a site visit, so Members could assess the site in more detail.

Mr McKevitt to submit the addresses of the examples he referred to where extensions had been built.

(10) LA07/2022/0210/F**Location:**

Ground floor unit 12 Seaview Warrenpoint

Proposal:

Retention of existing outdoor customer seating area

Conclusion and Recommendation from Planning Official:

Approval

The Chairperson advised Planning Application LA07/2022/0210/F removed from the schedule as the representative from the objectors had been unable to attend the meeting.

(11) LA07/2022/0226/F**Location:**

Ground floor unit 12 Seaview Warrenpoint

Proposal:

This is a category 11 section 54 application

Conclusion and Recommendation from Planning Official:

Approval

The Chairperson advised Planning Application LA07/2022/0226/F removed from the schedule as the representative from the objectors had been unable to attend the meeting.

(12) LA07/2022/0467/O

Location:

Lands to infill gap Creggan West Road Between no1 and no3 Creggan West Road Whitecross Co. Armagh

Proposal:

2 no building sites

Conclusion and Recommendation from Planning Official:

Refusal

Power-point Presentation:

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

Speaking rights:

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

Issues raised:

- Mr Rooney said the water treatment plant located to the SW of No. 1 Creggan West Road would not have been constructed as a building, but rather, it was a metal container / cabinet put there to meet the needs of NI Water.
- Mr Rooney said he was not aware of any previous application cases where similar containers / cabinets were relied upon as buildings to fulfil planning policy requirements.
- Councillor Byrne said the metal shed had foundations, and two doors and if it was located within the garden it would be considered a building.
- Mr McKay said planning policy in the countryside was a restrictive policy with permission granted by exception and the drive was towards restriction and sustainability in the countryside.

Councillor Hanna proposed to accept the Officers recommendation in respect of Planning Application LA07/2022/0467/O. Councillor O'Hare seconded the proposal.

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

FOR:	8
AGAINST:	1
ABSTENTIONS:	1

AGREED:

On the proposal of Councillor Hanna, seconded by Councillor O'Hare it was agreed to issue a refusal in respect of Planning Application LA07/2022/0467 as per the information contained within the Case Officer report and presented to Committee.

P/108/2022: VERBAL UPDATE ON IMPLEMENTATION OF NEW PLANNING IT SYSTEM

Mr McKay advised the new Planning IT system was going live on 5 December 2022 and the existing system would cease on Friday 18 November and re-open on Monday 21 November as a read-only system. He said the transition to the new system would take a few weeks which would result in new applications not being uploaded to the system for the next few weeks.

Mr McKay said some disruption was to be expected, however he said the December Committee Meeting should not be affected.

P/109/2022: HISTORIC ACTION SHEET

Read: Historic Action Sheet. **(Copy circulated)**

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

P/110/2022: PLANNING COMMITTEE PERFORMANCE REPORT – SEPTEMBER 2022

Read: Planning Committee Performance Report – October 2022. **(Copy circulated)**

AGREED: It was unanimously agreed to note the Planning Committee Performance Report

P/111/2022: CURRENT APPEALS AND DECISIONS

Read: Current Appeals and Decisions. **(Copy circulated)**

AGREED: It was unanimously agreed to note the Current Appeals and Decisions.

The meeting concluded at 1.00pm.

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 14 December 2022

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:

- **LA07/2021/0245/F** - Existing toilet block in the car park is to be demolished and replaced with a public beach amenity building accommodating female and male toilets, universal toilet, first aid room, lifeguard store and ground store - Land immediately west of 40 Clanmaghera Road Tyrella Beach **APPROVAL**
- **LA07/2021/2131/F** - Residential development comprising 46 no. dwellings (16 no. detached and 30 no. semi-detached) - change of house type in respect of approval P/2011/1067/F - Land adjacent and to the west of Sacred Heart Grammar School 10 Ashgrove Avenue Newry BT34 1PR **APPROVAL**
- **LA07/2022/1034/F** - Proposed extension to existing building to include replacement sales area, WC, store and upcycling workshop. Re-roof existing building and build up glass curtain walling with masonry wall and windows and provision of on site parking using existing entrance. Retention of replacement polytunnel and proposed new lean to covered cleaning area. Removal of existing polytunnel and sales area - 1 Council Road Kilkeel BT34 4NP **APPROVAL**
- **LA07/2022/1224/F** - New, multi-use, non-bitmac, compacted gravel community trails - Corry Wood Station Road Castlewellan Co. Down **APPROVAL**

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Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

Newry, Mourne
and Down
District Council

ADDENDUM REPORT

Application Reference: LA07/2017/1261/O

Date Received: 21.08.2017

Proposal: Proposed dwelling and garage

Location: Site abutting 20 Junction Road Saintfield

Application was previously presented to Planning Committee on 10 January, 7 March and 01 August 2018 with a recommendation to Refuse.

Committee agreed at the August meeting that the application be deferred to seek legal advice on the issue of the farm business membership. Legal advice was sought and gained in mid-December 2021. (legal advice attached to agenda papers)

The Chief Planner provided an update to the 9th February 2022 meeting of the Planning Committee and advised that following the receipt of legal advice it would be necessary to seek additional information from the agent in relation to the involvement of the applicant in the farm business.

The agent was requested to produce evidence of the applicant's involvement in decision-making with respect to running the farm business, the extent of the benefit received as a member of the farm business and the financial risk the applicant bears in relation to the enterprise. The accounts of the farm and/or tax records were highlighted as of being of relevance to the Planning Departments consideration. This information was sought from the agent on 9 June 2022.

The agent responded on the 30 August 2022 stating that the applicant had reflected carefully on the requested information but did not consider that the information was necessary for the Council to determine this application or, indeed, relevant. The agent commissioned independent legal advice which was submitted and has been considered (Agents submission attached to agenda papers)

In the absence of the requested information the Planning Department is not in a position to verify the applicant's involvement in decision-making with respect to running the farm business. Therefore the application is being returned with a recommendation to refuse. Letters of support received on

the application have been considered.

1. The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. The proposal is contrary to Policies CTY1 and CTY10 and CTY13 (g) of Planning Policy Statement 21, Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that it has not been demonstrated that the proposed new building is visually linked (or sited to cluster) with an established group of buildings on the farm.
3. The proposal is contrary to Policy CTY8 and CTY14 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 Junction Road.

Signed A.McAlarney

Date: 29 November 2022

Application for planning permission for a proposed dwelling and garage under CTY 10 (Dwellings on Farms) at 20 Junction Road, Saintfield (LA07/2017/1261/O)

1. This is a straightforward application for planning permission for a dwelling and garage on an existing farm which has, unfortunately, taken over five years to get to this point because of avoidable delays in obtaining legal advice.
2. This application is made by Thomas Mageean. Along with his brother, Bernard Mageean, Thomas has been involved in the family farm business for much of his life. The farm has been passed down the generations. Thomas, like many rural dwellers in this district, would like his family to live close to him in his later years. The proposed dwelling would provide a new home for his daughter, son-in law, and grandchildren close to him and his wife.
3. The proposed dwelling should be granted permission. It would be “visually linked or sited to cluster with an established group of buildings on the farm” (CTY 10(c)), namely the group of buildings at No. 20 Junction Road. The main issue with this application has been whether or not the group of buildings at No. 20 Junction Road are “an established group of buildings on the farm” for the purposes of CTY 10(c) (underlining added).
4. In response to concerns from officers about this, the applicant commissioned a legal opinion from Conor Fegan, a specialist planning barrister. His opinion, dated 25 June 2020, sets out between paragraphs 13 to 34 why the group of buildings at No. 20 Junction Road are “on the farm” under CTY 10(c). Members are invited to read these paragraphs in full, as they provide a complete answer to the concerns raised by officers (Appendix 1).
5. It is understood that officers obtained their own legal advice on these issues. This advice has not been shared with the applicant; however it appears from the addendum report that officers were told it was “necessary to seek additional information from the agent in relation to the involvement of the applicant in the farm business”. Officers are now recommending refusal because the applicant did not give this information when asked for it. Officers say that they are “not in a position to verify [...] involvement in decision-making with respect to running the farm business”. However, that reasoning is flawed.
6. It is flawed because CTY 10 does not say that in order for a dwelling to be classed as being “on the farm” the occupant of that building must prove “involvement in decision-making with respect to running the farm business”. That is not a policy requirement. Members will be familiar with CTY 10(c). All that is required is that a building is “on the farm” (CTY 10(c)). It does not require the occupier of any dwelling to prove, with independent corroborating evidence, “involvement in decision-making with respect to running the farm business”. Members are invited to read the letter sent by the applicant on 30 August 2022 which deals with this point in more detail (Appendix 2).
7. The applicant has already provided ample evidence to show that the buildings at No. 20 Junction Road are “on the farm” under CTY 10(c). This can be seen clearly in map form. A map showing the fields where agricultural subsidies are claimed, the application site, and the buildings at No. 20 can be found at Appendix 3. It shows that on the east, west, and south sides, No. 20 is bounded by large fields that are in active agricultural use; and on the north side, it is bounded by Junction Road. It also shows extensive

agricultural holdings surrounding No. 20. Taking a step back from this, it is quite clear that No. 20 sits within the larger farm holding. It is clearly "on the farm" (CTY 10(c)).

8. And the applicant has been clear and consistent in its description of the farm business. Thomas and Bernard are brothers. The farm is divided between them. Thomas has helped out Bernard with various farming tasks over the years. Conacre rent has been paid between the two brothers in the past. Both Thomas and Bernard are listed as formal members of the farm on the DAERA Farm No. 628688. This veracity of all of this evidence has never been challenged by officers or others. It is set out in the legal opinion at paragraph 13 (Appendix 1).
9. Members might wonder why the applicant cannot simply provide the information officers are looking for to corroborate this account. There are three short reasons why.
10. First, as members will appreciate, family farms like this one operate on the basis of trust and loyalty, not on the basis of arid legal agreements. This farm has been in the family for generations. Its upkeep has been the life work of the two brothers. It is entirely unsurprising that they do not have lots of formal documents showing involvement in decision-making and assumption of financial risk like officers are asking for. Decisions in farms like this are taken around the kitchen table, not in a solicitors office. Records are sparse.
11. Second, the applicant is reluctant to provide documents which are not strictly speaking relevant. It takes time and money to do so. There is an understandable fear that if further documents are submitted this could lead to yet more delay or yet more requests for documents. The last time a good faith attempt was made to move matters forward by adding Thomas as a formal member of the farm business, the applicant and his professional team were accused of "manipulation" by officers. The applicant is satisfied that members now have enough information to assess compliance with CTY 10(c).
12. Third, Thomas' health has also deteriorated in the years since this application was submitted. Because of the nature of his illness, it is now difficult to obtain the type of information which officers have asked for this late in this process.
13. Officers have separately raised concerns about the precedent that this application would set if granted. In truth, it would set no precedent. The question of whether a set of buildings is "on the farm" (CTY 10(c)) or not will always be a fact sensitive question, to be determined with reference to application under consideration. This application is confined to its own facts as a lot CTY 10 applications are. Members are invited to read paragraphs 51 to 54 of the legal opinion for the full response to this concern (Appendix 1).
14. This family has waited five years to get planning permission for a family home on a farm which they have owned for generations. It is a familiar story of one generation of rural dwellers looking to have the next generation of their family live close to them on their farm. Officers are recommending refusal on the mistaken basis that there is some need to show "involvement in decision-making with respect to running the farm business". There is not. CTY 10(c) requires no such thing, as confirmed by the legal opinion submitted by the applicant. The other concerns of officers are, respectfully, baseless. Ample evidence to prove compliance with CTY 10(c) has been provided. Members are invited to overturn the recommendation and grant permission, allowing a new generation of the Mageean family to live on the family farm.

**PROPOSED DWELLING AND GARAGE
AT SITE ABUTTING 20 JUNCTION ROAD, SAINTFIELD**

**DETERMINATION OF AN APPLICATION FOR OUTLINE
PLANNING PERMISSION**

A D V I C E

Introduction and Background

1. I am instructed by Ms Sheila Curtin MRTPI to provide advice on the determination of an application for outline planning permission for a 'proposed dwelling and garage' at a site abutting 20 Junction Road, Saintfield (LA07 / 2016 / 1261 / O) ('Proposed Development'). Specifically, an issue has arisen under policy CTY 10, 'Dwellings on Farms', of PPS 21, 'Sustainable Development in the Countryside', as to whether the Proposed Development would be 'visually linked or sited to a cluster with an established group of buildings on the farm' (CTY 10(c)).
2. Before I address that specific issue, I need to briefly outline the factual background.
3. The application for outline planning permission was made by Mr. Thomas Mageean on 21 August 2017. The P1C Form recorded the DAERA Farm Identification No. 628688 and referred to Mr. Thomas Mageean and Mr. Bernard Mageean (who are brothers) as 'owners of the active farm business' (p. 2). A 'Field Boundaries Map' which outlines the extent of the active farm business which subsidies are claimed for was included with the application, showing land holdings of approximately 53.82 hectares.
4. A consultation response from DAERA was issued on 3 October 2017. That response pointed out that Mr. Thomas Mageean was not a formal member of the

farm business at that time. Mr. Bernard Mageean was the only formal member of the farm business at that time.

5. The applicant forwarded a letter from his accountant to the Council on or around 2 January 2018, which confirmed that he 'receives conacre rent from Mr. Bernard Mageean in respect of his land' at No. 20 Junction Road (p. 1).
6. The application first came before the Planning Committee on 10 January 2018, with a recommendation to refuse principally on the basis that the Proposed Development would not be 'visually linked or sited to a cluster with an established group of buildings on the farm' (CTY 10(c)). At that meeting, members asked numerous questions about ownership issues and ultimately decided to defer the determination of the application to allow further evidence to be submitted on those issues (p. 5):

On the proposal of Councillor Craig seconded by Councillor Hanna it was agreed to defer Planning Application LA07/2017/1261/O to allow for evidence to be provided to Planning Officials that would clarify ownership issues regarding the proposed site

7. Following this, Ms Sheila Curtin MRTPI, the agent acting on behalf of the applicant, forwarded evidence to the Council in a letter dated 7 February 2018 showing that:
 - (i) No. 20 Junction Road and the associated outbuilding is owned by Mr. Thomas Mageean;
 - (ii) No. 33 Junction Road is owned by Mr. Bernard Mageean;
 - (iii) No. 17 Junction Road is owned by Mr. Bernard Mageean;
 - (iv) The Roadside Barn opposite No. 20 Junction Road is owned by Mr. Thomas Mageean.
8. Around this time, Mr. Thomas Mageean submitted a 'BC1 — DAERA Business Change Notification' form with the consent of Mr. Bernard Mageean which notified DAERA that Mr. Thomas Mageean was to become a formal

registered member of DAERA Farm No. 628688. I am told that the purpose of this was to formalise what had already been the position for some time, namely that both brothers were members of the farm business. And it was also hoped that this would provide further clarity to the Planning Committee about the ownership issues that were raised during the 10 January 2018 meeting.

9. The application came back before the Planning Committee on 7 March 2018, with another recommendation to refuse for the same reasons. At that meeting, Ms Curtin explained that an application had been made to add Mr. Thomas Mageean to the farming business. Following further discussion at the meeting, the Planning Committee resolved to defer the determination of the application until the change in business application was determined by DAERA (p. 5):

Councillor Craig then proposed, and Councillor Larkin seconded, to defer Planning Application LA07/2016/1261/O for a period of 4 weeks in order for additional information to be received from DAERA and upon receipt of this information, Planning Officers be granted approval to issue the decision under delegated authority.

10. The application was subsequently approved by DAERA.
11. The matter came back before the Planning Committee for the third time on 1 August 2018, again with a recommendation to refuse for the same reasons. Officers were particularly concerned that the planning system was being ‘manipulated’ through the formal addition of Mr. Thomas Mageean to the farm business (p. 1 – 2). There was a discussion about this at the meeting, and members ultimately resolved to defer for legal advice (p. 3):

On the proposal of Councillor Clarke, seconded by Councillor Macauley it was agreed to defer Planning Application LA07/2017/1261/O to allow sufficient time for Ms Coll to explore the legal implications before giving advice to the Committee.

12. The application has not been brought back before the Planning Committee since this. The Council has not explained why it has taken so long to obtain legal advice.

13. Before I go on to address the reasons for refusal, it might be helpful for me to clearly set out the ownership issues as they currently stand and have been described to me:

- (i) No. 20 Junction Road is owned by Mr. Thomas Mageean and has been throughout the course of this application. He lives there, and has done for some time;
- (ii) The Roadside Barn opposite No. 20 Junction Road is owned by Mr. Thomas Mageean. He rents the barn to Mr. Bernard Mageean who uses it for cattle which are associated with the farm business;
- (iii) Mr. Thomas Mageean and Mr. Bernard Mageean are formal members of the farm business. Mr. Thomas Mageean was added as a formal member in 2018. He was added in order to formalise the existing position and to provide clarity on ownership issues for the Planning Committee;
- (iv) Mr. Thomas Mageean owns several of the fields in the farm holding, and has done for a considerable number of years (i.e. even before he was a formal member of the farm business). He receives conacre rent from Mr. Bernard Mageean for use of these fields;
- (v) in particular, Mr. Thomas Mageean owns the application site, which is currently in agricultural use and is within the active farm holding, and the field which abuts No. 20 Junction Road to the south and west. He receives conacre rent from Mr. Bernard Mageean for use of these fields. This also applies to other fields in the farm holding;
- (vi) Mr. Bernard Mageean owns Nos. 17 and 33 Junction Road. He also owns several other fields in the farm holding;

- (vii) the farm has been owned by this family for generations. Mr. Bernard Mageean and Mr. Thomas Mageean are brothers who have responsibility for the farm holding now. Mr. Bernard Mageean takes a more active role than Mr. Thomas Mageean, but over the years Mr. Thomas Mageean has assisted his brother with some tasks around the farm (e.g. cutting hedges). There is a formal relationship through the payment of conacre rent for use of some of the fields.

Compliance with CTY 10

- 14. CTY 10 sets out a set of criteria ((a) – (c)) which controls the development of new dwellings on farms. Located within PPS 21, it forms part of a suite of policies which are aimed at encouraging sustainable development in the countryside. CTY 10 is the main policy which governs the in-principle acceptability of new dwellings on farms in the countryside.
- 15. There is rightly no dispute that the application complies with criteria (a) and (b) of CTY 10.
- 16. That leaves criterion (c), which requires that:
 - the new building is visually linked or sited to a 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 that 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 groups(s).
- 17. There is no suggestion here that this is an exceptional case, which falls within the second sentence of this paragraph; instead, this application is advanced on the sole basis that the Proposed Development will be ‘visually linked or sited to a cluster with an established group of buildings on the farm’ (CTY 10(c)).

18. It is said, in short, that the Proposed Development would be ‘visually linked or sited to cluster with’ (CTY 10(c)) the group of buildings at No. 20 Junction Road (i.e. the residential dwelling and outbuilding owned and occupied by Mr. Thomas Mageean) and that this group of buildings is ‘on the farm’ owned and operated by Mr. Thomas Mageean and Mr. Bernard Mageean, which is assigned DAERA No. 628688.
19. It seems to me that there are two separate questions which need to be answered here:
 - (i) are the group of buildings at No. 20 Junction Road (i.e. the residential dwelling and outbuilding currently owned by Mr. Thomas Mageean) ‘on the farm’ (CTY 10(c))?
 - (ii) assuming that they are, would the Proposed Development be ‘visually linked or sited to cluster with’ (CTY 10(c)) those buildings?
20. In this case, in order for the Proposed Development to comply with CTY 10(c) the answer to both of the above questions needs to be ‘Yes’. If the answer to either is ‘No’, then the Proposed Development would not comply with CTY 10(c).
21. I will deal with each of those questions in turn.
22. I am firmly of the view that the group of buildings at No. 20 Junction Road are ‘on the farm’ (CTY 10(c)) which forms the subject of this application.
23. Before I explain why, I should point out two important points of interpretation which arise in connection with CTY 10(c). I do so mindful of the fact that the interpretation of policy is a matter of law for the courts (*Tesco v Dundee City Council* [2012] UKSC 13, [18]).
24. First, all that is required is that the established group of buildings are ‘on the farm’ (CTY 10(c)). There is no requirement for the group of buildings in question to be used for farming purposes — the policy simply requires the

established group of buildings to be located ‘on the farm’ (CTY 10(c)). An established group of buildings will often be ‘on the farm’ (CTY 10(c)) but not used for farming purposes (e.g. residential dwellings).

25. Second, the owner of the ‘established group of buildings on the farm’ (CTY 10(c)) does not have to be a formal member of the farm business nor do they need to be engaged in the farm business at all. Nothing in the wording of the policy suggests that they do. The amplificatory text which accompanies the policy makes this clear too (underlining added):

5.37 In recognition of changing farming practices and to help support rural communities, it is considered that there is a continuing need for new dwellings on farms to accommodate both those engaged in the farm business and other rural dwellers

26. With these principles in mind, a useful starting point when considering if the group of buildings at No. 20 are ‘on the farm’ (CTY 10(c)) is the Field Boundary Map (see above, [3]). The fields which are outlined on the map in yellow belong to the farm; they are in active agricultural use and a subsidy is claimed in connection with those. There is no doubt that the fields that are outlined in yellow are ‘on the farm’ (CTY 10(c)) and it does not appear to be suggested otherwise.
27. No. 20 is not outlined in yellow on the map; that is because it is not in active agricultural use and as such there is no subsidy claimed in connection with that piece of land. Similarly, No. 33 and No. 17 are not outlined in yellow on the DAERA maps, as no subsidies can be claimed in connection with these lands also. There is a residential dwelling and an outbuilding at No. 20, neither of which would lead to a subsidy. But that does not mean that the buildings at No. 20 are not ‘on the farm’ (CTY 10(c)) — just because an ‘established group of buildings’ is not outlined in yellow on a farm boundary map does not mean that ‘established group of buildings’ is not ‘on the farm’ (CTY 10(c)). The farm can (and normally will) extend beyond the yellow outlined areas for which subsidies are claimed, particularly where residential dwellings are concerned.

28. Looking at the map with that in mind, the farm consists of a large number of fields which are in active agricultural use. These fields are located on both sides of Junction Road. Looking at No. 20 in particular, the two fields which immediately abut No. 20 (i.e. the application site to the east and the larger agricultural field to the south and west which extends up to the barn owned by Mr. Thomas Mageean) are in active agricultural use (i.e. grazing). They are owned by Mr. Thomas Mageean, who receives conacre rent from his brother Mr. Bernard Mageean for use of these fields. Mr. Thomas Mageean is part of the family who has owned this farm for generations. He has helped his brother with odd tasks around the farm over the years (see above, [13]). So, when taking a step back and looking at No. 20 as a whole, on three sides (i.e. east, west and south) the site is bounded by large fields that are in active agricultural use; and on the remaining (i.e. north) side, the site is bounded by Junction Road. The site is surrounded by active agricultural fields, all of which are 'on the farm' (CTY 10(c)).
29. Once this is recognised, it is difficult to see how it can reasonably be concluded that No. 20 is not itself 'on the farm' (CTY 10(c)). It is surrounded by active agricultural fields, all of which are 'on the farm' (CTY 10(c)). Viewed in its wider context, No. 20 sits within the active farm holding which is broadly outlined in yellow on the boundary map.
30. Officers disagree. They say that the buildings at No. 20 are not on the farm, noting in their December 2017 report that the buildings at No. 20 are not 'associated' with the farm (p. 3) (underlining added):

From the information available to date, included that submitted by the agent, it appears the buildings associated with this farm business include the dwelling at no.17 Junction Road, a barn along the roadside immediately north of no.20, and approx. 90m from the application site, and a grouping of farm buildings and dwelling at no.33 Junction Road, which are located approx. 350m west of the application site.

31. The problem with this is that it asks the wrong question: the question is not whether the buildings are 'associated with this farm' (p. 3), but is instead whether the buildings are 'on the farm' (CTY 10(c)). As already explained

above, there is no need for the buildings to either to be used for farming purposes (see, [24]) or to be owned by an individual who is a formal member of the farming business (see, [25]).

32. It is clear, in particular, from the officer report of February 2018 that officers are placing particular weight on who owns each of the buildings and who is a formal member of the farm business. Notably, in that report it is said that ‘the buildings at No. 20 are not included within the farm business of Bernard Mageean’ (p. 1). But that really misses the point. As already explained, just because ‘an established group of buildings’ (CTY10(c)) is not owned by a formal member of the farm business does not mean that they are not ‘on the farm’ (CTY 10(c)) (see above, [25]). Put another way, ‘an established group of buildings’ (CTY10(c)) can be ‘on the farm’ (CTY 10(c)) irrespective of who has ownership of those buildings. Here, the group of buildings at No. 20 have been ‘on the farm’ (CTY10(c)) throughout the determination of this application, and in particular before Mr. Thomas Mageean was ever a formal member of the farm business.
33. I hope that it is clear that my conclusion that the buildings at No. 20 are ‘on the farm’ (CTY 10(c)) has been reached without me having placed any weight on the fact that Mr. Thomas Mageean is now a formal member of the farm. Irrespective of that change, I would have reached the same conclusion on this matter.
34. Therefore, in response to the first question, my answer is ‘Yes’, the buildings at No. 20 are ‘on the farm’ (CTY 10(c)).
35. I can deal with the second question (i.e. would the Proposed Development be ‘visually linked or sited to cluster with’ (CTY 10(c)) the buildings at No. 20 Junction Road) much more briefly.
36. The only reasonable answer to the second question is ‘Yes’, the Proposed Development would be ‘visually linked or sited to cluster with’ (CTY 10(c)) the group of buildings at No. 20 Junction Road. I agree with what is said in the Planning Policy Statement about this (p. 8):

The proposed site is visually linked and sited to cluster with the existing group of buildings at 20 Junction Road. The proposal will immediately abut the cluster of buildings at No. 20 Junction Road, which is the residing property of the applicant and part farm owner Mr. Thomas Mageean.

37. It is difficult to see how it could reasonably be said that the Proposed Development would not be 'visually linked or sited to cluster with' (CTY 10(c)) the group of buildings at No. 20 Junction Road when the application site immediately abuts No. 20 Junction Road and the type of development (i.e. residential) will be the same on both sites. Without actually being situated on No. 20, the Proposed Development could not be any closer to the cluster of buildings at No. 20. The Proposed Development would be 'visually linked or sited to cluster with' (CTY 10(c)) the group of buildings at No. 20 Junction Road.
38. Indeed, there has (rightly) never been any suggestion by the Council that the Proposed Development is not 'visually linked or sited to cluster with' (CTY 10(c)) the group of buildings at No. 20; instead, the Council has objected to this application on the altogether different and separate basis that the group of buildings at No. 20 are not 'on the farm' (CTY 10(c)).
39. If the Council agrees with my analysis above (see, [22] – [34]) that the group of buildings at No. 20 Junction Road are 'on the farm' (CTY 10(c)), then it is difficult to see how it could then reasonably conclude that the Proposed Development is not 'visually linked or sited to cluster with' (CTY 10(c)) that group of buildings; or in other words, if the answer to the first question posed above is 'Yes', then it is difficult to see how the answer to the second question could be anything other than 'Yes' too (see above, [19]).
40. Accordingly, in my view, the Proposed Development is compliant with CTY 10(c) because:
 - (i) the group of buildings at No. 20 Junction Road (i.e. the residential dwelling and outbuilding currently owned by Mr.

Thomas Mageean) are 'on the farm' (CTY 10(c)) which is owned by Mr. Thomas Mageean and Mr. Bernard Mageean and which is assigned DAERA No. 628688; and

- (iii) the Proposed Development would be 'visually linked or sited to cluster with' (CTY 10(c)) the group of buildings at No. 20 Junction Road.

41. For the sake of completeness, I should also say that CTY 10(c) requires that 'where practicable, access to the dwelling should be obtained from an existing lane' (CTY 10(c)). As explained in the Planning Policy Statement which was submitted with the application, 'the site is currently accessed via an existing agricultural gate, it is envisaged that access to the proposed site will be either via or as close as possible to this existing access point' (p. 8). This deals with the access point. Rightly, the Council has not raised any concern about access arrangements, with DfI Roads expressing 'no objections in principle' in its response of 4 October 2017. DfI Roads asks for a standard condition to be imposed (p. 1), which the applicant takes no issue with.
42. On the basis of the above, I consider that the Proposed Development complies with CTY 10.

The Manipulation and Precedent Concerns

43. Before leaving the CTY 10 issue, I want to address two of the concerns which officers have raised in connection with this application. In short, they are concerned that:
 - (i) the applicant has, in some way, 'manipulated' the planning system by successfully applying to have his name added to the farm business during the determination of this application ('Manipulation Concern'); and

- (ii) that as a result, if permission was granted it would set a bad precedent which encouraged others to do the same thing when applying for permission under CTY 10 ('Precedent Concern').

- 44. Both concerns can be seen in the report drafted by officers in advance of the Planning Committee meeting of 1 August 2018. Officers spoke about the potential harm in terms of setting a bad precedent at the beginning of the report after they explained that Mr. Thomas Mageean had been added to the farm business (p. 1):

Whilst it is acknowledged that the Planning Committee had deferred the application to allow for this information to be submitted, the Planning Office still hold serious concerns regarding the precedent this would set for future cases involving the deliberate manipulation of farm businesses in order to comply with Policy CTY10 of PPS21.

- 45. Officers were critical of the application to join the farm business that made by Mr. Thomas Mageean later in that same report (p. 2):

The farm business of Mr. Bernard Mageean, No. 17 Junction Road, has now been altered by adding the applicant as an additional member of the business. The applicant's purpose in so doing was to have the applicant's buildings at No. 20 Junction Road included within the farm business see criterion (c) of CTY10. The sole purpose of such was to gain planning permission for a dwelling.

It is my professional opinion that these actions run contrary to the ethos of Policy CTY10. Taken to its extreme interpretation then any person could have their name added to any farm business in order to gain planning permission.

- 46. Officers then went on to quote the amplificatory text in paragraph 5.40 of PPS 21, which warns against the artificial subdivision of land or selling off of land which is aimed at obtaining planning permission under CTY 10. After doing so, the officer repeats the point about manipulation (p. 2):

Whilst it is acknowledged that the current case does not involve the artificial subdivision of a rural business, this case does represent the manipulation of a rural business by adding additional members so as to satisfy Criterion (c) of CTY10 with the sole purpose of gaining planning permission.

47. Dealing first with the Manipulation Concern, this is misconceived for two reasons.
48. First, it is misleading — and, in my view, unfair — to say there has been ‘manipulation of a rural business’ with the ‘sole purpose of gaining planning permission’ (p. 2). Mr. Thomas Mageean has not been involved in any manipulation. As explained above (see, [8] – [10]), the application that was made to DAERA merely formalised the pre-existing relationship between the brothers and was intended to clarify ownership issues following the Planning Committee Meeting of 10 January 2018. It was a good faith attempt to address some of the confusion that had arisen about ownership issues. It was not an attempt to manipulate the farm business in order to gain planning permission under CTY 10.
49. Second, it is misguided. The fact that someone is formally added to a farm business does not mean that their buildings automatically become part of ‘an established group of buildings on the farm’ (CTY 10(c)). It might be useful to consider what buildings are owned by formal members of the farm as a starting point under CTY 10(c), but ultimately that is not what CTY 10(c) asks (see above, [25]). Buildings will either be ‘on the farm’ or they will not (CTY 10(c)), and changing who is a formal member of the farm will have little bearing (if any) on whether or not an ‘established group of buildings’ is found to be ‘on the farm’ (CTY 10(c)). It is, for this reason, wrong to suggest that ‘any person could have their name added to a farm business in order to gain planning permission’ (p. 2) — that is not how CTY 10(c) works (see above, [25]).
50. For both of these reasons, I regard the Manipulation Concern as ‘seriously misleading’ advice (*Mansell v Tonbridge and Malling Borough Council* [2017] EWCA Civ 1314, [42]).
51. The Precedent Concern does not arise here for three reasons.
52. First, as already explained, granting outline permission for the Proposed Development would not set a precedent that anyone can obtain planning permission under CTY 10 if they have their name added to a farm business

because that is not how CTY 10(c) works (see above, [25] & [49]) and it is also not the basis on which this application should be granted permission (see above, [22] – [40]). By granting permission on this application, all that the Council would be saying is that this particular ‘group of established buildings’ (i.e. at No. 20 Junction Road) are ‘on the farm’ (CTY 10(c)) in question. No real point of principle that is capable of being applied to later cases will be decided.

53. Second, ‘where precedent is relied on, mere fear or generalised concern is not enough’ (*Poundstreich Limited v Secretary of State for the Environment* [1988] 3 PLR 99, 74F). In order to rely on precedent, the Council needs to have ‘some material on which to base its view’, although in some circumstances the facts ‘speak for themselves’ (*Rumsey v Secretary of State for the Environment, Transport and the Regions* [2001] 81 P & CR 32, [16]). Here, the ‘serious concerns regarding the precedent this would set for future cases’ (p. 1) is no more than ‘mere fear or generalised concern’ and the facts do not ‘speak for themselves’. There is no evidence at all which suggests that if this application was allowed it would lead to many applications under CTY 10 where the applicant made changes to the structure of the farm business with a view to obtaining planning permission.
54. Third, and linked to the point just made, the circumstances of this case are relatively unique and are unlikely to arise again. It is extremely unlikely that similar applications will come forward in the future, citing this application as precedent in support of those applications. As recorded in the Planning Committee minutes of 1 August 2018, ‘it was agreed that this was an extremely unique situation’ (p. 3). And even if similar cases do come forward, it should be remembered that ‘previous decisions are not legal precedents that have to be distinguished’ (*Baroness Cumberledge of Newick v Secretary of State for Communities and Local Government* [2017] PTSR 1513, [85]). Each application must ultimately be decided on its own facts, and it is open to a planning decision maker to take a different approach to a subsequent planning application provided that it ‘explains its reasons for disagreeing’ with the earlier approach (*R (Bates) v Maldon District Council* [2019] EWCA Civ 1272, [29]).

With the relatively unique and unusual facts at play in this application, the Council could easily distinguish this application from other similar applications it might receive in the future.

The Ribbon Development Objection

55. Before moving on, I should briefly address the third reason for refusal which says that the Proposed Development would result in the creation of 'ribbon development' along Junction Road:

The proposal is contrary to Policy CTY8 and CTY14 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 Junction Road.

56. I have read the 'Supplementary Planning Statement' prepared by Ms Curtin which in my view deals with this objection. I would emphasise two points.
57. First, this is an outline application. As Ms Curtin points out, 'exact details regarding siting, proposed landscaping and design are reserved for subsequent reserved matters application' (p. 6). Any concerns relating to ribbon development would be more appropriately dealt with at the reserved matters stage.
58. Second, the Planning Appeals Commission decision which is cited in the Supplementary Planning Statement is important. In that appeal, the Commissioner said that it was important for CTY 8 and CTY 10 to be 'considered in the round' (p. 2). Particularly when officers have already accepted that a 'well designed dwelling will not offend policy CTY 13 of PPS 21' (p. 4), it is important that the policies are 'considered in the round' (p. 2), and some thought given to whether the Proposed Development would actually cause any harm to the character of the countryside. Ms. Curtin does so in the Supplementary Planning Statement and concludes that there would not be any harm (p. 1 – 5).

Other Matters

59. Before concluding, there are two further matters which I should comment on: first, the length of time which it has taken the Council to determine this application; and second, the prospects of a successful appeal to the Planning Appeals Commission in the event that the Council decides to refuse the application for the reasons given by officers.
60. On the first matter, this is a minor application and as such should have been determined within '8 weeks beginning with the date when the application was received by the Council' (Article 20(2)(b) Planning (General Development Procedure Order) (Northern Ireland) 2015). Despite this, it is now almost three years since this application was received by the Council and almost two years since the determination of this application was deferred by members so that officers could 'explore the legal implications' of this application.
61. It is now too late to bring an appeal against the non-determination of this application under s. 60 of the Planning Act (Northern Ireland) 2011, but that does not mean that the Council can take as long as it likes to determine this application. As Mrs Justice Lang DBE recently explained in *R (Farmiloe) v Secretary of State for Business Energy and Industrial Strategy* [2019] EWHC 2981 (Admin), 'unreasonable and excessive delay' in discharging statutory functions (e.g. the determination of applications for planning permission under s. 45 of the Planning Act (Northern Ireland) 2011) can be unlawful ([96]):

Excessive and unreasonable delay by a public body in discharging its statutory functions may amount to procedural unfairness, irrationality, or an abdication of discretion [...]

62. The delay in determining this application is excessive and unreasonable: an application which should have been determined within eight weeks remains undetermined almost three years later, with no progress having been made for almost two years. When one considers that this is a relatively straightforward application for outline planning permission which does not raise any complex questions of law or policy and which the Council has enough information to

determine, the ongoing thirty-one-month delay in the determining this application is alarming — it falls far short of achieving the goal of ‘timely decision-making’ set out in the Strategic Planning Policy Framework (p. 10).

63. Progress was being made up and until the Planning Committee meeting of 1 August 2018, during which the Planning Committee resolved to defer the determination of the application so that officers could ‘explore the legal implications’ of the application. But since then, the application has not been progressed by officers and no meaningful explanation has been given for this. Whilst it can take some time to obtain legal advice on planning matters (i.e. weeks or months), it should not have taken officers over thirty-one months to obtain legal advice in connection with this application. The time it has taken officers to obtain legal advice is out of all proportion to both the nature of this application and the complexity of the issues that it raises. The almost two-year delay in obtaining legal advice since the 1 August 2018 Planning Committee meeting has undoubtedly led to unreasonable and excessive delay in the determination of this application; and, at least arguably, that continuing delay is unlawful.
64. In order to remedy this, officers must bring this application to the Planning Committee at its next meeting for determination. I see no good reason why this should not be possible, particularly so now that the Council is determining applications in ‘virtual’ committee format. There is ample time between now and the next ‘virtual’ committee meeting for officers to obtain further legal advice, should that be necessary. Failure to bring this application back before the Planning Committee at its next meeting without good reason would likely be unlawful (see above, [61]).
65. On the second matter, for the reasons already explained above, if the Council refuses the application for the reasons given by the case officer, there would be strong grounds for appealing any such refusal to the Planning Appeals Commission under s. 58 of the Planning Act (Northern Ireland) 2011.

66. If this matter does proceed to an appeal, then there may be strong grounds for making an application for costs against the Council in the course of such an appeal. In particular, the 'Costs Awards Guidance' published by the Planning Appeals Commission says that 'causing an unnecessary appeal' may amount to unreasonable behaviour, and gives the examples of a local planning authority that is 'unable to produce any credible evidence to substantiate its reasons for refusing permission' (p. 5) or which 'proceeds on a fundamental error of law or fact' (p. 5). Whilst the 'fundamental error of law or fact' (p. 5) comment is made in respect of enforcement appeals, there is no good reason why it would not also apply to appeals against a refusal to grant planning permission.
67. There is no credible basis for concluding that the buildings at No. 20 Junction Road are not an 'established group of buildings on a farm' (CTY 10(c)) which the Proposed Development would be visually linked to or clustered with if allowed. They clearly are, as explained above (see, [22] – [40]). The arguments that are being relied on by officers do not stand up to scrutiny (see above, [43] – [54]).
68. And both the Manipulation Concern and the Precedent Concern are fundamentally flawed, both factually and legally, as also explained above (see, [43] – [54]).

Conclusion

69. In summary:
 - (i) the Proposed Development complies with CTY 10(c). The group of buildings at No. 20 Junction Road (i.e. the residential dwelling and outbuilding currently owned and occupied by Mr. Thomas Mageean) are 'on the farm' (CTY 10(c)) which forms the subject of this application, and the Proposed Development would be 'visually linked or sited to cluster with' (CTY 10(c)) that group of buildings. And, the Council (rightly) does not appear to dispute that the Proposed Development is in

- compliance with the remainder of CTY 10 (save for the point about ribbon development, dealt with below) ([14] – [42]);
- (ii) both the Manipulation Concern and the Precedent Concern are misconceived. There has been no manipulation here — Mr. Thomas Mageean was added to the farm business in order to formalise the pre-existing relationship and to clarify issues of ownership that were raised at the Planning Committee meeting of 10 January 2018. And no real issue of precedent arises here either ([43] – [54]);
 - (iii) Ms. Curtin has prepared a Supplementary Planning Statement which addresses the third reason for refusal, which concerns ribbon development. Two points should be emphasised: first, this concern is more appropriately dealt with at the reserved matters stage; and second, it is important to read the policies in PPS 21 as a whole, and to ask whether the Proposed Development would actually cause any harm to the character of the countryside ([55] – [58]);
 - (iv) there has been unreasonable and excessive delay in the determination of this application. There is no good reason why an application which should have been determined in eight weeks has still not been determined almost three years after it was received. The Planning Committee was entitled at its meeting on 1 August 2018 to defer the determination of this application until further legal advice was received, but the almost two-year delay which has followed this is both unreasonable and excessive. This application should be presented to the Planning Committee for determination at its next meeting — failure to do so without good reason would likely be unlawful ([60] – [64]);

- (v) if the Council decides to refuse this application for the reasons suggested by the case officer, then there would be strong grounds for appealing against that decision to the Planning Appeals Commission. And given the manner in which the Council has dealt with this application to date, there would be strong grounds for making an application for costs against the Council in any such appeal too ([65] – [68]).

70. I trust that the above is of assistance. Please let me know if there is anything further that I can assist with at this stage.



CONOR FEGAN

Chambers of Andrew Tait QC
Francis Taylor Building
Temple, London EC4Y 7BY

25 June 2020

**PROPOSED DWELLING AND GARAGE
AT SITE ABUTTING 20 JUNCTION ROAD, SAINTFIELD**

**DETERMINATION OF AN APPLICATION
FOR OUTLINE PLANNING PERMISSION**

A D V I C E

Ms Sheila Curtin MRTPI
2 Plan NI
47 Lough Fea Road
Cookstown
Co Tyrone
BY80 9QL

Planning Department
Newry, Mourne and Down District Council

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25/08/2022

Dear Mr. McKay,

Re. Proposed Dwelling and Garage at Site Abutting 20 Junction Road, Saintfield (LA07 / 2016 / 1261 / O)

In your email of 9 July 2022, the Council requested further evidence to “assist [y]our consideration of the matter”. In particular, the Council asked for evidence of:

- (i) the involvement of the applicant in decision-making with respect to the running of the farm business;
- (ii) the extent of the benefit received by the applicant as a member of the farm business; and
- (iii) the financial risk that the applicant bears in relation to the farm business.

No justification was given for these requests.

The applicant has reflected carefully on these requests but, for the reasons given below, does not consider that this information is necessary for the Council to determine this application — or, indeed, relevant.

First, there is nothing at all in CTY 10 itself or the supporting text which suggests that the information which you are seeking is relevant. The policy does not require an applicant to show “involvement [...] in decision-making with respect to the running of the farm business”, that they receive any “benefit [...] as a member of the farm business”, or that they bear any “financial risk [...] in relation to the enterprise”. None of those requirements are even remotely related to the criteria in CTY 10. In so far as you consider that they are related, I would appreciate if you could explain how they are.

Second, the underlying assumption of these requests seems to be that the applicant not only needs to be a member of the farm business (which would be wrong in itself), but that they need to be a member of the farm business who bears some risk and gets some benefit (which is wholly wrong). In effect, the Council seems to be placing requirements on the identity of the applicant, which runs contrary to the well-established principle of planning law that the identity of the applicant is irrelevant given that a permission runs with the land. As set out in the legal opinion

submitted on behalf of the applicant, the simple question is whether or not the group of buildings at No. 20 Junction Road are “on the farm” (CTY 10(c)). None of the information that the Council has asked for seems to be logically connected to that question.

Third, this analysis is supported by a number of decisions of the Planning Appeals Commission. Two are worth noting. First, in 2014/A0133, the Commissioner said “I can see nowhere in Policy CTY 10 that (i) requires an applicant to be a member of the farm business” (paragraph 7). That accords with the legal opinion of Mr Fegan. If it is right that there is no policy requirement to be a member of the farm business, then it must also be right that issues like the benefits which an applicant may or may not be receiving as a member of the farm business or the risks which an applicant may not may not be bearing as a member of the farm are also irrelevant. Second, in 2019/A0184, the Commissioner placed emphasis on the reference to “other rural dwellers” in paragraph 5.37 of PPS 21 when dismissing the argument by a third party that the appellant had failed to show that a new dwelling was needed to accommodate a member of the farm business. Again, that goes to the point that there is, in fact, no need under CTY 10 for the applicant to be seeking a dwelling as a member of the farm business. In short, it is considered that these appeal decisions support the analysis outlined above. If the Council makes a decision contrary to these appeal decisions, then it is highly likely that it will lose any resulting appeal, and will open itself to an adverse costs order.

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For all of these reasons, the evidence which you have requested is not material to the determination of the application and will not, therefore, be provided by the applicant. There is an obvious risk to the applicant if he provides this information that the Council will proceed to make a decision which is based on irrelevant information and / or a misreading of CTY 10.

Additionally, I note that in your email you said that you had taken “further advice on the matter”. I understand that the Council took formal legal advice in connection with this application. I would like to make a formal request for a copy of this legal advice under the Environmental Information Regulations 2004. You will be aware that it is not a complete answer to any request made under those regulations to say that the advice is privileged. Although a relevant exemption may apply under Regulation 12(3) or (4), you would still need to go on to consider whether the “public interest in maintaining the exception outweighs the public interest in disclosing the information” (Regulation 12(1)(b)), applying a presumption in favour of disclosure when doing so (Regulation 12(2)). In this case, the public interest clearly favours disclosure. The public, including the applicant, is entitled to understand how the Council is interpreting and applying the requirements set out in CTY 10. Transparency in decision making is important and if, as appears to be the case, the Council is effectively imposing additional evidential requirements on applicants who come forward under CTY 10, then the public is entitled to know what these are and the basis for them (*R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12, at [34] – [36]).

Finally, my client is keen to see that this application is determined one way or another as soon as practicable. The delay in deciding this application has been unfortunate, but the respective positions taken by the applicant and by officers are now at least clear. Nothing further is likely to be gained through further correspondence. This application should now be placed before members for a final decision.

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I look forward to hearing from you.

Kind regards,




Shelia Curtin, MRTPI PRINCIPAL 2PLAN NI
Chartered Planning & Engineering Consultancy


enc. Letter of legal advice submitted 29/06/2020
 Copy of appeal decision by Commissioner O'Donnell PAC ref.
 2014/A0133
 Copy of appeal decision by Commissioner Spiers PAC ref.
 2019/A0184





APPENDIX 3

Annotated Farm Map (NTS)

Application site in red 

Buildings at no. 20 Junction 

Road in brown 

Fields subsidies are claimed on in yellow 



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2019/0868/F

Date Received: 22.05.2019

Proposal: Proposed commercial development comprising ground floor retail unit and first floor creche with associated site works

Location: 107 Camlough Road, Newry, BT35 7EE

Site Characteristics & Area Characteristics:

The site occupies a corner site with the Green Road and Camlough Road in the development limit for Bessbrook. M&M Gas and Refrigeration currently occupies the site, with surrounding land uses including, a school, day care centre and filling station.

Site History:

P/2015/0127/F

Renewal of planning permission P/2008/1188/F for demolition of existing building and erection of No 3 No food retail units to include associated site works.

Permission Granted: 11.04.2016

P/2008/1188/F

Demolition of existing building and erection of 3 no. food retail units to include associated site works.

Permission Granted: 21.04.2010

P/1985/0990

Building for manufacture and storage of ice cream and garaging of ice cream.

Permission Granted: 14.11.1985

P/1981/0757

Extension and improvements to dwelling.

Permission Granted: 15.09.1981

P/1977/0914

Extension to dwelling

Permission Granted: 15.11.1977

P/1975/0930

Site for six replacement bungalows.
Permission Refused: 24.03.1976

P/1992/0761
Extension to dwelling
Permission Granted: 15.10.1992

Planning Policies & Material Considerations:

SPPS – Strategic Planning Policy Statement for Northern Ireland
Banbridge Newry and Mourne Area Plan 2015
PPS3 – Access, Movement and Parking / DCAN 15
PSRN – DES 2 / SP18
PPS15 – Planning and Flood Risk
PPS 2 – Natural Heritage

Consultations

DAERA – no objections raised, standing advice offered.

Rivers Agency – No objections with regard to PPS15.

Environmental Health – Following additional information, no objections subject to conditions.

DFI Roads – following amended plans, no objections subject to conditions.

NI Water – NI Water infrastructure within 20m of the proposed development site.

Objections & Representations

Nearest neighbours were notified in line with statutory requirements on 09.7.19, 30.12.20, 16.01.20, 25.06.20, 14.10.20, 26.02.21 and most recently on 01.04.2021 and the application was advertised in press on 19.06.2019. 76 objections have been received with one letter of support.

Objections Received.

1. Neighbour notification process compromised due to the failure of stating exactly what the amendment was.
2. Require formal explanation as to why service vehicles are not being required to be able to enter and exit the site in forward gear.
3. Require confirmation of the accuracy of the depiction.
4. Unsafe including pedestrian safety to allow delivery vehicles to pause on public road and then reverse into the site.
5. This arrangement will negatively impact upon the free flow of passing traffic.
6. Site may be used as a 'rat run' to bypass the traffic lights.
7. Early morning deliveries could negatively impact neighbouring properties due to noise potential.
8. Inadequate parking provision.
9. Applicant has not demonstrated the exact details of the plant and its location. Residents should be given opportunity to comment.
10. The lack of any evidence on the issue of retailing renders the application incomplete and should be refused.
11. Inaccurate application form – applicant stating he was aware of a similar previous type of application when previous approval prevented this.
12. Inaccurate claim that the proposal is using an existing access. New accesses onto protected routes are only permitted in exceptional circumstances.

13. The access should be taken from minor road, but even here standards could not be met.
14. Junction spacing arrangements remain inadequate
15. Applicant has not provided TAF or explained why RTL is not required.
16. Applicant has not provided a Drainage Assessment.
17. Applicant has played down traffic numbers. If figures are correct the proposal neither addresses nor makes any significant contribution to the local economy.
18. Ownership forms are inaccurate and it is not clear whether the requisite notice has been served. P2A forms are absent and the wrong address has been provided for the relevant statutory bodies.
19. Proposal will set a precedent and no realistic prospect that the applicant can secure the lands needed to carry out the development in full. There is an assumption that the Council will transfer the lands however the Council has a duty to offer the key land on the public market.
20. Complex auto tracking confirms poorly thought out and inappropriate for the site.
21. Stagger junction not in accordance with DCAN 15
22. Council to justify where there is no statement of retail need for this proposal.
23. Advise what the Council's position is on retailing at this location.
24. Autotracking assumes vehicles travel between site and Camlough only when likelihood is that service vehicles will travel to/from Newry.
25. Removable bars could make site used as a rat run.
26. Confirm if DFI / Council are accepting of the auto tracking in terms of the ability to enter and exit site in forward gear.
27. Potential conflict with adjacent junction and school opposite.
28. Explain how town centre approach advocated in SPPS has been adhered to.
29. Why has council not interrogated the issue of retail need.
30. Radius and sight lines inadequate
31. Drawings are misleading in that they suggest a fence is to be created between the car park and service vehicle area turning area but auto track shows that service vehicles do not actually turn in this area.
32. High volumes of objections warrant independent evaluation by the Planning Commission.
33. Was a feasibility study completed to identify the need and was an Impact Analysis completed, addressing if such a complex would benefit the local economy.
34. Planning Office should visit residents should visit the residents of the Green road to explain the plans submitted, as many are elderly and do not have access to the planning portal.
35. Neighbour notification was prejudicial as it was sent during holiday season.
36. Proposal is in direct contravention of the Planning Act points, a, b and c
37. Description of development is misleading as it doesn't specify exact use of development or size of shop.
38. Application forms note the Council has an interest which questions the Council's impartiality on deciding the application.
39. Noise, nuisance or general disturbance to adjacent properties particularly if the site is sold off.
40. Development is in excess of that already approved on the site – same restrictions from 2016 should still apply now.
41. Proposal would decimate local retail businesses and it would result in the displacement of trade from Bessbrook and also Camlough.

42. Against retail policy and has a detrimental impact on vitality and viability of the existing convenience store.
43. Application goes far beyond day-to-day needs and should be refused – contrary to retail policy.
44. There is no need for this facility.
45. Precedent will threaten all city, town and village centres and therefore must be refused.
46. SPPS town centre first policy applies regardless of size and status of settlement.
47. Scale and nature of the development is not appropriate to the character of the settlement ie. Proposals in villages and small centres are expected to meet local need only ie meet the day-to-day needs of the local population. This proposal would exceed the daily needs of the local population.
48. Would negatively impact the character of Bessbrook since its populace ultimately travel away from main street for retail activities. Approval would lead to the decimation of the retails offerings on Main Street.
49. Application fails to address how the nearby convenience store will be affected and has not addressed the list of commercial properties in Main Street Bessbrook. Bessbrook should be recognised as a centre for the purposes of town centre retailing.
50. Proposal will pull trade away from Main Street Bessbrook and therefore incompatible with SPPS policy of ensuring there will be no unacceptable adverse effect on the vitality and viability of an existing centre.
51. Impact on Camlough supermarket should also be appraised.
52. Need has not been considered in light of the proposed refurbished retail store adjacent the site and the improved service it will offer.
53. Prematurity – prejudice the outcome of the forthcoming plan process by predetermining decisions about the scale, location and phasing of new development, which ought to be taken in the LDP context.
54. Use as a food supermarket is not justified and previous permission confirmed food supermarket as inappropriate.
55. P2a form not provided to confirm verification.
56. Application not valid as there is no proper Certificate of ownership.
57. Not clear of the specific area identified in Certificate C of the Certificate of ownership.
58. Confirmation that auto tracking has been technically assessed by the Roads Authority.
59. Traffic numbers in P1 form not realistic or reflective of the proposal.
60. Protected routes policy – why has access not been directed to adjacent minor road – Green Road.
61. Deficiency in parking
62. Confirm DFI Roads has seen objections.
63. No communication between residents at the beginning or during the consultation process.
64. Cars park illegally at swimming pool entrance to M&M during daytime hours as there isn't enough demand for spaces at present.
65. Lack of visibility turning left at busy main junction.
66. Entrance for proposed building near a busy junction.
67. Lorry drivers can only reverse in at present which causes a lot more traffic, new proposal will be even more busy.

68. No attempt to show how complex arrangements for delivery vehicles will impact upon other traffic attracted to the premises.
69. Deliveries in the morning could impact upon neighbouring properties due to noise potential.
70. 11 Fearons Terrace not notified.
71. Traffic congestion and pollution will dramatically rise and the road will suffer structurally.
72. Negatively impact all objectors businesses and add to increasing hardship in S Armagh area.
73. Increase noise and pollution and generate huge traffic problems. Green Road not built to accommodate heavy traffic.
74. Unsafe for small children on Green Road with increased traffic and damage close knit community.
75. Another store close to the ones already competing against each other for survival is uncalled for and unnecessary.
76. Part of site not legally owned by applicant but instead DRD / NMDDC.
77. Application will destroy livelihood of objectors family due to adverse impact on their business.
78. Approval would lead to job losses and financial hardship to neighbouring commercial premises.
79. Increase in carbon footprint.
80. Objector aggrieved they were not neighbour notified
81. Not enough parking at present for creche and swimming pool – cars parking outside objector's house.
82. Cars parking illegally opposite the swimming pool at the bus stop and park up on the footpaths preventing families with young children enjoying a walk with the pram
83. Lack of visibility when turning left (to Newry) and right (towards Camlough) when coming out of Green Rd junction.
84. Lorries are abandoned when delivering to M&M
85. Lorries cannot drive into M&M without reverse parking and causing lots of disruption to other vehicles.
86. Safety hazard due to work vehicles double parking at present. Where do these cars park when the development begins?
87. Traffic issues on Green Road due to the school cannot cope as it is.
88. Residents and care workers cannot park outside Green Road properties at present.
89. Negative effects on amenity due to noise and constant disturbance.
90. Direct contravention to the Planning Act
91. Proposal does not respect local context and street pattern, in particular the scale and proportions of surrounding buildings and would also be out of character for the area to the detriment of the local environment.
92. Development does not directly benefit the social and economic growth of the area.
93. Adverse effect on residential amenity in terms of noise, disturbance overlooking, loss of privacy, overshadowing etc.
94. Unacceptable high density and over development of the site involving loss of land and the open aspect of the neighbourhood entrance. Potential case of garden and land grabbing at the corner of Green Road.
95. Development will obstruct the view the main Camlough Road with may be potentially dangerous for traffic, increasing the risk of road traffic accidents.

96. Effect of the development on the character of the neighbourhood.
97. Design including bulk and massing of the development.
98. Over-bearing, out of scale and out of character in of its appearance compared with St Pauls, Dan Gregory's etc.
99. Loss of existing views from neighbouring properties.
100. Development would adversely affect road safety for the convenience of road users.
101. Increased parking issues. The current property M&M are causing a lot of traffic issues and inadequate parking.
102. Disturbance from HGVs entering and exiting the site.
103. Possible devaluation of neighbouring properties.
104. Loss of local sales and the potential closure of shops and businesses.
105. No need for the facility and should be in the town centre.
106. No proven retail deficiency and would adversely impact the vitality and viability of other retail facilities in the area.
107. No justification for allowing a change from small convenience stores to a large food retail store.
108. No evidence of sequential analysis before locating at this site. Proposal should be located elsewhere.
109. Nature and scale are unacceptable and does not respect the surrounding area.
110. Adverse impact on existing traffic conditions.
111. Traffic queuing and site being used as a short cut.
112. Protected routes policy presumes against the intensification of existing access onto protected routes and curtails new entrances onto protected routes.
113. Unnecessary for the community, adverse impact on traffic around the site causing double parking and lack of access to footpaths.
114. There is no case of need for this development at this location and should be directed towards a town or village centre.
115. There is no deficiency at this location and no evidence provided to confirm it will not impact on the viability or vitality of any other local centre including local retail offering.
116. No evidence of a town centre first approach or a sequential approach to the site selection. Presumption against this proposal.
117. No reference of the impact of the proposal on trade and turnover for both convenience and comparison goods traders, and impact on town centre turnover for all centres in the catchment.
118. No reference to impact of proposal on existing and committed and planned public and private sector investment and investor confidence in the town centres.
119. No reference of the impact of allocation of sites in the LDP Strategy
120. No evidence of impact on the vitality and viability of existing centres including consideration of local context.
121. No evidence cumulative impact, taking into account committed and planned development including local development plan commitments within the town centre and wider area.
122. No evidence of a review of local economic impacts.
123. Require verification the auto tracking manoeuvre us technically possible.

Letter of support from Giggles Early Years Ltd.

Letter sent regarding neighbour notification process by Dan Gregory on 31st July 2019 was responded to individually on 23rd August 2019. Copy of letter on file.

Consideration and Assessment:

Banbridge Newry and Mourne Area Plan 2015

The site is located within the Settlement Development Limit for Bessbrook in the Banbridge Newry and Mourne Area Plan 2015. Bessbrook is defined within the Plan as a village and page 34 of the Strategic Plan Framework notes 'villages and local shops are important for meeting the daily needs of shoppers.

The site has not been zoned and therefore the Plan remains silent on the use. Decision making is therefore deferred to the retained policies as explored in further detail below.

Strategic Planning Policy Statement for Northern Ireland

Dealing firstly with the retail element of the proposal and in the absence of a retail policy statement, the SPPS is pertinent policy consideration for all retail applications. The site is located within the Settlement Limit for Bessbrook within unzoned land. The aim of the SPPS is to support and sustain vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complimentary functions.

It is noted that Bessbrook which is defined as a village in the Area Plan does not have a designated town centre plan and therefore the sequential approach as prescribed in the SPPS cannot apply.

Section 6.278 is pertinent to the application which deals with proposals for shops in villages and small settlements. This paragraph states that proposals 'must be consistent with the aim, objectives and policy approach for town centres and retailing, meet local need (ie. Day-to-day needs), and be of a scale, nature and design appropriate to the character of the settlement.

Planning permission was granted on the site, on 11 April 2016, for the renewal of planning permission P/2008/1188/F for the demolition of existing building and erection of 3 No 3 food retail units to include associated site works, under P/2015/0127/F.

This was subject to a 5-year time condition. The formal approval notice specified a range of retail sales and ancillary storage in the context of Class A1 of the Planning (Use Classes) Order (NI) 2015. This application was received on 22.05.2019 which meant it was received whilst the previous approval was still extant. Substantial weight is therefore given to the previous history on the site bearing in mind there have been no significant changes in policy or site conditions since that approval.

I therefore conclude the principle of development has been established at this site by the previous approval and established use on the site and find no reason to diverge from that opinion.

The net retail floorspace on the previous application amounted to 363sqm. The proposed net retail floor space for the current application amounts to 280sqm. This obviously represents a reduction in net retail floorspace and is therefore not

considered fatal to the application. The remainder of the floorspace is dedicated to storage, ancillary accommodation and the extension of the childcare facility on the first floor.

The principle of the proposal, in terms of the retail element, has been established on the site by virtue of the previous approval and remains acceptable. The scale of the development in terms of its height is comparable to the previous approval. The previous approval amounted to 8.8m and 6.9m owing to the different roof heights along the building. The proposed building is 7m and therefore I find no reason for objection in terms of the height. In terms of the footprint the previous approval was approximately 525sqm whereas the proposed is 620sqm. The increase in the footprint of approximately 95sq m is considered against the demolition of the storage area to the rear of Giggles and the inclusion of the childcare facilities on the first floor. I consider the extra 95sqm of footprint development to be comparable to the previous approval and is acceptable. The finishes of the proposed development include a grey aluminium cladding system with stone cladding and dark grey aluminium windows and doors. Similar finishes are now found on many urban commercial premises and an improvement from the existing development on site. The stone cladding will help take the industrial look from the building and soften the impact from the critical views. Overshadowing and loss of light has been considered and given the previous approval as well as the spatial arrangement and separation distance to the nearest residential property I do not consider the proposal to represent a significant adverse impact. Residential amenity has been considered by Environmental Health who has confirmed it has no objections subject to compliance with the attached conditions. In an area where there is a mix of design types I consider the proposed finishes acceptable for the character of the area and site and in keeping with policy provisions within a Planning Strategy for Rural Northern Ireland and the SPPS.

Creche Facility

The creche extension is an extension of an existing facility, Giggles Early Years Ltd. Representation has been made to confirm they currently operate on a waiting list and do not have the physical capacity to meet the surrounding need for childcare. Development Control Advice Note 13 (DCAN 13) is helpful in determining such applications. Given the childcare facility which currently exists at this site, I consider the principle of the facility on the site to be established. I will focus my consideration on the acceptability of the extension to the existing facility.

The surrounding area can be described as mixed use. Whilst the scale will cater for more than 30 children the nearest childroom to No.88 Green Road is approximately 30m. This room has two windows and can accommodate 23 children. This is below the threshold of 30 where the DCAN notes there could be serious impact on residential amenity. I am also mindful of a funeral directors and limousine hire to the rear of No. 88. The other child minding rooms are to the front of the building with windows facing towards the Camlough Road and are less likely to cause disturbance to No. 88. The play area is approximately 55m from the rear of No. 88 and Environmental Health has raised no concerns.

Visually the facility will be housed within the larger development as explored above in this report. I do not consider the proposed design of the facility to have a detrimental impact on the surrounding area or environment and will in fact be an improvement to the existing site conditions.

Planning Policy Statement 3

DFI Roads has considered the objections to the proposal, many of which relate to traffic, parking and sight lines and following a number of amended plans has no objections to the proposal subject to compliance with recommended conditions. On this basis, Planning is content with the proposed parking arrangements on site.

In terms of the Protected Route policy AMP 3 and the Clarification of policy AMP 3 - Access to Protected Routes is pertinent to the application. The site falls within 'other protected routes within settlement limits' and notes that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access where (a) access cannot be reasonably taken from an adjacent minor road.

The Camlough Road is a Protected Route. I note the previous application made provision for access onto the Camlough Road. The proposal intends to use that approved access arrangement. I consider the history material to the application and I also consider that the adjacent minor road (Green Road) could not reasonably be expected to take all the potential traffic from this site, particularly when considering the close proximity to the junction with the Camlough Road. On this basis I am content that the proposed access onto the Camlough Road is an acceptable arrangement.

Parking Standards

The agent has outlined the parking requirements on the site layout Drawing Number 201 Revision C, a total of 33 car parking spaces. The retail floor area for the proposal amounts to 280sqm which, based on published car parking standards, requires a parking provision of 20 spaces. The total parking requirement for the creche facility, based on 85 children (9 spaces) and 1 member of staff per 8 children or 11 staff (4 Spaces) is 13 spaces taking the total parking provision for the site to 33 spaces. The Planning Department has considered these figures and is content the required parking provision has been met within the site.

Planning Policy Statement 15: Planning and Flood Risk

Following consultation with DFI Rivers, the Department has confirmed that policies FLD1, 2 and 4 do not apply to the site.

Policy FLD3

The proposal does not meet the thresholds for a drainage assessment as confirmed by DFI Rivers and is therefore the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site. Developers are advised to obtain advice from competent, suitably qualified persons to assist them in determining the appropriate site and finished floor levels.

Policy FLD5

DFI Rivers have received further information with regards to the condition assurance for the Camlough Impoundment, the information provided confirms the following:

The DFI memo, in relation to 'development in proximity to reservoirs' dated 17th June 2019, paragraphs 40-41 deal with reservoir Condition Assurance requirements. DFI Rivers are in receipt of information that satisfies the requirements of paragraph 40.

Accordingly, DfI Rivers would advise that the requirements of policy FLD 5 have been met.

Accordingly I consider the proposal in compliance with the SPPS and PPS 15.

Planning Policy Statement 2: Natural Heritage

The AONB designation stretches across the Camlough Road however whilst site splays will be within the designation, there is no new development that would prejudice or have a detrimental impact on the AONB and consequently there are no concerns with regard to PPS 2, policy NH 6.

Foul and surface water sewer available to service the proposal. Negative condition can be added to ensure connection is made.

Response to Objections

1. There is no legislative requirement or facility to note every change within an application. The notification reminds neighbours that new information / amended plans are available to view on the planning portal. Each material change or amendment to the planning application was neighbour notified. I do not consider the neighbour notification process has been prejudiced.
2. Service vehicles can enter and exit in forward gear.
3. There is no evidence to show the depiction submitted is inaccurate.
4. Delivery vehicles do not need to reverse into the site.
5. DFI Roads has confirmed it has no objection to the proposal.
6. The proposed fence between customer parking and deliveries will prevent the site being used as a rat run.
7. The hours of operation will be conditioned to ensure neighbouring amenity is not compromised. Environmental Health has no objections.
8. Parking is considered to be adequate to serve the proposal.
9. Environmental Health requested details of any noise making equipment to be on the facade of the building facing 88 Green Road. This is the critical elevation which was considered by EH and who subsequently confirmed no objection. Details of the plant are on the planning portal.
10. The SPPS does not require retail evidence for this type of application and the principle of development was previously established on the site with no material changes since.
11. The Planning Authority considered all planning history prior to making a recommendation. This is not a valid reason to withhold permission.
12. An existing access is in place and the access arrangements onto the Camlough Road have been previously approved.
13. Service access is taken from Green Road and DFI Roads has no objection to visibility standards shown.
14. DFI Roads has considered this and has no objection.
15. DFI Roads has considered this and has no objection.
16. DFI Rivers has confirmed a Drainage Assessment is not required.
17. There has been no evidence produced that traffic numbers are incorrect.
18. The agent has since served notice and filled in Certificate C. There is no requirement to submit the P2A form and the onus is on the developer to ensure they own and control all land necessary for the development. The agent has

emailed to confirm notice was served to the correct address as opposed to the previous address as noted on the P1 form.

19. The proposal is not considered to set a precedent that is incompatible with planning policy. Each application will be assessed against its individual merits. It has not been demonstrated there is no realistic prospect that the applicant can secure the lands needed to carry out the development in full. The Council has no interest in the application.
20. DFI Roads has considered the auto tracking and has no objection to the proposal. No demonstrable evidence has been produced to the contrary.
21. DFI Roads has no objection to the proposal.
22. Principle of development has been previously approved. SPPS does not require a statement of need for this type of application.
23. The Council has previously approved retailing at this location.
24. Whilst the autotracking shows vehicles coming from Camlough, this was by request and there is no reason to consider the vehicles could not travel from Newry direction using the same autotracking arrangement.
25. The latest site layout drawing does not show the fence between the parking area and service area as removable. The fence can be negatively conditioned to see full details prior to commencement of development.
26. DFI is content with the autotracking and Planning Authority has no evidence to dispute this position.
27. DFI Roads has considered these matters and is content with the proposal.
28. Bessbrook does not have a designated town centre and retailing was previously approved on this site. There have been no changes in policy or legislation since the previous approval on the site..
29. Previous retail approval on site for a larger retail net floor area. Proposal would be conditioned for 'day-to-day needs'.
30. DFI Roads has considered radius and sight lines and has no objection to the proposal.
31. Autotracking shows vehicles turning in this area which is fenced off from the rest of the parking. The drawings are not considered misleading.
32. There is no legislative basis for this.
33. A feasibility study and impact analysis is not considered necessary or required by policy.
34. Unfortunately, there is not the resources or availability of planning staff to visit all residents that do not have access to internet, for this application or any other application. Hard copies of plans can be requested from the Planning Office. The Planning Dept has fulfilled its prevailing statutory/legislative requirements for advertising and neighbour notification.
35. Planning legislation does not prevent neighbour notifications being sent at holiday periods during the year.
36. It is not clear how the proposal contravenes the Planning Act a, b and c.
37. The description is not considered misleading and does describe the proposal accurately.
38. The Council has no registered interest in the application as far as the Planning Department is aware.
39. Environmental Health has been consulted and has registered no objections subject to compliance with conditions. If the developer fails to comply with these conditions, this will be a matter for our enforcement team to investigate. However, on the basis of the information available, the proposal is not considered to have an unreasonable impact on residential amenity.

40. Whilst the floor area is larger than the previous approval, the net retail floor space is reduced.
41. It is not the role of the Planning Authority to protect one person's interests over another. In terms of the displacement of trade, weight is given to the planning history on the site.
42. Proposal considered to comply with retail policy. It is not the role of the Planning Authority to protect one person's interests over another
43. Application can be conditioned to ensure day to day needs are only facilitated at the site.
44. Previous history given substantial determining weight.
45. The previous history has been given substantial determining weight.
46. Bessbrook does not have a designated town centre in the Area Plan.
47. Scale and nature of the development is similar to previous approval and nature can be conditioned to reflect day to day needs. No evidence produced to confirm this proposal would exceed the daily needs of the local population.
48. Similar proposal previously approved by Council, no material change in policy since this approval.
49. The Planning Department, having assessed all material considerations, is satisfied that the proposal fits with prevailing retail policy.
50. Site has previous retail approval and not considered incompatible with SPSS. There is no designated town centre within Bessbrook and therefore no policy provision to refuse.
51. It is not the role of the Planning Authority to protect one person's interests over another.
52. It is not the role of the Planning Authority to protect one person's interests over another
53. There is a previous approval on this site that was extant when this application was received. The LDP team will be aware of the long running history on this when considering the new LDP proposals. The proposal is not considered premature.
54. Any approval would be conditioned with the same use class as the previous approval - Class A1.
55. Agent not required by legislation to submit a P2a form.
56. Certificate of ownership has been filled in by the agent.
57. Whilst a more specific description could have been used this is not a reason to withhold permission and the purpose of certificate C has been satisfied.
58. DFI Roads has assessed the auto tracking and confirmed no objections.
59. No evidence produced confirming the traffic numbers are inaccurate.
60. There are two accesses proposed. It was not considered reasonable to direct all traffic to the Green Road bearing in mind the close proximity to the junction. The proposal as submitted meets and Protected Routes policy and DFI Roads are content with the proposal.
61. The Planning Dept is content the parking provision is adequate for the proposal.
62. DFI Roads have been made aware of all objections to the proposal.
63. The Planning Depts statutory obligations have been met in terms of neighbour notification and advertising.
64. The parking spaces provided are considered to meet the standards required for the proposal.
65. DFI Roads has considered visibility and has no objection.
66. DFI Roads has considered proximity to junction and has no objection.
67. Lorry drivers will be able to drive straight in with this proposal.

68. Traffic impact has been considered by DFI Roads with no objections noted.
69. Environmental Health has considered residential amenity and subject to conditions has no objection.
70. 11 Fearons Terrace notified most recently on 01.04.2021.
71. DFI Roads has considered traffic congestion. No evidence regarding pollution or structural safety of roads provided.
72. No evidence the proposal will add to increasing hardship in S Armagh area. It is not the role of the Planning Authority to protect one person's interests over another.
73. DFI Roads has considered traffic implications and the acceptability of Green Road. No objections have been raised.
74. It is not clear how the proposal would damage a close-knit community. DFI has considered the impact of the proposal on the road network and all related matters of road safety and is content with the proposal.
75. It is not the role of the Planning Authority to protect one person's interests over another.
76. The applicant has served notice on the landowner.
77. It is not the role of the Planning Authority to protect one person's interests over another.
78. It is not the role of the Planning Authority to protect one person's interests over another.
79. This is not a material consideration for this application.
80. The Planning Department notified all residents and objectors in line with its statutory requirements. All objectors were notified of any subsequent amendments, in line with standard practice. If an objector was not notified initially, this was due to the fact that their property did not meet the neighbour notification test.
81. Car parking provision has been considered above and is considered satisfactory for the proposal.
82. The issue of car parking illegally goes beyond the scope of this application and is a matter for the relevant authority.
83. DFI Roads has considered visibility and has no objection to the proposal.
84. If this is happening under the current site conditions, there is no evidence to suggest this will happen under the new layout.
85. If this is happening under the current site conditions, there is no evidence to suggest this will happen under the new layout.
86. If this is happening under the current site conditions, there is no evidence to suggest this will happen under the new layout.
87. DFI Roads has considered the proposal in light of traffic and has no objection.
88. The nature of the proposal is such that most traffic associated to the premises will be for short periods. With adequate parking provision there's no evidence material reason to refuse on these grounds.
89. Similar approval on the site before and Environmental Health has no objection.
90. It is not clear how the application contravenes the Planning Act.
91. Similar proposal approved previously with no significant material changes to site or policy.
92. Whilst this is a subjective comment a similar proposal has been previously approved.
93. This has been considered in the report above.
94. Site is within the development and has had a similar approval on the site before. Not considered to be land or garden grabbing.

95. DFI Roads has considered visibility around the site and has no objection to the proposal.
96. I do not consider the character of the neighbourhood to be compromised by the proposal. Similar land uses exist in the immediate area.
97. The design and scale has been dealt with in the report above.
98. The design and scale has been dealt with in the report above.
99. Not a material planning consideration.
100. DFI Roads has considered Road Safety and has no objection to the proposal.
101. Parking is considered adequate. Current site conditions are completely different than proposed.
102. Any disturbance this might cause is not considered to be at an unreasonable level.
103. Not a material consideration.
104. Whilst no evidence has been shown to confirm this, it is not the role of the Planning Authority to protect one person's interests over another.
105. Site has previous similar approval with no significant material changes to policy or site conditions.
106. Site has previous similar approval with no significant material changes to policy or site conditions.
107. The conditions from the previous approval would be applied to the proposed development.
108. There is no town centre in Bessbrook additionally site history is a material consideration for this application.
109. Nature and similar scale has been previously approved at this site.
110. DFI Roads has no objection to the proposal.
111. The site cannot be used as a short cut due to the fence between commercial and public parking.
112. This has been considered in the report above.
113. These issues have been considered above.
114. This issue has been considered above.
115. There is no designated local centre in Bessbrook however planning history has been given determining weight.
116. This issue has been dealt with above.
117. Whilst there is no designated town centre, as noted above, it is not the role of the Planning Authority to protect one person's interest over another.
118. This is not a sustainable reason for refusal.
119. This is not a sustainable reason for refusal. Planning history is a material consideration for the application.
120. This issue has been dealt with above.
121. Whilst not a credible reason for refusal, the planning history is given significant weight for this application.
122. Whilst not a credible reason for refusal, the planning history is given significant weight to the application.
123. DFI Roads have reviewed tracking manoeuvres and have no objection to the proposals.

All objections have been given careful consideration however for the reasons noted above in this report, I recommend approval with the following conditions.

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; 200 REV B, 201 REV D, 202 REV A, 203, 20-150-AT3 REV D, 20-150-AT2 REV D, 20-150-AT1 REV D and 20-150-AT4 REV D.

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

3. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No. 201 Rev D, prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

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

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

5. The net retail floor space shall not exceed 280 sq. m measured internally.

Reason: To control the scale and range of commercial activity to be carried out at this location.

6. The gross retail floor space of the development hereby approved shall be used only for the retail sale and ancillary storage of the items listed hereunder and for no other planning purpose, including any other purpose in Class A1 of the Schedule to the Planning (Use Classes) Order (NI) 2015:-

- (a) food, drink, alcoholic drink;
- (b) tobacco, newspapers, magazines, confectionery;
- (c) stationary and paper goods;
- (d) toilet requisites and cosmetics;

- (e) household cleaning materials; and
- (f) other retail goods as may be determined in writing by the the Planning Authority as generally falling within the category of 'convenience goods'.

Retail services for this purpose are hereby defined as;

- (a) a post office;
- (b) for the sale of tickets or as a travel agency;
- (c) for hairdressing;
- (d) for hiring out of domestic or personal goods or articles; or
- (e) for the reception of goods including clothes or fabrics to be washed, cleaned or repaired either on or off the premises;
- (f) where the service is to visiting members of the public as may be determined in writing by the Planning Authority as generally falling within the category of 'retail service'.

Reason: To control the nature, range and scale of commercial activity to be carried out at this location.

7. No retailing or other operation in or from any building hereby permitted shall become operational until hard surfaced areas have been constructed in accordance with the approved drawing 201 REV D to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.

8. The retail units hereby permitted shall not be open to customers outside of the following hours of 7am to 11pm, Monday to Saturday and 7am to 8pm on Sundays.

Reason: To safe-guard the living conditions of residents in adjoining and nearby properties.

9. Deliveries of goods shall only be received between 7:30am and 7pm daily.

Reason: To safe-guard the living conditions of residents in adjoining and nearby properties.

10. All ventilation, air conditioning and refrigeration units shall be located on the building facade facing North East and not on the rear facade.

Reason: To safe-guard the living conditions of residents in adjoining and nearby properties.

11. No development shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW).

Reason: To ensure protection to the aquatic environment and to ascertain that a feasible method of sewage disposal is available at the site.

12. The development hereby permitted shall not be occupied until the onsite works have been completed in accordance with the drainage details submitted to and approved by the relevant authority.

Reason: In the interest of public health.

13. The development hereby permitted shall not be occupied until surface water drainage works on-site and off-site have been submitted, approved and constructed by the developer and the relevant authority.

Reason: To safeguard the site and adjacent land against flooding and standing water.

14. Prior to the commencement of development details of the internal fence and treatment for all new boundaries of the site shall be submitted to and agreed in writing by the Planning Authority.

Reason: Orderly control of development

Case Officer:

Authorised Officer



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2019/0868/F

Date Received: 22 May 2019

Proposal: Proposed commercial development comprising ground floor retail unit and first floor creche with associated site works.

Location: 107 Camlough Road Newry BT35 7EE

Addendum to Case Officer Report

1.0. This application was placed on the Agenda for the Planning Committee on Wednesday 29 June 2022. The Planning Department received a late objection on 23rd June 2022, prior to the Planning Committee. The Planning Department had not been in a position to consider the issues raised and the application was then removed from the Agenda by the Chief Planning Officer to allow the late information to be considered.

1.1. The issues raised in the Objection, as summarised in bold below, have now been considered in full and the application is now returned to Committee. Many of the issues were raised by objectors and were considered by the Case Officer, as part of the assessment of the planning application.

- **Failure to apply a town-centre-first policy.**

2.0. The Objector states that the Planning Department's failure to apply a town-centre-first policy on the basis that Bessbrook, as a village, does not have a town centre, is in direct contradiction to the SPPS, which advises that proposals

in villages and small settlements are required to be handled consistently with those in towns and cities i.e. the sequential and town centre-first approaches apply.

- 2.1. The Planning Department acknowledged, in its assessment of the application, that 'The aim of the SPPS is to support and sustain vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions, consistent with the RDS'. The regional strategic objectives for town centres and retailing are to, amongst other things, 'secure a town centres first approach for the location of future retailing'.
- 2.2. The regional objectives which include the *sequential approach* are included under the heading for town centres and retailing. The Planning Department considers that the sequential approach, as prescribed in the SPPS above, refers to retail applications within settlements with a designated Town Centre in the statutory plan. There is no designated Town Centre within Bessbrook. This was acknowledged, by the Planning Department, during its assessment of the application, as clarified in the case officer's report.
- 2.3. That said, the Planning Department, in assessing this proposal, was also mindful of the fact that the SPPS requires that proposals for shops within villages and small settlements must be consistent with the aim, objectives and policy approach for town centres and retailing, meet local need (i.e. day-to-day needs), and be of a scale, nature and design appropriate to the character of the settlement. This was acknowledged in the Case Officer's report.
- 2.4. The Planning Department considers that while there is no designated town centre within Bessbrook, there are 2 informal commercial centres, one to the north and one to south of the village. These have not been formally designated, as such, in the statutory plan, Banbridge, Newry & Mourne Area Plan 2015. The application site is located within one of those existing commercial nodes, to the south of the village, adjacent to a school. This provides a range of commercial uses for the local population including, a bar, off sales, petrol station, swimming

pool, day care, car sales, furniture and land uses associated with the nearby zoned industrial estate. The Planning Department considers, given the lack of a formal town centre designation within the area plan and the nature of existing uses immediately adjacent to the application site, that the proposal is acceptable at this location and in line with the requirements of the SPPS.

- 2.5. The Planning Department has also assessed the nature, scale and design of the proposal and considers that this is appropriate to the local area and, given the proposed food retail use, will also meet local day-to-day needs of the local population.
- 2.6. The Planning Department also acknowledged, in the case officer's report, the SPPS requirement that a sequential test should be applied to planning applications for main town centre uses that are not in an existing centre and are not in accordance with an up-to date LDP. Where it is established that an alternative sequentially preferable site or sites exist within a proposal's catchment, an application which proposes development on a less sequentially preferred site should be refused.
- 2.7. A number of points are relevant here. Food retail developments cannot be restricted to town centre locations only. It is considered that proposals for food retail, such as this one, can cater for local need within villages outside of Town Centres. It is also relevant that the current statutory plan for the district, while beyond its end date of 2015, was adopted in 2013, and its provisions are in place until a replacement plan has been adopted. It is considered that the proposal is in accordance with the provisions of the current plan for reasons set out elsewhere. In this context it is considered that a sequential approach is not appropriate in this instance.
- 2.8. That said, the Planning Department considers, for the purposes of completion, that even if it is to be accepted that the sequential approach should be adopted in the assessment of this application, it would be difficult to establish that there is an alternatively sequentially preferable site available to cater for this proposal. As stated above, while there is a commercial node to the north of

village at Fountain Street, it is also the case that an alternative commercial node has developed to the south of the village at the location of the proposed site. Between both sites, the area is predominately characterised by residential housing (within the settlement limits). As previously stated, the Planning Department considers, given the lack of a formal town centre designation in Bessbrook, within the area plan and the nature of existing uses immediately adjacent to the application site, that the proposal is acceptable at this location. In this context the Planning Department does not accept that an alternative sequentially preferable site or sites exist within the proposal's whole catchment, for the proposed use. There is no logical or reasonable justification to refuse planning permission, on this basis.

- 2.9. In summary, the Planning Department was always aware of the fact that Bessbrook does not have a designated Town Centre. It was also extremely cognisant of the fact that there are a number of established commercial centres in Bessbrook and that this application is located within one of those centres. In this context the Planning Department was satisfied that the proposal is consistent with the aim, objectives and policy approach for town centres and retailing, insofar that is practicable.

- **Failure to require an assessment of need or to assess retail impact on designated town centres**

- 3.0. The SPPS requires that in the absence of a current and up-to-date LDP, councils should require applicants to prepare an assessment of need which is proportionate to support their application. This may incorporate a quantitative and qualitative assessment of need taking account of the sustainably and objectively assessed needs of the local town and take account of committed development proposals and allocated sites.
- 3.1. A number of points are relevant here. The Planning Department has already clarified that the current statutory plan for the district, while beyond its end date of 2015, was adopted in 2013, and its provisions are in place until a replacement plan has been adopted. It is also material that the proposal is for 280 sq ms, retail and 210 sq ms of storage space, well below the 1000 square metres gross

external area threshold identified in the SPPS, where a full assessment of retail impact as well as need is required. Given the scale of the proposed development it is considered that a full assessment of need would not be proportionate to the scale of the proposal and is not required by the applicant. The SPPS also states a need assessment should take account of the 'sustainably and objectively assessed needs of the local town', taking 'account of committed development proposals and allocated sites.' Bessbrook is a village. In this context the Planning Department does not accept that all retail applications require an assessment of need.

3.2. That said and for the purposes of completion, even if it is to be accepted that an assessment of need is required in the assessment of this application, it is considered that the outcome would be a matter of planning judgement or fact and degree, considering the scale and nature of the proposal and the prevailing circumstances. In this case, the application is located within an existing commercial node. It seeks a reduced retail floor space from the previous approval, 280sqm of net retail floor space. The Planning Department does not consider this excessive or out of proportion to the village. It must also be noted that Bessbrook is a large, growing village with a recorded population of 2739 in 2011. Camlough had a population of 1,081. There has also been considerable housing development in the village since that date. All of this points to a high level of demand for convenience shopping of the type proposed by this application. It is considered that the proposal will add to the overall number of retail units in Bessbrook and will enhance the current retail provision.

3.3. As already mentioned, there is a commercial node to the north of village at Fountain Street. The objector states that this may be impacted on by the proposal. The Planning Department does not accept this, given the scale of the proposal. In addition, the *commercial centre*, as defined by the objector, does not have the benefit of a statutory designation within the statutory plan. It is considered that it would be difficult to sustain a refusal for this application on this basis and given its the immediate site context and the fact that it will promote vitality and viability within the village.

- 3.4. It is considered that the proposal, given its scale, nature and location will not adversely affect the vitality and viability of any existing retail centre within Bessbrook or Camlough and will not have a significant negative impact on retail provision within nearby town centres.

- **The Council has attached too much weight to the previous approval. It has failed to distinguish between day-to-day retailing and food store retail.**

- 4.0. The previous planning history and the extant approval for retail units must be a significant factor to be considered in the assessment of this application. As stated in the case officer report, a previous approval, on the application site, for a commercial development, with a larger retail floor space, albeit in 3 separate units, was extant at the time this application was received. This had been granted, under the terms of the then prevailing planning policy, on 11 April 2016 and was a renewal of an earlier approval granted on 21 April 2010.

- 4.1. The case officer, while acknowledging the publication of both the SPSS in September 2015 and the Banbridge , Newry & Mourne Area Plan 2015, stated that there had been no changes, within these documents to warrant a change of opinion to that previous arrived at. The objector considers that the previous application is a questionable approval. This is a matter of opinion that has not been tested through the courts. In these circumstances it would be totally inappropriate not to attach weight to the planning history on the site; it must be considered as part of the decision-making process.

- 4.2. The objector states that the Council has failed to acknowledge that this is a food retail application based on the applicant's drawings. The proposal description is for a proposed commercial development comprising ground floor retail unit and first floor creche with associated site works. It is also acknowledged that the ground floor plan makes reference to 280 sq ms, food retail and 210 sq ms of storage space. Taken all together this would not preclude the use of the premises, if approved, for general convenience retailing.

- 4.3.** It is also considered that the proposal, given its scale and location, will cater for local needs. It will cater for local needs through the provision of day-to-day or convenience goods, and this will also be reflected in strict planning conditions to be attached to the planning approval. Whilst the objector has noted differences in the previous application, the same conditions will apply. The cumulative retail floorspace is also now reduced.

- **The Need for a Drainage Assessment.**

- 5.0.** Paragraph 6.40 under policy FLD 3 of PPS 15 notes, 'in assessing the need for a Drainage Assessment the planning authority may consult with Rivers Agency...' In this instance the Planning Dept. has consulted with DfI Rivers on the need for a Drainage Assessment. DfI Rivers has confirmed this is not required and the Planning Department had no reason to dispute that position particularly given the hard standing arrangements existing on site and lack of flooding designations at this location.

- **The Need for a Transport Assessment Form**

- 6.0.** A Transport Assessment Form has now been submitted for consideration by DfI Roads. DfI Roads, as per its comments below, has confirmed that a full assessment is not required. 'In consideration of the objections raised, DfI Roads would summarise and comment as follows:

- No Transport Assessment submitted- a Transport Assessment Form has now been submitted. Upon consideration of this information, a full Transport Assessment is not deemed to be required
- Autotrack queries- Submitted Autotrack has demonstrated turning movements within the site as well as into and out of the service access on Green Road to the junction with Camlough Road. The access unto Green Road will be improved as part of this application from the existing issues being experienced/ reported.

- Removal/ alteration of existing substandard access unto Camlough Road has been consolidated under proposed arrangement (required sight visibility splays demonstrated), with increased parking provision'

- **Application is onto a Protected Route**

- 7.0. The Planning Department is satisfied that the application site, which is in commercial use, is currently accessed onto a Protected Route. In addition, there has been a dwelling at this site for a considerable period of time with an existing access to the public road. As noted in the body of the main case officer's report the Planning Department considers that the proposed access arrangements are consistent with policy requirements.

- **Lack of Assessment of Pollution issues.**

- 8.0. The Planning Department considers that this issue was properly considered in consultation with the Environmental Health Department.
- 8.1. The issue of Carbon Footprint is referred to within the SPPS under Natural Heritage and Transportation. In this context it promotes a sustainable solution to reduce the need for motorised transport. It is considered that while the proposal can only rely on existing transportation systems and measures in the immediate area to reduce the carbon footprint, many of the wider regional strategic issues around this matter are beyond the remit of this application.
- 8.2 Additional points of objection received, dated 23rd June 2022, have been covered within the original Case Officer's report which is scanned onto the Planning Portal. A further 20 letters of support were also received and have been uploaded to the Planning Portal

Case Officer: Ashley Donaldson

Date: 29.11.2022

Authorised Officer: Pat Rooney

Date: 29.11.2022

Application for planning permission for proposed commercial development comprising ground floor retail unit and first floor creche with associated site works at 107 Camlough Road, Newry BT35 7EE (LA07/2019/0868/F)

1. This is a controversial application which does not have the support of the local community, but which officers have nevertheless rushed to committee with a recommendation to approve. It is for a contentious commercial development across the road from St Paul's High School, Bessbrook. It has attracted no less than seventy six objections, with over one hundred and twenty concerns raised between them.
2. Concerned about the failure by officers to address the issues raised by the community, our clients have recently instructed specialist planning counsel, Conor Fegan BL, to review this application. His view is that there are at least eight flaws with this application which would make any approval vulnerable to judicial review.
3. First, the application has not been accompanied with a design and access statement. This is in breach of Article 6(1)(b)(ii) of the Planning (General Development Procedure) Order (Northern Ireland) 2015. A design and access statement is required in this case as the development consists of the provision of buildings where the floorspace created is 100 sqm or more and part of the development is in an Area of Outstanding Natural Beauty (Article 6(5)(ii)). The application breaches section 40(1)(b) of the Planning Act (Northern Ireland) 2011 and is therefore invalid.
4. Second, there has been no assessment of retail need. Regional policy requires this. Paragraph 6.282 of the SPPS requires applicants to *"prepare an assessment of need which is proportionate to support their application"*. Such an assessment is necessary also to understand if the proposal will *"meet local need"* (SPPS (Paragraph 6.278)). No such assessment has been undertaken here. Officers have failed to properly apply these policy requirements. The brief attempt by officers to assess need in the addendum report falls far short of what is legally required. And what is more, it conflicts with the evidence base for the emerging dPS. The Retail and Commercial Leisure Study (November 2020) undertaken by Nexus Planning concludes that Bessbrook centre is already *"performing well in serving the needs of the local population"* (Page 145). There is no rational evidential basis for challenging that assessment.
5. Third, there has also been no assessment of retail impact. Paragraph 6.283 of the SPPS says that applications for retail and other town centre developments under 1000 m2 may require a detail impact assessment, taking account of factors such as local circumstances, the size, role and function of town centres. Paragraph 6.278 says that proposals in villages must be of a scale and nature which is appropriate to the character of the settlement. Despite all of this, the application was not accompanied by a retail impact assessment. Several members of the public have raised concerns about impacts on existing town centre uses, but officers have simply dismissed these saying the planning system does not exist to protect the private interests of operators. That misses the point. Members of the public are understandably concerned about the impact that approving this application would have on the viability and viability of nearby centres, including Bessbrook and Camlough. Officers have failed to address these concerns in any systemic way. Their perfunctory attempt to do so in the addendum report provides no reassurance to local communities or business owners.
6. Fourth, the sequential approach has not been followed. The sequential approach has been a staple of regional retailing policy for years. It requires applicants to show that there are no sequentially preferable sites in centre or edge of centre locations within the catchment before locating in out of centre locations. That is clear from paragraphs 6.280 and 6.281 of the SPPS in particular. There is no question that this is an out of centre location. The applicant has not shown that no sequentially preferable sites in the catchment were available. Officers have not even asked for this assessment to be undertaken. Officers speculate in their addendum report that no sequentially preferable sites are likely available, but that assessment not based on any rational evidential basis. Officers are also wrong in their view

that simply because Bessbrook does not have a defined centre boundary in the extant plan the sequential approach does not apply. If that was right, it would drive a coach and horses through the sequential approach in most rural areas. Officers were required to consider the emerging dPS evidence base on centres in the Retail and Commercial Leisure Study (November 2020) and to form a view on centres in the context of this application.

7. Fifth, the assessment of transport impacts is flawed. The Transport Assessment compares proposed development with the previously consented development, even though the previously consented development is now expired. The correct comparator is the current use of the site. The traffic figures in the Transport Assessment are inconsistent with the traffic figures in the P1 form. Locals have queried the accuracy of the data on which the Transport Assessment is based (it being largely based on comparator developments in England). In response to all of these criticisms, officers have simply deferred to the expertise of DfI (Roads) and said that they have no basis for doubting the accuracy of the figures relied on. This is an abdication of the responsibility to assess evidence objectively and independently ([2006] NIQB 28, at paragraph 54). The Council has also not adequately considered access. The proposal will involve a new access onto the Camlough Road, a protected route under AMP 3. Officers assert that this is justified as access cannot reasonably be taken from Green Road, but neither officers nor DfI (Roads) have undertaken any actual assessment of this. They have not justified this proposal under AMP 3.
8. Sixth, officers have placed an unreasonable degree of weight on a previous approval for a different type of retail development on this site. The main justification for recommending approval is that the Council granted permission for three retail units previously on the site. That does not, however, provide a sound basis for approving this application. Officers have overlooked the fact that the previous approval is now expired. Placing as much weight as officers do here on an expired approval for a materially different type of retail development is irrational. Officers also fail to grapple with legitimate criticisms made by objectors about the reasoning in support of the previous application. The whole way in which officers have gone about addressing the previous approval is at odds with the case law ([1981] 1 WLR 1092).
9. Seventh, in breach of FLD 3 a drainage assessment has not been provided. FLD 3 says that a drainage assessment will be required for *"a change of use involving new buildings and / or hardsurfacing exceeding 1000 square metres in area"*. This threshold is breached based on what it said in the P1 form. Officers respond that DfI do not say a drainage assessment is required, but the Council must apply its own mind to FLD 3. Neither the Council nor DfI have explained how their approach is consistent with FLD 3. That is because it is clearly not.
10. Eighth, officers have wrongly treated climate change as irrelevant. In response to a concern from a member of the public about climate change, officers said in their report *"this is not a material consideration for this application"*. That is simply wrong in law. Climate change is a material consideration in regional policy (SPPS (Paragraphs 3.10 – 3.13)). Tackling climate change is part of sustainable development. The Council must exercise its planning functions in a way which is calculated to contribute to sustainable development (section 25(1) of the Northern Ireland (Miscellaneous Provisions) Act 2006). The Council is failing in its legal duty to consider climate impacts, notably sustainable transport and embodied carbon.
11. This application is in no fit state to be approved. Important issues have not been properly assessed. Regional policy has been misinterpreted. Documents which should have been provided have not been. There are gaping holes in the evidence. If this application was approved, our clients would seek to judicial review the decision. Members are invited to listen to the community and to refuse the application on the basis that inadequate information has been provided; or, alternatively, to defer this application until the relevant information has been obtained and consulted on.

Would you please ensure that all elected
Reps on the planning committee receive a
copy of this prior to the December
Planning meeting
Thankyou.



O'Callaghan PLANNING

Adding Value Through Quality Design

TITLE	Objection to planning application LA07/2019/0868/F – Addendum #1 Comments on TAF & DfI Roads consultation response dated 12/09/2022
PROJECT	Food retail store at 107 Camlough Road, Newry
DATE	November 2022
STATUS	Final
VERSION	D2
AUTHOR	Colin O'Callaghan Chartered Town Planner BSc Hons Dip TP MRTPI

Document Control

REVISION	DESCRIPTION	STATUS	DATE	BY	CHECKED	APPROVED
D2	Objection to planning application (Response to TAF & DfI Roads' Comments dated 12/09/2022)	Final	29/11/22	C.J.O'C		

O'Callaghan Planning | 20 Castle Street, Newry, BT34 2BY | Tel. 028 3083 5700

Email: enquiries@ocallaghanplanning.co.uk | www.ocallaghanplanning.co.uk



In June 2022 the author submitted an objection to this planning application. The application was, concurrently, scheduled for approval whereupon we submitted a request to speak on behalf of objectors. The application was duly removed from the schedule, and the applicant later submitted a Transport Assessment Form, which was issued to DfI Roads for consultation. DfI Roads replied to its consultation on 12th September 2022, indicating its opinion was unchanged (i.e. it was content with the proposal). DfI Roads' comments were caveated:

The above comments are on the basis that Planning are satisfied with the proposed parking and servicing requirements for this proposal, and that the information provided in the accompanying P1 Form is deemed accurate.

We are formally drawing the Council's attention to the fact that the information provided at Q25 of the applicant's Form P1 is not consistent with the data provided on the applicant's Transport Assessment Form. Form P1 therefore requires updating and DfI Roads ought to be re-consulted given the wildly differing traffic volume predictions.

We also wish to highlight a very important material consideration: the applicant's submission appears reliant upon earlier grants of planning approval. However, the previous permissions on the site have now expired. When the last application was granted, it was approved on the basis the applicant had a fallback position then. The applicant has no fallback position now. Accordingly, this application must be considered afresh, and subjected to the SPPS' retail policy tests because it is our view, based upon the available evidence, that the previous proposal was not fully scrutinised against the SPPS.

The TAF submitted in August 2022 has to be queried because it sought to argue the proposal would reduce traffic by way of comparison of an earlier approval (that is now expired) instead of out rightly demonstrating the adequacy of the access, parking, turning and servicing arrangements. Now there is no extant approval to compare with, and with the TAF flatly contradicting the traffic figures presented in the applicant's P1 form, DfI Roads must be re-consulted.

In the TAF the MRA Partnership, in consultation with the TRICS database, predicted 453 arrivals by car per day, with 7 arrivals in a taxi and 5 HGV movements (total 463). The applicant's predicted traffic count, as set out on Form P1, was only 46 i.e. 10% of what the TAF suggests. This matter requires further investigation.

The applicant's proposals show 33 parking spaces with 1 no. bay for HGV's servicing the site. While it is reasonable to assume not all of the anticipated 5 no. HGV's will attend the site at once, in the event that more than one HGV attends the site at any one time, then the applicant's proposals are demonstrably inadequate. There is a significant possibility that a second HGV might attempt to service the premises without conforming to the proposed service arrangements i.e. by halting on the roadside, or halting in the parking area, which would congest the site and affect the flow of traffic on the adjacent Protected Route.

With the previous approval having expired, please advise what exceptional circumstances have been set out to justify the access arrangements, directly onto the Protected Route, as we have been unable to access said justification.

The applicant's TAF predicts 77 trips in the hour at peak times (1800 – 1900). But the previous hour will, by the applicant's prediction, witness 90 vehicular movements (two-way). Between 0800 – 0900

a total of 85 movements per hour were predicted. The provision of 33 no. parking spaces is wholly inadequate for this volume of traffic, and the implications for the free flow of passing traffic on the protected route are significant. It is also noteworthy that the author of the TAF has conceded that the creche's traffic has been modelled upon a nursery because no data is available for creches. Accordingly, we submit that the actual traffic could be higher than has been predicted even in the applicant's TAF (which itself is 1000% the volume predicted in Form P1). The TAF predicted 93 movements per hour for the previous approval but the argument that this proposal represents betterment is nullified by the fact the previous permission lapsed.

The predicted high turnover of visitors will not be sufficient to compensate for the facts that:

- the previous permission has lapsed;
- the proposal must be judged now on its own merits;
- the TAF shows traffic will be 1000% that predicted on Form P1;
- the TAF results themselves could be low – the authors have provided little explanation as to how the “comparable” sites were selected from the TRICS database – this site is different in that it lies in a rural small settlement, on a main transport route, and will be visited primarily by car rather than on foot and the TAF has not, in our view, selected data from similar sites in similar situations.

The TAF “noted the Council is content with the parking on the site”. We have seen no evidence this is the case, hence would require confirmation from the Council.

Formalising the site's “entrances” does not sufficiently outweigh the disbenefits and disadvantages of this scheme to warrant approval - the TAF states the site entrances are formalised compared to the existing sub standard existing accesses. However, there is only one present access. There is an unauthorised parking bay along the Camlough Road frontage hence this cannot be taken as an existing access and no plaudits can be given to a proposal that seeks to secure advantage from unauthorised development (that is not comparable with a new access for a food supermarket given the significant intensification).

The TAF notes that that “service vehicles can enter and exit the site in forward gear, using the turning head provided”. In fact, only one service vehicle can enter and exit the site in forward gear, whereas parking standards dictate that more provision is required than this (one is needed for the retail use and an operational space is also required for the nursery, but given the nature of the proposal then provision needs to be left for more than one HGV delivering to the site at any one time).

The TAF states that the 15 locations selected included 4 suburban (out of centre); 4 edge of town and 7 neighbourhood centres. We are of the view that the selection process for identifying comparable generators is flawed because this site lies on a main transport route in a rural settlement. It does not have access to the same degree of surrounding populace as an edge of town site would (Bessbrook is not a town) and the site is not located at a neighbourhood centre. For those reasons, it is apparent that the level of travel likely to be experienced at this site may not be as has been predicted in the applicant's TAF, which itself is 1000% the volume predicted in the applicant's Form P1. Given the significance of the discrepancy, the applicant ought to be requested to provide updated P1 forms and DfI Roads should be requested to make further comment, based upon the issues raised herein.

We would also be grateful if the Council could clarify whether or not it is content with the parking arrangements, as has been noted in the TAF.

In closing, we would also respectfully request the Council to confirm whether the site visits of planning and roads officials have taken place during or outside the peak hours associated with the school opposite the site. The question is pertinent owing to the significant variations in traffic patterns at this location during a normal weekday even.

We look forward to hearing from you.

1. Good morning Chair and Members, thank you for the opportunity to address the committee today. My name is Hayley Wilson, the applicant's planning consultant, and I am joined today by the applicant, Mr Padraig Mallon, Mr Collin Dalton (the architect) and Mr Richard Agus (the roads consultant)
2. We welcome the recommendation of approval and the comprehensive case officer committee report.
3. We are to make six brief points:
 - i) The proposal seeks to regenerate this area of Bessbrook by removing the industrial nature and provide a positive frontage on Green Road and Camlough Road.
 - ii) The applicant's road consultant has assessed the proposed development and concludes the proposal will not have an adverse impact upon the road network. DfI Roads have no objection.
 - iii) The proposed development has a capital investment of approx. £1.6 million and will provide new employment opportunities during construction and operational phases.
 - iv) The planning history for retail development is a material consideration.
 - v) Despite assertions from the objectors, the Planning Department and the statutory consultees have assessed the proposal appropriately in accordance with the prevailing planning policy.
 - vi) It is clear that the objector seeks to frustrate the planning decision-making process by submitting late objections despite the robust case officer report and addendum that addresses the repetitive objections.
4. To conclude, this proposal will be a positive contribution to Bessbrook by way of the creation of new jobs, removes the industrial outlook on Camlough Road and will provide much needed additional facilities for the existing crèche.
5. The applicant is content with the conditions proposed and welcomes the recommendation of approval.



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2020/1588/F

Date Received: 19.10.2020

Proposal: The application is for full planning permission for the development of petrol filling station, 1no. retail unit, 1no. hot food unit, ATM and jet wash with associated access, car parking, landscaping and site works.

Location: The site is located at the former St. Patrick's Primary School site Ardglass Road Downpatrick.



Site Characteristics & Area Characteristics:

The application site is located within the settlement limits of Downpatrick as designated in the Ards and Down Area Plan 2015.

The site is located at the junction of Ardglass Road and John Street. It is currently a vacant site which has become overgrown with some vegetation following the demolition of the former primary school on the site. Google streetview 2008 indicates that there were vehicular

accesses to the school site on John Street and St Dillons Avenue with a pedestrian access onto the Ardglass Road close to the junction with John Street. The fencing from the former school still currently encloses the site.

The site is located to the south of Downpatrick approx 250m from the Town Centre. There are residential properties to the north of the site on St Dillons Avenue which include pairs of semi-detached two storey red brick dwellings. There are playing fields to the east, residential properties and St Mary's High School are located to the south of the site across the Ardglass Road. The former Downe Hospital has a recently constructed residential development which is located to the west where construction is at an advanced stage with a vehicular access opening onto John Street.

Site History:

LA07/2020/0009/PAD | Junction of John Street & Ardglass Road, Downpatrick | Petrol filling station, two convenience retail units. one hot food unit and associated access and parking arrangements

R/2008/0396/F | St Patricks Primary School, St Dillon's Avenue | Removal of 2No 54sqm mobiles and provision of single mobile with toilet facilities. Permission Granted 03.09.2008.

R/1994/0725 | St Patrick's Boys' Primary School St Dillon's Avenue Downpatrick | Extension to provide caretaker's store | Permission Granted.

R/1991/0578 | Adjoining St Dillons Avenue Edwards Street and Ardglass Road Downpatrick | Palisade fencing around playing fields | Permission Granted.

Other associated planning applications for the primary school.

Planning Policies & Material Considerations:

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.

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.

Ards and Down Area Plan (2015) – The site lies within the settlement limits of Downpatrick.

SPPS – Strategic Planning Policy Statement for Northern Ireland: sets out that Planning Authorities should be guided by the principle that sustainable development should be permitted, having regard to the local development plan and other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

PPS: Town Centres and Retailing: Para 6.278 relates to retailing in villages. Policies and proposals for shops in villages and small settlements must be consistent with the aim, objectives and policy approach for town centres and retailing, meet local need (i.e. day-to-day needs), and be of a scale, nature and design appropriate to the character of the settlement.

PPS 2: Natural Heritage: Sets out planning policies for the conservation, protection and enhancement of our natural heritage.

PPS 3: Access, Movement and Parking: Sets out planning policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking.

PPS 6: Planning Archaeology and the Built Heritage sets out the policies for the protection and conservation of archaeological remains and features of the built heritage.

PPS 15: Planning and Flood Risk (Revised September 2014): sets out planning policies to minimise flood risk to people property and Environment.

Guidance

DCAN 15 Vehicular Access Standards

DOE Parking Standards

Consultations:

NI Water – Statutory Response PDE should be applied for. NI Water notes the following.

There is available capacity at the WWTW. There is a public foul sewer within 20m of the proposed development boundary which can adequately service these proposals. An application to NI Water is required to obtain approval to connect. There is a public surface water sewer within 20m of the proposed development boundary which can adequately service these proposals. An application to NI Water is required to obtain approval to connect. Connections will be restricted to Greenfield Runoff rate of 10 litres/second/hectare.

DFI Roads – No objections subject to PSD conditions

NIEA – WMU – If Northern Ireland Water Limited (NIW) indicate that the WWTW and associated sewer network is able to accept the loading generated by the proposal, with no adverse effect on the WWTW or sewer network's ability to comply with their Water Order Consents, then Water Management Unit would have no objection to this aspect of the proposal. NI Water have indicated there is available capacity at the WWTW.

NIEA Land Soil Air – No objections subject to conditions

NIEA – NED – No objections subject to a condition

Environmental Health – No objections subject to conditions

Historic Environment Division (HED) – No objections

DfI Rivers – No objections

Shared Environmental Services (SES) – no formal consultation required.

Objections & Representations

In line with statutory requirements neighbours have been notified on 15.11.2021 and again with amended plans on 31.03.2022 and 09.06.2022. The application was advertised in the Down Recorder on 18.11.2020 (expiry 02.12.2020).

A total of 21 letters of objection were received in relation to the proposal. The main issues can be summarised as below.

- Traffic generation
- Congestion – school and new housing development
- road safety – proximity to the school and walking pedestrians – 4 accesses in close proximity
- infrastructure unable to cope
- flood issues
- sewerage and NI Water issues
- operating times of the PFS – impact on families
- noise and lighting disturbance
- details regarding the noise impact assessment
- visual impact
- impact on Ballymote Centre – contrary to SPSS retail impact and sequential tests and no need for it has been demonstrated
- environmental issues and removal of Trees and hedge
- Hazardous materials being contained within a small site
- antisocial behaviour
- 24hr petrol station only 5mins away

This is just a summary of the main points of the objection letters which have been read in full and are available to read on the planning portal.

Consideration and Assessment:

The main issues to consider in the determination of this application are:

- Principle of development
- Retail Impact
- Access, Road Safety, parking and Circulation
- Visual Impact - Design and Appearance
- Residential Amenity
- Other matters

The application was accompanied by, P1 form, site location plan, site layout, floorplans and elevations and the following documents

- Planning Statement;
- Retail Statement;
- Transport Assessment Form;
- Servicing Management Plan;
- Preliminary and Generic Quantitative Risk Assessments;
- Drainage Layout;
- Odour Assessment;
- Acoustic Assessment; and
- Ecology Report.

The application was initially submitted for a development which comprised a larger retail unit, separate retail unit and separate hot food unit. Following objection from MBA Planning who were acting on behalf of the units which make up the Ballymote Centre Downpatrick challenging the retail impact on this proposal, the scheme was subsequently reduced and is subject to this assessment. The proposal also involves the closing of the Edward Street shop and this could be controlled by condition and a planning agreement.

Proposal

The proposal is for the development of a new petrol filling station with additional separate hot food unit. The development will include a new sales building with entrance lobby and with food prep area, ATM, back of house (including chillers and freezers, covered external yard and external yard. The proposal also includes canopy, lighting, fuel pumps, jet wash, car parking and vehicle access and egress.

The building measures some 17.5m by 54.8m in footprint. The proposed building would be located to the east of the site close to the eastern boundary, with its front elevation facing westwards towards John Street. This retail element building would measure some 17.5m by 36m in area, and with its flat roof would stand some 5.4m in height. The hot food unit has a pitched roof measuring 9.5m in height. The retail unit would have a total gross floorspace of 857gsm with 519 sqm net sales space. The hot food unit would have a gross floorspace of 84 sqm. The walls of the retail unit will be double glazed grey ppc aluminium curtain walling with light grey finish to external walls and timber effect cladding. There are glazed elements in both the retail unit and hot food bar unit. The pitched roof will have dark grey / black roof tiles / slates. An ATM machine would also be installed to the front of the building along the side of the hot food bar unit.

The forecourt will be a three pump island facility i.e. six fill points located under the canopy, with six waiting spaces. The proposed canopy would measure some 24m in length and some 11m wide; and it would stand 6.2m in height. The external yard and covered yard are located along the eastern boundary. This rear boundary is defined both a 1.8m high timber fence above a retaining wall. The boundary will extend around the corner with Ardglass road comprising a wall and railing remaining a min 1.8m high above lower ground level at the bottom of the bank. A proposed rendered wall and railings defines the southern boundary which is separated to the roadside by new hedgerow which will replace the hedgerow that is being removed. Beyond this is a new footpath and right hand turning lane. A jet wash is being sited along the western boundary. The proposed jet wash would stand 4.4m in height.

In terms of parking provision, the proposal would provide a total of 53 car parking spaces (+6 at pumps) (one of which will provide air/water/vacuum facilities) It will also include including 4 enhanced accessibility spaces and future provision allowed for 6 e-car charging points to the north of the forecourt. The development would see an access entrance only from Ardglass Road and exit only onto John Street with a pedestrian access onto St Dillons Avenue.



Principle of Development

Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The LDP in this case is the Ards and Down Area Plan 2015 (ADAP).

The site lies within the settlement limit for Downpatrick. The application site is not subject to any specific designation or zoning and is considered 'whiteland'. The ADAP does not include any policies that the proposal can be tested against in retail impact terms. The ADAP designates the town centre of Downpatrick as Proposal DK 23.

SPPS

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In practice this means that development that accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise. Any conflict between retained policy and the SPPS is to be resolved in favour of the SPPS.

In principle the site is a brownfield site formerly a primary school. It is considered that the principle of this development in this location to be acceptable; and from this, the key issues to consider are retail impact, visual impact, residential amenity, road safety, and ecological issues.

Retail Impact

Paragraphs 6.267-6.292 of the SPPS set out policy in relation to 'Town Centres and Retailing', incorporating a town centres first approach for retail and other main town centre uses. The SPPS states that where retail uses are proposed outside of main town centres, a sequential test should be applied to establish whether or not sequentially preferable sites exist within the catchment area of the proposal. Para 6.281 states '*Applications for main town centre uses are to be considered in the following order of preference (and consider all of the proposal's catchment):*

- *primary retail core;*
- *town centres;*
- *edge of centre; and*
- *out of centre locations, only where sites are accessible by a choice of good*

public transport modes.'

A Retail Impact Assessment was prepared and submitted by Braniff Associates (BA) on behalf of the applicant. Within the report an analysis of the Population in the catchment, expenditure in the catchment, turnover of proposal, turnover of existing stores, trade draw of proposal from within catchment, market share of proposal. It is noted that an objection from MBA Planning on behalf of traders in the Ballymote Local Centre was also received whose main argument was that the proposal will have a significant adverse impact on the Ballymote Local Centre. Planning therefore engaged the services of Inaltus to carry out a detailed appraisal of the Retail Impact Assessment submitted for a proposed petrol filling station (PFS) development which at the time included the main retail unit plus 2 additional units. The appraisal was used to support the Council's consideration of the planning application in line with prevailing retail planning policy.

Closure of Spar

For closure of Spar to be given weight the applicant and owner of the Spar building would have to sign a Section 76 planning agreement securing its closure or secure the discontinuance of its use under Section 73 and deal with any compensation matters arising under Section 182 of the Planning Act (NI) 20211 (the Act). As this was not in place at the time of the appraisal the floorspace from the Edward Street store was assessed as being is entirely additional.

The conclusions from the appraisal were that the predicted impact on the town centre is within an acceptable range. Indeed, if all the turnover of the proposal was diverted from the town centre the proposal would not cause significant harm. The key consideration in the appraisal is the impacts on Ballymote Local Centre which was considered a finely balanced matter. The conclusions were that the applicant had not done enough to demonstrate that the proposal is acceptable, whereby no compelling need case was presented.

The report also concluded that by applying more realistic retail assumptions results in the potential impacts of the proposal being higher than often accepted. The case presented by the applicant that this is a one for one application was not sufficiently compelling to give weight to. If more compelling evidence was presented this could diffuse the potential impacts bringing them into an acceptable range. It might also provide improved qualitative arguments for the proposal.

In relation to the objectors' concerns, businesses in Ballymote are concerned about the proposal and have presented a case that the proposal will have a significant adverse impact on it. The appraisal concludes that Ballymote currently trades strongly despite the presence of a local Spar close to the application site. This demonstrates that Ballymote has a regular, loyal and local customer base that will exist even if the proposal is developed. The fact that Ballymote now has an unmanned PFS would support and would consolidate Ballymote by giving local Ballymote customers no reason to leave to use the proposal site.

On the conclusions of the independent retail appraisal the application was amended whereby the applicant was asked for compelling evidence that the proposal is needed and a true one for one application and seek to engage Section 73 / Section 182 or Section 76 of the Act to confirm that the Edward Street Spar store will cease trading.

The proposal was amended to omit retail Unit 2 from the application and the applicant entered into a legal agreement to close Spar store at Edward Street, this is now at advanced stage. The applicant provided an updated turnover of their store. This continues to apply a sales density of £7378/sq m. The turnover reduces because of the two changes outlined above. Turnover of proposal (using as per the latest Experian Retail Planner Briefing Note 19), Sales Densities and Turnover of Existing Shops, Trade Draw, Lowest Potential Impact, Medium Potential Impact and need have all been considered as part of the amended retail package and statement from Braniff Associates (BA).

In terms of Need, the updated Retail impact statement from BA have confirmed the proposal will be needed for qualitative reasons once the current Spar shop closes, other than this there has been minimal elaboration on the need cases.

It is therefore concluded that the applicant has secured two important concessions which have the propensity to reduce retail impact. The opportunity for the applicant to elaborate on the need case has not been forthcoming. The Council therefore has made a planning judgement call based on the evidence. The objectors' genuine concerns are acknowledged and whilst the case remains an application in the balance, and having sought an independent retail appraisal, it is Planning's view that whilst impacts will undoubtedly occur, those impacts will not cause significant adverse harm to Ballymote Local Centre given the location of this centre in the heart of a regular, loyal and local customer base and the associated businesses around it with its own unmanned PFS, which make this centre well placed to withstand the opening of this proposal.

Visual Impact - Design and Appearance

Policy DES 2 of The Planning Strategy for Rural Northern Ireland requires development proposals in towns and villages to make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials. The finish of the new building will include a light grey / off white / light stone finish, double glazed grey PPC aluminium curtain walling, timber effect detailing and stone cladding and grey / black tiles / slates as detailed above. Consideration has also been given in relation to designs of modern petrol filling stations. The jetwash unit is appropriately scaled, and it is not unusual to find such a facility on the forecourt of a petrol station; and the new plant equipment, paraphernalia and hardstanding would cause no visual harm given its overall use. Its current state and previous use as a primary school have been taken into account. On this basis the proposed boundary treatments including fencing walls, railings and hedging with the additional hedging and soft landscaping shown along the southern boundary would provide some screening and softening of the development. In this case the materials and finishes, layout, design and appearance of the proposed petrol filling station including retail unit, proposed hot food unit and associated canopy are all considered acceptable.

Residential Amenity

The impact on the local residents also has to be taken into account. Many of the concerns relate noise and nuisance, disturbance and anti-social behaviour. On this basis Environmental Health have been consulted with regard to the proposal. A noise impact Assessment report,

a photometric report and an odour report were all submitted as part of the proposal. Objection was raised regarding the impact of noise and disturbance likely to be caused by deliveries, the jetwash, access road and pedestrian access, plant equipment/air conditioning etc and general noise and disturbance. The submitted noise report which has been considered along with objections has been accepted by Environmental Health demonstrating that these elements of the proposal would not cause adverse harm to the living conditions of local residents. It is noted that in terms of the delivery baseline of the report - this was compared to the background level recorded at the site with no activity on the site, in addition, the impact of the car parking on the nearest properties on St Dillon's Avenue (15m away) will be within the noise target values for daytime and night-time without any requirement for walls or barriers.

Suitable conditions will be imposed to safeguard the amenity of local residents. Environmental Health is also satisfied that the submitted details regarding the floodlighting and its operation would not cause unacceptable harm to the amenity of local residents. The location of the delivery area is deemed to be further away from the properties at St Dillons Ave in order to reduce the impact. The jet car wash may also have an adverse impact on the amenity of the residential properties, therefore in order to mitigate this, Environmental Health require conditions be attached to any planning permission granted, relating to hours of operation and conditions regarding the roll cages, jetwash, air/water/vacuum and acoustic fence. EH have also included a condition relating to the remedial scheme (which overlaps with conditions imposed by NIEA).

On balance and given the conditions imposed by environmental health It is considered this proposal will not result in any significant or unacceptable residential impact on any adjoining properties, or character of the area, due to its design, size and location. In addition, it is deemed that that the proposed building, canopy and other structures within the site would not have an adverse impact on neighbouring properties in terms of loss of privacy, light and outlook.

Access, Road Safety, Parking and Circulation

The proposal would provide a total of 53 car parking spaces (+6 at pumps) (one of which will provide air/water/vacuum facilities). It will also include including 4 enhanced accessibility spaces and future provision allowed for 6 e-car charging points to the north of the forecourt. The development would see an access entrance only from Ardglass Road and exit only onto John Street with a pedestrian access onto St Dillons Avenue.

PPS 3 -Policy AMP 9 Design of Car Parking

This policy states that a high standard of design, layout and landscaping is expected to accompany all proposals for car parking. Planning permission will only be granted for a proposal where all the following criteria are met:

- (A) It respects the character of the local landscape
- (B) It will not adversely affect visual amenity; and
- (C) Provision has been made for security and the direct and safe access and movement of pedestrians and cyclists within the site.

Based on DoE Parking standards

The main retail unit on 1 space per 14m² = 47 spaces, Retail unit 1 hot food is based on 1 space per 3m² NFA and 1 space per 3 employees = 7 spaces. Total car parking requirement = 54 spaces, 53 car parking spaces (+6 at pumps) have been provided.

Operationally the car park has been assessed by DfI Roads and the design and layout is found to be acceptable. The parking provision provided within the site is considered to be acceptable for a development of this nature at this location within the settlement limits and 250m from the town centre.

Previously when the site operated as a primary school there was an access from both St Dillons Ave and John Street with a pedestrian access onto Ardglass Road. DfI Roads have been consulted regarding the proposal in terms of the new access and egress points and the visibility splays (for both vehicles and pedestrians) and letters of objection. Account has been taken of the proximity to St Mary's High School and to housing at both St Dillons Ave with additional the new housing located at the old Down Hospital site. Tactile pavers and the pedestrian handrail will remain at Ardglass Road crossing over to St Mary's High School with new tactile pavers across John Street. DfI have reviewed the technical aspect of how the new junctions will operate, in addition, auto tracking analysis have been submitted and DfI Roads raises no road safety objection in terms of both delivery vehicles and customer vehicles coming and going from the site. Several letters of objection including St Mary's High School have objected to the proposal from a road and pedestrian safety perspective and that that several other concerns have been expressed regarding traffic, parking and other related roads matters. DfI Roads provide expert and professional advice to the Council. DfI Roads have taken into consideration the letters of objection and at present they offer no objections subject to private streets determination drawings.

Archaeology and the Built Heritage

The application is in close proximity to HB18 19 017A & B Former Hospital Buildings (Grade B2) at 9a Pound Lane, Downpatrick, which are of special architectural and historic interest and is protected by Section 80 of the Planning Act (NI) 2011. Historic Environment Division (HED), Historic Buildings, has considered the impacts of the proposal on the listed buildings and on the basis of the information provided, advises that, the proposal satisfies the requirements of paragraph 6.12 of Strategic Policy Planning Statement for Northern Ireland and policy BH 11 (Development affecting the Setting of a Listed Building) of the Department's Planning Policy Statement 6: Planning, Archaeology and the Built Heritage.

HED therefore offer no objections to the proposal.

Flood Risk

DfI Rivers were consulted regarding the proposal. Following submission of a flood risk assessment and some further submitted drainage calculations and from a flood risk and drainage perspective DfI Rivers while not being responsible for the Drainage Assessment and associated information, accepts the applicant's logic and has no reason to disagree with its conclusions.

It should be brought to the attention of the applicant that the responsibility for the accuracy, acceptance and implementation of the proposed flood risk measures rests with the developer and their professional advisors. (Refer to section 5.1 of PPS 15).

On this basis DfI Rivers offer no objection to the proposal.

Natural Heritage –Ecology

Council consultation was carried out with NIEA - Natural Environment Division and informally with Shared Environmental Services (SES).

The proposal is subject to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (known as the Habitats Regulations). SES were consulted informally, further consideration with SES was not required, as there is no conceivable impact from the development on any European site has been identified. This concurs with the Ecological Appraisal and NIEA NED did not identify any impacts on European sites arising from the proposal.

NED taking into account the submitted Ecological Appraisal Letter and Open Mosaic Habitats and Bat Roost Suitability Report and the revised 'Proposed Site Plan' which shows compensatory planting proposed for the loss of hedgerow along the Ardglass Road. NED are content that a range of native species are proposed. From the reports submitted, NED are content that an assessment of the sites suitability as OMH was completed, and the ecologist found that the habitats present do not constitute this priority habitat, given that it does not meet all five criteria as established in the standard survey manual.

NED also acknowledge that a bat roost suitability assessment was also completed. Of the eleven trees/groups of trees assessed, the ecologist found all trees to have either *negligible* or *low* bat roosting potential with no further surveys required.

Thus NED are content with the proposal subject to a condition.

Economic Consideration

Paragraph 3.3 of the SPPS states that in making planning decisions there is a need to ensure economic considerations are accorded appropriate weight. Paragraph 4.18 continues that a modern, efficient and effective planning system is essential to supporting the Executive and wider government policy, in its efforts to promote long term economic growth in the interests of all the people in this region. Planning authorities should take a positive approach to appropriate economic development proposals and proactively support and enable growth generating activities.

The agent in his planning statement has indicated that the development represents a significant investment, of some £2.8M approx. and will support some 50 jobs in a range of full and part time positions. He states that the proposed development will support a range of local suppliers to the site, supporting a range of construction jobs throughout the construction period. In addition, he states the proposed development is expected to provide a rates income in the region of some £46,000 per annum to the local authority to support the delivery of public services.

Downpatrick does require future investment and job creation, and economic development is supported in all aspects of planning. However, a balancing exercise must be carried out in relation to the competing issues. It is recognised that the proposal would bring benefits to the

area, but this must be weighted appropriately against the extent of the development and its effect on this area.

Other Matters

As part of the application process DAERA – Regulation Unit were consulted. A Contaminated Land Risk Assessment report has been provided by WYG Environment and Planning (NI) Ltd in support of this planning application. The Risk Assessment is informed by site investigations and environmental monitoring data. No unacceptable risks have been identified for environmental receptors. Regulation Unit Land and Groundwater Team have no objections to the development provided conditions and informatives are placed on any Planning Decision Notice as recommended.

Water Management Unit have noted that if Northern Ireland Water Limited (NIW) indicate that the WWTW and associated sewer network is able to accept the loading generated by the proposal, with no adverse effect on the WWTW or sewer network's ability to comply with their Water Order Consents, then Water Management Unit have no objection to this aspect of the proposal. NI water have indicated that there is available capacity at the Waster Water Treatment works.

Signage

It is noted that signage is proposed, however, these matters do not form part of the consideration of this application as they are subject to the planning (Control of Advertisements) Regulations (Northern Ireland) 2015. Should the application be approved this can be dealt with by an informative.

Conclusion

Taking into account all material considerations including all the objections from the local neighbours, the High School and the businesses at Ballymote Centre, the previous history on the site as a primary school, the ADAP 2015, economic and no objections from any consultees, the proposal would represent an appropriate form of development that would not be visually harmful to the character and appearance of the surrounding area. It would not cause unacceptable harm to residential amenity or road safety. Given the scale and nature of the proposal it would not have an adverse impact on the overall economic vitality and viability of Downpatrick town centre or any local centre and would be of an appropriate scale for its urban location. Thus, the proposal is considered to comply with relevant planning policies and it is recommended that the application be approved subject to conditions.

Recommendation: Approval

As per the Scheme of Delegation, as the applications has attracted six or more material planning objections from different addresses and the recommendation is for approval then the application will be presented to the Planning Committee.

The Drawings upon which this approval is based are as follows:

Proposed Site plan – 2612-P-101 REV M
 Proposed block plan 2612-P-103 REV E
 Proposed plans & elevations – 2612-P-200 REV D
 Site sections and boundary elevations – 2612-P-300 REV D
 Jet Wash, Boundary details, visibility splays and fuel canopy – 2612-P-102 REV C
 Site location Plan – 2612-01REV H

Private Streets Drawing - 19-176-C10b

WYG Contaminated Land Risk Assessment (8 October 2020)

Conditions:

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

Reason: Time Limit.

2. The development hereby permitted shall take place in strict accordance with the following approved plans: 2612-01REV H, 2612-P-101 REVM, 2612-P-103 REV E, 2612-P-200 REV D, 2612-P-300 REV D, 2612-P-102 REV C, 19-176-C10b, WYG Report.

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

3. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.
 The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 19-176-C10.

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

4. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.

No other development hereby permitted shall be commenced until the works necessary for the improvement of a public road have been completed in accordance with the details outlined blue on Drawing Number **19-176-C10b** bearing the date stamp 14/10/2022. The Council hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

Reason: To ensure that the road works considered necessary to provide a proper, safe and convenient means of access to the development are carried out.

5. The vehicular access / egress, including visibility splays and any forward sight

distance, shall be provided in accordance with Drawing No. **19-176-C10b**, prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

6. No other development hereby permitted shall become operational until provision has been made and permanently retained within the curtilage of the site for the parking of private cars as indicated on drawing no **19-176-C10b**.

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

7. No other development hereby permitted shall become operational until the footway indicated on drawing no **19-176-C10b** bearing the date stamp 14/10/2022, has been constructed to final wearing course.

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

8. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Infrastructure Street Lighting Section. (These works will be carried out entirely at the developer's expense.)

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

9. The gross floor space hereby permitted shall not exceed 857 square metres when measured internally.

Reason: To control the nature range and scale of commercial activity carried out at this location.

10. The net retail floor space hereby permitted shall not exceed 519 square metres when measured internally. This approved net retail floor space shall be used only for the retail sale and ancillary storage of the items listed here under and for no other purposes, in Class A1 of the Schedule to the Planning (Use Classes) Order (Northern Ireland) 2015.

- a) Food and drink;
- b) Tobacco, newspapers, magazines and confectionary;
- c) stationary and paper goods;
- d) Toilet requisites and cosmetics, household cleaning materials; and
- e) other retail goods as may be determined in writing by the Council as generally falling within the category of (convenience goods).

Reason: To control the nature, range and scale of commercial activity to be carried out

at this location and to ensure compliance with the SPPS's objectives and policies for retailing and town centres.

11. No internal operations including installation/extension of mezzanine floors shall be carried out to increase floor space available for retail use without prior written consent of the Council.

Reason: To enable the Council to retain control over the nature, range and scale of retailing activity so as not to prejudice the continued vitality and viability of existing retail centres.

12. The retail unit hereby approved shall not be sub divided or otherwise modified to create additional units without the prior written approval of the Council.

Reason: To enable the Council to retain control over the nature, range and scale of retailing activity so as not to prejudice the continued vitality and viability of existing retail centres.

13. The petrol filling station hereby approved shall not be used for the sale, display or repair of vehicles.

Reason: To protect the character and appearance of the area and in order to ensure the amenities of the nearby residents are not affected.

14. The development hereby permitted shall not become operational until hard surfaced areas have been constructed in accordance with the approved drawings to provide adequate facilities for parking, servicing and circulating within the site. No part of these hard surfaced areas shall be used for any other purpose at any time other than for the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.

15. If during the development works, new contamination or risks are encountered which have not previously been identified, works should cease and the Planning Authority shall be notified immediately. This new contamination shall be fully investigated in accordance with the Land Contamination: Risk Management (LCRM) guidance available at <https://www.gov.uk/guidance/landcontamination-how-to-manage-the-risks>. In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Planning Authority in writing, and subsequently implemented and verified to its satisfaction.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

16. After completing the remediation works under Condition 15; and prior to occupation of the development, a verification report needs to be submitted in writing and agreed with Planning Authority. This report should be completed by competent persons in accordance with the Land Contamination: Risk Management (LCRM) guidance available at <https://www.gov.uk/guidance/landcontamination-how-to-manage-the-risks>. The verification report should present all the remediation, waste management and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and wastes in achieving the remedial objectives.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

17. No development or piling work should commence on this site until a piling risk assessment has been submitted in writing and agreed with the Planning Authority. Piling risk assessments should be undertaken in accordance with the methodology contained within the Environment Agency document on "Piling and Penetrative Ground Improvement Methods on Land Affected by Contamination: Guidance on Pollution Prevention" available at <http://webarchive.nationalarchives.gov.uk/20140328084622/http://cdn.environment-agency.gov.uk/scho0202bisw-e-e.pdf>.

Reason: Protection of environmental receptors to ensure the site is suitable for use.

18. The development hereby approved shall not be operational outside the following times:- 06.00 – 23.00 hours.

Reason: To safeguard the living conditions of residents in nearby properties.

19. No deliveries, collection of goods or services including refuse and fuel shall be taken at the premises between the hours of 21:00 and 07:00 daily.

Reason: To safeguard the living conditions of residents in nearby properties.

20. There shall be no moving of roll cages in the delivery area before 07:00 or after 21:00 hours daily.

Reason: To safeguard the living conditions of residents in nearby properties.

21. The jet car wash and air/water/vacuum units shall not be used between the hours of 23:00 and 07:00 daily.

Reason: To safeguard the living conditions of residents in nearby properties.

22. Floodlighting on the site shall be in accordance with Institution of Lighting Professionals Guidance Notes on the Reduction of Obtrusive Light.

Reason: In order to prevent unnecessary light intrusion to nearby residential property.

23. The acoustic fence proposed shall be close lapped leaving no gaps and shall be retained as such.

Reason: To safeguard the living conditions of residents in nearby properties.

24. The three downy birch trees, assessed as having *low* roosting potential, shall be subject to soft-felling techniques, under the supervision of an Ecological Clerk of Works (ECOW).

Reason: To protect bats and potential roosts.

25. Condition in relation to the Article 76 agreement is to be finalised by Planning prior to decision notice issuing.

Informatives

1. The purpose of the Conditions 15 to 17 is to ensure that any site risk assessment and remediation work is undertaken to a standard that enables safe development and enduse of the site such that it would not be determined as contaminated land under the forthcoming Contaminated Land legislation i.e. Part 3 of the Waste and Contaminated Land Order (NI) 1997. It remains the responsibility of the developer to undertake and demonstrate that the works have been effective in managing all risks. Land, Soil & Air

2. RU recommends that the applicant consult with the Water Management Unit in NIEA regarding any potential dewatering that may be required during the development including the need for a discharge consent. Discharged waters should meet appropriate discharge consent conditions. Further information can be obtained from: <https://www.daera-ni.gov.uk/articles/regulating-water-discharges>

3. The applicant should ensure that the management of all waste materials onto and off this site are suitably authorised through the Waste and Contaminated Land (Northern Ireland) Order 1997, the Waste Management Licensing Regulations (Northern Ireland) 2003 and the Water Order (Northern Ireland) 1999. Further information can be obtained from: <https://www.daera-ni.gov.uk/articles/waste-management-licensing> <https://www.daera-ni.gov.uk/topics/waste/waste-management-licensing-exemptions>

4. The Private Streets (Northern Ireland) Order 1980 and The Private Streets (Amendment) (Northern Ireland) Order 1992

Under the above Orders the applicant is advised that before any work shall be undertaken for the purpose of erecting a building the person having an estate in the land on which the building is to be erected is legally bound to enter into a bond and an agreement under seal for himself and his successors in title with the Department to make the roads (including road drainage) in accordance with The Private Streets (Construction) Regulations (Northern Ireland) 1994 and The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001. Sewers require a separate bond from Northern Ireland Water to cover foul and storm sewers.

5. Separate approval must be received from DfI Roads Service in respect of detailed standards required for the construction of streets in accordance with The Private Streets (Construction) Regulations (Northern Ireland) 1994 and The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001.

6. Under the terms of The Private Streets (Construction) (Amendment) Regulations (Northern Ireland) 2001, design for any Street Lighting schemes will require approval from DfI Roads Street Lighting Consultancy, (Marlborough House Graigavon) The Applicant is advised to contact DfI Roads Street Lighting Section at an early stage. The Applicant/Developer is also responsible for the

cost of supervision of all street works determined under the Private Streets Order (Northern Ireland) 1980.

7. Precautions shall be taken to prevent the deposit of mud and other debris on the adjacent road by vehicles travelling to and from the construction site. Any mud, refuse, etc, deposited on the road as a result of the development, must be removed immediately by the operator/contractor.

8. Road drainage to be agreed with Private Streets Engineer prior to commencement.

9. Pedestrian Crossing points to be agreed with Private Streets Section.

10. Water Management Unit would advise the applicant to contact the Water Regulation Team dustrialconsents@daera-ni.gov.uk at their earliest convenience to discuss the matter of Discharge Consent.

The applicant should be aware that if there is the intention to direct vehicle wash water through a petrol interceptor, the detergents from this wash water would render the petrol interceptor useless. The applicant should consult Pollution Prevention Guideline (PPG) 03 - Use and design of oil separators in surface water drainage systems, for further advice regarding the installation and maintenance of oil interceptors/separators which can be found at the link given below:

http://www.netregs.org.uk/library_of_topics/pollution_prevention_guides/all_ppgs.asp

x The applicant must also refer and adhere to the relevant precepts in DAERA Standing Advice on Vehicle Washing.

Care will need to be taken to ensure that polluting discharges do not occur during the construction and operational phases of this development. The applicant must refer and adhere to the relevant precepts in DAERA Standing Advice on Pollution Prevention Guidance, paying particular attention to where further information can be found regarding oil storage, incident response (dealing with spills), safe storage - drums and intermediate bulk containers, and the use of oil separators in surface water systems (including the restrictions due to use of detergents).

The applicant will be required to comply with the Control Of Pollution (Oil Storage) Regulations (NI) 2010. A key requirement of the Regulations is that oil storage containers (including temporary storage) must have a secondary containment system (a bund, which is an outer wall or enclosure designed to contain the contents of an inner tank, or a drip tray) to ensure that any leaking oil is contained and does not enter the aquatic environment. The applicant should also consult Pollution Prevention Guideline (PPG) 27 'Installation, Decommissioning and Removal of Underground Storage Tanks' which can be found at:

http://www.netregs.org.uk/library_of_topics/pollution_prevention_guides/all_ppgs.asp

x

See WMU consultation for full list of informatives.

11. The applicant should be informed that it is an offence under the Water (Northern Ireland) Order 1999 to discharge or deposit, whether knowingly or otherwise, any poisonous, noxious or polluting matter so that it enters a waterway or water in any underground strata. Conviction of such an offence may incur a fine of up to £20,000 and / or three months imprisonment. The applicant should ensure that measures are

in place to prevent pollution of surface or groundwater as a result of the activities on site, both during construction and thereafter.

12. The applicant shall have full regard to all relevant and current guidance and standards during the remediation and validation processes and shall incorporate such detail within any report submissions required to be submitted for prior approval by Planning Office (in consultation with the Environmental Health of Newry, Mourne and Down District Council).

13. BATS (all species)

The applicant's attention is drawn to The Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended), under which it is an offence:

- a) Deliberately to capture, injure or kill a wild animal of a European protected species, which includes all species of bat;
- b) Deliberately to disturb such an animal while it is occupying a structure or place which it uses for shelter or protection;
- c) Deliberately to disturb such an animal in such a way as to be likely to -
 - i. affect the local distribution or abundance of the species to which it belongs;
 - ii. Impair its ability to survive, breed or reproduce, or rear or care for its young; or
 - iii. Impair its ability to hibernate or migrate;
- d) Deliberately to obstruct access to a breeding site or resting place of such an animal;

or

- e) To damage or destroy a breeding site or resting place of such an animal.
- If there is evidence of bat activity / roosts on the site, all works should cease immediately

and further advice sought from the Wildlife Team, Northern Ireland Environment Agency,

Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 0289056 9558 or 028 9056 9557.

14. ALL BIRDS

The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly:

- kill, injure or take any wild bird; or
- take, damage or destroy the nest of any wild bird while that nest is in use or being built; or
- at any other time take, damage or destroy the nest of any wild bird included in Schedule A1; or
- obstruct or prevent any wild bird from using its nest; or
- take or destroy an egg of any wild bird; or
- disturb any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or
- disturb dependent young of such a bird.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

It is therefore advised that any tree or hedgerow loss or vegetation clearance should be kept to a minimum and removal should not be carried out during the bird breeding season between 1st March and 31st August.

15. Archaeology & Built Heritage

- Planning Act (Northern Ireland) 2011
- Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage.
- Strategic Planning Policy Statement for Northern Ireland (SPPS) – Planning for Sustainable Development.
- BS 7913:2013 Guide to the conservation of historic buildings
- Consultation Guide - *A guide to consulting HED on development management applications* - <https://www.communities-ni.gov.uk/publications/guide-consulting-hed-developmentmanagement-applications-and-guidance-listed-building-consent>
- ICOMOS XI'AN Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas.
- HED Setting Guidance, Feb 2018 <https://www.communitiesni.gov.uk/sites/default/files/publications/communities/guidance-on-setting-and-the-historicenvironment.pdf>
 - Please also see HED guidance <https://www.communities-ni.gov.uk/sites/default/files/publications/communities/our-planningservices-and-standards-framework.pdf>

16. This approval does not apply to any signs or advertising material which the developer or occupier may wish to erect at the premises.

17. 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.

18. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development.

Case Officer

C Moane

Date 02/11/2022

Appointed Officer

A.McAlarney

Date 02 November 2022

LA07/2020/1588/F - Development of petrol filling station, 1no. retail unit, 1no. hot food unit, ATM and jet wash with associated access, car parking, landscaping and site works - Former St. Patrick's Primary School site, Ardglass Road Downpatrick.

Cllr Gareth Sharvin (Neutral)

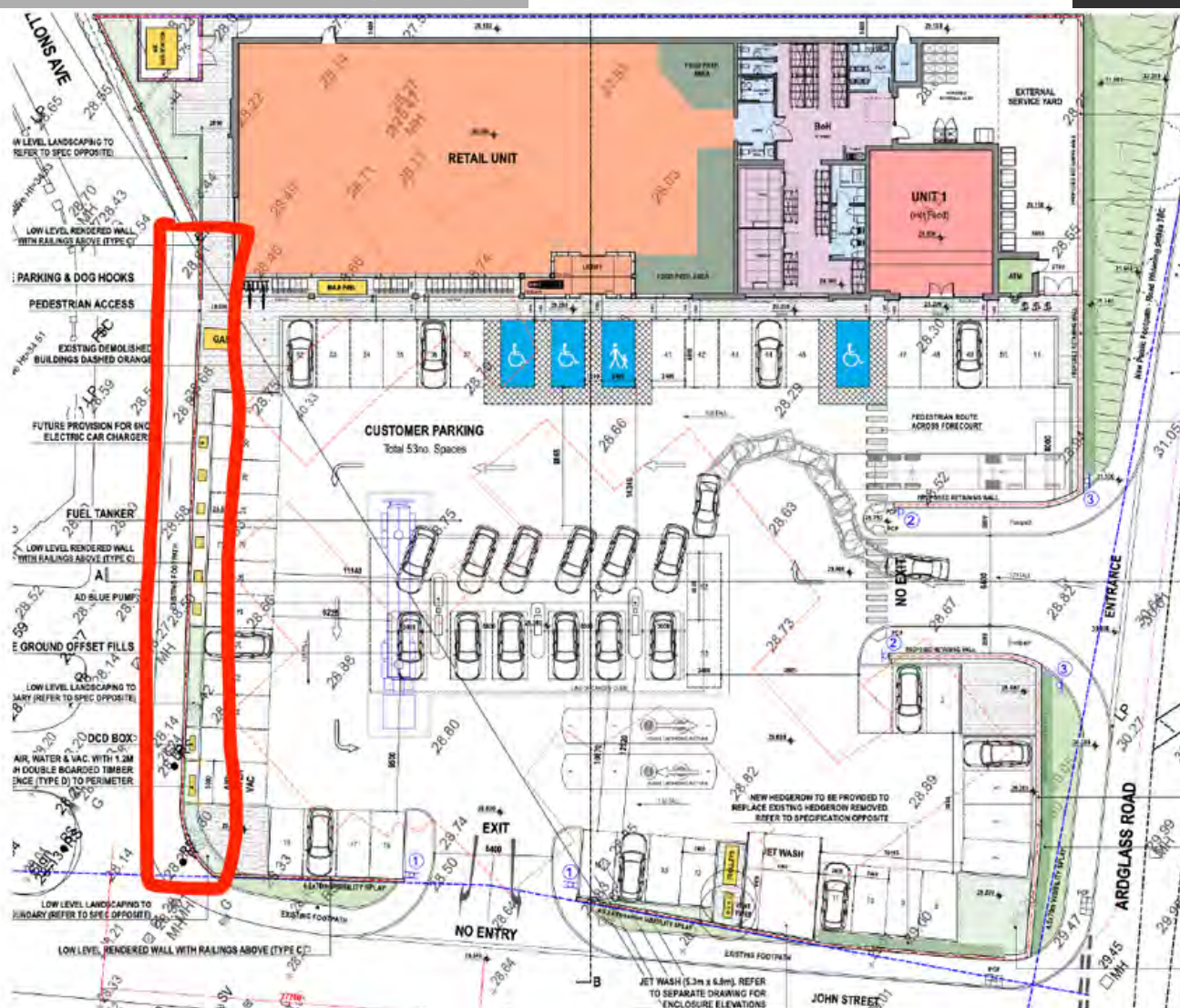
I wish to raise concerns on behalf of local residents in relation to planning application LA07/2020/1588/F for the development of a petrol filling station and associated units and works.

Residents have raised concerns to the following matters for this application:

1. The number of junctions within close proximity of one another - with the proposed plans showing an exit only junction onto John Street, this will result in 4 junctions being close to each other, increasing the risk of road safety concerns and impact on an already busy road and junction (as highlighted). The exit junction from the proposed development, junction into St Dillion's Avenue, Ardglass road and junction into the recently developed Downe housing estate. There is no road safety measures for crossing or slowing traffic down. It could also encourage cars to go up St Dillion's Avenue, which is already congested without this development. The resident feel that the original proposal of both entrance and exit onto Ardglass road would be better suited and reduce the impact on the local residential area.



2. Proposed low wall and railing on the St Dillion's Avenue side of the development will not reduce the impact of car lights onto the adjoining properties. The addition of a hedgerow along this side to the development would reduce the impact of light on the residential properties.



3. Closing off the proposed pedestrian entrance from St Dillion's Avenue, as the current proposal has the potential to encourage drivers to park along St Dillion's Avenue and further increase the already challenging traffic conditions along this road.
4. Restriction on times for deliveries to the premises to reduce noise pollution in the area, during night hours.

The residents accept that the likelihood of this development going ahead is high, but feel that the above requests will reduce the impact of the development onto their property. They would ask that these conditions and improvements be considered in relation to the application.

Kind Regards,

Gareth

ClIr Gareth Sharvin

Planning Application Ref. LA07/2020/1588/F at Ardglass Road, Downpatrick

Submission to Newry, Mourne and Down Planning Committee, 16th November 2022

1.0 The Proposed Development

- 1.1 The application was submitted by the Henderson Group in October 2020. The proposal is for the development of a petrol filling station and associated retail unit, a hot food unit, ATM and jet wash and associated access, car parking and landscaping arrangements. A second retail unit was originally proposed but this was removed from the scheme in recognition of concerns expressed by the Council in relation to retail impact.
- 1.2 It will provide a 780 sqm gross floorspace shop, a 90 sqm gross floorspace hot food unit, a 3-pump island petrol filling station and car parking provision to published standards. The filling station shop will replace the existing SPAR on Edward Street, creating an additional 445 sqm net of retail space. A Legal Agreement forms part of the proposal to ensure the closure of the SPAR on Edward Street. The new EUROSPAR will bring a new retail offer to Downpatrick with associated benefits arising in terms of increased competition and choice.
- 1.3 The proposal will deliver the redevelopment of a vacant, brownfield site (the former St Patrick's Primary School). The building has been designed, with its pitched roofing and brick and render finish, to both match and complement the site context.
- 1.4 The proposal represents a £2.8M investment which will support 50 approx. jobs and will result in additional rates income of £45,000 per annum approx.

2.0 The Pre-Application Discussion Process

- 2.1 The proposal was the subject of a positive Pre-Application Discussion with Newry, Mourne and Down District Council in 2019 / 2020 prior to the submission of the planning application.

3.0 The Planning Application Process and Assessment

- 3.1 A comprehensive planning application package has been provided in support of the proposed development and informed by the Pre-Application Discussion. In addition to a comprehensive drawing package, the planning application package included:
 - design and access statement;
 - planning statement;
 - retail statement;
 - transport assessment form and servicing management plan;
 - lighting assessment;
 - preliminary and generic quantitative risk assessments;
 - drainage assessment;
 - noise assessment; and
 - odour assessment.

- 3.2 Revised plans removing the second retail unit to reduce the scale of the proposal and amending the access arrangements were provided during the course of the planning application process in response to requests from the Council and DfI Roads.
- 3.3 Consultations were undertaken by the Council with DfI Roads, NI Water, Environmental Health, DAERA, Shared Environmental Services, Historic Environment Division and DfI Rivers. All consultees have no objections to the proposal, subject to conditions.
- 3.4 There have been 20 letters of objection from 16 addresses (including 13 local residents, St Mary's High School and a planning consultant on behalf of the Ballymote Local Centre) during the two-year period in which the application has been under consideration. There has been 1 further letter of representation, from the Sisters of Mercy, which welcomes the proposal in principle whilst noting a number of other comments.
- 3.5 The Council procured specialist, independent advice from Inaltus, a retail consultant including consideration of the retail need and impact concerns raised by the Ballymote Local Centre. Informed by this, the Council's Planning Department has concluded, as per the Applicant's retail assessment, that there will be no unacceptable adverse impacts arising and that the proposal complies with relevant planning policies.
- 3.6 The Henderson Group have met with St Mary's High School to discuss their concerns and to witness the period of congestion associated with the end of their school day. The access arrangements were amended and have subsequently been discussed in detail with DfI Roads who have no objections to them.
- 3.7 Ultimately, all the issues of concern have been thoroughly assessed, statutory consultees have no objections and the Council's Planning Department are satisfied that there are no unacceptable impacts arising from the development and that the proposal complies with all relevant planning policies. The Henderson Group own and operate other facilities in similar contexts and the Ardglass Road site will be managed to the same high standards requisite across all their sites.

4.0 Conclusion

- 4.1 It is respectfully concluded that the proposed development will provide a quality, modern, local shopping and service facility – a relocation and upgrade of the existing SPAR on Edward Street. It is a demonstration of private sector confidence in Downpatrick which will contribute to the sustainability of the neighbourhood through the provision of accessible, local services.
- 4.2 The proposal is consistent with the local development plan and the prevailing planning policy context. It has been thoroughly assessed by the Council and statutory consultees over the last two years, resulting in a recommendation for approval. It is an investment by a local business and it is commended to the Committee for approval.



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

Application Reference:	LA07/2020/1651/F
Date Received:	10/11/2020
Proposal:	Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) (Amended description).
Location:	75m north of 18 Ballinasack Road, Mullaghbawn, Newry

1.0. Site Characteristics & Area Characteristics:

- 1.1. 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 5m, to a maximum of 10m 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.
- 1.2. 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.

2.0. Site History:

P/2003/0168/O

- Site for dwelling and garage
- Immediately north of number 18 Ballinasack Road, Mullaghbawn, Newry
- Permission Granted 20.06.2003

P/2006/2002/F

- Erection of dwelling
- Immediately north of number 18 Ballinasack Road, Mullaghbawn, Newry
- Permission Granted 11.01.2008

P/2010/0904/F

- Erection of farm dwelling to include retention of existing foundations
- 45m north of 18 Ballinasack Road, Mullaghbawn
- Application withdrawn

3.0. Consultations:

Transport NI – DfI Roads has no objection in principle to this application.

NI Water – Generic response to routine planning application

HED – On the basis of the information provided is content that the proposal is satisfactory to SPSS and PPS 6 archaeological policy requirements.

4.0. Objections and Representations:

One neighbour was notified of the proposal on 15/12/2020. The proposal was also advertised in local press 12/01/2021.

Two items of correspondence were received from an objector on 27 January 2021 and 25th March 2021. Issues raised are summarised below:

- Address of site conflicts with footprint of proposed dwelling
- Non-compliance of previous approval with planning law
- Proportion of site covered by run-off area (in relation to septic tank emptying consultation response).
- Personal circumstances should not take precedence over other planning and development considerations.

5.0. Planning Policies and Material Considerations:

Strategic Planning Policy Statement for Northern Ireland

Banbridge Newry Mourne Area Plan 2015

Planning Policy Statement 21 – Sustainable Development in the Countryside

Planning Policy Statement 2 – Natural Heritage

6.0. Site context/Background

6.01. There is a long and complex planning history related to this application site, which is a material consideration for this planning application.

6.02. By way of background, outline approval was granted on the site for a house on 20th June 2003 under reference P/2003/0168/O. This was subsequently followed, on 11th October 2006, by a full application for the erection of a dwelling

under reference P/2006/2002/F. This was granted approval on 11 January 2008 with a one-year time limit to commence development.

- 6.03.** On 19th February 2010, the previous planning authority, Department of Environment (DoE Planning), initiated an enforcement investigation, under file reference P/2010/0108/CA, in response to complaints regarding the alleged unauthorised commencement of works on the site. On 20th May 2010, DoE Planning served a planning contravention notice on the landowner and in response, the applicant stated he had started work, on the site, in Autumn 2009. This date was beyond the time limit of the previous approval which should have commenced by 11th January 2009. On the 19th July 2010, the DoE Planning subsequently received an application, P/2010/0904/F, for the erection of a farm dwelling to include the retention of the existing foundations.
- 6.04.** This application was considered over a period from July 2010 to November 2011, whereby numerous objections, amended plans and additional information was submitted. On 8th December 2011, the application was presented to the legacy Council, Newry, Mourne & Down District Council, as an approval and was subsequently deferred. The application was reconsidered, and it was concluded that there was no evidence to prove that works had started in accordance with the previous approval. A recommendation for refusal was presented to Council and deferred on 10th February 2012. A meeting was held between the Department and the applicant/agent in May 2012, whereby it was contended the applicant had an active farm and it was proposed to submit farm map and a P1C form for consideration as an application under a farm dwelling under Policy CTY 10 of PPS 21.
- 6.05.** These documents were submitted to DoE Planning in May 2012. Following consultation with DARD, it confirmed the Business ID had been in existence for more than 6 years, but payments or allowances had not been claimed in the last 6 years. It was considered by the planning authority that there was an established farm and that the application complied with the requirements of Policy CTY 10 of Planning Policy Statement 21 (PPS 21) and approval was recommended.
- 6.06.** This recommendation was subsequently deferred by the Council on 7th March 2013. A meeting was held between the Department and the objectors in May 2013. The information raised in the meeting was considered and a further assessment made. The application was again recommended for approval. This decision did not issue due to a further review by the former planning authority.
- 6.07.** Jurisdiction for the planning application then passed to Newry Mourne & Down District Council, following the transfer of planning powers in April 2015. On 7th September 2016, a meeting took place between the Council's Planning Department, the planning agent, applicant and a local elected representative. The complex history of the site was reviewed. The agent put forward reasons in support of an approval for consideration.

- 6.08.** On 24th November 2016, the planning agent submitted an amended proposed site layout and existing site layout survey and cross section for consideration by the Planning Department. The application was then further assessed by the Planning Department, and it was concluded that it was contrary to a number of statutory planning policies, including: the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 10, Policy CTY 8, Policy CTY 13 and Policy CTY 14 of PPS 21 'Sustainable Development in the Countryside'; and Policy NH6 of Planning Policy Statement 2, 'Natural Heritage.' This was on a number of planning grounds including: it had not been demonstrated that the farm business was active or established; the proposed dwelling did not visually link or cluster with established buildings on the farm; and that the proposed dwelling would lead to inappropriate ribbon/suburban development in the countryside.
- 6.09.** The application was tabled for the Planning Committee on Wednesday, 26th June 2019 with a recommendation to refuse, as outlined above. The Planning Committee voted to overturn the case officer's recommendation on the grounds that significant excavation works had taken place and the applicant believed he had complied with regulations by commencing works. It was agreed officers be delegated authority to impose any relevant conditions.
- 6.10.** The Planning Department then issued a formal approval notice, on 2 July 2019, subject to a number of planning conditions.
- 6.11.** A formal application for leave to apply for a Judicial Review was then lodged by an objector in respect of the decision by Newry, Mourne & Down District Council to issue planning permission for the application on 2 July 2019. This was on the grounds that the decision was unlawful and of no effect. Legal advice was sought by the Planning Department, following the application for leave to apply for a Judicial Review, in line with normal procedure.
- 6.12.** Members of the Planning Committee were advised of the application for leave to apply for a Judicial Review at its meeting on 16 October 2019. The Committee voted to accept the legal advice given by Counsel and legal advisors and to concede the application on one ground, namely the 'reasons' issue.
- 6.13.** The application was returned to the Planning Committee on 29 July 2020 with a similar recommendation to refuse. Members voted to defer the planning application to allow for a site visit to take place so the Committee could assess the site in more detail.
- 6.14.** The application was subsequently formally withdrawn by the agent on 16th September 2020 and members of the Planning Committee were subsequently advised of this, at its meeting on Wednesday, 23rd September 2020.
- 6.15.** The applicant has now submitted a further application on the site for the 'Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) (Amended description).' This application must now be assessed.

7.0. Planning Consideration and Assessment.

- 7.1. This application seeks approval for a change of house type from that previously approved under P/2006/2002/F. The Planning Department has carefully assessed the application against prevailing planning policies and in the context of all relevant material considerations.

Banbridge/Newry and Mourne Area Plan 2015

- 7.2. Section 45 of the Planning (NI) Act 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. There are no specific policies in the Plan relating to the proposed use, therefore this application will be assessed against regional planning policy.

Strategic Planning Policy Statement (SPPS)

- 7.3. As there is no significant change to the policy requirements for the change of house type following publication of the SPPS, the retained planning policy is PPS 21 – Sustainable Development in the Countryside. This policy will be given substantial weight in assessing the proposal in accordance of para 1.12 of the SPPS.

PPS21 – Sustainable Development in the Countryside

- 7.4. This proposal is for a change of house type to that previously approved under P/2006/2002/F. As outline above, the previous approval did not lawfully commence within the period prescribed by the formal approval. In the light of this fact, this change of house type is unacceptable, as the approval P/2006/2002/F, the subject of this application, has now lapsed, (also refer to Para 7.7).
- 7.5. The Planning Department advised the agent via email 22nd January 2021 that it was not considered that the previous permission P/2006/2002/F commenced lawfully, and this permission has lapsed. An opportunity to provide any additional information was offered.
- 7.6. The main points offered in response are listed below:
- *A decision-maker is lawfully entitled to attach as much or as little weight to an individual material consideration as it sees fit. Any planning decision involves the careful balancing of a number of material considerations, of which planning policy is but one. It follows that a site's planning history (owing to a history of planning approvals) could be attributed greater weight than the failure to comply with a planning policy that arose after that decision was taken.*
 - *Decision-makers are lawfully entitled to take account of an individual's circumstances, in endeavouring to ascertain whether that individual believed that he had exercised due care and attention in the implementation of an earlier planning permission.*

- *In this case, a combination of personal and domestic circumstances were at play in the period when the applicant ought to have been implementing his planning permission.*
- *Various factors can be taken together to justify a departure from planning policy, and are as follows:*

The long history of planning approvals on this site and the legitimate expectation that there would always be a dwelling thereon;

The applicant's genuine endeavours to implement a permission, however ineffective;

The applicant's personal circumstances in the period when development was to have commenced;

The fact that the applicant was prejudiced to the extent that his permission was to be implemented in a more stringent timeframe than many others of that time (even to this day there is inconsistency of approach with some applicants receiving 5 years and others receiving only one year); and

To this day, the NI Planning Portal states that the applicant's time limit was not in fact curtailed beyond the standard 5-year period, another indicator of the confusion that reigned.

- 7.7.** The Planning Department has considered the points raised above and within the supporting statement provided. The previous full permission P/2006/2002/F was granted 11th January 2008 with condition 1 requiring development shall hereby permitted shall be begun before the expiration of 1 year from this date. The amount of time specified to commence a development is at the discretion of the planning authority. In the case of a full application for a dwelling on the foot of a previous outline approval, it was often standard practice to seek to link the time period as close as possible to the period specified in the original outline approval. In this case the previous planning authority judged that a period of one year was reasonable to enable the development to commence on site. The Planning Department do not consider that the issues raised, by the agent, are of sufficient weight to overcome the time requirements attached to the formal approval notice issued in respect of P/2006/2002/F.
- 7.8.** Condition 4 of the formal approval notice 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.
- 7.9.** This pre-commencement condition 4 was not complied with, as the access, splay and forward sightline have not been completed or implemented on the site. Failure to comply with condition 4 means that the permission has lapsed and has not commenced.
- 7.10.** Furthermore, aerial photography as well as superimposed drawings provided by the former agent show that the foundational work, carried out on the site, is built in the wrong position and is not in accordance with the approved plans. The permission has not commenced. Additionally, the applicant has previously stated that he started work on the site in autumn 2009 - after the one-year expiry

date of the previous approval (which would have been 11th January 2009). The Planning Department consider that the previous approval on the site was not commenced and this permission has lapsed.

- 7.11.** 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.
- 7.12.** In the light of the above, the Planning Department remains of the same opinion, as outlined above, that the previous approval P/2006/2002/F has not commenced lawfully. There is no basis on which this application for a change of house type to that previously approved can be approved. In the interests of completion, it has assessed the application against prevailing planning policy.

Policy CTY1 of PPS 21

- 7.13.** Policy CTY1 of PPS 21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development.
- 7.14.** Policy CTY1 states that planning permission will be granted for an individual dwelling house in the countryside in the following cases:
- *A dwelling sited within an existing cluster of buildings in accordance with Policy CTY 2a;*
The proposal is not located at an existing cluster of development.
 - *A replacement dwelling in accordance with Policy CTY 3;*
The proposal does not relate to a replacement dwelling.
 - *A dwelling based on special personal or domestic circumstances in accordance with Policy CTY 6;*
No personal or domestic circumstances information has been provided with this application.
 - *A dwelling to meet the essential needs of a non-agricultural business enterprise in accordance with Policy CTY 7;*
No evidence of a non-agricultural business enterprise has been provided with this application.
 - *The development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY 8;*
The application site does not represent a small gap within an otherwise substantial and continually built up frontage.
 - *A dwelling on a farm in accordance with Policy CTY 10.*

No evidence has been provided with this application to qualify for a dwelling on a farm.

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

CTY 13 - Integration and Design of Buildings in the Countryside

- 7.16.** 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.
- 7.17.** It is considered that the proposal will be a prominent feature in the landscape, the site lacks long established 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 and ancillary works do not integrate with their surroundings. The site is open and exposed with little in the way of screening and is elevated in nature in relation to the surrounding topography.
- 7.18.** Furthermore, it is the proposed intention to infill/ raise the levels in the site, further exacerbating issues of prominence on the site, 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, particularly the infilling, would not integrate with their surroundings.

CTY 14 – Rural Character

- 7.19.** 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.
- 7.20.** 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.

CTY 8 – Ribbon Development

- 7.21.** As the proposal is contrary to criteria D of CTY 14 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. The proposal would, if

permitted, result in the creation of ribbon development along the Ballinasack Road.

CTY 16 – Development relying on non-mains sewerage

- 7.22.** Foul sewage will be disposed of via septic tank. The proposal complies with CTY 16. A condition should be included to ensure a copy of a consent to discharge be submitted prior to commencement of the development.

Planning Policy Statement 2 – Natural Heritage

Policy NH 6 - Areas of Outstanding Natural Beauty

- 7.23.** Planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met:
- a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and
 - b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and
 - c) the proposal respects: local architectural styles and patterns; traditional boundary details, by retaining features such as hedges, walls, trees and gates; and local materials, design and colour.

The siting of the proposal is not sympathetic to the special character of the AONB and the particular locality.

8.0. Recommendation:

The application is recommended for refusal in the light of the above and for the reasons outlined below.

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 CTY 8 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.
3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 13 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;
 - The proposal relies primarily on the use of new landscaping for integration; and
 - Ancillary works do not integrate with their surroundings;
4. 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;
 - Create a ribbon of development, and
 - The impact of ancillary works would damage rural character.
5. 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 not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

Case Officer: E.Moore.

Date: 28/09/2022

Authorised Officer: P Rooney

Date: 28/09/2022

LA07/2020/1651/F

Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) 75m north of 18 Ballinasack Road, Mullaghbawn for Mr Gene Martin

This is an application for change of house type. It has been submitted on foot of attempts to secure the previous permission on this site through various works of construction, including foundations etc.

It has been said that the applicant did not implement his previous permission in time. However, although not alone, the applicant's previous permission was unjustly restricted to 1 year, when the NI planning portal advises it was 5 years; and a considerable number of others were given 5 years again for their change of house type application, even when there was only a few months remaining of the original approval. This Council is legally empowered to provide redress now and is entitled to attach as much weight to the history of planning approvals on this site as it sees fit. Showing the applicant a degree of clemency and giving him a final opportunity to implement his permission is a perfectly legitimate approach here, especially when the Council has a track record of giving applicants the benefit of doubt when it comes to matters involving the commencement of historic permissions.

It would not be irrational to recognise that: the applicant genuinely attempted to commence his development; because of the random and inconsistent limiting of certain permissions he was prejudiced (although not alone); and there would be no demonstrable harm in permitting the applicant to construct this dwelling now. Regardless of how widespread the prejudice was, this applicant is the one before us today seeking recourse. It is up to others to decide how they pursue their cases.

There are a considerable number of precedents that support this applicant, not least including two people who had appeals for change of house type dismissed, but whose subsequent planning applications were approved / overturned by this Council (LA07/2017/0562/F and LA07/2019/1228/F). Clemency has been shown to a litany of applicants who have either commenced development but not in accordance with their planning permission; others who had failed to comply with pre-commencement conditions, and in the case of LA07/2016/0716/F, where we represented an applicant wherein he had failed to carry out any works to commence a previous permission. In that case, *it was agreed (by this Committee) to issue an approval on planning application LA07/2016/0716/F, contrary to Officer recommendation, subject to a condition being added that the proposal must commence within one year of the approval being issued* – the applicant was given a final chance to save his permission.

The applicant, Mr Martin, made a conscious attempt to preserve his planning permission. At the time he set out to do the work, he was certain it was sufficient to preserve his permission. Although it is said that the work was carried out after the permission expired, some acknowledgement could be given to the confusion that reigned at that time – with some applicants given longer than others to commence their permissions, and with the planning portal suggesting he had a further 5 years to commence development, and with the DOE tendering advice to applicants about how to commence their development (and the new Councils later finding the DOE was issuing wrong advice because it ignored pre-commencement conditions in particular).

In summary, confusion reigned around the time the permission was granted. Property prices accelerated rapidly then crashed overnight. Many developers found themselves unable to complete developments due to financial constraints, and the applicant was no different. A widespread problem arose with many applicants seeking only to preserve their permissions. The Department of the Environment then issued numerous circulars to advise people and it has since been recognised that the core advice was flawed. Against that backdrop, substitution permissions, often lodged in an attempt to prolong the lifetime of a permission, were handled inconsistently. The majority of applicants were given only one year to commence development owing to the introduction of new and restrictive policies, but others got 5 years.

LA07/2020/1651/F

Erection of dwelling (Change of house type from that previously approved under P/2006/2002/F) 75m north of 18 Ballinasack Road, Mullaghbawn for Mr Gene Martin

The planning history to this site suggests the principle of a dwelling on this site was accepted and established for a prolonged period, with lengthy commitments / effective permissions. Approving this dwelling will not result in demonstrable harm nor will it result in injury to amenity. While concerns regarding visual impact have been raised now, setting aside the previous permissions' findings regarding visual impact (i.e. there was no adverse impact) appears harsh and punitive, albeit we acknowledge the Council is not legally bound to stand over the previous approach of the Department of the Environment. It is however difficult to accept new standards given the policy has not changed and many of the same cadre of personnel transferred across to the new Councils.

If the applicant was deemed to have breached his planning permission by commencing late, then it is important to remember that breaches of planning control can be remedied through the grant of a new planning permission.

For the avoidance of doubt, showing greater weight to the applicant's combined circumstances can legally be given greater weight than the purported failure to comply with Policy CTY 1 of PPS 21. That would overcome the first refusal reason.

Ribbon development is a curious reason for refusal given that there are no other developments sharing the same frontage with this site. The site is on a very short and angular section of Ballinasack Road, with nothing to either side and no prospect of anything to either side. Officers fail to mention what development would be read in cumulation with this to create a ribbon of development and as there is actually nothing to either side of the site (and no perception of anything to either side) the application cannot be contrary to CTY 8 of PPS 21.

Officers consider the proposal contrary to CTY 14 of PPS 21 as they feel it is prominent, and because they consider that it will result in ribboning, which is a suburban-style build-up of development. As before, as there is nothing to either side of the site, there cannot be any perception of ribboning, and the proposal does not actually offend CTY 14 in that respect, since the "suburbanisation" anticipated does not actually arise in the manner described.

Officers feel CTY 13 is offended as they feel the site is prominent and lacks established boundaries and is therefore unable to provide the necessary standard of integration. This is despite the fact the proposal previously passed the integration tests of equivalent policy. We believe officers have fallen into the age old trap of standing on an elevated site with panoramic views and assuming that the reverse views must be of a house that will be prominent. The planning report contains no records or reference to a critical analysis, and there is no indication as to the locations from which it would purportedly be apparent that the dwelling would lack established boundaries or other means of achieving suitable integration. There has been no identification of the locations from which it would purportedly be apparent that the dwelling would rely upon new landscaping for integration. The site is simply not exposed to the extent the planning department states. Views inwards will be extremely long-distance; from significantly lower contours and will see the dwelling absorbed by the mountain above it. The vegetation above the site will more than ably frame the dwelling from those long-distance views below. The dwelling will not breach the sky line from any of these long-distant viewpoints, the majority of which lie on the far side of a valley.

In the event Councillors wish to visit the site, or seek design amendments, the applicant is amenable to compromise.



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

Application Reference:

LA07/2021/1549/F

Date Received:

02.09.2021

Proposal:

Application under section 54 for amendment of condition 03C of planning approval LA07/2018/0244/F as follows:

Manufacturing operating hours extended from 7.00 - 23.00 hours Monday to Friday to 24 Hour production, 7 days per week

Location:

Unit 11, Milltown Industrial Estate, Warrenpoint, BT34 3FN

Site Characteristics & Area Characteristics:

The site is within the settlement limits of Warrenpoint/Burren as designated under the Banbridge, Newry and Mourne Area Plan 2015 (BNMP 2015). It is zoned as an Area of Existing Economic Development. There are a range of industrial and business units in the estate, of which this is the largest. There is housing to the NE of the site. A housing development (12 dwellings) has recently been granted approval under planning application LA07/2019/1748 on lands directly NE of the application site.



Site History:

- P/1976/0471 - NEW INDUSTRIAL SITE, MILLTOWN, WARRENPOINT - PROPOSED PROVISION OF ACCESS ROAD AND SERVICES TO NEW INDUSTRIAL ESTATE – Permission granted
- P/1989/0568 - MILLTOWN INDUSTRIAL ESTATE GREENAN ROAD WARRENPOINT - Erection of building to accommodate 6 industrial units – Permission granted
- P/1990/0838 - MILLTOWN INDUSTRIAL ESTATE GREENAN ROAD WARRENPOINT - Erection of industrial unit with offices – Permission granted
- P/1993/1176 - UNIT 11 MILLTOWN INDUSTRIAL ESTATE GREENAN ROAD WARRENPOINT - Erection of warehouse – Permission granted
- P/2000/0185/F - Unit 11 Milltown Industrial Estate, Warrenpoint - Enclosure of existing lorry park – Permission granted, 14.06.2000
- LA07/2018/0244/F - Unit 11, Milltown Industrial Estate, Warrenpoint, Co. Down, BT34 3FN - Change of use of part of existing warehouse to 1. Manufacturing, 2. Showroom with associated sales office. Alterations to existing building including new first floor sales office, new shop front, new goods access and new access to estate Road. Demolition of existing testing laboratory and erection of modular offices to provide admin/welfare to manufacturing use – Permission granted, 08.05.2018
- LA07/2020/0189/F - Unit 11, Milltown Industrial Estate, Warrenpoint, BT34 3FN - To amend condition No 03c of planning approval LA07/2018/0244/F which reads 'No machinery shall be operated, no process shall be carried out and no deliveries taken at, or dispatched from the site outside the following times: c) Manufacturing: 0700-2300 hours Monday to Friday' to read 'Manufacturing operating hours to be 24 hours, 7 days a week'. – Permission refused, 18.09.2020. This application was refused due to lack of sufficient information.
- LA07/2020/1708/F - Unit 11 Milltown Industrial Estate Warrenpoint BT34 3FN - Section 54 for the amendment of Condition 03C of Planning Approval LA07/2018/0244/F as follows; Manufacturing operating hours extended from 7.00-23.00 Monday to Friday to 24 Hour production, 7 days a week – Permission refused, 03.06.2021. This application was refused due to lack of sufficient information.
- LA07/2019/1748/F - Site on Upper Burren Road between No's 6 and 10 and extending to the rear of 22 and 26 Milltown Street and 4 Upper Burren Road Burren Warrenpoint - Erection of 12 dwellings, with boundary walls, fences, landscaping and associated site works – Permission granted, 14.09.2022

Objections and Representations:

Neighbour notification letters were issued to 10 addresses 20th September 2021 and 5th October 2021. Following the submission of letters of objections and amended plans, notification letters were issued to 14 addresses 30th November 2021.

Advertisement: 15.09.2021

Five letters of objections were received from 5 different addresses:

- 6 Upper Burren Road
- 10a Upper Burren Road
- 12 Upper Burren Road
- 24 Milltown Street
- 26 Milltown Street

The main points outlined in the objection are as follows:

- Existing noise issues;
- Newcel are currently operating 24/7 regardless of previous planning history;
- Excessive noise of vehicles coming and going during night-time hours;
- Forklifts constantly loading lorries;
- Noise of ramps and horns from vehicles;
- Negative impact on amenity of neighbouring dwellings;

A letter was also received from Andy Stevens of Matrix Planning Consultancy prepared by Layde Consulting. This document was submitted for applications LA07/2019/1748/F and outlined points of concern regarding the material submitted alongside the application.

Layde Consulting concluded that there were significant omissions within the Noise Impact Assessment and as such, it considered that noise impact on the proposed new residential receptors associated with application LA07/2019/1748/F would be significant. In addition, it concluded that noise impact on No.18 Milltown Street would also be significant during night-time periods if permitted to operate on a 24hrs basis.

The representations received will be discussed further below.

Consultations:

Environmental Health were consulted twice during the processing of the application. Environmental Health issued a response 7th January 2022 advising the following:

"Environmental Health have considered the information provided by the agent (dated 18th November 2021) in support of this application in conjunction with the acoustic report in relation to the application. Considering the nature of the proposed development and its close proximity to residential properties there is the potential for loss of amenity at these properties due to noise." Environmental Health stipulated a number of conditions to be attached if approval was to be granted.

Upon receipt of the letter prepared by Layde Consulted and submitted by Matrix Planning, the agent was offered the opportunity to submit comments and additional information in response. Further information was received in June 2022 in the form of a letter detailing how Newcel have completed almost all of the mitigation measures they committed to and a rebuttal letter by Dr Peter Hill.

A second consultation was issued to Environmental Health to provide comment on the documents received by Matrix Planning and the agent's response. A response was received from EH in September 2022.

EH advised the following:

"Environmental Health have considered the information provided by the agent (dated 27th June 2022) in support of this application. Considering the nature of the proposed development and its close proximity to residential properties there is the potential for loss of amenity at these properties due to noise. Environmental Health would therefore require the following conditions be attached to any permission granted:

1. No delivery or unloading of shipping containers after 18.00 on weekdays and not at any time on Saturday or Sunday, where steel ramps are required.
2. No use of steel ramps for any purpose after 18.00 on weekdays and not at any time on Saturday and Sundays.
3. Forklift trucks are gassed only between the hours of 7.00 and 18.00 daily.
4. Form an internal connection between the production hall and the material store to allow transfer of raw materials and finished product from the store to the manufacturing hall and back again without forklifts leaving the building envelope.
5. No forklift truck movements to occur outside the building envelope after 18.00 daily.
6. Only fork lift trucks which are equipped with silent "blue spot" safety reversing lights to be used on the site.
7. All doors to the rear and sides of the manufacturing area are kept closed between 23.00 and 07.00 on weekdays and between 18.00 and 07.00 on Saturday and Sunday.
8. Within 3 months of permission being granted close off the "drive through" on the line of the rear wall of the manufacturing area with a suitable acoustically insulated door and walls."

Planning Policy, Guidance and Other Considerations

- The Planning Act (Northern Ireland 2011) – Section 54
- The Strategic Planning Policy Statement for Northern Ireland 2015 (SPPS)
- The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP 2015)

Consideration and Assessment

LA07/2018/0244/F was approved in May 2018 for Change of use of part of existing warehouse to 1. Manufacturing, 2. Showroom with associated sales office. Alterations to existing building including new first floor sales office, new shop front, new goods access and new access to estate Road. Demolition of existing testing laboratory and erection of modular offices to provide admin/welfare to manufacturing use.

The applicant wishes to amend condition 03c of LA07/2018/0244/F which states:

"No machinery shall be operated, no process shall be carried out and no deliveries taken at, or dispatched from the site outside the following times:

c) Manufacturing: 0700-2300 hours Monday to Friday.

Reason: To safeguard the living conditions of residents in nearby properties."

The applicant wishes to amend the condition above to 24-hour production seven days a week.

Section 54 of the 2011 Act allows for an application to be made for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In considering an application made under section 54, the planning authority which granted the previous planning permission must consider only the "question of the conditions" subject to which planning permission should be granted (section 54(3)).

Impact on nearby residential properties

As outlined above, EH have been consulted twice for this application and within both responses have advised that given the application site's proximity to residential properties, conditions should be attached to any permission granted.

In consideration of the points outlined within the letters of objections received, it is considered that the conditions stipulated by EH address these concerns by restricting:

- The hours of delivery and unloading of shipping containers;
The hours of the use of steel ramps;
- The hours of operation of forklift trucks and restricting the movement pattern of forklift trucks;
- The hours of the opening of rear and side doors;

Environmental Health have also recommended that only fork lift trucks which are equipped with silent "blue spot" safety reversing lights to be used on the site.

Having account, the detailed comment from Environmental Health who provided expertise in this respective field, it is considered the issues raised have been fully considered, with detailed comment provided, offering no objections. On this basis, it is considered there are no grounds to sustain a refusal on this basis.

Recommendation: Approval

Conditions:

1. This permission is effective from date of issue.

Reason: Time limit.

2. This permission hereby granted relates solely to the variation of Condition No. 3c of planning permission LA07/2018/0244/F only and should be read in conjunction with that decision notice.

Reason: To ensure that all other conditions of the previous approval are adhered to.

3. There shall be no delivery or unloading of shipping containers after 18.00 or before 07:00 on weekdays and not at any time on Saturday or Sunday, where steel ramps are required.

Reason: To safeguard the living conditions of residents in nearby properties."

4. There shall be no use of steel ramps for any purpose after 18.00 or before 07:00 on weekdays and not at any time on Saturday and Sundays.

Reason: To safeguard the living conditions of residents in nearby properties.

5. The forklift trucks used at the premises shall be gassed only between the hours of 07.00 and 18.00 daily and no forklift truck movements shall occur outside the building envelope after 18.00 daily.

Reason: To safeguard the living conditions of residents in nearby properties.

6. Only fork lift trucks which are equipped with silent "blue spot" safety reversing lights shall be used on the site.

Reason: To safeguard the living conditions of residents in nearby properties."

7. An internal connection shall be formed between the production hall and the material store within 3 months from the date of this approval and shall be permanently retained thereafter.

Reason: To allow the transfer of raw materials and finished product from the store to the manufacturing hall and back again without forklifts leaving the building envelope to safeguard the living conditions of residents in nearby properties.

8. The "drive through/internal connection" on the line of the rear wall of the manufacturing area shall be closed off with a suitable acoustically insulated door and walls within 3 months from the date of this permission and permanently retained thereafter.

Reason: To safeguard the living conditions of residents in nearby properties.

9. All doors to the rear and sides of the manufacturing area shall be kept closed between 23.00 and 07.00 on weekdays and between 18.00 and 07.00 on Saturday and Sunday.

Reason: To safeguard the living conditions of residents in nearby properties.

Case Officer Signature: Eadaoin Farrell

Date: 06.10.22

Appointed Officer Signature: M Keane

Date: 10-10-22

LA07/2021/1549/F - Application under section 54 for amendment of condition 03C of planning approval LA07/2018/0244/F as follows: Manufacturing operating hours extended from 7.00 - 23.00 hours Monday to Friday to 24 Hour production, 7 days per week

Strategic Planning Policy Statement (SPPS) for Northern Ireland

The SPPS was published on 28/09/2015 and became immediately effective. Its provisions apply to the whole of Northern Ireland. It is material to all decisions on individual planning applications and appeals, which remained undetermined, as per the transitional arrangements. The SPPS is the most recent expression of regional policy.

Paragraph 2.3 states that that *"The basic question is not whether owners and occupiers or neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would **unacceptably affect amenities** and the existing use of land and buildings **that ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks** against which development proposals will be measured.*

Paragraph 5.65 states that planning authorities have the power to attach conditions to a grant of planning permission. This can enable planning authorities to approve development proposals where it would otherwise be necessary to refuse planning permission. However, conditions should only be imposed which are: **necessary; relevant to planning; relevant to the development being permitted**; precise; enforceable; reasonable.

Incompatibility with existing commercial operations

Paragraph 6.90 of the SPPS advocates a **precautionary principle** in respect of **existing economic development**. In this case the existing Milltown Industrial Estate is **zoned economic development** and adjoins the application site.

We are in a plan led system and the **existing zoned economic development land, would take precedent over unzoned "whiteland"**, where proposed housing would result incompatible development immediately adjacent to zoned and established industry.

The Newcel factory is seeking to be operational both day and night with forklift trucks and HGVS immediately adjacent to the proposed houses.

The Council permitted a housing application **LA07/2019/1748/F** on adjacent land from a **sequencing perspective both applications** should have been considered together or the existing use considered first before a new use was permitted.

Where it is demonstrated that a proposal for **new** or expanded development would **PREJUDICE the future operation of an established or approved economic development use**, then it will normally be appropriate to refuse the application and **Policy PED 8 of PPS4 cannot be met.**

Acoustic information has been provided by Layde Consulting to demonstrate that there are significant issues in the way in which the noise impacts have been considered.

The EHD response accepts there is the potential for noise and odour/dust, yet they have not sought mechanical ventilation as a means of mitigation. The proposed conditions and informative are unlawful and unenforceable and do not address the impact on outdoor amenity space, which adjoins the industrial estate.

It is incumbent on the planning authority to explore all reasonable means of mitigation with the developer and the established enterprise prior to determining the application.

We note the very recent position of the **Court of Appeal in the application of *Clare McCann v Armagh City, Banbridge and Craigavon Borough Council* {2022} NICA 60** where it highlighted that there is a "*disproportionate reliance on presumptively expert consultees*" and that consultees "**do not absolve planning officials and committees alike from their duty to carefully evaluate the evidence assembled**"

In essence, planning officers should **not** take the advice of consultees as gospel but should actively interrogate and evaluate **all** the material evidence, which includes 3rd party representations.

The case of *Gillingham Borough Council v Medway*, [1992] 3 All ER 923 still bears key authority and it was held that: "**where planning consent is given for a development or change of use, the question of nuisance will thereafter fall to be decided by reference to a neighbourhood with that development or use and not as it was previously**".

There are several legal authorities on this matter, such as;

- The UK Supreme Court case of *Lawrence and another v Fen Tigers Ltd and others* [2014] UKSC 14 states at para [90] that:

"it seems wrong in principle that, through the grant of a planning permission, a planning authority should be **able to deprive a property owner of a right to object to what would otherwise be a nuisance**, without providing her with compensation, when there is no provision in the planning legislation which suggests such a possibility."

- *Wheeler and another v J J Saunders Ltd and others* [1995] 2 All ER 697 the Court of Appeal stated:

If a planning authority were with notice to **grant a planning permission, the inevitable consequence of which would be the creation of a nuisance**, then it is well arguable that the grant would be subject to judicial review on the ground of irrationality"





79 Greenan Road
Newry BT34 2PT
T 028 – 4177 2220
E tdelahunt@delahunt-lavery.co.uk
E blavery@delahunt-lavery.co.uk

Our Ref : 1094/TD
5th December 2022

RE: Unit 11, MILLTOWN INDUSTRIAL ESTATE, WARRENPOINT.
YOUR REF : LA07 / 2021 / 1549 / F

SPEAKING RIGHTS SUMMARY : PLANNING COMMITTEE MEETING 14.12.22

INTRODUCTION:

Further to our clients (Newcel Paper Ltd) application to extend permitted manufacturing hours from 7.00 – 23.00 Monday to Friday to 24 hour / 7days per week, we hereby apply on their behalf for speaking rights in support of their application at the forthcoming meeting of NMDDC Planning Committee. (14th December 2022)

PLANNING HISTORY:

Milltown Industrial Estate was granted initial planning in September 1976 establishing industrial use. The premises known as Unit 11 were granted planning permission in January 1994 and a Building Control Completion Certificate was issued for the current building in December 1995. The building, constructed for Jenkins Shipping Ltd, for bulk paper storage and distribution, and the design of the building reflects this with the provision of a large scale, covered loading bay capable of accommodating a high volume of loading and unloading operations. The building was operated in this fashion by Jenkins until this company relocated to Belfast. Attracted by a design which was “custom designed” for handling large volumes of paper, Newcel Paper Ltd acquired Unit 11 in 2017. Planning permission was subsequently granted for the change of use of the warehousing area to manufacturing.

TRADING HISTORY:

Celebrating 50 years in business, Newcel Ltd is a locally owned, third generation family manufacturing business, providing employment for 62 employees, all of whom are from the local area. Since relocating from Newry, Newcel Ltd has traded strongly, tripling their turnover in just 5 years. In response, they have acquired the adjoining unit to the east and have invested heavily in new plant and machinery. They are now and have been for many months at full capacity. They are suppliers to the NHS and to many well-known UK foodservice groups, retailers and janitorial distribution groups in Ireland, the UK and Western Europe. While they are rightly proud of securing such high-profile custom, they are only too aware that any failure to meet their growing requirements will adversely affect repeat business and future growth.

Newcel Ltd's application for extended opening hours is motivated by their desire to secure jobs, increase the workforce and secure the businesses' future in the years to come. The company has recently patented an international 'Sustainable Packaging Process' – a global first.

Newcel has recently won the prestigious 'Tesco / Booker Supplier of the Year Award 2022' and has also been nominated for the 'UK Family Business of The Year Award 2022'

RESPONSE TO OBJECTIONS:

Newcel Ltd currently have permission to carry out manufacturing operations from 7.00 to 23.00 hrs Monday to Friday. Much of the comment received is ambiguous in relation to the time frame during which it is claimed nuisance noise occurs.

Newcel Ltd. strenuously reject the assertion that loading and unloading of shipping containers using steel ramps continues “through the night”. Raw material deliveries by articulated lorry are

delivered from Belfast Docks to the premises by outside contractors. They strictly deliver between 7.00 and 18.00 as they aim to return to Belfast at a reasonable hour.

Deliveries to Newcel Ltd of shipping containers amounts to approximately 20 units per month.

Each shipping container takes approx. 30 minutes to discharge, = c.2.5 hours per week.

Newcel Ltd accept that this operation creates noise but are adamant that deliveries are without exception always received during the normal working day. It is their understanding that the steel unloading ramp has been used at this site since the buildings construction approx. 28 years ago for the purpose described above. Newcel's own trucks return to Unit 11 in the early evening. These trailers are loaded or unloaded by fork-lifts without the use of the steel ramps as the trailers are side loading type. This operation is complete by 23.00 hrs at the latest. The trailers are not moved before 7.00am,

Newcel Ltd strenuously reject the assertion that noises generated by heavy trucks (engine noise, horns and beepers) are attributable only to their business and maintain that, where these occur after 23.00 hrs, are never as a result of their operations. There are a number of large haulage and manufacturing concerns within Milltown Industrial Estate and therefore a significant level of heavy goods traffic. Many of these operate outside normal working hours, both late nights and weekends. It is also common practice, for trucks arriving at neighbouring premises after hours when the gates are closed, to sound their horn to attract the gateman's attention. Newcel Ltd's CCTV cameras can confirm this practice at other sites within the estate. In addition, the industrial estate road is regularly used in the late evening by those who may be described as "boy racers". The noise generated by this kind of anti-social behaviour is significant but outside the control or responsibility of Newcel Ltd.

MITIGATION:

Notwithstanding the fact that it is private housing which has encroached on the environs of Milltown Industrial Estate and not the other way round, Newcel Ltd are anxious to make every effort to be a responsible neighbour. To this end they have already actioned almost all the proposed conditions proposed by Environmental Health and the Planning Office, namely;

- relocated their production hall to the front (south) of the building
- installed sound insulating to the high-level metal cladding walls facing North
- installed a new internal attenuated dust extraction system within the building envelope.
- formed an internal connection between production hall and material store to allow transfer of materials / product by forklift without leaving the building envelope.
- purchased 'Whisper Quiet' gas forklift trucks (3 no.).
- removed all reversing sirens from existing fork trucks and replaced with silent "blue spot" safety reversing lights.
- purchased an electric forklift truck.

This work has cost in excess of £250,000. An independent acoustic consultant has carried out measurements over a full 7-day period and these have been submitted to the planning department for assessment. His report demonstrates that the remedial work to the premises prior to the relocation of the Production Line has brought the noise levels down to acceptable levels. The assertion that these modifications have made no difference is not sustainable, anecdotal and in direct contradiction of scientific readings taken and the assessment of Environmental Health. In addition, to address break-out noise Newcel Ltd have taken the following "good housekeeping measures".

- no delivery/unloading of containers after 18.00 on weekdays/any time at the weekend.
- no use of steel ramps after 18.00 on weekdays / any time at the weekend.
- forklift trucks gassed only between the hours of 7.00 and 18.00
- all doors to the rear and sides of the building are kept closed outside the current approved operating hours.

Newcel Ltd are also reviewing the possibility of closing off the "drive through" on the line of the rear wall of the manufacturing with an acoustic roller door and acoustically insulated walls. This will further encapsulate the sound of the manufacturing processes within the building envelope.

Newcel wish to take this opportunity to once again state the importance of this application to their business and the employment and income generated by it for the local economy.



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

Application Reference:

LA07/2022/0210/F

Date Received:

02.02.2022

Proposal:

Retention of existing outdoor customer seating area

Location:

Ground Floor Unit
12 Seaview
Warrenpoint
BT34 3NJ

Site Characteristics & Area Characteristics:

The application site is within the settlement limits of Warrenpoint and Warrenpoint Town Centre as designated within the Banbridge, Newry and Mourne Area Plan (2015). The site is also within an Area of Outstanding Natural Beauty and an Area of Townscape Character.

The application site consists of a three storey mid-terrace building which has been converted from offices to a café at the ground floor. Apartments are located on each floor, above the café.

The site is located adjacent a building that was previously known as The Balmoral Hotel but which has more recently been converted to several different uses, including a guest house, retail on the ground floor and a restaurant on the first floor. On the opposite side are similar dwellings, some of which appear to have been converted to apartments. On the opposite side of the Balmoral Hotel the area becomes residential with large three storey terraced dwellings of a similar form to the application site. The

application building is in close proximity to the main commercial centre of Warrenpoint and Warrenpoint Town Park.

The building is currently subject to a live enforcement case - LA07/2022/0095/CA.

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)
- PPS 2: Natural Heritage
- PPS 3 – Access, Movement and Parking
- PPS 4: Planning and Economic Development
- PPS 6 - Planning Archaeology and the Built Heritage
- PPS 6 Addendum – Areas of Townscape Character
- DCAN 4 – Restaurants, Cafes and fast food outlets

Site History:

- P/1976/0337 – Proposed renovation of existing dwelling – Permission granted
- P/2014/0957/F - Material change of use from ground floor apartment to ground floor office including refurbishment of existing outhouse and WC – Permission granted
- LA07/2019/1258/F - Retention of change of use for ground floor cafe unit with 2.No. treatment rooms and ancillary services – Permission granted
- LA07/2022/0226/F – This is a category 11 section 54 application. Previous approval for retention of change of use to ground floor cafe unit & 2 no treatment rooms and ancillary services, condition 03 restricted opening hours to Mon-Sat 10.00 to 18.00. This application seeks variation to opening hours to provide opportunity for ticketed events and private catering (see attached sheet for times) 12 Seaview, Warrenpoint,

Proposed opening times:

Monday to Saturday open to general public 9am to 6pm,

Monday to Saturday open for ticketed events 6pm to 10pm

Sunday open to general public Midday to 4pm,

Open for private guest breakfasts 9am to 11am,

Open for ticketed events 4pm-9pm.

There are two holiday apartments on the floors above the cafe. The cafe owner would like to open on a Sunday morning to serve breakfasts to the guests staying in the holiday apartments - the cafe would not be open to the general public on Sunday morning – Under consideration

- LA07/2022/0095/CA - Alleged development not in accordance with approval – Live

- LA07/2021/0303/CA - Alleged breach of condition of planning approval LA07/2019/1258/F – Enforcement case closed
- LA07/2019/0201/CA - Alleged unauthorised change of use to cafe and holistic retailing – Enforcement case closed

Consultations:

Environmental Health were consulted a number of times on the proposal. The responses are as follows below:

- 25.03.22 - Environmental Health have no objection to this proposed development, subject to the following:
Noise:
 1) Use of outdoor space should be limited to current planning conditions, namely:
 Monday to Saturday :10.00am – 6:00pm
 2) As there are a number of residential properties in close proximity to this development, amplified sound should not be permitted in the outdoor area.
- 27.04.22 - a second response was received from EH following the submission of letters of objections.
Comments
 Environmental Health have no objection to this proposed development, subject to the following:
Noise:
 1) Use of outdoor space should be limited to current planning conditions, namely:
 Monday to Saturday :10.00am – 6:00pm
 2) As there are a number of residential properties in close proximity to this development, amplified sound should not be permitted in the outdoor area.

Objections & Representations:

Two neighbours were notified 11.03.22. A further 3 neighbours were notified 07.09.2022. The application was advertised in the local press 23.02.2022 and re-advertised 29.06.2022.

Following the submission of amended plans (showing the table layout and use of rear gate), neighbour notification letters were re-issued 13.10.2022.

28 letters of objections from 24 different addresses were received.

The letters of objections have been summarised below.

- Existing breaches of previous planning approval regarding opening hours;
- Existing operation of outdoor area;
- Erection of new signage on premise;
- Proposed extended opening hours will result in a 3x fold potential increase in capacity and customers which would lead to problems for residents;

- Back seating area is already in use using existing domestic laneways for access which is unsuitable and unsafe for customer use;
- Noise nuisance, intrusive and adverse impact on residential amenity for existing neighbouring residents;
- Proposal contrary to SPPS and DCAN 4;
- Amenity and character of surrounding area will be negatively affected by increased traffic;
- Limited parking available;

Further phone call and email correspondence was received from a neighbouring resident who advised of advertisements that promote proposed pop-up events and intention to acquire an alcohol licence. The resident also requested a re-consultation with Environmental Health in light of the advertisements and establishment's future intentions.

Note: A letter of objection was received by Matrix Planning Consultancy advising that a more detailed letter will be submitted. A second holding letter was received from Matrix Planning Consultancy 20th September advising that a more detailed objection would be submitted in due course. A response email was sent to Matrix Planning to advise that applications cannot be held pending the submission of further representations. As per the Planning Act 2011, a statutory 2-week period is provided. However, the Department accept representations up until a recommendation is made. To date, 28.10.22, nothing further has been received from Matrix Planning Consultancy.

One further letter of objection was withdrawn and therefore the contents of this objection will not be considered.

2 letters of support were received.

Consideration and Assessment

Planning Act (Northern Ireland) 2011

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the development limits of Warrenpoint and within Warrenpoint Town Centre as designated within the relevant Area Plan.

SPPS

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In practice this means that development that accords with an up-to-date

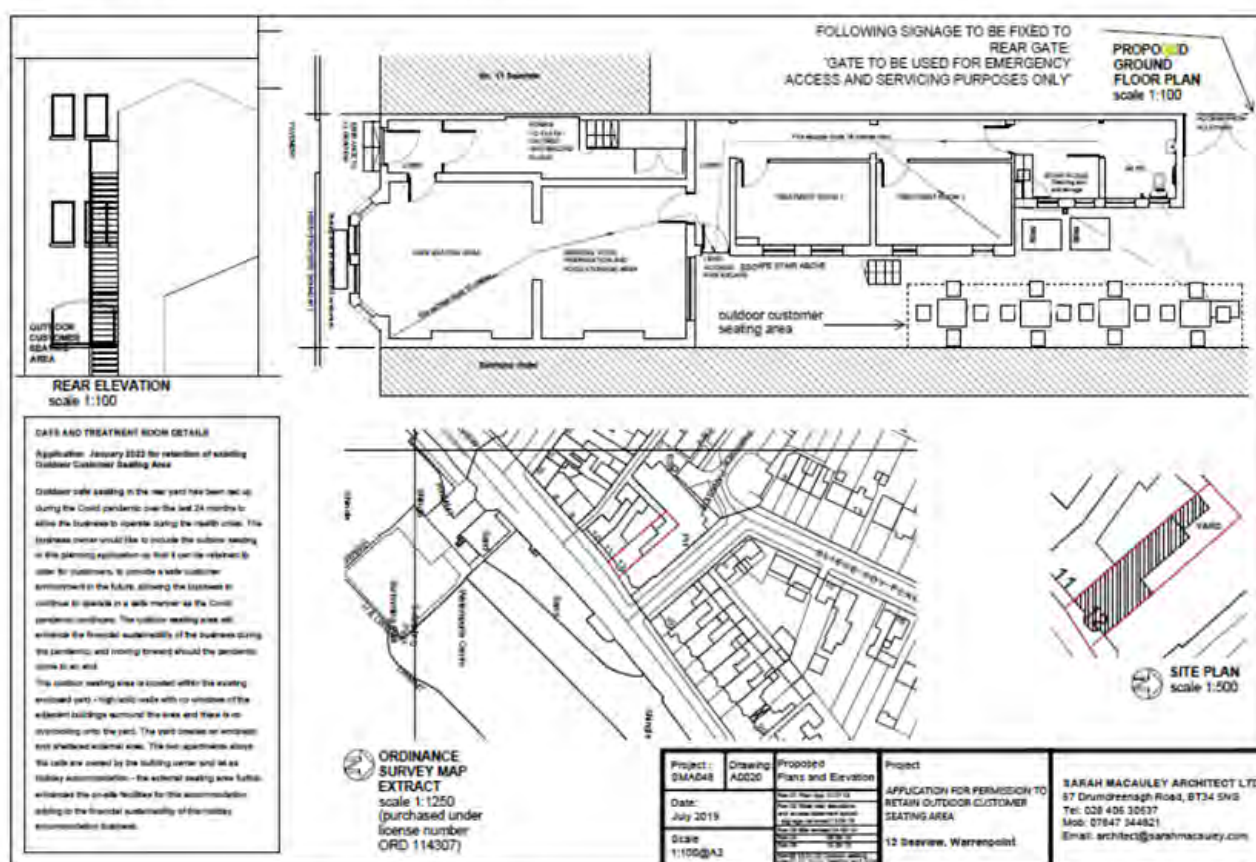
development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise. The SPPS at paragraph 6.91 states all applications for economic development must be assessed against normal planning criteria relating to such considerations such as access arrangements, design, environmental and amenity impacts.

There is little change in the SPPS from that of the policies within PPS 4 and it is arguably less prescriptive, therefore PPS 4: Planning and Economic Development will be given substantial weight in determining the application in accordance with paragraph 1.12 of the SPPS.

PPS 4: Planning and Economic Development

This application is for the retention of an outdoor customer seating area in association with an existing café at ground floor. There are no specific policy provisions within BNMAP for this site and as there is no significant change to the policy requirements for the Expansion of an Established Economic Development Use within Settlements following the publication of the SPPS, the retained policy PPS4 'Planning and Economic Development' will be given substantial weight in determining this proposal, in accordance with paragraph 1.12 of the SPPS.

The proposed drawing is shown below.



Policy PED 1 of PPS 4 provides guidance for economic development in settlements. The policy advises that proposals to extend an existing economic development use or premises within settlements will be determined on its individual merits having

regard to Policy PED 9. As mentioned above, the seating area is in association with an existing café. A café is considered sui generis which essentially is a term used for premises that do not fall within a defined use class. The use of the premises was previously approved for the sale of food or drink for consumption on the premises or of hot food for consumption off the premises under planning approval LA07/2019/1258/F.

Policy PED 9 advises that provides criteria for economic development.

- a) it is compatible with surrounding land uses;
The outdoor seating area is the rear yard of the application building which is currently being used as a café on ground floor and two apartments on the first and second floor. As mentioned above, the subject site is located within Warrenpoint Town centre boundary (TC 98). Para 4.1 of DCAN 4 states that retailing will generally be directed to existing settlements of appropriate size and Para 4.2 goes on to advise that preferable locations for restaurants, cafés and fast food outlets include town centres. Town centre uses include retail, offices, residential and various sui generis uses such as cafes within this proposal. The surrounding land uses include residential, retail, restaurants, hotels and guest houses. Given the fact that the proposal is for an outdoor seating area to serve an existing café located within Warrenpoint Town Centre, I am satisfied that the proposal is compatible with surrounding land uses. Moreover, Para 4.5 of DCAN 4 advises that restaurants, cafés and fast food outlets complement the primary shopping function of town centres by contributing to the range and choice of facilities available to residents and visitors, and they also support tourism.

- b) it does not harm the amenities of nearby residents;
Para 5.1 of DCAN 4 states that "the likely impact of such proposals on the character and amenity of the adjoining or surrounding area will be an important concern when determining applications. In assessing this impact, a number of factors need to be taken into account i.e.
 - noise disturbance;
 - smells and fumes;
 - refuse and litter;
 - traffic considerations and car parking; and
 - provision for people with disabilities."

Para 5.2 of DCAN 4 goes on to state that "the use of planning conditions is often paramount to the control of restaurants, cafés and fast food outlets, particularly in relation to the above considerations. The impact of many proposals which would otherwise be rejected, may be mitigated by the imposition of such conditions. Preventative measures can be taken through the development control process by for example restricting opening hours and dealing with the technical aspects of noise and fume attenuation. The Environmental Health Department of the relevant local council will be consulted as appropriate during the processing of planning applications and in the formulation of any conditions considered necessary for the approval of the development."

As outlined above, several letters of objections were received from neighbouring residents. A summary of the concerns are noted again below with the Department's response in bold.

- *Existing breaches of previous planning approval regarding opening hours;*
There is a live enforcement case LA07/2022/0095/CA which is currently investigating possible breaches of approval and the use of the rear yard area for customers. Subsequently, an application has been submitted and is under consideration for the variation of opening hours.
- *Existing operation of outdoor area;*
There is a live enforcement case LA07/2022/0095/CA which is currently investigating possible breaches of approval and the use of the rear yard area for customers. The application under consideration is for retrospective permission for the outdoor seating area.
- *Erection of new signage on premise;*
The erection of new signage on premises requires advertisement consent. This concern will be raised with Enforcement.
- *Proposed extended opening hours will result in a 3x fold potential increase in capacity and customers which would lead to problems for residents;*
The proposed extended opening hours are under consideration under LA07/2022/0226/F. The site layout drawing submitted as part of this application shows the layout of tables providing seating for an additional 16 customers. This is considered an acceptable level of seating provision given the size of the rear yard and the Town Centre location. The capacity of the outdoor seating area can be controlled by way of condition if approval was to be granted.
- *Back seating area is already in use using existing domestic laneways for access which is unsuitable and unsafe for customer use;*
Following internal discussions, a note has been included on the drawing to advise that the rear laneway and gated access will be used for emergency access and servicing purposes only. A recent site visit determined that access to the outdoor seating area can be gained through the existing premises. The use of the gated access via the rear laneway can be controlled by way of condition if approval were to be granted.
- *Noise nuisance, intrusive and adverse impact on residential amenity for existing neighbouring residents;*
Environmental Health have been consulted on the proposal and have returned a response offering no objections subject to conditions restricting the hours in which the outdoor seating area will be open to customers as well as not permitting amplified sound in the outdoor area due to the proximity of neighbouring residents. The Planning Department have been contacted on several occasions by neighbouring residents voicing concerns regarding alcohol being used on the premises. The proposal is for an outdoor seating area to the rear of an

existing café. The matter of alcohol licences or BYOB is outside the remit of Planning as advised in Para 3.7 of DCAN 4 which refers to 'Alfresco' eating and states that it may be necessary to obtain licences from other authorities. The outdoor seating area is enclosed by high concrete walls as shown on the images below. This enclosure provides an acceptable level of privacy to neighbouring dwellings, given the fact that the rear gated access is to be used for emergency access and servicing of the premises (taking out bins etc) only. On this basis, the Planning Department do not consider it necessary to re-consult Environmental Health.



- *Proposal contrary to SPPS and DCAN 4;*
The assessment of the proposal against SPPS and DCAN 4 is laid out within this report.
- *Amenity and character of surrounding area will be negatively affected by increased traffic and limited parking available;*
As mentioned above, the site layout plan submitted shows capacity for an additional 16 customers in the outdoor seating area. The capacity can be controlled by way of condition if approval was to be granted. Given the Town Centre location, proximity to public transport links and proximity to a number of public car parks within the area and on-street parking along Seaview and Queen Street, it is considered that the increase in capacity for a potential 16 more customers would not be detrimental to the area in terms of parking. I consider that on street parking requirements are sufficient to deal with proposal as it is unlikely to generate heavy volumes of traffic and the local streets in the vicinity of the site as well as the public car parks less than 350m from the premises can adequately serve the proposal.
- c) it does not adversely affect features of the natural or built heritage;
 The application site is within an Area of Outstanding Natural Beauty and an Area of Townscape Character. As such Policies NH 6 of PPS 2 and Policy ATC 2 of PPS 6 Addendum applies. There are also a number of listed buildings in close proximity to the application site. Given the location of the outdoor seating area to the rear of the building and enclosure provided by the adjacent development, the proposal will not be visible from public view points. No new buildings are proposed. On this basis, and given the urban context, I am satisfied that the proposal does not adversely affect features of the natural or built heritage.
- d) it is not located in an area at flood risk and will not cause or exacerbate flooding;
 The Flood Maps show that the application site is not located within an area at flood risk. The yard area is already hard cored.
- e) it does not create a noise nuisance;
 As mentioned above, several letters of objections from neighbouring residents were received. These are detailed above. Environmental Health were consulted on the proposal and have returned a response offering no objections subject to conditions restricting the hours in which the outdoor seating area will be open to customers as well as not permitting amplified sound in the outdoor area due to the proximity of neighbouring residents. The restrictive opening hours of the outdoor area will limit the potential for noise nuisance.
- f) it is capable of dealing satisfactorily with any emission or effluent;
 Given the nature of the proposal, this criterion is not applicable.

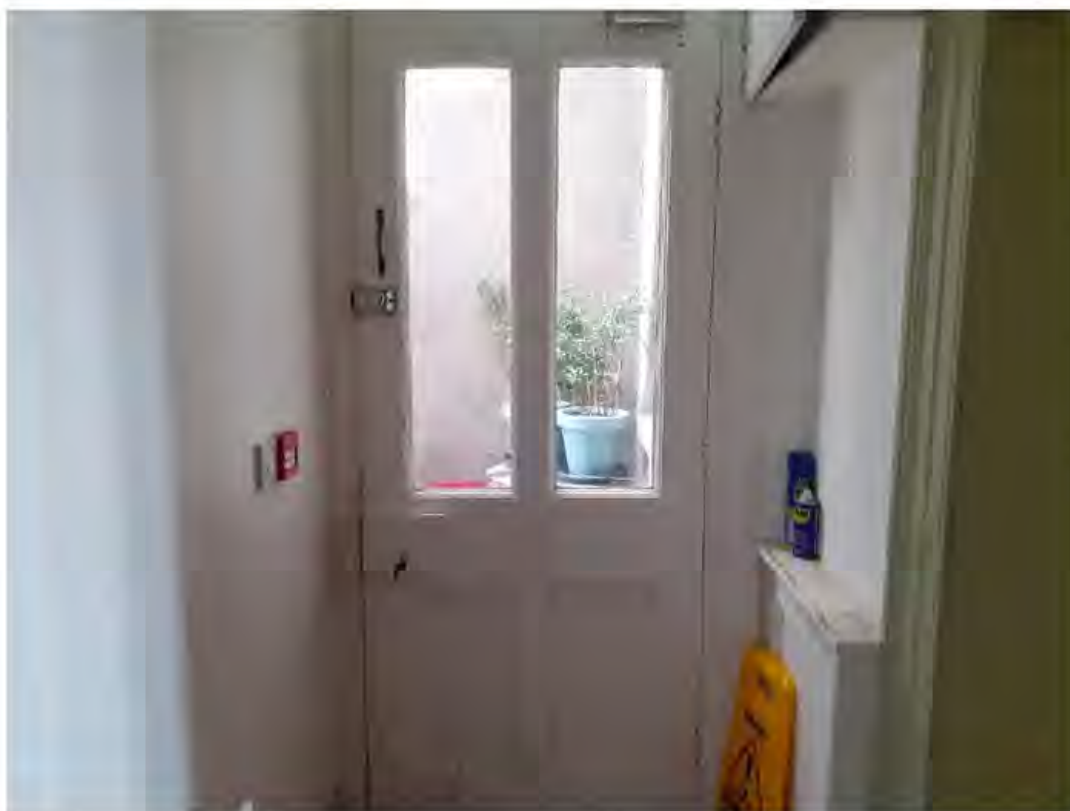
- g) the existing road network can safely handle any extra vehicular traffic the proposal will generate or suitable developer led improvements are proposed to overcome any road problems identified;
- h) adequate access arrangements, parking and manoeuvring areas are provided;

The site layout plan submitted shows capacity for an additional 16 customers in the outdoor seating area. The capacity can be controlled by way of condition if approval was to be granted. Given the Town Centre location, proximity to public transport links and proximity to a number of public car parks within the area and on-street parking along Seaview and Queen Street, it is considered that the increase in capacity for a potential 16 more customers would not be detrimental to the area in terms of parking. I consider that on street parking requirements are sufficient to deal with proposal as it is unlikely to generate heavy volumes of traffic and the local streets in the vicinity of the site as well as the public car parks less than 350m from the premises can adequately serve the proposal.

- i) a movement pattern is provided that, insofar as possible, supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way and provides adequate and convenient access to public transport;

Access to the outdoor seating area is through the existing café as shown on the images below. The rear laneway/right of way is to be used for emergency access and servicing of the premises only.





- j) the site layout, building design, associated infrastructure and landscaping arrangements are of high quality and assist the promotion of sustainability and biodiversity;
The site layout shows the placement of the seating area. No new buildings are proposed. Landscaping is not required given the nature of the proposal and limited views of the seating area from public viewpoints.
- k) appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are adequately screened from public view;
As shown in the images of the outdoor area, the area is enclosed by high concrete walls which screens the seating area from public view.
- l) is designed to deter crime and promote personal safety; and
Access to the seating area is through the café. The gate is to be used for servicing purposes and emergency access only. The existing café premises will provide surveillance for the customer seating area.
- m) in the case of proposals in the countryside, there are satisfactory measures to assist integration into the landscape.
N/A

Summary

In summary, the proposal complies with the relevant planning policies and guidance. The Planning Department acknowledge the letters of objections received. Following consultation with Environmental Health and after a full assessment of the proposal, it is considered that the proposal complies with the relevant planning policies and guidance. Conditions will be attached restricting the opening hours/usage of the outdoor seating area and capacity, restricting the use of the rear gate and the provision of amplified music to protect the amenity of neighbouring residents.

Recommendation: Approval

Conditions:

- 1) This decision notice is issued under Section 55 of The Planning Act (Northern Ireland) 2011.

Reason: This is a retrospective application.

- 2) The development hereby permitted shall take place in strict accordance with the following approved plan: A0020Rev07,

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

- 3) The gated access highlighted in yellow on Drawing No. A0020Rev07 shall be used for emergency access and servicing purposes only.

Reason: To protect the amenity of the neighbouring residents.

- 4) The hours of operation of the outdoor seating area hereby approved shall be restricted to 10:00 to 18:00 Monday to Saturday and closed on Sunday.

Reason: To protect the amenity of the neighbouring residents.

- 5) Amplified sound is not permitted in the outdoor seating area hereby approved at any time.

Reason: To protect the amenity of the neighbouring residents.

- 6) The capacity of the outdoor seating area hereby approved shall not exceed 16 patrons at any one time.

Reason: To protect the amenity of the neighbouring residents.

7) No food shall be cooked in the outside seating area at any time

Reason: To protect the amenity of neighbouring residents.

Informatives:

1. This permission does not confer title. It is the responsibility of the developer to ensure that he controls all the lands necessary to carry out the proposed development
2. This determination relates to Planning Control only and is not to be construed as binding the Planning Department in respect of any application required, including Advertising consent.
3. 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.

Case Officer Signature: Eadaoin Farrell

Date: 28.10.22

Appointed Officer Signature: M Keane

Date: 02-11-22

Speaking Request Summary - LA07/2022/0210/F & LA07/2022/0226/F - Ground Floor Unit, 12 Seaview, Warrenpoint, BT34 3NJ

A S54 application can only propose a change that was previously considered under the original planning permission. **It cannot extend the scope of the original permission.** It is noted that conditions widen the scope of the application and do not include the original ones.

There has been **significant local opposition** to this planning application from residents with 34 objections registered against **both applications** (See Appendix 1).

Planning approval was granted for **LA07/2019/1258/F on 27th August 2020** subject to four conditions, with Condition 2 restricting the opening hours as follows: **'The hours of operation should be restricted to 10:00 to 18.00 Monday to Saturday and closed on Sunday. Reason: In the interests of amenity'.**

Condition 2 was attached by Environmental Health to make the development acceptable in respect of the impacts on existing residential amenity.

The critical issue in the case is what has changed since LA07/2019/1258/F was granted to justify the conditions being significantly relaxed? Nothing has been provided by way of justification.

The **relaxation of Condition 2 amounts to an intensification of use** e.g. ticketed events 25 people, private catering and 16 outside. This is in addition to the 42 daily customers referenced in the LA07/2019/1258/F application and constitutes an **intensification of customers (>60%)**

Paragraph 1.2 of DCAN 15 states that **intensification** is considered to occur when a proposed development would increase the traffic flow using an access by **5% or more.**

On that basis the Planning Officer has **failed to consider the issue of intensification of usage and re-consult with DFI Roads.**

Strategic Planning Policy Statement (SPPS) for Northern Ireland

The SPPS was published on 28/09/2015 and became immediately effective. Its provisions apply to the whole of Northern Ireland. It is material to all decisions on individual planning applications and appeals, which remained undetermined, as per the transitional arrangements. The SPPS is the most recent expression of regional policy.

Paragraph 2.3 states that that *"The basic question is not whether owners and occupiers or neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would **unacceptably affect amenities** and the existing use of land and buildings that **ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks** against which development proposals will be measured.*

Paragraph 5.65 states that planning authorities have the power to attach conditions to a grant of planning permission. This can enable planning authorities to approve development proposals where it would otherwise be necessary to refuse planning permission. However, conditions should only be imposed which are: **necessary; relevant to planning; relevant to the development being permitted;** precise; enforceable; reasonable.

In this circumstance, Condition 2 was attached to LA07/2019/1258/F in the interests of residential amenity as it was deemed **necessary, relevant to planning, and relevant to the development being permitted.**

To manage development, planning authorities should treat **noise as a material consideration in the determination of planning applications.**

The proposal does not comply with SPPS, as there is clear **harm to residential amenity of existing adjoining residents** and notwithstanding the clear **failure to fully investigate the noise impact, as no background acoustic data has been submitted or requested.**

Non-Compliance with Policy PED9 of PPS4 – Planning and Economic Development

Proposals for **sui generis uses, such as a café for the sale of food and drink** are also to be considered under PPS4. Neither proposal complies with Policy PED9 Criteria (b) and (e) and it is noteworthy that LA07/2022/0226/F does not even mention PED9 in the report.

Development Control Advice Note (DCAN) 4 – Restaurants, Cafes and Fast Food Outlets

The Council refers to DCAN 4 is the assessment of each application however they have misapplied the guidance provided within the document and have contradicted themselves in the interpretation

Paragraph 5.2 states the use of planning conditions is often **PARAMOUNT** to the control of restaurants, cafés and fast-food outlets, particularly in relation to **noise disturbance; - smells and fumes; - refuse and litter; - traffic considerations and car parking; and - provision for people with disabilities.**

The definition of paramount is “supreme” or “more important than anything else”.

Environmental Health accept that both applications have the **potential to cause adverse impact via noise.** Despite this admission Environmental Health offer **no objective analysis, evidence or justification to widen Condition 2,** which they had previously placed to limit opening hours to protect residential amenity. Given this was recently recommended the approach is irrational given there is **no evidential support for the condition’s relaxation.**

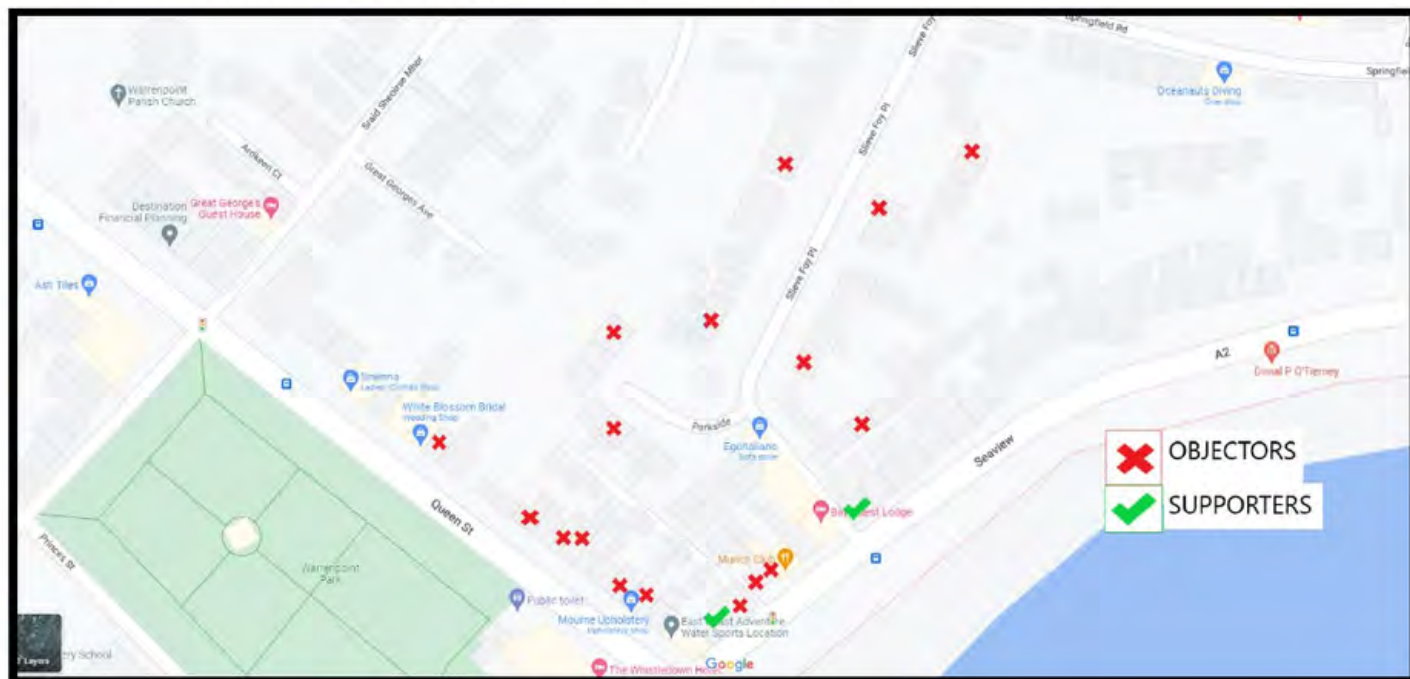
The proposed **extended opening hours would result in an intensification of use via a threefold increase in capacity** will cause noise nuisance exacerbating issues relating to the residential amenity of nearby residents. There is also a **cumulative impact,** with the **commercial uses in the former Balmoral Hotel,** which has failed to be acknowledged or considered by EHD or Planning Officers. **The outdoor seating would exacerbate this issue.**

Ongoing Breaches of Planning, Liquor Licencing & Entertainment

The applicant has displayed a **blatant disregard of the Council’s Planning and Enforcement Departments through a series of ongoing planning breaches.** They are also serving alcohol without a liquor licence. **If any doubt exists members must seek a full Acoustic Assessment** to be undertaken, along with consideration of the **increased parking requirements** which have been failed to be considered by the Council and Environmental Health as demonstrated.

AGRICULTURAL | COMMERCIAL | RESIDENTIAL | RETAIL | TOURISM

Appendix 1 – Objectors Location Relative to Premises



Appendix 2 - Evidence of ongoing breaches



Dear Planning Council,

Unfortunately, I will not be able to attend the meeting that has been rescheduled to suit the convenience of the planning consultant employed by my neighbours at number 11. My work schedule has me on a flight to New York at that time.

The points I would make if I were able to attend are as follows:

12 Seaview is in the town zone on the seafront. The Warrenpoint town masterplan supports hospitality and tourism for this location. I purchased 12 Seaview in 2014, at that time it was derelict, I have lovingly restored it to its original beauty. I converted the upper floors to holiday apartments which I personally host, I am an Airbnb Superhost, I pay non domestic rates for these apartments and have a NI Tourism certificate. I share the masterplan vision for Warrenpoint as do my tenants in the ground floor café. We are driven to supply a high standard of hospitality and tourism, to contribute heavily to the local economy and community in which we live and work.

The ground floor café has no shared walls with any residential neighbours. I co own the alley behind 10 to 12 Seaview, myself and my tenants have every right to use it. The space at the rear of 12 Seaview is surrounded by 3 storey high masonry walls. It is completely private and contained. I lecture at various universities globally on acoustics so can explain how the sound generated in that space is dispersed by the render and adjacent sloping roof. There are no standing waves to amplify generated sound. In layman's terms the shape of the courtyard brakes the soundwaves and lessens their volume. Some spaces do the opposite, spaces with smooth parallel walls amplify sound significantly.

Sadly the neighbours at number 11 have do not accept that they live in the town centre zone, they have on many occasions articulated that they do not want any kind of business next door to them and they resent all I and my tenants do for the local economy and community. They have been endlessly obstructive and malicious in their behaviour. Both myself and my tenants in the café are simply local mothers trying to run a business for the good of the community and our families. The planning delays have cost us dearly and a rejection will result in further losses and closures which will impact our families and the community.

Yours sincerely,

Julie McLarnon

Clients include..... Domino Records, Rough Trade, Merge, SubPop, Drag City, Believe, BBC, Warners, Sony



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

Application Reference:

LA07/2022/0226/F

Date Received:

02.02.2022

Proposal:

This is a category 11 section 54 application. Previous approval for retention of change of use to ground floor cafe unit & 2 no treatment rooms and ancillary services, condition 03 restricted opening hours to Mon-Sat 10.00 to 18.00. This application seeks variation to opening hours to provide opportunity for ticketed events and private catering (see attached sheet for times), 12 Seaview, Warrenpoint,

Proposed opening times:

Monday to Saturday open to general public 9am to 6pm,
Monday to Saturday open for ticketed events 6pm to 10pm
Sunday open to general public Midday to 4pm,
Open for private guest breakfasts 9am to 11am,
Open for ticketed events 4pm-9pm.

There are two holiday apartments on the floors above the cafe. The cafe owner would like to open on a Sunday morning to serve breakfasts to the guests staying in the holiday apartments - the cafe would not be open to the general public on Sunday morning.

Location:

Ground Floor Unit
12 Seaview
Warrenpoint
BT34 3NJ

Site Characteristics & Area Characteristics:

The application site is within the settlement limits of Warrenpoint and Warrenpoint Town Centre as designated within the Banbridge, Newry and Mourne Area Plan (2015). The site is also within an Area of Outstanding Natural Beauty and an Area of Townscape Character.

The application site consists of a three storey mid-terrace building which has been converted from offices to a café at the ground floor. Apartments are located on each floor, above the café.

The site is located adjacent a building that was previously known as The Balmoral Hotel but which has more recently been converted to several different uses, including a guest house, retail on the ground floor and a restaurant on the first floor.

On the opposite side are similar dwellings and some appeared to have been converted to apartments. On the opposite side of the Balmoral Hotel the area becomes residential with large three storey terraced dwellings of a similar form to the application site. The application building is in close proximity to the main commercial centre of Warrenpoint and Warrenpoint Town Park.

The building is currently subject to a live enforcement case - LA07/2022/0095/CA.

Planning Policies & Material

Considerations:

This application will be assessed under the following policy considerations:

- The Planning Act 2011
- Strategic Planning Policy Statement (SPPS)
- Banbridge, Newry and Mourne Area Plan (2015)
- PPS 2: Natural Heritage
- PPS 3 – Access, Movement and Parking
- PPS 6 - Planning Archaeology and the Built Heritage
- PPS 6 Addendum – Areas of Townscape Character
- DCAN 4 – Restaurants, Cafes and fast food outlets

Site History:

- P/1976/0337 – Proposed renovation of existing dwelling – Permission granted
- P/2014/0957/F - Material change of use from ground floor apartment to ground floor office including refurbishment of existing outhouse and WC – Permission granted
- LA07/2019/1258/F - Retention of change of use for ground floor cafe unit with 2.No. treatment rooms and ancillary services – Permission granted
- LA07/2022/0210/F - Retention of existing outdoor customer seating area – Under consideration
- LA07/2022/0095/CA - Alleged development not in accordance with approval – Live
- LA07/2021/0303/CA - Alleged breach of condition of planning approval LA07/2019/1258/F – Enforcement case closed
- LA07/2019/0201/CA - Alleged unauthorised change of use to cafe and holistic retailing – Enforcement case closed

Consultations:

Environmental Health were consulted a number of times on the proposal. The responses are as follows below:

- 25.03.22 - Environmental Health have no objection to this proposed development, subject to an operating hours condition;
- 21.04.22 - Environmental Health request further details on the "ticket events":
 - Nature/Type of events
 - Activities involved
 - Numbers of patrons expected at the events
 Environmental Health will make further comment when this information is received.
- 20.05.22 - Environmental Health have reviewed the application and have no objection subject to the following:
 1. As there are a number of residential properties in close proximity to this development, opening hours should be limited to the following times, to protect the amenity of the local area:
 - Monday to Saturday opening hours 9am to 10pm,
 - Sunday open 9am to 9pm
 2. Use of outdoor space should be limited to current planning conditions, namely:
 - Monday to Saturday :10.00am – 6:00pm
 3. Due to proximity of local residential buildings, there should be no amplified sound, within the curtilage of the property.

Objections & Representations:

Two neighbours were notified 11.03.22. A further 3 neighbours were notified 07.09.2022. The application was advertised in the local press 23.02.2022 and re-advertised 29.06.2022.

28 letters of objections from 23 different addresses were received.

The letters of objections have been summarised below.

- Existing breaches of previous planning approval regarding opening hours;
- Existing operation of outdoor area;
- Erection of new signage on premise;
- Proposed extended opening hours will result in a 3x fold potential increase in capacity and customers which would lead to problems for residents;
- Noise nuisance, intrusive and adverse impact on residential amenity for existing neighbouring residents;
- Proposal contrary to SPSS and DCAN 4;
- Amenity and character of surrounding area will be negatively affected by increased traffic;
- Limited parking available;

Queries were also received regarding an entertainment licence and liquor licence. These matters are outside the remit of planning.

Note: A letter of objection was received by Matrix Planning Consultancy advising that a more detailed letter will be submitted. A second holding letter was received from Matrix Planning Consultancy 20th September advising that a more detailed objection would be submitted in due course. A response email was sent to Matrix Planning to advise that applications cannot be held pending the submission of further representations. As per the Planning Act 2011, a statutory 2-week period is provided. However, the Department accept representations up until a recommendation is made.

A further two letters of objections from 2 different addresses were withdrawn and therefore the contents of these letters will not be considered.

A total of 36 letters of support were received from 29 different addresses. The letters of support have been summarised below.

- Currently no noise;
- Business is within retail area of Warrenpoint zone plan;
- Area draws tourism to Warrenpoint seafront;
- Business is a valuable asset to Warrenpoint's commercial attraction and would benefit economy;
- Asset to neighbourhood ambience;
- Benefit to have a business opening later;
- Other neighbouring businesses have similar opening hours;

Consideration and Assessment

Planning Act 2011

Section 54 of the 2011 Act allows for an application to be made for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. In considering an application made under section 54, the planning authority which granted the previous planning permission

must consider only the "question of the conditions" subject to which planning permission should be granted (section 54(3)).

LA07/2019/1258/F was approved 27th August 2020 for a change of use for ground floor cafe unit with 2.No. treatment rooms and ancillary services. The application wishes to vary condition 3 of LA07/2019/1258/F.

Condition 3 currently restricts opening hours of the premises to 10am to 6pm Monday to Saturday and closed on a Sunday. This condition was attached in the interests of amenity.

The applicant wishes to vary the opening hours to:

- Monday to Saturday open to general public 9am to 6pm,
- Monday to Saturday open for ticketed events 6pm to 10pm

- Sunday open to general public Midday to 4pm,
- Open for private guest breakfasts (apartments above) 9am to 11am,
- Open for ticketed events 4pm-9pm.

SPPS

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In practice this means that development that accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise. The SPPS at paragraph 6.91 states all applications for economic development must be assessed against normal planning criteria relating to such considerations such as access arrangements, design, environmental and amenity impacts.

As stated, the principle of the use of this site as a café has already been established whereby this application seeks to vary the opening hours.

Impact on area and neighbouring residents

Para 5.1 of DCAN 4 states that "the likely impact of such proposals on the character and amenity of the adjoining or surrounding area will be an important concern when determining applications. In assessing this impact, a number of factors need to be taken into account i.e.

- noise disturbance;
- smells and fumes;
- refuse and litter;
- traffic considerations and car parking; and
- provision for people with disabilities."

Para 5.2 of DCAN 4 goes on to state that "the use of planning conditions is often paramount to the control of restaurants, cafés and fast food outlets, particularly in

relation to the above considerations. The impact of many proposals which would otherwise be rejected, may be mitigated by the imposition of such conditions. Preventative measures can be taken through the development control process by for example restricting opening hours and dealing with the technical aspects of noise and fume attenuation. The Environmental Health Department of the relevant local council will be consulted as appropriate during the processing of planning applications and in the formulation of any conditions considered necessary for the approval of the development."

As noted above, a number of letters of objections were received regarding the proposal. The objections are summarised below.

- Existing breaches of previous planning approval regarding opening hours;
There is a live enforcement case LA07/2022/0095/CA which is currently investigating possible breaches of opening hours condition and the use of the rear yard area for customers. The application under consideration is to vary the opening hours.
- Existing operation of outdoor area;
There is a live enforcement case LA07/2022/0095/CA which is currently investigating possible breaches of approval and the use of the rear yard area for customers. Subsequently, an application has been submitted and is under consideration for the retention of the outdoor seating area.
- Erection of new signage on premise;
The erection of new signage on premises requires advertisement consent. This concern will be raised with Enforcement.
- Proposed extended opening hours will result in a 3x fold potential increase in capacity and customers which would lead to problems for residents;
The agent has clarified that Monday – Saturday 9am-6pm, the premises will be open to the general public and 6pm-10pm the premises will be open for tickets events. The agent advised that the ticketed events will have a maximum of 25 guests. The agent advised that Sunday 9am-11am the premises will be open for private breakfast for the upstairs apartments. The premises will be open 12pm-4pm on Sundays to the general public and 4pm-9pm on a Sunday for ticketed events. At present the premises can open (as per condition No. 3) 10am-6pm Monday-Saturday. The proposed opening hours includes an extra hour in the morning (9am-10am) Monday-Saturday for the general public and 4 additional hours in the evening for ticketed events. Condition 3 currently restricts Sunday opening. Given the breakdown of the opening hours and conditions stipulated by Environmental Health, the Planning Department is satisfied that the extended opening hours will not affect the amenity of neighbouring residents in terms of odour, noise, parking and litter to an unacceptable level.
- Noise nuisance, intrusive and adverse impact on residential amenity for existing neighbouring residents;

Environmental Health were consulted 3 times during the processing of the application. EH requested further information regarding the “ticket events” including the nature/type of events, activities involved, and numbers of patrons expected at the events. Further information submitted by the agent clarified that the ticketed events will be dining events with a maximum number of 25 guests attending. The guests will be taking part in food tasting. The agent advised that there will be no entertainment provided and no amplified sound within the curtilage of the property. Environmental Health returned a final response offering no objections subject to a number of conditions given the proximity of the development to residential properties. The conditions include:

- Opening hours should be limited to the following times, to protect the amenity of the local area:
 - Monday to Saturday opening hours 9am to 10pm,
 - Sunday open 9am to 9pm
- Use of outdoor space should be limited to current planning conditions, namely:
 - Monday to Saturday :10.00am – 6:00pm
- Due to proximity of local residential buildings, there should be no amplified sound, within the curtilage of the property.

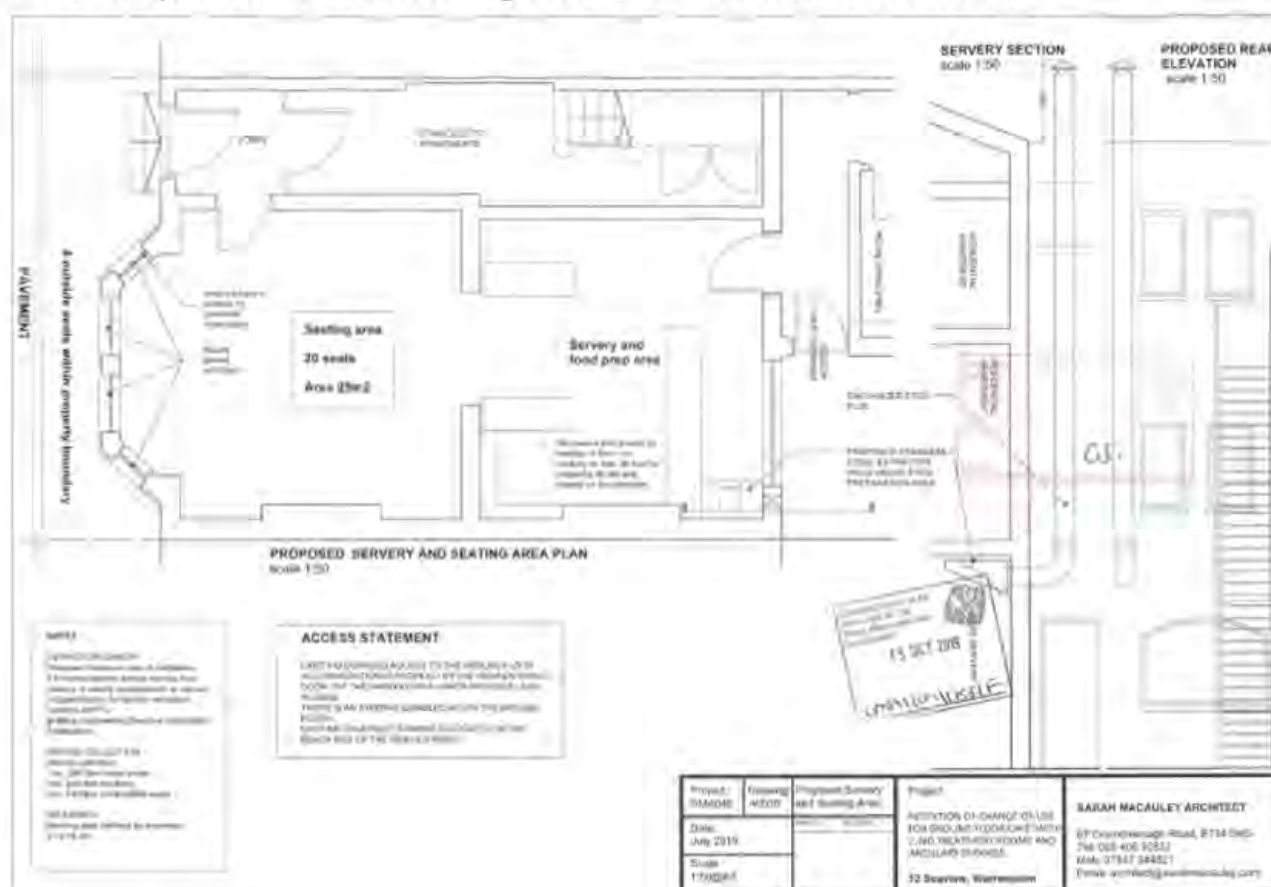
The Planning Department have been contacted on several occasions by neighbouring residents voicing concerns regarding alcohol being used on the premises. The matter of alcohol and/or entertainment licences or BYOB is outside the remit of Planning as advised in Para 3.7 of DCAN 4 which refers to ‘Alfresco’ eating and states that it may be necessary to obtain licences from other authorities.

- Proposal contrary to SPPS and DCAN 4;
The assessment of the proposal against SPPS and DCAN 4 is laid out within this report.
- Amenity and character of surrounding area will be negatively affected by increased traffic and limited parking available;

As mentioned above, the subject site is located within Warrenpoint Town centre boundary (TC 98). Para 4.1 of DCAN 4 states that retailing will generally be directed to existing settlements of appropriate size and Para 4.2 goes on to advise that preferable locations for restaurants, cafés and fast food outlets include town centres. Town centre uses include retail, offices, residential and various sui generis uses such as cafes within this proposal. Given the Town Centre location, proximity to public transport links and proximity to a number of public car parks within the area and on-street parking along Seaview and Queen Street, the Planning Department is satisfied that the proposal will not impact the amenity and character of surrounding area due to increased traffic and limited parking to an unacceptable level in this urban context. I consider that on street parking requirements are sufficient to deal with proposal as it is unlikely to generate heavy volumes of traffic given the size of the existing

premises (and the fact that the EH have stipulated a condition to restrict the outdoor seating area to a 6pm closure) and the local streets in the vicinity of the site as well as the public car parks less than 350m from the premises can adequately serve the proposal.

Whilst it is noted that this application seeks to extend the opening hours of the approved café, it has been acknowledged that the previous approval was granted on the basis of all food being prepared off site and only heated on the premises and that there was no cooking of food on site. This was also reiterated within the Planning Statement submitted alongside the application. A note was shown and approved on the site plan below. This Drawing was included on this decision notice.



Approved site layout - LA07/2019/1258/F

Given the above and the lack of detail provided for the proposed ticketed events, the Planning Department deem it necessary to protect the amenity of neighbouring residents in terms of potential odour pollution in line with Para 5.1 of DCAN 4 by stipulating a condition restricting the cooking of food on site unless the Council gives its written consent to any variation by the submission of an Odour Impact Assessment.

Summary

Having account, the detailed comment from Environmental Health who provided expertise in this respective field, it is considered the issues raised within the letters of objections have been fully considered, with detailed comment provided, offering no

objections. On this basis, it is considered there are no grounds to sustain a refusal on this basis.

The variation to the opening hours has been considered in consultation with Environmental Health, and while the itemised hours outlined and associated supporting documentation provided by the nominated agent are noted, following receipt of comments from Environmental Health these will be conditioned appropriately.

Recommendation: Approval

Conditions:

1. The hours of operation should be restricted to the following times:
 - Monday to Saturday opening hours 9am to 10pm,
 - Sunday opening 9am to 11am for guests from upper floor apartments only,
 - Sunday opening hours 12pm to 9pm

Reason: To protect the amenity of the local area.

2. The hours of operation of the outdoor seating area hereby approved should be restricted to 10:00 to 18:00 Monday to Saturday and closed on Sunday.

Reason: To protect the amenity of the local area

3. Amplified sound shall not be permitted within the curtilage of the property at any time.

Reason: To protect the amenity of the local area.

4. No food shall be cooked on site until an Odour Impact Assessment has been submitted by the applicant and approved by the Planning Authority.

Reason: To protect the amenity of the local area.

5. The gated access to the rear of the premises shall be used for emergency access and servicing purposes only.

Reason: To protect the amenity of the neighbouring residents.

Informatives:

1. All other conditions, informatives and annotations on the approved plans of LA07/2019/1258/F remain valid and must be adhered to in full.

Note: Drawing No.03 states 'No cooking on site. All food is prepared off site and heated on the premises'.

<p>Case Officer Signature: Eadaoin Farrell</p> <p>Date: 28.10.22</p>
<p>Appointed Officer Signature: M Keane</p> <p>Date: 02-11-22</p>



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

Newry, Mourne
and Down
District Council

Application Reference: LA07/2022/0273/F

Date Received: 11.02.2022

Proposal: The application is for a change of use from existing shop (use Class A1) to proposed amusement arcade.

Location: The application site is known as 54 Market Street, Downpatrick.



Site Characteristics & Area Characteristics:

The site in question is a single storey building that has a shop front to the front façade and is a terrace building. The walls are plastered walls that are painted and there is a slate roof to the front section. The building is a long narrow building with an access also to the rear of the premises out into a shared yard area.

The site is within the settlement development limits of Downpatrick as defined in the Ards and Down Area Plan 2015 and the site is also within Downpatrick's Primary Retail core and within the defined Town Centre. The site is also within the Strangford and Lecale Area of Outstanding Natural Beauty and within an area of archaeological potential and an area liable to flooding. There are also listed buildings within the town centre, including the former bank building on the corner of Market Street and St Patrick's Avenue.

Site History:

R/1982/0516 – 52 Market Street, Downpatrick – change of use from shop to café extension – granted – 06.10.1982

Planning Policies & Material Considerations:

The proposal has been assessed against the following policies and plans:

- The Ards and Down Area Plan 2015
- Regional Development Strategy (RDS)
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 3: Access Movement and Parking
- Planning Policy Statement 6: Planning, Archaeology and the Built Heritage
- Development Control Advice Note 1 Amusement Centres.

Consultations:

Consultation issued to Environmental Health in relation to the application and they have responded with no objections but advise that should the proposal proceed separate licenses will be required from the Council.

While other constraints have been noted on the site given the nature of the application it is not considered that any further consultations are required.

Objections & Representations

In line with statutory requirements the application was advertised in the local press on 02.03.2022 which expired on 16.03.2022. Neighbour notification issued on 18.03.2022 which expired on 01.04.2022. to date 6 representations have been received including 1 letter of support from the applicant. A summary of the content of the objections is summarised below.

- The change of use away from a retail unit to an amusement arcade conflicts with the strategic priorities of the Councils Regeneration and Economic Development Strategy 2020-2025, as the vision of this document is to *promote the revitalisation of our city, towns, villages and rural communities*. Objectors believe that to allow the change of use to occur it would conflict with adjacent land uses.
- Objectors raise concerns that the proposed use, if implemented, could potentially deter future development within the town and would have an impact on footfall.
- One objector believes that the proposal would be against the policy requirements of PPS 6 given the proximity to listed buildings.
- Neighbouring businesses have also objected to the proposed use and raise issues such as late-night opening and safety of staff and the likely impact on the shared yard to the rear of the site. One objector also notes the clientele that such places attract and

does not believe this will benefit the town in any way and don't believe this would be an appropriate neighbouring business.

- One objector claims there are inaccuracies with the P1 form and drawings but has not elaborated on this comment.

Consideration and Assessment:

Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the local development plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The LDP in this case is the Ards and Down Area Plan 2015 (ADAP).

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 Strategic Planning Policy Statement states the aim of the SPPS is to support and sustain vibrant town centres across Northern Ireland through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions consistent with the Regional Development Strategy. Any development needs to be appropriate and needs to ensure the vibrancy of town centres is retained.

In terms of the reference to the SPPS, the SPPS does allow for leisure, entertainment and businesses within the town centre and this point is not disputed however the SPPS clearly states within point 6.269 that planning should encourage development of an appropriate scale in order to enhance the attractiveness of the town centre.

The Ards and Down Area Plan 2015 and the SPPS are given consideration in assessing this proposal noting the cancellation of PPS 5 with the introduction of the SPPS.

In relation to the Ards and Down Area Plan 2015 the site is within the town centre of Downpatrick and also noted as being within the primary retail core (PRC). The area plan notes that the purpose in identifying the PRC is to allow control to be exercised over development inside that area to ensure the continuance of a compact and attractive shopping environment offering both choice and convenience. The Area Plan also notes that the main focus of retail is towards the lower end of Market Street, where the site in question is located. The plan also notes that a proliferation of office uses at street level within shopping frontages can displace significant amounts of retail floorspace, reduce shopper activity, and affect the commercial viability of retailing.

The previous use of the building was that of a hardware store, this use ceased late 2021. The use as a hardware store fell under class A1: Shops in The Planning (Use Classes Order) 2015. The proposed use as an amusement arcade is Sui Generis or no specified class.

Plans submitted show that there is a small front office proposed to the front of the building facing out onto Market Street offering approx. 8sqm floor space, a small lobby would allow access to the remainder of the unit with approx. 86m devoted to the amusement arcade with

approx 28 Slot Machines (AWP Machines). These machines will largely be located close to both walls with toilets and an access to the rear of the building. The front of the shop will remain the same in appearance as the current building front with the proposed premises having full length glass window to the front. Any signage would be subject to a separate advertisement consent.

Within the existing retail core there are a mix of uses, whilst the predominant use is retail there are also retail services and office space at ground floor level. There is a good level of footfall presently through this section of the town. It is also noted that the site is in close proximity to a square where public events are held throughout the year.

A Retail and Commercial Capacity Study undertaken as part of the Area Plan Review found that there are 201 units in the centre, a reduction of seven units since the previous Study was undertaken in 2019. The composition of the centre shares similarities to the UK national averages.

Convenience shopping is slightly lower than the average at 8.0% compared to 9.2% and remains comparable to the previous survey. Comparison shopping is slightly above the average at 27.9% compared with 27.1%. The offer available within the town centre includes a mix of national multiples (New Look, Argos and Halfords) as well as independent retailers.

There is a lower proportion of leisure services (20.9% compared to 24.6%) which remains consistent since 2019. There is also a lower proportion of retail services (13.4% compared to 15.6%), although there has been a minor increase since the previous health check. Financial and business services exceed the average at 10.9% compared to 9.1%, with several banks located in the centre, although the Bank of Ireland has become vacant since the previous study and is now the subject of a change of use application to an amusement arcade/adult gaming centre.

Initial health checks undertaken in 2019 and then updated in March 2022 show that whilst there have been some changes in terms of the composition of the centre, Downpatrick is performing broadly in line with UK national averages and functions well as a centre, catering for the majority of retail and service needs expected to be found in a settlement of this size.

The level of vacant units in the centre is 19.4% and exceeds the UK national average of 14.2%. The overall level of vacancy has increased by one unit since the previous health check was undertaken. Vacancies are spread throughout Downpatrick, although concentrations of vacant units can be found in Market Lane and Scotch Street.

The Retail and Commercial Capacity Study undertaken by Nexus as part of the Councils Area Plan Preparation has recommended that the Primary Retail Core be removed from Downpatrick town centre. The retail consultants considered that there was some danger in being closed to the idea of non-retail uses at ground floor level within the heart of major town centres.

DCAN 1 Amusement Centres

This is an advice and guidance document and not policy.

The factors which call for consideration on a planning application for an amusement centre are its effects on the amenity and character of its surroundings, and its effects on road safety and traffic flow.

The latter merit special consideration where the premises front on to a busy traffic route or are near an awkward road junction or are so sited that many visitors arriving on foot will have to cross a busy road or use an inadequate footway. The highways effects will depend to some extent on the activities to be carried on. For example, large concentrations of people at the beginning and end of bingo sessions held at an amusement centre would have a different effect from the same number of people arriving and departing over a longer period.

The applicant has noted that there would not be any classes for example bingo operating from the building. It is not anticipated that the proposal will result in a detrimental impact on traffic flow or road safety.

The effects on amenity and the character of the surroundings are more diverse. They will usually depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation.

As regards the location, amusement centres are not normally acceptable near residential property nor are they good neighbours for schools, churches, hospitals, or hotels. They are out of place in conservation areas or other places of special architectural or historic interest, except perhaps where these cover a really wide area. In areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood.

The proposed development is not located close to residential property, EHO have commented on the proposal and have no objections in respect of noise or amenity. It is noted that anti-social behaviour generally associated with such places is not a matter for planning but for the PSNI and licensing and ultimately safe and sensible gambling is a matter for the business operator.

The proposed development is not located within the Downpatrick Conservation Area, it is however located within close proximity to the Listed Bank on the corner of Market Street and St Patricks Ave. Given the nature of the proposal, with no physical changes being proposed, it is not considered that there will be a negative impact on the listed building or its setting as a result of the change of use element of the proposal.

It is noted that there is a currently undetermined application with the Council for a change of use of a former redundant bank building (A2) to an adult gaming centre at 80-82 Market Street within the PRC. There is an existing amusement centre called Carousel Casino Slots to the rear of Sports Direct on St Patricks Ave outside the PRC but within the Town Centre. The Council will continue to deal with applications for non-retail in the town centre on a case by case basis.

In towns where there is no provision for areas for amusement or entertainment, amusement centres are usually best sited in districts of mixed commercial development. In areas where shopping is the predominant use, the likely effect of the development on the character of the shopping centre is relevant. An important consideration will be whether an amusement centre would break up an otherwise continuous shopping frontage; and although this can be mitigated

by attention to the design of the facade and entrances, it may nevertheless be a serious objection in some shopping streets.

The premises previously operated as a Hardware shop, there is a diversity of frontages and mixed uses along this stretch of Market Street including offices within the Primary Retail Core. It is noted that the proposed change of use will involve a front office element of 8sqm to the street frontage. It is acknowledged that the proposed change of use will result in a loss of GF retail at this location.

It is not considered that this change of use will have a disruptive effect on the shopping frontage, as previously stated there are a range of retail uses, services and office premises located within the retail core.

Objections have been taken into consideration however it is important to ensure that planning control is used to deal with planning issues and not with other things. Planning is about land use matters, public order must be maintained, but gambling and public order are not in themselves planning matters.

Having account to Planning policy and guidance, having considered the objections received and have regard to the findings of the Commercial Study commissioned by the Council for input to the Area Plan preparation, whilst it is acknowledged that the proposal involves the loss of a GF retail unit, the current health of the town centre is considered to be able to cope with this loss without detriment to the vibrancy, vitality and viability of the town centre.

It is not considered that the proposed change of Use will result in a loss of retail such that the vitality and viability of Downpatrick Town Centre is detrimentally affected and as such a recommendation of approval is made.

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: **7001 and 7002**.

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

3. The premises must not operate outside the hours of 09:00 – 00:00 Monday to Saturday and 11:30 – 00:00 Sunday.

Reason: In the interests of residential amenity.

Informative

1. The applicant will need to consult with the Licensing Section of the Council in regard to obtaining an Amusement Permit.

Case Officer: Fionnuala Murray

Appointed Officer: A.McAlarney

Date: 05.08 2022



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

ADDENDUM REPORT

Application Reference: LA07/2022/0273/F

Date Received: 11.02.2022

Proposal: The application is for a change of use from existing shop (use Class A1) to proposed amusement arcade.

Location: The application site is known as 54 Market Street, Downpatrick.

The application was scheduled for presentation to the 24 August 2022 meeting of NMDDC Planning Committee with a recommendation to approve. The application was removed to allow for consideration of a late representation that had been received from Matrix Planning on the 16th August 2022 following formal consideration of the proposal on the 5th August 2022.

Since then a number of representations have been received. A letter of objection was also received on the 24 August 2022 from Patrick Brown MLA.

A letter of rebuttal was received from C. McIlvar on 30 August 2022 in response to the Matrix Planning representation of 16th August 2022 and a further representation from Matrix Planning of the 22 November 2022.

This addendum will address the matters raised in the representations received since 5th August 2022.

Matrix Planning raises the following policy matters

- Assessment contrary to the Area Plan DK 23 and DK 24 and the SPPS.
- The proposed use is non-retail and results in a loss of retail in PRC
- Assessment of need required
- DCAN1 non compliance

- Cumulative assessment required
- Break in Continuous shopping frontage

Patrick Brown MLA

- Significant change of use, incompatible with regeneration efforts in Downpatrick in particular the Regeneration and Economic Development Strategy 2020-2025 incompatible with the Area Plan, SPPS, and DCAN 1
- area is already well served by significant non retail uses in the form of bookmakers and adult amusement and gaming.
- long opening hours
- extra noise and footfall in direct conflict with long established Downpatrick businesses in retail, shopping and hospitality, this is potentially off putting for any future investors.

In consideration of the matters raised in the Matrix letter of objection and Patrick Brown MLA the following is offered.

As the Strategic Planning Policy Statement for NI 2015 (SPPS) cancelled PPS 5. The SPSS provides strategic subject planning policy for a wide range of planning matters, including town centres and retailing. General guidance and advice in Development Control Advice Note 1: Amusement Centres 1983 (DCAN 1) is also pertinent.

It is acknowledged that the application site lies within the Town Centre DK23 and the Primary Retail Core (PRC) DK 24 as identified in the Ards and Down Area Plan. Proposals DK23 and DK23 define the extent of the town centre and PRC they do not contain policy.

As regards the compatibility of a gaming arcade in the Town Centre and PRC, Paragraph 6.271 of the SPPS, is the town centres first approach for the location of future retailing and other main town centre uses. Footnote 58 of the SPPS confirms that town centre uses "includes cultural and community facilities, retail, leisure, entertainment and businesses". An amusement arcade and gaming centre comprises a form of leisure and entertainment. Therefore, it constitutes a town centre use as envisioned by the SPPS.

Paragraph 6.279 of the SPPS states that all retailing and town centre proposals must ensure that there will be no unacceptable adverse impact on the vitality and viability of an existing centre. Para 6.281 requires planning applications for main town centre uses to be considered in an order of preference: PRC; town centres; edge of centre; and out of centre location. The current proposal, which is recognised as a town centre use by the SPPS, would be located within the defined PRC. In this respect, the appeal proposal is in accordance with policy and, as such, an assessment of need is not considered necessary.

Reference is made to a recent PAC decision Ref: 2020/A0076, a non-determination appeal for a change of use from a Bank (Class 2) to an amusement arcade and adult gaming at High Street Newtownards. The commissioner found town centre uses to include cultural and community facilities, retail, leisure, entertainment, and businesses. An amusement arcade and gaming centre comprises a form of leisure and entertainment. This case was similar with the current proposal in that both proposals were located

within the designated Town Centre and the PRC. The commissioner found that the proposal was policy compliant with the SPPSs and the Area Plan.

In relation to concerns raised about the potential environmental and amenity issues associated with such a development, the SPPS recognises at Paragraphs 4.11 and 4.12 that there are a wide range of considerations, including noise, visual intrusion, general nuisance and waste management, which should be taken into account by planning authorities when managing development. Supporting good design and positive place making is one of the core planning principles of the SPPS.

General guidance and advice is provided by DCAN 1. Paragraph 3 of DCAN 1 indicates that one of the factors to be considered in relation to a planning application for an amusement centre are its effects on the amenity and character of its surroundings. Paragraph 4 points out that the effects on amenity and the character of the area will usually depend on the location of the proposal in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation.

Paragraph 5 states out that in area, where shopping is the predominant use, the likely effect of the development on the character of the shopping centre is relevant,

It goes on to point out that an important consideration will be whether an amusement centre would break up an otherwise continuous shopping frontage.

Downpatrick's Primary Retail Core is essentially linear in shape, consisting mainly of the shops in Market Street, but also includes stretches of Irish Street, Scotch Street, English Street and St. Patrick's Avenue. It also includes are the Grove Shopping Centre. The Primary Retail Core is short and compact, its shopping frontages are largely continuous it contains a mix of professional and financial services, such as Banks and Building Societies.

The building subject to this application is located on the southern side of Market Street; it is not within the Downpatrick Conservation Area or other place of special architectural or historic interest. It is not located near residential property or any schools, churches, hospitals or hotels, which DCAN 1 states are not normally acceptable locations for amusement centres.

There is currently an application for a change of use of a former bank to an amusement arcade at 80-82 Market Street, this is subject to a non-determination appeal with the PAC at present. However this application can be differentiated from the current proposal as it represents a change of use from a non-retail to a retail use in the PRC. As always, individual applications will be determined upon their individual merits and no decision has as yet been forthcoming on this application. There are no other amusement arcades in the PRC. Casino Slots and Carousel Casino Slots are located in the town centre but set in back street locations off the main shopping street of St Patricks Avenue.

The property at the time of writing has reopened as a Hardware store and sits within a linear frontage comprising a range of shops and bookended by 2 banks one of which is currently vacant (Northern Bank Building). The proposal as already alluded to represents a town centre use in the PRC. It is considered that the proposed development would not break up an otherwise continuous shopping frontage, retail would remain the predominant use along Market Street and the main concentration of retail floor space within Downpatrick would continue to be located within the PRC as required by the ADAP.

The proposed drawings show that the front of the shop will remain the same in appearance as the current shop front with the proposed premises having full length glass window to the front. Any signage would be subject to a separate advertisement consent. There will be no perceivable detriment visually to the retail frontage whether it be used as a hardware shop or an amusement arcade. It is interesting to note that from the referenced appeal judgement the commissioner held that in the interest of visual amenity, the front windows of the premises were required to permanently contain a display. If this were deemed necessary, this could be conditioned as such in agreement with the applicant.

In terms of the concerns regarding the impact of the proposed development on regeneration efforts on Downpatrick, noise, disturbance, long opening hours etc. There has been no evidence provided to indicate a general nuisance or disturbance at this location that would have an unacceptable detrimental impact upon amenity. The Environmental Health Office have raised no objection to the proposed development. Issues around anti-social behaviour and public order are matters for the PSNI while responsible gaming is a matter for the owner/manager of the facility and any issues relating to noise and litter would be matters for Environmental Health.

In terms of the proposal putting off potential investors to the town or hampering regeneration efforts, there has been no evidence presented as to how this proposal will discourage shoppers from visiting Downpatrick town centre or investors investing in it. Matters relating to opening hours have been conditioned.

Having given full consideration to all matters raised during the processing of this application and having regard to the Area Plan and the prevailing planning policy context APPROVAL is recommended.

Signed

A.McAlarney

Date: 29 November 2022



Application Reference: LA07/2022/0273/F

Date: 7/12/2022

Proposal: The application is for a change of use from existing shop (use Class A1) to proposed amusement arcade.

Location: The application site is known as 54 Market Street, Downpatrick.

In response to the assessing officer's recommendations with reference to **LA07/2022/0273/F** please find detailed below, the rebuttal of Downpatrick Town Committee (DTC). It is also the intention of the Town Committee to request speaking rights on the **14/12/2022** when the application is due to be presented at NMADDC Planning Committee.

Officer Recommendation

The building subject to this application is located on the southern side of Market Street, it is not within the Downpatrick Conservation Area or other place of special architectural or historic interest. It is not located near residential property or any schools, churches, hospitals or hotels, which DCAN 1 states are not normally acceptable locations for amusement centres.

DTC Rebuttal

The Town Committee would highlight that the officer has failed to recognise that the proposal would be directly opposite:

- Journey Community Church located on Unit 10 – 11 The Market House, Market St, BT30 6LR
- Youth Initiatives Downpatrick located at Unit 12 The Market House, 49-51 Market Street BT30 6LR 500

And within close proximity to:

- South Eastern Regional College Downpatrick Campus, 110 Market St, BT30 6LZ.

It is the opinion of the Town Committee that this would be grounds for refusal as **DCAN1 Amusement Centres (1983)** paragraph 3 clearly states:

*The effects on amenity and the character of the surroundings are more diverse. They will usually depend on the location of the proposed amusement centre in relation to other development, its appearance, the kind of amusement to be provided, the noise likely to be produced and the hours of operation. **As regards the location, amusement centres are not normally acceptable near residential property nor are they good neighbours for schools, churches, hospitals, or hotels.** They are out of place in conservation areas or other places of special architectural or historic interest, except perhaps where these cover a really wide area. In areas where one amusement centre may not be out of place, it would be permissible to take into account the effect of larger numbers on the character of a neighbourhood.*

Officer Recommendation

'In terms of the proposal putting off potential investors to the town or hampering regeneration efforts, there has been no evidence presented as to how this proposal will discourage shoppers from visiting Downpatrick town centre or investors investing in it.'

DTC Rebuttal

Downpatrick Town Committee would direct the Planning Committee to an online petition activated by Councillor Gareth Sharvin.

[Petition · Stop Amusement Arcade planning application for Downpatrick high street · Change.org.](#)

The petition has, to date, received over 200 signatures evidencing that the proposal will discourage shoppers from visiting Downpatrick town centre. The Town Committee would also make the committee aware of a letter of objection submitted to the assessing officer on behalf the Downpatrick Regeneration Working Group. (DRWG). The group is currently in the process of formulating a policy document for town centre regeneration alongside the Ministerial Advisory Group for Architecture and the Built Environment for Northern Ireland.

The signed petition and letter of objection clearly contradict the assessing officer's opinion/recommendation. Evidence provided supports the claim that the application will have a detrimental effect on shopping, regeneration and economic growth of Downpatrick.

DTC trusts that the correct conclusion to this matter will be that approval will be overturned at Committee.

Regards



Philip Campbell
Chair
Downpatrick Town Committee

Ref – LA07/2022/0273/F - 54 Market Street, Downpatrick, Co Down - Change of use application from existing retail shop (Use Class A1) to proposed Amusement Arcade

The site is in Downpatrick town centre and is **presently occupied** by a **hardware store (comparison/non-food retail) with a long lease**. There is a continuous street level shopping frontage present. The proposals ground floor frontage will predominantly consist of an office, which provides **no active retail frontage**.

Ards & Down Area Plan (ADAP) 2015

We are in a **plan led system** and Section 6 (4) and 45 (1) of the Planning Act (Northern Ireland) 2011 indicates that regard is to be had to the local development plan, and the determination must be made in **accordance with the plan** unless material considerations indicate otherwise. The application site is located within the designated Downpatrick town centre, as depicted on Map No. 3/002h (Appendix 1) and **within the designated Primary Retail Core (PRC)**.

Downpatrick Town Centre & Primary Retail Core (PRC)

Proposal DK23 specifically states; ***“Town Centre image in Downpatrick is adversely affected by property vacancy, and by non-retail uses”***. The proposal is for a non-retail use, which **will impact on the vitality, viability and character** of Downpatrick town centre and its **shopping function**.

Proposal DK24 states that the purpose for identifying a PRC within a town centre is **allow control to be exercised over development inside** that area to ensure the **continuation** of a compact and **attractive shopping environment** offering both **choice** and convenience.

The final paragraph warns against **proliferation of non-retail (offices) uses at street level within shopping frontages** as this will displace retail floorspace and reduce shopper activity, which will affect the **commercial viability of retailing**. The PRC already has **significant non-retail uses in the form of bookmakers and adult amusement/gaming both within and on the periphery**. There are clear warnings regarding the **proliferation of non-retail uses and displacement of retailing** at street level damaging the vitality and viability of Downpatrick town centre and PRC, as such it does not accord with the provisions of ADAP 2015.

Strategic Planning Policy Statement (SPPS) for Northern Ireland

The critical matter is the **enhancement of the attractiveness of Downpatrick town centre and PRC and to sustain the vibrancy and vitality**. The proposal seeks to break up a continuous retail frontage and **displace retail floorspace** in the PRC with a street level office and entrance.

The Collins dictionary definition of “enhance” is to improve its value, quality, or attractiveness. An amusement arcade / **gaming centre will not attract footfall to the town centre or PRC, nor will it enhance the attractiveness of Downpatrick** sustaining its vitality and vibrancy. Whilst the ADAP 2015 currently operates as the LDP, it is now past its notional end date and pre-dates the SPPS. The Plan does not reflect the new regional policies introduced within the SPPS for retailing and town centres and is not an up-to-date plan.

I note the Downpatrick Regeneration Plans for the Pilot Living High Streets Initiative with collaboration from the Ministerial Advisory Group (MAG) for Architecture and the Built Environment

Paragraph 6.282 states that; *"In the **absence of a current and up-to-date LDP**, councils should require applicants to **prepare an assessment of need**, which is proportionate to support their application"*.

The wording of this policy requirement is clear and unambiguous and goes on to state that *"it is envisaged that this may incorporate a **quantitative and qualitative assessment of need** taking account of the sustainably and **objectively assessed needs of the local town** and take account of **committed development proposals and allocated sites**"*

There is a needs test embedded in the SPPS and it is noted that **the applicant has not provided an assessment of need** and the Council has not identified that an assessment of need **is a policy requirement of the SPPS**. This is a significant and alarming oversight, given the proliferation of non-retail uses (including gambling and gaming) within and on the edge of the PRC and Downpatrick town centre and the **cumulative impacts**.

NEXUS Planning Retail & Commercial Capacity Study – September 2020

The NEXUS report forms part of the evidence base for the Draft Plan Strategy. However, this has not undergone Independent Examination (IE) and on that basis the referenced documents are neither a Local Development Plan nor Regional Planning Policy. **Page 157, paragraphs 5.22-5.24 of the NEXUS report** are considered, it is very apparent that there is a **presumption against the loss of Class A1 Retail Use in the Downpatrick PRC** and not only is this clearly expressed in ADAP 2015,

If there was no restriction or control to displacement of retail floorspaces at ground floor level in the Downpatrick PRC, then why would NEXUS need to alter this in new local development plan?

Development Control Advice Note (DCAN) 1 – Amusement Centres

The proposal is located in **opposite Journey Community Church** (10/11 Market Street), **Downpatrick Youth Initiatives** (49-51 Market Street), **SERC** located 250m southwest of the subject site. Likewise, the tourist attraction of **St Patrick's Centre is 150m (west)** opposite the site with Down Cathedral beyond (450m).

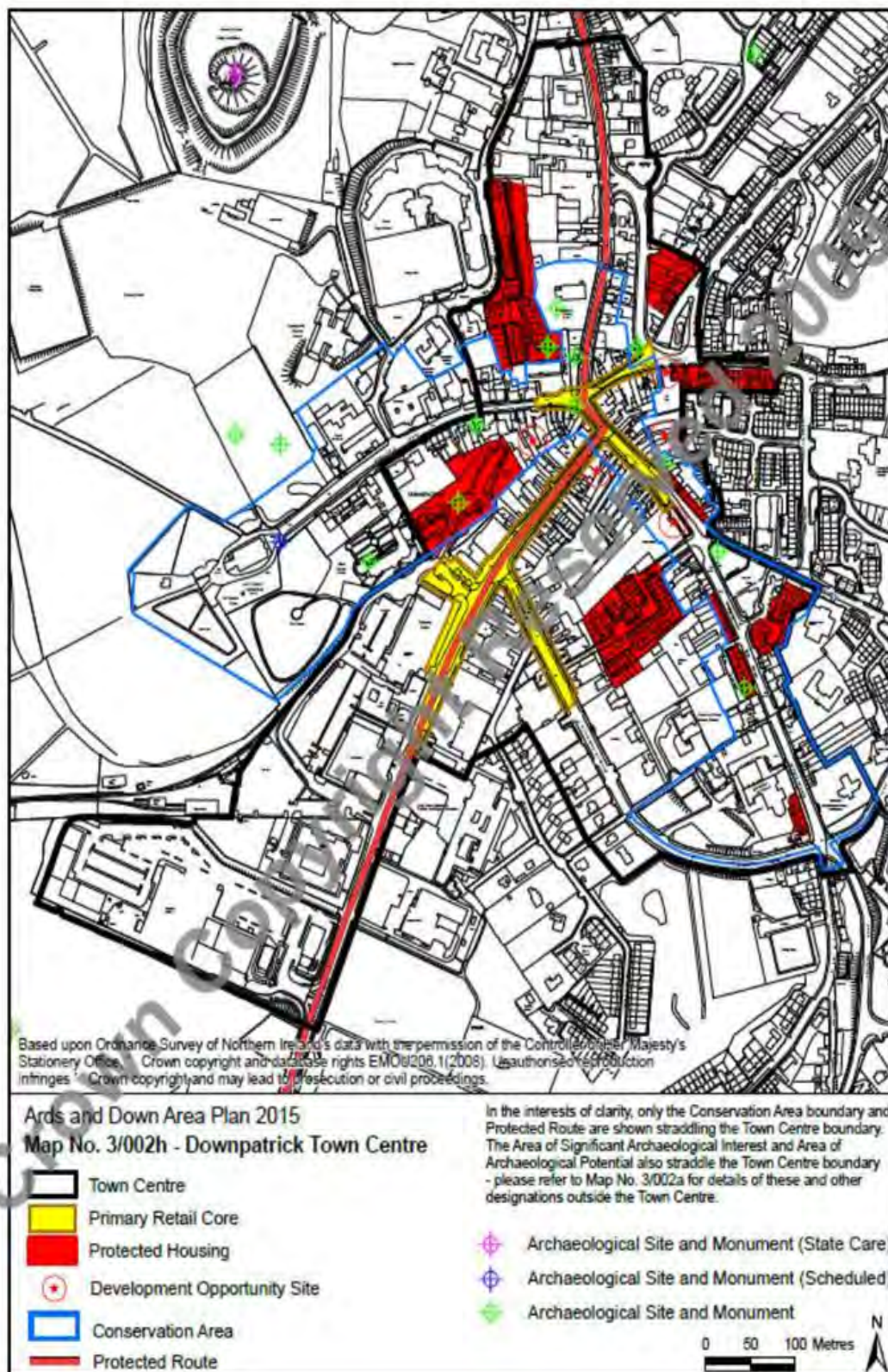
Paragraph 4 of DCAN 1 states that amusement arcades are not **normally acceptable near residential property nor are they good neighbours for schools, churches**, hospitals or hotels. Whilst this is not an exhaustive list it highlights **public buildings used for general assembly**. The proposal is clearly **near** several of these buildings. There is also a **cumulative assessment** to be applied, if a needs assessment took place. It is noted where one amusement centre may not be out of place it would be permissible to take account of the effect of a concentration. Paragraph 5 of DCAN 1 states that an important consideration will be whether an amusement centre **would break up an otherwise continuous shopping frontage**, where there is a presumption against non-retail uses at street level.

Precedent

Officers identify other existing adult gaming centres in Downpatrick town centre, but do not consider the **proliferation or saturation** of such uses in the PRC or Downpatrick town centre and how this will undermine the retail function of the town centre. There is **no consideration as to how this precedent would be limited** and to permit the proposal would clearly pose an unacceptable threat to the vitality and viability of Downpatrick town centre.



Appendix 1 – Primary Retail Core (PRC) – Ards & Down Area Plan – 2015



Appendix 2 – Map of Gaming Entertainment & Bookmakers



Whether “Slots o Fun” is derelict or not is irrelevant and I would direct the Council to the legal principles in ***Panton and Farmer v. SSETR [1999] JPL 46***, which conformed that while a use may decline, become inactive and lie dormant it **can still exist** in the sense that it has not been abandoned.

There is nothing to prevent “Slots o Fun” re-opening tomorrow (See Appeal 2015/E0001 – Dublin Road – Newry, Mourne and Down District Council) and I note the signage, shutters all remain intact.

On that basis it remains a material consideration to be weighed in the overall cumulative assessment and proliferation of use.



In Objection

17/08/2022

LA07/2022/073/F - Change of use application from existing shop (Use Class A1) to proposed amusement arcade

The judgement on this application is that, does an amusement arcade bring an economic, tourism and regeneration element to the primary retail core of Downpatrick. When considering DCAN1 it indicates that the application of guidance in any particular case is a matter of judgement. This planning committee is being asked to make that judgement on whether this amusement arcade on the main street of Downpatrick is suitable for an amusement arcade, I would direct the committee's attention to the following points:

1. An amusement arcade at this location will have negative impact on the surroundings as the property fronts onto Market Street which is the main street through Downpatrick Town Centre.
2. It will be a negative loss of retail frontage in Downpatrick Town Centre, particularly small units which have a great appeal for start-ups and independent stores which is a popular business approach in Downpatrick.
3. It will also impact on the regeneration project by Newry, Mourne and Down Council, where the Downpatrick Regeneration Group is being set up to identify projects, attract suitable business investment and increase visitors.

When considering the Strategic Planning Policy Statement, it clearly states the aims of the SPSS is in supporting and sustaining vibrant town centres and through the promotion of established town centres as the appropriate first choice of retailing and other complementary functions, and that any development needs to be appropriate and needs to ensure the vibrancy of town centres. If this application is approved, the vibrancy of Downpatrick Town Centre will be significantly impacted as we lose retail space to amusement and gambling units. It is not appropriate on the main street of the town centre and will not bring any vibrancy to the town to boost business, tourism or regeneration.

In the officers report itself, it clearly calls out the good footfall along this section of the town centre, and would ideally be suitable to a retail business to benefit from this footfall, rather than an amusement arcade.

The report also states that an amusement arcade is not suitable within the area of a church, hotel, hospital, school or residential areas, across the road is Journey Community Church, less than 5 minutes walk you are in residential properties, you have the South Eastern College and Down High school. The recommendation has clearly not considered these elements in the area.

I note from the letter of support concerning this application, that they foresee no noise or disturbance. In my experience, you can clearly hear the gambling machines being used from the footpath even without accessing the property. There will be a clear increase of noise and impact on the adjoining properties given this.

Summary:

1. The application will have a detrimental impact on the vibrancy of Downpatrick Town centre.
2. It will result in the loss of a GF retail unit in the Downpatrick Town Centre.
3. It will disrupt the retail frontage along this road, as there is a men's clothing store, cafe, home and gifts shop, technology shop and a shoe shop along this frontage, with no front office space or amusement element to be foreseen.
4. The operational hours will be significantly later to that of the surrounding businesses and with this result in higher noise and disturbance to the area.
5. And consider the Irish Street Regeneration project and the town centre regeneration projects of Newry, Mourne and Down Council, and what we as a council are aiming to do in the heart of the county town.

I would appeal to the committee to carefully examine the element of GF retail space being lost in the town centre, the impact to the vibrancy and viability of Downpatrick in approving this application and how such a business can contribute to the regeneration of Downpatrick town centre.

Kinds Regards,



**Cllr Gareth Sharvin
Downpatrick DEA
Newry, Mourne and Down Council**

Dear Democratic Services

I am looking for speaking rights to address the above application by 'zoom' at a meeting scheduled for next Wednesday the 14th from 10am.

I believe this application is in respect to the old 'Kelly's Hardware' building on Market Street Downpatrick, now called Taggart & Sons. I cannot get onto the portal so hopefully have the correct reference.

I believe that council's planning department intend to recommend approval for this controversial application to change the use of the old 'Kelly's Hardware' building to an amusement arcade.

This building has recently been taken on by a local business who have set up an excellent DIY/homeware store that is sympathetic to the history of the building, adds to the regeneration of Market street and is in keeping with the character of the town.

This latest proposal to, at some point in the future presumably, introduce another amusement arcade in the town centre and remove the ONLY hardware store, will not add planning value to our town centre. It will only fuel gambling addiction, prey on deprivation and will give nothing back to the town.

And it will leave a huge gap in our main streets offering to the public. A town of 10000 people needs a hardware store

Downpatrick is in dire need of a Hardware Store after Kelly's Hardware closed at this site last year. Taggart and sons have now opened on Kelly's old premises filling a vital need in the town

We need to do everything we can to prevent another gambling centre close what is now our only hardware store Taggart & Sons

There are more than a dozen venues for gambling in our town centre and NI is recorded as having the worst of any region in the UK in terms of gambling addiction with 42000 victims in the province – we don't need more

Councillor Cadogan Enright

LA07/2022/0273/F – Carol Gourley

The application building at 54 Market Street is a vacant retail unit located along a very busy street and within an active, mixed use area. It is within the Primary Retail Core as defined in the Ards & Down Area Plan 2015. There are six public houses, a betting shop, hot food takeaways, restaurants, coffee shops, off license, offices and various shops all around the site area. Only a number of these ground floor commercial uses have living accommodation above. The site does not lie adjacent to any schools, dwellings, churches, hotels or hospitals. The character of the area is mixed and busy. Whilst there are residential uses further along Market Street, the area is clearly very mixed in character. DCAN1 does not automatically rule out amusement arcades where there are residential uses in proximity but indicates that the application of guidance in any particular case is a matter of judgement. The applicant is not required to prove a need for the proposal.

EHD have been consulted and confirmed they are happy with the proposal and do not have any noise or disturbance concerns. The absence of an objection from EHD is significant. Any noise emanating from the premises can be adequately controlled through the use of a self-closing door, opening hours etc which can be reflected in conditions. The premises are bounded by commercial properties on both sides. There are no flats above the application building or the commercial properties at each side with the closest residential uses being in the first/second floors over retail units considerably further along Market Street. The subject building was recently in use as a hardware shop and could, without the need for further consent, be re-used as such. The site is located on a busy main street and passing traffic generates a considerable level of noise. Residents would be accustomed to this noise and to that generated by existing commercial uses at, and close to, the site. Whilst we acknowledge the objectors concerns we judge that the weight, which should be attached to such concerns is not such as to render the proposal unacceptable. The proposed development will not generate noise or cause disturbance which would be to the detriment of the character and amenity of the area.

Objector concerns regarding possible anti-social behaviour, out of control gambling etc are not planning matters. Planning does not exist to protect the private interests of one landowner or in this case shop owner against another. An electric mix of uses within a town centre results in a healthy town centre to the benefit of all. The amusement arcade will attract footfall to the town centre which in turn will help sustain and support neighbouring retail outlets. The change of use will not have a disruptive effect on the shopping frontage. The current health of the town centre is well able to cope with this small loss of retail space without detriment to the town centre. Based on all the above we concur with the case officer's recommendation to approve and urge members to agree the same.



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

Application Reference: LA07/2021/0245/F

Date Received: 08/02/2021

Proposal: Existing toilet block in the car park is to be demolished and replaced with a public beach amenity building.

Location: Land immediately west of 40 Clanmaghery Road, Tyrella Beach, County Down.



Site Characteristics & Area Characteristics:

The lands outlined in red form an irregular shaped site located at the Tyrella Beach amenity carpark. The subject site contains an existing kiosk and small toilet block building, both buildings have a dashed render finish and hip roof design. The site provides a large car parking in an informal arrangement on a sandy/grass surface. The site is quite flat and gradually slopes south to the beach. Access arrangements are already in place, with a formalised entrance from the Clanmaghery Road. The site is predominantly amenity grassland and hardstanding, surrounded by arable

fields to the north-west and sand dunes encompassing the remainder. A row of dwellings are located immediately east of the car park.

The application site is located outside any settlement development limits as designated within Ards and Down Area Plan 2015. The area is of typical rural character and predominately agricultural use although it is acknowledged there are also a number of dwellings and outbuildings in this locality. It is situated within a coastal context, directly beside Tyrella Beach, and within Strangford and Lecale AONB and just outside Tyrella and Minerstown ASSI and Murlough SAC.

Site History:

R/1997/0700 - Formalisation of car parking area, provision of toilet block, new playground, new boundary wall at entrance and formalisation of dune walks. Tyrella Beach And Dunes Clanmaghera Road Tyrella. Permission granted.

R/1989/0678 - Conservation of beach and sand dunes and development to include beach parking and toilets. Tyrella Beach Rathmullan Tyrella. Permission granted.

Planning Policies & Material Considerations:

Ards and Down Area Plan 2015

SPPS - Strategic Planning Policy Statement for Northern Ireland

PPS 2 - Natural Heritage

NH 2- Species Protected by Law

NH 6 - Areas of Outstanding Natural Beauty

PPS 3 - Access, Movement and Parking

AMP 2 - Access to Public Roads

PPS 15 – Planning and Flood Risk

PPS 16 - Tourism

PPS 21 - Sustainable Development in the Countryside

CTY 1 - Development in the Countryside

CTY 13 - Integration and Design of Buildings in the Countryside; and

CTY 14 - Rural Character

Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside

Consultations:

DfI Roads - No objections to this proposal.

DfI Rivers – FLD1 - Development in Fluvial and coastal Flood Plains - DfI Flood Maps (NI) indicates that the development **does not** lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain. However, it is in close proximity to the 1 in 200 year coastal flood plain which has an approximate level of 3.75mOD at this location. Taking into account the precautionary approach of Revised PPS 15 it is recommend that any new development be allowed an additional freeboard of 600mm.

Environmental Health (NM&D) – Raised no objections to the scheme.

Northern Ireland Environment Agent (NIEA) –

Natural Environment Division - has considered the impacts of the proposal on the site and, on the basis of the information provided, is content with the proposal.

Marine and Fisheries Division has considered the impacts of the proposal on the marine environment and on the basis of the information supplied considers that the proposal is unlikely to have a significant impact on the marine environment provided appropriate pollution measures are implemented on site during construction and operation.

Water Management Unit & Inland Fisheries - Water Management Unit has considered the impacts of the proposal on the surface water environment and on the basis of the information provided is content with the proposal.

Shared Environmental Service (SES) has reviewed the Habitats Regulations Assessment (HRA) dated December 2021 undertaken for this proposal by Tetra Tech Consulting (NI) Ltd for Newry Mourne and Down District Council. Having considered the nature, scale, timing, duration and location of the project it is concluded that it is eliminated from further assessment because it could not have any conceivable effect on a European site.

Historic Environment Division (HED) – (Historic Monuments) has assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Objections & Representations:

A total of 8 Neighbours within close proximity of the site were notified at various stages of the application most recently 05/10/2022. This application was first advertised in the local press on 24/02/2022 and re-advertised on 15/03/2022. At the time of writing no objections or representations have been received.

Consideration and Assessment:

Summary of Proposal

The proposal seeks full planning permission for the demolition of the existing toilet block to be replaced with a public beach amenity building accommodating female and male toilets, universal toilet, first aid room, lifeguard store and ground store.

The proposed amenity building will have a rectangular shaped footprint with an orientation along a north south axis with the principal elevation facing east and rear elevation facing west. The replacement building will overlap the existing footprint, extended further south towards the beach.

The finished floor levels of the building proposed is 06.700m, slightly lower than adjacent road level 08.000m. The building will have a flat roof construction, with maximum ridge height of approx. 3.4m above finished floor level. The building will have a contemporary design measuring 23.4m x 6.5m provided a gross floor space of 152m². The proposed materials and finishes will consist of blue engineering brick walls, a mixture of galvanised steel and hardwood doors, Timber framed single glazed windows with external 32 x 100 mm vertical larch boards. The roof will have roof mounted PV Panels which will extending 150mm above the ridge.

Ards and Down Area Plan 2015

Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Ards and Down Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located outside settlement limits on the above Plan and is unzoned. There are no specific policies in the Plan that are relevant to the determination of the application and it directs the decision-maker to the operational policies of the SPPS and the retained PPS21. In terms of designations the site is situated within a coastal context, directly beside Tyrella Beach, and within Strangford and Lecale AONB and just outside Tyrella and Minerstown ASSI and Murlough SAC.

The Strategic Planning Policy Statement (SPPS)

Applications for tourism development will also be assessed in accordance with normal planning criteria such as access arrangements, design, environmental and amenity impacts so as to ensure high quality, safe and otherwise satisfactory forms of development. The safeguarding or enhancement of an existing or planned public access to the coastline or other tourism asset will be a particular consideration when assessing proposals for tourism development.

The SPPS in relation to tourism development seeks to manage the provision of sustainable and high-quality tourism developments in appropriate locations within the built and natural environment. The SPPS aims to;

- safeguard tourism assets from inappropriate development;
- ensure a high standard of quality and design for all tourism development.

- utilise and develop the tourism potential of settlements by facilitating tourism development of an appropriate nature, location and scale;

PPS 21 - Sustainable Development in the Countryside

Policy CTY 1 of PPS 21 permits a range of development considered to be acceptable and will contribute to the aims of sustainable development. In relation to non-residential development tourism development proposal in accordance with PPS 16 are permitted.

PPS 16 – Tourism

TSM 2 Tourist Amenities in the Countryside

Planning permission will be granted for a tourist amenity in the countryside where it is demonstrated that:

- a) it is in association with and requires a site at or close to a particular tourism attraction located in the countryside, or
- b) the type of tourist activity in itself requires a countryside location.

All proposals that include buildings *must* make provision in existing or replacement buildings, where possible.

A proposal for the extension of an existing tourist amenity will be permitted where the scale and nature of the proposal does not harm the rural character, landscape quality or environmental integrity of the local area. Where possible, such proposals will be expected to be accommodated through the conversion, reuse or extension of existing buildings on site, unless it can be demonstrated that this is not a feasible option. In circumstances where the planning authority accepts a new or replacement building it should be sited and designed so as to integrate with the overall development. Any conversion, extension or new building should respect the scale, design and materials of the original building(s) on the site and any historic or architectural interest they may have.

The planning department are content in principle to allow for the replacement of the existing building. It is accepted that the existing toilet block is of a scale and design obsolete to meet modern needs.

The proposed amenity building overlaps with the existing. The use on the site will remain as such respecting the long-established use on this site.

In terms of design principles, the building's linear form follows the line of the existing access way to the beach. The entrances are all located to the east side of the linear

form away from the exposed south westerly winds and addressing the existing car park. This side of the building is 'carved out' to create a sheltered area from wind and rain. This sheltered area facilitates the doors into the toilets, accessible toilets and first aid room. The buildings low ridge height will allow for integration within the dune landscape. The external material of the building is a blue engineering brick responding to the colours in the landscape and particularly the distant views to the Mourne. The material colour will allow the building to sit discretely in the landscape when viewed from a distance.

No unacceptable damage will be caused to the local character and environmental quality or residential amenity of this area. The proposal is not considered to offer any negative residential impact to surrounding neighbours, nor will this proposal cause any overlooking or overshadowing. Due to the building design and existing topographical features this proposal will create no unacceptable overshadowing or overlooking to any neighbouring property nor will it be considered a prominent feature on the landscape.

The proposal complies with the policy contained within TSM2, and is of a nature appraised to the countryside, respects the site context in terms of scale, design and Area Plan.

TSM 7 Criteria for Tourism Development

A proposal for a tourism use, in addition to the other policy provisions of this Statement, will be subject to the following design criteria:

- (a) a movement pattern is provided that, insofar as possible, supports walking and cycling, meets the needs of people whose mobility is impaired, respects existing public rights of way and provides adequate and convenient access to public transport;
- (b) the site layout, building design, associated infrastructure and landscaping arrangements (including flood lighting) are of high quality in accordance with the Department's published guidance and assist the promotion of sustainability and biodiversity;
- (c) appropriate boundary treatment and means of enclosure are provided and any areas of outside storage proposed are screened from public view;
- (d) utilisation of sustainable drainage systems where feasible and practicable to ensure that surface water run-off is managed in a sustainable way;
- (e) is designed to deter crime and promote personal safety;
- (f) development involving public art, where it is linked to a tourism development, needs to be of high quality, to complement the design of associated buildings and to respect the surrounding site context. In addition to the above design criteria, a proposal will also be subject to the following general criteria (g – o).

General Criteria

- (g) it is compatible with surrounding land uses and neither the use or built form will detract from the landscape quality and character of the surrounding area;
- (h) it does not harm the amenities of nearby residents;
- (i) it does not adversely affect features of the natural or built heritage;
- (j) it is capable of dealing with any emission or effluent in accordance with legislative requirements. The safeguarding of water quality through adequate means of sewage disposal is of particular importance and accordingly mains sewerage and water supply services must be utilised where available and practicable;
- (k) access arrangements must be in accordance with the Department's published guidance;
- (l) access to the public road will not prejudice road safety or significantly inconvenience the flow of traffic;
- (m) the existing road network can safely handle any extra vehicular traffic the proposal will generate;
- (n) access onto a protected route for a tourism development in the countryside is in accordance with the amendment to Policy AMP 3 of PPS 3, as set out in Annex 1 of PPS 21.
- (o) it does not extinguish or significantly constrain an existing or planned public access to the coastline or a tourism asset, unless a suitable alternative is provided.

Proposal represents a replacement amenity building in a sensitive landscape, the proposal represents a betterment in planning terms for the site. There are no impacts in terms of visual and landscape, environmental, pedestrian or vehicular access, natural or built heritage or residential amenity. All consultees are content with the proposed development.

TSM 8 - Safeguarding of Tourism Assets

Planning permission will not be granted for development that would in itself or in combination with existing and approved development in the locality have an adverse impact on a tourism asset such as to significantly compromise its tourism value.

The scheme seeks to replace an amenity building (toilet block). It is accepted that the existing toilet block is of a scale and design obsolete to meet modern needs. The use on the site will remain as such respecting the long-established use on this site and respects the site context in terms of scale and design.

PPS 2 - Natural Heritage

Policy NH1 – European and Ramsar Sites – International

The potential impact of this proposal on Special Protection Areas, Special Areas of Conservation and Ramsar sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

As the competent authority for this proposal, Newry, Mourne and Down District Council must itself undertake as much of the assessment process as required under Regulation 43 of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

A stage 1 and stage 2 HRA report was carried out by Tetra Tech on behalf of the applicant (Newry Mourne and Down District Council). The report concluded there will be no likely adverse effects on the integrity of Murlough SAC resulting from the Tyrella Beach amenity building proposal, either alone or in combination with other plans or projects.

Having appraised the report SES consider the Council has fulfilled its obligations under the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended). SES did request that a number of conditions be appended to the decision notice to ensure full compliance with this policy.

NED note that, as per the P1 Form, foul sewage is to be disposed of via a Sewage Treatment Plant. However, no information has been provided in the supporting drawings to indicate the placement of the outfall structure. NED advise that conditions be attached to any planning permission, in order to prevent damage to the adjacent designated habitats. Should the recommendations not be achievable, NED advise that the applicant submit further information, detailing the location of the outfall structure, for full consideration by the Department. This will be dealt with by pre commencement condition.

NH 2- Species Protected by Law apply

The proposal involves the modifications and demolition of a building which could have an impact of Bats and other protect species, as such the provisions of NH 2- Species Protected by Law apply. Upon the request of the planning department, the agent submitted a Biodiversity Checklist and associated Ecological statement, which was forwarded to NIEA NED for their consideration. The PEA has highlighted the existing structure's potential to support a bat roost as such an emergence survey was carried out.

Based on the surveys and materials provided, NED is content that there is sufficient evidence to suggest that no roosts were recorded during the survey effort and therefore no further action is required. Given the mobile nature of bats, there is a possibility of a roost being established in the interim. NED has provided additional

guidance below in the event of a roost being established and discovered from the last survey date and the commencement of works.

The report also indicates that no other protected or priority habitats/species not already associated with the adjacent designated site were recorded.

NH6 – Areas of Outstanding Natural Beauty

The application site is located within an Area of Outstanding Natural Beauty and as such Policy NH6 is applicable. This policy requires development proposals in Areas of Outstanding Natural Beauty (AONB) to be sensitive to the distinctive special character of the area and the quality of their landscape, heritage and wildlife. For the reasons and justification outlined above, it is considered that the proposal complies with Policy NH 6.

PPS 15 – Planning and Flood Risk

FLD1 - Development in Fluvial and coastal Flood Plains - DfI Flood Maps (NI) indicates that the development **does not** lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain. However it is in close proximity to the 1 in 200 year coastal flood plain which has an approximate level of 3.75mOD at this location.

Taking into account the precautionary approach of Revised PPS 15 it is recommended that any new development be allowed an additional freeboard of 600mm. The Flood Hazard Map (NI) shows the predicted 1 in 200 year climate change flood level to be 3.98mOD.

Case officers are content that the finished floor levels 006.700m exceed this required threshold.

PPS 3 - Access, Movement and Parking

DfI Roads were consulted as part of the assessment of this application. In a response dated 24/03/2021, DfI Roads have no objections to the proposal. The planning department are content that existing parking arrangements will remain as per existing and no alteration to access is proposed.

Recommendation:

In summary the scheme is considered to promote high standards in the design, siting and landscaping of development in the countryside, meeting the core objectives of PPS21 and PPS 16.

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: 1923- SU-01, 1923- SU-02, 1923- SU-03, 1923- D-01, 1923-PL-01 Rev A, 1923-PL-02 Rev B, 1923-PL-03 Rev A, 1923-PL-04 Rev A & 0110-Rev-B. HRA Tetra Tech December 2021.

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

3. A Construction Environmental Management Plan (CEMP), agreed with the appointed contractor, must be submitted to the Council for approval at least eight weeks **prior to any construction works commencing**. The CEMP must identify all potential risks to the adjacent SAC and must incorporate all of the pollution prevention measures as detailed in Section 6.1 of the HRA prepared by Tetra Tech, dated December 2021. The approved CEMP shall be adhered to and implemented throughout the construction period in accordance with the approved details, unless otherwise agreed in writing by the Council.

Reason: To protect Northern Ireland priority habitats and species and to ensure implementation of mitigation measures identified within the Biodiversity Assessment and to prevent likely significant effects on protected sites.

4. **No development** shall take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a Consent to discharge has been granted under the terms of the Water (NI) Order 1999.

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

5. A suitable buffer of at least 10m shall be maintained between the location of all demolition/ construction works including refuelling, storage of oil/fuel, concrete mixing areas and washing areas, storage of machinery/material/spoil, etc. and Tyrella and Minerstown ASSI and/or any surface drain on site.

Reason: To protect Northern Ireland priority habitats and species, to ensure implementation of mitigation measures identified within the Biodiversity Assessment and to prevent likely significant effects on protected sites.

6. Construction of the outfall structure, for discharge from the sewage treatment plant, shall take place out with the adjacent designated sites.

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

Case Officer: S. Maguire	Date: 25/11/2022
Appointed Officer: A.McAlarney	Date: 29 November 2022



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2021/2131/F

Date Received: 30th November 2021

Proposal: Residential development comprising 46 no. dwellings (16 no. detached and 30 no. semi-detached) - change of house type in respect of approval P/2011/1067/F

Location: Land adjacent and to the west of Sacred Heart Grammar School 10 Ashgrove Avenue Newry BT34 1PR

1.0 SITE CHARACTERISTICS & AREA CHARACTERISTICS:

- 1.1 The site comprises an L-shaped field fronting onto Ashgrove Avenue to the south. It adjoins the grounds of Sacred Heart Grammar School to the east, with undeveloped land directly west followed by the grounds of Newry High School further west of this, positioned on lower ground. The rear gardens of residential properties (Cloverdale) adjoin the northern boundary of the site. The site is bound to the south and east by palisade fencing, with the remaining boundaries mainly vegetative and the addition of close boarded fencing and mature trees along part of the northern boundary. The site is relatively overgrown at present, with some gorse in parts and the landform varies in level across the site, with higher ground in the central and northern portions of the site and the entire site sitting above the level of Ashgrove Road. There are several existing electricity poles positioned across the site.
- 1.2 The site is within the development limit of Newry City and is zoned for housing development (NY 50,) as identified by the Banbridge, Newry and Mourne Area Plan 2015 and is located in an area of mixed use; mainly comprised of residential and educational buildings, with several schools in the surrounding area with associated open space / playing fields. In terms of the established residential character, there are a range of house types and sizes in the locality, ranging from detached bungalows to semi-detached two storey dwellings.

2.0 SITE HISTORY:

- 2.1 This site formed part of a larger approval for residential development by virtue of **P/2011/1067/F** (erection of residential development comprising 2 No. detached dwellings, 28 No. semi-detached dwellings, 9No. terraced dwellings

(in 3 blocks) and 8 No. apartments (in 4 blocks) - 47 No. units in total, to include 16 No. social housing units,) which was approved on 13th November 2012. (It is noted an earlier outline application for residential development P/2005/3016/O was withdrawn on 3rd December 2012.

- 2.2 A separate application (**P/2014/0293/F**) for the extension of existing approved housing development (P/2011/1067) to incorporate relocated entrance and repositioning of 6 no. dwellings with amendments to house types A, B F and G was refused on 20th October 2015 as the access road would have harmed the amenity of existing residents.
- 2.3 Since the approval of P/2011/1067/F, several applications were made to discharge attached conditions (including LA07/2017/1344/DC, LA07/2017/0311/DC.)
- 2.4 Application **LA07/2017/0808/F** for removal of condition 2 on planning approval P/2011/1067/F which required that 16 of the 47 units approved are provided for social rented housing was refused on 10th November 2017.
- 2.5 Application **LA07/2017/1713/F** was for changes of house type to the two units subject to this application but is was returned as invalid as the permission granted in 2012 was found to have lapsed.
- 2.6 A subsequent application followed in 2018 for two dwellings in the south-eastern corner of the site was approved by virtue of application reference **LA07/2018/0745/F** on 6th July 2018 and as such, remains extant (expiry 5th July 2023.)
- 2.7 In 2019, a CLU(P)D was submitted under **LA07/2019/1054/LDP** for the erection of approved dwellings on sites 9 and 10 of approval P/2011/1067/F, however this was determined by the PAC in a non-determination **appeal (ref 2019/A0108)** whereby it was determined on 3rd March 2020 that the erection of the approved dwellings on sites 9 and 10 in accordance with permission P/2011/1067/F would be lawful on the basis that evidence demonstrates that development had commenced on site before the permission expired on 13th November 2017.
- 2.8 The current application, which is classified as 'major' in line with the Planning (Development Management) Regulations (Northern Ireland) 2015 as the site exceeds 2 hectares in size, is preceded by a Proposal of Application Notes (**LA07/2021/1439/PAN**,) as required by legislation, under, which was deemed as acceptable on 11th February 2022.
- 2.9 **On the basis of the above, it is considered there are two no. extant permissions on the application site; LA07/2018/0745/F and P/2011/1067/F (by virtue of LA07/2019/1054/LDP,) which are material to this assessment.**

3.0 PLANNING POLICIES & MATERIAL CONSIDERATIONS:

- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Banbridge, Newry & Mourne Area Plan 2015 (BNMAP 2015)
- A Planning Strategy for Rural Northern Ireland (Policies DES2 & SP18)

- PPS3 – Access, Movement & Parking
- PPS6 – Planning, Archaeology and the Built Heritage
- PPS7 – Quality Residential Environments – Policy QD 1
- PPS7 Addendum – Safeguarding the Character of Established Residential Areas
- PPS8 – Open Space, Sport and Outdoor Recreation
- PPS12 – Housing in Settlements
- PPS15 (Revised) – Planning and Flood Risk

- DCAN8 – Housing in Existing Urban Areas
- DCAN10 – Environmental Impact Assessment
- DCAN15 – Vehicular Access Standards
- DOE Parking Standards
- 'Creating Places' and 'Living Places' Design Guides

- Planning History
- Third party representations

4.0 CONSULTATIONS:

- 4.1 **DfI Roads (final response 10/11/2022)** – Requested several amendments in 2 no. responses. The final scheme of amendments together with the correspondence from the agent dated 9th March 2022 are considered acceptable, with no further objections and agreement of Roads Determination Drawings (conditions attached.)
- 4.2 **DFI Rivers Agency (04/04/2022)** – No objections in relation to PPS15 (Revised) policy requirements, informatives attached.
- 4.3 **NI Water (24/03/2022)** – Recommend approval, with conditions attached.
- 4.4 **DfC Historic Environment Division (03/02/2022)** – No comments from Historic Buildings. Historic Monuments on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements
- 4.5 **NIE** – No further objections, subject to condition.
- 4.6 **DAERA (NIEA) (23/12/2021)** – Water Management Unit (WMU) advise the proposal has the potential to adversely affect the surface water environment in relation to sewage disposal. However if NIW indicate that the WWTW and associated sewer network is able to accept the additional load , with no adverse

effect on the WWTW or sewer network's ability to comply with their Water Order Consents, then Water Management Unit would have no objection to this aspect of the proposal.

- 4.7 Natural Environment Division (NED) make no specific comments, but refer the Planning Department to the standard environmental guidance and note that this proposal may be subject to the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) (known as the Habitats Regulations).

- 4.8 **Loughs Agency** (20/12/2021) – informatives / guidance attached.

5.0 OBJECTIONS & REPRESENTATIONS:

- 5.1 The application was advertised in the local press on 26th January 2022 and 8 neighbouring properties were notified of the application by letter on 19th January 2022 and 24th January 2022 (amendments.)
- 5.2 It is noted that neighbour notification letters have been returned by Royal Mail from No. 7 Ashgrove Avenue as 'addressee gone away.' Site inspection confirms this property appears to be unoccupied / derelict.
- 5.3 No objections or representations have been received at the time of writing (June 2022) and both the statutory periods have passed (9th February 2022 and 26th January 2022 respectively.)

6.0 CONSIDERATION AND ASSESSMENT:

- 6.1 Full permission is sought for a residential development of 46 houses (16 detached, 30 semi-detached.) The main development road and areas of public open space are identical to that approved under P/2011/1067/F, with the general arrangement similar to this approval, albeit the layout road differs slightly in terms of its positioning and access detailing to dwellings.
- 6.2 The house types have been updated under this application to a modern standard and the number of dwellings has reduced by 1. It is noted that units 45 and 46 are identical to the separate permission under LA07/2018/0745/F. The scheme incorporates in curtilage parking and private amenity space for all dwellings. The proposal incorporates 46 no. two storey dwellings of 7 varying house types as follows:

HTA – 8P4B Detached x 3
HTB – 8P4B Detached x 3
HTB (i) – 8P4B Detached x 3
HTC – 6P3B Semi-detached x 22
HTD – 8P4B Detached x2
HTD (i) – 8P4B Detached x 5
HTF – 6P3B Semi-detached x 8

- 6.3 External schedule of finishes include: black roof tiles, black u PVC rainwater

goods, hardwood painted doors, white / grey uPVC window frames and French doors, smooth off white render to walls and grey stone where detailed.

- 6.4 The layout is largely similar to the previously approved scheme which constitutes a valid 'fall-back' which can be implemented. The primary considerations in this assessment relate to: Plan requirements and the impact of the proposed amendments on road safety, archaeological, natural environment and amenity requirements.
- 6.5 The proposal falls within the threshold of Category 10 (b) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017. The Council has determined through an EIA screening that there would be no likely significant environmental effects and an Environmental Statement is not required.
- 6.6 Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is currently within the remit of the Banbridge / Newry & Mourne Area Plan 2015 as the new council has not yet adopted a local development plan. The site is located within the settlement limit of Newry City on the above Plan and is zoned for housing (NY50 – 2.04 hectares of land east of Newry High School). There are 3 key site requirements for this zoning:

- 1. A minimum of 16 dwellings are to be provided for social housing**

This application relates to land zoning NY50, which constitutes the entire land zoning. Given this is the case and there are no further undeveloped lands within this zoning that could meet the above requirements, it will be necessary to condition that a minimum of 16 dwellings within this scheme are allocated for social housing units in order to satisfy KSR 1/ Plan requirements.

- 2. The minimum density is to be 20 dwellings per hectare and;**

The proposal relates to 46 dwellings on a site of 2.05Ha which equates to 22.4 dwellings per hectare. The application site comprises all lands zoned under NY50, with no additional land parcels to consider. The proposed density is therefore acceptable to the above requirements of the Plan in addition to Planning Control Principle 1 of PPS12 (Increased Housing Density without Town Cramming.)

- 3. The site is to be accessed from Ashgrove Avenue.**

The proposal includes the construction of a new access off Ashgrove Road which is acceptable in principle, to the above Plan requirement and its

acceptability overall will be subject to meeting all other policy requirements, as considered below under PPS7, PPS3 and DCAN15.

- 6.7 Given the above, the proposal is considered to be in general accordance with the Area Plan requirements.**
- 6.8 Under the SPPS (Para 3.8,) the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In practice this means that development that accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise. The proposal is considered against the additional material considerations outlined above:**
- 6.9 SPPS, PPS3, PPS6 PPS7 (QD1, QD2) PPS7 Addendum (LC1,) PPS8, PPS12, PSRNI, Creating Places, DOE Parking Standards,**
- 6.10 Planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment (PPS7 QD1.)
- 6.11 The development respects the surrounding context and is appropriate to the character and topography of the site (giving consideration to the contrast in levels,) in terms of layout, scale, proportions, and appearance of buildings and landscaped and hard surfaced areas. The proposal provides betterment in terms of character, with the removal of terraced dwellings which would not be prevalent in the ERA. The proposed two storey and semi-detached / detached dwelling form with incorporated pitched roof is appropriate in the surrounding context, including educational buildings and varied dwelling form along Ashgrove Avenue.
- 6.12 HED:HM are content that the proposal meets the archaeological requirements of PPS6 and that there is no need to condition further archaeological surveillance which was formerly completed on the site under P/2011/1067/F and discharged under applications LA07/2017/0311/DC and LA07/2017/1344/DC.
- 6.13 Each dwelling has been provided with an area of rear and private amenity space which is within recommended size requirements (not less than 70m2.) It is also recommended that dwellings have a minimum of 10m behind the building line. The layout is broadly in accordance with these standards, though it is noted that some of the dwellings fall marginally short of this 10m. However where this is the case, dwellings back onto public amenity space as part of the overall residential development and there would not therefore be an issue in

relation to residential amenity in terms of privacy / overlooking etc. In this context, the marginal shortfall of rear garden depths are acceptable.

- 6.14 The layout also incorporates areas of public open space, in the form of three amenity areas and the addition of a landscaped area at the site entrance. The amount of open space exceeds the minimal open space requirements set out in PPS8 OS2 (for this site 2050m2.) It is considered that the areas of open space could be better located and proportioned throughout the overall layout to create a better balance, however the layout is largely similar to the extant approval in terms of open space therefore it would be difficult to seek alterations in this regard. The landscaped area at the site entrance will create an attractive outlook to the development along the frontage of Ashgrove Road and help to soften the visual appearance of the new layout road and associated areas of hardstanding throughout the scheme. Subject to the proposed landscaping being appropriately implemented and maintained in perpetuity including through the agreement of a landscape management plan, the proposed landscaped measures are acceptable.
- 6.15 The site is located approximately 1 mile from the City Centre and is within walking distance to bus stops along both Ashgrove Avenue and Belfast Road. Given the proximity to existing neighbourhood facilities including service station / shop on Belfast Road, there should be no requirement to provide local neighbourhood facilities as part of the residential scheme on this site.
- 6.16 The overall layout incorporates a 2m footpath around the perimeter of the road layout, connecting to the existing footways along Ashgrove Road. The proximity of the site to existing public transport facilities will also encourage sustainable modes of transport.
- 6.17 **Each dwelling incorporates in-curtilage parking provision which is acceptable to the requirements as set out in DOE Parking Standards.**
- 6.18 The site is located within an area of mixed character which includes many building forms. The design of the development incorporates traditional features and would be acceptable in the surrounding context in terms of overall form and detailing. The proposal represents a high quality in terms of design, layout and landscaping which exceeds minimal policy requirements as also set out in Policy PCP2 (Good Design) of PPS12.
- 6.19 **In terms of residential amenity, the layout of the dwellings will not harm the amenity of existing or proposed residents and the separation distances between the buildings is sufficient. The relationship of dwellings to the adjacent school grounds is considered acceptable and would not create any concerns in terms of security / amenity.**
- 6.20 Each dwelling overlooks the development road to create natural surveillance and areas of private amenity space are enclosed by secure fencing to ensure

privacy. Areas of open space are overlooked generally by dwellings to deter anti-social activities in these areas.

- 6.21 In addition, in ERA's permission will only be granted for the infilling of vacant sites for new housing, where all of the criteria of QD1 are met and the additional criteria of LC1 are met (PPS7 2nd Addendum):

- a) The proposed density of 22.4 Dwellings per hectare is not significantly higher than that found within the ERA;
- b) The proposed pattern of development is considered to be in keeping with the overall character and environmental quality of the ERA;
- c) All dwellings proposed are to a size not less than those set out in Annex A

6.22 PPS15 (Revised) - Drainage, Flood Risk

- 6.23 The proposal seeks to utilise mains water supply and dispose of surface water and foul sewage via mains sewers.

- 6.24 NI Water advise that public water supply and foul and storm sewers are available with capacity to serve the development. The application site benefits from an Article 17 agreement and the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted, a pre-commencement planning condition in this regard will not be necessary, however a condition requiring measures to be in place prior to occupation will be imposed, in the interest of public health.

- 6.25 DfI Rivers Agency offer no objection to the proposal from a flood risk perspective. The application site benefits from an Article 17 agreement and Schedule 6 consent to discharge for up to 60 dwellings. This additional attenuation provides betterment in terms of drainage measures. There have been no concerns raised by DfI in relation to PPS15 (Revised) remaining policy requirements, with the site located out with the flood plain. A condition will be necessary to ensure the proposed drainage measures are implemented prior to occupation of the dwellings hereby approved in the interest of preventing any flood risk to the site or surrounding lands.

6.26 PPS2 - Natural Heritage

- 6.27 The site does not impact on any known features of ecological interest and DAERA NED has not raised any concerns.

- 6.28 A Habitats Regulation Assessment (HRA) screening has been carried out in line with the Conservation (Natural Habitats, etc) (Amendment) Regulations (Northern Ireland) 2015 and NH1 of PPS2 and it is considered that the proposal will not have a likely significant effect on any other European or National designated sites. General informatives will be included in relation to natural heritage.

- 6.29 Having had regard to the development plan and all other material considerations, the proposal is considered a sustainable development**

that will not cause demonstrable harm to interests of acknowledged importance. It should therefore be approved subject to the conditions below.

7.0 RECOMMENDATION: Approval

7.1 Summary Recommendation:

- Principle of development established, by virtue of extant permissions on the site, which represent a valid fallback position;
- In giving weight to the details approved, the proposed 'change of house type' is considered acceptable;
- No changes to policy or site requirements since the extant approval;
- No third party objections or representations have been received;
- Proposal should be recommended subject to the conditions below being met.

8.0 PLANNING 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 approved shall take place in strict accordance with the following drawings:
 - 01 – House Type A (date stamped 30 Nov 2021)
 - 02 – House Type B (date stamped 30 Nov 2021)
 - 03 – House Type B (i) (date stamped 30 Nov 2021)
 - 04 – House Type C (date stamped 30 Nov 2021)
 - 05 – House Type D (date stamped 30 Nov 2021)
 - 06 – House Type D (i) (date stamped 30 Nov 2021)
 - 08 – House Type F (date stamped 30 Nov 2021)
 - 09 Rev C – Site Plan (date stamped 1st Nov 2022)
 - 11 REV A – Location Map (date stamped 9 March 2022)
 - PSD 10 Rev A (date stamped 1st Nov 2022)
 - 11 – Sections (date stamped 1st Nov 2022)

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

3. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. The Department hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. PSD 10 Rev A Bearing the date stamp 1st November 2022

Reason: To ensure there is a safe and convenient road system within the development and to comply with the provisions of the Private Streets (Northern Ireland) Order 1980.

4. The vehicular accesses, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No. PSD 10 Rev A Bearing the date stamp 1st November 2022 prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

5. No dwellings hereby approved shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of the development.

Reason: To ensure the orderly development of the site and the road works necessary

to provide satisfactory access to each dwelling.

6. No dwellings hereby approved shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking (and turning) of private cars as shown on the approved plan (Drawing No. PSD 10 Rev A (date stamped 1st Nov 2022 and 09 Rev C – Site Plan (date stamped 1st Nov 2022)

Reason: To ensure adequate (in-curtilage) parking in the interests of road safety and the convenience of road users.

7. The Development hereby permitted shall not be commenced until a Street Lighting scheme design has been submitted and approved by the Department for Infrastructure Street Lighting Section.

Reason: Road safety and convenience of traffic and pedestrians.

8. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Infrastructure's Street Lighting Section

Reason: To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians.

9. Provision shall be made and permanently retained, within the approved development, for a minimum of 16 No. social housing units. This minimum requirement shall be delivered by an arrangement with a Registered Social Landlord (RSL) i.e. Northern Ireland Housing Executive (NIHE) or a registered housing association. Full details of the mix opted for, shall be submitted to and agreed by the Council (in consultation with NIHE) prior to the commencement of any of the dwellings hereby approved.

Reason: To meet the Key Site Requirement for Social Housing provision as listed in Zoning NY50 of the Banbridge / Newry and Mourne Area Plan 2015 and ensure its long term delivery.

10. Prior to the commencement of development hereby approved, the applicant shall submit a copy of their agreement from Northern Ireland Electricity (NIE) for the alteration to the existing overhead line in writing to the Council's Planning Authority for approval.

Reason: To maintain the safety clearances required to Northern Ireland Electricity overhead lines.

11. Prior to commencement of the development hereby approved, the method of sewage disposal shall be submitted to and agreed in writing by the Local

Planning Authority. Development shall take place in accordance with the approved details.

Reason: To ensure a practical solution to sewage disposal is possible at this site.

12. The open space and amenity areas as indicated on the drawing No 09 Rev C (Site Plan, date stamped 1st Nov 2022) shall be managed and maintained in accordance with a detailed Landscape Management and Maintenance Plan which shall be submitted to and agreed in writing by the Local Planning Authority prior to the first occupation of any dwelling hereby approved.

Reason: To ensure successful establishment and ongoing management and maintenance (in perpetuity) of the open space and amenity areas in the interests of visual and residential amenity.

13. During the first available planting season after the occupation of the first dwelling, or as otherwise agreed in writing by the Local Planning Authority, landscaping shall be carried out in accordance with the approved details (as shown on Drawing No. 09 Rev C – Site Plan, date stamped 1st Nov 2022) and maintained thereafter.

Reason: In the interest of visual and residential amenity.

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

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

Case Officer Signature:

Date:

Appointed Officer Signature:

Date:



Comhairle Ceantair
an Iúir, Mhúrn
agus an Dúin

**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2022/1034/F

Date Received: 13.06.2022

Proposal: Proposed extension to existing building to include replacement sales area, WC, store and upcycling workshop. Re-roof existing building and build up glass curtain walling with masonry wall and windows and provision of on site parking using existing entrance. Retention of replacement polytunnel and proposed new lean to covered cleaning area. Removal of existing polytunnel and sales area.

Location: 1 Council Road, Kilkeel, BT34 4NP

1. Site Characteristics & Area Characteristics:

- 1.1. The site is within the development limits for Kilkeel as designated within the Banbridge, Newry and Mourne Area Plan 2015. The site is also within an Area of Outstanding Natural Beauty. The building is in use as a care facility. Applicant: Mourne Stimulus.



2. Site History:

- P/1992/1429 - Change of use from former Council Offices to Day Centre for the mentally handicapped - Permission granted - 08.02.1993
P/1995/0412 - Extension to courtroom - Permission granted, 15.05.1995
LA07/2019/0464/F - Remove existing room and extension to existing building

with additional offices and storage rooms and a classroom/ son-rise therapy room
– Permission granted, 08.08.2019

LA07/2020/1749/F - Proposed Clear Perspex Canopy to the outside of part of the existing building. Permission Granted 14.01.2021

3. Planning Policies & Material Considerations:

Banbridge, Newry and Mourne Area Plan 2015.

Strategic Planning Policy Statement for Northern Ireland

PPS 2: Natural Heritage

4. Consultations:

Environmental Health: No objections

NI Water: No objections

DfI Roads: No objections

5. Objections & Representations

14 neighbouring properties were notified of the application. The application was advertised in a local newspaper on 20.07.2022. No representations have been received to date (24-11-22).

6. Consideration and Assessment:

6.1. The proposal involves the extension to existing building and a glass curtain walling with masonry wall and windows, the retention of a polytunnel with a proposed covered area.



6.2. The Planning department had concerns with the proposal including the landscaping and annotation to sales area. the agent amended the

landscaping on the proposal and provided a statement from the charity organisation demonstrating that this wholly ancillary to the use of the site as a day centre.



6.3. Section 45 of the Planning Act (Northern Ireland) 2011 requires the Council to have regard to the local development plan, so far as material to the application, and to any other material considerations. The site is located within the settlement limit of Kilkeel as set out in BNMAP 2015 and within the AONB.

6.4. Paragraph 3.8 of the SPPS states that the guiding principle for Planning Authorities in determining a planning application is that sustainable development should be permitted, having regard to the Development Plan and all other material considerations unless the proposed development will cause demonstrable harm to interest of acknowledged importance.

6.5. The use of this site is long established, whereby it is considered the proposed development will not cause demonstrable harm to any interests of acknowledged importance due to its small scale nature, construction and materials. The polytunnel and extension are modest in size and respective of the scale of existing structures. The design is typical of a polytunnel and the finishes of the extension are complimentary to the existing building. The proposal will not compromise visual or residential amenity and the land use of the site remains as existing.

The use of this site in the wider locality is noted including proximity to other uses including residential properties. A consultation exercise has been undertaken with several bodies as part of the processing of this case, including Environmental Health whereby no objections have been received.

In respect of the sales element the applicant has confirmed the following:

- We have always had a sales area at the garden project.

- The sales area is for occasional use only, we use this area to facilitate plant sales in summer and for collection of wooden crafts or holly wreaths over the Halloween and Christmas periods.

It is considered this can be conditioned accordingly.

6.6. PPS 2: Natural Heritage

6.7. Policy NH6 – Areas of Outstanding Natural Beauty of PPS 2 must also be considered given that the proposal is situated within the Mourne AONB. It lays out the relevant criteria to be met by new development which must be of an appropriate design, size and scale for the locality. It is considered that the proposal complies with Policy NH6 of PPS2.

7. **Recommendation:** Approval

The proposal does not present significant demonstrable harm to the existing use of the site or to the amenity of neighbouring dwellings. In the round, the application is considered acceptable.

8. **Conditions:**

1. The development hereby permitted shall be begun before the expiration of 5 year 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: 01A, 03, 04, 05.

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

3. The development hereby approved shall be used solely as ancillary to the use of the site as a day care as defined by Class D1 (b) as defined by The Planning (Use Classes) Order (Northern Ireland) 2015.

Reason: To define the permission and restrict the use of the site.

4. Prior to the occupation of any part of the development hereby approved a native hedge shall be planted as indicated on the plans hereby approved. This hedge shall be a minimum height of 1.5m above ground level and shall be allowed to grow to a

minimum height of 2m. If any part of this hedgerow dies, it shall be replaced within the same season with a hedge of a similar size.

Reason: To protect the amenity of neighbouring properties.

Informatives:

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

<p>Case Officer Signature: E McArdle</p>
<p>Date: 24/11/2022</p>
<p>Authorised Officer Signature: M Keane</p>
<p>Date: 24-11-22</p>



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

Application Reference: LA07/2022/1157/F

Date Received: 01.08.2022

Proposal: Replacement and widening of existing walkway along Jane's shore to include a new walkway comprised of new hard-standing surface and timber boardwalks, upgraded and replacement stiles, gates, fencing and all associated site works.

Location: Jane's Shore, River Quoile - between A22 Killyleagh Road and A7 Belfast Road, Downpatrick



Site Characteristics & Area Characteristics

The application site comprises an existing walking trail which runs along the south eastern side of a stretch of the Quoile River. It is made up of gravel paths and some portions of board walk and wooden bridges – it stretches from adjacent to the Belfast Road, running behind Quoile Park ending adjacent to Killyleagh Road.

The site is located just to the north west of the settlement limit of Downpatrick and therefore lies within the countryside. The site lies within a Local Landscape Policy Area and lies in close proximity to Strangford AONB, Strangford Lough Ramsar Site and Strangford Lough SPA.



Site History:

No recent or relevant planning history on site.

Planning Policies & Material Considerations:

The proposal will be assessed in relation to the Regional Development Strategy, the Ards and Down Area Plan 2015, the Strategic Planning Policy Statement for Northern Ireland (SPPS), PPS2 Natural Heritage, and PPS8 Open Space, Sport and recreation.

The list of planning policy and guidance documents is not exhaustive. Should any additional document form part of the assessment for the proposal it will be referenced within the report.

Consultations:

NIEA - NED initially responded seeking photos of the trees referred to in the PEA with low and moderate bat roost potential, clarification of whether these trees are to be retained or removed along with other details relating to any proposed planting or invasive species. Upon receipt of this requested info officers are satisfied that no trees are to be removed and therefore there is no harm to protected species.

Rivers Agency - Rivers Agency initially responded seeking information in relation to historical flooding in the vicinity of the site. They also requested a map as detailed above clearly showing the extents of both the Q100 fluvial flood plain and the T200 coastal flood plain in the proposed development. Finally, they sought details on what safety procedures are proposed for the development. Upon receipt of this information – Rivers Agency responded with no further comments on the proposal but recommended informatives to be added to any approval.

SES - Shared Environmental Service (SES) while not being responsible for the Habitats Regulations Assessment (HRA) undertaken for this project on behalf of Newry, Mourne and Down District Council as uploaded to the Northern Ireland Planning Portal on 01/08/2022 have no reason to disagree with its findings.

SES consider that the Council in agreeing the HRA will have fulfilled its obligations under the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

HED - HED (Historic Monuments) has assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPSS and PPS 6 archaeological policy requirements.

Objections & Representations

The application was advertised in the Down Recorder on 17.08.22 which expired on 31.08.22.

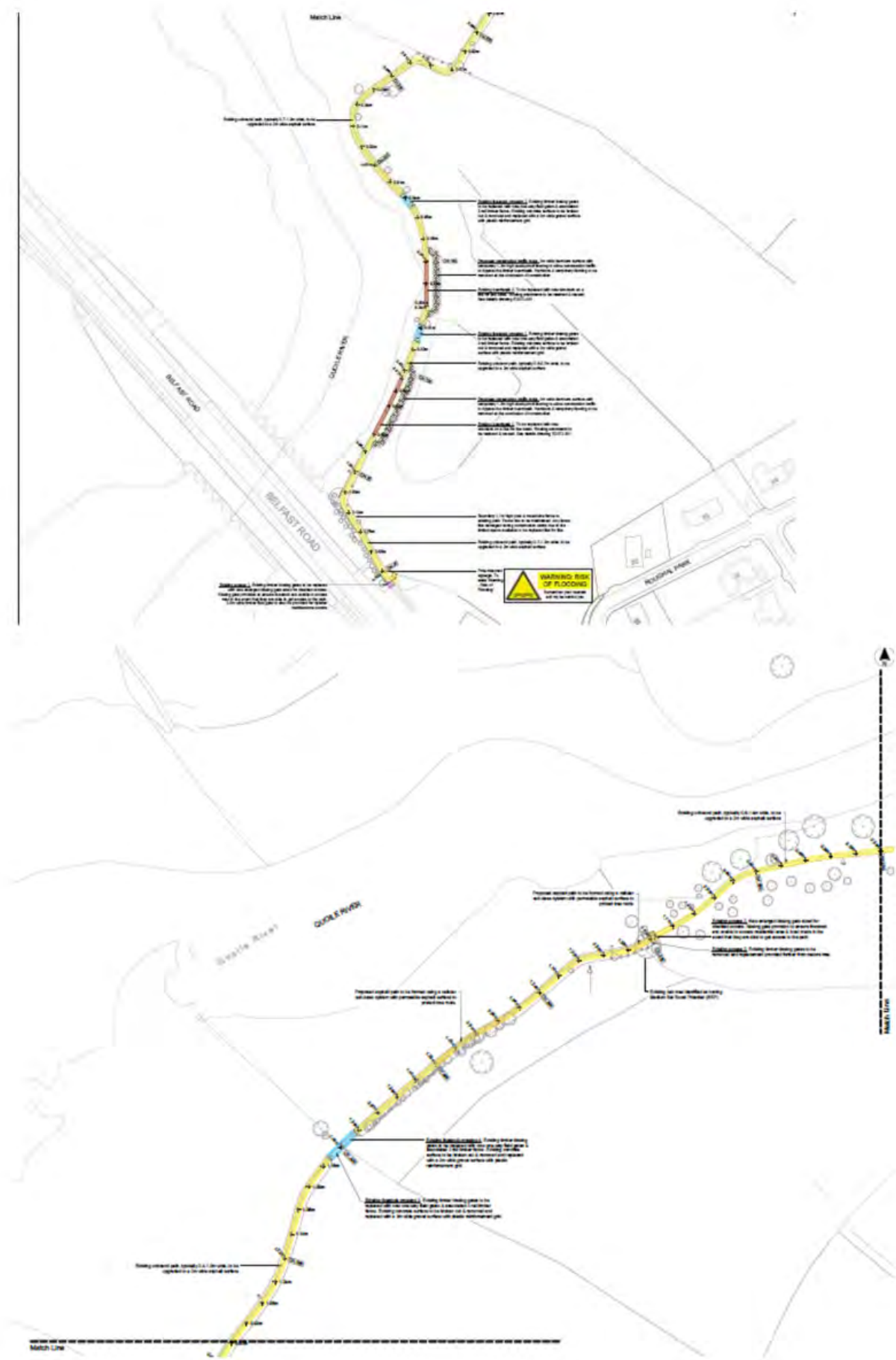
Neighbour notifications were issued on 19.08.22 which expired on 02.09.22.

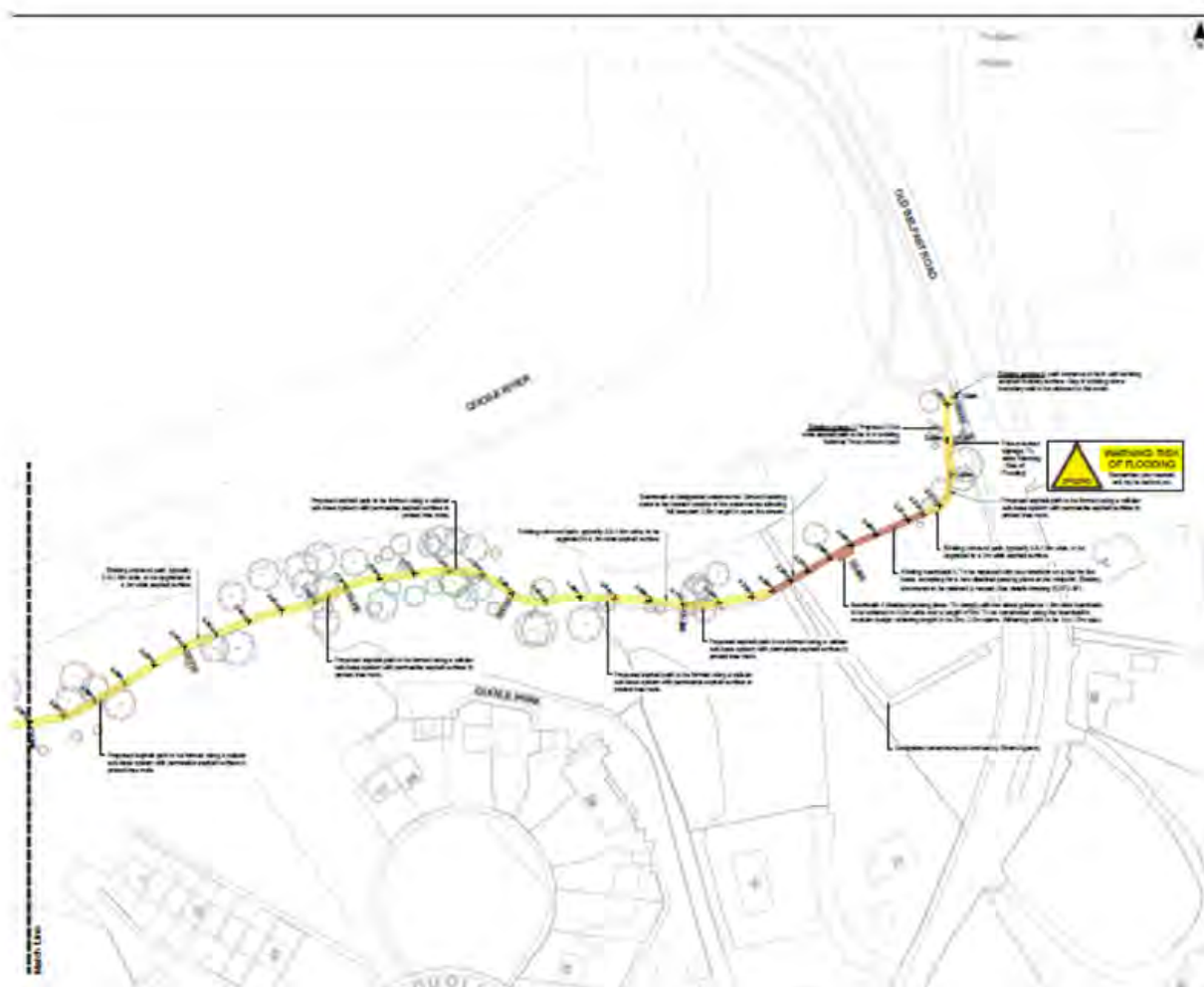
To date, no representations have been received.

Consideration and Assessment:

This proposal seeks permission for the replacement and widening of the existing walkway with a mix of new hard-standing surface and timber boardwalks, upgraded and replacement stiles, gates and fencing. It would follow the existing walkway trail which is already in place. The existing track is fairly uneven in places and ranges from a width of 0.7m to 1.2m. This is to be increased to a 2m wide asphalt trail.

Proposed site layout





The SPPS identifies the regional strategic objective for open space, sport and outdoor recreation. There are several objectives which centre on safeguarding existing open space, ensure new open space is provided where necessary such as within new development, facilitate outdoor recreational activities, ensure new sporting facilities are accessible to all, achieve a high standard of design, siting and landscaping and ensure such proposals are in keeping with the principles of environmental conservation and help sustain and enhance biodiversity.

PPS8, Policy OS3 provides policy and criteria for development for outdoor recreation in the countryside. Given that this application seeks to replace an existing walkway with a new slightly wider walkway along the same route, OS3 is the relevant policy consideration for this proposal.

Officers are satisfied that there would be no adverse impact on features important to nature conservation, archaeology or built heritage, no loss of the best or most versatile land, no harmful impact on visual or adjacent residential amenities and public safety is not impinged upon. The use has already been long established and so the development is considered an acceptable countryside use in terms of nature, scale, extent of the recreational activities proposed. There are no ancillary buildings proposed and the timber walkways will replace similar already existing. The proposal remains accessible without the use of private car.

Officers consider the proposal therefore to be in line with the requirements of Policy OS3 of PPS8.

PPS2 provides policy criteria for consideration of impact on protected sites, protected species, biodiversity and sites of local importance, priority habitats and priority species.

A Preliminary Ecological Appraisal was submitted with the application which NED reviewed. They initially responded seeking photos of the trees referred to in the PEA with low and moderate bat roost potential, clarification of whether these trees are to be retained or removed along with other details relating to any proposed planting or invasive species. The agent responded with the information as requested, confirming that none of the trees were to be removed and that only one of the trees referred to was within the red line. Given that no trees are to be removed, officers are satisfied that there are no threats to protected species in the granting of this permission.

Rivers Agency was consulted given the location of the site upon land liable to flooding. Rivers Agency initially responded seeking information in relation to historical flooding in the vicinity of the site. They also requested a map as detailed above clearly showing the extents of both the Q100 fluvial flood plain and the T200 coastal flood plain in the proposed development. Finally, they sought details on what safety procedures are proposed for the development.

Additional information by way of an Updated FRA was provided directly to Rivers Agency on 29/11/22 via email - given that the Planning Portal is currently not operational, a formal consultation though the portal was not possible. Rivers Agency responded on 30/11/22, again via email with their updated comments in response to the updated FRA. They are satisfied with the additional contained within the updated FRA and have no objections to the proposal. They have recommended Informatives be attached to any approval granted.

The proposed widened and replacement walking track will not be any more visible than the existing walkway which is in place along Jane's Shore. Officers are satisfied that the proposal would not have any demonstrable impact on the residential amenity of any nearby properties. The provision of a replacement walkway along Jane's Shore facilitates a more structured use of the asset within the community and approval is therefore recommended.

Recommendation:

Approval is recommended

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 drawing number and documents to which this decision relates are:
 - 100 Rev A
 - 201 Rev C
 - 202 Rev C
 - 203 Rev C
 - 211 Rev A
 - 301
 - 303 Rev A
 - 304
 - 305
 - Flood Risk Assessment P02 by Design ID Revised on 22.11.22

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

3. Once a contractor has been appointed, a final Construction Environmental Management Plan (CEMP) should be submitted to NIEA Water Management Unit, at least 4 weeks prior to the commencement of construction to ensure effective avoidance and mitigation methodologies have been planned for the protection of the water environment, confirmation shall be provided to the Planning Authority for agreement in writing.

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

Informatives

1. Developers should acquaint themselves of their statutory obligations in respect of watercourses as prescribed in the Drainage (Northern Ireland) Order 1973 and consult the Rivers Agency of the Department of Agriculture accordingly on any related matters.
2. Any proposals in connection with the development, either temporary or permanent which involve interference with any watercourse at the site:- such as diversion, culverting, bridging; or placing any form of structure in any

watercourse, require the written consent of the Rivers Agency. Failure to obtain such consent prior to carrying out such proposals is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.

3. Any proposals in connection with the development, either temporary or permanent which involve additional discharge of storm water to any watercourse require the written consent of the Rivers Agency. Failure to obtain such consent prior to permitting such discharge is an offence under the Drainage Order which may lead to prosecution or statutory action as provided for.
4. If, during the course of developing the site, the developer uncovers a watercourse not previously evident, he should advise the local Rivers Agency office immediately in order that arrangements may be made for investigation and direction in respect of any necessary measures required to deal with the watercourse.

Case Officer: J McMullan

Date: 30.11.22

Appointed Officer: A.McAlarney

Date: 30 November 2022

Thank you Chairperson and good afternoon members,

As the agent and on behalf of Newry Mourne and Down Council, we very much welcome the recommendation to approve this proposal seeking to upgrade this section of walkway along the Quoile River. Our thanks go to the statutory consultees and to the case officer, Jane McMullan, for diligently processing this application.

I trust committee members concur with conclusions of the case officers report and ratify planners' recommendation to approved this proposal.

Thank you.



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**Newry, Mourne
and Down**
District Council

Application Reference: LA07/2022/1224/F

Date Received: 02.08.2022

Proposal: New, Multi-use, non-bitmac, compacted gravel community trail

Location: Corry Wood, Station Road, Castlewellan, Co. Down BT31 (25m south east of 12 Castlehill, Annsborough)



Site Characteristics & Area Characteristics

The red line of the application site comprises small narrow stretch of Corry Wood, running roughly from north to south along an existing trail. It is surrounded by trees and vegetation of varying levels of maturity. There are some adjacent gravel trails nearby, this site will intersect an existing trail.

The site is located just to the south east of the settlement limit of Annsborough and therefore lies within the countryside.

Site History:

LA07/2019/0110/F - Corry Wood, Station Road, Castlewellan
Walking, non-bitmac community trails
Granted - 27.08.2019

Planning Policies & Material Considerations:

The proposal will be assessed in relation to the Regional Development Strategy, the Ards and Down Area Plan 2015, the Strategic Planning Policy Statement for Northern Ireland (SPPS), PPS2 Natural Heritage, and PPS8 Open Space, Sport and recreation.

The list of planning policy and guidance documents is not exhaustive. Should any additional document form part of the assessment for the proposal it will be referenced within the report.

Consultations:

NIEA - Natural Environment Division has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns subject to recommended conditions.

SES - In respect of the above, Shared Environmental Service (SES) has reviewed the HRA provided by the applicant (29/05/2019). SES concur that there is unlikely to be any significant effect on any European designated sites arising from any aspect of this proposal.

HED - HED (Historic Monuments) has assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Objections & Representations

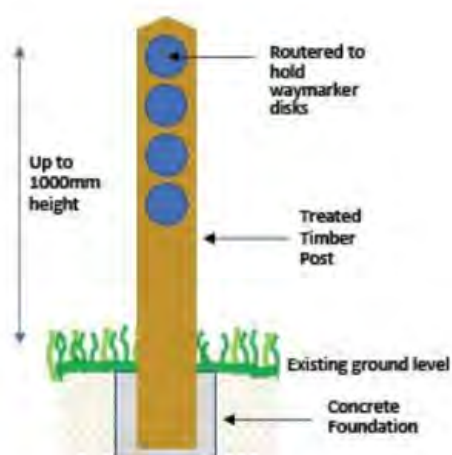
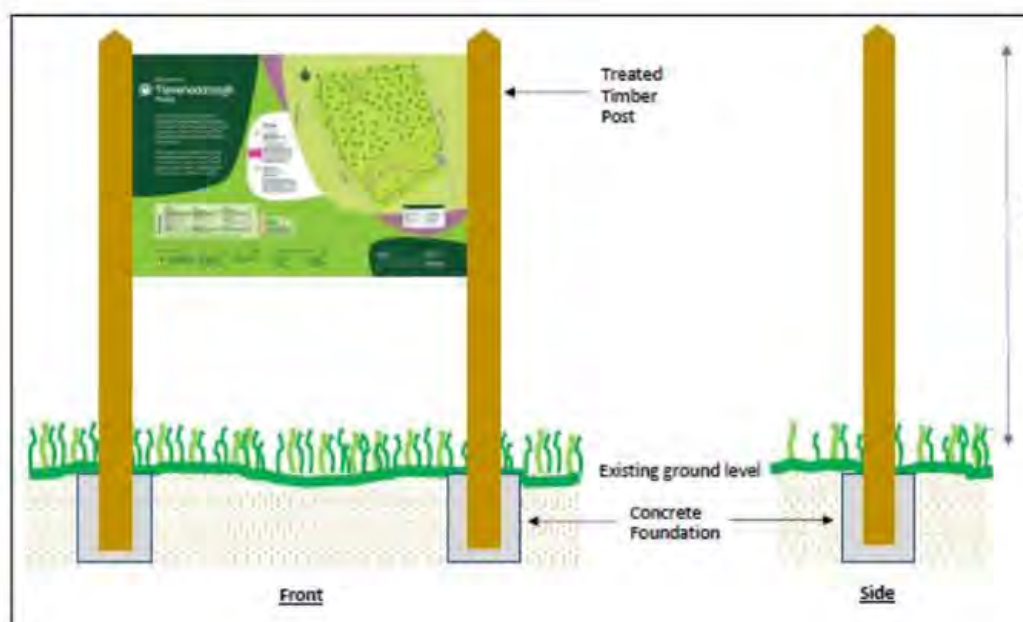
The application was advertised in the Mourne Observer on 24.08.22 which expired on 07.09.22.

Neighbour notifications were not issued given that the site is entirely surrounded by the Corry Wood, with no properties adjoining the site.

To date, no representations have been received.

Consideration and Assessment:

This proposal seeks permission for the creation of a new additional gravel community trail that would extend between from one existing trail and follow an informal track in a southerly direction further into the wood. The track itself would be 2m wide and 650m long. The proposal also includes the installation of directional waymarking posts to match those already in place on the trails installed during phase 1, installation of a visitor counter to record and monitor use, interpretation panel and bench seating (details below).



Typical waymarker post in situ



The SPPS identifies the regional strategic objective for open space, sport and outdoor recreation. There are several objectives which centre on safeguarding existing open space, ensure new open space is provided where necessary such as within new development, facilitate outdoor recreational activities, ensure new sporting facilities are accessible to all, achieve a high standard of design, siting and landscaping and ensure such proposals are in keeping with the principles of environmental conservation and help sustain and enhance biodiversity.

PPS8, Policy OS3 provides policy and criteria for development for outdoor recreation in the countryside. Given that this application seeks to add an additional path within a wooded area already served by paths, OS3 is the relevant policy consideration for this proposal. Officers are satisfied that there would be no adverse impact on features important to nature conservation, archaeology or built heritage, no loss of the best land, no harmful impact on visual or adjacent residential amenities and public safety is not impinged upon. Further demonstrated by the response from NIEA raising no objections to this proposed development.

PPS2 provides policy criteria for consideration of impact on protected sites, protected species, biodiversity and sites of local importance, priority habitats and priority species.

A Preliminary Ecological Appraisal was submitted with the application which NED reviewed. They responded seeking a full badger survey given the presence of a badger set near the site, which status was unknown. The Badger survey was commissioned, and NED were again consulted on this. The badger survey found the set to be inactive. NED therefore have no objections to the proposal subject to recommended conditions.

The impact the proposal would have on the natural environment is limited to the creation of the trail and mitigation measures have been detailed by the applicant. While NED has suggested planning limiting the timing of ground clearance to avoid disturbance of breeding birds, they are otherwise content to recommend approval of the development. They have reviewed the information provided within the PEA and is content that the location of the upgraded desired trail line is unlikely to significantly impact priority habitat. NED would recommend for a slight change to the construction method 25m around the sett to state:

- works to be restricted to the footprint of the existing ballasted track bed, no digging below 10cm/4" and no use of vibration or compactor equipment other than the tracks of the mini-digger. Badgers and their places of refuge are protected at all times under the terms of the Wildlife (Northern Ireland) Order 1985 (as amended).

The proposal will not be visible in views along Station Road considering the path will be set well within Corry Wood surrounded by trees and vegetation; it will only be visible to walkers who have come to use the facility. The proposal would not have any demonstrable impact on the residential amenity of any nearby properties.

The provision of an additional trail community path in Corry Wood facilitates a more structured use of the asset within the community and approval is recommended.

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 drawing number to which this decision relates are: No.1, Trail Infrastructure Layout 1, Counter and Seat Detail-1, Panel Detail-1, Post Detail-1 and the details contained within document titled 'Minor Application and Overall Project overview.' Date stamped 28th June 2022.
Reason: To define the planning permission and for the avoidance of doubt.
3. A pre-construction badger activity survey shall be carried out by a qualified ecologist on the currently disused outlier sett **prior to any works commencing** on site.
Reason – To ensure that badgers are not once again utilising the disused outlier sett on site

Informatives

1. The applicant's attention is drawn to Article 10 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly:

- kill, injure or take any wild animal included in Schedule 5 of this Order, which includes the badger (*Meles meles*);
- damage or destroy, or obstruct access to, any structure or place which badgers use for shelter or protection;
- damage or destroy anything which conceals or protects any such structure;
- disturb a badger while it is occupying a structure or place which it uses for shelter or protection.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

2. If there is evidence of badger on the site, all works should cease immediately, and further advice sought from the Wildlife Team, Northern Ireland Environment Agency, Klondyke Building, Cromac Avenue, Gasworks Business Park, Belfast BT7 2JA. Tel. 028 9056 9558 or 028 9056 9557.

3. The applicant's attention is drawn to Article 4 of the Wildlife (Northern Ireland) Order 1985 (as amended) under which it is an offence to intentionally or recklessly:

- kill, injure or take any wild bird; or
- take, damage or destroy the nest of any wild bird while that nest is in use or being built; or
- at any other time take, damage or destroy the nest of any wild bird included in Schedule A1; or
- obstruct or prevent any wild bird from using its nest; or
- take or destroy an egg of any wild bird; or
- disturb any wild bird while it is building a nest or is in, on or near a nest containing eggs or young; or
- disturb dependent young of such a bird.

Any person who knowingly causes or permits to be done an act which is made unlawful by any of these provisions shall also be guilty of an offence.

4. It is therefore advised that any tree or hedgerow loss or vegetation clearance should be kept to a minimum and removal should not be carried out during the bird breeding season (e.g. between 1st March and 31st August).

Case Officer: J McMullan	Date: 30.11.22
Appointed Officer: A.McAlarney	Date: 30 November 2022

TRACKING ACTION SHEET ARISING FROM PLANNING COMMITTEE MEETINGS

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
		PLANNING MEETING – 1 AUGUST 2018			
LA07/2017/1261/0	Thomas Mageean – proposed dwelling and garage – site abutting 20 Junction Road, Saintfield	Defer application to enable the Council's Legal Advisor to consider issues raised regarding ownership of the application site (Mr Thomas Mageean); the farm business in the name of Mr Bernard Mageean, who takes land in conacre from his brother and this farm business being altered by adding the applicant as an additional member of the business and in so doing have the applicants buildings at No. 20 Junction Road included within the farm business criterion © of CTY10	Annette McAlarney	Legal Advice received. Further information received from the agent.	N
PLANNING COMMITTEE MEETING 26 AUGUST 2020					
LA07/2019/1302/F	Provision of a dwelling with associated parking and amendment to application R/2011/0794/f to remove parking	Defer Planning Application LA07/2019/1302/F to allow the applicant to provide evidence that sight lines can	A McAlarney	Awaiting Consultee response.	N

	area for apartments and replace with shared amenity space - to rear of Nos 65-69 South Promenade, Newcastle.	be secured for this proposal.			
LA07/2019/1087/O	Replacement dwelling and garage - approx. 50m NE of 21 Drakes Bridge Road, Crossgar	Removed from the agenda as agent unable to attend	A McAlarney	Return to Nov Committee	N
PLANNING COMMITTEE MEETING 09 MARCH 2022					
LA07/2020/1567/F	Proposed GAA training pitch, multi-use games area, ball wall along with associated lighting, fencing, ball stops and ground works (amended drawings) - Ballyholland Harps GAA grounds Bettys Hill Road Ballyholland Newry BT34 2PL	Removed from the schedule at the request of Planners – to be brought back to Committee	Patricia Manley		N
LA07/2017/0978/F and LA07/2017/0983/LBC	Demolition of side and rear extension. New rear and side extensions and rear dormer 50 Hilltown Road Bryansford Newcastle	Defer back to officers to see if agreement on design can be reached and delegate decision to officers	Annette McAlarney	Agent to submit revisions following meeting.	N
PLANNING COMMITTEE MEETING 06 APRIL 2022					
LA07/2021/1824/F	Replacement Dwelling House - 34 Ringdufferin Road Downpatrick	Removed from the schedule at the request of Planners	Annette McAlarney	Under consideration by Planning Office	N
PLANNING COMMITTEE MEETING 29 JUNE 2022					

LA07/2019/0868/F	Proposed commercial development comprising ground floor retail unit and first floor creche with associated site works - 107 Camlough Road, Newry, BT35 7EE.	Removed from the schedule at the request of Planners	Pat Rooney		
LA07/2021/2010/O	Farm dwelling and garage - Approx 100m West of 42 Crawfordstown Road Downpatrick	Defer for further consideration by Planners and take back to Planning Committee	Annette McAlarney	Under consideration by Planning Office	
PLANNING COMMITTEE MEETING 27 JULY 2022					
LA07/2021/0987/F	Section 54 application seeking planning permission to vary condition no. 17 of P/2013/0242/F - Lands at Watsons Road/Dorans Hill Newry including lands to the east of Watsons Road	Defer – Dfi to attend Planning Committee Meeting when application is next scheduled	Anthony McKay	On agenda for Special meeting on 08-09-2022 – meeting cancelled and to be reconvened	
LA07/2020/1864/F	Proposed barbers shop / hairdressers - Between no.39 Church Street Rostrevor & no. 2 Water Street Rostrevor	Defer for a site visit	Pat Rooney	Site visit 10-08-2022 – on agenda for meeting on 24-08-2022 – defer to allow for further discussions to take place with the agent, applicant and planners	
PLANNING COMMITTEE MEETING 24 AUGUST 2022					
LA07/2022/0273/F	Change of use application from existing shop (Use Class A1) to proposed Amusement Arcade - 54 Market Street Downpatrick	Removed from the agenda at the request of Planners to consider a late objection received	Anthony McKay		

PLANNING COMMITTEE MEETING 19 OCTOBER 2022					
LA07/2020/1588/F	Development of petrol filling station, 1no. retail unit, 1no. hot food unit, ATM and jet wash with associated access, car parking, landscaping and site works - Former St. Patrick's Primary School site, Ardglass Road Downpatrick	Application removed from the agenda at the request of Planners		Return to Nov Committee	
END					

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1. Live Applications

MONTH 2022/23	NEW APPLICATIONS	LIVE APPLICATIONS	LIVE APPLICATIONS OVER 12 MONTHS
April 2022	142	1,120	235
May 2022	132	1,070	248
June 2022	187	1,074	266
July 2022	129	1,070	265
August 2022	178	1,104	270
September 2022	191	1,130	271
October 2022	164	1,119	263
November 2022	84	1,080	252

2. Live Applications by length of time in system

Month 2022/23	Under 6 months	Between 6 and 12 months	Between 12 and 18 months	Between 18 and 24 months	Over 24 months	Total
April 2022	660	225	89	37	109	1,120
May 2022	609	213	94	43	111	1,070
June 2022	618	190	115	42	109	1,074
July 2022	609	196	112	43	110	1,070
August 2022	626	208	110	46	114	1,104
September 2022	649	210	106	48	117	1,130
October 2022	670	186	95	53	115	1,119
November 2022	640	188	84	53	115	1,080

3. Live applications per Case Officer

Month 2022/23	Average number of Applications per Case Officer
April	69
May	66
June	66

Newry, Mourne & Down District Council – November 2022

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July	70
August	72
September	79
October	78
November	75

4. Decisions issued per month

Month 2022/23	Number of Decisions Issued	Number of Decisions Issued under delegated authority
April	151	139
May	159	152
June	168	162
July	117	110
August	126	126
September	155	148
October	153	142
November	104	96

5. Decisions Issued YTD

Month 2022/23	Number of Decisions Issued	Breakdown of Decisions	
April	151	Approvals (138)	91%
		Refusals (13)	9%
May	310	Approvals (287)	93%
		Refusals (23)	7%
June	478	Approvals (444)	93%
		Refusals (34)	7%
July	595	Approvals (554)	93%
		Refusals (41)	7%
August	721	Approvals (672)	93%
		Refusals (49)	7%
September	876	Approvals (817)	93%
		Refusals (59)	7%
October	1,029	Approvals (949)	92%
		Refusals (80)	8%
November	1,133	Approvals (1,043)	92%
		Refusals (90)	8%

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6. Enforcement Live cases

Month 2022/2023	<=1yr	1-2 yrs	2-3 yrs	3-4 yrs	4-5 yrs	5+yrs	Total
April	214	154	75	74	78	96	691
May	218	144	79	79	75	97	692
June	209	149	73	75	82	96	684
July	207	151	75	68	78	94	673
August	203	157	80	58	80	99	677
September	194	162	82	59	83	100	680
October	225	156	87	58	82	100	708
November	206	154	90	59	81	103	693

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
6 April 2022	10	7	3	1
11 May 2022	9	7	2	5
1 June 2022	9	6	3	3
29 June 2022	6	3	3	1
27 July 2022	3	0	3	0
24 August 2022	17	13	4	4
21 September 2022	13	10	3	4
19 October 2022	9	7	2	5
16 November 2022	14	6	8	5
Totals	90	59	31	28

Newry, Mourne & Down District Council – November 2022

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8. Appeals

Planning Appeal Commission Decisions issued during period 1 November 2022 to 30 November 2022

Area	Number of current appeals	Number of decisions issued	Number of decisions Allowed	Number of decisions Dismissed	Withdrawn
Newry & Mourne	25	2	0	2	-
Down	30	2	1	1	
TOTAL	55	4	1	3	-

Newry, Mourne & Down District Council – November 2022

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Statutory targets monthly update - October 2022 (unvalidated management information)
Newry, Mourne and Down

	Major applications (target of 30 weeks)				Local applications (target of 15 weeks)				Cases concluded (target of 39 weeks)			
	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 30 weeks	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 15 weeks	Number opened	Number brought to conclusion ²	"70%" conclusion time ³	% of cases concluded within 39 weeks
April	0	1	303.8	0.0%	121	147	20.8	34.0%	30	45	101.2	44.4%
May	1	-	0.0	0.0%	124	143	19.6	31.5%	41	39	61.6	59.0%
June	1	-	0.0	0.0%	136	153	15.4	47.7%	27	33	79.5	45.5%
July	2	2	97.9	0.0%	90	98	17.3	37.8%	27	44	163.6	50.0%
August	0	1	11.4	100.0%	160	113	19.4	33.6%	39	21	49.4	66.7%
September	1	1	48.8	0.0%	130	140	19.9	30.0%	33	20	68.8	55.0%
October	2	1	86.2	0.0%	125	133	24.6	25.6%	20	28	102.7	57.1%
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	7	6	76.8	16.7%	886	927	19.0	34.4%	217	230	82.3	52.6%

Source: NI Planning Portal

Notes:

1. DCs, 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

Newry, Mourne & Down District Council – November 2022

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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 appeal is lodged; or a planning appeal is withdrawn. The time taken to conclude an enforcement case is then compared to the 90th percentile of the sequence.

Current Appeals

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AUTHORITY Newry, Mourne and Down

ITEM NO 1
Planning Ref: LA07/2018/1616/ **PAC Ref:** 2020/C002
APPELLANT David Trevor Shields **DEA** The Mournes
LOCATION Approximately 35 Metres South East Of 8 Ballinran New Road
 Kilkeel
 RT34 47N
PROPOSAL Retention of 2no. existing pig sheds with underground slurry tanks, 3no.
 feed silos and gravel yard, and extension to western gable of shed at
 rear of site, with loading bay.
APPEAL TYPE DC- EIA Determination - app ES is required
Appeal Procedure Formal Hearing **Date Appeal Lodged** 11/08/2020
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 2
Planning Ref: LA07/2020/1568/ **PAC Ref:** 2021/A0009
APPELLANT Mr & Mrs Pat Hayes **DEA** Slieve Croob
LOCATION To The Rear And Immediately South West Of 62 Crawfordstown
 Road
 Drumaness
PROPOSAL Retrospective extension to domestic curtilage, construction of garden
 feature and greenhouse along with all associates hard and soft
 landscaping.
APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure **Date Appeal Lodged** 18/05/2021
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

228

ITEM NO	3		
Planning Ref:	LA07/2020/1360/	PAC Ref:	2021/A0022
APPELLANT	Charlie Magennis	DEA	The Mournes
LOCATION	Base And Morelli's 71-73 Central Promenade Newcastle		
PROPOSAL	Proposed erection of temporary retractable awning and lightweight structure		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	09/06/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	4		
Planning Ref:	LA07/2020/1077/	PAC Ref:	2021/A0031
APPELLANT	Mr Eammon McAteer	DEA	Crotlieve
LOCATION	12 Cullion Road Mayobridge BT34 2HJ		
PROPOSAL	Improvements to existing lorry parking area, erection of a building for the maintenance of lorries and collection and compacting of cardboard, polystyrene for transfer to re cycling centers		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	25/05/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	5	PAC Ref:	2021/A0033
Planning Ref:	LA07/2021/0096/	DEA	Rowallane
APPELLANT	Mr Bailey		
LOCATION	18a Drumgivan Road Drumgivan Ballinahinch		
PROPOSAL	Extension and renovation of Schoolhouse to domestic dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	25/05/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	6	PAC Ref:	2021/A0034
Planning Ref:	LA07/2020/0770/	DEA	Newry
APPELLANT	Jamie McDonald		
LOCATION	Lands Approx. 40m NE Of 29 Clontigora Hill Newry		
PROPOSAL	Infill dwelling and garage, associated landscaping and site works		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	25/05/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	7		
Planning Ref:	LA07/2020/0936/	PAC Ref:	2021/A0092
APPELLANT	Mr James Hughes	DEA	Crotlieve
LOCATION	Mountview Business Park Rathfriland Road		
PROPOSAL	Newry Replacement free standing vertical sign with logos to both faces		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	17/08/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	8		
Planning Ref:	LA07/2021/0790/	PAC Ref:	2021/A0107
APPELLANT	Mr & Mrs Wayne Garrett	DEA	Rowallane
LOCATION	135m South Of 58 Carsonstown Road Saintfield		
PROPOSAL	Single dwelling and garage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	14/09/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	9		
Planning Ref:	LA07/2021/1088/	PAC Ref:	2021/A0113
APPELLANT	MPG Wind	DEA	Crotlieve
LOCATION	Lands Approximately 230m To The North West Of 15 Barnmeen Road		
PROPOSAL	Bathfriland Proposed retention of existing turbine tower, replacement of existing turbine nacelle and blades with new nacelle and blades. The replacement nacelle and blades will create a hub height of 40m with a maximum rotor diameter of 31m and tip height of 55.5m (up to 250kW)		
APPEAL TYPE	DC - Non Determination of a Planning Application		
Appeal Procedure	Written Reps	Date Appeal Lodged	09/11/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	10		
Planning Ref:	LA07/2018/0932/	PAC Ref:	2021/A0116
APPELLANT	Dynes Bros	DEA	Downpatrick
LOCATION	No's 12 And 14 St Patrick's Way And Lands Between 12 And 14 St Patrick's Way Ballyhornan Road Ballyalton Downpatrick (amended Address)		
PROPOSAL	Detached dwelling on lands between 12 and 14 St Patrick's Way and amendments to existing dwellings 12 and 14 to provide additional lands, landscaping and amendments to previously approved parking arrangements. (Amended Proposal)		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	13/10/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	11		
Planning Ref:	LA07/2019/1206/	PAC Ref:	2021/A0118
APPELLANT	Kilbroney Timberframe Limited	DEA	Newry
LOCATION	Land At 76 Canal Street Newry And Lands 15 Metres North Of 31-43 Catherine Street		
PROPOSAL	Proposed 8 dwellings (2 blocks of four terrace dwellings)		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	13/10/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	12		
Planning Ref:	LA07/2020/0921/	PAC Ref:	2021/A0122
APPELLANT	Alan Humphries	DEA	Downpatrick
LOCATION	Adjacent To 127a Shore Road Kilclief		
PROPOSAL	Dwelling and garage		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	18/10/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	13		
Planning Ref:	LA07/2021/0092/	PAC Ref:	2021/A0137
APPELLANT	Mr Paul Henry Murney	DEA	Crotlieve
LOCATION	39 Chapel Hill Road Mayobridge		
PROPOSAL	Retention of agricultural shed used for the wintering of animals and the storage of fodder and farm machinery		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	04/11/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	14		
Planning Ref:	LA07/2021/0174/	PAC Ref:	2021/A0138
APPELLANT	Mary Boal	DEA	Crotlieve
LOCATION	To The Rear Of No. 56 Milltown Street Burren		
PROPOSAL	Warrenpoint Proposed dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	04/11/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	15		
Planning Ref:	LA07/2021/1066/	PAC Ref:	2021/A0141
APPELLANT	Sean & Linda Tumely	DEA	Slieve Croob
LOCATION	Adjacent To And North West Of 150A Vianstown Road Downpatrick		
PROPOSAL	Single Dwelling House		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	10/11/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	16		
Planning Ref:	LA07/2020/0518/	PAC Ref:	2021/A0143
APPELLANT	Mr Alan Milne	DEA	Slieve Gullion
LOCATION	100m North Of 245 Armagh Road Tullyhappy		
PROPOSAL	Newry Retention of replacement agricultural store		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	17/11/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	17		
Planning Ref:	LA07/2021/1061/	PAC Ref:	2021/A0150
APPELLANT	Mr Dermot O'Hare	DEA	Crotlieve
LOCATION	Lands Between 17A And 17B Hilltown Road Mayobridge RT34 2A.1		
PROPOSAL	Proposed dwelling and garage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	02/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	18		
Planning Ref:	LA07/2021/0502/	PAC Ref:	2021/A0156
APPELLANT	Mr & Mrs J Wade	DEA	Rowallane
LOCATION	71 Lisburn Road Lisdalga Saintfield		
PROPOSAL	Replacement dwelling and conversion of existing dwelling to domestic store.		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	01/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	19		
Planning Ref:	LA07/2019/1262/	PAC Ref:	2021/A0158
APPELLANT	SJ Anderson & Sons	DEA	Rowallane
LOCATION	11 Lisburn Road Ballynahinch		
PROPOSAL	Replacement of existing dwelling with 4 townhouses and associated site works		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	03/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	20		
Planning Ref:	LA07/2021/0639/	PAC Ref:	2021/A0161
APPELLANT	Declan Clarke	DEA	Newry
LOCATION	Located Upon Lands Approximately 50 Meters North Of No 33 Ferryhill Road Clontarf		
PROPOSAL	Proposed Erection of outline rural detached infill dwelling house and detached domestic garage, site works and associated landscaping		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	14/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO 21
Planning Ref: LA07/2021/0578/ **PAC Ref:** 2021/A0162
APPELLANT Mr Brendan Quinn **DEA** Slieve Gullion
LOCATION Located Upon Lands Approximately 40m South East Of No. 20 Creamery Road
PROPOSAL Carran Proposed erection of a rural infill detached dwelling house together with detached domestic garage, site works and associated landscaping

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps **Date Appeal Lodged** 14/12/2021
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

ITEM NO 22
Planning Ref: LA07/2021/0361/ **PAC Ref:** 2021/A0163
APPELLANT Gerard Murphy **DEA** Slieve Gullion
LOCATION Approximately 84 Metres North East Of No. 2 Milltown Road Lislea
PROPOSAL Co. Armagh Proposed erection of an agricultural storage building and associated site works

APPEAL TYPE DC- Refusal of Planning Permission
Appeal Procedure Written Reps **Date Appeal Lodged** 14/12/2021
Date of Hearing
Date Statement of Case Due for Hearing
Date Statement of Case Due - Written Representation
Date of Site Visit

Current Appeals

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ITEM NO	23		
Planning Ref:	LA07/2020/1025/	PAC Ref:	2021/A0168
APPELLANT	Patrick Fitzsimons	DEA	Downpatrick
LOCATION	Adjacent To And North West Of 59 Annacloy Road Downpatrick BT30 9AQ		
PROPOSAL	Proposed dwelling accessed by existing entrance and proposed new entrance for 59 Annacloy Road, Downpatrick		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	14/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	24		
Planning Ref:	LA07/2021/0066/	PAC Ref:	2021/A0169
APPELLANT	Mr Peter Connolly	DEA	Newry
LOCATION	3 River Street Newry BT34 1DQ		
PROPOSAL	Conversion of commercial property to four number self contained one bedroom apartments		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	15/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	25		
Planning Ref:	LA07/2021/0408/	PAC Ref:	2021/A0177
APPELLANT	Irwin Carr Consulting Ltd	DEA	Crotlieve
LOCATION	Lands Located To The Rear Of No. 7 Osbourne Promenade (together With Rear Access And Parking From Great Georges Street South)		
PROPOSAL	Proposed Retention of Existing Office/Storage Building to be used in conjunction with No. 7 Osbourne Promenade (amended description)		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	20/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	26		
Planning Ref:	LA07/2020/0982/	PAC Ref:	2021/A0178
APPELLANT	Mr Noel McKevitt	DEA	Newry
LOCATION	Lands Approximately 55 Metres North West Of No.5 Upper Fathom Road		
PROPOSAL	Fathom Lower: Proposed erection of 2 No. Rural infill detached dwelling houses and detached garages, rural entrance pillars and gates, additional landscaping and associated site works		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	20/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	27	PAC Ref:	2021/A0179
Planning Ref:	LA07/2021/0598/	DEA	Slieve Croob
APPELLANT	Ryan Kelly		
LOCATION	Adjacent To 104 Downpatrick Road Ballynahinch		
PROPOSAL	Farm dwelling, detached garage and site works		

APPEAL TYPE	DC- Refusal of Planning Permission	Date Appeal Lodged	22/12/2021
Appeal Procedure			
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	28	PAC Ref:	2021/A0182
Planning Ref:	LA07/2021/0246/	DEA	The Mournes
APPELLANT	Gerard Milligan		
LOCATION	Immediately North-west Of 102 Tullybrannigan Road Newcastle		
PROPOSAL	Proposed 3no. self contained tourism units		

APPEAL TYPE	DC- Refusal of Planning Permission	Date Appeal Lodged	05/01/2022
Appeal Procedure			
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	29		
Planning Ref:	LA07/2021/0428/	PAC Ref:	2021/A0185
APPELLANT	Michael Berrill	DEA	Newry
LOCATION	Casa Bella Interiors 4 The Mall Newry		
PROPOSAL	Replacement of existing shop front sign		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	06/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	30		
Planning Ref:	LA07/2021/1747/	PAC Ref:	2021/A0186
APPELLANT	Walter Watson	DEA	Slieve Croob
LOCATION	Site Between 121 And 121a Ballylough Road Castlewellan		
PROPOSAL	New Infill Dwelling (CTY 8)		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	10/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

242

ITEM NO	31		
Planning Ref:	LA07/2021/0339/	PAC Ref:	2021/A0192
APPELLANT	Mr Daniel Clarke	DEA	Rowallane
LOCATION	Lands Approx. 30m To North East Of No 16 Ringhaddy Road Killinchy		
PROPOSAL	Proposed site for dwelling in accordance with Policy CTY8 of PPS21		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	14/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	32		
Planning Ref:	LA07/2020/1796/	PAC Ref:	2021/A0196
APPELLANT	Joseph McKeivitt	DEA	Crotlieve
LOCATION	Immediately North West Of No. 4 Aughtnamoira Road Warrenpoint BT34 2PR		
PROPOSAL	Erection of dwelling (amended address)		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	14/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	33		
Planning Ref:	LA07/2021/1407/	PAC Ref:	2021/A0197
APPELLANT	Mr & Mrs Orr	DEA	Rowallane
LOCATION	Adjacent To 60 Carsonstown Road Carsonstown		
PROPOSAL	Saintfield Erection of Replacement Dwelling and Retention of existing building as outbuilding		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	18/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	34		
Planning Ref:	LA07/2021/0956/	PAC Ref:	2021/A0200
APPELLANT	David Og Downey	DEA	Newry
LOCATION	101m North West Of No.60 Lower Foughill Road Jonesborough		
PROPOSAL	Newry Proposed off site replacement dwelling and associated site works		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Informal Hearing	Date Appeal Lodged	24/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	35		
Planning Ref:	LA07/2021/0620/	PAC Ref:	2021/A0203
APPELLANT	Mr Martin Russell	DEA	Slieve Croob
LOCATION	Magheralagan Corn Mill Opposite 68 Drumcullan Road Downpatrick		
PROPOSAL	Restoration and Conversion of Magheralagan Corn Mill to single dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	25/01/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	36		
Planning Ref:	LA07/2021/1079/	PAC Ref:	2021/A0211
APPELLANT	Bridgeen King	DEA	Slieve Croob
LOCATION	7 Woodgrove Castlewellan		
PROPOSAL	Use of building as salon for home-working (retrospective)		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	07/02/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

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ITEM NO	37		
Planning Ref:	LA07/2021/1123/	PAC Ref:	2021/A0225
APPELLANT	Mr & Mrs Malone	DEA	Slieve Croob
LOCATION	Lands Approx. 50m South East Of 55 Leitrim Road Castlewellan		
PROPOSAL	Proposed Site for erection of 1no detached off site Replacement Dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	21/02/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	38		
Planning Ref:	LA07/2021/1188/	PAC Ref:	2021/A0229
APPELLANT	Frank Clerkin	DEA	Crotlieve
LOCATION	170 Metres North West Of 107 Kilbroney Road Rostrevor RT34 3RW		
PROPOSAL	Proposed extension to existing farm yard		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	25/02/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

246

ITEM NO	39		
Planning Ref:	LA07/2021/1091/	PAC Ref:	2021A0234
APPELLANT	Mr Garth & Mrs Kathryn Belshaw	DEA	Rowallane
LOCATION	Land Adjoining 26 Windmill Avenue Ballynahinch		
PROPOSAL	Single Dwelling House		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	14/03/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	40		
Planning Ref:	LA07/2021/0251/	PAC Ref:	2021/A0235
APPELLANT	Robin Dalzell	DEA	The Mournes
LOCATION	Site Adjacent To 57 Castlewellan Road Newcastle		
PROPOSAL	Single Dwelling		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	14/03/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals**247**

ITEM NO	41	PAC Ref:	2021/A0239
Planning Ref:	LA07/2021/0368/	DEA	Downpatrick
APPELLANT	Mr & Mrs L Venney		
LOCATION	Lands Contained Between 1 Minerstown Road And 55 Rossglass Road		
PROPOSAL	Downpatrick 2 no. Infill dwellings and detached garages		

APPEAL TYPE	DC- Refusal of Planning Permission	Date Appeal Lodged	15/03/2022
Appeal Procedure			
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	42	PAC Ref:	2021/A0244
Planning Ref:	LA07/2021/1640/	DEA	Rowallane
APPELLANT	Luke Rea & Claire McIlwaine		
LOCATION	Lands Adjacent To And 35m West Of 73 Lisbane Road Ballynahinch		
PROPOSAL	Proposed Site for a Single Infill Dwelling		

APPEAL TYPE	DC- Refusal of Planning Permission	Date Appeal Lodged	21/03/2022
Appeal Procedure			
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals**248**

ITEM NO	43		
Planning Ref:	LA07/2020/1906/	PAC Ref:	2021/E0010
APPELLANT	Eamonn McAteer McAteer Recyclin	DEA	Crotlieve
LOCATION	Lands At And To The Rear Of No. 12 Cullion Road Mayobridge		
PROPOSAL	Newry Existing area, yard and access, for storage, parking and circulation of vehicles associated with McAteer Recycling Ltd, and all associated site works and infrastructure		
APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure		Date Appeal Lodged	10/06/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	44		
Planning Ref:	LA07/2021/0778/	PAC Ref:	2021/E0057
APPELLANT	Norman Graham	DEA	Rowallane
LOCATION	50m North To Rear Of 46 Riverside Road Ballynahinch		
PROPOSAL	Erection and use of two agricultural sheds for agricultural uses for storing farm machinery and equipment for active farm and provide lambing/calving, TB Testing onsite facilities with crush		
APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure	Written Reps	Date Appeal Lodged	21/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

249

ITEM NO	45		
Planning Ref:	LA07/2021/0780/	PAC Ref:	2021/E0058
APPELLANT	Norman Graham	DEA	Rowallane
LOCATION	50m North To Rear Of 46 Riverside Road Ballynahinch		
PROPOSAL	Erection and Use of Dwelling House		
APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure	Written Reps	Date Appeal Lodged	22/12/2021
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	46		
Planning Ref:	LA07/2021/1361/	PAC Ref:	2021/E0069 LDC
APPELLANT	Mr Christopher Skelly	DEA	Slieve Croob
LOCATION	Land Adjacent And NW Of 50 Flush Road Ballyward Castlewella		
PROPOSAL	The formation of a laneway to the site and the digging of foundations		

APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure		Date Appeal Lodged	22/02/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

250

ITEM NO	47		
Planning Ref:	LA07/2021/0990/	PAC Ref:	2021/E0074 LDC
APPELLANT	Mr Brendan Starkey	DEA	Downpatrick
LOCATION	Approx 90m East Of 27 Bright Road Downpatrick		
PROPOSAL	The digging of foundations, the lying of concrete and the construction of a portion of block-work		
APPEAL TYPE	DC- Refusal of CLUD		
Appeal Procedure		Date Appeal Lodged	16/03/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	48		
Planning Ref:	LA07/2021/1781/	PAC Ref:	2022/A0019
APPELLANT	Trevor Lindsay	DEA	Rowallane
LOCATION	Between 5 & 7 The Nursery Killyleagh		
PROPOSAL	Site for Dwelling and Garage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	26/04/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

251

ITEM NO	49		
Planning Ref:	LA07/2022/0021/	PAC Ref:	2022/A0020
APPELLANT	Terence O'Hanlon	DEA	The Mournes
LOCATION	161 Bryansford Road Cross Kilcoo		
PROPOSAL	Retrospective application for Garage building, also accommodating Home office and Gymnasium on hardstanding on increased Dwelling Curtilage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	27/04/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	50		
Planning Ref:	LA07/2021/1011/	PAC Ref:	2022/A0024
APPELLANT	Gary Gordon	DEA	The Mournes
LOCATION	14 Church Road Kilkeel County Down		
PROPOSAL	Proposal for the erection of a shed for equestrian use and retention of extension to domestic curtilage		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure	Written Reps	Date Appeal Lodged	03/05/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

252

ITEM NO	51	PAC Ref:	2022/A0028
Planning Ref:	LA07/2019/1084/	DEA	Slieve Gullion
APPELLANT	CP & A Supplies Ltd		
LOCATION	110m South West Of No. 1 Carrickcroppan Road Camlough		
PROPOSAL	RT35 7HA Extension to the existing commercial yard		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	06/05/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	52	PAC Ref:	2022/A0029
Planning Ref:	LA07/2021/1982/	DEA	Slieve Croob
APPELLANT	Mr Trevor Nelson		
LOCATION	70m SE Of 5 Coach Lane Cottage Road Seaford		
PROPOSAL	New agricultural shed		

APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	09/05/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

253

ITEM NO	53		
Planning Ref:	LA07/2021/1041/	PAC Ref:	2022/A0046
APPELLANT	Mr & Mrs Anthony & Mary O'Prey	DEA	Slieve Croob
LOCATION	To The Rear Of 9 Wateresk Road Dundrum		
PROPOSAL	Dwelling and detached garage with associated site works, including improvements to existing vehicular access		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	17/06/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

ITEM NO	54		
Planning Ref:	LA07/2021/2178/	PAC Ref:	2022/A0072
APPELLANT	Ms Kerry Boyle	DEA	Crotlieve
LOCATION	3 Forest Hills Newry BT34 2FL		
PROPOSAL			
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	05/07/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			

Current Appeals

254

ITEM NO	55		
Planning Ref:	LA07/2021/1051/	PAC Ref:	2022/A0087
APPELLANT	Jimmy And Brendan Quigley	DEA	Slieve Gullion
LOCATION	30m West Of 210 Concession Road Armagh		
PROPOSAL	Proposed 2 no. infill dwellings		
APPEAL TYPE	DC- Refusal of Planning Permission		
Appeal Procedure		Date Appeal Lodged	16/11/2022
Date of Hearing			
Date Statement of Case Due for Hearing			
Date Statement of Case Due - Written Representation			
Date of Site Visit			



Appeal Decision

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

255

Appeal Reference:	2021/A0163
Appeal by:	Mr Gerard Murphy
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of an agricultural storage building and associated site works
Location:	Approximately 84m north east of 2 Milltown Road, Lislea, Newry
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/0361/F
Procedure:	Written representations and Commissioner's site visit on 3 rd November 2022
Decision by:	Commissioner Gareth Kerr, dated 14 th November 2022

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal site is located to the south eastern side of Hall Road, just to the east of its junction with Milltown Road. It comprises part of a larger agricultural field to the rear of some older sheds at the roadside. It was originally submitted that these buildings were associated with and used by the appellant's farm business. A third party who lives opposite the appeal site on Hall Road objected to the proposal at both application and appeal stage and challenged the land ownership information submitted. Title deeds were submitted to show that the existing buildings and a portion of the site originally outlined in red are in fact owned by the third party and that they have not been used by the appellant in connection with his farm business.
3. I do not accept the appellant's contention that these buildings are not fit for purpose. However, as the final position of the appellant, as set out in his rebuttal statement, is to accept that he does not own the existing buildings, their condition is not a determining factor in the appeal. In the appellant's rebuttal, he apologises for some aspects of the planning application submission as he was unaware of the registered status of some of the lands following the death of his father. He provided an amended drawing No. PL-01 A with his rebuttal statement with a reduction in the red line to exclude the portion of land adjacent to the sheds which is owned by the third party and a slight increase along the access lane which is owned by the appellant. It is poor practice to submit such information at appeal stage, and especially with rebuttal evidence when there is no further opportunity for other parties to comment on it. It raises a number of issues in respect of the land

ownership certificate, admissibility of information and potential prejudice. Therefore, the other parties were invited to comment on the revised drawing. No further comments were received from the third party.

4. Under Section 42 of the Planning Act (Northern Ireland) 2011 (the Act), a planning authority must not entertain an application for planning permission in relation to any land unless it is accompanied by one or other of four certificates. The application was accompanied by Certificate A which stated that the appellant was in actual possession of every part of the land to which the application relates. When the land ownership was challenged by the third party, the Council sought further information about the farm business and land ownership from the appellant, but states that none was received. The appellant states that a response to the Council's queries was provided on 13th July 2021. The Council states that no such information was received. I note that the above date was a public holiday in Northern Ireland. In any case, the effect was that the information was not before the Council and when refusing planning permission, it cited failure to provide information as one of the refusal reasons.
5. The appellant provided copies of the information he claimed to have submitted on 13th July 2021 as an appendix to his Statement of Case in the appeal. The Council argued that this information should be ruled inadmissible under Section 59 of the Act. Section 59 states that a party to the proceedings is not to raise any matter which was not before the Council at the time the decision appealed against was made unless that party can demonstrate that the matter could not have been raised before that time, or that its not being raised before that time was a consequence of exceptional circumstances.
6. Land ownership and the particulars of the farm business were evidently matters which were before the Council during the processing of the application since it requested further information on them. Therefore, I am not persuaded that they constitute a new matter as set out under Section 59. It is in the interest of all parties to the appeal that the land ownership situation be clarified and the evidence now provided helps to do so. Furthermore, as it was received with the appellant's statement of case, the Council had the opportunity, if it so wished, to comment on it at rebuttal stage. Therefore, the Council has not been prejudiced by receipt of the information which it chose not to comment on. As the information requested by the Council has now been provided and is admissible in the appeal, this overcomes the Council's sixth refusal reason based on lack of information.
7. In considering whether the amended red line is admissible, it appears to me that the reduction accords with the Land Registry information submitted by both the appellant and the third party. The reduced site no longer includes land owned by the third party. The small increase in the red line along the existing laneway, which is owned by the appellant, is not material. With the exception of the northern part of the laneway which is in the ownership of the road authority, all of the site is within the control of the appellant. This addresses the challenge made to the land ownership certificate by the third party.
8. The purpose of the provisions set out in Section 42 of the Act is to ensure that the interests of landowners are protected. The fact that the red line has been changed in response to concerns raised by the third party indicates that his interests have

been taken account of. It is in his interest to proceed based on the amended drawing which no longer claims ownership of any land belonging to him. Notwithstanding that he chose not to comment on this specific drawing, as he has been able to comment on the issue during both the application and the appeal, I consider that he would not be prejudiced by the acceptance of this drawing in the appeal. As the issue has been aired and the red line reduced in response to the concerns raised, I consider that the purpose of the provisions of Section 42 is not impaired and the drawing is admissible. I will consider the other matters raised by the third party including the impact on his septic tank later in this decision.

Reasons

9. The main issues in this appeal are:
 - the principle of the development in the countryside;
 - whether the farm business is active and established;
 - whether the proposal is necessary for the efficient use of the holding;
 - whether the siting of the proposed building is acceptable;
 - whether the development is appropriate in terms of character and scale; and
 - whether it would visually integrate into the local landscape.
10. Section 45 (1) of the Planning Act (Northern Ireland) 2011 states that regard must be had to the local development plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Banbridge, Newry and Mourne Area Plan (BNMAP) 2015 operates as the LDP for this area. In it, the site is located in the countryside, approximately 350m north east of the small settlement of Lislea. It is also within the Ring of Gullion Area of Outstanding Natural Beauty. BNMAP provides no specific policies for agricultural development within the plan area.
11. Regional planning policies of relevance to this appeal are set out in the Strategic Planning Policy Statement for Northern Ireland (SPPS) and retained policies within Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21). There is no conflict or change in policy direction between the provisions of the SPPS and the retained policies insofar as they relate to this appeal. Therefore the retained policies take precedence in decision making in accordance with the transitional arrangements outlined in the SPPS.
12. Policy CTY1 of PPS 21 states that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. These include agricultural and forestry development in accordance with Policy CTY12. Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. Policy CTY12 states that planning permission will be granted for development on an active and established agricultural holding where certain criteria are met. The Council disputed whether the holding is active and established. Furthermore, they raised concerns under the first three of the five criteria which require that:
 - (a) it is necessary for the efficient use of the agricultural holding;
 - (b) in terms of character and scale it is appropriate to its location; and

- (c) it visually integrates into the local landscape and additional landscaping is provided as necessary;
13. Policy CTY12 goes on to state that in cases where a new building is proposed applicants will also need to provide sufficient information to confirm that there are no suitable existing buildings on the holding or enterprise that can be used, that the design is sympathetic and that the proposal is sited beside existing farm buildings. Exceptionally, consideration may be given to an alternative site away from existing farm buildings, provided there are no other sites available at another group of buildings on the holding, and where it is essential for the efficient functioning of the business or there are demonstrable health and safety reasons.
 14. Policy CTY13 of PPS 21 relates to Integration and Design of Buildings in the Countryside. It states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It cites seven instances where a new building will be unacceptable, of which the Council have raised three in the appeal:
 - (a) it is a prominent feature in the landscape;
 - (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; and
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.
 15. Policy CTY14 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. The Council has raised criterion (a) which states that a new building will be unacceptable where it is unduly prominent in the landscape.
 16. The appeal site comprises a section cut out of the northern end of a larger agricultural field which is relatively flat, and part of a laneway connecting it to Hall Road. The appeal proposal is a portal framed agricultural store measuring 15.25m by 13.7m and 6.5m to the ridge. It would have a roller shutter door and pedestrian access door in the north western gable facing the road and a covered lean-to livestock pen with an open front running for half its length on the south western elevation. Within the shed there would be space for livestock pens, bale storage and machine storage and maintenance. The lower portion of the walls would be shuttered concrete finished with grey plaster. The upper portion of the walls and the roof would be clad with green metal sheeting. The area between the existing sheds at the roadside and the new shed would be hard surfaced and separated from the remainder of the field by a post and wire fence.
 17. Paragraph 5.56 of the Justification and Amplification to Policy CTY12 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 relates to dwellings on farms and requires that the farm business is currently active and has been established for at least six years.
 18. The appellant has a registered farm business ID number (648373) which was allocated to his father Mr Terence Murphy on 5th April 2006. The farm map which dates from October 2011 indicates that the business comprises a total land area of

- 2.61 hectares. The Department of Agriculture, Environment and Rural Affairs (DAERA) consultation response indicates that it is a category 3 farm business ID which is unable to claim subsidy and that no payments were claimed in the last 6 years. However, it does indicate that the business has been established for over six years.
19. While the receipt of subsidies is often accepted as evidence that a farm business is active, it is not the only means of demonstrating this. Paragraph 5.39 of PPS 21 states that 'agricultural activity' refers to the production, rearing or growing of agricultural products including harvesting, milking, breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural and environmental condition.
 20. The appellant has provided evidence that the farm's flock number (781955) was reactivated by DAERA in November 2014 and provided a copy of the Sheep Flock Register. This indicates a number of flock movements between 2014 and 2020. The appellant's father, Mr Terence Murphy passed away in 2020. The appellant and his family lived in Australia prior to his father's death. He was not involved in the farm business at this time. Following his father's death, the appellant on return from Australia was added to the farm business number and flock number for succession purposes.
 21. Information in the Flock Register suggests that sheep numbers on the holding reached a peak in 2018 after which most movements have been off the holding. This is likely to coincide with the declining health of the appellant's father. The decline in livestock numbers suggests that the business was being wound down at that stage. There have been no flock movements recorded in the period since 2020 when the appellant's father is stated to have passed away. There is no evidence of any flock movements since the appellant joined the farm business. The appellant's evidence does not state the extent of the current flock.
 22. During my site visit, I noted around eight sheep in the field, but the absence of any actions relating to sheep in the flock register (e.g. dipping) since 2020 means I cannot be sure that the sheep on the holding are part of the appellant's flock. While the evidence provided shows that agricultural activity took place between 2014 and 2020, I have not been presented with sufficient evidence on the appellant's agricultural activity to persuade me that the farm business is currently active as required by the policy. The Council's objections on this matter are sustained.
 23. With regard to the need for the proposal, the appellant's supporting statement, submitted with the application, refers in general terms to welfare standards for livestock, but gives no detail as to the appellant's agricultural operations or flock size. The appellant's letter dated 13th July 2021 states that he urgently requires the proposed building to house existing stock for 2021 or he will have to find alternative rental accommodation which is not considered efficient for the existing farm holding. No information is given on where sheep were overwintered or lambed in previous seasons (when there were over 100 in the flock) and why the same accommodation is not available to the appellant now. No information is provided of any farm machinery owned by the farm business which would need to be stored inside. No information is given on other existing buildings at the disposal of the farm business and why they are not suitable for agricultural storage.

24. The appellant's evidence states that there are no existing agricultural buildings associated with this agricultural holding and that the farm map associated with the enterprise confirms this status. However, they argue elsewhere in the same submission that buildings and laneways are removed from DAERA farm maps for claim and payment purposes. It appears from the site location map that there are outbuildings around the appellant's home address, which is approximately 200m south west of the appeal site and that there is a large existing shed approximately 80m south west of the appeal site on land which is outlined in blue as belonging to the appellant. Given the paucity of information on existing buildings, flocks and machinery, I have not been persuaded that the proposed shed is necessary for the efficient use of the agricultural holding, or that there are no suitable existing buildings on the holding that can be used. The Council's objections under criterion (a) of Policy CTY12 are sustained.
25. Policy CTY12 requires that where a new building is proposed, it must be sited beside existing farm buildings. Paragraph 6.73 of the SPPS confirms that this means existing buildings on the holding. As the appellant has now accepted that he does not own the existing sheds at the roadside, he seeks permission for the appeal development on the basis of the exception test, as set out in paragraph 13 above. The appellant's original health and safety argument concerned the risk of animals escaping from the existing sheds onto the public road, but no weight can be attributed to this argument since the existing roadside sheds are not owned or used by the business. No other health and safety reasons have been advanced. The appellant has failed to provide any analysis of the existing buildings on his holding, has not demonstrated that the proposal is essential for the efficient functioning of the business and has not offered any demonstrable health and safety reasons. As it appears that there are other buildings on the holding, the erection of the appeal proposal on an alternative site would be contrary to the exception test. The Council's objections on this point are sustained. The Council has sustained its second reason for refusal.
26. With regard to the visual impact of the proposed shed, the Council has not provided any critical viewpoints to demonstrate their concerns. While the site itself would be cut out of a larger agricultural field and has no established natural boundaries, it benefits from being set back slightly from the roadside. On approach from the north east on Hall Road, the proposal would be screened by a 2-3m high existing hedge along the roadside. The existing buildings would also limit views from the north. The site is more open to views from the west around the junction of Hall Road and Milltown Road. While the development would be partly tucked behind some roadside trees and the existing buildings, much of it would sit within an open part of the field. However, from this viewpoint, the proposed building would have a backdrop of mature trees and rising land to the rear. These factors in combination mean the proposed building would integrate satisfactorily and would not appear as a prominent feature in the landscape. The Council's concerns under Policy CTY13 and criterion (c) of Policy CTY12 have not been sustained. The Council has not sustained its fourth reason for refusal.
27. The appellant referred to a DAERA publication entitled "Farm Buildings in the Countryside". This document was not provided in evidence and in any case is not planning policy or supplementary guidance, so I cannot consider it in the appeal. Agricultural buildings are a common feature of the local area and contribute to its

rural character. There is a larger complex of farm buildings associated with 40 Hall Road opposite the appeal site. There are also smaller groups of buildings and individual sheds dotted across the local landscape. The scale of the appeal proposal is relatively modest and given its local context, it would not appear out of character with its surroundings, or unduly prominent in the landscape. Therefore, it would not cause a detrimental change to the rural character of the area. The Council's concerns under Policy CTY14 and criterion (b) of Policy CTY12 have not been sustained. The Council has not sustained its third and fifth reasons for refusal.

28. The appellant raised appeal decision 2017/E0005 – an appeal against the refusal of a certificate of lawfulness for a proposed agricultural shed. The Appellant stated that the decision supported his position regarding farm buildings on farm maps, however, having read the decision, I do not agree that it addresses this matter. In any case, as the appeal was determined under a different legislative context and was concerned with whether the proposal complied with permitted development rights, it is not comparable to the present appeal which is subject to PPS 21.
29. The third party's septic tank is located within the appeal site in an area proposed as hard standing. While this land is owned by the appellant, the third party has an easement regarding the septic tank and is concerned that the development, if approved, would interfere with it. I consider that this is a legal matter between the parties and that even if the appeal were to be allowed, the planning permission would not extinguish any pre-existing legal rights or easements pertaining to the land. I accept the appellant's position that in the event of approval, the legal easement would be a matter that could be negotiated between the parties outside of the planning process. It is not, therefore, a reason to refuse planning permission.
30. As I have not been persuaded that the farm business is currently active, that the proposal is necessary for the efficient use of the holding, that there are no suitable existing buildings on the holding that can be used and that the alternative site away from existing buildings meets the exception test, the proposal is contrary to Policy CTY12 and unacceptable in principle. As no other overriding reasons why the development is essential in this location have been put forward, it is also contrary to Policy CTY1. The Council has therefore sustained its first reason for refusal. The Council's first and second reasons for refusal are determining. Accordingly, the appeal must fail.

This decision is based on the following drawings:-

- PL-01 A – Site Location Map at scale 1:2500, Location Overview Map and Existing Site Topographical Survey at scale 1:1000 which was received by the Commission on 18th March 2022;
- PL-02 – Plans, Elevations and Specification at scale 1:100 which was received by the Council on 22nd February 2021; and
- PL-03 – Site Layout Plan at scale 1:500 which was received by the Council on 22nd February 2021.

COMMISSIONER GARETH KERR

List of Documents

Planning Authority:-	A	Statement of Case Newry, Mourne and Down District Council
	B	Rebuttal Statement Newry, Mourne and Down District Council
	C	Comments on Revised Drawing Newry, Mourne and Down District Council
Appellant:-	D	Statement of Case and Appendices Blackgate Property Services Ltd.
	E	Rebuttal Statement Blackgate Property Services Ltd.
	F	Comments on Revised Drawing EnviroFarm Ltd,
Third Parties:-	G	Statement of Case Mr Terry Murphy
	H	Statement of Case McNamee McDonnell Solicitors
	I	Rebuttal Statement McNamee McDonnell Solicitors



Appeal Decision

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

Appeal Reference:	2021/E0074
Appeal by:	Mr Brendan Starkey
Appeal against:	Refusal to certify a Certificate of Lawfulness of Proposed Use or Development
Development:	The digging of foundations, the laying of concrete and the construction of a portion of blockwork
Location:	Approx 90m east of 27 Bright Road, Downpatrick
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/0990/LDP
Procedure:	Written representations with Commissioner's site visit on 1 November 2022.
Decision by:	Commissioner Mandy Jones, dated 3 November 2022.

Decision

1. The appeal is dismissed.

Reasons

2. The application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) was received by the Council on 21 May 2021, in accordance with Section 170 of the Planning Act (Northern Ireland) 2011. The application was refused on 16 November 2021. This appeal was made under Section 173 of the 2011 Act against the Council's refusal of the application.
3. Section 170 of the Act makes provision for the issue of a CLOPUD; Section 170 (1) states that 'if any person wishes to ascertain whether – (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question. Section 170 (2) indicates that if, on an application under this section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of application, it must issue a certificate to that effect; and in any other case it shall refuse the application.
4. The main issue in this appeal is whether development has lawfully commenced to allow the completion of the dwelling.
5. On 16 November 2021, the Council refused to certify citing the following reason,

'The Council, having considered the information and evidence provided, is unsatisfied that works carried out are in compliance with the conditions attached to planning permission R/2005/0367/RM. In conclusion, planning permission R/2005/0367/RM has not been commenced within the required timeframe and as such, has now lapsed.'

6. Outline planning permission was granted on 20 March 2002 (R/2001/1089/O) for a Dwelling approx. 90m east of 27 Bright Road, Downpatrick and the subsequent reserved matters was approved on 2 May 2006 (R/2005/0367/RM). The outline planning approval for the proposed dwelling required that development commence by 2 May 2008.
7. A letter from Building Control (Mr P Hobson, Senior Building Control Surveyor) dated 6 May 2021, was submitted by the appellant which confirms that ' a *satisfactory foundations inspection was carried out by Building Control on 22 April 2008. Two further inspections were carried out on 20 January 2009 and 25 September 2009 at which it was noted that no further progress had been made*' The Council have stated that on checking aerial imagery of the appeal site, works are apparent on the site in 2009, which would correspond to the information from Building Control. As such, the Council consider that it has been sufficiently demonstrated that the works commenced on the dwelling foundations prior to the critical expiry date of the permission (2 May 2008).
8. Condition 2 of R/2005/0367/RM, required that:

- The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement of any works or other development hereby permitted.

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

9. The approved stamped drawings, show an access was to be provided with 2.4 x 70 m site splays west side of access and 2.4 x full frontage east side of access (annotated as 70m). The Council have stated that aerial imagery of the appeal site demonstrates that a new access and laneway was in place by May 2021 – which was well after the permission has expired. From my observations on site, I would concur that the access is currently in place.
10. The appellant in his submission to the Council accepts that he did not comply with Condition 2 of R/2005/0367/RM. I was told by the appellant that rather than creating the access at the time he used an existing field gate to the east of no 27 Bright Road to bring on site the necessary machinery to allow him to excavate the foundations and pour the concrete. No evidence was presented by the appellant to confirm when the approved access was in fact completed.
11. The Council are of the view that Condition 2, is a pre - commencement condition which was required to be discharged before any development work took place on the appeal site. Until pre - commencement conditions have been fully satisfied, a planning permission cannot be implemented. The use of an existing field gate to the south west of the appeal site does not form part of the approved drawings. It

was argued by the Council that condition 2 prohibited construction of the dwelling until the access was constructed and this goes 'the heart' of the permission as it required provision of approved access in the interests of road safety. Irrespective of the works undertaken in forming the foundations, as the pre - commencement conditions have not been discharged, the permission has not commenced lawfully.

12. The appellant cited case law, *River Faughan Anglers Ltd v Derry City and Strabane District Council* (2018) NIQB 87. I was referred to paragraph 29 in which McCloskey J sets out his conclusions in regard to the Whitley principle and case law namely, *R (Hart Aggregates) v Harlepool BC* (2005) EWHC 840. Referring to paragraph 58 of this case, it states ' Going back to first principles, the starting point should be the proposition that there is no scope for implied conditions in a planning permission... the need for a local planning authority to spell out any requirement or prohibition in clear terms applies with particular force where the condition is said to prevent not merely some detail of the development, but the commencement of any development pursuant to the planning permission. The status of 'condition precedent' is acquired only if the condition ' goes to the heart of the permission.'
13. It was argued by the appellant that condition 2 of R/2005/0367/RM is similar to the wording of condition 6 of planning approval (A/2007/0897/F) referred to in the *River Faughan Anglers Ltd v Derry City and Strabane District Council* 2018. The appellant maintained that McCloskey J considered this condition and that of another approval on the site and had difficulty with the wording concluding that 'the two conditions under scrutiny manifestly lacking the necessary attributes of clarity and coherence, I readily conclude that they cannot be characterised conditions precedent. It follows that the court rejects this discrete attack on the lawfulness of the early 2011 works'
14. The appellant is of the view that condition 2 is not a true condition precedent as concluded by McCloskey J in the *River Faughan Anglers Ltd v Derry City and Strabane District Council* 2018 and does not go to the heart of the permission.
15. The appellant goes on to say that McCloskey J at paragraph 26 states, 'furthermore, it is clear from all the evidence that the laying of foundations could not have been undertaken in the absence of a vehicular access from the main road to the site and there is sufficient evidence for the court to be satisfied that an access of this kind was installed. The Court bears in mind that in the real world something quite rough and rudimentary would have sufficed for this purpose'.
16. It was argued by the appellant that this draws similarities with the appeal site, in that there was an existing field gate which accessed onto the Bright Road and led to the field in which the site is located to allow for the access for machinery to excavate the foundations. Therefore, it was argued he is more in breach of the condition. This breached condition does not go to the heart of the permission and does not render the development unlawful.
17. The *River Faughan Anglers Ltd v Derry City and Strabane District Council* 2018, case law quoted essentially, relates to two access conditions from two different approvals in 2009 on the same site. Condition no 6 of the first of the two approvals states:

' The vehicular access, including visibility splays and any forward sight line, shall be provided in accordance with the approved plans, prior to the commencement, operation or any works or other development hereby permitted '

Condition no 4 of the second approval, employs the terminology *' prior to the commencement or occupation or any works or other development hereby permitted'*

18. It was concluded by McCloskey J, at paragraph 3, that the two differently worded conditions gave rise to obscurity, ambiguity, and a significant lack of coherence. It was concluded that this *'divests both conditions of the clarity necessary to be classified conditions precedent.'* Contrary to the appellants point, this refers to the ambiguity arising from two different conditions of two approvals.
19. In sharp contrast, this appeal is clearer cut concerning one planning approval and I consider condition 2 of R/2005/0367/RM to be clear, coherent, and unambiguous. Condition 2 prohibited construction of the dwelling until the access to the site was constructed. In my opinion, this went to 'the heart' of the permission as it required provision of the approved access in the interests of road safety.
20. The reason quoted for the imposition of condition 2 is stated as 'to ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users'. Read in the overall context of the planning permission as a whole, it is simply concerned with the provision of an access considered safe by roads and planning authorities.
21. In this appeal, by the appellant's own admission, he stated that rather than creating the approved access at the time he used an existing field gate to the east of no 27 Bright Road to bring on site the necessary machinery to allow him to excavate the foundations and pour the concrete. I note that, the nature and position of this access have not been indicated on any drawings and I have no details of this temporary access alluded to.
22. The appellant refers to a decision by Lisburn & Castlereagh City Council in regard to a CLOPUD. It was stated that in application LA/2020/0723/LDP, the Council accepted that condition 5 of S/2006/0281/RM did not go to the heart of the permission and was not a true condition. The CLOPUD was then granted based on the fact that the foundations had been excavated and the access and visibility splays not formed prior to the expiry of planning permission. Although the appellant claims that it is his understanding condition 5 of S/2006/0281/RM was the same wording to condition 2, I was not furnished with copies of this planning approval, and I am unaware of any of the circumstances around this particular case. In any event, each decision must be assessed on its own merits.
23. The appellant also referred to appeal decision 2020/E0007 for a CLOPUD. This can be distinguished as the Commissioner concluded that by the critical date, splays at the access for the approved dwelling were substantially complete. He concluded that although not entirely finished, most of the work had been done apart from the removal of a telegraph pole which was the main plank of the Council's argument. I note, the construction of the dwelling had also commenced by the critical date. In appeal decision 2020/E0007, the Commissioner considered

that condition 3 (access condition) was timeously discharged and the consent lawfully implemented.

24. From the evidence presented, according to the Council it appears that the vehicular access was provided by May 2021, and well after the permission had expired and the appellant acknowledged that the approved access was not in place at the time the foundations were excavated, and concrete poured. I consider, condition 2 was a pre - commencement condition which must be discharged before any other works or development approved on the site commences. Until pre - commencement conditions have been satisfied, a planning permission cannot be said to have been begun. Notwithstanding the works undertaken in forming the foundations, as the pre - commencement conditions have not been discharged the permission has not commenced lawfully and the permission has subsequently lapsed. The Council's decision to refuse the CLOPUD application was well founded. The appeal is dismissed.

COMMISSIONER MANDY JONES

List of Documents

Planning Authority:	A	Statement of Case
Appellant:	B	Statement of Case



Appeal Decision

4th Floor
92 Ann Street
Belfast
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

Appeal Reference:	2021/A0234
Appeal by:	Mr Garth Belshaw
Appeal against:	The refusal of outline planning permission
Proposed Development:	Single dwelling house
Location:	Land adjoining 26 Windmill Avenue, Ballynahinch
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/1091/O
Procedure:	Hearing 7 September 2022
Decision by:	The Commission, dated 23 November 2022

The Commission has considered the report by Commissioner Helen Fitzsimons and accepts her analysis of the issues and recommendation that the appeal should succeed.

Decision – the appeal is allowed and outline planning permission is granted, subject to the following conditions:

- (1) Except as expressly provided for by Conditions 2, 3, and 4, the following reserved matters shall be as approved by the Planning Authority – the siting, design, external appearance of the dwelling and the means of access thereto,
- (2) The ridge height of the dwelling shall not exceed the ridge height of 26 Windmill Avenue.
- (3) Any application for approval of reserved matters shall incorporate plans and sections indicating existing and proposed ground levels and proposed finished floor levels, all in relation to a known datum point.
- (4) Prior to commencement of any building works visibility splays of 2.4 metres by 33 metres shall be laid out in both directions at the point of access of the appeal site with Windmill Avenue and shall be permanently retained and kept clear thereafter.
- (5) No development shall take place until consent to discharge has been granted by Northern Ireland Water.
- (6) No development shall take place until a landscaping scheme showing the means by which the boundaries of the appeal site are to be defined has been submitted to and approved in writing by the Planning Authority. The scheme of landscaping shall include the location, number and sizes of any trees and shrubs

to be planted, and any walls or fences to be erected. Any scheme of planting as finally approved shall be carried out during the first planting season after the commencement of the development.

(7) Application for approval of the reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.

(8) The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.

This decision approves the following drawing:

The 1:500 Site location plan date stamped received 09th June 2021 by Newry, Mourne and Down Council and referenced Plan No. 20407NW3

ANDREA KELLS

Chief Commissioner

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

**Appeal by
Mr Garth Belshaw
against the refusal of outline planning permission for single dwelling house
at
land adjoining 26 Windmill Avenue, Ballynahinch**

**Report
by
Commissioner Helen Fitzsimmons**

Planning Authority Reference: LA07/2021/1091/O

Procedure: Informal Hearing 7th September 2022

Report Date: 02nd November 2022

1.0 **BACKGROUND**

- 1.1 Newry, Mourne and Down District Council received a planning application on 9th June 2021. By notice dated 10th November 2021, the Council refused planning permission giving the following reason: -
1. **Under Article 3(6) of the Planning (General Development Procedure) Order (Northern Ireland) 2015, a Waste Water Impact Assessment (WWIA) is required in order to enable the Council to fully assess the development proposed in consultation with NI Water. In the absence of a WWIA and in light of the position outlined by NI Water, it has not been adequately demonstrated that waste water from the development proposed could be adequately dealt with. On this basis, the precautionary principle is applied.**
- 1.2 The Commission received the appeal on 9th March 2022 and advertised it in the local press on 23rd March 2022. No representations from third parties were received in respect of the appeal.

2.0 **SITE AND SURROUNDINGS**

- 2.1 The appeal site is a rectangular plot of land, which directly adjoins the dwelling at 26 Windmill Avenue. The site is grassed and slopes down from the roadside to the southwest. The boundary to the north west is open and undefined, the boundaries to the north east and south west are bounded by a footpath. The south eastern boundary is defined by a gable wall of the dwelling at 26 Windmill Avenue, a wall some 1 metre in height to the front of this dwelling, and a wall some 1.8 metres in height to the rear garden of this dwelling.
- 2.2 The appeal site is located within an existing housing development. The dwelling at 26 Windmill Avenue forms part of a row of three terrace dwellings. The dwellings in this row have a rendered finish with a slate roof. The dwellings are designed as split level with a mono pitched roof design, one and half storey to the front of the dwelling falling to two storey to the rear.
- 2.3 To the south west of the appeal site is a two storey housing development Loughside Drive. These dwellings are separated from the appeal site by a shared pathway which is located to the rear of the dwellings in Loughside Drive and to the rear of those in Windmill Avenue.

3.0 **PLANNING AUTHORITY'S CASE**

- 3.1 The site accommodates a rectangular plot which is located directly beside No 26 Windmill Avenue. The site is currently laid out in grass and slopes gradually from the roadside down towards the housing in Loughside Drive. No 26 has a small horizontal window on the gable elevation. The dwelling at No 26 is part of a row of three terrace dwellings, which have a mono pitched roof. The south east boundary of the site is defined by a staggered wall approximately 1.8 metre in height defining the rear garden of No 26. The south west boundary is undefined as are the remaining boundaries. A pathway to the rear of the properties is accessed via steps to the south west of the site.

- 3.2 Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the Local Development Plan (LDP), so far as material to the application. Section 6(4) of the Act requires that where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The LDP in this case is the Ards and Down Area Plan 2015 (ADAP).
- 3.3 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 only issue with regard to the application relates to NI Water response.
- 3.4 NI Water were consulted with regard to the proposal and commented as follows:
NI Water recommend that the application for planning approval should be refused. There is a public foul sewer within 20 meters of the proposed development boundary which cannot adequately service these proposals. The receiving foul sewerage network has reached capacity. The public system cannot presently serve this development proposal without significant risk of environmental harm and public disamenity including pollution, flooding and detrimental impact on existing properties. NI Water plans to upgrade the sewerage system in this Drainage Area. While this remains subject to prioritisation and the availability of funding, NI Water is recommending connections to the system are curtailed. The Applicant is advised to consult directly with NI Water (InfrastructurePlanning@niwater.com) to discuss current projected timescales to upgrade the wastewater system in this drainage area. Alternatively, an Impact Assessment may be undertaken to ascertain whether an alternative drainage/treatment solution can be agreed. Upon the completion of which and subject to re-consultation, NI Water may reconsider its recommendation.
- 3.5 The agent was aware of the NI Water issue and wrote to the Planning Office on 11th August 2021, to state that he had requested a site meeting with NI Water. The agent subsequently wrote to the Planning Office and outlined the discussions he had with the NI Water which took place from August 2021 – September 2021. The agent maintains that the Wastewater Impact Assessment should only apply to a development of 2 or more houses. The design flow from a single house is insignificant and a mains foul sewer connection will become available, after NI Water conclude their internal discussions.
- 3.6 Clarification on the issue in respect of developments which proposed only a single dwelling was sought from NI Water. An email from Infrastructure Planning at NI Water was received from the Developer Services Infrastructure Planner, Team Lead on 5th October 2021. It advised the agent that NI Water are looking into how to deal with capacity issues with single units or smaller sites. This is still under discussion, and there is no timescale as to if or when this could be put in place. They therefore advised the planning agent that the only way forward for this proposal, at this time, is through the submission of the WWIA to NI Water, which has not yet been received. They advised that the response on this point would not change until the Impact Assessment is submitted and a solution agreed upon.

- 3.7 The Planning Office advised the agent again of the need to submit the WWIA on 14th October 2021 stipulating a timeframe for submission of 3 weeks. The agent advised by email dated 29th October 2021 that the applicant is looking at funding for the £1,540 fee for a WWIA. The agent asked the question that if the applicant submitted a Wastewater Impact Assessment, and as NI Water will aim to provide a report within 65 days, can the determination of the planning application be made after NI Water provide that report? From the agent's email, it is clear that the WWIA has not been submitted to NI Water. The agent was advised by email dated 4th November 2021 that as the requested WWIA had not been received by the Planning Office they would proceed to determine the application.
- 3.8 While it is appreciated that the appellant is reluctant to want to pay the associated fee, this unfortunately is outside of the control of Planning. The Council took the view that this information could not be negatively conditioned on any planning decision notice and was necessary as it had not been adequately demonstrated that waste water from the development proposed could be adequately dealt with. On this basis, the precautionary principle was applied. The agent was therefore given sufficient time to engage with NI Water and submit the WWIA. Having not provided the required information within the agreed timeframe the application was determined in line with the Council's Scheme of Delegation.
- 3.9 On the day of the hearing 7th September 2022 the appellant's agent provided additional evidence. This had been sent directly to the Council that morning and contained email correspondence between the appellant and NI Water dated 19th August 2022, which advised as follows;
'The solution engineering report for the development is in progress. The nature of the downstream capacity means we will be recommending a storm offsetting solution to alleviate capacity issues. Storm offsetting will remove flow from the system allowing additional capacity for the foul flow from the development to connect'.
- Given the positive nature of the email, the Council are content to withdraw their previous objection to the proposal, on the basis a condition is added to the decision. Two forms of wording were put forward for conditions:
- No development shall take place on site until the method of sewage disposal has been agreed on site with NI water; or
 - No development shall take place until discharge to consent has been granted by NI Water.
- 3.10 The Council would also request, if the Commission is so minded to approve the development the following conditions which have been summarised below should be included in its decision:
- 1) Standard time limit.
 - 2) The siting, design and external appearance of the dwelling, the means of access thereto and the landscaping of the site shall be obtained from the Council, in writing.
 - 3) Development should take place in strict accordance with approved plan: site location plan 20407NW3.
 - 4) No development shall take place until a landscaping scheme has been submitted to and approved by the Council.

- 5) The proposed dwelling shall have a ridge height no higher than the adjacent dwelling at No 26 Windmill Avenue.
- 6) Any application for approval of reserved matters shall incorporate plans and sections indicating existing and proposed ground levels and proposed finished floor levels, all in relation to a known datum point.
- 7) A scale plan and accurate site survey at 1:500 shall be submitted as part of the reserved matters application showing the access to be constructed and other requirements in accordance with the attached form RS1 (2.4m x 33m in both directions along Windmill Avenue). The access shall be constructed in accordance with detailed approved plans prior to the commencement of the development as approved.

4.0 APPELLANT'S CASE

- 4.1 The grounds for this appeal against the decision made by the Council consists of illegality, irrationality, unfairness and fettering.

Illegality

- 4.2 The Council has no authority to take this decision using the Scheme of Delegation. The prevailing circumstances satisfy the requirements detailed in the last paragraph of Part 2 within the Scheme of Delegation. In an email dated 14th October 2021, the council issued a direction, and without explanation, the information specified was not provided by the applicant within the time allowed.

Irrationality

- 4.3 The Council allocated a 3-week period to provide the information specified in the direction, which is wholly inadequate. The WWIA Guideline Notes state that, NI Water will endeavour to provide you with a development solution engineers report within 65 days of receipt of a complete application.

Unfairness

- 4.4 In an email dated 4th November 2021, the council refused the applicant's request, made by email dated 29th October 2021, to delay the determination of the application until after NI Water had published the engineers report. Mr Harry Harvey MLA made a similar request by email on 8th November 2021.

Fettering

- 4.5 NI Water changed their procedures for making wastewater connections in April 2021, and included single units. The new 2-stage process requires fees of £238.80 and £2,520. It is clear from NI Water's discussion with Mr Harry Harvey MLA, by email dated 8th November 2021, they are aware that WWIA may not be appropriate for single units.
- 4.6 In the leading case of *Barratt Homes Limited v Welsh Water* [2009] UKSC 13, the Supreme Court said at paragraph 41, "While this might create no problem in the case of an individual dwelling house", when referring to the notice required for connecting premises to a public sewer.
- 4.7 The Council could have made the completion of a WWIA a requirement at reserved matter stage, and grant outline planning permission.

- 4.8 The treatment of this planning application by the Council, contrasts with a similar application reference LA01/2019/1105/F, where another Council granted full planning permission.
- 4.9 A WWIA was submitted on 19th January 2022 and no response was received within the 65 days. The appellant has chased a response and NI Water responded to an email dated 19th August 2022. This email provides a positive response to the WWIA which was submitted in January 2022. This sets out how NI Water intend to proceed by recommending a storm offsetting solution to alleviate capacity issues. This storm offsetting will remove flow from the system allowing additional capacity for the foul flow from the development to connect. This email indicates that the development will be able to connect to the existing foul sewage system. Therefore, the appellant is content to withdraw all objections within their SoC, on the premise that a condition can be attached to the decision. The appellant has no objections to the conditions proposed by the Council.

5.0 CONSIDERATION

- 5.1 The main issue in this appeal is whether an acceptable means of disposal for wastewater to serve the proposed dwelling can be obtained.
- 5.2 Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Ards and Down Area Plan 2015 (ADAP) acts as the LDP for the area wherein the appeal site is located. In the ADAP, the site is located within Ballynahinch settlement limits. There are no pertinent plans or policies relevant to the proposed development.
- 5.3 The Strategic Planning Policy Statement 'Planning for Sustainable Development for Northern Ireland' (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole of the Council area. As no Plan Strategy has been adopted for the ADAP area, the SPPS and the retained Planning Policy Statements apply.
- 5.4 The sole reason for refusal relates to wastewater disposal. At the hearing both parties withdrew all objections. I will therefore consider the conditions put forward.
- 5.5 A condition is necessary to ensure that the proposed new dwelling is in keeping with the ridge height of the adjacent dwellings in order to respect the overall character to the area.
- 5.6 The appeal site slopes in a north easterly to south westerly direction, and a condition requiring the submission of plans and sections indicating existing and proposed ground levels and proposed finished floor levels is necessary to ensure the development respects the existing levels of the appeal site and the surrounding area.
- 5.7 A condition is necessary to ensure that consent for wastewater disposal is obtained from NI Water, to facilitate the development proposed and to ensure that wastewater is disposed of satisfactorily.

5.8 To ensure that the boundary treatments respect those within the existing established residential development, the submission of a landscaping scheme providing for hard and/or soft landscaping to each of the boundaries is required.

5.9 Visibility splays of 2.0 metres x 33 metres in both directions along Windmill Avenue, are necessary in the interests of road safety and for the convenience of road users.

6.0 **RECOMMENDATION**

6.1 I recommend to the Commission that the appeal is allowed and that outline permission is granted, subject to the following conditions:

(1) Except as expressly provided for by Conditions 2, 3, and 4, the following reserved matters shall be as approved by the Planning Authority – the siting, design, external appearance of the dwelling and the means of access thereto.

(2) The ridge height of the dwelling shall not exceed the ridge height of 26 Windmill Avenue.

(3) Any application for approval of reserved matters shall incorporate plans and sections indicating existing and proposed ground levels and proposed finished floor levels, all in relation to a known datum point.

(4) Prior to commencement of any building works visibility splays of 2.4 metres by 33 metres shall be laid out in both directions at the point of access of the appeal site with Windmill Avenue and shall be permanently retained and kept clear thereafter.

(5) No development shall take place until consent to discharge has been granted by Northern Ireland Water.

(6) No development shall take place until a landscaping scheme showing the means by which the boundaries of the appeal site are to be defined has been submitted to and approved in writing by the Planning Authority. The scheme of landscaping shall include the location, number and sizes of any trees and shrubs to be planted, and any walls or fences to be erected. Any scheme of planting as finally approved shall be carried out during the first planting season after the commencement of the development.

(7) Application for approval of the reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.

(8) The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last reserved matters to be approved, whichever is the later.

6.2 This recommendation relates to the following drawing: –

- A 1:500 Site location plan, date stamped received 09th June 2021 by Newry, Mourne and Down Council, Plan No. reference 20407NW3

List of Documents

- Planning Authority: - "A"- Statement of Case by Newry, Mourne and Down District Council.
- Appellant: - "B"- Statement of Case by Mr James Brown on behalf of Mr Garth Belshaw.
 "B1" – Email evidence dated 19th August 2022 submitted at the hearing by Mr James Brown on behalf of Mr Garth Belshaw.

Hearing

- In attendance: -
- Council Representative: - Mrs Catherine Moane (Remotely)
- Appellant: - Mr James Brown (In person)
 Mr Garth Belshaw (In person)



Appeal Decision

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

Appeal Reference: 2021/A0049
Appeal by: Mr M Farrell
Appeal against: The refusal of outline planning permission
Proposed Development: Dwelling and garage on gap site
Location: Lands approximately 50 metres north west of 53 Ayallogue Road, Newry
Planning Authority: Newry, Mourne and Down District Council
Application Reference: LA07/2020/079/O
Procedure: Hearing on 15th February 2022
Decision by: The Commission, dated 9th November 2022

The Commission has considered the report by Commissioner Gillespie and accepts his analysis of the issues and recommendation that the appeal should fail.

Decision – the appeal is dismissed.

This decision is based on the following drawing: -

Number	Title	Scale	Date Received
P01A	Site Location Plan	1:2500	31 st July 2020

ROSEMARY DALY
Principal Commissioner

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

Appeal by

Mr M Farrell

against the refusal of outline planning permission for a

Dwelling and garage on gap site

at

Lands approximately 50m north west of No. 53 Ayalogue Road, Newry

Report

by

Commissioner Kevin Gillespie

Planning Authority Reference: LA07/2020/0079/O

Procedure: Informal Hearing on 15th February 2022

Report Date: 22nd September 2022



1.0 **BACKGROUND**

1.1 Newry, Mourne and Down District Council received the application on 9th January 2020 and advertised it in the local press on 29th January 2020. By notice dated 22nd April 2021 the Council refused permission giving the following reasons:

1. **The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 of PPS 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 in a settlement.**
2. **The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 8 of PPS 21, Sustainable Development in the Countryside in that the proposal would, if permitted, add to a ribbon development along Ayallogue Road and does not represent an exception of policy.**
3. **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, result in a suburban style build-up of development when viewed with existing and approved buildings and would add to a ribbon of development and would therefore result in a detrimental change to further erode the rural character of the countryside.**
4. **The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and PPS 2 Policy NH 6 in that the siting of the proposal is not sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.**

1.2 The Commission received the appeal on 10th June 2021 and advertised it in the local press on 23rd June 2021. No representations were received from third parties.

2.0 **SITE AND SURROUNDINGS**

2.1 The appeal site is located approximately 50m north west of No. 53 Ayallogue Road. The site is currently an agricultural field, broadly rectangular in form and contains no buildings. It slopes downwards from the site's western boundary adjacent to Ayallogue Road towards the site's eastern boundary.

2.2 The appeal site is bounded by post and wire fencing interspersed with mature hedging and trees along its northern and southern boundaries. Immediately abutting the post and wire fence along the southern boundary is a 1m high (approx.) concrete wall which forms the access leading to No. 53 Ayallogue Road. The western boundary adjacent to Ayallogue Road is formed by a land bank and incorporates a single metal gate which provides access into the agricultural field. The eastern boundary is undefined.

2.3 To the north of the appeal site lies agricultural land with No. 53a, a detached two storey dwelling and attached garage, No. 55 Ayallogue Road, a single storey

detached dwelling and an intervening farm building lying further to the north. To the east of the appeal site lies agricultural land. To the south of the appeal site lies No. 51 Ayallogue Road, a single storey detached dwelling with integral garage, No. 51a Ayallogue Road a single storey detached dwelling with integral garage and No. 53 Ayallogue Road a single storey dwelling with detached garage. To the west of the site lies No. 56a Ayallogue Road which comprises a single storey detached dwelling and detached garage.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 At the appeal hearing, the Council accepted that the numbering of some dwellings referred to in their Statement of Case (SoC) was incorrect. Where the SoC referred to a dwelling to the immediate south of No. 53 as being No. 53a Ayallogue Road, on the ground it accepted that the dwelling is numbered No. 51a Ayallogue Road. Similarly, where the SoC referred to a dwelling to the north of the appeal site as being No. 53b Ayallogue Road, on the ground it accepted that the dwelling is numbered No. 53a Ayallogue Road.
- 3.2 Policy CTY 1 of Planning Policy Statement 21 'Sustainable Development in the Countryside' sets out criteria by which an individual dwelling in the countryside is acceptable. The proposal is for a dwelling and garage on a gap site. Therefore, Policy CTY 8 'Ribbon Development' applies.
- 3.3 The application site is located to the north of No. 53 Ayallogue Road. This dwelling does not have frontage to the road with its curtilage clearly demarcated through fencing, some distance from the roadside. Nos. 51, 51a, 53a and 55 Ayallogue Road all have frontage to the road. As the building at No. 53 Ayallogue Road does not have frontage, the appeal proposal is not sited within a substantial and continuously built-up frontage.
- 3.4 The gap is measured from Nos. 51a to 53a Ayallogue Road as these have frontage to the road. The gap site measures 138m (approx.). The average frontage width is 33m (approx.). The gap between buildings is not a small gap site and can accommodate more than two houses. It does not meet the criteria. The gap site serves to provide relief and a visual break in the developed appearance of the locality along Ayallogue Road and helps maintain rural character. The Council considers that the proposal does not meet the criteria of CTY 8 of PPS 21 and therefore is automatically contrary to CTY 1 of PPS 21.
- 3.5 The proposal would result in a suburban style build-up of development when viewed with existing and approved buildings and would add to a ribbon of development. The proposal would result in a detrimental change to further erode the rural character of the countryside contrary to CTY 14 'Rural Character'.
- 3.6 In respect of planning applications LA07/2019/0008/F (Infill dwelling and garage - 70m East of No. 14a Ayallogue Road Newry) and LA07/2019/1449/F (Infill dwelling and detached garage - adjacent to and 50m south of 29 Foughilletra Road Jonesborough), these are distinguishable from the appeal proposal as in both of those cases the Planning Officer's recommendation to refuse each application was overturned by the Council's Planning Committee. Each case must be determined on a site by site basis and on its own merits.

- 3.7 Development proposals in AONB's must be sensitive to the distinctive special character of the area and the quality of their landscape, heritage and wildlife. The AONB has a number of features which comprised its special character including the only ring dyke geological formation in an AONB in Northern Ireland and that it was clad with heather. The siting of the proposal is not sympathetic to the special character of the AONB and would appear incongruous in the local area contrary to Policy NH 6 of PPS 2 'Natural Heritage'.
- 3.8 Should this appeal be allowed, the following conditions (in summary) should be attached:
- Submission of Reserved Matters application to include details of the siting, design and external appearance of the buildings, landscaping and the means of access;
 - A scale plan and site survey at 1:500 to be submitted showing visibility splays of 2m x 60m and access arrangements;
 - Ridge height of the dwellings not to exceed 5.5 metres above finished floor level and angle of roof pitch not to exceed 40 degrees;
 - Depth of underbuilding between finished floor level and existing ground level not to exceed 0.3 metres;
 - Details of all proposed tree and shrub planting and a programme of works to be approved prior to commencement of development;
 - Existing natural screenings to be retained; and
 - Replacement native species tree/hedge to be planted if any retained tree or hedge is removed, dies or is seriously damaged within 5 years from the date of planting.

4.0 APPELLANT'S CASE

- 4.1 The veracity of the Council's neighbour notification process is questioned because of the failure to notify the residents of the property at No. 51a Ayalogue Road. This calls into question the robustness, validity and legality of the decision to refuse the application as the Council has failed in its duty to act equitably and consistently during this process.
- 4.2 Upon further clarification it is now accepted that No. 51a Ayalogue Road was not required to be notified of planning application LA07/2020/0079/O (the appeal development) because it does not directly adjoin the appeal site having regard to the definition of 'neighbouring land' as detailed in Article 2 of the Planning (General Development Procedure) Order (Northern Ireland) 2015. It is now accepted that there is that no prejudice to No. 51a Ayalogue Road occurred as a result of it not being neighbour notified of the aforementioned planning application by the Council under the prescribed statutory process.
- 4.3 Policy CTY 8 confirms that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles with gaps between them can still represent ribbon development if they have a common frontage or they are visually linked. In this case, whether or not No. 53 Ayalogue Road is set back from the frontage, the gap in which it is proposed to site the dwelling does not provide relief or a visual break in

the developed appearance of this locality. Accordingly, there is justification for treating this as an exception.

- 4.4 The development of “a small gap site within an otherwise substantial and continuously built-up frontage” is recognised as an acceptable form of development. For the purpose of this policy “the definition of a substantial and built-up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear”. The definition of a “substantial and built-up frontage” is only an example because the policy wording uses the word “includes”. This definition is therefore not definitive, limited or exhaustive and PPS 21 does not imply that it is. The definition offers no comment on what might be excluded. In appeals 2011/A0103 and 2016/A0040, the Commission recognised how the definition of “substantial and continuously built-up frontage” states that it ‘includes’, “which suggests the presence of other possibilities of substantial and continuously built-up development, including that with development to the rear”. What can be taken from the appeal decisions is the possibility that the policy provides for other types of substantial and continuously built-up frontage. Thus, it would not be accurate to suggest that the policy discounts buildings that are sited back, staggered or at angles or have gaps between them and the Council has unjustifiably concluded that No. 53 Ayallogue Road must be excluded in this case. Being set back does not indicate, of itself, that development is not part of the linear row of road facing development, and this is especially true where developments are inter-visibly linked along the frontage.
- 4.5 The appellant’s position is that even if this proposal does not fall within the listed definition of a substantial and continuously built-up frontage, that is not necessarily fatal since the policy offers but one definition and it is clear that there are other possibilities which are not excluded. It follows that since ribbons with accompanying development to the rear are not excluded, buildings sited back, staggered or at angles or with gaps between them are not excluded either.
- 4.6 Ribbon development and the infilling of small gaps in existing ribbons are intertwined to the extent that the thrust of the policy is aimed at consolidating development within the bookends of existing ribbons and preventing the outward growth of an existing ribbon or even the coalescence of two ribbons. There is no question that this proposal involves the consolidation of an existing ribbon. The gap between the closest buildings within this ribbon does not provide a visual break from development (that would otherwise have retained a sense of openness and taken away the transient, sequential awareness of road facing developments). Since the opposite is true, permitting this proposal will not significantly alter the character or amenity of this area in a manner that would otherwise be presumed against.
- 4.7 In appeal decision 2019/A0096, it was confirmed that a house and shed which were set-back did form part of the frontage, albeit that the appeal was dismissed due to the size of the gap. In the planning application LA07/2019/1449/F, the Council accepted that both the dwelling and the outbuilding contributed to a substantial and continuously built-up frontage despite being set-back behind fences that are in turn set-back from the road. In planning application LA07/2019/0008/F, the Council recognised that No. 11 Ayallogue Road formed part of the built-up frontage, despite its setback being considerably greater than that of No. 53 Ayallogue Road and despite a sizeable area of land lying between it and the road.

- 4.8 In the planning report for the planning application LA07/2019/0008/F the Council stated, "It should be noted that the Planning Department determined that this particular application did not represent an appropriate infill site, given the fact that No. 11 was not considered to have frontage with the public road. The Planning Department are of the same opinion with regards this application site". In its planning report, the Council tried and (sic) divorce itself from decisions taken corporately by its planning committee. Decisions taken by the Council are corporate whether they are taken by officers or elected members and precedent established by the Council especially on the same road cannot be ignored whether the precedent was set by officers or elected members.
- 4.9 The issue of precedent is a material consideration in the determination of any planning application. The latter two cases stand squarely on all fours with the appellant's proposal and both decisions should rightfully be regarded as indicative of a benchmark that other applicants should be expected to achieve.
- 4.10 The issue of precedent arose in appeal decision 2019/A0138 which was allowed on the basis that the planning authority failed to satisfactorily distinguish the proposed development from planning permission LA02/2018/0880/O (Proposed new 1 1/2 storey infill dwelling and garage - Between 171 and 175b Knockan Road, Rathkenny, Ballymena). The Commission considered both cases to be on all fours with each other. A precedent had been set and this outweighed the requirements of Policy CTY 8 of PPS 21. In this appeal case, the Ayallogue Road and Foughiletra Road precedents stand squarely with this proposal to the extent that precedents set by this Council in the vicinity of this site cannot be ignored in the determination of this planning appeal.
- 4.11 Paragraph 6.64 of the SPPS states that Policy approaches to new development should therefore reflect differences within the region, be sensitive to local needs and be sensitive to environmental issues including the ability of settlements and landscapes to absorb development. The site lies within a built-up ribbon of development. Even if it is felt that on a technicality No. 53 Ayallogue Road is set back and does not form part of the road frontage, in visual terms there is an opportunity to accommodate this development. The gap in this case is not so wide as to constitute a visual break or a buffer between separate ribbons so a new house on this site would appear to be in keeping with the spirit of the SPPS.
- 4.12 In reality the concern was that this development is inappropriate only because of the presence of a sheep wire fence to the rear of No. 53 Ayallogue Road. Physically and visually, the sheep wire fence does not in any way create an impression that No. 53 Ayallogue Road does not in fact form part of this frontage. In fact, No. 53 Ayallogue Road is actually closer to the road front than one of the other buildings within the ribbon, again illustrating the fact that it is a mere technicality the applicant is considered to have fallen short on. Paragraph 6.69 of the SPPS confirms that "the policy approach must be to cluster, consolidate, and group new development with existing established buildings". Clearly the proposal is consistent with that approach.
- 4.13 At No. 53 Ayallogue Road, the land to its south is only demarcated by a post and wire fence. The situation is comparable to appeal 2020/A0019 to the extent that there is no other means of access to the land other than via No. 53's laneway albeit

that the appellant concedes that the appeal site allowed direct access between the two areas.

- 4.14 The assessment as to whether or not No. 53 Ayallogue Road forms part of the development on this frontage requires consideration of the following matters in the round.
- Visually No. 53 Ayallogue Road appears as part of the same linear row or belt of buildings/ribbon of development;
 - No. 53 Ayallogue Road is closer to the road than one of the other dwellings on the frontage and also the outbuilding to the rear of No. 51A Ayallogue Road;
 - The land to the south of No. 53 Ayallogue Road cannot be accessed other than via the same access lane as leads to No. 53 Ayallogue Road;
 - When travelling in each direction along Ayallogue Road, it is almost imperceptible that there is any form of delineation or demarcation between No. 53 Ayallogue Road and the land to its south between it and the road; the man-made walls and features at the access to No. 53 Ayallogue Road are indistinguishable from those at No. 51A Ayallogue Road and because the walls and gates of each are similar there is no impression that No. 53 Ayallogue Road does not form part of the development along the frontage;
 - The boundaries to the land to the south of No. 53 Ayallogue Road are entirely man-made or planted; and that especially when mowed, the area of land to the south of No. 53 Ayallogue Road appears no different than a formal lawn thereby avoiding any sense that No. 53 Ayallogue Road is set behind anything other than a lawn/garden/grassed area.

The occupier of No. 53 Ayallogue Road is however unable to currently mow the lawn due to age and health reasons.

- 4.15 Often a planning authority will measure the size of a gap between buildings and its primary means of determining whether the gap is small is by deciding if this is equal to the average plot size. However, while a measure such as average frontage width can inform assessment the (sic) existing frontage development pattern, the policy does not necessitate duplication of such a mathematical factor in respect of proposals for infill development. The assessment of whether a proposal would respect the existing development pattern along the frontage requires consideration of the matters of size, scale, siting and plot size in the round.
- 4.16 The site and the next field appear as two obvious plots for the purposes of this appraisal. There is room for one dwelling in each field, with sufficient room left for agricultural access to the rear lands (this would be needed to avoid sterilizing the agricultural "back" lands). If one dwelling were approved on the appeal site, there would be no prospect of an applicant gaining permission for two plots on the field to the immediate north, as those two dwellings would not respect the pattern of development along this frontage. The only other place to consider the hypothetical third dwelling would be to the south of No. 53 Ayallogue Road but this would result in tandem development which would be out of character and would conflict with Policy NH 6 'Areas of Outstanding Natural Beauty' of Planning Policy Statement 2 'Natural Heritage, inter alia, it would not integrate sympathetically with its surroundings. It would fail to meet other planning and environmental considerations due to the potential for overlooking No. 53 Ayallogue Road and the consequential loss of

privacy along with potential overshadowing and loss of daylight. Overall, when considered in the round, there is no prospect of an approval on the appeal site establishing circumstances under which a further two permissions would result.

- 4.17 The appellant concedes that the gap, if excluding No. 53 Ayallogue Road, would lie on the outer margins of acceptability, albeit within the normal tolerance. Whether the gap is 110 metres or 140 metres (if excluding No. 53) recent cases show it is permissible to take account of the size of other plots in this immediate area but not lying within the narrow frontage under consideration. There are 70 metre wide plots at Nos. 54 and 58 Ayallogue Road on the opposite side of the road and 200 metres up Ayallogue Road, an agricultural complex occupies a plot that measures in excess of 60 metres wide. While the plots in this immediate frontage vary between 30 and 45 metres wide, determining this application as if Ayallogue Road is characterised by narrow plots would be incorrect.
- 4.18 A recent case resulted in a permission being granted in a 115m gap in planning application LA07/2020/0669/F (2 dwellings and 2 garages - 90m SE 21 Ballynalack Road, Ballynalack, Camlough) and 123 metres in planning application LA07/2019/0620/O (New dwelling and garage - Adjacent and South West of 76 Drumlough Road, Mayobridge) where the gap was more than twice the size of the adjoining plots. In 2020/A0019, there were a broad spectrum of plot sizes ranging between 50 metres and 120 metres. A dwelling was permitted on the basis that it could have been within 60 metres of the nearest building. There is a wide spectrum on Ayallogue Road and even at its worst this gap could not accommodate more than two dwellings that the two dwellings that occupy the wider plots in this immediate locality (albeit beyond the frontage). *Tesco Stores Limited v Dundee Council [2012] UKSC 13* is relevant and its finding that "the context indicates that the issue of suitability is directed to the developer's proposals, not some alternative scheme which might be suggested by the planning authority". So the assessment should be made on the basis of the appellant's proposal, not on the crude basis (mathematical exercise) the planning authority has applied.
- 4.19 The appellant contends that the proposal is cognisant of the development pattern in this locality with its 45 metre wide frontage being commensurate with the other plots along this frontage. The second part of the gap would be approximately 50 metres which is again within the broad spectrum of plot sizes that are evident in this locality. Although the space between adjacent buildings is slightly more than double this (and trebled if No. 53 Ayallogue Road is disregarded from the frontage), the proposal must be considered in the round before deciding if the arrangement of land within the gap is really such that three dwellings could be accommodated. When considering this objectively, and looking at the extent of the individual landholdings, it would be highly improbable in the extreme that more than two dwellings could be accommodated between Nos. 53 and 53A Ayallogue Road or even that a dwelling would inevitably follow to the south of No. 53 Ayallogue Road if it was excluded from the frontage.
- 4.20 It is contended that there is no prospect of the gap being regarded as not small, for the purposes of the policy, given that the approaches are all at an acute angle (north and south) so there is never a point at which the width of the gap is obvious to passers-by. Accordingly, if the Council had conducted its analysis objectively in the

round, it ought to have recognised that the gap is indeed small for the purposes of the salient policy.

5.0 CONSIDERATION

- 5.1 The main issues in this appeal are whether the proposed development would:
 - be acceptable in principle in the countryside;
 - impact on the rural character of the area; and
 - be sympathetic to the special character of the Ring of Gullion AONB.
- 5.2 Section 45(1) of the Act requires regard to be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The Banbridge Newry and Mourne Area Plan 2015 (BNMAP) operates as the local development plan (LDP) for the area where the appeal site is located. In BNMAP, the appeal site is located in the countryside and outside of any settlement limit or special countryside area defined in the plan. There are no other provisions in the BNMAP that are material to the determination of the appeal. The appeal site lies within the AONB.
- 5.3 The Strategic Planning Policy Statement 'Planning for Sustainable Development for Northern Ireland' (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole of the Council area. As no Plan Strategy has been adopted for the Newry, Mourne and Down District Council area, both the SPPS and the retained Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) and Planning Policy Statement 2 'Natural Heritage' (PPS 2) apply. In line with the transitional arrangements, as there is no conflict or change in policy direction between the provisions of the SPPS and retained policy, PPS 21 provides the policy context for determining this appeal.
- 5.4 Policy CTY 1 of PPS 21 lists a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of instances when planning permission will be granted for an individual dwelling house are stated. One of these is a small gap site in accordance with Policy CTY 8 of PPS 21.
- 5.5 Policy CTY 8 of PPS 21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. An exception to the policy will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The Council considers that the proposal is not sited within a substantial and continuously built-up frontage.
- 5.6 To establish whether the appeal site represents an infill opportunity, it is first necessary to determine whether it is within an otherwise substantial and continuously built-up frontage. I agree with the appellant that the policy uses the

word 'includes' and that this does not rule out other scenarios aside from that detailed in the policy headnote. Nevertheless, I cannot set aside the definition that is provided within the headnote of Policy CTY8 in respect of what it envisaged to be a substantial and built up frontage of a line of 3 or more buildings along a road frontage with accompanying development to the rear.

- 5.7 In order for a building to have road frontage, the plot on which it stands must abut or share a boundary with that road, footpath or lane. In support of his case, the appellant submitted a 'frontage' map within his evidence to demonstrate that a small gap site exists within a substantial and continuously built-up frontage along this part of Ayallogue Road. The frontage identified in the map is between Nos. 51 and 55 Ayallogue Road.
- 5.8 The parties agree that Nos. 51, 51a, 53a Ayallogue Road, an agricultural building south of No. 53a and No. 55 Ayallogue Road have frontage to the road. The nexus of the disagreement between the parties centres upon the road frontage status of the building at No. 53 Ayallogue Road.
- 5.9 At my site visit, I noted that the land to the front of No. 53 Ayallogue Road has a generally uneven ground surface, is covered in long grass and has the same appearance as the adjacent field to the north and other fields in the immediate vicinity of the appeal site. In addition, and from my observations, a post and wire fence runs around this land and across the front of No. 53 Ayallogue Road effectively severing it from the road. Furthermore, the flanking wall that runs along both sides of the lane serving No. 53 Ayallogue Road provides further separation between the appeal site and the curtilage of No. 53 Ayallogue Road. The appellant referred to appeal 2020/A0019, which was para-phrased in his evidence. A copy of this appeal decision or other appeal decisions were not provided. In the limited evidential context, I have limited information to assess and I am not persuaded that the circumstances in this appeal decision are fully reflective of the configuration of the site-specific nature of the appeal site. Therefore I cannot conclude it is on all on the fours with the appeal development. Taking all of those factors, I consider that the land to the front of No. 53 Ayallogue Road is an agricultural field and not, as contended by the appellant, an unkept domestic garden. No. 53 Ayallogue Road does not therefore have road frontage as envisaged by the policy and cannot be taken into account.
- 5.10 Nos. 51, 51a, 53a Ayallogue Road, an agricultural building south of No. 53a and No. 55 Ayallogue Road comprise a continuous and substantially built-up frontage within which the appeal site lies. I will now consider the gap that does exist between the road frontage buildings at 51 and 55 Ayallogue Road. The parties agree that the gap is some 138m wide and that plot widths within it are between 33m and 40m. Development of the gap when taking account of the existing development pattern along the frontage could yield up to 4No. dwellings. This arrangement would not respect the existing development pattern along the frontage and as it would accommodate more than two houses it would be contrary to Policy CTY 8 of PPS 21.
- 5.11 The appellant argued that development within the gap to the front of No. 53 Ayallogue Road would not meet other planning and environmental requirements. Even if I was to consider this persuasive, the developable area of the gap would remain at some 110m. This, of itself, could accommodate up to 3No. new dwellings

whilst respecting the existing development pattern along the frontage. This would also be contrary to Policy CTY 8 of PPS 21.

- 5.12 The appellant also sought to rely on the spacing and plot sizes of Nos. 54 and 58 Ayallogue Road on the opposite side of the road to the appeal site and also a farm complex some 200m from the appeal site. However, as none of those buildings lie within the frontage where the appeal site is located, they cannot form part of my analysis in regard to the requirements of Policy CTY 8.
- 5.13 I see nothing in the appellant's argument or the approach of the Council that would offend the case law raised by the appellant. (*Tesco Stores Limited v Dundee Council*). In so far as I can ascertain, the Council has assessed the proposal on the planning merits of the case as presented and not in respect of an alternative scheme suggested by it.
- 5.14 Whilst the appellant referred to appeal decisions 2019/A0096 or 2019/A0138, copies of these decisions were not provided to enable a full understand of the context and circumstances specific in these decisions. It is not for me to compile evidence on behalf of any party to the appeal. This evidence has therefore limited weight in the determination of this appeal especially as each case has to be considered on their own merits.
- 5.15 The Council's decision is its final corporate decision and not the recommendation of an individual case officer and I agree with the appellant that it is not a distinguishing factor in this appeal. However, I agree with the Council that each case must be decided on its own site-specific merits. I have visited the sites of both planning permission LA07/2019/0008/F and planning permission LA07/2019/1449/F. However, neither was located within a substantial and continuously built-up frontage and are distinguishable from the appeal proposal for that reason. I consider both to be poor planning decisions of themselves which are contrary to planning policy. I do not consider it in the public interest that such decisions are repeated.
- 5.16 As I have not found any of the appellants other arguments to be persuasive, they are not determining in this appeal. For these reasons, the appeal site is not an exception to policy in that it does not constitute a small gap in an otherwise substantial and continuously built-up frontage.
- 5.17 The dwellings at Nos. 51, 51a and 53a Ayallogue Road share a common frontage to the road along with No. 55 and an agricultural building south of No. 53a Ayallogue Road. They are all visually linked with No. 53 Ayallogue Road and a ribbon of development, as acknowledged by the appellant, exists. I agree with the Council that as part of the gap within this ribbon of development, the appeal site provides relief and is an important visual break. Irrespective of siting on the appeal site, a dwelling and garage would therefore be contrary to Policy CTY 8 of PPS 21 in that it would add to an existing ribbon of development and be unacceptable in the countryside. It would not accord with the policy direction set out in paragraph 6.64 of the SPSS which advocates that new development should be sensitive to environmental issues including the ability landscapes to absorb development. Accordingly, the Council has sustained its second reason for refusal based on Policy CTY 8 of PPS 21.

- 5.18 Policy CTY 14 'Rural Character' 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. It adds that a new building will be unacceptable in five stated circumstances. The Council contends that the proposal, if approved, would be contrary to (b) as it results in a suburban style build-up when viewed with existing and approved buildings and (d) as it would add to a ribbon of development.
- 5.19 Paragraph 5.80 of Policy CTY 14 states that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside.
- 5.20 I have already found that there is an existing ribbon of development along Ayallogue Road which comprises Nos. 51, 51a, 53a, an intervening building lying immediately to its north and 55 Ayallogue Road to the south of the appeal site because of their visual linkage with each other. This ribbon of development already appears suburban in nature and rural character has already been eroded. The appeal proposal would be seen as another road frontage development within the existing ribbon and would add to it, thereby resulting in a suburban style build-up of development when viewed with existing and approved buildings. This would further unacceptably erode rural character within this part of the countryside. For these reasons, the appeal proposal would therefore fail to comply with criteria (b) and (d) of Policy CTY 14 of PPS 21. Accordingly, the Council's third reason for refusal is sustained.
- 5.21 The Council's fourth reason for refusal relates to Policy NH 6 'Areas of Outstanding Natural Beauty' of PPS 2. This states that planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and where three stated circumstances are met.
- 5.22 As this is an application for outline planning permission no detailed designs have been presented by the appellant. In any event design is a matter to be reserved. The Council provided no evidence to demonstrate that the proposed development could not be of an appropriate design and size for the locality but raised concerns regarding criterion (a) of Policy NH 6 that the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality.
- 5.23 Although I am not persuaded that the scale of the proposal in itself would be unsympathetic to the identified special character of the AONB as a whole given that the stated features would remain intact, I consider that, for the reasons already outlined above, as the siting of the proposal would be detrimental to the rural character of this particular locality, it would therefore be unsympathetic to the AONB. The Council's fourth reason for refusal is sustained for this reason.
- 5.24 Policy CTY 1 of PPS 21 goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a nearby settlement. I was given no evidence of any overriding reasons to demonstrate why the development is essential and could not be located in a nearby settlement. As the proposed development would fail to meet the requirements of Policy CTY 8 of PPS 21 and it has not been demonstrated that it

is essential in this location, the appeal proposal is not acceptable in principle in the countryside and fails to meet the requirements of Policy CTY 1 of PPS 21. The Council's first reason for refusal is sustained.

- 5.25 As I have found all four reasons for refusal are sustained in respect of Policies CTY1, CTY8, CTY14 and PPS2 the appeal proposal is not acceptable in the countryside. Accordingly, the appeal must fail.

6.0 **RECOMMENDATION**

- 6.1 As all four reasons for refusal are sustained, I recommend to the Commission that the appeal be dismissed.

- 6.2 This recommendation relates to the following drawing(s):-

Number	Title	Scale	Date Received
P01A	Site Location Plan	1:2500	31 st July 2020

List of Appearances

Planning Authority:-

Mr. Ashley Donaldson
Ms. Elaine Harte
Newry, Mourne and Down District Council

Appellant(s):-

Mr. Colin O'Callaghan – O'Callaghan Planning
(agent)

List of Documents

Planning Authority:-

"A1" Newry, Mourne and Down District Council
Statement of Case

"A2" Newry, Mourne and Down District Council
Rebuttal Statement

Appellant(s):-

"B1" O'Callaghan Planning
Statement of Case

"B2" O'Callaghan Planning
Rebuttal Statement