



May 26th, 2022

**Notice Of Meeting**

You are invited to attend the Planning Committee Meeting to be held on **Wednesday, 1st June 2022** at **10:00 am** in **Boardroom Monaghan Row Newry** and **via Microsoft Teams**.

**Committee Membership 2021-2022**

- Cllr. D McAteer (Chair)
- Cllr. C Enright (Deputy Chair)
- Cllr. R Burgess
- Cllr. P Byrne
- Cllr. L Devlin
- Cllr. G Hanna
- Cllr. V Harte
- Cllr. M Larkin
- Cllr. D Murphy
- Cllr. L McEvoy
- Cllr. H McKee
- Cllr. G O'Hare

# Agenda

## 1.0 Apologies and Chairperson's remarks.

- Apology - Conor Mallon Director

## 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 7 - LA07/2021/1318/0 - site meeting held on 18-05-2022 attended by Cllrs. Byrne, Harte, Larkin, Murphy, McAteer and O'Hare
- Item 12 - Application presented at Planning Committee in January 2022 – Cllr. Byrne was not a Committee Member at that time – all other Committee Members were present

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### *For confirmation*

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## 4.0 Minutes of Planning Committee Meeting held on Wednesday 11 May 2022. (Attached).

 *Planning Committee Minutes 11.05.2022.pdf*

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### *For Discussion/Decision*

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

 *Addendum list - 01-06-2022.pdf*

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### *Local Development Plan Items - Exempt Information*

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## 6.0 LDP: Planning Policy Review - Coastal Development. (Attached).

This item is deemed to be restricted by virtue of Paragraph 3 of Part 1 of Schedule 6 of the Local Government Act (Northern Ireland) 2014 - information relating to the financial or business affairs of any particular person, (including the Council holding that information) and the public may by resolution, be excluded during this item of business.

 *PC Report re LDP PPR - Coastal Development (June'22).pdf*

*Not included*

 *PPR Paper - Coastal Development (PC 1.6.22).pdf*


*Not included*

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**7.0 LA07/2021/1318/O - Infill Dwelling - Site between 11 and 13 Tullydonnell Road Silverbridge Newry Co. Down. (Case Officer report attached).**

REFUSAL

- In line with the updated Operating Protocol no further speaking rights are permitted on this application (Margaret Smith, agent, will be available to answer any queries Members may have)
- A site meeting was held on 18-05-2022 - Councillors Byrne, Harte, Larkin, Murphy, McAteer, and O'Hare attended

 [LA07-2021-1318-O \(infill\) Site between 11 and 13 Tullydonnell Road, Silverbridge.pdf](#)

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**Development Management - Planning Applications for determination**


**8.0 LA07/2021/0394/F - Change of use of lands to Public Park (used in conjunction with Saintfield Community Centre - lands to the rear of Saintfield Community Centre and to the south of 8-11 Windmill Grange with access onto Belfast Road. (Case Officer report attached).**

APPROVAL


- A request for speaking rights has been received from Sandra Patterson, Dennis Russell and Hilary Russell in objection to the application. **(Submission attached).**
- A request for speaking rights has been received from Saintfield Development Association in support of the application - Barbara Graham; Ian Mack and Martyn Todd. **(Submission attached).**

 [LA07-2021-0394-F\\_CO\\_report.pdf](#)

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 [Item 8 - LA07-2021-0394-F \(objection\).pdf](#)

Page 33

 [Item 8 - LA0720210394F \(support\).pdf](#)

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**9.0 LA07/2019/1009/O - Redevelopment of existing residential site - Residential development at 113 South Promenade Newcastle. (Case Officer report attached).**

*For Approval*

APPROVAL

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

📄 *LA07-2019-1009-O-COR.pdf*

*Page 36*

📄 *Item 9 - LA07-2019-1009-0 (support).pdf*

*Page 56*

## **10.0 LA07/2019/1748/F - Erection of 12 dwellings, with boundary walls, fences, landscaping and associated site works - 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. (Case Officer report attached).**

### APPROVAL

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

📄 *LA07-2019-1748-F.pdf*

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📄 *Addendum report 19-1748.pdf*

*Page 71*

📄 *Item 10 - LA07-2019-1748-F (objection).pdf*

*Page 74*

📄 *Item 10 - LA07-2019-1748 (support).pdf*

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## **11.0 LA07/2021/1219/O - Site for 5 units of self-catering accommodation - Lands 215 SE of 40 Quarter Road Annalong. (Case Officer report attached).**

### REFUSAL

- A request for speaking rights has been received from Brendan Quinn, agent, and John and Myrtle Haugh, applicant, in support of the application. **(Submission attached)**.

📄 *LA07-2021-1219-O.pdf*

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📄 *Item 11 - John Haugh - LA07-2020-1219-O 1st June 2022.pdf*

*Page 91*

## **12.0 LA07/2021/1252/O - Site for dwelling and detached garage - 40m south west of No. 67 Tullyframe Road Attical. (Case Officer report attached).**

## REFUSAL

- A request for speaking rights has been received from Brendan Quinn, agent and Sean and Denise Sloan, applicant, in support of the application. **(Submission attached).**

Application presented at Planning Committee in January 2022 – Cllr. Byrne was not a

Committee Member at that time – all other Committee Members.were present

📄 *LA07-2021-1252.pdf* *Page 93*

📄 *Addendum report LA07-2021-1252.pdf* *Page 103*

📄 *Item 12 - Sean Sloan - LA07-2020-1252-O 1st June 2022.pdf* *Page 106*

### **13.0 LA07/2021/1664/O Proposed site for infill dwelling and domestic garage Between 8 and 12 Ballykeel Road Ballymartin Kilkeel BT34 4PL. (Case Officer report attached).**

#### REFUSAL

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

📄 *LA07\_2021\_1664\_O Ballykeel Rd Ballymartin.pdf* *Page 108*

📄 *Item 13 - LA07.2021.1664.O.pdf* *Page 113*

### **14.0 LA07/2021/0983/F - Restoration of The Grange Courtyard Buildings and reconstruction of bomb damaged block - New landscape within the Grange Courtyard. New drainage system to the Grange. Restoration of the entrance gates on the Castle Avenue. New pedestrian path from entrance gates to existing car park. New vehicular road off Castle Avenue to existing car park. Traffic control barrier on Castle Avenue. Relocation of caravan spaces. Restoration of the heritage landscape. (Case officer report to follow).**

#### APPROVAL

- To be presented at Committee

### **15.0 LA07/2021/0988/LBC. Restoration of the Grade B1 Listed Grange Courtyard Building and reconstruction of bomb damaged block. Internal demolitions and new interventions such as staircases, lift, toilets. Replacement of existing windows and new windows. New landscape within the Grange**

**Courtyard. New drainage system to the Grange. Restoration of the entrance gates on the Castle Avenue. New pedestrian path from entrance gates to existing car park. (Case Officer report to follow).**

New vehicular road off Castle Avenue to existing car park. Traffic control barrier on Castle Avenue. Relocation of caravan spaces. Restoration of the heritage landscape.

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*For Noting*

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**16.0 Judgement – Application by Gordon Duff (Re Glasdrumman Road, Ballynahinch) for judicial review. Planning Application LA07/2020/1292/O -Two infill dwellings on lands between Nos 2 and 10 Glasdrumman Road, Ballynahinch. (Attached).**

 *Re Duff (Glasdrumman Road) lead case - judgment.pdf*

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**17.0 Historic Action Sheet. (Attached).**

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

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## NEWRY, MOURNE & DOWN DISTRICT COUNCIL

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**Minutes of the Planning Committee Meeting of Newry, Mourne and Down District Council held on Wednesday 11 May 2022 at 10.00am in Boardroom, Monaghan Row, Newry and via Microsoft Teams.**

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**Chairperson:** Councillor D McAteer

**In attendance:** **(Committee Members)**

Councillor R Burgess  
 Councillor P Byrne  
 Councillor L Devlin  
 Councillor G Hanna  
 Councillor V Harte  
 Councillor M Larkin  
 Councillor D Murphy  
 Councillor L McEvoy  
 Councillor G O'Hare

**(Officials)**

Mr C Mallon	Director, Enterprise, Regeneration & Tourism
Mr A McKay	Chief Planning Officer
Mr P Rooney	Principal Planning Officer
Mr A Hay	Principal Planning Officer
Mr M McQuiston	Senior Planning Officer
Ms A McAlarney	Senior Planning Officer
Mr M Keane	Senior Planning Officer
Ms P Manley	Senior Planning Officer (via Teams)
Mr F O'Connor	Head of Legal Administration
Ms L Coll	Legal Advisor
Ms S Taggart	Democratic Services Manager (Acting) (via Teams)
Ms C McAteer	Democratic Services Officer
Ms L Dillon	Democratic Services Officer
Ms L Cummins	Democratic Services Officer (via Teams)
Ms P McKeever	Democratic Services Officer

**P/043/2022: APOLOGIES AND CHAIRPERSON'S REMARKS**

No apologies were received

Councillor McAteer asked that a letter of condolence be sent to Nora Largey on the recent sad passing of her mother.

**P/044/2022: DECLARATIONS OF INTEREST**

Councillor Devlin declared an interest in Item 12 – LA07/2021/1712/F

Councillor Burgess declared an interest in Item 13 – LA07/2021/0394/F

**P/045/2022:            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.**

- **Item 6** - LA07/2019/1134/O - Replacement Dwelling - 90 Manse Road Darraghcross Crossgar – Councillors Byrne, Devlin, Hanna, Larkin, Murphy, McAteer, McEvoy and O'Hare attended a site visit on 13-04-2022
- **Item 7** – LA07/2020/1161/F - Councillors Devlin, Hanna, Murphy, McAteer, McEvoy and O'Hare attended a site visit on 30-03-2022
- **Item 8** – LA07/2020/1370-0 – Councillors Hanna, Larkin, Murphy, McAteer, McEvoy and O'Hare attended a site visit on 30-03-2022

**MINUTES FOR CONFIRMATION**

**P/046/2022:            MINUTES OF PLANNING COMMITTEE MEETING HELD ON WEDNESDAY 6 APRIL 2022**

Read:                    Minutes of Planning Committee Meeting held on Wednesday 6 April 2022. (Copy circulated)

**AGREED:                On the proposal of Councillor Hanna, seconded by Councillor McEvoy, it was agreed to adopt the Minutes of the Planning Committee Meeting held on Wednesday 6 April 2022 as a true and accurate record.**

**FOR DISCUSSION/DECISION**

**P/047/2022:            ADDENDUM LIST**

Read:                    Addendum List of Planning Applications with no representations received or requests for speaking rights – Wednesday 11 May 2022. **(Copy circulated).**

Councillor Larkin proposed Item 13- LA07/2021/0394/F be removed from the Addendum List and presented at the next Planning Committee Meeting. In response to a query from Councillor McAteer as to the reason for requesting it be removed, Councillor Larkin said he had been advised that an objector to the application had not been aware it was to be heard at the Meeting today and had not been able to engage in the process to date. Councillor McEvoy seconded the proposal.

Councillor Devlin asked what the precedent was in determining if a Planning Application be removed from the Addendum List. Councillor McAteer said requests were usually accepted providing there was a reasonable explanation for doing so and it was usual practice to try to facilitate people who were not familiar with the planning system.



Councillor Hanna stated an email had been circulated from an objector thereby indicating the objector had been involved in the process and he said the onus was on her to secure speaking rights.

The Chairperson put Councillor Larkin's proposal to a vote by way of a show of hands and voting was as follows:

FOR: 8  
 AGAINST: 1  
 ABSTENTIONS: 0

The proposal was carried.

**AGREED:** **On the proposal of Councillor Larkin, seconded by Councillor McEvoy it was agreed to remove the following application listed on the addendum list for Wednesday 11 May 2022 and be given a full presentation at the June Committee Meeting**

- **LA07/2021/0394/F** - Change of use of lands to Public Park (used in conjunction with Saintfield Community Centre) - Lands to the rear of Saintfield Community Centre and to the south of 8-11 Windmill Grange with access onto Belfast Road. **APPROVAL**

**AGREED:** **On the proposal of Councillor Devlin, seconded by Councillor Harte, it was agreed to approve the Officer recommendation in respect of the following application listed on the addendum list for Wednesday 11 May 2022:**

- **LA07/2022/0201/LBC** - Removal of tiered seating and steps. Widening of corridor between theatre and display room. Create new store using a section of existing store - Newcastle Centre 10-14 Central Promenade Newcastle **GRANTED**

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

#### **P/048/2022: PLANNING APPLICATIONS FOR DETERMINATION**

##### **(1) LA07/2019/1134/O**

As agreed at the Planning Meeting on 6 April 2022, a full presentation and speaking rights were permitted.

Councillors Burgess and Harte withdrew from the discussion/decision on this application.

**Location:**  
 90 Manse Road Darraghcross Crossgar

**Proposal:**  
 Replacement Dwelling

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point presentation:**

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

**Speaking rights:**

Mr G Tumelty, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members. Mr Mageean was in attendance to answer any questions from Members.

**Issues Raised:**

- Councillor Byrne referred to the term 'reasonably capable' as outlined in the engineer's report and asked what constituted 'reasonably capable'. In response Mr McKay said the decision taken by Planning was assessed on all considerations and the information that had been made available to officers, but ultimately it was up to the Committee where to place reliance, any material consideration could be taken into account, but it would have to be rooted in planning policy.
- Councillor Byrne considered there was a lot of ambiguity around the term 'reasonably'.
- Mr McKay it was a feature of policy to have ambiguity, however he considered the policy was clear and that Planning considered the subject building contributed to the heritage, appearance and character of the locality and it was reasonably capable of being made structurally sound, the financial aspect was not considered as it was not part of the planning process.
- Ms McAlarney acknowledged there was very little room to the rear of the building to extend and said it was important to note it was only half of the building being considered.
- Mr Tumelty said to work within the red line would be very restricted and would require excavation works to the rear which he said would further weaken the back wall of the building.
- Mr Tumelty said the red line was not defined by any area on the ground, a replacement building could be pulled forward giving it a more level surface to work within.
- Mr Tumelty said a replacement dwelling would need to have a higher ridge height to meet current regulations, but he would be happy to work with Planning on design.

Councillor Hanna proposed to issue an approval in respect of Planning Application LA07/2019/1134/O contrary to officer recommendation on the basis that he considered, the building was not fit for the purpose of being restored, the survey reflected the poor state of the building, the front wall was lying out and an extension would be very restricted. He said a replacement dwelling should be similar in design. Councillor Larkin seconded the proposal.

Mr McKay asked Councillor Hanna to address the refusal reasons. Councillor Hanna said there was only one refusal reason to address as the second one had been removed. Councillor Hanna said he considered the current building was very small and the integrity and structure were in question. He said if the replacement building was single storey, slightly larger, of similar design and using sympathetic materials it would be sustainable, would integrate into the countryside and comply with CTY3.

Before going to a vote, Councillor Byrne asked it was noted that his reason for supporting the decision to overturn the Planning Officer's recommendation was that he considered the building to be structurally unsound, which was cited as an exception contained within CTY3.



Mr McKay asked Councillor McAteer to address the policies upon which the recommendation was placed, notably, CTY 13 and CTY14 which dealt with integration in the countryside and the tourism policies, TSM 6, which dealt with holiday parks, TSM 7 which dealt with general criteria for tourism and TSM 8 safeguarding tourism assets.

Councillor McAteer said he considered the amended plans addressed all concerns and further conditions could be imposed. He said the vernacular in the area was stone ditching and stones could be used on the three levels of the site to aid with integration and that officers, agent and applicant worked together to bring that forward.

**AGREED:**

**On the proposal of Councillor McAteer seconded by Councillor Devlin it was agreed to issue an approval in respect of Planning Application LA07/2021/1161/F contrary to officer recommendation on the basis that the development would not be unduly prominent in the area and the use of stone screening would further aid with integration.**

**Planning officers be delegated authority to impose any relevant conditions.**

**(3) LA07/2021/1370/O**

((Councillors Burgess, Byrne, Devlin and Harte withdrew from discussion/decision on this application).

**Location:**

Land located between No. 22 and No. 22B Lurgan Road, Silverbridge, Newry

**Proposal:**

Infill development of 2 no. dwellings

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point Presentation:**

Mr P Rooney, Principal Planning Officer provided Members with a short recap (via Teams) on the power point presentation previously presented to Committee.

**Speaking rights:**

In line with the updated Operating Protocol no further speaking rights were permitted on this application.

Ms Colleen Savage, agent and Mr Michael McLoughlin, applicant were in attendance to answer any questions from Members.

**Issues Raised:**

- Ms Savage said sites along the Lurgan Road ranged from 0.7 hectares to 0.354 hectares and the proposed sites were 0.27 and 0.31 hectares respectively.
- Ms Savage said the plot widths along the Lurgan Road varied and planning had previously granted approval for the largest gap site along this stretch of road.



**Proposal:**

Infill Dwelling

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point Presentation:**

Mr Pat Rooney, Principal Planning Officer gave a power point presentation via Teams 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:**

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

**Issues Raised:**

- Ms Smith confirmed the only entrance to No. 11 Tullydonnell Road was the one identified in the presentation, she said both the lane and hedges bordering it were well maintained and the bins were brought to the bottom each week for emptying by Council.
- Ms Smith said the adjacent building to the East of No. 11 was a farm building and it had a different access.
- Mr Rooney said the main concern was that of the three buildings being relied on by the agent, to comply with policy, only one had road frontage, the other two were set back and accessed by a private lane.
- Mr Rooney said the agent, in referring to 5.33 of CTY8 had given an incorrect interpretation of the policy and said in this instance, there were not three dwellings situated along either a laneway or a footpath and consequently he considered the application contravened policy.
- Councillor Byrne said there was a lot of ambiguity around 5.33, and his interpretation of the policy was that the buildings were visually linked.
- Mr McKay said it was important the Committee considered the context of the policy and that 5.33 did not fall within the main body of the policy but was within justification and amplification and he said the policy when read in its entirety was very clear.
- Mr Rooney said 5.33 was irrelevant to Planning Application LA07/2021/1318/O as it was about ribbon development and not built up road frontage.
- Mr McKay said property No. 13 had road frontage in that it had a driveway and the garden extended to the road, however, No. 11 did not have road frontage, it just had an access lane.
- Mr McKay said the starting point for the Committee was to decide if there were three properties forming a continuous and substantial built up frontage and he said Planning considered there was not.
- Ms Smith said the dwelling to the North with its own access and the dwelling and outbuilding to the South sharing an access were the three buildings that she considered had road frontage, and she said there did not have to be three separate accesses to comply with policy.
- Mr Rooney acknowledged, that previously where an outbuilding was linked to a dwelling and read as a separate building it would be considered as two separate buildings for the purposes of complying with policy, however, he said in this instance the buildings on the other side of the road, did not have road frontage.
- Mr McKay said Planning Policy PPS21 was a restrictive policy and permission was granted by exception.

**AGREED:**

**On the proposal of Councillor Murphy seconded by Councillor O'Hare, it was unanimously agreed to defer Planning Application LA07/2021/1318/O for a site visit so that Members could assess the site in more detail.**

(Break 11.40am – 11.50am)

**(5) LA07/2021/1171/F****Location:**

Lands adjacent and 64m SW of no.22 Donaghaguy Road Warrenpoint

**Proposal:**

Proposed farm dwelling with associated site works and landscaping

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point Presentation:**

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

**Speaking rights:**In objection

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

In Support

Mr Tony O'Hare, agent and Mr Paul McCreanor, agent presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

**Issues Raised:**

- Mr O'Hare said the applicant had a farm business that included growing, cutting and selling grass, additionally there was a farm store that was used for horses for hobby purposes.
- Mr Keane said CTY10 was entirely assessed to ascertain if there were any grounds to justify an approval in respect of the application.
- Mr Keane said the letter provided by the agent provided further evidence that for several years a third party had been farming the lands and claiming the Single Farm Payment subsidy.
- Mr O'Hare said the letter also stated the owner, Mrs McCullough had employed the third party as a contractor to do agricultural works on her land.
- Mr O'Hare said DAERA had confirmed the farm had been established for more than 6 years, that Mrs McCullough was a farmer and it could be backed up by invoices.
- Mr O'Hare said although full tax accounts had not been submitted to Planning, they could be made available if required.
- Mr O'Hare said the third party had included Mrs McCullough's land as part of his farm so he could comply with the Nitrates Directive.
- Councillor McAteer said a Nitrates subsidy did not exist and slurry could be gifted to a neighbouring farmer using slurry licences.





**Speaking rights:**

Mr Declan Rooney, agent and Mr Jerome Johnston, applicant presented in support of the application, detailing and expanding upon a written statement that had been circulated to Committee Members.

**Issues Raised:**

- Ms McAlarney said the proposed house type was unacceptable and although she acknowledged planning had previously been granted for a terrace of three dwellings, the current application was for one dwelling and she said in the absence of a certificate of lawfulness, Planning Department would be wary of reliance being placed on extant approval.
- Ms McAlarney said when assessing the proposed house design, a wide residential area had been considered specific to where the site could be read in terms of context.
- Mr Rooney said the proposed design reflected modern living and any further amendments to the design would have to be discussed with the applicant.
- Ms McAlarney advised NI Water had responded with concerns about the proximity of the site to a waste water treatment plant and the potential for odour and noise and it had requested further information which had not been forthcoming.
- The agent said he was not aware of any complaints of noise or odour from neighbouring properties.
- Ms Coll said there was a gap in information and it was important the Committee focus on what was relevant, which was the outstanding response from NI Water.
- Mr McKay confirmed that should the Committee decide to issue an approval in respect of Planning Application LA07/2021/0461/F, a negative condition could be attached whilst awaiting the response from NI Water.

Councillor Larkin proposed to issue an approval in respect of Planning Application LA07/2021/0461/F contrary to officer recommendation on the basis that a negative condition be attached in relation to the outstanding report from NI Water. Councillor Larkin said he was content with the proposed size and design, he considered it to be suitable for the site, it was within view of other similar size houses and it reflected local development. He said it was not unsympathetic to the AONB as there were a variety of styles in the area. 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:	8
AGAINST:	1
ABSTENTIONS:	1

The proposal was declared carried.

**AGREED:**

**On the proposal of Councillor Larkin, seconded by Councillor Hanna it was agreed to issue an approval in respect of Planning Application LA07/2021/0461/F contrary to officer recommendation on the basis that a negative condition be attached in relation to the outstanding report from NI Water. The proposed size and design were in keeping with neighbouring properties and it was sympathetic to the character of the area and AONB.**

**Planning officers be delegated authority to impose any relevant conditions.**

**(7) LA07/2021/1712/F**

(Councillor Devlin withdrew from the meeting)

**Location:**

Lands approximately 20m NE of no. 32 Ballykeel Road Cabra

**Proposal:**

Erection of farm dwelling and garage

**Conclusion and Recommendation from Planning Official:**

Refusal

**Power-point Presentation:**

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

**Speaking rights:**

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

**Issues Raised:**

- Mr O'Callaghan said the applicant did not have any road frontage on to the Ballykeel Road, he only had frontage on to a private lane situated off a public road.
- Mr McKay said he did not accept there were health and safety cases that would demand that dwellings be located at least 75m from a farm business.
- Mr McKay said there were many examples in the district of newly constructed houses in close proximity of farm businesses, which evidenced that farm dwellings and farm businesses could happily co-exist close to each other.
- Mr McKay referred to the health and safety guidance from Environmental Health regarding dwellings built within 75m of farms and said often complaints of noise and odour may have arisen due to a dwelling not being in the farms ownership.
- Councillor Byrne said the 75m safe distance rule should apply to all whether they were actively farming or not.

Councillor O'Hare proposed to issue an approval in respect of Planning Application LA07/2021/1712/F contrary to officer recommendation on the basis that he considered it met the requirements of CTY10 in that the farm had been active and established for at least 6 years, no dwelling or development opportunities out of the settlement limits had been sold off from the farm holding, the health and safety concerns had been clearly demonstrated, it would not be unduly prominent in the area and it would not add to ribbon development. Councillor McEvoy 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:	0
ABSTENTIONS:	0

The proposal was carried.

**AGREED:**

**On the proposal of Councillor O'Hare seconded by Councillor McEvoy it was agreed to issue an approval in respect of Planning Application LA07/2021/1712/F**

**contrary to officer recommendation on the basis that the farm had been active and established for at least 6 years, no dwelling or development opportunities out of the settlement limits had been sold off from the farm holding, the health and safety concerns had been demonstrated, it would not be unduly prominent in the area and it would not add to ribbon development.**

**Planning officers be delegated authority to impose any relevant conditions.**

(Lunch 1.35pm – 2.00pm)

(Councillor Devlin re-joined the meeting)

### **LOCAL DEVELOPMENT PLAN (CLOSED SESSION)**

**AGREED:** **On the proposal of Councillor Devlin, seconded by Councillor Burgess, it was agreed to exclude the public and press from the meeting during discussion on the following items:**

**P/049/2022:** **LDP: Progress Report - Quarterly Update**

Read: Report dated 11 May 2022 by Mr A McKay, Chief Planning Officer regarding the Local Development Plan: Progress Quarterly Update

**P/050/2022:** **LDP: Planning Policy Review – Retail**

Read: Report dated 11 May 2022 by Mr A McKay, Chief Planning Officer regarding the Local Development Plan: Planning Policy Review – Retail

On the proposal of Councillor Byrne, seconded by Councillor Burgess, it was agreed to come out of closed session.

When the Committee came out of closed session, the Chairman advised the following had been agreed:

**P/049/2022:** **LDP: Progress Report - Quarterly Update**

**AGREED:** **On the proposal of Councillor Byrne, seconded by Councillor Burgess, it was agreed to note the quarterly update provided in Report dated 11 May 2022 from Mr A McKay, Chief Planning Officer regarding the Local Development Plan.**

**P/050/2022:** **LDP: Planning Policy Review – Retail**

**AGREED:** **On the proposal of Councillor Byrne, seconded by Councillor Burgess, it was agreed to note the LDP: Planning Policy Review – Retail:**

- **Agree the proposed draft policies for inclusion within the draft Plan Strategy, and**

- **Authorise the Development Plan Team to amend the proposed draft planning policies as necessary (i.e. subject of further consultation engagement, sustainability appraisal, and any change to overarching regional policy) and report back to Members any substantive changes to proposed policy wording or direction.**

**FOR NOTING**

**P/051/2022: HISTORIC ACTION SHEET**

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

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

**P/052/2022: PLANNING COMMITTEE PERFORMANCE REPORT - APRIL 2022**

Read: Planning Committee Performance Report for April 2022.  
**(Copy circulated)**

**AGREED: It was unanimously agreed to note the Planning Committee Performance Report April 2022.**

**P/053/2022: CURRENT APPEALS AND DECISIONS**

Read: Planning Appeals and Decisions Report.  
**(Copy circulated)**

**AGREED: It was unanimously agreed to note the Report on Planning Appeals and Decisions.**

The meeting concluded at 3.07pm.

For confirmation at the Planning Committee Meeting to be held on Wednesday 1 June 2022.

**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 01 June 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:

- There are no applications on the addendum list for the Planning Committee Meeting on 1 June 2022

**-0-0-0-0-0-0-**



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference: LA07/2021/1318/O**

**Date Received: 14/07/2021**

**Proposal: Infill Dwelling**

**Location: Site between 11 and 13 Tullydonnell Road, Silverbridge**

**Site Characteristics & Area Characteristics:**

The application site is located outside any settlement limits as defined within the Banbridge / Newry and Mourne Area Plan 2015, the site is situated within an Area of Outstanding Natural Beauty.

The site is an area of agricultural land positioned on the edge of the public road, the site rises quite steeply to the southeast and rear boundary of the site.

The site has No 13 adjacent and south, this property is two-storey in design with a hipped roof, the property is elevated above the road with a large amenity area sweeping down to the roadside. To the north of the site there is a narrow lane that provides access to a single storey dwelling No 11 and its associated farm buildings, the property and buildings are set back from the public road and positioned to the east of the application site.

The site is within a rural area with a few other properties and agricultural buildings in the vicinity, at present the area remains rural.

**Site History:**

No relevant planning history.

**Planning Policies & Material Considerations:**

The following policy documents provide the primary planning context for the determination of this application:

- Banbridge / Newry and Mourne Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 21 – Sustainable Development in the Countryside
- Planning Policy Statement 3 – Access, Movement and Parking / DCAN 15

- Planning Policy Statement 2 Natural Heritage
- Building on Tradition

**Consultations:**

DFI Roads – No objections.

NI Water – No objections.

**Objections & Representations:**

The application was advertised on 04/08/2021 and three neighbours were notified on 16/08/2021. No representations or objections have been received.

**Consideration and Assessment:****Strategic Planning Policy Statement for Northern Ireland**

Paragraph 1.12 of the SPPS states that where the SPPS introduces a change of policy direction and / or provides a policy clarification that would be in conflict with the retained policy the SPPS should be accorded greater weight in the assessment of individual planning applications. However, the SPPS does not introduce a change of policy direction nor provide a policy clarification in respect of proposals for residential development in the countryside. Consequently, the relevant policy context is provided by the retained Planning Policy Statement 21, Sustainable Development in the Countryside.

**Planning Policy Statement 21 – Sustainable Development in the Countryside**

Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. PPS21 states that planning permission will be granted for gap site which is accordance with policy CTY8.

**Principle of Development**

Policy CTY8 states that an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. 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 application site has No 13 to the south and this property is considered to have a frontage with the public road given the substantial garden area fronting the road. No 11 and its associated building, which are located to the east of the site, have their access lane running along the boundary with the application site, but the dwelling and buildings are set back from the public road with agricultural land between the road and the buildings. As a consequence, these buildings do not have a frontage with the public road. Although the laneway provides the access/exit point to the road the curtilage of the property is set back from and does not extend to the public road due to the intervening agricultural land. As a result, this property is not considered to have a road frontage.

The agent has submitted some information to argue that although the property and buildings at No 11 are set back from the public road the fact that the laneway runs to the road is sufficient to establish that the buildings have a road frontage, the agent included some examples which they state relate to the proposal. Consideration has been given to the information and examples submitted, however it is considered that limited weight should be attached to these as the circumstances pertaining to each, including related planning history, are different. No 11 clearly does not have a frontage to the road since it is accessed via a single laneway and is set some distance back from the road frontage. In arriving at this conclusion, the Planning Department has fully considered the requirements of the relevant planning policies and all other material considerations.

As a result, the application site is not considered to be a gap within an otherwise substantial and continuously built up frontage but instead it is considered that it would create a ribbon of development.

The proposal is not considered an exception to policy and there are no reasons why the development is essential in this rural location. It is therefore contrary to CTY1 and CTY 8 of PPS 21.

#### **Integration, Design and Rural Character**

Policy CTY 13 of PPS 21 requires a building to be visually integrated into the surrounding landscape. The application site is an open agricultural field located on the edge of the public road and as such a dwelling on the site would be considered a prominent feature in the landscape. The site at present is open to views and would be unable to provide a suitable degree of enclosure for a dwelling to integrate into the landscape. To provide a suitable degree of enclosure and screening would require the use of new landscaping. It is considered that the proposal fails to comply with parts a, b and c of Policy CTY13.

CTY 14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. A new building will be unacceptable where it will be unduly prominent, result in a suburban style build-up of development when viewed with existing buildings, and where it creates or adds to a ribbon of development.

As previously stated the site is open and so any dwelling on the site would be prominent. A dwelling on the site would result in a suburban style build-up of development when viewed with existing buildings in the area and a dwelling on the site would create a ribbon of development along Tullydonnell Road. It is considered that the proposal fails to comply with parts a, b and d of Policy CTY14.

#### **Area of Outstanding Natural Beauty**

Planning Policy Statement 2 Policy NH6 is applicable due to the location within an AONB. The proposal (for the reasons noted above) is considered unsympathetic to the special character of the AONB and therefore fails this policy criterion.

#### **Access and Parking**

DFI Roads raised no objections to the proposal and as such it is considered that access and parking provisions are acceptable.



**Development relying on non-mains sewerage.**

Policy CTY 16 – The application would appear to comply with this policy, a condition should be included to ensure a copy of a consent to discharge be submitted prior to commencement of the development.

**Recommendation: Refusal****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 CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that it fails to meet the provisions for an infill dwelling and would, if permitted, result in the creation of ribbon development along Tullydonnell 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 CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the site is prominent and unable to provide a suitable degree of enclosure for a building to integrate into the landscape and the proposal relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.
4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the building would, if permitted be unduly prominent and result in a suburban style build-up of development when viewed with existing and approved buildings and would create a ribbon of development and would therefore result in a detrimental change to and further erode the rural character of the countryside.
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 unsympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality.

**Case Officer:** Wayne Donaldson

**Date:** 25/02/2022

**Authorised Officer:** Pat Rooney

**Date:** 04/03/2022



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2021/0394/F

**Date Received:** 26/02/2021

**Proposal:** Change of use of lands to Public Park (used in conjunction with Saintfield Community Centre)

**Location:** Lands to the rear of Saintfield Community Centre and to the south of 8-11 Windmill Grange with access onto Belfast Road



#### Site Characteristics & Area Characteristics:

The lands outlined in red forms an irregular shaped site, located to the immediate east of a community centre and indoor sports facility. The site as present consists of a field in a semi-maintained condition, with car parking to the west. The area of the site totals approx. 1.5 hectares. The site lies to the rear of a large building, with a windmill stump located to the east. This roadside boundary is marked by a low wall and fencing with planting behind. The grounds of Saintfield High School are also located opposite the site. The site is bounded by Millpond Business Park to the south, whereby the watercourse appears to form the boundary. The site is also

bounded by housing to the north whereby this boundary includes fencing and planting. The boundary is marked by a wall with a field beyond, whereby this field includes the remains of an old windmill. The site would be considered rolling drumlin, rising in level to the east and slopes gently down towards the southern boundary. The east of the site exhibits a dense belt of vegetation.

The site is located within the development limits of Saintfield, towards the northern end of the village. The site is within lands zoned as a Local Landscape Policy Area (LLPA 7) Carson's Dam River Corridor as identified in the Ards and Down Area Plan 2015. It is also noted this stretch of the Belfast Road is a Protected Route, while a watercourse runs along the southern boundary. This area includes a mix of uses including community centre, indoor sports facility, housing, business park to the south and a school opposite to the far side of the Belfast Road.



**Site History:**

LA07/2021/1573/F - Change of use to multi-purpose community hall with ancillary cafe and exhibition space - to be used as an extension to existing facilities in front of building C and alterations to elevations. Rear of existing Unit C Saintfield Community Centre Saintfield. Application withdrawn.

LA07/2020/1726/PAN - Change of use from agricultural use to a community park. Windmill field Saintfield. The field is adjacent to and immediately east of the new Saintfield Community Centre (29 Belfast Road) and abounds Windmill grange windmill Road and Millpond Business Park Saintfield. Current access is beside 19 Windmill Rd. Proposal of application notice acceptable.

LA07/2018/1867/PAD - Community open space. Field behind 19, Windmill Road, Saintfield Bt24 7DX. PAD declined.

LA07/2018/1743/NMC - Non Material Change to previous approval R/2014/0627/F for the Change of use of 2 of the 3 existing vacant industrial warehouses to a community centre and indoor sports facility with changing rooms. 29 Belfast Road Saintfield. Non Material Change refused.

R/2014/0627/F - Change of use of 2 of the 3 existing vacant industrial warehouses to a community centre and indoor sports facility with changing rooms. External works to include childrens multiplay unit, additional on site parking, tree maintenance and perimeter fencing. 29 Belfast Road Saintfield BT24 7EP. Permission granted.

R/1995/0109 - Playing pitches, formal and informal planting, car parking, pavilion and duck pond. Lands Between Station Road, Belfast Road & Windmill Road Saintfield. Permission Granted.

R/1994/6113 - Proposed recreation scheme Lands at Todds Hill Saintfield. Lands at Todds Hill. Pre-application enquiry. Non-committal.

**Planning Policies & Material Considerations:**

The NI Regional Development Strategy 2035

SPPS – Strategic Planning Policy Statement for Northern Ireland.

Ards and Down Area Plan 2015

PPS 2 – Natural Heritage

PPS 3 - Access, Movement and Parking

AMP 2 - Access to Public Roads

AMP 7 - Car Parking and Servicing Arrangements

PPS 6 – Planning, Archaeology and the Built Heritage

PPS8 – Open Space, Sport and Outdoor Recreation

PPS 15 – Planning and Flood Risk

DCAN15 – Vehicular Access Standards

Parking Standards

### **Consultations:**

DfI Roads - No objections to this proposal providing Planning is content with the proposed parking provision. Condition: Existing access onto Windmill Road to be kept closed and stopped up except for use only solely for maintenance purposes as described in letter from Trustees.

DfI Rivers – There is a designated watercourse that flows adjacent to the southern boundary of this site known to DfI Rivers as Carsons Dam River (MW3307Ext). Given the site area, a drainage assessment was required as per FLD 3. DfI Rivers have no objection subject to recommended planning condition and informatives. The planning condition requires the submission of a final drainage assessment, compliant with FLD 3 & Annex D of PPS 15.

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.

*Water Management Unit & Inland Fisheries* -Water Management Unit has considered the impacts of the proposal on the water environment and would advise the proposal has the potential to adversely affect the surface water environment. **To ensure effective avoidance and mitigation measures WMU requires a full Construction Method Statement (CMS) should be submitted to NIEA Water Management Unit, at least 8 weeks prior to the commencement of construction.**

Shared Environmental Services (SES) – 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) – The proposed development site contains an early 19th century windmill (DOW016:500). HED offer no objection to the scheme subject to planning conditions.

## **Objections & Representations:**

Having account current procedure and practice a total of 13 Neighbours within close proximity of the site were notified on 18/03/2021. This application was advertised in the local press on 17/03/2021. An additional neighbour was notified on 24/03/2022.

To date (14/03/22) 28 representations have been logged in respect of this application, of which 11 logged as objections (including a petition with 28 signatures) The Council received 17 letters in support of this application including 4 local Councillors; Cllr P Brown, Cllr. K Owen, Cllr. W Walker and Cllr. T Andrews.

The representations in support of the proposal include the following:-

- Retains and restores the historic stump on site
- Benefits the wider Saintfield community
- A need for a park
- Social interaction and a boost to the economy through tourism and a genuine sense of togetherness

A number of the objection letters submitted concerns as follows:

- Anti-social behaviour
- Flooding concerns
- Congestion and traffic pressures
- Road safety
- Boundary treatments
- Parking concerns
- Impact on wildlife
- Dangerous building/structure on site
- Security concerns

The comments made are considered further below. See file for full content of reps received as the above is a summary of main issues raised.

## **Consideration and Assessment:**

### Summary of Proposal

The proposal seeks full planning permission for the change of use of lands to Public Park (used in conjunction with Saintfield Community Centre). The submitted site layout plan demarcates a number of pathways using through the site. The proposal also includes the erection of native tree planting, 1.6m long timber benches, erection of paladin fencing along the northern boundary and 1.6m vertical board fencing to the northern boundary (abutting Windmill Grange). Access to the site will be via existing entrance which serves the existing complex, and a 3.5m wide run along the

north of the site (left hand side of building A). The scheme seeks to utilise the existing car parking.

#### Ards and Down Area Plan 2015

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

The application site is located within a Local Landscape Policy Area (LLPA 7) Carson's Dam River Corridor. Policy CON 2 of The Plan Strategy and Framework states that; Planning permission will not be granted to development proposals which would be liable to adversely affect the environmental quality, integrity or character of these areas. Volume 3 of the Local Development Plan lists the features of this designated LLPA 7 Carson's Dam River Corridor which includes;

- River corridor linking Saintfield Demesne to Windmill Hill and associated important mature trees and riverside vegetation especially east of former railway line and alongside the hockey and cricket pitches;
- Potential for public access along some stretches
- Remains of former windmill of historical significance in associates with Saintfield Mills has potential as riverside amenity area; and
- Former drained and surviving mill ponds are important link in the industrial past.

Having considered the scheme, it is the planning department view that the creation of a park on this site is compatible with the thrust of this LLPA meeting the requirements of Policy CON 2.

The council also formally consulted HED to provide comment regarding the scheme and any potential impacts to the early 19th century windmill (DOW 016:500), a monument scheduled for protection under the Historic Monuments and Archaeological Objects (NI) Order 1995. HED requested the submission of an An Archaeological Impact Assessment (AIA).

The impact assessment submitted with this proposal has identified the potential for industrial archaeological remains to be impacted upon during construction works for this scheme. Consequently, mitigation is required ahead of site works as per the attached conditions.

HED Monuments having considered the proposal have raised no objections to the scheme.

#### PPS 8 – Open Space, Sport and Outdoor recreation.

Policy 'OS 1 Protection of Open Space' states that development would not be permitted that would result in the loss of existing open space, irrespective of its physical condition and appearance. The definition of open space set out in Annex A of PPS 8 stating that open space is taken to mean all open space of public value. The policy affirms that most areas of open space can perform multiple functions and that open space can improve the quality of life for communities by providing green spaces close to where people live.

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

As part of the submission, the application was accompanied with a Pre-Application Consultation Report. A questionnaire was carried out as part of the consultation, and out of the 72 responses received 58 believed that the community park would benefit Saintfield. Furthermore, during the assessment of this application the Council received 17 letters in support of this application including 4 local Councillors: Cllr P Brown, Cllr. K Owen, Cllr. W Walker and Cllr. T Andrews.

Given the nature of the proposal, the actual loss of open space is very limited. The proposal is expected to encourage more proactive use of that open space, through the provision of community facilities. The change of use of land to public park is not considered to offend this policy,

Policies OS5 & OS7 of PPS8 control the use of noise generating activities and floodlighting on outdoor activities. The environmental Health Department have been consulted on the development and have raised no objections

### 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). In a response dated 23/07/2021 SES stated that having considered the nature, scale, timing, duration and location of the project it is concluded that, the proposal will not have an adverse effect on site integrity of any European site.

NIEA having considered the Construction Environmental Management Plan (CEMP) is generally content that the implementation of the mitigation measures outlined should minimise any potential impacts on the watercourses and designated sites. NED recommends that final details of the proposed mitigation measures and construction methods should be provided in a final CEMP.

#### NH 2- Species Protected by Law



NH2 states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species. The presence of species protected by legislation is a material consideration when a planning authority is considering a development proposal that if carried out, would be likely to result in harm to the species or its habitats.

It is noted from the site layout plan there is a number of derelict buildings and structures present at the site that will be retained and protected throughout this development. These structures were described in the Biodiversity Assessment, dated March 2020, as having bat roosting potential (BRP), however no further surveys were considered necessary as no works will be carried out on these structures.

Many of the trees at the site are mature and could have the potential to support roosting bats. NED notes all trees are to be retained for this development, therefore, is content that no further bat surveys are required.

NED notes from the Biodiversity Assessment that there was evidence of badger foraging on the railway tracks, which will be fenced off and not included in this planning application. NED welcomes the proposal within the letter from agent labelled Response to Environment and Fisheries Group & NIEA comments of 11/10/21, for fencing that will facilitate movements of mammals throughout the site to minimise impact to foraging and commuting badgers.

NED notes that, although no otter survey was submitted, information within the CEMP has provided mitigation to prevent pollution to potential otter habitat. NED is therefore content that otters will not likely be significantly impacted by the proposal.

### PPS 3 - Access, Movement and Parking

The proposal seeks to use the existing access point to the east which serves the existing community building. The scheme will utilise the existing parking spaces that serves the community building, which in total is in the region of 115 parking spaces. DfI Roads were consulted as part of the applicant and would offer no objections to this proposal providing Planning is content with the proposed parking provision. Planning is content that there is ample car parking provision for the facility. DfI Roads have recommended a planning condition whereby existing access onto Windmill Road to be kept closed except for maintenance purposes as described in letter from Trustees. The proposal meets the requirements of this policy.

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

The council formally consulted HED to provide comment regarding the scheme and any potential impacts to the early 19th century windmill (DOW 016:500), a

monument scheduled for protection under the Historic Monuments and Archaeological Objects (NI) Order 1995. HED requested the submission of an Archaeological Impact Assessment (AIA).

The impact assessment submitted with this proposal has identified the potential for industrial archaeological remains to be impacted upon during construction works for this scheme. Consequently, mitigation is required ahead of site works as per the attached conditions.

HED having considered the proposal have raised no objections to the scheme,

### PPS 15 – Planning and Flood Risk

There is a designated watercourse that flows adjacent to the southern boundary of this site known to DfI Rivers as Carsons Dam River (MW3307Ext).

Given the planning application exceeds 1 hectare in area, a Drainage Assessment is required as set out in FLD 3 of PPS 15.

The applicant has received Schedule 6 Consent to discharge 14.08l/s (Greenfield rate) of storm water runoff from the proposed site to the designated Carsons Dam River (MW3307) located adjacent to the southern boundary of the site. Having reviewed the drainage Assessment DfI Rivers whilst raising no objections to the scheme requests that prior to the commencement of any of the approved development on site, a final drainage assessment, containing a detailed drainage network design and compliant with Annex D of PPS 15 must be submitted to the Planning Authority for its consideration and approval.

### Considerations of Representations

All of the issues raised (valid planning reasons) in these representations have been fully considered in the assessment of this planning application.

In terms of Road safety, DfI Roads have been formally consulted carried out to ensure the proposal was complaint with PPS 3. Environmental Health and DfI Rivers have raised no objections to the scheme. Reference was made to potential distribution to wildlife. The agent submitted additional information for the consideration of NED of NIEA who are also content with the scheme provided all trees and buildings on site are to be retained.

### **Recommendation:**

The proposal has been considered having regard to all material planning considerations, the Area Plan, relevant planning policies and comments received from statutory consultees and third parties.

The principle of the use of the site for open space is considered to be acceptable. As demonstrated above, the proposal will comply with the policy requirements set out in OS1 of PPS8. The previous planning history whereby a community centre and indoor sports facility was above directly adjacent to this site, is a material consideration which has been taken into account.

It is considered that the new area of open space will provide a valuable community asset for the settlement of Saintfield.

Having weight up all material planning considerations, on balance, approval is recommended subject to the conditions outlined below.

### Conditions:

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

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

2. The development hereby permitted shall take place in strict accordance with the following approved plans: 01, 02-Rev-A, 03, D1, D2, D3, D4.

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

3. No development activity, including ground preparation or vegetation clearance, shall take place until a final Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Planning Authority. The approved CEMP shall be implemented in accordance with the approved details and all works on site shall conform to the approved CEMP, unless otherwise agreed in writing by the Planning Authority. The CEMP shall include, but is not limited to, the following:

- a. Construction methodology and timings of works;
- b. Pollution Prevention Plan; including suitable buffers between the location of all construction works, storage of excavated spoil and construction materials, any refuelling, storage of oil/fuel, concrete mixing and washing areas and any watercourses or surface drains present on or adjacent to the site;
- c. Site Drainage Management Plan; including Sustainable Drainage Systems (SuDS), foul water disposal and silt management measures;
- d. Water Quality Monitoring Plan;
- e. Environmental Emergency Plan;

f. Additional updated wildlife surveys, Badger and Otter and any other as necessary

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 the Strangford Lough ASSI/SPA/SAC and Ramsar site.

4. Prior to commencement of development, a full Construction Method Statement (CMS) should be submitted to the Council for consultation with NIEA Water Management Unit, at least 8 weeks prior to the commencement of construction to ensure effective avoidance and mitigation methodologies have been planned for the protection of the water environment.

Reason: To ensure effective avoidance and mitigation measures have been planned for the protection of the water environment.

5. No works shall be carried out on the buildings or structures identified on drawing 02-Rev-A until a protection zone has been clearly marked around each structure which has potential roosting features. The protection zone(s) shall be retained and maintained until all construction activity has been completed on site.

Reason: To minimise the potential impact of the proposal on bats.

6. Prior to works commencing on site, all trees identified as retained shall be protected by appropriate fencing in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Planning Authority.

Reason: To retain the biodiversity value afforded by existing trees.

7. Prior to the commencement of any of the approved development on site, a final drainage assessment, containing a detailed drainage network design and compliant with Annex D of PPS 15 must be submitted to the Planning Authority for its consideration and approval.

Reason – To safeguard against flood risk to the development and elsewhere.

8. No site works of any nature or development shall take place until a programme of archaeological work (POW) has been prepared by a qualified archaeologist, submitted by the applicant and approved in writing by Newry, Mourne and Down District Council in consultation with Historic Environment Division, Department for Communities. The POW shall provide for:

- The identification and evaluation of archaeological remains within the site;
- Mitigation of the impacts of development through licensed excavation recording or by preservation of remains in-situ;
- Post-excavation analysis sufficient to prepare an archaeological report, to publication standard if necessary; and Preparation of the digital, documentary and material archive for deposition.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

9. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 8.

Reason: to ensure that archaeological remains within the application site are properly identified, and protected or appropriately recorded.

10. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 8. These measures shall be implemented, and a final archaeological report shall be submitted to Newry, Mourne and Down District Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with Newry, Mourne and Down District Council.

Reason: To ensure that the results of archaeological works are appropriately analysed and disseminated and the excavation archive is prepared to a suitable standard for deposition.

11. No development shall take place until there has been submitted to and approved by the planning authority a landscaping scheme for the site providing for all native species planting. More information can be found at: <https://www.daera-ni.gov.uk/publications/native-species-planting-guidance>. The scheme of planting as finally approved shall be carried out during the first planting season after the commencement of the development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.

Reason To enhance the biodiversity value of the site and aid integration.

12. The existing access onto Windmill Road to be closed to members of the public and shall be used solely for maintenance purposes.

Reason: To avoid the use of a substandard access onto a public road.

<b>Case Officer:</b>	<b>S. Maguire</b>	<b>Date:</b>	<b>15/04/2022</b>
<b>Appointed Officer:</b>	<b>A.McAlarney</b>	<b>Date:</b>	<b>21 April 2022</b>

From: Residents of Windmill Road

To: Newry, Mourne and Down Planning Committee

Date: 26.5.2022

RE: Planning Proposal LA07/2021/0394/F

### **Short Written Submission**

We are grateful for the opportunity to speak to the group on 1<sup>st</sup> June 2022. And submit this short written submission of the key areas that we wish to address.

Our group have nominated three speakers; Dennis, Hilary and Sandra who have been briefed by our group.

The points that we would like to raise within our allocated time include –

- Planning matters
- Planning criteria
- Security issues
- Antisocial issues
- Health and safety issues
- Transport issues
- Environmental issues
- Privacy.

We look forward to meeting with you next week.

## **STATEMENT FROM SAINTFIELD DEVELOPMENT ASSOCIATION**

### **Planning Application LA07/2021/0394/F**

#### **BACKGROUND TO THE PROJECT**

- SDA is very grateful to NMDDC for the provision of a community centre for the residents of Saintfield and area (over 12,000 people within 4 miles).
- Down District Council recognised the need for a community centre for Saintfield over 15 years ago, but finding a suitable site was difficult.
- Down District Council also recognised the need for a community park for Saintfield over 20 years ago. Again finding a suitable site was difficult, as Councillor Burgess will confirm. When the site for the community centre was confirmed, on behalf of the then Chief Executive of DDC, John Dumigan, Councillor Burgess tried to purchase the windmill field, but was not able to do so.
- SDA maintained contact with the then owners of the windmill field and, after lengthy negotiations and a generous donation from an American whose family lived in Saintfield, were able to purchase the field.
- The need for a community park has been repeatedly confirmed by numerous public consultations over the last 15 years, including consultation for two village plans, windmill park feasibility study, pre-application consultation and engagement with boundary neighbours.
- A community garden is also being completed, which will be between the community centre and park.
- SDA is also grateful to NMDDC for granting an easement of access to the proposed park from the community centre site.
- With the provision of informal outdoor recreational space that the proposed park would provide, adjacent to the indoor recreational space, the residents of the area would have excellent facilities for generations to come.

#### **CONSULTATIONS CARRIED OUT AND MITIGATION OF CONCERNS**

##### **Consultation with boundary neighbours.**

This was conducted by approaching individual households. We tried to accommodate all, including those who had serious objections. We found that some neighbours strongly objected to there being a park at all and we could not accommodate them.

They wanted a public or group meeting which we refused due to Covid restrictions. We also felt it was fairer to let all people voice their opinions individually so we could record and try to address them.

##### **Objectors' concerns**

Antisocial behaviour – mitigation – paladin fencing, gates closed after dark.

Flooding concerns – addressed as per planners notes

Road safety – public access through Community Centre kindly granted by NM&D – if application refused our field management would mean more traffic on Windmill Rd.

Boundary treatment – access strip for maintenance of neighbours' fence, avoidance of tall boundary planting that would obstruct view. The ground falls away beyond the objectors' back gardens so they will have limited overview of the park beyond their fence.

Parking – as per Planners' notes kindly supplied by NM&D. in Community Centre.

Impact on wild life – we are making every effort to support and encourage flora and fauna and have currently commissioned a consultant to advise.

Dangerous building – this is scheduled and will be fenced off from public access.



Security concerns – see antisocial behaviour.

### **Outcome of Application Refusal**

An immediate appeal

SDA couldn't fund boundary fence – reduced security

SDA members and volunteers would access the field through Windmill Rd to carry out planting and land management projects on a regular basis increasing traffic on Windmill Rd.

Without maintenance the scheduled monument would deteriorate and fall down.

### **COMMENTS FROM A BOUNDARY NEIGHBOUR**

My wife and I live beside the proposed park.

Our boundary with the field is approximately as long as the combined lengths of the boundaries that the other five residential properties have with the field.

When a park was first proposed, yes we were concerned about its proximity to our house. Members of Saintfield Development Association offered to meet us to discuss our concerns.

They walked the field with us and then we had a meeting at our house with our sons who will someday inherit our house.

We had issues with provisions for our security, privacy and wildlife.

Security fencing will be erected round the park.

A wildlife corridor along the old trackbed of the Belfast & County Down Railway will benefit wildlife and also afford us some privacy.

All members of the immediate family were satisfied with these provisions and we wholeheartedly support the development of a park for the people of Saintfield and the surrounding area for generations to come.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2019/1009/O    **Date Received:** 26.06.2019

**Proposal:**     Redevelopment of existing residential site

**Location:**     Residential development at 113 South Promenade, Newcastle

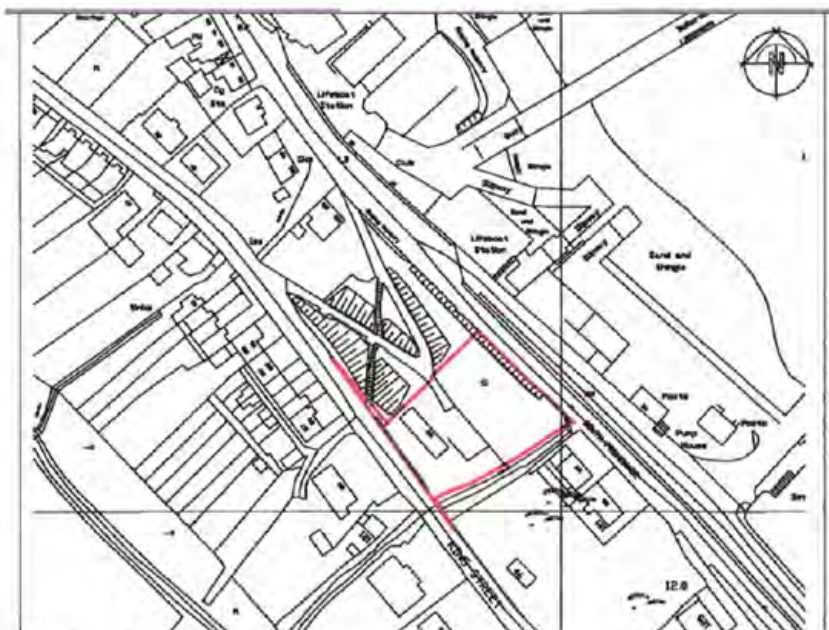
### **1.0   SITE CHARACTERISTICS & AREA CHARACTERISTICS:**

The application site is located approximately 0.5 miles from Newcastle Town Centre along the western side of South Promenade (a Protected Route,) in an elevated location overlooking Newcastle Harbour to the east, with a backdrop of forest / Mourne Mountains further west. This area is Designated as an Area of Townscape Character and Area of Outstanding Natural Beauty.

The site extends between South Promenade to its eastern boundary and King Street to its western boundary, whilst an existing watercourse adjoins the site to the south, connecting into the Harbour area. The site is steeply sloping along an embankment and is largely overgrown and inaccessible by foot, with an existing vehicular access off King Street boarded up.

There is an existing dwelling located in towards the rear / western portion of the site close to King Street. The existing dwelling appears as a dwelling of traditional form, sitting below the road level of King Street, with corrugated roof only visible. Views of the existing building are also limited from South Promenade, owing to change in levels across the site and the site being largely overgrown

The surrounding area is primarily residential and recreational in character; with the site located adjacent to an area of existing amenity open space and recreation located directly north of the site, including a walking path which connects South Promenade to King Street linking to 'The Granite Trail' walking trail, located opposite and west of the site. Surrounding residential properties vary in scale, massing and form, with lower density development to the south and east of the site and higher density (including terraces and apartments) to the north and west of the site.



Site Location Plan



Aerial Photograph (extracted from Design and Access Statement)

## 2.0 RELEVANT PLANNING HISTORY:

### Site History

R/1977/0420 - Bogey hill, Newcastle - passive recreation – PERMISSION GRANTED 02.03.1978

R/1984/0067 - Adjacent to 105 south promenade Newcastle. – dwelling – PERMISSION REFUSED 11.09.1984 (refused on access / road safety)

R/1983/0368 - Adjacent to 105 south promenade, Newcastle - erection of dwelling – PERMISSION REFUSED 11.11.1983 (refused on access / road safety)

### 3.0 PLANNING POLICIES & MATERIAL CONSIDERATIONS:

- The NI Regional Development Strategy 2035 (RDS)
- The Planning Act (Northern Ireland) 2011
- The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017
  
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Ards and Down Area Plan 2015 (ADAP)
- A Planning Strategy for Rural Northern Ireland (PSRNI)
  
- PPS2 – Natural Heritage
- PPS3 – Access, Movement & Parking
- PPS6 Addendum – Areas of Townscape Character
- PPS6 – Planning Archaeology and the Built Heritage
- PPS7 – Quality Residential Environments
- 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
- DCAN15 – Vehicular Access Standards
- DOE Parking Standards
- 'Creating Places' & 'Living Places' Design Guides
  
- Third party representations and objections

### 4.0 CONSULTATIONS:

DAERA Coastal Development (25/07/2019) – Marine and Fisheries Division has considered the impacts of the proposal and on the basis of the information provided, refers to standing advice and informatives.

DAERA Water Management Unit (25/07/2019) - Refer the Planning Authority to DAERA Standing Advice, which includes relevant conditions and informatives.

DAERA Natural Environment Division (NED) (final response 23/02/2022) - Following provision of additional ecological information and amended information, NED has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, is content with the proposal subject to recommendations and informatives.

DfC Historic Environment Division (HED) Historic Monuments (20/08/2019) - Has considered the impacts of the proposal and is content that the proposal satisfies PPS 6 policy requirements, subject to the completion of a Level 3 Historic Building Survey.

DfC Historic Environment Division: Historic Buildings (HED:HB) (20/08/2019) - Has considered the impacts of the proposal on the buildings and on the basis of the information provided, advise it is unable to provide a substantive response due to lack of information provided. HED:HB request consultation on any further application on this site and advise it will expect any proposal to be appropriately scaled so as not to impact long views/wider context of listed buildings.

DfI Rivers Agency (23/08/2019) – Policies FLD2 and FLD3 are applicable:

- A working strip of minimum 5m width is required between development and King Street Stream which flows along the south-eastern site boundary;
- A Drainage Assessment is required if additional hardstanding exceeding 1000m is proposed

Shared Environmental Services (SES) (29/11/2019) - Having considered the nature, scale, timing, duration and location of the project it is concluded that, provided the necessary mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site. Mitigating conditions attached.

NI Water (22/08/2019) – Public water supply and foul sewers available, with capacity to serve the development at Newcastle WwTW. No surface water sewer available, therefore drainage details will be conditioned.

## 5.0 OBJECTIONS & REPRESENTATIONS:

This application was advertised initially in local papers on 10<sup>th</sup> July 2019 and the statutory advertising period subsequently expired on 24<sup>th</sup> July 2019.

14 neighbouring properties in total have been notified of the application by letter, with the statutory notification period also expiring on 24<sup>th</sup> July 2019. It is noted that several letters have been returned by Royal Mail; including letters from No's; 46 117, 121 and 125 King Street.

25 objections have been received at the time of writing this report (April 2022) from the following addresses:

- King St – No's 54A, 55, 75 (x2,) 77, 85, 89, 93, 101-103 (x 2,) 105-107, 109 (x 2,) 111, 119, 123, 125A 131, 139,
- South Promenade No's – 103 (x 2,) 105 (x2,)
- Coastguard Villas – No.1 (x2)

The above includes 2 no. petitions of objection, with 15 no. identical objections and 8 no. identical objections submitted, signed by residents of the above properties. In addition to these petitions, 2 no. separate letters have been submitted from No's 101-103 King Street and 109 King Street.

The following list is intended as a summary of the material planning issues raised within the submitted objections and does not preclude the detailed submissions which are placed on file for full consideration:

### Access / Road Safety and Pedestrian Movement /Safety

- *Impact on King Street from increased traffic flows (exacerbating existing parking and traffic flow issues and safety concerns arising from informal 'turning circle' at the access road leading to No's 103-105, increasing congestion problems including buses unable to pass,*
- *Impact on pedestrians unable to access safe pavements as a result of vehicles parking on hill verges – including at Bogey Hill amenity area*
- *Application fails to demonstrate the traffic impact on King St and it has not been demonstrated that the road onto South Promenade cannot be used for access in lieu of King Street*
- *Impact from construction vehicles in an area with no space available*
- *Residents along King Street already struggling to get parking spaces;*
- *Impact on the steps and footways of Bogey Hill – including concerns around using this area during and after construction including for vehicles;*
- *No footways in the area, unsafe facilities for pedestrians*
- *Bogey hill is the only safe place for children to play along King St, if this is taken from them where do they go?*

**The proposal seeks to alter the existing access off King Street to serve the residential development. The above comments are considered and in consultation with DfI Roads, the Planning Authority are advised that the proposal is compliant with road safety requirements as set out in the relevant policies (including PPS3, DCAN15.)**

**The issue of parking is noted. Siting and design are matters left reserved; therefore car parking provision will be required to be assessed in detail through a Reserved Matters application to ensure that there is sufficient parking within the application site to serve the proposed development in accordance with PPS3 and DOE Parking Standards.**

### Natural Heritage

- *Impact on the flora and fauna, with foxes, badgers, deer, birds, bats all in the area and who may reside on the site;*
- *The site contains natural mature woodland of important habitat in addition to a stream to the east supporting local wildlife. The proposed scale and density of development and impact on natural environment is concerning.*

**Throughout the course of this application, ecological surveys and additional information were required to fully assess natural heritage matters, as considered by PPS2. In consultation with DAERA's Natural Environment Division, the principle of residential development is acceptable, however this is conditional a number of natural heritage**

requirements being met including: the provision of a protected species licence from NIEA prior to any works being carried out, in addition to compensatory habitat measures being incorporated into the detailed scheme to protect a known protected species, the provision of a detailed Lighting Plan at Reserved Matters stage to assess the proposed light spillage and impact on biodiversity, the provision of a Construction Method Statement at Reserved Matters stage to detail all mitigation and avoidance measures to protect the aquatic environment, the provision of a 10m buffer from the watercourse to protect designated sites from any contamination from construction, the provision of a long term buffer to the watercourse (minimum 5m) from all development to ensure long term access and maintenance to the river. On the basis of the advice from DAERA NED, who are the statutory consultee in this regard, the proposal is considered acceptable in principle to Natural Heritage requirements, conditional to all detailed requirements being addressed through a Reserved Matters application.

#### Character of the Area

- *Adverse impact on AONB – e.g. through use of infill, retaining walls for dwellings to sit level with King Street (inadequate detailing)*
- *The Granite Trail is a pedestrianised walking trail of historic importance to the town and central to the character of the harbour area. To build a modern multi-storey high density development immediately adjacent to the Bogie Hill would be an act of extreme folly;*

The Planning Authority has noted the concerns regarding the indicative site layout in terms of the impact of the proposal on the character of the area including AONB and ATC designations and agree that the indicative layout proposed is unacceptable in its current form and is not acceptable in the wider context of the designation. Whilst redevelopment for the purpose of a residential use is acceptable in principle, the indicative layout plan will not form part of any planning approval this will be reinforced by way of a planning informative to advise the developer that the indicative layout is not acceptable. Design is a matter left reserved at this stage however and it will fall to be considered further through a Reserved Matters application, in consultation with Historic Environment Division.

#### Archaeology

- *It is likely that archaeological remains will be encountered during the course of development (reference to Policy NE19 AAP)*

HED Historic Monuments (the competent authority in this regard) has assessed the proposal and is content that the proposal satisfies PPS 6 policy (including archaeological) requirements, subject to the completion of a Level 3 Historic Building Survey being carried out. This will be dealt with by way of necessary planning condition/s.

### Non-material planning issues

The following issues below are non-material planning issues and cannot be given any determining weight in this assessment:

- *Impact on views of residents*
- *Impact on residential values*
- *Concerns regarding structural damage to neighbouring properties and permanent de-stabilisation.*
- *Concerns regarding impact on combined sewer and storm drainage systems on Bogie Hill*
- *Impact on peaceful use / enjoyment of home, including during construction*

**In summary and in giving determining weight to the above, the applicant has been required to provide additional information in relation to ecology to ensure the necessary requirements are met. In consultation with the relevant authorities, road safety, natural heritage, archaeological requirements have been fully considered and addressed, subject to the necessary planning conditions being met. Concerns in relation to character of the area and residential amenity and parking will fall to be given detailed consideration at Reserved Matters stage following receipt of a detailed proposal.**

## **6.0 CONSIDERATION AND ASSESSMENT:**

### **6.1 The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017**

The proposal meets the description listed in Schedule 2 of the above regulations and is located within a sensitive area (Area of Outstanding Natural Beauty) although does not fall within the relevant threshold (column 2) of Schedule 2 as the site area is less than 0.5ha. As proposals also represent a redevelopment of a formerly developed site whereby there is no likely significant environmental effects and therefore an Environmental Statement is not required.

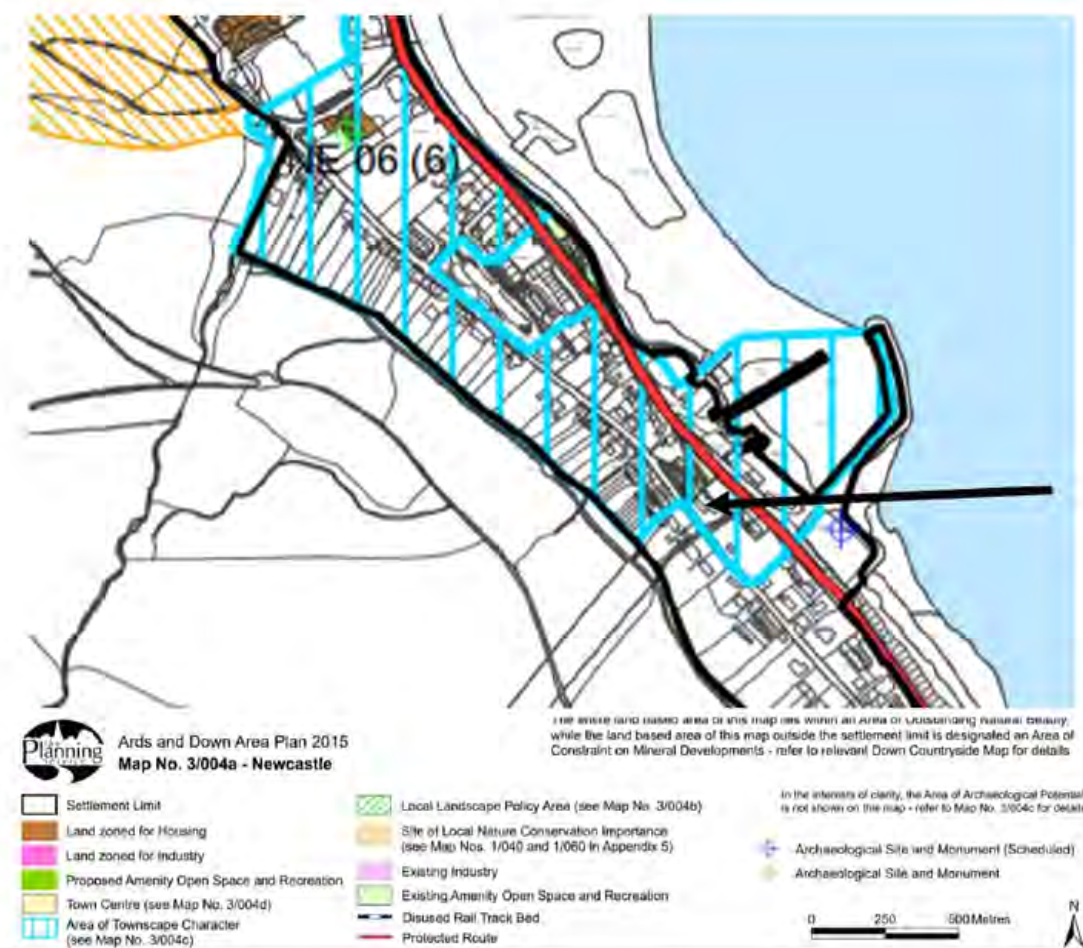
### **6.2 RDS and SPPS**

Policy RG8 of the RDS aims to manage housing growth to achieve sustainable patterns of residential development. It aims to provide more high quality accessible housing within existing urban areas without causing unacceptable damage to the local character and environmental quality or residential amenity of these areas. The SPPS sets out core planning principles to be employed in the quest to achieve sustainable development. Its aim of supporting good design and positive place making while preserving and improving the built and natural environment is of relevance to this assessment.



### 6.3 Ards and Down Area Plan 2015 (ADAP 2015)

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the local development plan so far as the material to the application, and to any other material considerations. Section 6 of the Planning Act (NI) 2011, which deals with local development plans, states where, in making any determination under this Act, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.



The site is located inside the settlement development limit of Newcastle (NE01) on un-zoned land that has previously been developed for residential use. The proposed land use is in keeping with existing built form found at this location and does not conflict with the area plan in terms of the development principle.

Policy NE18 of The Plan (The Harbour, The Rock and King Street Area of Townscape Character) is relevant to this assessment and directs that all new development in the harbour area should reflect its scale, its maritime and local vernacular and style in form, detail and materials, and be compatible in terms of use. The largely Georgian buildings forming the cluster on either side of the coast road are integral to the harbour scene but of more sophisticated architectural style. They are a significant group and emphasis should be placed on conservation of the existing fabric and character with particular attention given to massing, scale, detailing and materials. The proposed residential

development is acceptable to NE18 in terms of a compatible use. In the event of an approval, the assessment of scale, form, design, and detailing will be considered in more detail through a Reserved Matters application.

Policy NE14 (Apartments) sets out detailed requirements for apartment development in Newcastle. The proposal incorporates terraced townhouse style properties, therefore NE14 is not applicable; however if the design should be amended to incorporate apartments, the plan requirements of Policy NE14 will be engaged.

The proposal is acceptable to Plan requirements in principle, subject to Policy NE18 being met through an appropriate detailed scheme.

In addition to the Plan requirements considered above, the impact of the proposal on additional designations and constraints including: Residential amenity, Area of Townscape Character, Area of Outstanding Natural Beauty (AONB,) Listed Buildings / Structures, Archaeology, Flood Risk, Road Safety and Natural Heritage, is further considered in detail below, in accordance with the SPPS and Prevailing Planning Policy requirements.

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

- 6.4.1. The SPPS sets out core planning principles and the need to achieve sustainable development. Of relevance to this application are the aims of supporting good design and positive place making while preserving and improving the built and natural environment, (Para 3.3) It is considered that the proposal is in accordance with the principles set out in the SPPS and other policy considerations for the reasons set out below.

#### **6.5 SPPS and PPS2: Natural Heritage**

##### Policy NH1: European and Ramsar Sites and NH3: Sites of Nature Conservation Importance (National)

The potential impact of this proposal on European Designated Sites has been assessed through a HRA screening. And following necessary consultation with Shared Environmental Services (SES) the application has been considered in light of the assessment requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended) by SES on behalf of Newry, Mourne and Down District Council, which is the competent authority responsible for authorising the project and any assessment of it required by the Regulations.

Having considered the nature, scale, timing, duration and location of the project it is concluded that, provided necessary mitigation is conditioned in any planning approval, the proposal will not have an adverse effect on site integrity of any European site (including uphill Eastern Mournes SAC and downhill and hydrologically connected Murlough SAC.)

The necessary mitigation measures are detailed by way of planning conditions at the end of this report.

DAERA's Natural Environment Division (NED) has considered the relevant information provided in addition to the nature of the development, the pollution prevention measures outlined in the Construction Method Statement (26/06/2019) and the distance to the designated site of c.200m, advise that there will be no likely significant impact on Murlough ASSI / SAC. Provided appropriate pollution prevention measures are implemented during the construction and operational phases of the development, the proposal is unlikely to have a significant impact on this designated site.

#### Policy NH2: Species Protected by Law and NH5: Habitats, Species or Features of Natural Heritage Importance

NED raised concerns initially and in the absence of further information, advised the proposal would be contrary to PPS2 in that the development would be likely to harm a protected species and insufficient information has been submitted to establish otherwise. In addition, NED has provided advice in relation to the existing watercourse (priority habitat and wildlife corridor,) wild birds and potential invasive species on site (The PEA noted that *Rubus* spp. was identified on the site, and NED sought clarification from the ecologist if this was Salmonberry.)

Since NED's initial comments, further ecological information has been submitted, including; a PEA, Ecological surveys, clarification that the mature Sycamore tree noted on the site to have a bat roost is to be removed to facilitate the development, with proposed bat boxes detailed to compensate for this loss (drawing provided with proposed bat box locations and specifications provided,) clarification from Blackstaff Ecology that the site contained Bramble (*Rubus fruticosus* agg.) and no Salmonberry was found during a further ecological inspection of the site.

NED having assessed all of the information submitted, consider that the proposal is unlikely to have a significant impact on the protected species provided the proposed measures are followed and conditions are attached to any decision notice to ensure that a Wildlife Licence is granted prior to any works on the building and trees with known bat roost. NED also advise that on the basis of the submitted information, it is unlikely that there will be any impacts on other protected species, however, depending on the timeframe to Reserved Matters, further surveys may be required. Upon consideration of the proposal,

Finally, NED also considers that the proposal is unlikely to have a significant impact on other natural heritage interests, subject to necessary recommendations, as detailed in the conditions and informatives further below and on the respective decision notice.

#### Policy NH6: Areas of Outstanding Natural Beauty (AONB)

Planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and all the criteria as set out in policy NH6 are met. As this is an outline application, details

with regard to design, size, scale and layout are matters reserved for further assessment through a Reserved Matters application.

#### **6.6 SPPS, PPS3: Access, Movement and Parking, DCAN15: Vehicular Access Standards and DOE Parking Standards**

The proposal includes altering of the existing access off King Street to serve the proposed development. DfI Roads initially sought additional information in the form of:

1. Existing levels of the site for the proposed entrance. Existing and proposed.
2. A 1/500 concept plan for the proposed development.

Having been provided with the above, DfI Roads has advised that there are no objections to the proposal, subject to the necessary access conditions being met. As an outline application details regarding layout and parking will be matters reserved for detailed stage. These details will form part of a planning condition for a scale plan and accurate site survey to be submitted at detailed stage.

DfI Roads has considered the third party objections uploaded at this time (13 January 2020) and offer no objection to the proposal on the basis of road or pedestrian safety. Whilst the third party concerns are noted, the Planning Department must give the determining weight to the advice of DfI Roads who are the competent authority in relation to such matters.

#### **6.7 SPPS and PPS6 Addendum: Areas of Townscape Character (ATC1: Demolition Control in an ATC, ATC2: New Development in an ATC)**

The site is located within The Harbour, The Rock and King Street ATC, as identified by NE18 of The ADAP 2015. The Harbour, by virtue of its location and function, has a singular sense of place quite distinct from its immediate environs. King Street also has a distinct sense of place, with buildings and groups of buildings which display a distinctive character. The older buildings and groups are dispersed with more recent developments inserted into the spaces between.

Under Policy ATC1, there is a presumption in favour of retaining any building which makes a positive contribution to the character of an ATC and demolition of an unlisted building in an Area of Townscape Character will normally only be permitted where the building makes no material contribution to the distinctive character of the area. Where permission for demolition is granted, this will normally be conditional on prior agreement for the redevelopment of the site. The key considerations for this policy test are:

- the contribution of the building to the ATC and the effect of its demolition on the distinctive character of the area; and
- whether the quality of proposals for the redevelopment of the site will maintain or enhance the distinctive character of the area.



Views of site and building to be replaced from King Street showing No.113 South Promenade



Views of site from South Promenade

The existing building on site to be replaced is considered a non-listed vernacular structure (when considered against the characteristics set out in PPS21 Annex 2 - Vernacular Buildings,) which is present on the 1<sup>st</sup> and 2<sup>nd</sup> edition Ordnance Survey maps (c. 1830's and 1850's respectively). The site is largely overgrown, with the building screened from view from South Promenade and its roofline visible from King Street, set below road level. Arguably the building does not make a material contribution to the character of the ATC given both its current condition and positioning away from view. On this basis, its demolition would be considered to have little effect on the distinctive character of the ATC, conditional to the prior agreement of redevelopment of the site (including a survey of the existing building to be carried out – see PPS6 assessment.) On this basis, the proposal in principle, is considered acceptable to ATC1, subject to the necessary conditions being met.

Under Policy ATC2, development proposals in an ATC will normally only be permitted where the development maintains or enhances its overall character and respects the built form of the area. This policy also requires that any trees, archaeological or other landscape features which contribute to the distinctive character of the area are protected and integrated in a suitable manner into the design and layout of the development. This element of the policy can be further addressed on submission of detailed drawings at reserved matters stage.

To comply with NE18 of ADAP 2015, to sustain and enhance the distinctive character and sense of place generated by the harbour and its surroundings, new development should reflect its scale, its maritime, local vernacular and style in form, detail and materials, and be compatible in terms of use. Emphasis should be placed on conservation of the existing fabric and character with particular attention given to massing, scale, detailing and materials.

Within the King Street area, development will also be expected to conform to the prevailing residential use and applicants will be expected to demonstrate how development proposals respect the overall character and topography and preserve the local environmental quality.

As this is only an outline application, the assessment of these matters are limited, however it is accepted that the proposal in principle, presents the opportunity to maintain or enhance the ATC and the opportunity for betterment in accordance with ATC2. This will be conditional to the requirements of both ATC2 and NE18 being fully met through a detailed proposal and Reserved Matters Application.

#### **6.8 SPPS and PPS6: Planning Archaeology and the Built Heritage (Including BH11: Development Affecting the Setting of a Listed Building)**

The application is in proximity to Widows Row (Grade B2) which is of special architectural and historic importance, protected by Section 80 of the Planning Act (NI) 2011.

Historic Environment Division, Historic Buildings (HED:HB) has considered the impacts of the proposal on the buildings and on the basis of the information provided, advise it is unable to provide a substantive response due to lack of information provided. HED:HB request consultation on any further application on this site and advise it will expect any proposal to be appropriately scaled so as not to impact long views/wider context of listed buildings. This will need to be assessed in detail in consultation with HED, following receipt of a detailed proposal.

Historic Environment Division: Historic Monuments (HED: HM) has considered the impacts of the proposal and is content that the proposal satisfies PPS6 policy requirements, subject to the completion of a Level 3 Historic Building Survey. This matter will be dealt with by way of planning condition as detailed at the end of this report.

#### **6.9 SPPS and PPS12: Housing in Settlements (PCP2, PCP3) PPS7: Quality Residential Environments (QD1,) PPS7 Addendum: Safeguarding the Character of Established Residential Areas (LC1, LC2,) PPS8: Open Space, Sport and Outdoor Recreation (OS2,) PSRNI (SP18 and DES2), DCAN8: Housing in Existing Urban Areas and Creating Places**

PPS12 - Housing in Settlements

Planning Control Principle 2 - Good Design

As an outline application details with regard to design and layout will be matters reserved for detailed drawing stage.

### Planning Control Principle 3 Sustainable form of development

The site is contained within the settlement limit of Newcastle on lands which have been previously developed for residential use. The redevelopment residential proposal within this urban setting is encouraged and is in accordance with sustainable forms of development outlined within PCP3.

### DES2, SPPS, PSRNI, PPS 7- Quality Residential Environments, Policy QD1 PPS7 (Addendum)

Policy QD1 of the PPS7 states amongst other things that planning permission will only be granted for new residential development where it is demonstrated that the proposals will create a quality and sustainable residential environment drawing upon the positive aspect of character and appearance of the surrounding area.



The above Indicative Site Layout Plan (Drawing No. A3-04) has been submitted for information purposes only at this stage, but is fully considered: In its current form, the indicative proposal fails to meet the above policy requirements and falls short of providing a high quality residential layout which meets the requirements of policy QD1.

This includes (but not limited to) concerns in relation to: layout generally, large areas of hardstanding, proposed density (overdevelopment,) positioning and amount of private amenity space provision for dwellings (limited garden depths for each dwelling and restricted plot sizes will not allow for future proofing,) car parking provision, relationship of dwellings 1-5 to the Road and harbour (and their contribution to ATC character,) relationship of units 4 – 12 to the SE

boundary and King Street Stream (10m construction buffer required to meet HRA requirements and a 5m maintenance strip required to meet PPS15 (revised) FLD2.) limited details regarding retention of landscaping and proposed landscaping.

Whilst the principle of residential re-development is acceptable given the site's former use as well as its location within the settlement limit of Newcastle, which is in accordance with principle with the area plan, the current conceptual plan is unacceptable for the reasons set out above. These concerns would also fail to address the detailed requirements of the plan in relation to the ATC, as outlined under NE18; this will be further reinforced by an informative outlining that the indicative layout is unacceptable and should not be presented as part of future consideration for redevelopment of this site.

Matters relating to house types, design and layout can be reserved for detailed drawing stage with these issues outlined above resolvable through a careful design and layout. This does not preclude the development from adhering to the provisions of policy through a refined design and layout submission at reserved matters / detailed drawing stage.

#### **6.10 SPPS and Revised PPS15: Planning and Flood Risk (FLD2: Protection of Flood Defence and Drainage Infrastructure, FLD3: Development and Surface Water)**

King Street Stream, which is designated under the terms of the Drainage (Northern Ireland) Order 1973, flows along the south eastern boundary of the site. DfI Rivers Agency advise that in accordance with 6.32 of this policy, it is essential that a working strip of minimum width 5m is retained. This working strip is required to be shown on a site layout drawing and protected from impediments (including tree planting, hedges, permanent fencing and sheds), land raising or future unapproved development by way of a planning condition. Access to and from the maintenance strip should be available at all times. As this is an outline application, a negative condition will be included to ensure that these requirements are met through the detailed proposal to be submitted.

The proposal seeks to discharge surface water via existing storm drains; however NI Water advise that there is no public water surface sewer available to serve the proposal. The developer will be required to confirm that they have consent from either NIW for the requisition of a new sewer or alternatively consent from DfI Rivers to discharge water into the nearby watercourse.

In accordance with revised PPS 15, Planning and Flood Risk, FLD 3, Development and Surface Water (Pluvial) Flood Risk outside Flood Plains, a Drainage Assessment is required if additional hard-standing exceeding 1000m<sup>2</sup> is to occur. Detailed plans are not currently available to assess whether a DA is required, however when queried, the agent has confirmed that the proposed hard standing will be below this threshold. A planning condition will be necessary however to ensure that in the event that these thresholds are triggered, a Drainage Assessment is provided and further consultation with DfI Rivers undertaken to ensure FLD3 requirements are met.



### 6.11 SPPS and Residential Amenity

Paras 4.11 and 4.12 of the SPPS highlight the role the Planning Department has in safeguarding residential amenity when assessing development proposals. The indicative layout presents concerns in terms of the amenity of occupants of the proposed dwellings. It is noted that this plan has been submitted as an indicative layout, the full detail and assessment of residential amenity (both existing and proposed residents) will be fully considered on receipt of detailed drawings through a Reserved Matters application.

### 7.0 Recommendation:

Approval (subject to the conditions below being met.)

### 8.0 Planning Conditions:

1. Application for approval of the reserved matters shall be made to the Council within 3 years of the date on which this permission is granted and the development, hereby permitted, shall be begun by whichever is the later of the following dates:-
  - i. the expiration of 5 years from the date of this permission; or
  - ii. the expiration of 2 years from the date of approval of the last of the reserved matters to be approved.

Reason: As required by Section 62 of the Planning Act (Northern Ireland) 2011.

2. Approval of the details of the siting, design and external appearance of the buildings, the means of access thereto and the landscaping of the site (hereinafter called "the reserved matters"), shall be obtained from the Council, in writing, before any development is commenced.

Reason: This is outline permission only and these matters have been reserved for the subsequent approval of the Council.

3. The under-mentioned reserved matters shall be as may be approved, in writing, by the Council :-
  - Siting; the two dimensional location of buildings within the site.
  - Design; the two dimensional internal arrangement of buildings and uses and the floor space devoted to such uses, the three dimensional form of the buildings and the relationship with their surroundings including height, massing, number of storeys, general external appearance and suitability for the display of advertisements.
  - External appearance of the Buildings; the colour, texture and type of facing materials to be used for external walls and roofs.

- Means of Access; the location and two dimensional design of vehicular and pedestrian access to the site from the surroundings and also the circulation, car parking, facilities for the loading and unloading of vehicles and access to individual buildings within the site.
- Landscaping; the use of the site not covered by building(s) and the treatment thereof including the planting of trees, hedges, shrubs, grass, the laying of hard surface areas, the formation of banks, terraces or other earthworks and associated retaining walls, screening by fencing, walls or other means, the laying out of gardens and the provisions of other amenity features.

Reason: To enable the Council to consider in detail the proposed development of the site.

4. Full particulars, detailed plans and sections of the reserved matters required in Conditions 02 and 03 shall be submitted in writing to the Council and shall be carried out as approved.

Reason: To enable the Council to consider in detail the proposed development of the site.

5. A scale plan and accurate site survey at 1:500 (minimum) 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. The access shall be constructed in accordance with the approved plan prior to the commencement of any other development.

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

6. The development hereby permitted shall take place in strict accordance with the following approved plan:
  - Drawing No. A4 - 01 (Site Location Map, date stamp received 26 June 2019)

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

7. The redevelopment works hereby approved shall be solely for residential development.

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

8. No development shall take place until a plan indicating floor levels of the proposed dwellings in relation to existing and proposed ground levels has been submitted to and approved by the Planning Authority.

Reason: To ensure the dwellings integrate into the landform and in the interest of residential amenity.

9. The depth of underbuilding between finished floor level and existing ground level shall not exceed 0.3 metres at any point.

Reason: In the interest of visual amenity.

10. No site works of any nature or development shall take place until a Level 3 Historic Building Survey has been prepared by a qualified archaeologist / conservation architect and submitted to and approved in writing by Newry, Mourne and Down District Council in consultation with Historic Environment Division, Department for Communities.

Reason: to ensure that archaeological remains within the application site are properly recorded prior to demolition.

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. Should the proposed layout include an additional area of hardstanding of 1000m<sup>2</sup> or more, a Detailed Drainage Assessment shall be submitted as part of the Reserved Matters application in accordance with Policy FLD3 of Planning Policy Statement 15 (Revised.)

Reason: To safeguard against flood risk to the development and elsewhere.

13. Prior to commencement of development hereby approved, the method of storm water disposal shall be submitted to and approved in writing for the agreement of the Council's Planning Authority in the form of either a formal agreement from NI Water or a Schedule 6 Consent from DfI Rivers Agency to discharge storm water into the existing watercourse.

Reason: To safeguard against flood risk to the development and elsewhere.

14. A scale plan shall be submitted as part of the reserved matters application showing a working strip of minimum width 5m between the existing watercourse and all development. The working strip shall be protected from impediments (including tree planting, hedges, permanent fencing and sheds), land raising or future unapproved development and access to and from the maintenance strip shall be available at all times.

Reason: To facilitate future maintenance of the watercourse by the Rivers Agency in accordance with Policy FLD2 of Planning Policy Statement 15 (Revised.)

15. No works are permitted to be carried out on the existing building and tree identified as having a bat roost until a Protected Species Licence has been obtained from NIEA, the details of which shall be submitted to and agreed in writing by the Local Planning Authority.

Reason: to ensure protection of protected species

16. Scaled plans shall be submitted as part of the reserved matters application showing bat boxes to be incorporated into the development. The details of which shall be submitted to and agreed in writing with the Local Planning Authority. The bat boxes shall be implemented in accordance with approved details and maintained in perpetuity.

Reason: to ensure protection of protected species

17. A detailed Lighting Plan shall be submitted as part of the Reserved Matters application, and shall provide details of proposed artificial lighting, to include a map showing predicted light spillage across the site and with a light spill of 1 Lux or less on boundary vegetation and compensatory roosts. Lighting shall be implemented in accordance with approved details.

Reason: To minimise the impact of the proposal on the biodiversity of the site, including protected species.

18. A detailed and updated site-specific Construction Method Statement (CMS) shall be submitted for approval by the Council's Planning Authority as part of a Reserved Matters application. This CMS shall reflect all the mitigation and avoidance measures to be employed for the protection of the aquatic environment, as outlined in the CMS, date stamped 26th June 2019.

Reason: To protect priority habitats and designated sites downstream and to prevent polluting discharges to the adjacent watercourse impacting on Murlough SAC.

19. Scaled plans shall be submitted as part of the reserved matters application which clearly define a minimum 5m buffer to the existing watercourse along the south eastern boundary, which is protected from all development, including gardens. The details of which shall be submitted to and agreed in writing with the Local Planning Authority. This shall be implemented in accordance with approved details and maintained in perpetuity.

Reason: To protect priority habitat and designated sites downstream.

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

storage of machinery/materials/spoil etc. and the watercourse bordering the south eastern edge of the red line boundary and any open surface water drains.

Reason: To prevent polluting discharges entering the adjacent watercourse and impacting on the site integrity of Murlough SAC.

21. Storm drainage of the site, during construction phase, shall be designed to the principles of Sustainable Drainage Systems (SuDS) in order to prevent the polluting effects of storm water on the adjacent watercourse. Construction of SuDS should comply with the design and construction standards as set out in The SuDS Manual - Construction Industry Research and Information Association (CIRIA) Report C753.

Reason: To prevent polluting discharges entering the adjacent watercourse and impacting on the site integrity of Murlough SAC.

22. No development shall take place until full details of all proposed tree and shrub planting and a programme of works, have been submitted to and agreed in writing by the Local Planning Authority, and all tree and shrub planting shall be carried out in accordance with those details and at those times.

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

23. A landscape management and maintenance plan shall be submitted to and agreed in writing by the Local Planning Authority prior to commencement of development. The plan shall set out the period of the plan, long term objectives, management responsibilities, performance measures and maintenance schedules for all areas of landscaping and open space. The landscape management plan shall be carried out as 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.

24. 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:**                      **O. Rooney**                      **Date: 12.05.22**

**Appointed Officer Signature:**              **P. Manley**                      **Date:12.05.22**

Dear Sir/Madam,

With regard to planning application LA07/2019/1009/O which has been scheduled for the next Committee meeting on 1<sup>st</sup> June 2022, I would like to avail of the speaking rights in support of the application which have been made available. The application has been scheduled for approval, but I would like speaking rights to answer any questions raised by the committee as there is objection to the application by local residents. There is no supporting statement to attach.

Kind Regards

**Barry Hillen** BSc BArch MSc  
RIBA ARB RSUA RIAI  
Architect / Director



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

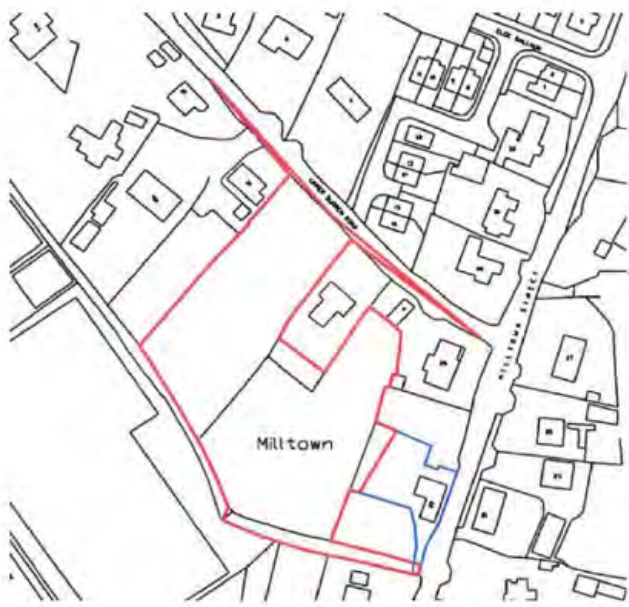
**Application Reference:** LA07/2019/1748/F

**Date Received:** 15/11/2019

**Proposal:** Erection of 12 dwellings, with boundary walls, fences, landscaping and associated site works

(Note: When initially submitted in 2019, this application was for a total of 15 dwellings but has since been amended/reduced to a total of 12).

**Location:** Lands 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



**Site Characteristics & Area Characteristics:**

Characteristics of site: The lands outlined in red are irregular in shape located between no. 06 and no. 10 Upper Burren Road and running to the rear of 22-26

Milltown Street. The site at present is a piece of unmaintained land, consisting of long grass and portions of scrub. The levels within the site fall from north east to south west. There is no vehicular access to the site at present, with access served via a field gate. A belt of trees run along the entire south western boundary, with a mature hedgerow running along the north eastern boundary. There are limited views into and through the site from the public road, given that the site is located to the rear of a number of properties.

Characteristics of area: The subject site is located within the settlement limits of Warrenpoint/Burren on un-zoned white lands. The southern portion of the site abuts Milltown Industrial Estate which is land zoned as Existing Industry. The immediate area is predominately characterised by detached dwellings which front onto Upper Burren Road and Milltown Street. Case officers note semi-detached dwellings located opposite the proposed entrance.

### **Site History:**

P/2013/0141/O - Adjacent to and south east of 10 Upper Burren Road, Burren, Warrenpoint. Site for dwelling and garage. Permission granted.

P/1995/0564 - Adjacent To No.10 Upper Burren Road Milltown Burren Warrenpoint. Site for dwelling. Application withdrawn.

### Applications within close proximity to the site

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. Received Sept 2021. Remains under consideration. Currently at consultee stage.

LA07/2020/1708/F - 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. Unit 11 Milltown Industrial Estate, Warrenpoint. Permission refused.

LA07/2020/0189/F - 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. Unit 11, Milltown Industrial Estate, Warrenpoint, BT34 3FN. Permission refused.

LA07/2018/0244/F - 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. Unit 11, Milltown Industrial Estate, Warrenpoint, BT34 3FN. Permission granted.

P/2012/0820/F - Erection of a Dwelling. Adjacent to No. 4 Upper Burren Road Warrenpoint. Permission granted.

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

The NI Regional Development Strategy 2035  
 SPPS – Strategic Planning Policy Statement for Northern Ireland.  
 Banbridge/Newry and Mourne Area Plan 2015  
 PPS 2 – Natural Heritage  
 PPS 3 - Access, Movement and Parking  
 PPS4- Economic Development  
 PPS 7 – Quality Residential Environments  
 PPS8 – Open Space, Sport and Outdoor Recreation  
 Addendum to PPS7 – Safeguarding the Character of Established Residential Areas  
 PPS 12 – Housing in Settlements  
 PPS 15 – Planning and Flood Risk

Supplementary guidance  
 Creating Places  
 Development Control Advice Note (DCAN) 8 - Housing in Existing Urban Areas  
 DCAN15 – Vehicular Access Standards  
 Parking Standards  
 DCAN8 – Housing in Existing Urban Areas  
 A Planning Strategy for Rural Northern Ireland (Policies DES2 & SP18)

### **Consultations:**

NI Water – Available capacity

DFI Rivers – No objection subject to recommended planning condition and informatives (Noted a Drainage Assessment was submitted and Schedule 6 Consent obtained).

Environmental Health (NM&D) – No objection in principle. Having considered the application stating that applicant should be aware that there is an existing industrial estate to the rear of the site and future occupants of the dwellings may be affected by noise from the site.

SES – No objections (Informal consultation)

DFI Roads - No objections subject to access being constructed in accordance with approved PSD's and planning conditions.

NIEA – No objections in principle (Noted a Landscape and lighting plan, Bio Diversity Report, and Preliminary Ecological Appraisal were submitted).

Since receipt of the application in 2019 consultation and re-consultation has been undertaken with several bodies including those outlined above, whereby it is noted all consultees now offer no objections to the proposals in principle.

### **Publication, Objections & Representations:**

Having account current procedure and practice an initial round of neighbour notification as undertaken in Jan 2020 (with additional neighbour being notified in March 2020).

Following receipt of amended plans/additional information, further rounds of NN were also undertaken.

The application was also advertised in the local press in Jan 2019, and again in Oct and Dec 2020 following receipt of an amended description. (Reducing the number of units).

It is considered the proposals have been correctly Advertised and Neighbours Notified, whereby the proposal description and site address provided are sufficiently detailed.

To date (06-10-21) approx 100 representations have been logged in respect of this application, with some 76 logged as objections and 22 logged in support. The address points of those who have made representation have been noted.

The planning concerns raised are summarised as follows:

- Size and scale of the proposal, over-development,
- Directly overlooking
- Congestion and traffic pressures including parking
- Siting and heights of buildings
- Dwelling types
- Road safety
- Conflict with adjoining land uses (overlooking, overshadowing, dominance, smoke from chimneys)
- Boundary treatments
- Impact on Protected species
- Security concerns
- Lack of green space
- Impact on a Right of Way

The representations in support of the proposal include the following:-

- Disagree with the road dangers raised in the objections,
- The number of houses does not determine how people drive
- Note a footpath is provided along the site frontage. Other landowners along this stretch of road may wish to offer lands to DFI to provide footpaths further along the road
- Support the housing building for the area.

The comments made are considered further below.

See file for full content of reps received as the above is a summary of main issues raised.

### **Consideration and Assessment:**

#### STRATEGIC POLICY

RG8 of the RDS aims to manage housing growth to achieve sustainable patterns of residential development. It aims to provide more high quality accessible housing within existing urban areas without causing unacceptable damage to the local character and environmental quality or residential amenity of these areas. Therefore the principle of developing this site within the urban footprint is in line with the regional housing policy of the RDS.

The SPSS sets out core planning principles to be employed in the quest to achieve sustainable development. Of particular relevance to this application are the aim of supporting good design and positive place making while preserving and improving the built and natural environment.

The design, density and layout of the scheme has been amended during the course of the application in response to the concerns of the planning authority. These matters will be assessed further below.

The SPSS also addresses housing in settlements. It repeats the planning control principles listed in PPS12. The proposal complies with these as follows:

- *increased housing density without town cramming* – the proposal will increase the housing density in this area without erosion of local character, environmental quality or amenity. The design draws on some of the characteristics of adjacent development. For further consideration of these issues, see 'urban design' below.
- *sustainable forms of development* – the use of sites like this within the urban footprint is more sustainable than one-off housing developments outside development limits and is therefore to be encouraged. There are local facilities and services available nearby.

- *good design* – The design of the scheme successfully respects the context of the area and follows local traditions of form, materials and detailing, while taking advantage of the characteristics of the site.
- *balanced communities* – as this proposal is for a small development, there is limited scope to provide different unit sizes, however several house types are proposed.

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.

As stated above the lands comprising the application site are located within the settlement limits of Warrenpoint/Burren on un-zoned white lands, as identified in the Area Plan.

With regards to the principle of development, as stated above, the site is regarded as white-land. The site is vacant at present, whereby the area in general along the Upper Burren Rd and Milltown St is largely residential in character. The adjoining land use and zoning to the rear is also noted, however having account the zoning of the site, and character of the area, it is considered there can be no objection to the principle of residential use on this site.

### URBAN DESIGN

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, as per the requirements of QD1 of PPS7.

As outlined previously, the proposal was initially for a total of 15 units, however this has since been reduced and is now for a total of 12 units (2 detached and 10 semi-detached).

This report is based on the latest scheme for 12 units, which effectively comprises 4 house types.

Houses 1-2: 2 storey semi-detached adjacent to the entrance to the development and closest to the Upper Burren Rd.

Houses 3-11: split level units, 2 storey to the front and 3 storey to the rear, which will back towards the industrial site. Plot 3 is detached, while Plots 4-11 are semi-detached

House 12: 2 storey detached dwelling, sited adjacent to No.24 and 26 Milltown St.

The finishes for all units include black roof tiles, black RWGs, cream colour pvc fascia, windows and doors, and cream coloured render walls with grey slate stone cladding.

The site will access directly onto the Upper Burren Rd adjacent to no.10, with all units using this same individual entrance.

Policy QD1 of PPS 7, requires all proposals for residential development to conform to Criteria (a) – (i).

- (a) The development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscape and hard surfaced areas

In assessment of this criterion it is considered the development does respect the surrounding context in terms of its layout, house type, size, finishes, plot size and density.

It is noted this stretch of Upper Burren Rd and Milltown St now includes a mix of detached and semi-detached dwellings of differing sizes and designs, both single and 2 storey in nature.

While the adjoining properties to either side of the entrance are detached, there are also semi-detached dwellings immediately adjacent, including the more recently constructed developments of Clock Ballaun and Milltown Close, which now also form part of the character of this area.

As stated above it is considered the development proposed including the layout, scale, plot sizes, house types and finishes respect the surrounding context and is appropriate for the area, for the reasons outlined. The development is set back from the road, with a soft area of amenity space at the entrance, however the development still provides a frontage to the road, with the entrance unit being double fronted and which will also respect the character and scale along the street-scene.

Each unit includes incurtilage parking to the side with soft landscaping to the front, thereby creating a quality environment.

Levels have been provided which indicate those proposed will respect those existing including those of the adjoining properties.

The boundaries of units will primarily comprise aluminium estate type railings along the front with boarded fencing hidden to the rear with planting. A number of existing

trees are also to be retained with root protection zones included in the landscaping plan. A Landscaping plan has also been submitted.

The size of the development does not trigger any requirement for communal open space provision, however 2 pockets of communal open space are provided either side of the entrance.

While the site is located within the settlement limit, the Planning Authority noted the adjoining lands to the west are zoned as an existing area of economic development, with a current application under consideration to increase operating times for the adjoining site. Consultation was undertaken with Environmental Health (EH) due to the nature of the proposal and constraints of the site and wider area, whereby EH did not object to the proposal and did not request any further information, such as acoustic measures or a Noise Assessment.

The Planning Dept had requested a Noise Assessment from the agent during the processing of the case, however the agent rebutted this request, setting out the comments from EH.

Having account the comments and position from EH the Planning Dept considered this request was not justifiable.

It is noted the existing planting along the boundary with the industrial lands is to be retained, with a new hedgerow also provided along this boundary boundary.

- (b) Features of the archaeological and built heritage, and landscape features are identified and, where appropriate, protected and integrated in a suitable manner into the overall design and layout of the development.

There are no known features which impact the site.

- (c) Adequate provision is made for public and private open space and landscaped areas as an integral part of the development

Each unit will have its own internal area of private amenity space, with small soft areas to the front and larger private garden areas to the rear, which are considered sufficient for each of these 3 and 4 bedroom units.

Given the scale of the development, it is considered that there is no requirement for this proposal to comply with (d) and (e).

- (f) adequate and appropriate provision is made for parking

Each unit will have its own in-curtilage parking with space for at least 2 cars off-street, and also space for additional parking on-street if required. It is noted TNI are now content with the proposals.

- (g) the design of the development draws upon the best local traditions of form, materials and detailing;

The design and finishes of each unit as outlined above are considered to be in keeping and acceptable for this setting.

- (h) the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance

Since the original submission in 2019, the Planning authority has sought and received revisions and reductions to the layout to ensure a quality layout and to prevent any unacceptable impact resulting on the amenity of any adjoining property and also to ensure there are no inter-relationship issues between the units proposed.

It is considered the siting of each unit, together with the levels and layout including window openings and orientation, and separation distances to the various boundaries will ensure no unacceptable impact will result on the amenity of any adjoining property, or indeed between the units proposed, in terms of overlooking, overshadowing, loss of light or dominant impact, in this urban context. Also it is considered the entrance road which is centrally located is sufficiently removed from the boundaries with adjoining properties, and together with boundary proposals, will not result in any unacceptable loss of amenity.

- (i) The development is designed to deter crime and promote personal safety

The proposed layout is spacious and open and does not include any elements that would give rise to concern. The area of public open space to the front is open and visible and can be monitored. As such it is considered the proposal does not offend this criteria.

The representations received included that there is a Right of Way (ROW) affected by the site. In respect of this, the agent advised they queried this with the Councils Rights of Way Officer, who confirmed the said path is not registered as a ROW, however that the proposals do not impact/obstruct this.

In summary it is considered the proposal does not offend the requirements of PPS7 or the subsequent associated Addendum, whereby the scale and form of the development proposed is respective of the character of the area.

In addition to PPS7, proposals for residential development must also comply with the requirements of the Addendum to PPS7 (Safeguarding the Character of Established Residential Areas).

#### Policy LC 1 of the Addendum to PPS 7

Given the mixed character of the area surrounding the site and the existing use of this site, the proposal must accord with the requirements of this policy.

In established residential areas planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (including extended garden areas) to accommodate new housing, where all the criteria set out in Policy QD 1 of PPS 7, and all the additional criteria set out within this Addendum are met (a-c).

It is considered the density including plot sizes and pattern of development respects the character of the area, for the reason outlined above, and does not offend this policy.

#### PPS 2 - Natural Heritage

The agent submitted a Biodiversity Checklist and associated Ecological statement, landscape layout, Lighting Report and Lighting Plan, and a further Addendum to the Preliminary Ecological Appraisal. NED has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, is content with the proposal, subject to conditions and informatives.

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). Shared Environmental Services have considered the site, in a response dated 09/01/2021 concluded that "the proposal would not have any likely significant effect on the features of any European Site."



### PPS 3 – Access, Movement and Parking

DFI Roads has been consulted with regards to the Access, Movement and Parking, on more than one occasion throughout the processing of this application. The Department has responded to the most recent scheme with no objections to the proposal subject to Conditions. As stated above, it is considered parking provision for each unit is sufficient. The site indicates these 12 units will use the same entrance road and shared access on to the Upper Burren Rd. The development includes a footpath within the site and also along the site frontage (2m wide), with internal access road width of 5.5m, and 8m radius at the site entrance from the Upper Burren Rd, with splays of 2.4m by 45m and 2.4m by 40m in either direction, which is deemed acceptable by DFI Roads in this instance.

The ownership of the lands outlined in red line was raised with the agent during the processing of the case whereby an amended P1 form and Certificate was received.

### **Recommendation:**

While it is noted this application has attracted considerable interest both in opposition and support, it is considered the current proposals do not offend any of the applicable policy provisions and there are no grounds to sustain a refusal.

The Planning Authority have secured significant amendments to this proposal throughout the processing of this application to ensure that this proposal meets these core planning principles for sustainable development outlined in the SPPS for the reasons outlined within this report.

On this basis the application is recommended for Approval subject to conditions.

### **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 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 Drawings hereby approved

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.

3. The visibility splays at the junction of the proposed access road with the public road shall be provided in accordance with the plans hereby approved, prior to the commencement of any other works or other development.

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

4. No dwellings 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

5. No dwelling shall be occupied until provision has been made and permanently retained within the curtilage of the site for the parking of private cars at the rate of 2 space per dwelling.

Reason: To ensure adequate (in-curtilage) parking in the interests of road safety and the convenience of road users.

6. 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.

7. The Street Lighting scheme, including the provision of all plant and materials and installation of same, will be implemented as directed by the Department for Infrastructure Street Lighting Section

(These works will be carried out entirely at the developer's expense.)

Reason: To ensure the provision of a satisfactory street lighting system, for road safety and convenience of traffic and pedestrians.

8. Existing mature trees and hedgerow along the site boundaries shall be retained, as shown on Drawing P04D.

Reason: To protect the biodiversity value of the site, including protected species.

9. Prior to works commencing on site, all existing trees as shown on Drawing Number P04D and Drawing Number P011, as being retained shall be protected by appropriate fencing in accordance with British Standard 5837:2012 *Trees in relation to design, demolition and construction – Recommendations*. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Planning Authority.

Reason: To protect the biodiversity value of the site, including protected species.

10. All works to be carried out within the Root Protection Area (RPA) as shown on Drawing No. P011 shall be carried out under the supervision of an experienced and suitably qualified arboriculturist. The arboriculturist shall write a report detailing the works carried out and the implementation of mitigation measures and this shall be submitted to the Planning Authority within 6 weeks of the completion of works within the RPA.

Reason: To protect biodiversity within the site, including protected species.

11. ALL landscape and planting proposals shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The planting plan shall be carried out during the first available planting season after construction works have been completed, in accordance with Drawing Number P04D. The proposed boundary planting to the rear of all units shall be a minimum height of 1m at the time of planting, and shall be allowed to grow on to a minimum height of 2m.

Reason: In the interests of visual and residential amenity.

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

Reason: To ensure the provision of landscaping to the site.

13. The boundary fencing associated with each unit as indicated on Drawing No. shall be completed prior to the occupation of the unit it serves, which shall be permanently retained thereafter.

Reason: In the interests of visual and residential amenity.

14. Prior to the commencement of any of the approved development on site, a final drainage assessment, containing a detailed drainage network design and compliant with Annex D of PPS 15 must be submitted to the Planning Authority for its consideration and approval.

Reason: To safeguard against flood risk to the development and elsewhere.

**Informatives**

<b>Case Officer Signature: S Maguire</b> <b>Date: 06-10-21</b>
<b>Appointed Officer Signature: M Keane</b> <b>Date: 06-10-21</b>

## Addendum Report

### Application Reference: LA07/2019/1748/F

Note: This Addendum report is to supplement the original case officer report dated 6<sup>th</sup> Oct 2021.

### Background

This is a Full application for a housing development comprising 12 dwellings, on lands off Upper Burren Rd, Warrenpoint.

The site is irregular in shape and is accessed between no. 6 and 10 Upper Burren Rd, and extends to adjoin Milltown Industrial Estate at the rear.

The site is located within the settlement limits of Warrenpoint/Burren as identified in the Area Plan on lands regarded as white-land.

The application was previously recommended for Approval in Oct 2021, and was included on the Schedule to be presented to Planning Committee for Oct 2021's meeting. However it was removed from this list for further consideration.

This included further consideration of the following matters:

1. relationship and potential impact from the adjoining Industrial lands,
2. investigate the line of the visibility splays and ownership of same, and
3. to seek confirmation DFI Roads had considered all representations received.

1. The Planning Dept queried the comments provided by Environmental Health in Jan 2020 from this Dept.

Following reconsideration of its position, Environmental Health requested the submission of a Noise Impact Assessment.

Following receipt of same, and further re-consultation, Environmental Health replied (Nov 2011) with no objections in principle subject to the following conditions:-

- The noise mitigation measures, namely double glazing and acoustic ventilation to all properties as identified in section 4, of the noise impact assessment produced by Irwin Carr Consulting, referenced Rp001N 2021282 (Upper Milltown Rd Burren) and dated 11 November 2021 must be implemented in full.

- An acoustic barrier at least 1.8m high shall be included along the boundary of the development, to the rear of site No 3 to 11, prior to the occupation of any unit hereby approved, shall be permanently retained thereafter. The barrier shall be constructed

of either masonry, timber panelling (Close lapped with no gaps) or of earth and shall have a minimum self weight of 25 Kg/m<sup>2</sup>.

- Should any unforeseen ground contamination be encountered during the development, and in order to protect human health, all works on site should immediately cease. The Environmental Health Department should be informed and a full written risk assessment in line with the current government guidance that details the nature of the risks and necessary mitigation measures should be prepared and submitted for appraisal.

A further 3<sup>rd</sup> party representation was received regarding these comments, which prompted a further consultation with Environmental Health.

Environmental Health in its most recent response (March 2022) have reaffirmed their previous position and offer no objections subject to conditions.

On this basis it considered there are no grounds to sustain a refusal on Environmental Health grounds.

2. Representations on behalf of third parties have raised the issue that the incorrect certificate had been completed on the P1 form, and that notice had not been correctly served on the owners of neighbouring lands who it is alleged the site visibility splays crosses.

This matter was revisited and raised with the agent, who subsequently provided an amended Certificate on the P1 form serving notice on No.10 and 10a Upper Burren Rd, but also provided land folio maps showing the applicant holds an easement over the area of which the line of the splays cross the frontage of no.6.

While it is noted land ownership issues are a private legal matter, beyond the remit of planning, as a challenge was received during the processing of this application, this was duly investigated by the Planning Dept. On the basis of the above, it is considered the correct certificate has been completed, notice served, and no further action is required in this respect.

3. A further consultation was issued to DFI Roads (May 2022) requesting confirmation that all representations received to date had been fully considered as part of their assessment and response. In its final response DFI Roads have advised the following:-

DFI Roads have considered all representations and our previous comments dated 29 April 2021 are still applicable.

DfI Roads also made specific comment on the speed surveys provided by both parties (agent and third party), advising they have considered the speed surveys from both parties and have carried out their own follow on speed survey on site as part of the consultation assessment and are content that the proposal achieves the required 2.4m x 70m on the near side as demonstrated on the drawing of 2.4m by 40m to the tangent point and 2.4m by 45m (bracketed figure) on the off side as vehicles coming from this direction are slowing down approaching the upper Burren road/Milltown street junction.

A footway is being provided along the site frontage like other developments in the area to which a footway link may be established through possible future developments within the area.

The 2.4m x distance is considered satisfactory by the department as speeds on the priority road are below 37mph and danger is unlikely to be caused as per DCAN 15.

On this basis the Planning Dept is content all representations received have been considered by DFI (and the Planning Dept) in reaching its position.

As advised above this application was held for further consideration on a number of aspects.

This reconsideration is now completed, whereby the proposals are considered acceptable, subject to conditions.

The application is hereby recommended for Approval subject to conditions.

(These conditions include those on the original report and those outlined above).

**Recommendation: Approval**

**Case Officer:** M Keane 18-05-22

**Authorised Officer:** Pat Rooney 18.05.2022

### Speaking Rights Submission

**Ref - LA07/2019/1748/F - Erection of 12 dwellings, with boundary walls, fences, landscaping and associated site works - 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**

- It is noted that amended P2 Certificates were issued in respect of Nos.10 and 10A Upper Burren Road, as the visibility splays to northwest run across this 3<sup>rd</sup> party land.
- No Certificate has been served on Nos.6 Upper Burren Road (Mr Mallon) despite the southeastern visibility splay clearly running across 3<sup>rd</sup> party land, which is not under the applicant's ownership.



- The applicant has provided a copy of Folio DN217565 and claims to have an easement for entry, access, services etc.
- Mr Mallon (No.6) has made enquiries with his solicitor and the easement relates to a dwelling house (singular) not a housing development (plural) and papers will be provided to demonstrate same.
- Irrespective of any alleged easement the land is not owned by the applicant and in accordance with Section 43 of the Planning Act (NI) states that the decision-maker **must not entertain** an application for planning permission in relation to any land unless it is accompanied by one of four certificates. Mr Mallon has not had notice served.
- The use of the word must is a mandatory expression, as supported by the decision in *Telford & Wrekin Council and SOS for Communities and Local Government and Grown Enterprises Ltd* {2013} EWHC 79.



- Whilst it is accepted that landownership issues are private legal matters, there is still an obligation on the Council, as the prohibition on determining planning applications applies irrespective of whether anyone is prejudiced.
- Section 43 of the Act has not been discharged and any subsequent decision would be unlawful, as we have clearly demonstrated 3<sup>rd</sup> party land is required in respect of the visibility splays, which is not under the applicant's control, and they have knowingly withheld this information ad the Council is complicit.
- The relevant planning policies for residential developments are contained within the SPPS and Planning Policy Statement 7: Quality Residential Environments.
- Criterion (h) requires that the design and layout will not create conflict with adjacent land-uses and there is no unacceptable adverse effect on existing **or proposed properties in terms of, among other things, overlooking.**
- Site 12 is some (8m) below the finished floor level of existing properties and directly overlooked by Nos.22-26 Milltown Road and Nos.6 Upper Burren Road.
- 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.
- 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.
- Acoustic information has been provided 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 sough 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.**
- There are remaining unresolved issues on this application, and this creates legal vulnerability of the recommendation to grant permission.

This planning application is for the erection of 12 dwellings with boundary walls, fences, landscaping and associated site works and has been recommended for approval by the planning department. This proposal seeks to use a vacant site, consisting of unmaintained land and create development that will conform with the surrounding land uses which are predominantly residential. The applicant is keen to promote sustainability, and the use of sites like this, within the development limit, is more sustainable than one-off housing developments in the countryside. A range of different house types have been provided to accommodate the various needs of any future occupants. The surrounding area is characterised by residential properties along the Upper Burren Road and Milltown Street and therefore this development will not be out of character, within the surrounding area. The site is classified as "white land" in the statutory development plan. There are no zonings, key site requirements or associated constraints affecting the site. In addition to this there are no listed buildings, archaeological remains or other important natural or built heritage features nearby. The applicant acknowledges that a high number of representations were received both in support and in opposition to the proposal, these have been summarised within the case officers report and addendum report. The views of the public and in particular neighbouring residents are important and have been taken into full consideration by the applicant. These objections have been addressed by the case officer within their final report and the applicant has also outlined within their supporting statement how the proposal will suitably integrate into the area. It should be noted also that statutory consultees that were referred on this application; DFI Rivers, DFI Roads, NI Water, Environmental Health, NIEA and SES have no objections to the proposal. The applicant had instructed a number of independent consultants as part of this application process to carry out reports in line with the regulations set by the statutory consultees to help to demonstrate that the proposed development would not have an adverse impact on the surrounding lands. These reports which included a Transport Assessment Form, Noise Impact Assessment, Lighting Plan, Bio-diversity Checklist and a Drainage Assessment, in addition to the consultee's own assessments of the proposal, showed there to be no impact upon the integrity of protected species, congestion / traffic pressures or road safety, neighbouring amenities and this should reassure the public of their concerns on these matters. Suitable conditions have been attached to the planning department's recommendation for approval, to protect the biodiversity value of the site and any protected species and to ensure that road safety is not compromised as a result of the approval of this application. Concerns were raised by the public around the lack of green space for the development, however this has been provided for with the proposal as each individual dwelling has its own private amenity green space along with small areas of communal open space either side of the site entrance. The Planning Department has also referred to this within their report highlighting that each unit will have small areas to the front and large private garden areas to the rear which are considered to be sufficient. Therefore, these objections cannot be sustained. In curtilage car parking provision is adequate with each dwelling availing of at least two spaces. Planning authorities are increasingly seeking parking at the sides of dwellings to avoid a dominant mass of hard standing to the fronts of properties; hence the applicant has designed the development in this manner. The nature of the proposal is such that it will not result in a significant increase in noise levels, and road traffic noise impact will not undermine existing residents' amenity levels. A new access will be created as part of this proposal; however, it will not have an adverse impact or cause any detriment to road users. All works are in accordance with requirements set out under Planning Policy Statement 3: Access, Movement and parking and Development Control Advice Note 15: Vehicular Access Standards. The planning department

have attached a number of conditions to their recommendation to ensure that these measures along with access works are implemented prior to the occupation of any of the proposed dwellings. This will ensure that the road safety of vehicles travelling along the Upper Burren Road will not be compromised. Despite land ownership issues being a private legal matter, concerns were raised in regards to visibility splays encroaching onto neighbouring properties land. Although the applicant did not feel that this should hold up the processing of his application, as it could be dealt with outside of the application process, the planning department did consider it necessary to address. The applicant duly complied and suitably addressed the concerns raised. There can be no doubts that the correct certificate has been completed, notice served and that no further action is required in this respect. Overall DFI Roads have no concerns with the proposal and objections to this effect from the public cannot be upheld. Concerns have been expressed by existing residents that prospective occupants will be affected by noise from a factory in Milltown Industrial Estate. The applicant has provided an independent report that disproves this, and this has been accepted by Environmental Health. The factory has made various applications on its site and the latest application seeks to vary operating times. On the basis of evidence put forward, Environmental Health has no objection to that expansion. Although there is no uniform style of building in this locality, and there is considerable variety in house design, materials and finishes, we believe that the proposed development respects the surrounding area. The proposed development is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, landscaped and hard surfaced areas. The dwelling forms for this proposal are simple while materials and detailing are consistent with the character of the surrounding area. The scale of the buildings on the site is appropriate to the site's context, while the layout of the proposal has been cognisant of the site's existing contours. The layout of the development will not create conflict with adjacent land uses and there will be no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. The planning department reiterate this point in their report. The applicant has been careful to ensure that the existing vegetation at the site will be retained in order to maintain the rural character of the area. Dwellings are adequately spaced and the proposal has been reduced from a total of 15 dwellings to 12 to facilitate this. Overall, there will be no diminution in the area's local character and environmental quality. The planning department share this view and recognise the detail and consideration of design and amenity space carried out by the applicant as a part of this development proposal. There are limited views into and through the site from any points of general public access or assembly, owing to the site's context (situated to the rear of a number of residential properties).

Overall, the nature of housing proposed is to a very high standard and no insurmountable constraints have been identified. The proposal is believed to be indicative of a quality residential environment. It is considered to be compliant with all current planning policies and supplementary guidance documents and the principle of residential use on this site has been justified. All third-party concerns have been carefully considered by the planning department and the applicant. There are no known material considerations that would dictate that planning permission ought not to be granted in this case. The proposal does not offend any of the applicable policy provisions and there are no grounds to sustain a refusal. In light of the foregoing we would respectfully request the Committee members to align with the recommendation of the planning department and approve this proposal.



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2021/1219/O

**Date Received:** 28.06.2021

**Proposal:** Site for 5 units of self-catering accommodation

**Location:** 215 SE of 40 Quarter Road  
Annalong

**Site Characteristics & Area Characteristics:**

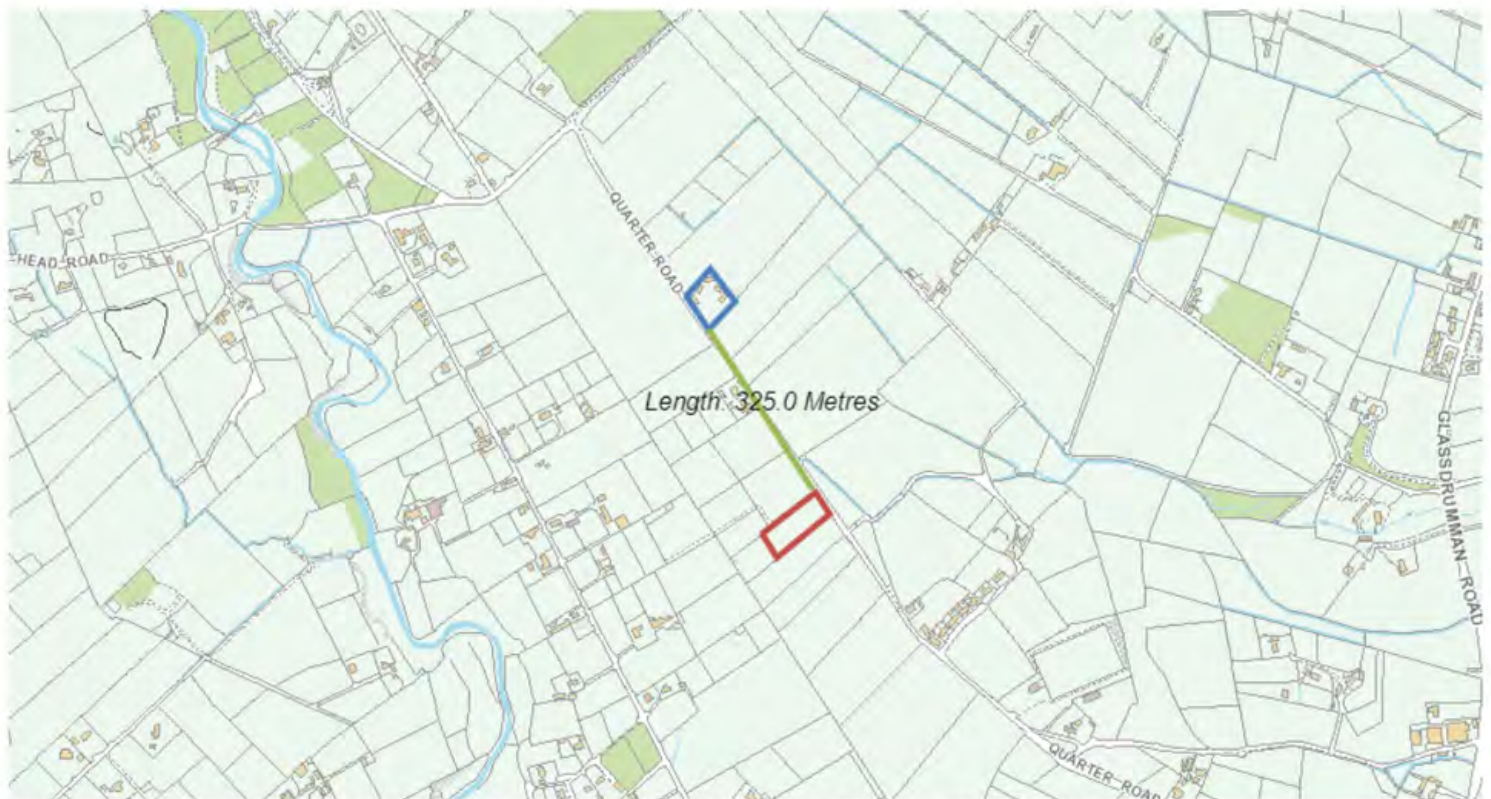
The site is located outside the settlement development limits as defined by the Banbridge, Newry and Mourne Area Plan 2015. The site is also within the Mourne Area of Outstanding Natural Beauty and a Site of Local Nature Conservation Importance (Mullartown Moraine).

The application site is a flat, grassed agricultural field that is bound by dry stone walls overgrown by hedgerow along the roadside and north and southern boundaries. The western boundary of the application site is undefined as the site is a portion of a larger field. The site is accessed off the SW side of Quarter Road. The surrounding area is predominantly rural in character and is typified by a dispersed pattern of development.

The application has been submitted by the owners of Kribben Cottages which comprise 5 self-catering units along Quarter Road. Kribben Cottages has been outlined in blue below.



*Application site*



*Application site outlined in red. Kribben Cottages outlined in blue.*

**Site History:**

There is no history for the application site.

The history for Kribben Cottages site is as follows:

- P/1979/0409 - PROPOSED YOUTH HOSTEL TO INCLUDE WARDEN'S DWELLING – Permission granted
- P/1981/0641 - YOUTH HOSTEL WITH WARDENS ACCOMMODATION – Permission granted
- P/1987/1330 - Site for youth hostel with warden's accommodation – Permission granted
- P/1990/1213 - Site for Youth hostel with wardens accommodation. Renewal of outline planning permission – Permission granted
- P/1997/1278 - Site for Youth Hostel with warden's accommodation – Permission granted
- P/2000/1525/F - Erection of development self-contained accommodation for Youth Hostel Association – Permission granted
- P/2013/0553/F - Retention of 5 No. tourist accommodation self-catering units to be used for holiday letting – Permission granted

**Planning Policies & Material Considerations:**

This planning application has been assessed under:

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

**Consultations:**

- DfI Roads- No objections subject to conditions
- Water- Approval
- NI Tourist Board - For applications below major thresholds, namely local applications, planning authorities may wish to consult with local tourism officials within the Local Council whom Tourism NI considers best placed to provide input, not least in terms of geographical local knowledge. Also, through the community planning process and associated local development plans Tourism NI already fully engages at a strategic level with Local Authorities.
- NIEA NED - The scale of the proposed development is small in relation to the

size of the SLNCI, and is in an improved grass field with no exposures or obvious geomorphological features. I therefore do not believe that the proposed development, should it receive approval, will have a significant negative impact on Earth Science conservation.

NED note that the proposal may involve removal or lopping of: Field hedgerows or lines of trees >1m high and 0.5m wide; Areas of scrub, including gorse. The development may also affect or be within 50m of: Rivers, streams or canals. NED should be re-consulted if new information is received (such as ecological surveys requested following application of relevant Standing Advice/ Biodiversity Checklist, relevant objection letters, or if there are specific natural heritage issues which arise following a site visit by the planning officer) to enable us to carry out a more detailed assessment."

Upon receipt of a number of letters of objections (discussed further below), the agent was requested to submit a Biodiversity Checklist. A BDC was submitted whereby 'no' was answered to all of the questions within Part 1 and Part 2 bypassing the need to complete Part 3. However, it was noted that as the site is located within Mullartown Moraine SLNCI as acknowledged by the agent in the Design and Access Statement submitted, Part 3 needed to be completed by a suitably qualified person. The agent was requested to amend the BDC accurately and complete Part 3 accordingly.

An amended BDC was submitted and NIEA NED reconsulted. NED issued a final response 26<sup>th</sup> January 2022 and on the basis of the information provided, NED were content with the proposal subject to informatives.

- EH- Should a full application be received Environmental Health would request the following:- a noise data sheet which identifies the noise levels associated with the waste water treatment plant. Depending on the noise data received a further noise assessment may be needed. The applicant should also be advised that the pumping station should be located at least 15m away from any residential property. If not being adopted by NI water a management plan for the service and maintenance of the pumping station must be put in place. As this is an outline application, this request could be attached by way of condition to be submitted at RM stage if approval was to be granted.

An email was received from the agent requesting the Planning Department to consult the Council's Tourist Department. Following internal discussions, it was not considered necessary to consult with the Tourist Department on this application.

### **Objections & Representations**

Neighbour notifications: No neighbour notifications were required for this application

Advertisement: 04.08.2021

6 letters of objections were received from 4 addresses – 89, 91, 93 and 109 Mill Road, Annalong. All letters received comprised the same points as follows;

- The site is in a much more rural location than is portrayed in this document. Rather than the Quarter Road being a “gateway to the Mournes”, as stated in the document titled “Design and Access Statement”, it is a narrow road which leads to the Head Road  
**This point will be considered in the assessment of the application under Policy TSM 5 of PPS 16.**
- Mourne Rambler bus is a seasonal only bus service and does not operate 7 days per week.  
**This point will be considered in the assessment of the application under Policy TSM 5 of PPS 16.**
- Access arrangements to the Quarter Road are not clear, especially due to the narrow nature of the site - This is a safety concern for the residents, road users and pedestrians  
**This is an outline application, therefore matters such as access, parking and landscaping are reserved. Although a proposed site layout plan has been submitted showing the proposed access. DfI Roads have been consulted and have no objections subject to conditions.**
- This site will greatly impose on the skyline,  
**This point will be considered under Policy TSM 7 of PPS 16 and NH 6 of PPS 2 below.**
- While tourist accommodation is required in the local area it should not impose over the local population of the Mill Road and Quarter Road  
**Proposed tourist accommodation is assessed under PPS 16 and the policy relevant to this proposal is TSM 5. This will be discussed further below.**
- If the applicant were to be successful in this application, they would own 10 dwellings on the Quarter road. It is likely this would cause significant discontentment with the local population.  
**This is not a material consideration and is a matter outside the remit of planning.**
- The development is not environmentally sustainable – installing sewage system and extending electricity;  
**This will be considered under Policy CTY 16 of PPS 21.**
- Tourism should be brought into the already developed towns and villages, rather than impacting the unspoilt landscape of the Mournes.  
**Proposed tourist accommodation is assessed under PPS 16 and the policy relevant to this proposal is TSM 5. This will be discussed further below.**
- There is numerous tourist accommodation available in the immediate vicinity.  
**Proposed tourist accommodation is assessed under PPS 16 and the policy relevant to this proposal is TSM 5. This will be discussed further below. However, the number of existing tourist accommodation is not an applicable criterion within the relevant policies.**



- Demand for self-catering accommodation is only high due to Covid 19 and travel restrictions. In normal times, the demand will be seasonal only.
- This development is completely separate from "Kribben Cottages". The applicant should be encouraged to purchase land adjacent to the site. Multiple developments will cause sprawl and ribbon development, with this development being of a significant size in comparison to there being no development in the vicinity.

**Proposed tourist accommodation is assessed under PPS 16 and the policy relevant to this proposal is TSM 5. This will be discussed further below.**

- The development would have a significant adverse effect on the nature conservation interests of this conservation area.  
**NIEA NED have issued a response and do not consider the proposal to affect the SLNCI of the application site. A BDC has been submitted and NED have stated they have no objections based on the info submitted- a Biodiversity Checklist.**
- There is evidence of badgers and other small mammals inhabiting the area of the development. This includes badger sets on the boundaries with badgers using the field as a habitat to roam.  
**A BDC has been submitted and NED have stated they are content based on the information submitted.**
- This proposed development was sold in the past six months and marketed as agricultural lands. If a precedent is set in passing this application, land value will significantly increase as developers will look to exploit the area.  
**This point is not a material consideration in the determination of this application and is outside the remit of planning.**
- It will not sit sympathetically within the environment; it will dominate it.  
**This point will be considered under Policy TSM 7 of PPS 16 and NH 6 of PPS 2 below.**
- The site layout could be easily altered to divide properties to be sold in the future, with this being used a guise for permanent accommodation and short-term profit.  
**Tourist policies require the site layout to deter permanent residential use. Policy TSM 5 also states that a condition will be attached to the permission requiring the units to be used for holiday letting accommodation only and not for permanent residential accommodation. Moreover, the policy also states that permitted development rights in respect of plot boundaries will also be removed.**
- A development of this size will have a large impact on the skyline from my Family's property, visible and audible impacts will inevitably impact on our enjoyment of the area in which we live.  
**Loss of view is not considered a material consideration. Audible impacts are considered material and EH were consulted and have stated that a noise data sheet should be submitted if a full application is submitted.**

1 letter of support was received from the Council's Head of Product Development and Visitor Experience. The letter outlines that "if approved, this will showcase the destination and encourage visitors to stay within the local area."

**Proposal:**

This is an outline application for the erection of 5 self-catering units at Quarter Road, Annalong.

Within the Design and Access Statement submitted, the agent has outlined that the "applicant company already operate 5 self-catering units at Quarter Road." These are known as Kribben Cottages and are located approx. 325m NW of the application site. The DAS goes on to state that "the applicant company do not own any land adjacent to 'Kribben Cottages' and therefore cannot extend this development. The closest land the company owns is the application site."

Although this is an outline application, indicative drawings have been submitted – floor plan, elevations and site layout. The concept drawing shows a cottage style unit (3 bedroom) with a ridge height of 5m from FFL enclosed by a dry stone wall and trees planted around the perimeter of the site. The cottages are to be finished in roughcast render whitewashed with lime wash, hardwood windows and doors, natural roof slates and granite stone exterior where shown. A new access is to be created along the roadside boundary. Parking and amenity space within the application site serving the 5 units is to be communal.

The proposed drawing is shown below.



### **Assessment**

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 Mourne AONB and a Site of Local Nature Conservation Importance (Mullartown Moraine).

### **Strategic Planning Policy Statement**

The Strategic Planning Policy Statement for Northern Ireland (SPPS) is a material consideration. This policy document sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy. During this transitional period planning authorities will apply the SPPS and retained policy documents.

### **Planning Policy Statement 21**

Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) is a relevant retained policy document. Policy CTY1 of PPS21 lists the types of development which in principle are considered to be acceptable in the countryside and will contribute to the aims of sustainable development. It indicates that planning permission will be granted tourism development in accordance with the TOU Policies of PSRNI.

These have been superseded by the policies of Planning Policy Statement 16: Tourism (PPS 16). The pertinent policy within PPS 16 is Policy TSM 5, which relates to self-catering accommodation in the countryside.

Policy TSM5 relates to self-catering accommodation in the countryside and states that planning permission will be granted for self-catering units of tourist accommodation in three circumstances:

- a) one or more new units all located within the grounds of an existing or approved hotel, self catering complex, guest house or holiday park;
- b) a cluster of 3 or more new units are to be provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right;
- c) the restoration of an existing clachan or close, through conversion and / or replacement of existing buildings, subject to the retention of the original scale and proportions of the buildings and sympathetic treatment of boundaries. Where practicable original materials and finishes should be included.

Criterion c) is not applicable to this application as the proposal does not involve the restoration of an existing clachan or close.

In reference to criterion a); as mentioned above, within the Design and Access Statement submitted alongside this application, the agent has outlined that "the subject proposal, while not adjoining the existing self-catering units, is nevertheless an expansion of the applicant's existing operation". The Department acknowledge that the applicant owns 'Kribben Cottages' which is an existing self-catering complex comprising 5 units. This complex is located approx. 325m away from the application site on the other side of Quarter Road. It is evident from the annotated site location map submitted that the proposal is not located within the existing grounds of 'Kribben Cottages'. The agent has advised that the applicant does not own any land closer to 'Kribben Cottages'. However, to accept that these new units would be located within the grounds of an existing self-catering complex, regardless of the significant separation distance; merely because the applicant does not own any land closer to Kribben Cottages would set a harmful precedent.

I consider that the proposal does not fall within criterion (a) of Policy TSM 5.

In reference to criterion b), PPS 16 defines tourist amenity as "an amenity, facility or service provided primarily for tourists (defined as overnight visitors and day visitors) but does not include tourist accommodation". PPS 16 acknowledges that tourist amenities "are diverse in terms of their nature, scale and function".

Within the Design and Access Statement, the agent has advised the following:

- The site is within the Mourne Mountains 'Tourist Signature Destination';
- It is near, and on the main approach to, the Carrick Little Track (the main route into the southern Mournes) and the Silent Valley (50,000 plus visitors each year) – 2 tourist attractions;
- It is on the brown signed 'Mourne Mountains Scenic Loop'; and,
- It is served by the 'Mourne Rambler Bus'.

Para 7.22 of PPS 16 states:

*"This policy provides sustainable opportunities for self-catering tourist accommodation in the countryside particularly in areas where tourist amenities and accommodation have become established or likely to be provided as a result of tourism initiatives such as the Signature Projects."*

Para 7.25 of PPS 16 goes on to state:

*"Where units are proposed in association with a tourist amenity, the policy requires that the tourist amenity must be a significant visitor attraction in its own right. In assessing this, the planning authority will consider the nature and scale of the tourist amenity."*

An email was sent to the agent 6<sup>th</sup> October 2021 advising that the Planning Department consider the proposal to be contrary to Policy TSM 5 in that the proposal did not comply with either a), b) or c) of TSM 5 and therefore the principle of development could not be established at the site.

A rebuttal letter was submitted 8<sup>th</sup> October 2021. The contents of the letter are as follows:

- Given the fact that the Council's own Tourism Strategy highlights that there is an insufficient range of accommodation to service target markets (page 31 in the Council's 'Tourism Strategy') that the Department within the Council which deals with tourism has been consulted on the subject application;
- If the proposed units are at or close to an existing or approved tourist amenity that is/will be a significant visitor attraction in its own right they are acceptable;
- The site is in the Mournes; 1 of only 9 Tourist Signature Destinations/Projects;
- Paragraph 7.22 only makes sense if the intention of the policy was to regard *Signature Projects* as tourist amenities that are significant visitor attractions in their own right, i.e., they fall within sub-section (b) in the policy;
- Paragraph 3.7 of the RDS which, among other things, aims to improve facilities for tourists in support of the 9 '*Tourist Signature Destinations*'. The SPPS adopts the same approach;
- The site is close to other important tourist amenities – Carrick Little Track and Silent Valley;
- The site enjoys tourist services as defined in PPS 16 – served by the Mourne Rambler Bus;
- The site enjoys tourist facilities as defined in PPS 16 - the site is also on the brown signed '*Mourne Mountains Scenic Loop*';
- Finally, while not adjoining the Kribben Cottages, the proposal is never the less an expansion of the applicant's existing operation on the only land he owns near the existing units.

Most of the points contained within the rebuttal letter were outlined in the Design and Access Statement submitted initially. In response, the Planning Department do not

consider it necessary to consult with the Council's Tourism Department. The Planning Department acknowledge that the application site is located within a "tourist hotspot" with a variety of tourism assets located in the wider area. The Department acknowledge the Mournes Signature Project and the fact that P.31 of the Council's Tourism Strategy states that there is an insufficient range of accommodation to service target markets. The Department acknowledge that additional tourist accommodation may contribute to the wider tourism objectives of the area; however, each application must be and is determined on its own merits compliance with operational planning policy is essential.

The site is not located at or close to an existing "tourist amenity" as required by policy. Rather than comprising a tourism development in an appropriate location, **it would constitute a random self-catering development in the countryside that could threaten the value of tourism assets and could set a harmful precedent.** Para 7.24 of PPS 16 states that "the policy will also provide sustainable environmental benefit through focusing self-catering development in existing nodes of tourism activity, thereby avoiding random development throughout the countryside and safeguarding the value of tourism assets." The Department consider the proposal to be random development in the countryside; which may in turn harm the sensitive nature of the landscape, rather than development in existing nodes of tourism activity.

For the reasons outlined above, the proposal does not comply with operational planning policy – PPS 6 Policy TSM 5 and therefore the principal of development cannot be established at this site.

Notwithstanding that the principal of development is not acceptable, I will also consider the proposal against Policy TSM 7. A concept plan has been submitted showing 5 units within the site and a new access created along the roadside boundary. As this is an outline application, I am satisfied that if the principle of development was considered acceptable, a high-quality scheme could be achieved in accordance with published guidance by way of relevant conditions such as landscaping, use restrictions, ridge heights, permitted development rights in respect of plot boundaries removed etc. The indicative site layout shows communal parking and amenity areas which would deter permanent residential use. DfI Roads were consulted on the proposed access and have no objections. A number of objections were received which have been outlined above. Possible noise nuisance was listed as one of the concerns within the objections. If this application was to be approved, Environmental Health have requested a noise data sheet identifying the noise levels associated with the waste water treatment plant. As this is an outline application, this request could be dealt with by way of condition. There are no nearby neighbouring dwellings that could be impacted in terms of loss of light, overlooking or overshadowing caused by the 5 units. NIEA NED issued a response advising that the proposal would not adversely affect features of the natural heritage.

Criterion (g) of Policy TSM 7 requires development to be compatible with surrounding land uses and neither the use or built form will detract from the landscape quality and character of the surrounding area. The surrounding area is rural in nature with views

of the Irish Sea east of the site and the lands rising to the Mourne Mountains west of the site.

As outlined above under TSM 5, the Department consider the proposal to constitute a random self-catering development in the countryside that could threaten the value of tourism assets and could set a harmful precedent. Therefore, the Department consider that the development of the site with 5 self-catering units would detract from the landscape quality and character of the surrounding area.

In summary, the proposal is considered to fail to comply with Policy TSM 5 and criterion g) of TSM 7 for the reasons outlined above.

### **Planning Policy Statement 3**

The application proposes to create a new access off Quarter Road and DFI Roads have raised no objections subject to conditions. The indicative site layout shows 10 communal parking spaces which would equate to 2 spaces per unit. This is considered acceptable.

### **Policy CVN 1**

The application site is within a Site of Local Nature Conservation Importance (Mullartown Moraine) and therefore Policy CVN 1 is applicable. The policy states:

*"Planning permission will not be granted to development that would be liable to have an adverse effect on the nature conservation interests of a designated Site of Local Nature Conservation Importance."*

Alongside this application, a Glacial Geology Report by Professor A M McCabe was submitted. NIEA were consulted and advised 9<sup>th</sup> November 2021 that "the scale of the proposed development is small in relation to the size of the SLNCI, and is in an improved grass field with no exposures or obvious geomorphological features. I therefore do not believe that the proposed development, should it receive approval, will have a significant negative impact on Earth Science conservation".

The proposal is considered to be in compliance with Policy CVN 1.

### **Planning Policy Statement 2**

The application site is located within an Area of Outstanding Natural Beauty and as such Policy NH6 is applicable.

*"Planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and all the following criteria are met:*

- a) the siting and scale of the proposal is sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality; and*
- b) it respects or conserves features (including buildings and other man-made features) of importance to the character, appearance or heritage of the landscape; and*
- c) the proposal respects:*
  - local architectural styles and patterns;*

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

The proposed separation distance between the existing 'Kribben Cottages' complex is considered unsympathetic to the special character of the AONB in general and of the particular locality. Moreover, the Department consider the proposal to involve random self-catering development in the countryside which would be unsympathetic to the special character of the Area of Outstanding Natural Beauty. Therefore, the proposal is considered to fail to meet the requirements of NH 6 of PPS 2.

**Recommendation:** Refusal

**Reasons for refusal:**

1. The proposal is contrary to Policy TSM 5 of the Department's Planning Policy Statement 16 as the proposed development fails to comply with criterion (a) in that it will not be located within the grounds of an existing self catering complex and fails to comply with criterion (b) in that it will not be provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right. The proposed development fails to comply with criterion (c) in that the it does not involve the restoration of an existing clachan or close, through conversion and / or replacement of existing buildings.
2. The proposal is contrary to criterion (g) of Policy TSM 7 of the Department's Planning Policy Statement 16 in that the development, if permitted, would detract from the landscape quality and character of the surrounding area.
3. The proposal is contrary to Policy NH 6 of the Department's Planning Policy Statement 2 as the site lies within an Area of Outstanding Natural Beauty and would, if permitted, adversely affect the nature conservation interests of the area in that it is considered unsympathetic to the special character of the AONB in general and of the locality.

**Case Officer Signature:** Eadaoin  
Farrell

**Date:** 09.02.2022

**Authorised Officer Signature:**

**M Keane**

**Date:** 09-02-22



**Application LA07/2021/1219/O. Site for 5 Self Catering Tourist Units at Quarter Road, Annalong for John Haugh**

This application seeks OPP for 5 self catering tourist units which would be run in conjunction with "Kribben Cottages", which consists of 5 rural style, self catering holiday homes further north along Quarter Road.

Policy TSM5 relates to self-catering accommodation in the countryside and states that planning permission will be granted for self-catering units of tourist accommodation in three circumstances. The second circumstance is given as "*a cluster of 3 or more new units are to be provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right*".

Travelling from Belfast, the site is just over 1 mile from, and on the main approach to the Carrick Little laneway. The lane is the most popular route used by walkers to climb Slieve Binnian and the neighbouring mountains in the southern Mourne. It features 2 car parks and a café.

The Silent Valley is to the west of the Carrick Little lane, further along Head Road. It attracts over 50,000 visitors each year.

Rourke's Park is a laneway which opens off Quarter Road into the mountains, at the junction with Head Road. It's also a very popular route for walkers who climb Slieve Long Seafin, Slieve Round Seafin, Slieve Rocky and Slieve Donard. The access lane at Rourke's Park is located just over 700m from the application site. This being the case, tourists staying in the proposed cottages could walk into the Mourne and climb Slieve Donard from their holiday cottage without needing to drive their car to a car park or park along the public road.

These are 3 tourist amenities/attractions within walking distance of the application site. These are amenities in terms of Policy TSM 5. In relation to whether or not the application site is "*at or close to an existing or approved tourist amenity*" the officer's report advises with 1 single sentence "*The site is not located at or close to an existing tourist amenity as required by policy*".

Unfortunately, the report does not elaborate on why a site which is located within walking distance, is not considered as being close to the amenities. This stance has become even more frustrating given that TSM 5 doesn't define the word "*close*". It's open for interpretation.

**Is the Planning Department's approach the same with all tourism related applications?**

Policy TSM 6 doesn't require a site to be close to a tourist amenity. The planning dept use TSM 6 to assess applications for New and Extended Holiday Parks in the Countryside. Under TSM 6 a "holiday Park" must include more than 1 static caravan. Along with static caravans an application can propose chalets, cabins and pitches for touring caravans.

I have researched several recent files which have proposed only timber glamping pods on sites where no static caravans were proposed.

With the exception of those which were supported by farm diversification, glamping pod applications are being assessed under TSM 6. If glamping pod applications don't propose static caravans, they should be assessed under TSM 5 which requires the application site to be close to an existing tourist amenity.

This approach by the Planning Dept confirms that they are very willing to use their own discretion and interpretation of TSM 6 to approve Glamping Pod applications, yet they are using an extremely rigid interpretation of the word "CLOSE" in TSM 5 to refuse this application.

The Planning Department consulted the NI Tourist Board in relation to this application.

They were advised that Tourism NI did not comment on minor, local applications such as this. Tourism NI advised the planning department to consult with local tourism officials within the Council whom Tourism NI considered best placed to provide input in terms of geographical & local knowledge.

Despite being urged to do so by ourselves, the Planning Department has refused to consult the Council's Tourism Dept. We are at a loss to understand why this has happened given that the Council's own tourism strategy advises "There is an insufficient range of accommodation to service target markets"

The planning dept regularly consult the environmental health dept relating to planning applications and they liaise with the Building Control dept when seeking information on dates relating to commencement of development. So, why are they unwilling to consult the Council's own tourism officials???

The planning dept is approving lots of Glamping Pod sites. These will not appeal to every tourist who visits the Mournes, especially older tourists.

The Council's own Tourism Strategy identifies the need for additional tourism accommodation.

Kribben Cottages can't cope with the current demand for accommodation. They could easily attract more tourists to the area if they had additional accommodation to offer.

The build cost of the scheme would inject approx £750,000 into the local economy and sustain a significant number of jobs in the construction industry.

Increased tourism in the area would boost the local economy.

Once completed, the new units would provide employment for additional staff who would be required to help manage the 2 sites.

This application seeks to go some way towards meeting the need for tourist accommodation by providing 5 very high quality, self catering, rural style units which, will appeal to tourists of every age group.

For the reasons above, I would respectfully ask that the recommendation to refuse this application is overturned and that OPP is granted without delay.

Brendan Quinn.

BSc Hon's

ICIOB



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2021/1252/O

**Date Received:** 1<sup>st</sup> July 2021

**Proposal:** Site for dwelling and detached garage

**Location:** 40m south west of No. 67 Tullyframe Road, Attical, Kilkeel

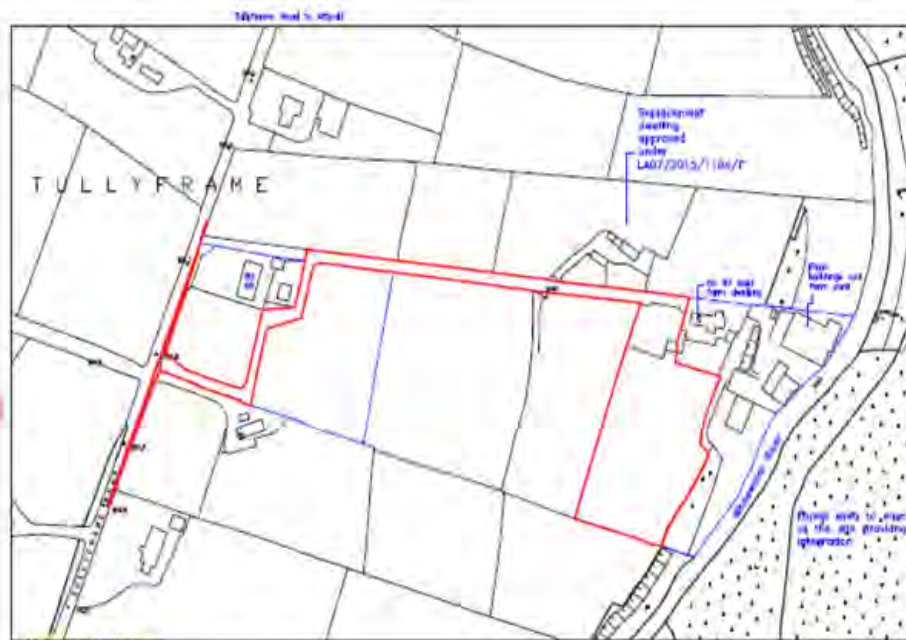
**Site Characteristics & Area Characteristics:**

The application site is located outwith any defined settlement development limits as designated in the Banbridge, Newry and Mourne Area Plan 2015 (Map 3/01 Newry and Mourne District). The application site is located approximately 1.32 miles south west of the settlement development limit of Attical.

The site is located within an agricultural field close to number 67 Tullyframe Road. Image 1 below shows the red line boundary to be assessed. The proposed application extends to the Tullyframe Road exiting adjacent to the access for number 63 Tullyframe Road. The revised red line boundary extends down the laneway upon which the main farm dwelling at number 67 Tullyframe Road is accessed; the applicant then proposes to create a new laneway to the rear of number 65 Tullyframe Road (currently agricultural fields) and exits onto the Tullyframe road at the boundary of the agricultural field north of the access to number 63 Tullyframe Road. The dwelling is to be located South West of the main dwelling house and is approximately 262m east of the Tullyframe Road and

includes agricultural fields and part of the existing laneway used to access the Tullyframe Road.

**Image 1 Revised Site Location Plan**



The site is located within an Area of Outstanding Beauty namely Mourne and is approximately 60m west of the White Water river ASSI.

**Planning Policies & Material Considerations:**

This planning application has been assessed against the following policy:

- Banbridge, Newry and Mourne Area Plan 2015
- Strategic Planning Policy Statement (SPPS) for Northern Ireland
- PPS 2 Natural Heritage
- PPS3 Access Movement and Parking
- DCAN 15 Vehicular Access Standards
- PPS21 Sustainable Development in the Countryside
- Building on Tradition Sustainable Design Guide

**Site History:**

Whilst there is no planning history on the application site; there is planning history within proximity to the revised red line (dated received on the 22<sup>nd</sup> September 2021) as well as the laneway upon which the application site resides.

It has been noted that the revised laneway extends to the curtilage of the approved application: P/2013/0347/O and associated reserved matters LA07/2016/0536/RM.

Reference	Location	Proposal	Status
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LA07/2021/1753/RM	Site adjacent to and north of 65 Tullyframe Road, Attical, Kilkeel, BT34 4RZ,	Infill site for dwelling and garage	Neighbours notified
LA07/2020/0405/O	Site adjacent to and North of 65 Tullyframe Road, Attical, Kilkeel,	Infill site for dwelling and garage	Approved
LA07/2019/0303/RM	20m North East of No. 61 Tullyframe Road, Kilkeel, BT34 4RZ,	Dwelling and detached garage with new access	Approved
LA07/2018/1010/DC	25 metres SouthWwest of No. 65 Tullyframe Road, Kilkeel,	Discharge condition No. 7 of planning approval LA07/2016/0536	Condition discharged
LA07/2017/1837/F	From existing line approximately 90m W of 67 Tullyframe Road, Kilkeel to existing line approximately 20m SE of 109 Tullyframe Road, Kilkeel,	Erection of a new 11kV overhead line on wood pole structures to provide an electrical system upgrade between existing NIE Networks equipment	Approved
LA07/2016/0536/RM	25 metres south west of No. 65 Tullyframe Road, Kilkeel,	Dwelling and detached garage	Approved
P/2015/0191/O	20 metres north east of 61 Tullyframe Road, Atticall, Kilkeel,	Site for dwelling and detached garage with new access onto public road	Approved
LA07/2015/1184/F	55 metres North West of 67 Tullyframe Road,	Proposed storey and a half replacement dwelling 55 metres North West of 67 Tullyframe Road. for, Mr John Magee	Approved
P/2013/0347/O	25 metres south west of No.65 Tullyframe Road, Kilkeel,	Site for infill dwelling and detached garage	Approved
P/2007/1678/F	63 Tullyframe Road, Tullyframe, Kilkeel. BT34 4RZ.	Erection of replacement dwelling.	Approved
P/2004/0672/F	65 Tullyframe Road, Kilkeel, Co.Down.	Attic conversion with provision of 3 dormer windows.	Approved
P/2004/0546/RM	80m South of No 63 Tullyframe Rd Kilkeel	Erection farm retirement dwelling and garage	Approved

P/2002/1438/O	80m South of No 63 Tullyframe Rd Kilkeel	Site for farm retirement dwelling & garage	Approved
P/1998/1637	Adjacent to 65 Tullyframe Road Kilkeel	Erection of Farm retirement dwelling	Withdrawn
P/1998/1378	Site adjacent to no 65 Tullyframe Road Kilkeel	Farm retirement dwelling	Withdrawn
P/1988/1204	Tullyframe Road, Kilkeel	Site for farm retirement dwelling	Approved
P/1991/0917	Tullyframe Road Kilkeel	Erection of farm retirement dwelling and garage	Approved

### Consultations:

Consultations were issued to the following consultees on the 11<sup>th</sup> of August 2021.

- NI Water – No objections subject to Planning Conditions
- NIEA – Water Management Unit responded with standing advice- single dwellings which contains and informatives relevant to this proposal.
- DFI Roads – No objections in principle to this proposal subject to conditions
- DAERA Downpatrick – Responded "Prior to 2021 proposed site was located on land associated with another farm business"

A further consultation was issued to DAERA Downpatrick on the 29<sup>th</sup> September 2021. DAERA responded on the 7<sup>th</sup> October again with the same response "Prior to 2021 proposed site was located on land associated with another farm business"

### Note:

With regards to DAERA consultation response; DAERA state that the Farm Business ID has been in existence for more than 6 years; the farm ID was allocated in January 2011 and is a category 1 farm business. Payments have been claimed through the Basic Payment Scheme in each of the 6 years.

Further, submitted alongside the Planning Application was a letter from DAERA dated 3<sup>rd</sup> of June. The letter contains an image of the application site and confirms that the application site (field number 3/081/032/3) has claimed payment on the field upon which DAERA can confirm that they are actively farming the field for the calendar year of 2021.

Therefore, it can be considered for the purposes of this application that the application site is contained within an active and established farm.

**Objections & Representations:**

10 neighbours were notified with regards to the application on the 13<sup>th</sup> of August 2021 and subsequently on the 23<sup>rd</sup> of September 2021 due to a red line change. The application was advertised in the local press on the 4<sup>th</sup> August 2021.

One representation was received on the 12<sup>th</sup> of August in relation to the proposed application which set out the following:

- P1 form section 27 states that John Magee has been notified; the letter claims that there was no P2a received. Further, Mrs Maureen Magee is the joint owner of the lane upon which is to be used as an access to the proposed site.
- No knowledge of a P2a being issued
- The applicant is not in control of all lands required to form the new laneway junction. The field to the North of the junction is owned by Mr and Mrs Martin Magee; visibility splays are therefore not available without their consent. The proposal to widen the first 5m of the laneway requires third party land from Mr and Mrs Magee. Consent has not been agreed.

This representation has been uploaded to the portal and the agent made aware of this. Following this representation, the applicant proceeded to change the access to the proposed dwelling and submitted a revised P1 form. Whilst the Planning Department aren't responsible for ensuring a P2a has been issued to the relevant landowners they are responsible for neighbour notifying.

**Assessment:****Banbridge, Newry and Mourne Area Plan 2015**

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is the Banbridge, Newry and Mourne Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside the settlement limit of any designated settlement as illustrated on Map 3/01 of the plan. The site is located within the Mourne Area of Outstanding Natural Beauty.

**Strategic Planning Policy Statement (SPPS) for Northern Ireland 2015**

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

**PPS21 Sustainable Development in the Open Countryside**

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

### **CTY 10 – Dwellings on Farms**

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

*(a) the farm business is currently active and has been established for at least 6 years;*

This has been confirmed via a consultation response dated 2<sup>nd</sup> of September 2021 from DAERA.

*(b) no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. This provision will only apply from 25 November 2008; and*

The criteria has been complied with.

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

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

The application site is located within close proximity to the main farm dwelling and does cluster within an established group of farm buildings.

When originally submitted the red line of the application site extended along the existing laneway and access, however this was then amended to that shown in Image 1 above.

The red line now extends along a portion of the laneway however then cuts across agricultural fields, with a new access exiting onto the Tullyframe Rd adjacent to the access serving no.63.

The policy states: *where practicable, access to the dwelling should be obtained from an existing lane.*

The agent states in an email of the 20<sup>th</sup> September 2021, the following:-

*That those whos lands are required upon which to provide splays are no longer providing the offer; the applicant has decided to seek approval to upgrade an existing agri access to provide access to the new dwelling.*

The email further states *that the existing lane which serves the farm yard and main farm dwelling does not benefit from modern visibility standards, in fact the current visibility splay to the north of the access achieves 2.4 x 13.36m. This, along with the applicant's inability to widen the existing lane to 5m for the first 10m outside the public road has*



*informed the applicant's decision seek approval in principle for an alternative access which achieves the required standards.*

*The visibility splays proposed are the same as those which have already been accepted by DFI Roads and should therefore be acceptable once again to DFI Roads.*

*In relation to access, criterion C in CTY 10 advises "and where practicable, access to the dwelling should be obtained from an existing lane". The inclusion of the word "practicable" confirms there is no absolute requirement to access a new dwelling via an existing access lane. For very obvious road safety reasons it is not "practicable" to obtain access via the existing lane. As such the applicant seeks permission to improve an existing access onto Tullyframe Road.*

*Proposing to serve the existing dwelling via a new access is in keeping with the text in CTY 10, decisions taken by the Council's Planning Committee in similar circumstances and in keeping with the Councils fairly recent decision on application LA07/2020/0222/O close to Bessbrook.*

The Planning Department has considered the email and revised drawings received from the applicant. Every application is assessed on its own merits and whilst the Planning Department are sympathetic to the applicant with regards to splays and access to the dwelling house. The Planning Department are of the view that an amicable solution must be made between those with control over the lane and adjoining lands in order to bring the access up to modern standards.

The existing laneway leading to the application site is currently used to serve number 67 Tullyframe Road; the proposed application site is accessed via this lane however, following a revision the proposed application does not propose to use the full length of this existing lane to the Tullyframe Road; in doing so a justification has been provided however, the justification is not considered to be an extenuating circumstance upon which a divergence of access, which will cut across fields, and along the rear and side of a recently approved dwelling should be granted which may impact the amenity of neighbouring dwellings upon which the proposed 'new' laneway would be created and located.

Whilst it is noted that within the email received to planning the agent refers to another application and decision made by the Council. The application referred to is of differing circumstances and in that instance, it was not *practicable* to connect to the existing access; this application has differing circumstances upon which the Department do not feel there is extenuating circumstances upon which to approve a differing access away from the current access to the farm and main farm dwelling.

CTY10 states that the proposed application must also meet the requirements of CTY13 (a-f) CTY14 and CTY16.

### **Policy CTY13- Integration and Design of Buildings in the Countryside**

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

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

The site for the dwelling is set back from the road, located along a lane accessed from the Tullyframe Road. The application site is a large open field with some vegetation/walls to enclose it; whilst it is considered that the applicant would rely on the use of landscaping for further enclosure the proposed dwelling would be sufficiently removed from the Tullyframe Road in order to not be a prominent feature within the landscape. It would be expected with any further application a landscaping plan would be submitted.

It is considered that the application does not comply with criterion D in that the ancillary works which include the creation of a new stretch of laneway cutting across fields and new access, would be visually prominent and not integrate with their surroundings, and there is no reasonable justification for doing so.

This new stretch of laneway will run along the rear and side of a recently approved dwelling, and will effectively result in no.65 being enclosed by a road/laneway on 3 sides.

Policy recommends new access driveways should run unobtrusively. It is considered cutting across fields in the manner proposed is not acceptable.

#### **Policy CTY14 – Rural Character**

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

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

As above, the application site is located a sufficient distance from the Tullyframe Road, on this occasion whilst it is considered that the development would rely on new landscaping to enclose the dwelling house it wouldn't be considered a prominent feature in the landscape. In any instance a landscaping plan would be expected to be submitted with any further application on the site.

The proposal is contrary to criterion E in that the ancillary works comprising the new stretch of laneway, which cuts across fields and new access onto the Tullyframe Rd, will damage the rural character of the area.

It is noted the existing holding is accessed via the existing laneway and access, whereby a further access point, will result in the proliferation of accesses along this stretch of road which will damage rural character.

### **Policy CTY16 – Development Relying on Non-Mains Sewerage**

*Planning permission will only be granted for development relying on nonmains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem. Applicants will be required to submit sufficient information on the means of sewerage to allow a proper assessment of such proposals to be made. In those areas identified as having a pollution risk development relying on non-mains sewerage will only be permitted in exceptional circumstances.*

As this is an outline application details of non-mains sewerage have not been provided and would be assessed within a further application on the site.

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

Policy NH6 states planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of appropriate design, size and scale for the locality and where additional criteria are met. This cannot be thoroughly assessed at Outline stage.

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

#### **DCAN 15- Vehicular Access Standards**

Policy AMP2 of PPS3 states that planning permission will only be granted for a development proposal involving direct access onto a public road where such access will not prejudice road safety. Paragraph 5.16 of Policy AMP2 makes reference to DCAN 15 which sets out the current standards for sightlines that will be applied to a new access onto a public road. DFI Roads have no objection to the proposal and the proposed access will not prejudice road safety. It is considered the proposal meets PPS 3 and DCAN 15.

**Recommendation:** Refusal**Reasons:**

1. The proposal is contrary to Policy CTY10 of Planning Policy Statement 21; Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that access to the dwelling is not obtained from an existing lane.
2. The proposal is contrary to Policy CTY13 of Planning Policy Statement 21; Sustainable Development in the Countryside, in that the ancillary works do not integrate with their surroundings.
3. The proposal is contrary to Policy CTY10 of Planning Policy Statement 21; Sustainable Development in the Countryside, in that the ancillary works will damage the rural character.

**Case Officer Signature: Roisin McGrane**

**Date: 03/11/2021**

**Appointed Officer Signature: M Keane**

**Date: 03-11-21**



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

**Newry, Mourne  
and Down**  
District Council

## Addendum Report

**Application Reference:** LA07/2021/1252/O

### Background

This is a Full application for a farm dwelling off the Tullyframe Rd, Attical, which includes a new access on to this road.

The application site comprises a field which is set back some distance from the Tullyframe Road and is accessed via an existing laneway, which currently serves the farm holding.

The farm dwelling proposed will use a portion of this laneway, however will then cut across a field to create a new separate entrance on to the public road. The existing access/entrance onto the Tullyframe Rd is to remain unaltered.

The application was presented to Planning Committee in January 2022, with a recommendation of Refusal on the following grounds:-

1. The proposal is contrary to Policy CTY 1 and CTY10 of Planning Policy Statement 21; Sustainable Development in the Countryside and does not merit being considered as an exceptional case in that access to the dwelling is not obtained from an existing lane.
2. The proposal is contrary to Policy CTY 1 and CTY13 of Planning Policy Statement 21; Sustainable Development in the Countryside and Policy NH6 of PPS 2 in that the ancillary works do not integrate with their surroundings.
3. The proposal is contrary to Policy CTY 1 and CTY10 of Planning Policy Statement 21; Sustainable Development in the Countryside, in that the ancillary works will damage the rural character.
4. The proposal is contrary to Policy CTY 1 of Planning Policy Statement 21; Sustainable Development in the Countryside in that the proposed access arrangements would be detrimental to the residential amenity of existing and proposed dwellings by way of noise and general disturbance.

The Officers recommendation of Refusal was overturned at Planning Committee.

Attached below are the minutes from Januarys Planning Committee meeting:

*On the proposal of Councillor Larkin, seconded by Councillor Hanna it was agreed to issue an approval in respect of Planning Application LA07/2021/1252/O contrary to officer recommendation on the basis that it was an exceptional case, the access to the existing lane could not be used, the ancillary works could be integrated and would not damage the rural character of the area and the amenity of the two dwellings would not be adversely affected. A Mourne dry stone wall be built to the upper side of the site to the east side of the lane.*

*Planning officers be granted authority to impose any relevant conditions.*

(Note: The audio recording of the meeting also confirms conditions to be delegated as proposed by Cllr Larkin).

Following this meeting the Planning Dept noted that the comments from DFI Roads were based on the original scheme showing the existing entrance being used and not the revised proposals with a new entrance.

As such a re-consultation was then issued to DFI Roads. On receipt of this response in Feb 2022, the Planning Dept discussed potential conditions following the overturn at Planning Committee to ensure any such conditions were enforceable.

This prompted further discussions with DFI Roads who then withdrew their previous comments of Feb, and requested further consultation be issued.

DFI Roads latest responses (15th March and 17<sup>th</sup> May) now advise the earlier responses were erroneous and have been withdrawn, and that the proposals are unacceptable.

In order to accept the proposed new access, DFI Roads require the existing substandard laneway to be permanently and properly stopped up, and the red line extended to include all works necessary to do so.

The Planning Dept are of the opinion it is not possible to attach conditions that are enforceable, which compels the applicant to use the new access proposed, rather than the existing substandard access, without the existing access being closed up.

The Planning Dept is aware there is also an extant permission for a replacement dwelling along this same laneway for a different land owner, which uses the existing laneway and access. This replacement dwelling did not propose or require any improvements to the access due to its nature.

The above position was re-laid to the agent on 3<sup>rd</sup> May, whereby the agent requested the application be returned to the Planning Committee without delay. No further information was received and no changes are being proposed.

As outlined above, the Planning Dept are of the opinion it cannot construct conditions which deal with the issues, and ensures the applicant solely uses the new access and not that existing, which is substandard, whereby the intensification of same is not permitted.

As the advice of the consultee has changed since being presented to Planning Committee, and on the basis of the above, it has been determined that the application must be returned to the Planning Committee.

On the basis of the information available the application is again recommended for Refusal.

**Recommendation: Refusal**

**Refusal reason:**

- The proposal is contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 2, in that it would, if permitted, prejudice the safety and convenience of road users since it proposes to intensify the use of an existing access at which visibility splays of 2.4m metres x 80 metres cannot be provided in accordance with the standards contained in the Department's Development Control Advice Note 15.

**Signed:** M Keane (17-05-22)

**Authorised Officer:** A McKay 17.05.2022

**Application LA07/2021/1252/O. Site for a dwelling and detached garage at Tullyframe Road, Kilkeel for Sean Sloan.**

This application proposes a dwelling on the applicant's farm. The application was discussed by the planning committee in January past. The planning committee overturned the planning dept's recommendation for refusal and delegated the imposition of planning conditions on the decision notice to the planning dept. A decision has never issued.

After the planning committee hearing, the planning dept noticed that the DFI Roads comments related to the previous access proposal which sought to improve the access where the existing lane meets Tullyframe Road and not to the access proposal that was discussed & accepted by the committee. Notably, the planning officer who presented the planning dept's case to the committee discussed road safety at the old and new access with Cllr Hanna at length during the committee hearing. The officer did this without having a comment from DFI Roads re the revised access. The applicant is very frustrated at this practice and feels that the planning dept has perhaps mis-lead the committee in relation to access.

The application will be re-considered by the committee because the planning dept feels the need to impose a planning condition which would prevent the applicant from using the old access which is sub-standard. The applicant can't agree to this for legal reasons.

From reading the officer's reports on file, one would think this has been a very simple process thus far. However, closer scrutiny of the file, associated emails and notes of conversations reveals a situation where the planning dept appears to have a better understanding about road safety that the officers in DFI roads.

DFI roads were consulted re the revised access on 14th January, a few days after the committee hearing. The DFI roads response dated 15<sup>th</sup> February past contained no objections and included an RSI form showing the access standards which were required. A senior planning officer then rang DFI roads to explain the Council's dis content at the DFI roads response and suggested that DFI roads should ask that the old access be closed over to prevent its continued use.

DFI roads were consulted on 27<sup>th</sup> February. A further DFI roads response was received with no objections on 9<sup>th</sup> March. In summary, DFI roads had twice been asked for their comments re the revised access and twice they had confirmed they were content with the access. One would have thought that the Planning Dept would be content to simply approve the application as was the express wish of the Planning Committee.

Instead the senior planning officer emailed DFI Roads to voice his concern that the consultation replies did not align with the Planning Dept's requirements. DFI roads asked to be re-consulted and they were for the 3<sup>rd</sup> time on 10<sup>th</sup> March. Their reply was issued by a different officer and it advised

*"Following an internal review by senior management Dfi Roads have found that the Responses dated: 15/02/2022 & 09/03/2022 were erroneous & we wish to withdraw those responses".*

The reply then continued to request that the red line be extended to include the old access and that a planning condition be imposed requiring that the old access be closed over.



The planning dept discussed the matter with the Council's legal dept and then asked me by email to revise the drawings as required by DFI Roads so a condition could be imposed which sought the closure of the end of the existing lane. The applicant can't do this as there are several other land owners who use the existing access. From reading the file notes, the planning dept are well aware that the applicant can not close over the old access, so the application has again been recommended for refusal.

The refusal reason suggests that the applicant "*proposes to intensify the use of an existing access at which visibility splays of 2.4m metres x 80 metres cannot be provided*"

Refusal reasons must be precise. The given reason is anything but precise as it relates to a scenario that is not proposed nor reflected in the drawings on the file.

#### **Is planning condition that asks for the old access to be closed over necessary?**

Development Management Practice Note 20, The Use Of Planning Conditions, guides planning officers and relevant users on the use of planning conditions in decision notices and deals primarily with procedures as well as good practice. Paragraph 3.1 advises that conditions should only be imposed where they satisfy **ALL OF 6 TESTS**. Paragraph 3.1 advises that "Conditions should be"

**1. Necessary, 2. Relevant to planning, 3. Relevant to the development to be permitted, 4. Enforceable, 5. Precise and 6. Reasonable in all other aspects.**

The current access, which the planning dept require to be closed over, provides 2.4 x 13.3m towards Atticall. From personal experience and speaking to the Sloan family, the existing access is dangerous. The applicant advises that it will cost him approx £10-15,000 to construct the new section of lane and provide the safe access as per the access drawing on file. After doing so, the applicant will have a very safe access which provides at least 2.4 x 80m visibility splays in both directions along Tullyframe Road. If the applicant has spent very considerable funds providing a new and safe access, it is grossly un-reasonable for the planning dept to assume that he will still use the existing and dangerous access.

From the above, I contend that the imposition of a planning condition which requires the old access to be closed over is 1. **Un-necessary** and 2. **Un-Reasonable**. As such the condition fails 2 of the 6 tests in practice note 20. This being the case there is no need for a planning condition which requires the old access to be closed over and the application as was discussed by the planning committee in January past should be approved without delay.

Lastly in my 24 year career as a planning agent and engineer, I have been told countless times that Roads Service who then became DFI roads are the "*experts on Road Safety*" and it is they and only they who can decide when an access onto a public road is safe or not. Twice DFI roads advised that the current access was acceptable, yet the Council refused to accept this stance.

The recent practice adopted the planning dept has shown that DFI Roads are only the experts on road safety when it suits the planning dept and that they can and will be asked to change their opinion on an application if the planning dept deems it necessary for various reasons.

For the reasons above, I would respectfully ask that the recommendation to refuse this application is overturned and that OPP free from un-necessary conditions is granted without delay. Brendan Quinn. BSc Hon's ICIOB



Comhairle Ceantair  
an Iúir, Mhúrn  
agus an Dúin

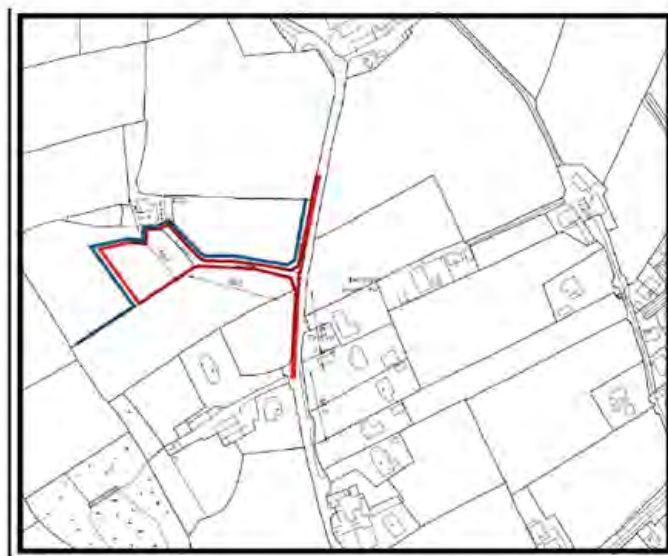
**Newry, Mourne  
and Down**  
District Council

**Application Reference:** LA07/2021/1664/O

**Date received:** 16.09.2021

**Proposal:** Proposed site for infill dwelling and domestic garage

**Location:** Between 8 and 12 Ballykeel Road, Ballymartin, Kilkeel, BT34 4PL



**Area Characteristics & Site Characteristics:**

The application site is located outside any settlement development limits as designated within Banbridge Newry and Mourne Area Plan 2015. The site is located within an Area of Outstanding Natural Beauty (AONB).

The site is accessed via a shared laneway which adjoins the Ballykeel Road. No.12 is located directly North of the site, a storey and half dwelling. The site is within the open countryside and is currently used for agricultural purposes.

**Site History:**

No relevant/recent planning history

**Planning Policies and Material Considerations:**

Strategic Planning Policy Statement (SPPS) for Northern Ireland 2015

Banbridge Newry and Mourne Area Plan 2015

PPS 2 Natural Heritage (July 2013)

- NH 6 - Areas of Outstanding Natural Beauty

PPS 3 Access, Movement and Parking

- AMP 2 - Access to Public Roads

PPS 21- Sustainable Development in the Countryside

- CTY 1 - Development in the Countryside
- CTY 8 - Ribbon Development
- CTY 13 - Integration and Design of Buildings in the Countryside
- CTY 14 - Rural Character
- CTY 16 - Development Relying on Non-Mains Sewerage

Building on Tradition, a Sustainable Design Guide for the Northern Ireland Countryside

**Consultations:**

NI Water- Generic response

DfI Roads- No objections, subject to conditions

**Objections and Representations:**

4 neighbours were notified of the proposal which expired 28.10.2021. The proposal was also advertised in local press which expired 27.10.2021. No objections or representations have been received date (10.02.2022).

**Consideration and Assessment:**

The application submitted is seeking outline planning permission for an infill dwelling and domestic garage in the open countryside.

Section 45 of the Planning Act (NI) 2011 requires the Council to have regard to the Local Development Plan (LDP), so far as material to the application and to any other material considerations. The relevant LDP is Ards and Down Area Plan 2015 as the Council has not yet adopted a LDP. The site is located outside settlement limits on the above plan in open countryside. 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 PPS21.

Policy CTY 1 of PPS 21 identifies a range of types of development which in principle are considered acceptable in the countryside. One of these is the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY 8.

Supplementary guidance on the assessment of infill sites is contained in Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside.  
PPS 21 - Sustainable Development in the Countryside

#### CTY 8

Planning permission will be refused for a building which creates or adds to a ribbon of development. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. 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 application site is located along a private laneway which serves an existing dwelling and outbuildings, No.12 Ballykeel Road, to the north-west side of the site. The site adjoins an open field to the south-east. This is the extent of development along this laneway. A further dwelling, No.8 Ballykeel Rd, is located further south. This property is accessed onto the Ballykeel Road and does not have a frontage to the laneway. It is set back from the Ballykeel Road by an intervening field.

Policy CTY 3 is clear when it states that, for the purposes of this policy, the definition of a substantial and built-up frontage includes a line of 3 or more buildings along a road frontage ..... The sub text to Policy CTY 8 states that, for the purposes of this policy, a road frontage can include a private laneway. In this case, as outlined above, there is clearly not a substantially and built-up frontage of 3 or more buildings, (either along a road or lane frontage). The application fails this policy test in CTY 8.

Furthermore, the extended laneway terminates in front of the application site, where No.12 is then served by a private driveway which extends off the shared lane. This therefore cannot be considered as a common frontage considering it is within the curtilage of No.12. The fact that this lane does not continue past the application site means that it does not offer an otherwise substantial and continuously built-up frontage.

Therefore, the application site is not considered to be a gap within an otherwise substantial and continuously built up frontage. As a result, the general principle of infill development has not been met. The proposal is not considered an exception to policy

and is contrary to CTY8, as there are no reasons why the development is essential in this rural location and therefore is contrary to CTY1.

Policy CTY8 also requires that infill dwellings meet other planning and environmental requirements. Paragraph 6.70 of the SPPS confirms that "All development in the countryside must integrate into its setting, respect rural character and be appropriately designed." These considerations must be assessed under policies CTY13 and CTY14 of PPS21.

#### CTY 13

It is considered that a suitably designed dwelling would not appear as an unduly prominent feature in the landscape given the setback distance from the Ballykeel Road and intervening vegetation which means the application site is largely screened from direct views. The site benefits from natural established boundaries to its northern and western boundaries, providing a level of enclosure which will aid integration.

As this is an application for outline permission, the design of the building is not yet considered.

#### CTY 14

As previously discussed, the proposal is not considered to appear prominent within the landscape. However, it is considered the proposal will result in ribbon development, thereby causing a detrimental change to and eroding the rural character of the area.

The proposal therefore fails CTY 14 (d).

#### CTY 16

Foul Sewage is proposed to be disposed of via a septic tank. Further details of this would be submitted at reserved matters stage and the necessary permission from NIEA Water Management Unit and NI Water are required. The proposal is therefore not contrary to CTY16.

#### PPS 2 Natural Heritage

As this site is located within a designated Area of Outstanding Natural Beauty (AONB) policy NH 6- requires that new development within a designated AONB must be of an appropriate design, size and scale for the locality. As this is an outline application the design, size and scale of the proposal will be given full consideration at the Reserved Matters stage.

#### PPS 3 Access, Movement and Parking

The proposal must accord with AMP2 of PPS3. DfI Roads was consulted and responded on 17.01.2022 with no objections in principle to the proposal, subject to conditions. Splays of 2m by 33m are required to be provided at the junction of the laneway with the Ballykeel Rd.

## Summary

The application is considered to fail the policy requirements for an infill dwelling, and as such is recommended for refusal.

## Recommendation:

### Refusal

#### Refusal Reason:

1. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY 1 and 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 it is not an exception to the policy as it does not constitute 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.
3. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 and of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal will result in ribbon development, thereby eroding the rural character of the area.

**Case Officer:** G. McShane

**Authorised by:** M. Keane

**Date:** 10.02.2022

## Planning Committee 'Call in' Request Form

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Delegated Application List w/c: 3 <sup>rd</sup> May 2021	Planning Application Number : LA07/2021/1664/O	Requested by: Cllr Kathryn Owen
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PLEASE NOTE THAT SUBMISSIONS SHOULD BE ON THIS FORM AND LIMITED TO TWO PAGES. ANY ADDITIONAL INFORMATION BEYOND TWO PAGES WILL BE DISREGARDED.

**Description of the application** – Proposed Site for Infill Dwelling

**Proposed decision (including reasons if the decision is refusal)** – Refusal:

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 it is not an exception to the policy as it does not constitute 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

**Set out the valid and credible planning reasons why this application should be referred to Committee (including reference to relevant planning policies)** –

1. The Planning Officer asserts that the proposal fails to satisfy PPS21 policy CTY8 because the site is not deemed to fall within a substantial and continuously built up frontage, which is defined as *"a line of 3 or more buildings along a road frontage without accompanying development to the rear."* No's 6 and 8 are along the Ballykeel Road and then there is 2 fields up an adjoining lane which leads to and in front of No12. The front distances are as follows No6 = 54.3m, No 8 = 58.3m, Field = 70.0m, Proposed Site = 40.7m, No 12 = 27.5m. Average site frontage length = 50.16m. This is not far off the proposed site of 40.7m.
2. The application site is evidently located within a substantial and continuously built-up frontage and the plot size proposed is commensurate with that found locally. This proposal is therefore acceptable in accordance with policy CTY8 and should be granted planning permission.

**Set out why this application should be determined by Committee rather than officers** –

The Planning Officer's interpretation and application of policy & legislation is incorrect, and the refusal reason put forward is neither valid nor sustainable – in this respect, I refer to the details above. The application, as submitted, should therefore be considered by the planning committee to resolve this error, and allow for the approval of this application.

**Neutral Citation No:** [2022] NIQB

**Ref:** SCO

*Judgment: approved by the Court for handing down  
(subject to editorial corrections)\**

**ICOS No:** 21/055065/01

**Delivered:** 24/05/2022

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

**QUEEN'S BENCH DIVISION  
(JUDICIAL REVIEW)**

**IN THE MATTER OF APPLICATION BY GORDON DUFF  
(RE GLASSDRUMMAN ROAD, BALLYNAHINCH) FOR JUDICIAL REVIEW**

**AND IN THE MATTER OF A DECISION OF NEWRY, MOURNE AND DOWN  
DISTRICT COUNCIL**

The applicant, Mr Duff, appeared in person  
Philip McAteer (instructed by Belfast City Council Legal Services Department) appeared  
for the respondent  
William Orbinson QC and Fionnuala Connolly (instructed by O'Hare Solicitors)  
appeared for the notice party, Mr Carlin  
Stewart Beattie QC and Philip McEvoy (instructed by Cleaver Fulton Rankin, Solicitors)  
appeared and intervened (by written submissions only) for Lisburn and Castlereagh City  
Council

**SCOFFIELD J**

**Introduction**

[1] In these proceedings the applicant, Mr Gordon Duff, challenges the decision of Newry, Mourne and Down District Council ("the Council") to grant outline planning permission (reference LA07/2020/1292/O) on 9 April 2021 for two detached 'infill' dwellings and garages at lands located between Nos 2 and 10 Glasdrumman Road, Ballynahinch.

[2] Mr Duff appeared as a litigant in person. Mr McAteer appeared for the respondent. Mr Orbinson QC appeared with Ms Connolly for the notice party, Mr Carlin. (Unusually, the notice party in this case seeking to defend the permission was a planning consultant. However, I understand that his participation was on behalf of his client, the relevant landowner and ultimate beneficiary of the



permission, Mrs Miskelly, who hopes to build houses on the application site for her daughters to live in. No objection was made to Mr Carlin acting in this capacity.) Mr Beattie QC also appeared, with Mr McEvoy, for Lisburn and Castlereagh City Council (LCCC) as an intervener, whose interest in the proceedings arises by virtue of the fact that the applicant has issued a range of judicial review challenges against LCCC relating to the application of the same planning policy which is at the heart of this case. I am grateful to all counsel for their written and oral submissions; and, indeed, to Mr Duff for the way in which he politely and cogently put his case both orally and in writing.

### **The applicant's other judicial review challenges**

[3] In his Order 53 statement, the applicant has described himself as someone who “has consistently challenged the cumulative destruction [of the environment] and classes himself as an environmental protector”. Other recent judgments of the court have described a range of applications which have been brought by Mr Duff in this regard, many of which focus on the policies contained within Planning Policy Statement 21 (PPS21), entitled ‘Sustainable Development in the Countryside’, and, in particular although not exclusively, Policy CTY8 within PPS21. By way of example, see the court’s judgment in *Re Burns’ and Duff’s Applications* [2022] NIQB 10 (“*Burns and Duff*”), at paras [3] and [36]; and *Re Duff’s Application (East Road, Drumsum)* [2022] NIQB 11, at para [52].

[4] The court granted the applicant leave to apply for judicial review in this case on 30 October 2021. A number of other cases raising essentially the same issues but against different planning authorities have been stayed pending the outcome of these proceedings which have been treated as something of a ‘lead case’ on the issues of interpretation of planning policy which lie at the heart of most of Mr Duff’s challenges. Many of his applications for judicial review have been dealt with by way of the orders following upon the court’s judgment (mentioned above) in *Burns and Duff*, where the relevant planning applications are now being reconsidered by LCCC; but there remains a range of cases which await the outcome of this application (or, as may be the case, the decision on any appeal from this judgment). Those cases include applications against the Planning Appeals Commission (PAC) and a number of other district councils.

### **The applicant's grounds of judicial review**

[5] When leave to apply for judicial review was granted in this case, Mr Duff’s pleaded grounds were significantly modified and ‘slimmed down’ by means of a direction pursuant to RCJ Order 53, rule 3(4) that the applicant’s Order 53 statement be amended. This was on the basis that the previously pleaded grounds were unduly prolix and repetitious and, to some degree, simply repeated submissions or factual assertions which had been made to the proposed respondent. The grounds on which leave were granted were considered by the court to represent a synopsis of

the key issues raised by the applicant's pleaded case which had surmounted the leave threshold.

[6] There are now therefore only three grounds of challenge to be addressed, namely (i) illegality; (ii) the leaving out of account of material considerations; and (iii) irrationality. Aside from an issue about hedgerow removal, the applicant's challenge centres upon the Council's interpretation and application of Policy CTY8 of PPS21.

[7] The illegality ground is in the following terms:

"... [T]he respondent erred in law in its interpretation of Policy CTY8 and/or CTY14 of PPS21 and/or of paragraph 6.73 of the SPPS [Strategic Planning Policy Statement] and thereby failed to apply them properly or at all."

[8] The material considerations ground is in the following terms:

"... [T]he impugned decision is vitiated because the respondent wrongly left out of account the following considerations:

- relevant supplementary planning guidance in 'Building on Tradition'; and
- the extent of hedgerow removal involved in the proposed development and/or Policy NH5 of PPS2 in relation to hedgerows".

[9] And the irrationality ground is in the following terms:

"... [T]he respondent's view that Policy CTY8 was complied with was irrational in the *Wednesbury* sense in that the respondent wrongly:

- considered there to be a "substantial and continuously built-up frontage" at the site;
- considered the 'gap' to be infilled to be a "small" gap;
- considered that permitting the development would not amount to creating or adding to ribbon development; and

- reached its view on this issue without properly informing itself of material considerations by conducting a site visit to the application site.”

[10] The bullet points set out in the last of these grounds draw attention to a range of concepts within the relevant planning policy which Mr Duff contends are regularly misunderstood or misapplied in planning decisions in this jurisdiction dealing with Policy CTY8.

### **Factual background to this case**

[11] The application relates to a decision to grant planning permission for two detached infill dwellings and garages at lands located between Nos 2 and 10 Glasdrumman Road, Ballynahinch. According to the report provided to the Council’s Planning Committee by its professional planning officers (“the officers’ report”) the application site is 0.47ha and comprises the front portion of a field which lies between the two properties mentioned. There is mature vegetation along the roadside boundary. The surrounding land is predominantly domestic and agricultural in use, with a number of dwellings along the immediate stretch of road. The site is located within the rural area, outside any designated settlement areas.

[12] The planning application was advertised in the local press on 30 September 2020 and the usual neighbour notification was carried out. There were 18 objections received in relation to the proposal, including three from elected members of the Council. The substance of these is listed in the officers’ report. Many aspects of the relevant policy and guidance were addressed in the course of the objections, some of which were from the applicant in this case.

[13] Mr Duff objected to the planning application by way of letter dated 30 September 2020, which has been exhibited to his grounding affidavit. The Planning Committee of the Council ‘called in’ the application to be determined by it; and it was dealt with at the committee’s meeting of 16 December 2020. As is usual, the officers’ report on the application was presented to the committee. Mr Duff was granted speaking rights at the meeting and presented his arguments, which were in similar terms to those set out in his letter of objection. He did, however, also raise the issue of a site visit and argued that the committee could not properly make a decision without having visited the site. The committee put that issue to a vote and determined that it was not in favour of having a site visit. The committee also voted on the substance of the planning application and voted to approve it, with eight votes cast for approval and two votes cast against.

[14] Mr Duff was unhappy with the decision, which he has described as appearing to him to be “an obviously bad decision which did not comply with policy”. He sent pre-action correspondence to the Council the day after the committee’s decision, on 17 December 2020. For its part, the Council did not respond in substance to the pre-action correspondence but, instead, rescheduled the application for further

consideration before the Planning Committee on 8 April 2021. Before this meeting occurred, the planning officer prepared and presented an addendum to his original report. This addendum did not mention Mr Duff's pre-action correspondence but, instead, related to issues of flood risk and historic interests which had arisen separately. This is because, after the first committee meeting, the officers appreciated that consultation had not been carried out with the Rivers Agency and with the Historic Environment Division, each of which subsequently responded with no objections.

[15] The application was considered again by the committee on 8 April 2021. Before this meeting, on 26 March, Mr Duff (who had again been granted speaking rights) submitted a short statement for the benefit of the committee.

[16] At the meeting on 8 April the committee considered the matter again and heard from the planning applicant's agent (Mr Carlin) and from Mr Duff. The committee once again voted to approve the application (with eight members voting in favour; none against; and one abstention). The planning permission itself was issued on 9 April 2021. Mr Duff thereafter sent further pre-action correspondence to the Council but issued his application for leave to apply for judicial review on 8 July 2021 in order to comply with the time limit in RCJ Order 53, rule 4.

### **The relevant planning policies**

#### ***Policy CTY8 within PPS21***

[17] The key policy for present purposes is Policy CTY8 of PPS21. The nub of the policy is contained within the first sentence of the policy text, which is in the following terms:

“Planning permission will be refused for a building which creates or adds to a ribbon of development.”

[18] This is in materially similar terms to the consideration which is required in respect of the same issue under Policy CTY14 of PPS21, which provides that:

“A new building [in the countryside] will be unacceptable where... it creates or adds to a ribbon of development (see Policy CTY8).”

[19] Put simply, PPS21 views ribbon development in the countryside as a bad thing: where a proposal creates or adds to a ribbon of development, applying the policies just mentioned, it will be refused planning permission. The justification text related to Policy CTY8 makes this explicit (at paragraph 5.32):

“Ribbon development is detrimental to the character, appearance and amenity of the countryside. It creates and

reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. Ribbon development has consistently been opposed and will continue to be unacceptable.”

[20] A similar sentiment is expressed in para 5.80 of PPS21, which is part of the text supporting Policy CTY14, in the following terms:

“It is considered that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside”.

[21] It is, of course, always open to a planning authority – provided it does so consciously, on proper planning grounds and in a manner which is not *Wednesbury* irrational – to depart from a policy. (That is an elementary statement of legal principle in this field: see, for example, *Re Bow Street Mall and Others’ Application* [2006] NIQB 28, at para [43](e); and *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13, at para [18]). However, PPS21 gives a very strong steer against development which creates or adds to a ribbon of development. Precisely what “a ribbon of development” means is discussed further below. That concept is also addressed in the justification and amplification text related to Policy CTY8. Whether a proposed development would create or add to a ribbon of development will be a matter of planning judgement.

[22] Aside from the possibility of departing from policy (that is to say, permitting development which will create or add to a ribbon of development, notwithstanding that fact, because the environmental harm so caused is outweighed on the facts of the application by other planning merits, such that the authority decides to depart from the policy), Policy CTY8 itself admits of exceptions to the general rule. The first of those – which is relevant for present purposes – is in the following terms:

“An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. 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.”

[23] In addition, the policy also envisages the infilling of a small gap site with economic development, rather than housing development. This further exception is couched in the following terms:

“In certain circumstances it may also be acceptable to consider the infilling of such a small gap site with an appropriate economic development proposal including light industry where this is of a scale in keeping with adjoining development, is of a high standard of design, would not impact adversely on the amenities of neighbouring residents and meets other planning and environmental requirements.”

[24] The reference to the infilling of “*such* a small gap” appears to be a reference back to a small gap site “within an otherwise substantial and continuously built up frontage” in the preceding paragraph. Such a gap may therefore, consistently with the policy and provided the requirements in relation to matters such as scale and design are met, be filled either by appropriate housing development or economic development. The description of infill housing in accordance with the policy as an “exception” makes clear that it applies to proposals which would otherwise be thought to create or add to a ribbon of development. In the limited circumstances described in the second and third paragraphs of the policy, infill development which would otherwise be precluded by the first paragraph of the policy may be granted planning permission.

[25] It is important to bear in mind, however, that the primary focus of Policy CTY8 is on avoiding ribbon development, save where one of the two exceptions is engaged. Since Policy CTY8 is referred to in Policy CTY1 of PPS21 as being one of those policies pursuant to which development may in principle be acceptable in the countryside, there may be a temptation to view it primarily as a permissive policy. However, unlike Policies CTY2, CTY3, CTY4, CTY6, CTY7, CTY10, CTY11 and CTY12, it does not begin by setting out that planning permission “will be granted” for a certain type of development (or “may be granted” in the case of Policies CTY5 and CTY9). Rather, Policy CTY8 begins by explaining that planning permission “will be refused” where it results in or adds to ribbon development. It is an inherently restrictive policy, which admits of two exceptions. Bearing this in mind is important in construing the policy.

[26] I accept the submission made by the notice parties in this case that the drawing of the exceptions within Policy CTY8 represents the policy-maker striking a balance as to what represents sustainable development in the countryside such that, where a proposal falls within one of the exceptions, it may be considered to represent sustainable development which ought to be encouraged. However, in construing the policy tests which require to be met in order for a proposal to engage one of the exceptions, it is proper to bear in mind that the exceptions within Policy

CTY8 represent a concession in the face of a strong general rule against ribbon development, such that they ought not to be widely construed.

### *The Strategic Planning Policy Statement*

[27] It is also necessary to consider a short excerpt from the Strategic Planning Policy Statement for Northern Ireland (SPPS). Para 6.73 of the SPPS, in material part, states as follows:

“The following strategic policy for residential and non-residential development in the countryside should also be taken into account in the preparation of LDPs and determination of planning applications.

...

- **Infill/ribbon development:** provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development; ...”

[28] Although any conflict between the SPPS and any policy (such as PPS21) which is retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS (see para 1.12 of the SPPS), I do not consider that to arise in the present case. There was some debate about whether the SPPS altered the position set out in Policy CTY8 by referring to “provision” being made for the development of small gap sites, rather than referring to an “exception” to the general rule; and/or by its referring to such provision before, rather than after, stating the general prohibition against ribbon development. However, I do not discern any conflict between this short-hand expression of the position in the SPPS and the more detailed policy set out in Policy CTY8 (and Policy CTY14). There is nothing whatever to suggest that there was any intention in the SPPS to change policy direction or clarify or refine the applicable policy in this field. In particular, I am unpersuaded by the submission that the exceptions set out within Policy CTY8 have been swept away by the different wording used in the SPPS. Rather, in my view, the respondent was correct to rely on that portion of para 1.12 of the SPPS which makes clear that, where it is silent or less prescriptive on a particular planning policy matter than the relevant retained policy, this should not be judged to lessen the weight to be afforded to the retained policy. In short, I do not consider that the SPPS was intended to, or did, herald any move away from the approach required by careful application of the terms of Policy CTY8 itself. The second sentence in the bullet point quoted above is to be read along with, and subject to, the first sentence.

### *Supplementary Planning Guidance*

[29] Para 6.78 of the SPPS, relating to the implementation of the 'Development in the Countryside' section of the SPPS, states that:

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

[30] This supplementary planning guidance ("*Building on Tradition*") is referred to in further detail below. It was published in 2012, after PPS21 (which was published in June 2010), and was obviously designed to explain more fully precisely how the policy concepts in CTY8 were to be interpreted and applied in practice. The relevant portions for the purpose of Policy CTY8 are contained at pages 70-77 of *Building on Tradition*. Particularly relevant excerpts from this supplementary guidance are discussed below. Such supplementary guidance generally also continues to apply, notwithstanding the introduction of the SPPS, pursuant to paras 1.10 and 1.14 of the SPPS.

[31] In addition, further such guidance was contained in a planning advice note (PAN) issued by the Department for Infrastructure in August 2021 – although later withdrawn in October 2021. I have addressed this PAN at some length in my decision in *Burns and Duff (supra)*, at paras [17]-[21]. Although the PAN pre-dates the grant of permission in the present case and was and is, therefore, irrelevant to the Council's consideration of the application which is at issue in these proceedings, I mention it because it was designed to elucidate and re-emphasise the original intention behind Policy CTY8 which is at the centre of these proceedings. Again, the appropriate portions of the PAN (paras 20-23) are referred to further below where appropriate.

#### ***Policy NH5 of PPS2***

[32] Finally, Mr Duff has also relied upon Policy NH5 of PPS2 on Natural Heritage. Policy NH5, entitled 'Habitats, Species or Features of Natural Heritage Importance', provides as follows:

"Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- priority habitats;
- priority species;
- active peatland;
- ancient and long-established woodland;
- features of earth science conservation importance;



- features of the landscape which are of major importance for wild flora and fauna;
- rare or threatened native species;
- wetlands (includes river corridors); or
- other natural heritage features worthy of protection.

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required."

### **The substance of Mr Duff's objections**

[33] The applicant has a number of basic points which he made in opposition to the application for planning permission with which these proceedings are concerned. First, he contends that the approved sites are not within a substantial and continuously built-up frontage. Second, he contends that the gap which is to be infilled is not small. Third, he contends that No 12 Glassdrumman Road does not have a frontage to that road. Fourth, he contends that a number of policies prohibit creation of, or addition to, ribbon development, in which the approval of this planning application results and that this is an absolute prohibition. Fifth, he also contends that the Planning Committee fell into error or acted unlawfully in failing to conduct a site visit in this case. Sixth, he has raised issues about the removal of hedgerows which will be involved in the implementation of the impugned permission. Each of these issues is addressed in further detail below.

### **The planning report in this case**

[34] The officers' report in this case correctly identified the relevant policies and supplementary guidance to be considered, including the Regional Development Strategy 2035; the SPPS; the Ards and Down Area Plan 2015; PPS3; Policies CTY1, CTY8, CTY13, CTY14 and CTY15 of PPS21; and *Building on Tradition*. The core elements of Policy CTY8 were summarised. The assessment of the application against these policies was carried out by a case officer and approved by a senior planning officer, as well as the file being reviewed by the Council's Chief Planning Officer in advance of the relevant committee meetings. The Chief Planning Officer is Mr Anthony McKay, who was also the respondent's deponent in these proceedings.

[35] In relation to the assessment of whether the proposed site was a small gap site within a substantial and continuously built-up frontage, the officers' report was in the following terms:

“The proposed site has a frontage of 111m onto the Glassdrumman Road. To the south east of the site lies No 2 which is a dwelling with detached garage, both with frontage onto the road. To the north west of the site is a dwelling at No 10 also with frontage to the road. Further along the road lies a ménage which is in association with No 12 Glassdrumman Road and two further dwellings beyond, with frontage to Glasdrumman Road. Officers are satisfied that the site comprises a small gap site within a substantial and continuously built up frontage.”

[36] The report went on:

“With regard plot size. No 2 Glassdrumman Road has a plot width of 46m, No 10 has a plot width of 54m and No 12 has a plot width of 68m. While a large portion of this frontage width is occupied by a ménage, this is viewed to be in association with the domestic property at No 12 rather than being considered undeveloped land, given the fencing and hardstanding and therefore is counted as part of the frontage width. The average of these three plot sizes is 56m. The site subject of this application has a frontage width of 111m. As there would be two dwellings within this application site, they would both have a plot width of 55.5m.

Officers are therefore satisfied that the proposed plot sizes would be in keeping with the development on either side. The proposal therefore respects the existing development pattern along this stretch of the Glassdrumman Road.

While it is acknowledged that building-to-building distance is greater than the average plot width, from a visual perspective on the ground it is considered that the site frontage and the lands outlined in red are large enough to accommodate 2 dwellings which respect the existing development pattern, plot sizes and character of the area.”

### **The McNamara decision**

[37] A significant focus on the part of the applicant in these proceedings is the decision of McCloskey J (as he then was) in *Re McNamara's Application* [2018] NIQB 22. The applicant has argued that this is a “poor decision which needs qualified”. In advancing this case, he refers to a transcript of a hearing before Weatherup LJ on 7

June 2018 in which he (Mr Duff) was granted leave to apply for judicial review in another case. Mr Duff contends that, in granting leave in that case, Weatherup LJ accepted that the *McNamara* decision may require to be looked at again. I have considered the transcript of Weatherup LJ's remarks and, as it seems to me, the height of what he was saying was that the guidance contained in *Building on Tradition* had not been referred to in the *McNamara* judgment (nor was it referred to in the decision under challenge in that case) and that a further consideration of the approach to Policy CTY8, fully taking into account the text of *Building on Tradition* and argument in relation to it, may be appropriate. I would not take the judge's observations in the course of exchanges following an oral ruling on a leave application to be intended, without more, to cast doubt on the correctness of the reasoning or result in *McNamara*.

[38] The applicant's central complaints about the *McNamara* decision are that it misinterpreted the planning policy at issue and encouraged the use of evaluative judgement in cases concerning that policy (which would then be extremely hard to challenge by way of judicial review) in ways which "ignore policy prohibitions"; and, in addition, that the judgment focused on Policy CTY8 without considering other relevant policies and construing Policy CTY8 in its proper context. In the event, the further case in which Mr Duff had been granted leave by Weatherup LJ and which he had hoped would be the vehicle through which the *McNamara* decision could be re-examined was dismissed without adjudication on the merits because the applicant failed to lodge a sum in court as security for costs, as directed. In any case, the present application has allowed the applicant to make his case as to the correct approach to Policy CTY8 with the benefit of full argument on the assistance to be gained by reference to the SPPS and *Building on Tradition*, neither of which were discussed in the judgment in *McNamara*.

[39] The applicant contends that para [18] of the *McNamara* judgment is in error, in that it refers to Policy CTY8 "enshrining a general, *not inflexible*, rule that a development proposal entailing the construction of a building "which creates or adds to a ribbon of development" will *normally* be refused" [my emphasis in italics]. Mr Duff argues that Policy CTY8 does not itself contain any such flexibility but, rather, is in absolute terms: "Planning permission *will* be refused for a building which creates or adds to a ribbon of development" [again, my emphasis in italics]. Nor, he contends, does para 6.73 of the SPPS contain any flexibility on its face; nor indeed, the relevant portion of Policy CTY14 (see para [18] above). In light of this, Mr Duff contends that McCloskey J failed to recognise the "absolute prohibition" and "non-negotiable harmful outcome" which flows from these policy provisions.

[40] In my view, the applicant's complaint against the judgment in the *McNamara* case fails to properly set the criticised portion of the judge's comments in context. It is true that the first sentence of Policy CTY8 is expressed in unequivocal terms. However, it must be understood in the context both of the legal effect of planning policy generally and the rest of the text contained within the remainder of that policy. As to the first, any planning policy can only ever be a general and not

inflexible rule because of its status as *policy*, which is a guide and not a straitjacket, and which may therefore lawfully be departed from (see para [21] above). As to the second, Policy CTY8 itself provides an “exception” to the general rule where something which would otherwise constitute the exacerbation of ribbon development is countenanced. McCloskey J was not suggesting, nor should he be taken as having suggested, that a planning authority can simply turn a blind eye where a proposal before it will create or add to a ribbon of development in the countryside (once it has determined, as a matter of planning judgement, that that is the case). In such a circumstance, it may apply the exception within Policy CTY8 relating to infilling where that is engaged, or may lawfully depart from the policy (to permit such development notwithstanding its unacceptable nature as a matter of policy) where it can rationally conclude that other material planning merits outweigh the acknowledged policy non-compliance. Absent those two instances however, Policy CTY8 – or, indeed, that portion of Policy CTY14 which is in materially similar terms – should result in the refusal of the application. McCloskey J plainly recognised both of these instances as being those where departure from the normal result would be legally permissible.

[41] Insofar as Mr Duff contends that there is a complete prohibition on ribbon development within policy which either bars a planning decision-maker from departing from policy as a matter of law, negates the exceptions expressly catered for in Policy CTY8, and/or requires a strained or unnatural interpretation to be given to the words “adds to” within that policy, I reject those submissions.

[42] Mr Duff also contends that the judgment in *McNamara* is an error at para [21] by again asserting that there is no outright prohibition against the creation or enlargement of a ribbon of development in the countryside. In the applicant’s submission, there is indeed such an outright prohibition. Further, the applicant submits that the *McNamara* judgment is also “misleading” at para [24].

[43] These complaints are really further formulations of the initial complaint, namely that the learned judge failed to recognise that there was an absolute prohibition on the creation of, or addition to, ribbon development. As I have explained above, there is a clear prohibition on such development; but that must be understood as subject to three things. First, it is a matter of planning judgement in the first instance as to whether a proposal *does* create or add to a ribbon of development. Second, there is an exception (infilling a small gap site either in accordance with the second or third paragraph of the policy) where such development is permissible. And, third, even if the proposal represents ribbon development and does not fall within the exception, it is always open to a planning authority to consciously depart from the prohibition where it is outweighed by other material considerations. This case concerns the question of whether the Council properly directed itself in relation to the in-built exception within Policy CTY8.

[44] McCloskey J’s reference to the balance to be struck between protection of the countryside and the permission of *some* development “in the furtherance of the goal

of sustaining a strong and vibrant rural community” and to Policy CTY8 itself being a “juggling act” does no more than to recognise the reasons behind the express provision of exceptions within the policy and that these same considerations may, in an appropriate case, justify a departure from the policy. It is not to water down or misconstrue the first paragraph or sentence of Policy CTY8. It is merely to describe its effect in its full policy and legal context.

[45] Finally, the applicant objects to McCloskey J having described Policy CTY8 as entailing “a significant element of evaluative planning judgment”. But his reference to that, in para [24] of his judgment, was simply observing that, in determining whether there was a ribbon of development and (perhaps more importantly) determining whether the exception to the general prohibition applied, the planning authority would have to assess the proposal and the relevant site and judge whether a number of the concepts referred to in the policy were engaged. The facts of this case highlight just such an exercise. McCloskey J was not, to my mind, suggesting that there was any significant *balancing* to be undertaken between competing objectives in the application of the policy itself; but that, rather, in striking that balance itself, the policy used a number of terms which called for the application of planning judgement.

#### **Further discussion of the ‘exception’ within Policy CTY8**

[46] Mr Duff has seized on the fact that the word “exception”, which is used in Policy CTY8 in relation to infill sites, is *not* used in the SPPS which, instead, refers to making “provision” for the development of a small gap site in an otherwise substantial and continuously built up frontage. I do not consider that anything turns on this. In my view, it is entirely clear from the wording of Policy CTY8 that its second paragraph (and, indeed, its third paragraph) are designed to operate as exceptions to the general rule which are set out in its first paragraph. The wording in the SPPS that “provision should be made for the development of a small gap site in an otherwise substantial and continuously built-up frontage” is merely a shorthand reference to the permissive provisions set out in the second and third paragraphs of Policy CTY8. As I have already observed at para [28] above, there is nothing to suggest that the reference in the SPPS was designed to materially change, much less supersede, those provisions of policy within PPS21.

[47] I do however agree with Mr Duff’s submission to the effect that, as exceptions to the general rule, the provision made for development within small gap sites should be narrowly construed bearing in mind the policy aim behind Policy CTY8 (and, indeed, PPS21 more generally). In short, I further agree with the thrust of Mr Duff’s submission that the exceptions provided for infill development are designed to allow for further development where (in colloquial terms) the damage has already been done by the prior development of the substantial and continuously built up frontage. I said as much in *Re Rural Integrity (Lisburn 03) Ltd’s Application* [2021] NIQB 32, at para [11]. The reference to there already being an *otherwise* substantial and continuously built up frontage (*i.e.* to such a frontage existing already, without

the addition of the application proposal) supports this interpretation. Planning applicants should not be eager to stretch the exception for infill sites beyond breaking point; much less so, planning authorities.

[48] Nonetheless, as discussed further below, the scope for a more expansionist approach to the exception for infill sites is increased by some of the text within Policy CTY8 itself; as well as some of the supplementary guidance within *Building on Tradition*. Taken together, these indicate, for instance, that phrases such as “small gap site” and “continuously built up frontage” were contemplated as having a meaning and possible application which goes beyond the ordinary and natural meaning of those words as they might appear at first blush.

## Discussion

### *Would the development create or add to ribbon development?*

[49] The first question under Policy CTY8 is whether the proposal involves a building which creates or adds to a “ribbon of development”. As McCloskey J observed in para [18] of *McNamara*, this concept is not expressly defined. It is a matter of planning judgement; but what was meant by a “ribbon of development” can be understood further by reference to additional parts of the policy and its supporting text. I agree with McCloskey J’s observation that, at its simplest, it denotes a *strip* of development; and, at that, one which is by its nature detrimental to the character, appearance and amenity of the countryside as it creates and reinforces a built-up appearance. From para 5.32 of the supporting text, one can see that the concerns about ribbon development relate mainly to its effect on rural character but also to the potential sterilisation of back-land behind the ribbon. In light of the purpose of the policy, the concept of a ribbon of development should not be interpreted narrowly; but it is nonetheless a matter of assessment for the planning authority. A ribbon might well consist of buildings which have a common frontage but that is not necessary if they are visually linked (see para 5.33 of PPS21).

[50] If the planning authority is of the view that the proposal does not create or add to ribbon development, neither Policy CTY8 nor sub-paragraph (d) of Policy CTY14 will point to its refusal (although it will still require to be permissible in principle under Policy CTY1 or as an exception to that policy). Where the proposal *will* create or add to ribbon development, the planning authority should go on to consider whether it is permissible under the infill exception provided within Policy CTY8; or, if not, whether it is appropriate on planning grounds to depart from the policy, recognising the strength of the language in which the policy is expressed and the fact that it incorporates an exception which does not apply.

[51] In the present case, there appears to be no dispute that the proposed development will create or add to a ribbon of development, since the application was presented to the Council, and accepted by it, under the infill housing exception within Policy CTY8.

*Is it a "small gap site" within a "continuously built-up frontage"?*

[52] The exception where a proposal may be permissible under Policy CTY8 even though it would create or add to a ribbon of development relates to "the development of a small gap site... within an otherwise substantial and continuously built up frontage". These are related concepts but it is logical to ask first whether there is a substantial and continuously built up frontage (SCBUF); before then asking whether there is a small gap site within that frontage. Again, whether there is an otherwise substantial and continuously built up frontage is a matter of planning judgement. In this case, there *does* have to be a common *frontage*. It is plainly not restricted to a terrace of houses and, therefore, must be capable of being constituted by more substantial houses on their own plots (see, for instance, the reference to "plot size" within the policy); but the frontage should be continuous. The definition of this concept expressly includes "a line of 3 or more buildings along a road frontage without accompanying development to the rear".

[53] A key issue for the applicant in these proceedings is the question of whether a SCBUF can contain any type of break and, in particular, a visual break. In short, his contention is that a visual break within a frontage means that it cannot be considered a SCBUF for the purposes of the Policy CTY8 exception. I do not accept that the concept of SCBUF can be constrained in such absolute terms.

[54] An important point to remember is that Policy CTY8 refers to a small gap site within an *otherwise* substantial and continuously built up frontage, that is to say, which is continuously built up *but for* the gap which is under consideration as a development site.

[55] Para 5.34 of PPS21 states that:

"Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage."

[56] The wording of this text is perhaps ambiguous. On the one hand, it could be suggested that the reference to "these gaps" in the second sentence relates back to gaps which "provide relief and visual breaks", so that the policy-maker clearly envisaged gaps which provide a visual break nonetheless being infilled. On the other hand, it could be suggested that the second sentence is emphasising that only that category of 'gaps' which do *not* provide a visual break will come within the exception. I do not consider the second interpretation to be the correct one for a number of reasons. First, it is not the more natural reading of the text. Second, the

next portion of para 5.34 goes on to refer to accommodating two houses on a gap site (as does the policy itself). This is plainly permissible under the policy in some circumstances; and the likelihood of sites which could accommodate two houses being gaps which provide a visual break is high. Third, *Building on Tradition* does *not* suggest that sites which provide a visual break *cannot* come within the CTY8 exception. Beneath the illustration on page 72 it is noted that, “Some gaps are not suitable for infilling if they frame a view or provide an *important* visual break in the development” [italicised emphasis added]. The text at paras 4.5.0 and 4.5.1 further explains the following:

“There will also be some circumstances where it *may* not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.

As a *general* rule of thumb, gap sites within a continuous built up frontage exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.”

[italicised emphasis added]

[57] In summary, there is no indication within the policy text itself that a gap which provides a visual break in the developed appearance of the locality *cannot* be a small gap site for the purposes of CTY8. The supplementary planning guidance supports the view that gaps which provide a visual break may be suitable for infill development but, on the other hand, there may be sites (described as offering an “important” visual break) which are not. This requires an assessment by the planning authority of the value of the break which the site offers. If a site offers an important visual break the loss of which will result in a material change in the developed appearance of the local area, that may be a reason for refusing planning permission for infill development at the site. That *might* be because the planning authority reaches the view that, as a matter of judgement, the site could not properly be described as a small gap site in the context of the frontage in which it sits; but may also be because, even if the site *is* a small gap site, the loss of the important visual break could not be said to meet “other planning and environmental requirements” (as the proposal is also obliged to do under Policy CTY8). In such a circumstance, the harm to rural character involved in granting such a permission would not be such as is contemplated and considered acceptable within the balance struck by Policy CTY8. Whether a site offers a visual break of such importance or significance is, again, a matter of planning judgement; but it is a matter of common sense, and consistent with the guidance contained in *Building on Tradition*, that the



larger the site, the more likely it is to offer an important visual break. As the reference to framing viewpoint illustrates, however, the size of the gap alone will not be determinative. As the text at the bottom of page 73 of *Building on Tradition* also indicates, an important visual break may arise from (for instance) mature trees which stand in the gap, such that there is “no scope for infill in such a ribbon”.

[58] In the present case, the applicant asserts that there was no investigation of whether Nos 2, 10 and 12 Glasdrumman Road were part of the same continuous frontage, given the fact that the gaps between Nos 2 and 10 are greater than the combined width of the curtilages. The applicant further asserts that the impact of the visual and physical break provided by the substantial hedge to the south-east of No 10, which stretches from No 2 Glasdrumman Road, has not been taken into account. Nor, he submits, is there any explanation as to how the site could be regarded as part of a substantially built up frontage, given that it looks entirely undeveloped and rural.

[59] Mr Duff further contends that *Building on Tradition* and Policy CTY8 require investigation of whether the gap is a visual break and therefore whether it should be developed at all. The applicant contends that the Council did not objectively investigate this issue at all. He also contends that there is no explanation as to how a very substantial field between two houses, separated by approximately 150m, could be classed as a “small” gap site. Whether a gap site is small is at least partly informed, the applicant submits, by objectively viewing the site and assessing whether it would *look* small. Mr Duff further submits that the gap with which this application is concerned “is considerably more than twice the average size of the first 5 houses on the south side of Glasdrumman Road”. He contends that the Council erred in considering that the ‘yard’ between No 10 and No 12 Glasdrumman Road was part of the curtilage of No 12 (which then “heavily skewed the average frontage size”). Mr Duff’s evidence is that he has inspected this yard carefully and that it may at one time have been a *ménage* for horses; that it is now a yard; but that, on any view, it is not part of the domestic curtilage, and is separated from No 12 by a farm gate with a fence and access laneway to a field to the rear. He has also provided a historic Ordnance Survey map showing that the now yard (then a *ménage*) was built in a field entirely separate from the home at No 12. In addition, Mr Duff contends that No 12 Glasdrumman Road does not have a frontage to that road. It is accessed by a short laneway and “has no frontage of its own”. There are two small sheds or stables with their own access, in front of No 12. It is these two sheds, the applicant submits, which are located along the frontage; not the house. If indeed it is these small buildings which are part of the frontage, the development proposals clearly do not respect the existing development pattern; and, moreover, they have development to the rear (the house at No 12) so that they should not be considered to be part of the ‘qualifying frontage’.

[60] As to whether the gap site is a “small gap site”, at first glance it would not appear to be. However, that is not a matter for the court to determine. It is a matter of planning judgement. As Mr Duff accepts, what does (or does not constitute) a

'small' site will also be site-specific to some degree, having regard the size of the plots of the buildings which form part of the frontage. *Building on Tradition* indicates (at para 4.5.1, quoted above) that, as a general rule of thumb, gap sites exceeding the local average plot width may be considered to constitute an important visual break. This is *not* saying that gap sites exceeding the local average plot width are not, or cannot be, small gap sites. It is simply drawing the decision-maker's attention to the need to consider the quality of the visual break which would be lost to development. On page 71 of *Building on Tradition*, it is said that, "When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots". Again, this is not saying that such a gap will never be capable of being considered a small gap site; simply that this will *often* be unsuitable for development. That may be because it is not, properly viewed, a small gap site; or may also be because, even if it is a small gap site, it is not an appropriate site for permission to be granted because of the additional damage to rural character which will be occasioned by the loss of an important visual break, or because any proposed development will not respect the existing development pattern along the frontage. In the present case, although Mr Duff disputes the methodology, the Council considered that the new plots would be (very marginally) less than the average plot width in the adjoining frontage. This ties in with a further portion of the guidance set out in the last bullet point of page 71 of *Building on Tradition*, which states, "A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon".

[61] In particular, the respondent relies upon the illustrative plan at the top of page 71 of *Building on Tradition* (which relates to cluster development under Policy CTY2a but is under the heading of, and beside text relating to, 'Infilling Gaps and Frontage Development'); and the illustrative plan at the bottom of page 76 of *Building on Tradition* (as well as the further such illustration at the bottom of page 77). Mr McAteer submitted that these illustrations clearly indicate that two-house infill development is permissible where the new houses are well sited, well scaled and reflect traditional siting patterns, as in this case. The latter of these illustrations is provided as an example of good practice, or at least permissible practice, applying Policy CTY8 and, the respondent asserts, bears a similarity to the proposal which was allowed in the present case. For instance, it demonstrates that two seemingly large detached dwellings each in a substantial site are permissible as infill development where these are not out of character with other dwellings in the 'otherwise substantial and continually built up frontage'; and, correspondingly, that what would appear to be a large gap between such buildings sufficient to accommodate two such dwellings is not precluded from being considered to be a 'small gap site'.

[62] To my mind, *both* parties in this case have made the mistake of using the guidance in *Building on Tradition* in a mechanistic or arithmetical way to seek to support their position, when this guidance was never intended to be used as a scientific formula to produce a firm result on what is ultimately a matter of judgement. Mr Duff argues that the gap is the gap between the relevant buildings

(here, the domestic properties at Nos 2 and 10 respectively) and that that gap is wider than two times the average plot width. That requires refusal, he suggests. The Council focuses on the plot width of the new houses and say that they are (just) less than the average plot width of the houses forming the rest of the ribbon, which therefore points to grant, it suggests. Both approaches are too rigid bearing in mind the nature of the exercise and the purpose and nature of the guidance in *Building on Tradition*.

[63] Having regard to the design guidance in *Building on Tradition*, as well as to the reference in Policy CTY8 itself to infill sites accommodating a maximum of two houses, I have reached the following conclusions on this aspect of the applicant's case:

- (a) Although I might myself have concerns as to whether the development site in this case should properly be described as a "small gap site", I do not consider the Council's conclusion that it was such a site to be *Wednesbury* irrational (*i.e.* to be so unreasonable that no reasonable Council could form that view), having regard to the additional policy text and supplementary guidance which indicate that sites which might accommodate two houses may in principle fall within the Policy CTY8 exception.
- (b) Likewise, I do not consider that the Council's view that the houses on the Glasdrumman Road (the three on which the evidence focused and an additional two further dwellings further up the road past No 12) form an "otherwise substantial and continuously built up frontage" to be *Wednesbury* irrational, so permitting the court to intervene. This conclusion is one I reach with some reticence, since it appears to me that there is force in Mr Duff's argument that the Council's assessment has been 'skewed' to some degree by treating the ménage (or former ménage or yard) as part of the curtilage and frontage of No 12. By doing so, the average plot size of the ribbon was significantly increased; No 12 is then viewed as having greater frontage onto Glasdrumman Road than would otherwise be the case; and the continuity of the frontage is maintained rather than being broken by this development feature. However, ultimately, the treatment of this portion of land, and whether it is to be read as part of the frontage of No 12 ("in association with" No 12, as the officers' report says) rather than as a separate planning unit or as a break in the frontage, is one of planning judgement. Mr Duff effectively invited me to take my own view on this issue and hold (a) that the Council's planning officers were wrong in their assessment and (b) that the frontage guidance in *Building on Tradition* was not met. However, it is not the role of the court – other than in cases of irrationality or clear cases of error as to established and material fact (which this case is not) – to engage in the merits of the planning assessment.
- (c) I have also not been persuaded that the Council – having lawfully taken the view that the application site, in the context of the surrounding development,

represented a small gap site in an otherwise substantial and continuously built up frontage – was irrational in failing to conclude that the gap site offered an important visual break which required the application to be refused in light of the harm to rural character which the proposed development would cause. It would have been preferable if this issue had been addressed and grappled with expressly; but the onus lies on the applicant to establish that it was not considered or, with more difficulty, that an irrational conclusion was reached. I do not consider that either onus has been discharged.

[64] I am satisfied that the Council took the relevant policy tests into account and also took into account the supplementary guidance in *Building on Tradition*. A decision to refuse permission on a variety of bases might well have been defensible, had the Council judged some of the issues before it differently. Indeed, the grant of permission at this site might well be considered to lie at the outer edge of what might rationally be considered to comply with the Policy CTY8 exception. However, much of Mr Duff's challenge was more appropriate to argument which would have been better directed towards a third party appeal against the grant of permission on the merits. Indeed, Mr Duff lamented the absence of availability of such an appeal route in our planning system in some of his submissions.

#### *The absence of a site visit*

[65] The applicant contends that many of the matters which are raised above are issues to be considered after having visited the site and having looked carefully at its appearance in order to properly assess the detail of the local context, the general area, and the proposed site in particular. He submits that these matters cannot be assessed by an academic assessment alone or by way of desktop analysis. Mr Duff describes himself as having pleaded for the Planning Committee to visit the site to gather the visual information necessary for an objective decision to be made. This suggestion was rejected by vote of the committee. In Mr Duff's further evidence he has submitted a range of photographs but contends that these "still do not do the rural character and agricultural nature of this site justice"; and that this can only be properly appreciated by physical attendance at the site.

[66] It is a well-known feature of planning law that the decision-maker must not only ask itself the right question but must also take reasonable steps to acquaint itself with the relevant information to enable it to answer the question correctly (usually referred to as the *Tameside* principle). This is reflected, for instance, in para [30] of the decision in *Dover District Council v CPRE Kent* [2017] UKSC 79.

[67] The respondent's evidence emphasises that the councillors on the Planning Committee had the benefit of the presentation given by the planning officials, which included a PowerPoint presentation which contained various maps, plans and photographs, and that they also had presentations from the parties during the course

of the meeting and the opportunity to raise any questions or queries that they wished.

[68] The respondent's Planning Committee has an operating protocol, which deals with the issue of site visits at paragraph 71 in the following terms:

"Site visits may be arranged subject to Committee agreement. They should normally only be arranged when the impact of the proposed development is difficult to visualise from the plans and other available material and the expected benefit outweighs the delay and additional costs that will be incurred."

[69] At the meeting on 16 December 2020, having heard representations, the chairman asked for a proposal and two councillors proposed that the Planning Committee should undertake a site visit. That proposal was put to the committee and declared lost in a vote of eight votes to two. Mr Duff again raised the issue at the Planning Committee meeting of 8 April 2021. Notwithstanding the points made by him on that occasion, the committee was still content to proceed without conducting a site visit.

[70] Mr McAteer reminded me of what was said in para [43](g) of Girvan J's summary of the relevant principles in this area in the course of his judgment in *Re Bow Street Mall and Others' Application* (*supra*):

"If a planning decision maker makes no inquiries its decision may in certain circumstances be illegal on the grounds of irrationality if it is made in the absence of information without which no reasonable planning authority would have granted permission (*per* Kerr LJ in *R v Westminster Council, ex parte Monahan* [1990] 1 QB 87 at 118b-d). The question for the court is whether the decision maker asked himself the right question and took reasonable steps to acquaint himself with the relevant information to enable him to answer it correctly (*per* Lord Diplock in *Tameside*)."

[71] This was plainly not a "no inquiries" case, in his submission; and the Council could not be said to have acted unlawfully merely because it determined that this application could be decided without the committee members physically attending the site. I accept that submission. It was not *Wednesbury* irrational for the Council to determine that it could proceed to deal with the application without a site visit, particularly in circumstances where the Council's planning officers had visited the site in order to formulate their report and, *inter alia*, had taken a number of pictures at the site which were made available to the elected members in the course of the officers' presentation.

[72] I would add, however, that the court recognises the significant benefits in contentious planning applications of councillors themselves visiting a site. As is evident from the above, the application of Policy CTY8 does involve decision-makers engaging with a number of concepts which entail the exercise of planning judgement. The policy is fundamentally concerned with rural character, which is likely to be best assessed by a visit to the locus and consideration of the site from critical viewpoints. In terms of assessing whether infill development in a gap site will result in the loss of an important visual break, such that it goes beyond the impact on rural character 'priced into' the policy exception, a site visit may well of considerable assistance. The court recognises, however, that such visits take time and can result in delay and cost, which is why planning authorities have leeway in assessing whether they are necessary.

### *Removal of the hedgerow*

[73] Finally, the applicant contends that the Council has not assessed whether development of the gap site in this case "meets other policy and environmental requirements" as required by Policy CTY8: in particular, he submits that the environmental impact of removal of hedgerow was not investigated at all. Mr Duff is concerned that a significant portion of hawthorn hedge will be removed which would have an abundance of berries in the autumn which are eaten by both mammals and birds. In addition to providing habitats for all kinds of wild flowers, bees, birds and small mammals, the applicant has drawn attention to the fact that hedges are also critical wildlife corridors (since open fields often offer no protection to animals moving from place to place). He has provided photographs of the significant hedgerow along the front of the application site, some of which will be removed to provide access if the development proceeds. In advance of the judicial review hearing, the hedgerow was significantly cut back; but an established hedge nonetheless remains along the frontage to the Glasdrumman Road at the site.

[74] Mr Duff contends that the site plan and site layout plan are of insufficient quality to make it obvious how much hedgerow is to be removed when the permission is built out. The impact of creating necessary sightlines to facilitate access to the proposed dwellings will be to remove a very long section of hedgerow, he submits. In his second affidavit he has exhibited the Department for Infrastructure roads consultation response and, looking at the required visibility splays, estimates that around 50 metres of hedgerow will be required to be removed. He does not consider that this was adequately addressed by the Council's Planning Committee; or that it can now be addressed adequately at the reserved matters stage.

[75] In support of this aspect of his case, the applicant has relied on supplementary guidance issued by the Department of the Environment in April 2015 entitled, 'Hedgerows: Advice for Planning Officers and Applicants Seeking Planning Permission for Land Which May Impact on Hedgerows'. In fact, updated guidance, in materially similar terms, was issued by the Department for Agriculture, the

Environment and Rural Affairs (DAERA) in April 2017 (“the DAERA hedgerow guidance”). This guidance emphasises that all hedgerows are a priority habitat due to their significant biodiversity value, which relates not only to the specific plant species within the hedgerow but to their wider value for foraging, providing shelter, and corridors for movement of large numbers of species. It emphasises the value of hedgerows. It references Policy NH5 of PPS2 (set out at para [32] above) and notes that: “The degree of impact depends on the net loss involved, the proportion of connectivity lost and the species richness and structure of the hedges that are lost or fragmented. There may also be protected and priority species impacts that also have to be considered.”

[76] The respondent submits that Policy CTY1 of PPS21 lists a range of types of development which are considered to be acceptable in principle in the countryside (including infill development in accordance with Policy CTY8). It is said that it is inevitable that there will be some loss of hedgerows as a result of such development. This is not generally likely to result in an unacceptable adverse impact on known priority habitats. Indeed, the respondent also points to the fact that the removal of hedgerows does not itself require the grant of planning permission, such that the hedgerows in question in this case could perfectly lawfully have been removed by the planning applicant in advance of submitting a planning application.

[77] This last point is at first blush a powerful one. A landowner is quite entitled, without having to seek planning permission, to cut down a hedge on their land. However, in my view that is to miss the point. There is no reason to suppose that the landowners in this case were likely to remove significant portions of hedgerow unless and until they were granted planning permission. It is the building of the dwellings permitted by the impugned permission which is likely to be the catalyst for significant hedgerow removal. Indeed, Policy NH5 and the DAERA hedgerow guidance proceed on the common sense basis that hedgerow removal should be taken into account in considering planning applications because – notwithstanding that it might be permissible to remove hedges without planning permission – the grant of planning permission, in the knowledge that the proposed development will require hedgerow removal, renders such removal much more likely.

[78] The respondent’s better point is that this issue was before the Committee and necessarily considered by them in the course of their consideration of the application. The issue of hedgerow removal was expressly referenced in the officers’ report in this case, when summarising the objections received. It noted the objection that development “would block off a wildlife corridor” between Nos 2 and 10 Glasdrumman Road and that the hedgerow to be removed for visibility splays “provides shelter for wildlife”. The issue was raised by Mr Wilson in his letter of objection which was before the committee, as well as by the present applicant. In addition, the issue was raised by Mr Duff before the Planning Committee (as is reflected in the minutes of its meeting of 16 December 2020, which specifically notes the issue of the existing hedgerow being a wildlife habitat as one of the issues raised)

and in the applicant's written statement of 26 March 2021. It was also raised by the other objector, Mr Wilson, at that time.

[79] The proposed site layout plan which formed part of the PowerPoint presentation to councillors did not provide a huge amount of detail (as one might expect at the outline approval stage) but was sufficient to show an indicative sightline at the entrance to the new dwellings. In any event, it would have been obvious to the councillors involved that access from the road would be required; and they would be well aware that sightlines would be necessary (particularly in circumstances where some of the objectors raised road safety issues and an objection that the 'double entrance' to serve both proposed dwellings was too large). It could not have been lost on them that hedgerow removal would be required to facilitate access to the site, which is why objectors were raising the issue. The Council accordingly granted permission in this case with its eyes open as to concerns in relation to hedgerow removal.

[80] Policy NH5 provides that planning permission will only be granted for a development proposal which is not likely to result in unacceptable adverse impact on, or damage to known, priority habitats, species or other features of natural heritage importance. Indeed, even where a development proposal is likely to result in an unacceptable impact on such habitats, species or features, it may still be permitted in compliance with the policy if the decision-maker considers that the benefits of the proposed development outweigh the value of the habitat, species or feature (with appropriate mitigation and/or compensatory measures being required).

[81] Albeit the DAERA hedgerow guidance makes clear that all hedgerows meeting the definition in that advice (which I do not take to be in dispute in this case) are a priority habitat, it was open to the Council to conclude that the proposal in this case was not likely to result in unacceptable adverse impact on or damage to that habitat. I have not been persuaded that the Council was insufficiently informed of the likely net loss of hedgerows which would be involved in the proposal, for the reasons summarised above. There was nothing in this case to indicate that an extended habitat survey was required. This was not a hedgerow with large trees; or where there was evidence of it being species rich; and it did not form a town boundary. Accordingly, it was not a case where a survey of protected and priority species was necessary under the DAERA guidance. That guidance sets out a number of principles to be applied, which contain a significant degree of discretion (such as to "replace 'like for like' when replanting", "retain connectivity where possible", "integrate hedgerows into the development...", etc.). The respondent also relies on the fact that planning permissions for development in the countryside will generally contain conditions relating to landscaping matters; and, in this case, conditions 3 and 6 of the impugned permission *inter alia* reserve details including the means of access and landscaping to be approved at the reserved matters stage and preclude development from commencing until a landscaping plan has been submitted, which might properly include mitigating measures.



[82] Taking all of this together, the applicant has not made out his case that this issue was not properly addressed by the Council. It is to the credit of the applicant and the other objectors that they raised the issue of hedgerow loss before the Council. Having done so, however, it was a matter for the Council as to how deeply it enquired into that matter. I have not been satisfied that the Council left this issue out of account; nor that its conclusion (that the loss of hedgerow which was necessarily involved in the grant of this outline application was acceptable) was irrational.

[83] It would have been helpful if the Council's planning officers had specifically directed councillors' attention to Policy NH5 of PPS2; and may well have been helpful for some further photographs of the hedgerow at the site to have been provided (which could, of course, also have been provided by the objectors at the time of the Council's decision-making). Mr Duff is concerned about the *cumulative* loss of hedgerow, as well as cumulative development in the countryside more generally. His grounding affidavit suggests that there are over 2,000 one-off houses approved for development in the countryside in Northern Ireland every year. He has drawn this from planning statistics released by the Department. He contends that a significant proportion of these permissions relate to 'infill' housing. This results in a huge amount of investment in building in the countryside, rather than focussing such investment in urban regeneration. Even if development of the average rural house resulted only in removal of 20m of hedgerow, 2,000 rural houses *per year* would result in the annual removal of some 40km of hedgerow. This is, of course, a well-made point. Although each application coming before a planning authority must be addressed on its own merits, planning policy in relation to countryside development is generally in restrictive terms because each new development, whilst of limited effect on its own, adds to the overall impact of development in the countryside. Policies which require decision-makers to carefully consider issues such as hedgerow removal, which might seem marginal in any one particular case, should therefore be taken seriously. For the reasons I have given, I consider the issue *was* considered in substance by the Council in this case, largely through the emphasis placed on the point by objectors; but planning authorities should be alive to this issue even where it is not raised by objectors.

### **Standing**

[84] In granting leave to apply for judicial review, the court considered that the applicant *at least arguably* had sufficient interest in the matter have standing for the purposes of section 18 of the Judicature (Northern Ireland) Act 1978 and RCJ Order 53, rule 3(5). Indeed, submissions on behalf of the interested party (Mr Carlin) accepted this to be the case in light of the fact that the applicant had been an objector in the course of the planning application process.

[85] However, the respondent continued to contend that the applicant does not have a sufficient interest in the matter to which the application relates.

Notwithstanding the applicant's participation in the process before the Council's Planning Committee, the Council contends that he is not directly affected by the outcome of the decision. On that basis it is submitted that he has insufficient standing to be granted any intrusive relief. The respondent relies heavily, in support of this submission, on *Walton v Scottish Ministers* [2012] UKSC 44.

[86] As noted above, the applicant has described himself as an environmental campaigner or protector of the environment. In recent times he has become a regular and frequent litigant before the court (in one way or another) in cases which seek to raise issues about the interpretation and application of planning policy, usually in relation to policies within PPS21. He has made the point that, in his view, the Department has abandoned its role in maintaining the integrity of the planning system and that he feels that, in those circumstances, he is filling a necessary void as the only person willing to do so.

[87] In fairness to Mr Duff, he has enjoyed some measure of success in at least some of the cases which he has brought or supported. I addressed his position, in relation to the question of standing, in detail in the case of *Re Duff's Application (East Road, Drumsurn)* (*supra*). For the reasons identified in that case, I consider the applicant does have standing to bring the present application. Albeit he has no personal interest in the outcome (over and above his general concern for the environment), he was heavily involved in the planning process as an objector, including by way of written representation and appearance, having been granted speaking rights, at two meetings of the Council's Planning Committee.

[88] Mr McAteer's point was a more nuanced one, namely that a different or separate analysis of Mr Duff's interest was appropriate for the purposes of the grant of *relief*, even if he had sufficient interest to litigate the issues in these proceedings in the first case. In light of the conclusions I have reached on the substance of the challenge, this issue does not need to be addressed in this judgment.

### **Summary and overall guidance in relation to the approach to Policy CTY8**

[89] In my assessment, Mr Duff wishes to apply a number of guidance statements within *Building on Tradition* as if they were rigid rules which preclude the grant of permission pursuant to Policy CTY8 in a range of cases. He also seeks to present the policy tests within the exception provided in CTY8 as straightforward matters of fact for the court to determine, wrongly denying or seeking to minimise the scope for the exercise of planning judgement in cases involving proposed infill development. On the other hand, in this and a range of other cases which have been highlighted by him, I consider that one can discern a somewhat relaxed and generous approach to the grant of planning permissions under the infill exception in Policy CTY8 which may be thought to have lost sight of the fundamental nature of that policy as a restrictive policy with a limited exception. In the words of the Department's Planning Advice Note of April 2021, there is a case that decisions have been taken which "are not in keeping with the original intention of the policy" which will then

“undermine the wider policy aims and objectives in respect of sustainable development in the countryside”.

[90] The scope for the exercise of planning judgement in respect of a number of concepts contained within the policy is such that there may be planning control decisions made pursuant to it which appear to some to be ‘bad’ decisions. But the role of the court is emphatically not to substitute its own view on the planning merits. Planning authorities are trusted to make these judgments partly on the basis of their expertise and, in the case of elected district councillors, on the basis of their local knowledge and democratic accountability. Where the exercise of planning judgement, as has arguably occurred in relation to this policy, results in a greater number of grants of planning permission than the original policy intention may have suggested, the correct approach to deal with that is unlikely to be by way of litigation in the courts (where the court’s role is necessarily limited) but, rather, by way of the regional planning authority (the Department) either re-emphasising the original policy intention (as it sought to do through the PAN) or, as necessary, changing planning policy. A further option may be seeking to ‘tighten up’ the approach to policy through the issue of further supplementary planning guidance. However, both notice parties in this case have rightly emphasised the fundamental distinction between planning policy and supplementary guidance. In any event, if the policy is being implemented in a way which does not reflect the original balance it intended to strike between protection of the countryside and enabling sustainable development, that is a matter for the Department to consider and address.

[91] In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a ‘lead’ case in relation to Mr Duff’s applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is ‘no’, the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.
- (ii) Where the proposal *will* create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) *or* where,

exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies *and* the fact that Policy CTY8 contains an express exception which is not engaged in the case).

- (iii) In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.
- (iv) Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.
- (v) Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.
- (vi) Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in *Building in Tradition*, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement.

## Conclusion and costs

[92] For the detailed reasons given above, I do not consider any of the applicant's grounds for judicial review to have been made out and dismiss the application.

[93] In his Order 53 statement, the applicant contended that this was an application for judicial review of a decision, act or omission all or part of which are subject to the provisions of the Aarhus Convention, and therefore an Aarhus Convention case within the meaning of the Costs Protection (Aarhus Convention) Regulations (Northern Ireland) 2013 (as amended) and, accordingly, sought a protective costs order (PCO) in the terms that any costs recoverable from him should not exceed £5,000 in total. As there was no opposition to the suggestion that the proposed application was an Aarhus Convention case, the court made a PCO in the standard terms, namely that the costs recoverable from the applicant should not exceed £5,000 (exclusive of VAT); and the costs recoverable from the respondent should not exceed £35,000 (exclusive of VAT). Subject to any further submissions on the issue, I propose to make a costs order against the applicant in favour of the respondent, such costs to be taxed in default of agreement but, in any event, not to exceed the sum of £5,000 exclusive of VAT (or £6,000 inclusive of VAT).

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

Minute Ref	Subject	Decision	Lead Officer	Actions taken/ Progress to date	Remove from Action Sheet Y/N
		<b>PLANNING MEETING – 1 AUGUST 2018</b>			
LA07/2017/1261/0	Thomas Mageean – proposed dwelling and garage – site abutting 20 Junction Road, Saintfield	<b>Defer application to enable the Council’s Legal Advisor to consider issues raised regarding ownership of the application site (Mr Thomas Mageean); the farm business in the name of Mr Bernard Mageean, who takes land in conacre from his brother and this farm business being altered by adding the applicant as an additional member of the business and in so doing have the applicants buildings at No. 20 Junction Road included within the farm business criterion © of CTY10</b>	Annette McAlarney	<b>Legal Advice received.</b>	N
		<b>PLANNING MEETING - 13 FEBRUARY 2019</b>			
LA07/2015/0149/F	Change of use of building to provide storage and distribution of fuel with alterations and new bulk fuel tank in yard – site	<b>Withdrawn by the Planning Department to allow further consultation to be completed</b>	P Manley	<b>Application to be removed from the list due to current</b>	Y

	between 54 and 58 Edenappa Road, Jonesborough			<b>enforcement issues relating to the site</b>	
<b>PLANNING COMMITTEE MEETING 26 AUGUST 2020</b>					
LA07/2019/1302/F	Provision of a dwelling with associated parking and amendment to application R/2011/0794/f to remove parking area for apartments and replace with shared amenity space - to rear of Nos 65-69 South Promenade, Newcastle.	<b>Defer Planning Application LA07/2019/1302/F to allow the applicant to provide evidence that sight lines can be secured for this proposal.</b>	A McAlarney	<b>Awaiting consultation response from DFI Roads on new info submitted.</b>	N
LA07/2019/1087/0	Replacement dwelling and garage - approx. 50m NE of 21 Drakes Bridge Road, Crossgar	<b>Removed from the agenda as agent unable to attend</b>	A McAlarney	<b>Application on hold to allow a Bat survey to be carried out by applicant. Survey season is May – August.</b>	N
<b>PLANNING COMMITTEE MEETING 23 SEPTEMBER 2020</b>					
LA07/2020/0176/F	Proposed rural infill detached dwelling and garage – 45m north of 5 Molly Road Lower, Jonesborough	<b>Defer for 3 months to allow time for the garage to the north of the proposed site to be built and then application to be re-considered</b>	A Davidson	<b>Under consideration by Planning Office</b>	N
<b>PLANNING COMMITTEE MEETING 09 MARCH 2022</b>					
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) -	<b>Removed from the schedule at the request of Planners – to be brought back to Committee</b>	Patricia Manley		N

	Ballyholland Harps GAA grounds Bettys Hill Road Ballyholland Newry BT34 2PL				
<b>LA07/2017/0978/F and LA07/2017/0983/LBC</b>	Demolition of side and rear extension. New rear and side extensions and rear dormer 50 Hilltown Road Bryansford Newcastle	<b>Defer back to officers to see if agreement on design can be reached and delegate decision to officers</b>	Annette McAlarney	<b>HED and Agent to meet to discuss revisions.</b>	N
<b>PLANNING COMMITTEE MEETING 06 APRIL 2022</b>					
<b>LA07/2021/1824/F</b>	Replacement Dwelling House - 34 Ringdufferin Road Downpatrick	<b>Removed from the schedule at the request of Planners</b>		<b>Under consideration by Planning Office</b>	N
<b>PLANNING COMMITTEE MEETING 11 MAY 2022</b>					
<b>LA07/2021/1318/O</b>	Infill Dwelling - Site between 11 and 13 Tullydonnell Road Silverbridge Newry Co. Down	<b>Defer for a site visit</b>	Pat Rooney	<b>Site visit held 18-05-2022 – on agenda for Planning meeting on 01-06-2022</b>	Y
<b>LA07/2021/0394/F</b>	Change of use of lands to Public Park (used in conjunction with Saintfield Community Centre) - Lands to the rear of Saintfield Community Centre and to the south of 8-11 Windmill Grange with access onto Belfast Road.	<b>Remove from the addendum list for full presentation at the June Committee Meeting</b>	Annette McAlarney	<b>Back on agenda for Planning meeting on 01-06-2022</b>	
<b>END</b>					