

April 4th, 2023

Notice Of Meeting

You are requested to attend the meeting to be held on **Tuesday, 4th April 2023** at **7:00 pm** in **Church Street, Newtownards.**

Agenda

Agenda

(Attached)

[📄 Agenda.pdf](#)

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1. Apologies

2. Declarations of Interest

3. Matters Arising from Minutes of Planning Committee 7 March 2023

(Minutes attached)

[📄 230307 PC Minutes PM.pdf](#)

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4. Planning Applications

4.1 LA06/2015/0677/F - 251a Bangor Road, Whitespots, Newtownards

Replacement of existing structure with 1 no. single storey unit to accommodate stables, coach house, tack room, workshop and toilet.

(Information attached)

[📄 Item 4.1 Executive summary.pdf](#)

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[📄 Item 4.1a LA06 2015 0677 F.pdf](#)

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[📄 Item 4.1c Further Addendum to COR LA06.2015.0677.F.pdf](#)

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4.2 LA06/2021/0506/F - Cairn Wood, 21 Craigtlet Road, Newtownards

Sustainable energy system consisting of 26 no. ground mounted solar panels, a containerised battery building (total battery storage capacity of 28KWh), back up generator, fuel tank and associated site works.

(Information attached)

[📄 Item 4.2 Executive summary.pdf](#)

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4.3 LA06/2021/1472/LBC - Town Hall (now City Hall), The Castle, Bangor

Lightning protection system

Item 4.3 Executive summary.pdf

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Item 4.3a LA06 2021 1472 LBC.pdf

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4.4 LA06/2023/1426/F - Open space approx. 33m NW of McKee Clock, Bangor

Item 4.4 Executive summary.pdf

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5. Update on Planning Appeals

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6. NIW - Update on Coastal Fence

Item 6 NI Water update Coastal Fence.pdf

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ARDS AND NORTH DOWN BOROUGH COUNCIL

March 2023

Dear Sir/Madam

You are hereby invited to attend a hybrid meeting (in person and via Zoom) of the Planning Committee of the Ards and North Down Borough Council which will be held in the Council Chamber, 2 Church Street, Newtownards on **Tuesday, 04 April 2023**, commencing at **7.00pm**.

Yours faithfully

Stephen Reid
Chief Executive
Ards and North Down Borough Council

A G E N D A

1. Apologies
2. Declarations of Interest
3. Matters arising from minutes of Planning Committee 07 March 2023
4. Planning Applications

4.1	LA06/2015/0677/F	Replacement of existing structure with 1 No. single storey unit to accommodate stables, coach house, tack room, workshop and toilet 251a Bangor Road, Whitespots, Newtownards
4.2	LA06/2021/0506/F	Sustainable energy system consisting of 26 No. ground mounted solar panels, a containerised battery building (total battery storage capacity of 28 KWh), back up generator, fuel tank and associated site works. Cairn Wood, 21 Craigtlet Road, Newtownards
4.3	LA06/2021/1472/LBC	Lightning protection system Town Hall (now City Hall), The Castle, Bangor
4.4	LA06/2023/1426/F	Temporary siting & operation of 34m illuminated panoramic viewing wheel and 5 additional attractions between May and September 2023 Open space approx. 33m NW of McKee Clock, Bangor

5. Update on Planning Appeals
6. NIW – Update on Coastal Fence

MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)

Alderman Gibson (Chair)	Councillor McAlpine
Alderman Keery	Councillor McClean
Alderman McIlveen	Councillor McKee
Councillor Adair	Councillor McRandal (Vice Chair)
Councillor Brooks	Councillor Moore
Councillor Cathcart	Councillor P Smith
Councillor Cooper	Councillor Thompson
Councillor Kennedy	Councillor Walker

ARDS AND NORTH DOWN BOROUGH COUNCIL

A meeting of the Planning Committee was held (hybrid) on Tuesday 7th March 2023 at 7.00 pm via Zoom and at Council Offices on Church Street, Newtownards.

PRESENT:

In the Chair: Alderman Gibson

Aldermen: Keery (Zoom)
McIlveen

Councillors:	Adair (Zoom)	McKee (Zoom)
	Brooks (Zoom)	McRandal
	Cathcart (Zoom)	Moore (Zoom)
	Kennedy	Thompson (Zoom)
	McAlpine (Zoom)	Walker
	McClellan	Smith, P (Zoom)

Officers: Director of Prosperity (A McCullough), Head of Planning (G Kerr) and Democratic Services Officer (R King)

1. APOLOGIES

There were no apologies.

NOTED.

2. DECLARATIONS OF INTEREST

No Interests were declared.

NOTED.

3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE MEETING HELD ON 7TH FEBRUARY 2023 (Appendix I)

PREVIOUSLY CIRCULATED:- Minutes of the meeting held on 7TH February 2023.

RECOMMENDED that the minutes be noted.

AGREED, on the proposal of Councillor McRandal, seconded by Councillor Walker, that the recommendation be adopted.

4. PLANNING APPLICATIONS

4.1 LA06/2021/1125/F – CHANGE OF USE FROM GARAGE TO SHORT TERM HOLIDAY LET (RETROSPECTIVE)

(Appendices II - III)

PREVIOUSLY CIRCULATED: Report outlining the planning application.

DEA: Ards Peninsula

Committee Interest: A Local development application 'called-in' from delegated list w/c 30 January'23 to Planning Committee by a member of that Committee

Proposal: Change of use from garage to short term holiday let

Site Location: 116 Portaferry Road, Newtownards

Recommendation: Refusal

The Head of Planning outlined the above application, advising that it was for the change of use from a garage to short term holiday let at 116 Portaferry Road, Newtownards, and the application was before members due to a call in by Alderman McIlveen. The recommendation was to refuse planning permission.

Providing some context for members, the building under consideration was previously used as a garage in association with the dwelling on the site. The garage was converted into holiday let accommodation without the benefit of planning permission.

An enforcement case was opened (LA06 2021/0054/CA) for alleged unauthorised tourist accommodation and an application for retrospective permission was now sought.

The holiday let was featured on numerous websites including Booking.com, Discover Northern Ireland and Visit Ards and North Down.

Members should note that all tourist accommodation was centrally uploaded by Tourism NI on the Discover Northern Ireland website and these listings were then 'fed' into the shared web platform of visitardsandnorthdown.com.

The Council had no ability to upload accommodation listings separately as Tourism NI determined the certified status of the property. NI Tourism did not check if a facility had planning permission.

The site was located on the Portaferry Road directly opposite the coastline. It was a countryside location within a designated AONB in the Ards and Down Area Plan 2015.

The site contained a bungalow and also the building under consideration of this retrospective application which was located to the east of the site with a parking and turning area to the front of the buildings.

The building consisted of one room which was used as a bedroom with an ensuite. It had a sitting area within the room and coffee station with a small fridge. The room appeared to have the same furniture and facilities similar to that of a standard hotel room.

In terms of policy consideration, Policy TSM 5 of PPS 16 which dealt with tourism proposals referred to the construction of new units or conversion of buildings within clachans which were associated with existing tourism enterprises. The proposal did not involve a new build or a clachan so it did not fit neatly within Policy TSM 5.

The justification and amplification section of TSM 5 explained that the intention of the policy was to avoid random development throughout the countryside and with the policy providing sustainable economic benefits with new self-catering accommodation linked with an existing tourism enterprise.

Paragraph 7.29 of Policy TSM 5 of PPS 16 referred assessment back to Policy CTY 4 of PPS 21 for the conversion of existing buildings. Consequently, the reader was directed from paragraph 7.29 of Policy TSM 5 to CTY4 of PPS 21 which dealt with the conversion and re-use of existing buildings.

The policy thrust of CTY 4 was in regard to older buildings in the countryside in order to secure their retention and reuse.

With the introduction of the Strategic Planning Policy Statement there was a change of policy direction and therefore this was the primary policy for consideration over CTY 4 regarding the conversion of existing buildings.

The SPSS at paragraph 6.73 provided clarity when dealing with conversion of buildings and took precedence over CTY4 as there was a policy change from a 'suitable building' to a 'locally important building'.

It could not be argued that the proposal was a locally important building as interpreted within the policy.

It was a garage that had been clad to the front and while making it distinctive, it did not make it locally important. By considering this building as locally important would be sending out the message that by carrying out certain works to existing buildings in order to make them distinctive or stand out would be thus making it locally important. It was not what the policy intended.

While it was acknowledged that each application must be assessed on its own merits, the PAC also stressed the importance of locally important buildings – one appeal being dismissed within the Borough.

In summary, whilst acknowledging the particular circumstances of each application, the Council's Planning Department had sought to apply the policy for tourism proposals in a consistent manner.

An inconsistency of approach to the application could open the Council to potential challenge. The policy on conversion of a locally important building was surely not

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meant to permit the cladding of a garage building to make it a more modern or quirky building and then being able to convert to another use, one which was also not supported under the Tourism policy.

To authorise this would set a precedent for other people to construct or reuse a building, convert it, and then have a dearth of such 'tourism' properties. By setting the precedent for such forms of development could detrimentally change the character of an area whereby there were more traffic movements, and amenity issues.

The Planning Department was not against the development of tourism provision within the Borough and had approved proposals for tourism along the Ards Peninsula such as glamping pods and self-catering in the countryside such as self-catering pods.

The approval of the proposed development would have the potential to create a precedent for future applications that would undermine the policy. Compliance with planning policy was in the public interest and a matter of acknowledged importance.

Refusal of planning permission was therefore recommended.

Alderman McIlveen outlined the reasoning for his call-in on the application, advising that he wished to draw out SPPS 6.265 which referred to a positive approach to determining applications in relation to tourism and development which also included rural areas and Areas of Outstanding Natural Beauty (AONB). He felt that the planning officer had not put enough weight on that particular part of planning policy when assessing this application.

The Head of Planning advised that as with every planning application, all aspects had been weighed up and policy CTY 4, in relation to the conversion, had been the determining factor for the recommendation to refuse and the whole proposal had fallen under that particular test, so therefore the tourism and AONB aspects had not carried as much weight.

Responding, Alderman McIlveen took the view that the CTY 4 policy was not exclusive to older buildings and felt the opinion taken by the case officer had been too restrictive in terms of the tourism objectives set out in the planning policy which he had referred to.

Explaining that policy, the officer advised that the intention was to seek the retention of locally significant buildings and the bar had been set high because there had been incidents of the policy being abused as it was hard to interpret what should be considered as a significant building. The policy had therefore sought to address this and referred to conversions of churches and old school buildings, for example.

She added that an old farmhouse had been approved for conversion at Greengraves Road under this policy previously and alluded to further examples of glamping pods approved under the tourism policy for the southern shores of the Ards Peninsula.

The officer warned that if the existing application was approved then it would send a message that any garage which was prominent from the roadside would be worthy of conversion. There were many examples in equally attractive areas and that was the reason why the bar was set high with the policy setting clear direction for what should be considered as a significant building. She referred to a conversation of an outhouse on Thorny Hill Road which had been refused planning permission previously despite being in close proximity to part of the Columban Way.

Alderman McIlveen felt that Strangford Lough was different, describing it as a huge tourism asset for the Borough and pointed to the sustainability objective within in the SPPS, arguing that conversion was more sustainable than allocating portions of land for glamping pods. In terms of a precedent being set for other similar types of conversions, he argued that each application was always assessed on its own merit and therefore felt that should not be a factor.

Councillor Cathcart was concerned that CTY 4 was too restrictive in terms of the types of buildings it sought to retain and furthermore restricting the Borough's tourism potential. He did not see a danger for setting a precedent, pointing out that he could not envisage anyone wanting to spend a night in his own garage in the suburbs of Bangor. This application should be assessed in the context of the location and the tourism potential.

As a conversion of an existing building, he asked what harm officers felt the proposed use would bring and what would happen if it was an application for the change of use from an existing dwelling to a holiday let.

In terms of the potential harm, the Head of Planning explained this was an unauthorised conversion of a garage to tourist accommodation and the harm was that allowing it to continue on that basis was not taking account of the main policy consideration of the relevant SPPS in regard to conversions.

Change of use from a dwelling to a holiday let would still be considered under the same policy. A holiday let changed the nature of that use of the building and there were impacts on comings and goings of guests to the property and impacts on neighbours to take into account.

Councillor McClean agreed with previous comments and had always been of the understanding that regardless of any precedent, each application needed to be considered on their own merits. He felt that if anything ever came to the planning committee that was deemed detrimental to the area, then it was the responsibility of the committee to refuse that regardless of any precedent.

He was of the understanding that the policy's direction was to look favourably on locally important buildings and did not necessarily state that refusal should be applied if a building was deemed not be of local importance. He asked for clarity on that and the Director of Prosperity added that the SPPS was applying a higher test than what was in PPS 21 in relation to suitably important buildings. The PAC had set out what it considered to be in that category and those PAC decisions had never been subject to a successful Judicial Review. Therefore William Orbison QC would advise this to be a clear material consideration for planning authorities.

On that basis, this was not considered to be a locally important building, of historical or architectural value, where allowing it to operate as tourist accommodation would retain and secure its future.

The chair invited Mr Jason Martin (agent) to join the meeting who spoke in favour of the application and had submitted the attached speaking notes.

The Chair invited questions from Members to the speaker.

Alderman McIlveen referred the speaker to his earlier comments which suggested planners had not taken in to account the policy around tourism and asked the speaker for his own thoughts on that.

Mr Martin felt there was a balance to be struck and this was a very niche application and 'slapping cladding' on any other building would not work in many other locations.

It was the mix of the location and the architectural importance of the building and he felt that the group of buildings in that area, on that part of the road made this application suitable under SPPS. If you were to take away the public visibility it would become less important, but it was the prominence on Strangford Lough mixed with architectural features of other buildings that made it of local importance. He felt that the new and old policies failed to provide clear direction on tourism for Northern Ireland and we were relying on policies that were created 10 and 20 years ago. The tourism industry in Northern Ireland had changed in terms of more demand for staycations and planning policy had failed to keep up with that.

He argued that there was a severe lack of accommodation in the Borough and a balance needed to be struck. Precedents were not being set because every application had to be assessed on its own merit. He added that there had been no objections to the application from any of the statutory consultees or neighbours.

Alderman McIlveen asked about the online ranking of the accommodation referred to in the speaker's notes and Mr Martin advised it was ranked in the top 13 quirky accommodations on Buzzfeed for the whole of the United Kingdom.

In a further query, Alderman McIlveen asked the speaker for his view on the need to assess the application on the building's previous use as a garage.

Mr Martin stated that the building had not been used as a garage for a number of years and under permitted development there had been no requirement to apply to change the garage into a garden room when it was used for the occupants.

Responding to a further query from Alderman McIlveen, the speaker added that if the application was unsuccessful the building would be maintained as a garden room and not as a garage. He believed that this met the requirements of permitted development. He felt that the building should be assessed on its current physical appearance.

Responding to queries from Councillor McClean, Mr Martin confirmed the property was last used as a garage in 2017. He agreed it was right not to grant permission to every single garage for conversion to a holiday let and that there had to be certain parameters and he felt that given the prominence of the building and the architecture it should be considered suitable under 6.73 of SPPS which while not an exhaustive list, it was not an explicit one. He confirmed that the accommodation looked the same now as it did as a garden room which had been used by friends and family.

Pointing to the retrospective aspect of the application, Councillor McClean asked why permission was not sought previously and the speaker advised that the physical changes were done under permitted development but he could not comment why his client had not sought planning permission for the change of use but he had acted immediately to try and resolve the matter once he had received an enforcement letter.

In response to a question from Councillor Cathcart, Mr Martin confirmed that the building had become a property let in 2018.

Councillor Walker understood that the building had been used as a holiday let from 2021 but it was clarified that the enforcement action was taken in 2021.

Mr Martin clarified for Councillor Walker that it was used from 2017 to 2018 as an extra room for the house and even now was blocked out for personal use by the occupants.

Responding to a final query, Mr Martin confirmed to the chair that the client had evidence that the building was used for private use in 2017.

The Chair thanked the speaker for attending.

Alderman McIlveen had taken an approach from a tourism point of view and recognised that Mr Martin's argument was that the building was of special character. He asked officers for a specific definition of special character.

The Head of Planning referred him to the wording of section 6.73 which mentioned locally important buildings such as a former schoolhouse, churches and older traditional barns. The thrust of the policy was for older buildings and not for garages with finishes that made them more noticeable.

He asked for clarity if there was anything in the PAC decisions that defined locally important or if the list she had referred to was exclusive. The officer did not believe the list was exclusive but she said that the building was not architecturally significant. It was only because of the distinctive finishes added to the building that made it stand out but this did not make it locally important.

Alderman McIlveen pointed out that members were being asked to consider this as a garage conversion, however Mr Martin had advised that works had been undertaken under permitted development to convert it to a summer house which had been its most recent use. The officer confirmed that the building was being assessed on its

existing visual appearance and the images of a garage had been provided for context as was normal practice.

Councillor Walker thanked Alderman McIlveen for calling in the application as it had highlighted issues in planning legislation, but he felt that there was nothing that could be done in the existing meeting that would enable the Planning Committee to grant planning consent. He agreed the policy was too restrictive and he had been concerned to hear that Tourism NI determined the certified status of holiday lets and did not check if a facility had planning permission.

Given the policy restrictions, he indicated that he would be reluctantly proposing the officer's recommendation to refuse planning permission.

Proposed by Councillor Walker, seconded by Councillor McAlpine, that the officer's recommendation be agreed and planning permission be refused.

Referring members to his earlier comments, Councillor Walker added that the issues and restrictions highlighted by this application needed to be reviewed and considered in the Local Development Plan.

Alderman McIlveen could not support the proposal, arguing that Members should not be slaves to policy and felt that the SPPS had been interpreted very narrowly and to completely eradicate CTY 4 seemed a step too far. There had been issues previously in relation to interpretation of SPPS and these had largely been untested through the court. In this case it was important to look at strategic policy in relation to tourism and the positive approach that was directed. He appreciated the reluctance from Councillor Walker but he could not support his proposal.

On being put to the meeting, with 7 voting FOR, 7 voting AGAINST, 1 ABSTAINING and 1 ABSENT, the Chair used his casting vote against, and the proposal FELL.

The voting was as follows:

FOR (7)	AGAINST (7)	ABSTAINED (1)	ABSENT (1)
Councillors:	Aldermen:	Alderman:	Cooper
Brooks	McIlveen	Gibson	
McAlpine	Keery		
McKee	Councillors:		
McRandal	Adair		
Moore	Cathcart		
Smith P	Kennedy		
Walker	McClellan		
	Thompson		

The Chair advised that he would use his casting vote to vote against the proposal. He felt that it was important to allow the application for the tourism related reasons that had been articulated by his colleagues. It was also an existing building that was successful.

Alderman McIlveen proposed, seconded by Alderman Keery, to grant planning permission with delegated authority for Planning Officers to attach appropriate conditions.

Alderman McIlveen appreciated the discussion and the representation made by officers and felt that there was a keen wish for Council to see its tourism offer develop and in that case, taking in to account the planning policy statement, on balance with the aspects of the policy in regard to conversion of the building, he felt this was a sympathetic conversion. This was a change of use from a striking summer house that was a prominent feature along that particular road and it was not something that would be of harm to the surrounding area. He felt it should be considered under the CTY 4 policy.

Councillor McClean echoed those comments, feeling that the restrictions were not consistent with any of the Borough's tourism objectives. He felt the building stood in marked contrast from other buildings in that area and he had driven past it many times and had been impressed by its appearance. He did not fear precedents, and he would like to see the policy reviewed as this was an extraordinary restrictive position and the policy was not fit for purpose. On balance therefore, he would be supporting the proposal.

Referring to his earlier comments, Councillor Walker was sympathetic to the application but could not support the proposal to approve it. He was aware of other buildings along the same stretch that were not pebble dashed with brown windows, as had been alluded to earlier in the debate, and those buildings were also architecturally impressive, and this particular building in question was not any more significant than those. It was the restrictive policy that the Planning Committee was guided by however that needed to be reviewed.

Councillor P Smith took a similar view, he was torn by the application as Council did want to support its tourist industry and this was a small attempt to do so. Ultimately though, he felt it did not meet the definition of a locally important building and was sympathetic to the application and the policy restrictions, but he could not support it.

On being put to the meeting, with 8 voting FOR, 7 voting AGAINST, 0 ABSTAINING and 1 ABSENT the proposal was declared CARRIED.

FOR (8)	AGAINST (7)	ABSTAINED (0)	ABSENT (1)
Aldermen:	Councillors:		Cooper
Gibson	Brooks		
McIlveen	McAlpine		
Keery	McKee		
Councillors:	McRandal		
Adair	Moore		
Cathcart	Smith P		
Kennedy	Walker		
McClean			
Thompson			

RESOLVED, on the proposal of Alderman McIlveen, seconded by Alderman Keery, to grant planning permission with delegated authority for Planning Officers to attach appropriate conditions.

4.2 LA06/2022/0437/F ACCESS POINT AND DRIVEWAY TO DWELLING, TO INCLUDE PILLARS AND WALLS - 18 MILLBROOKE ROAD, BANGOR

PREVIOUSLY CIRCULATED: Report outlining the planning application.

DEA: Holywood & Clondeboye

Committee Interest: A Local development application 'called-in' to Planning Committee from the delegated list w/c 23 January by a member of that Committee

Proposal: Access point and driveway to dwelling, to include pillars and walls

Site Location: 18 Millbrooke Road, Bangor

Recommendation: Refusal

It was noted that item 4.2 had been withdrawn following the withdrawal of the above planning application.

5. UPDATE ON PLANNING APPEALS

PREVIOUSLY CIRCULATED: - Report from the Director of Prosperity detailing the following:

Appeal Decisions

1. The following appeal was dismissed on 15 February 2023.

PAC Ref	2022/A0023
Application ref	LA06/2021/0698/LBC
Appellant	Mr James Woods (Castlereagh Ltd.)
Subject of Appeal	Demolition of structurally unsound and dangerous listed building HB24/01/139
Location	2 – 4 Church Street, Portaferry

The Council refused this application on 20 April 2022 for the following reason:

- i. The proposal was contrary to paragraph 6.15 of Strategic Policy Planning Statement for Northern Ireland and Policy BH 10 of PPS 6 in that the development would if permitted result in the loss of a listed building and no exceptional reasons had been provided to outweigh its loss.

The building subject of the appeal was a grade B1 listed building (ref. HB24/01/139).

Policy BH10 of PPS6 states there would be a presumption in favour of retaining listed buildings. It went on that the demolition of a listed building would not be

permitted unless there were exceptional reasons why the building could not be retained in its original or a reasonably modified form.

Where, exceptionally, listed building consent was granted for demolition this would normally be conditional on prior agreement for the redevelopment of the site and appropriate arrangements for recording the building before its demolition. No new scheme for redevelopment of the site was submitted to the Council as a separate but accompanying application.

The Appellant questioned the special architectural and historic interest of the building. He considered that it possessed no special architectural features, nor had any historic interest beyond its age. Consultee HED and in attendance at the appeal described the building as having local historic interest by virtue of its irregular internal plan form, as well as its age.

The Commissioner acknowledged the information submitted in the Appellant's structural report, Risk Assessment and other supporting information however the personnel involved in compiling the reports did not have specialisms in conservation issues pertaining to old buildings. It was therefore accepted that the Council's report was better positioned to assess the matter of retention with regard to such a building given the specific specialism in conservation engineering and greater weight was placed in the overall assessment contained in the Council's report and it was not accepted that the building was beyond saving.

The Commissioner accepted the Council's position that the building could be made whole, with acceptable modifications and while it would be an expensive and laborious process, it remained possible, though challenging.

The building subject of the appeal still possessed historic features, arising from the age and design of the building, worthy of retention. It would not be in the public interest to permit demolition. Consequently, the Commissioner considered the demolition of the building would be contrary to Policy BH10 of PPS6 and the related provisions of the SPPS, the Council had sustained its reason for refusal and the appeal failed.

2. The following appeal was allowed on 16 February 2022.

PAC Ref	2021/E0043
Application ref	LA06/2021/0207/LDP
Appellant	Mr P. Babb
Subject of Appeal	Commencement of development approved under planning application X/2006/0011/RM
Location	32d Quarter Road, Cloughey, Newtownards.

The Council refused the above application on 24 August 2021 as taking account of the evidence provided and the information available to the Council consider that the planning permission X/2006/0011/F was not lawfully implemented prior to its expiry date.

Application X/2006/0011/RM for a replacement dwelling approved the reserved matters associated with X/2002/0974/O on 15 June 2006.

Condition 1 stated that the development shall be begun by whichever was the later of the following dates: - the expiration of a period of 5 years from the grant of outline planning permission; or the expiration of 2 years from the date hereof. In this case, two years from the date of the reserved matters approval was 15 June 2008 and five years from the date of the outline approval was 6 March 2008. Therefore, the critical date for implementing the approval was 15 June 2008.

The onus was therefore on the appellant to demonstrate that any work of construction in the course of the erection of the buildings were carried out at the site prior to 15 June 2008. The Commissioner accepted that the laying of foundations and construction of a brick course upon those foundations amounted to works of construction in the course of the erection of the buildings. The Council was of the opinion that it would be impossible to ascertain when those works were carried out without Building Control records or aerial imagery.

While evidence was submitted from several sources to demonstrate works were ongoing, the works stated on the Building Control records themselves did not amount to works of construction in the course of the erection of the buildings.

Evidence submitted included two letters from contractors who carried out the works to demonstrate that the foundations and block course were laid shortly after the building control inspection of 16 August 2007, but Council suggested that the lack of corroborating information along with these letters, such as receipts or bank statements, should be afforded less weight.

The commissioner did not share the Council's view as the letters from the contractor's indicated that the foundations were constructed as part of the wider works at the site in August 2007 and Council did not provide a sufficiently persuasive argument which would cause the Commissioner to doubt the veracity of the appellants evidence around this matter.

As such the Commissioner was satisfied on the balance of probabilities, that the foundations had been in situ since August 2007 and the construction works undertaken represented an appropriate and timely commencement of the approval.

3. The following appeal was dismissed on 22 February 2023

PAC Ref	2021/A0144
Application ref	LA06/2019/0609/O
Appellant	Mr Henry McDowell
Subject of Appeal	2 no. infill dwellings and garages
Location	Land between 10 & 12 Ballycreely Road, Comber

The Council refused this application on 04 November 2021 for the following reasons.

- i. The proposal was contrary to the provisions contained in the Strategic Planning Policy Statement for Northern Ireland and Policy CTY1 of

Planning Policy Statement 21, Sustainable Development in the Countryside, in that there were no overriding reasons why this development was essential in this rural location and could not be located within a settlement.

- ii. The proposal was contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal did not constitute a small gap sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and would, if permitted, result in the extension of ribbon development along the Ballycreely Road.
- iii. The proposal was contrary to the provisions contained in the Strategic Planning Policy Statement and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal would, if permitted, extend the existing ribbon of development along Ballycreely Road and would further erode the rural character of the area due to a build-up of suburban style development when viewed with existing buildings.

The Commissioner was of the opinion that the plot size analysis provided by the Council was reasonably accurate and the average plot size was representative of the existing plots along the frontage which could accommodate more than two dwellings.

While it was argued that the plot sizes of the two proposed dwellings accorded with those of adjacent dwellings when looking at them in isolation, this was not representative of the character of development as a whole along the frontage. Subsequently, the appeal site did not represent a small gap site sufficient only to accommodate up to a maximum of two houses and would fail to respect the existing development pattern along the frontage in terms of size, scale, siting and plot size.

The Commissioner sustained the Council's second reason for refusal as it was considered that the appeal development would add to an existing ribbon of development and was not an exception under the policy and was therefore contrary to Policy CTY8 of PPS21 and the related provisions of the SPPS.

The Commissioner also considered and upheld objector's concerns regarding visual integration and the appeal development would fail to satisfy Policy CTY13 of PPS21 when read as a whole and the related provisions of the SPPS.

The Commissioner considered that the loss of the visual gap of the appeal site and consequent further erosion of rural character would be contrary to Policy CTY14 of PPS21 and the related provisions of the SPPS and therefore Council's third reason for refusal was sustained.

Objectors concerns regarding road safety were not upheld and concerns raised regarding surface water run off following high periods of rainfall were considered to be a civil matter.

All the PAC reports on the cases above were appended to this report.

New Appeals Lodged

4. The following appeals were lodged on 15 and 17 February respectively.

PAC Ref	2022/A0192
Application ref	LA06/2022/0346/O
Appellant	Richard Topping
Subject of Appeal	Infill site for 2 No. dwellings with domestic garages
Location	Between 32 and 34 Castle Espie Road, Comber

PAC Ref	2022/A0193
Application ref	LA06/2020/1008/O
Appellant	Ashton Fraser Investments
Subject of Appeal	Erection of 9 Dwellings with access off Messines Road (Right turning Lane provided)
Location	Lands immediately North of 10-18 Cambourne View and 17 Cambourne Park Newtownards

Details of appeal decisions, new appeals and scheduled hearings could be viewed at www.pacni.gov.uk.

RECOMMENDED that Council notes this report.

AGREED TO RECOMMEND, on the proposal of Alderman McIlveen, seconded by Councillor McRandal, that the recommendation be adopted.

6. PLANNING SERVICE UNIT PLAN (2023/24) (Appendix IV)

PREVIOUSLY CIRCULATED: - Report from the Director of Prosperity detailing the following:

Since 2017/18 Service Plans had been produced by each Service in accordance with the Council's Performance Management policy.

Plans were intended to:

- Encourage compliance with the new legal, audit and operational context;
- Provide focus on direction;
- Facilitate alignment between Corporate, Service and Individual plans and activities;
- Motivate and develop staff;
- Promote performance improvement, encourage innovation and share good practice;
- Encourage transparency of performance outcomes;
- Better enable us to recognise success and address underperformance.

A draft plan for 2023-24 was attached, which had been developed to align with objectives of The Big Plan for Ards and North Down 2017-2032; the draft Corporate Plan 2020-24 and the draft Annual Performance Improvement Plan (PIP). The Plan would also support delivery of the Integrated Strategy for Tourism, Regeneration and Economic Development 2018 -2030. The agreement of the plan would also aid toward achievement of the Council's performance improvement duties under the Local Government Act (NI) 2014.

The Service Plan highlighted where the service contributed to the Corporate Plan and, where this was the case, set out the objectives of the service for the 2023-24 year. It further identified the key performance indicators used to illustrate the level of achievement of each objective, and the targets that the Service would try to attain along with key actions required to do so.

The plan had been developed in conjunction with staff, officers and management and in consultation with key stakeholders where relevant and took account of budget setting coming out of decisions made in relation to setting of the rate, under works not being commenced and associated risks.

The plan was based on the agreed budget. It should be noted that, should there be significant changes in-year (e.g., due to Council decisions, budget revisions or changes to the PIP) the plan may have needed to be revised.

The Committee would be provided with update reports on performance against the agreed plan.

RECOMMENDED that Council agrees the attached Planning Service plan.

Referring to the 15-week processing time target for local development applications, Councillor Cathcart noted that pre-Covid the Planning Service had been extremely close to meeting that target however there had been setbacks post-Pandemic and he asked what action was being taken to address an adverse in processing times. In addition, he asked what progress was being made on meeting the eight-week target to process householder development applications.

The Head of Planning advised that officers were actively working to improve those processing times, in particular the householder applications. She referred to technical issues in relation to the MasterGov system which had caused the recent delays to applications and it was a matter of working through those glitches, as reported at the last Planning Committee meeting. She advised that there had been some recent improvement to processing times following that ongoing work.

The Director of Prosperity referred to staffing pressures and increased demand on the service, post-Pandemic, and that had brought further impacts, particularly in respect of the householder team. While the Planning Service was not hitting the eight-week target, the vast majority of applications were being processed within the previous 15 week target, but efforts were being made to reduce that timescale to eight weeks.

The Director advised that discussions were ongoing with statutory consultees to reduce response times and as part of a wider improvement scheme across Northern Ireland, her department was working to improve the system in terms of introducing statutory validation check lists which would enable officers to refuse an application early in the process if it failed to contain necessary criteria. This would resolve front-loading issues on the service.

Councillor Cathcart appreciated those efforts, adding that a speedy planning system helped to bring economic growth and investment to the area. He asked how other Councils compared to Ards and North Down's reported processing times.

The Director cautioned against comparison due to the variances in staff levels and the number of different types of applications across different Council areas. For example Belfast, Londonderry, Armagh and Banbridge might have had more major applications on the system while other areas had a much smaller number of applications. The figures were available on the quarterly statistics that would be provided in the quarterly updates. The Quarter 3 Performance Report was due to be provided but unfortunately the Department for Infrastructure had been delayed in providing the statistics. The Planning Committee would be provided with those figures once available.

Councillor Cathcart noted the irony that the DfI which set the targets had been delayed in providing the figures, including the delay the around the Queen's Parade development which had greatly affected those figures.

AGREED TO RECOMMEND, on the proposal of Alderman McIlveen, seconded by Councillor Cathcart, that the recommendation be adopted.

7. UPDATE ON TREE PRESERVATION ORDERS

PREVIOUSLY CIRCULATED: - Report from the Head of Planning stating that this report represented the quarterly update to Planning Committee regarding detail relating to Tree Preservation Orders served and applications for consent to carry out works to protected trees.

The table attached set out the figures from the date of the last report to Committee.

RECOMMENDED that the Council notes the content of this report.

AGREED TO RECOMMEND, on the proposal of Alderman McIlveen, seconded by Alderman Keery, that the recommendation be adopted.

EXCLUSION OF PUBLIC/PRESS

AGREED, on the proposal of Alderman McIlveen, seconded by Councillor McClean, that the public/press be excluded during the discussion of the undernoted item of confidential business.

8. UPDATE ON ENFORCEMENT MATTERS

(Appendix V)

*****IN CONFIDENCE*****

*****NOT FOR PUBLICATION*****

SCHEDULE 6 – Information relating to the financial or business affairs of any particular person (including the Council holding that information)

RE-ADMITTANCE OF PUBLIC AND PRESS

RESOLVED, on the proposal of Alderman McIlveen, seconded by Alderman Keery, that the public/press be re-admitted to the meeting.


TERMINATION OF MEETING

The meeting terminated at 8.36pm.

ITEM 4.1

Ards and North Down Borough Council

Application Ref	LA06/2015/0677/F
Proposal	Replacement of existing structure with 1 No. single storey unit to accommodate stables, coach house, tack room, workshop and toilet
Location	251a Bangor Road, Whitespots, Newtownards DEA: Newtownards
Committee Interest	A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation
Validated	28/10/2015
Summary	<ul style="list-style-type: none"> • Proposal originally submitted was for 3 sheds, deemed to be unacceptable and through negotiation reduced to one shed. • Stables are for the use of the applicant only and will not be open to clients, customers, or members of the public • Enforcement history associated with application site – proposal will replace existing shed on site. • Current condition of site - dilapidated structures and old horse boxes, detracts from the visual amenity and character of the landscape • Site is located within a Local Landscape Policy Area (LLPA): 'Whitespots, lead mines, Golden Glen and associated lands' • 11 objections received from 6 separate addresses – issues raised include principal of development, septic tank, access, prominence, land ownership and information on application form. All material issues raised considered within Case Officer Report • All consultees content subject to conditions • Associated section 76 legal agreement limiting proposal to domestic use to prevent intensification onto protected route (Bangor-Newtownards Dual Carriageway)
Recommendation	Approval
Attachment	Item 4.1a – Case Officer Report

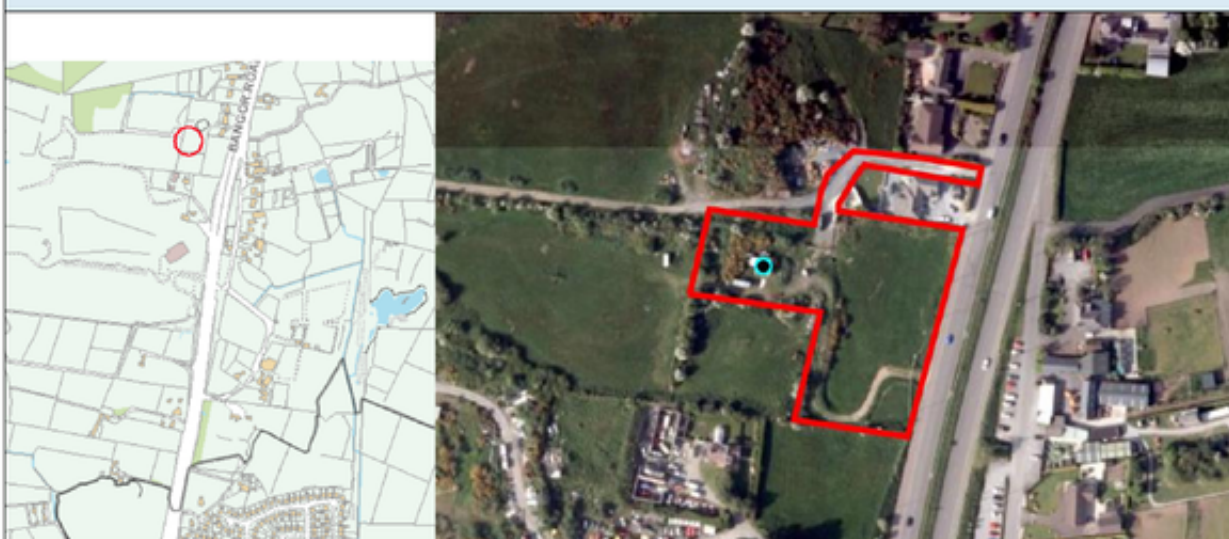
Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2015/0677/F	DEA: Newtownards	
Proposal:	Replacement of existing structure with 1 No. single storey unit to accommodate stables, coach house, tack room, workshop and toilet		
Location:	251a Bangor Road, Whitespots, Newtownards		
Applicant:	Mr P Finnegan		
Date valid:	28/10/15	EIA Screening Required:	No
Date last advertised:	03/02/22	Date last neighbour notified:	26/01/22
Letters of Support: 0	Letters of Objection: 11 from 6 separate addresses	Petitions: 0	
Consultations – synopsis of responses:			
DFI Roads	No objections		
Environmental Health	Content subj to conditions		
NI Water	Standing Advice		
NIEA: Regulation Unit	Content subj to conditions		
NIEA: WMU	Advice and guidance		
Summary of main issues considered:			
<ul style="list-style-type: none"> • Principle of development • Visual Amenity • Impact of the proposal on the character of the countryside • Impact on Biodiversity • Access & Road Safety 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

1. Site and Surrounding Area

The proposed site is located on the western side of Bangor Road, to the north of Newtownards. The land rises from the road upwards in a westerly direction. The site is accessed via a laneway that runs from the Bangor Road along the northern side of No. 251 and then it turns along the rear of this property and opens out into a roughly levelled area. There is a sloping field between this level area and the roadside. The area would appear to have been infilled with rough hard-core material at some stage in the past to level the ground out. There are two horse lorries, one which consists of the back portion of the lorry only and the other one appears to have been in situ for a considerable period of time and is not in working order. Another lorry which appears to be an old army type model is also on the site and again does not appear to have been moved in some time. There are various pieces of scrap metal strewn around the site. There are also a number of scrap vehicles on the site and an old trailer. There is a makeshift shed on the site consisting of a wooden frame with sheet metal cladding which is divided up in different sections. The application is effectively for the replacement of this shed. There are a number of dwellings adjacent to the road along this section of Bangor Road.



2. Site Location Plan



3. Relevant Planning History

X/2013/0142/O: 251a Bangor Road, Newtownards; Farm dwelling, detached garage and new access - Withdrawn 18 December 2014

The above application was recommended for refusal under Planning Policy Statement 3 (Access, Movement and Parking) grounds and in addition, the proposed dwelling could not cluster with any existing farm buildings.

Enforcement History on site

X/2014/0047/CA: Alleged unauthorised infilling of land
Case closed as breach remedied by removal of imported waste material used for the unauthorised infilling

X/2015/0001/CA: Alleged unauthorised Shed
Enforcement Notice served requiring removal of shed and associated foundations. Case closed as complied with

LA06/2015/0075/CA: Alleged unauthorised change of use of land to manufacture of equestrian/equine equipment
Case closed as no breach identified

LA06/2015/0030/CA: Alleged unauthorised creation of new access onto a protected route:
Case closed as no breach identified

LA06/2015/0187/CA: Alleged unauthorised change of use of agricultural access for other purposes, via new field gate on Protected Route
Case closed as use of access not demonstrated to be for any other purpose other than agriculture and as such would fall under agricultural permitted development - Class C, Part 7 [Agricultural Buildings and Operations] of The Planning (General Permitted Development) Order (Northern Ireland) 2015

LA06/2017/0156/CA: Alleged unauthorised advertisement for alleged unauthorised equine archery at site:
Case closed as no breach identified

LA06/2017/0157/CA: Alleged unauthorised change of use of land to equine archery business
Case closed as no breach identified

LA06/2017/0179/CA: Unauthorised construction of laneway from agricultural gate through field to land to rear
Case closed on 04 March 2022: The Council is content that the works meet the criteria under Part 7, Class C (Agricultural Buildings and Operations) of the Planning (General Permitted Development) Order (Northern Ireland) 2015.

The makeshift shed does not have any planning permission associated with it although from review of orthophotography it is clear that it has been in situ for a period in excess of 5 years and is therefore immune from enforcement action, however no Certificate of Lawfulness has been sought or granted in this regard.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP)
- Ards and Down Area Plan 2015
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 2: Natural Heritage (PPS 2)
- Planning Policy Statement 3: Access, Movement and Parking
- Planning Policy Statement 8: Open Space
- Planning Policy Statement 21: Sustainable Development in the Countryside

Planning Guidance:

- Building on Tradition: A Sustainable Design Guide for the NI Countryside (BoT)

Principle of Development

The proposal is for replacement of an existing structure with 1 No. single storey unit to accommodate stables, coach house, tack room, workshop and toilet

The site described above is in the countryside as defined in the Ards and Down Area Plan 2015 which operates as the Local Development Plan for the area. The site is located within a Local Landscape Policy Area (LLPA): 'Whitespots, lead mines, Golden Glen and associated lands'.

Policy CTY 1 of PPS 21: Sustainable Development in the Countryside sets out a range of types of development which are in principle acceptable in the countryside, and further highlights that other types of development will only be permitted where there are either overriding reasons why it is essential and could not be located in a settlement, or that it is otherwise allocated for development in a development plan.

The initial test in relation to the principle of development is therefore whether the proposal falls within a category of development under Policy CTY 1 which is in principle acceptable, or whether planning permission can only be justified through Policy CTY 1 on one of the 'fallback' bases, namely that:

- Overriding reasons can be shown as to why the development is essential and could not be located in a settlement; or
- The proposal is allocated for development in a development plan.

Further to the above, Policy CTY 1 states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for drainage, access and road safety.

The policy under which this proposal is being assessed is Policy CTY 1 in respect of non-residential development i.e. outdoor sport and recreational uses in accordance with PPS 8: Open Space, Sports and outdoor Recreation (PPS 8)

The proposal in the context of the Plan designation relating to the Local Landscape Policy Area is considered later in this report.

Policy OS3 of PPS8 entitled 'Outdoor Recreation in the Countryside' sets out that permission will be granted for the development of proposals for outdoor recreational use in the countryside where all of a number of criteria are met. Further, it states the following within the justification and amplification:

'The keeping and riding of horses for recreational purposes is increasingly popular in many parts of the countryside. Outdoor participatory recreational uses such as riding schools will normally be considered acceptable in principle, provided the scale of ancillary buildings is appropriate to its location and can be integrated into their landscape surroundings.'

Whilst the notes specifically refer to riding schools, the approach taken by the Commissioner in Appeal 2018/A0008, was that this would not '*bar consideration of other equestrian uses under the policy.*' The headnote does not distinguish between recreational facilities for personal use and larger commercial operations.

It must be noted that the proposal was originally for three new buildings on site and was associated with a business use. An amended application form and plans were received for the replacement of the existing structure with 1 No. single storey unit to accommodate stables, coach house, tack room, workshop and toilet. The agent stated on behalf of the applicant that the stables are for the use of the applicant only and will not be open to clients, customers or members of the public. Whilst the applicant will use part of the stables for commercial work connected to his business, the actual business use is carried out off-site. The following was stated within an email from the agent:

'Furthermore; I can confirm all lands and buildings are used solely by the Finnegans for equestrian and equine purposes associated with the breeding of horses (and all activities associated with this, including occasional visits by a vet and/or delivery of supplies), the training of horses (by Mr Finnegan) for carriage promotional work (this work being carried out off-site, on surrounding roads, in towns and villages) and the maintenance of carriages/coaches by the Finnegans.'

In addition to the above statement, the agent submitted copies of several horse passports. I consider such a use to be appropriate to the countryside and ascertain that it could not reasonably be accommodated within a settlement. The above policy does not set a minimum threshold for equestrian activity before which the erection of new buildings can be considered.

The proposed new shed will replace the existing dilapidated structure on site. Figures 1 and 2 show the existing three buildings to be removed and proposed site layout consisting of one building.

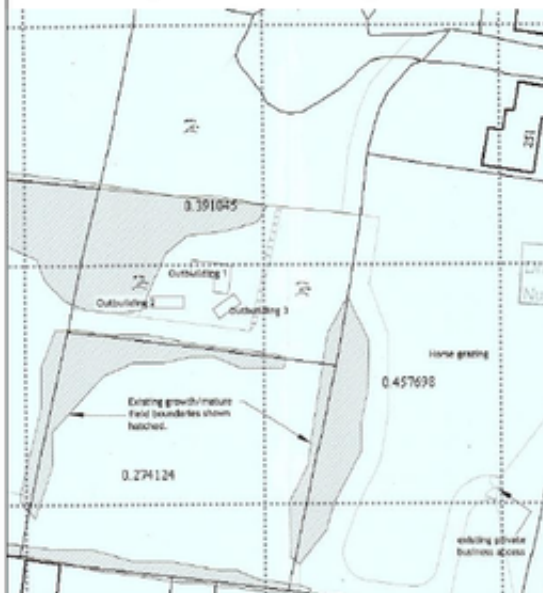


Figure 1: Existing Site Layout



Figure 2: Proposed Site Layout

The proposed shed measures 11m x 11m and will have a pitched roof with a ridge height of 4m. The shed will be a lightweight steel framed building finished in green corrugated cladding. Other finishes include clear translucent roof panels, timber sliding main central door and upvc windows. The proposed shed would be considerably larger than the existing outbuilding with a slightly higher ridge height. (see floorplan of existing and proposed to right hand side)



The shed will be located on the same footprint of an existing shed and will be placed within a field that is currently used for horse grazing. I do not consider there to be any loss of high value agricultural land as a result of this application. The current condition of the site, with dilapidated structures and old horse boxes, takes away from the visual amenity and character of the landscape. I am of the professional opinion that a new shed with additional landscaping will improve the visual amenity of this existing site, further to removal of the existing structures.



The proposed shed will be situated on an elevated site which sits above the carriageway between Bangor and Newtownards. Image 1 below shows the existing site from the road.



Image 1: Existing site as viewed from the main road travelling north toward Bangor

As the site is within a prominent position, I had concerns that there would be sustained views of the shed when travelling along both sides of the carriageway. Given the shed will effectively replace the existing dilapidated shed/structure on site, the new shed will not be considerably more prominent. There is a line of existing vegetation growth/field boundaries which will help screen the shed when travelling from Newtownards which will be conditioned to be retained. In order to help with screening when travelling from Bangor, the agent included landscaping measures within the proposed site plan. This consists of 6 native species varying between 4 – 5.5m in height. This landscaping will be vital in integrating the building into the landscape and will help screen the shed from these public viewpoints along the carriageway. The proposed landscaping scheme will be conditioned to be carried out during the first planting season following erection of the building.

There will be no adverse impact upon features of importance to nature conservation, archaeology or built heritage.

Visual Amenity & Integration into Landscape

Policy CTY 13 and CTY14 of PPS 21 have been considered in regard to this application. As assessed previously, I am satisfied that the proposal will integrate sympathetically into the surrounding landscape and the proposed building will not cause a detrimental change to, or further erode, the rural character of the area. The existing and proposed landscaping will help screen the building from view and soften the visual impact of the new building. The existing outbuilding has a ridge height of 3.7m. The proposed shed is only 0.3m higher than this therefore it is not considered that this proposal will have a significantly greater visual impact.

The site is located within an LLPA: Ref LLPA 3: Whitespots, Lead Mines, Golden Glen and associated land. The Plan sets out those features or combination of features that contribute to the environmental quality, integrity or character of these areas. In relation to this particular designation I have reviewed those features which would be relevant to this site, noting that the LLPA designation covers nearly 300ha,

and further to application of Policy CON 2 within the ADAP which 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, I am content given the structure will replace an existing shed/outbuilding and additional landscaping is proposed that the proposal will not have a major detrimental impact upon the visual amenity of the LLPA.

Residential Amenity

The proposal is not considered to unduly affect the privacy or amenity of neighbouring residents. The closest dwelling at 251 Bangor Road will be approximately 55m from the stables. Given the stables will accommodate a workshop/tool store, the Council's Environmental Health Department (EHD) was consulted on the proposal and offered no objections in relation to noise issues. EHD did propose an informative stating that the applicant should be advised to ensure that all plant and equipment used in connection with the development is so situated, operated and maintained as to prevent the transmission of noise to nearby dwellings. I consider this should be secured by a planning condition rather than merely referred to in an informative, which has no legal standing and is unenforceable.

Road Safety and Access

The application form indicates that there will be no additional traffic generated by the proposal and it will be for private use only. There is a gravel laneway leading from an agricultural gate adjacent 251 Bangor Road to the site. The development proposes to utilise this access coming off the Bangor Road, which is a protected route. DFI Roads was consulted on the proposal and stated the following:

'No objections providing this application is non-commercial and there will be little or no intensification in use of the existing access. These comments are on the basis that this is an exception to the Protected Routes Policy.'

Within PPS 3, Access, Movement and Parking, Policy AMP 3, examples are given to what can be considered exceptions to the Protected Routes Policy. Under (d) 'Other Categories of Development' it is stated that approval may be justified in particular cases for other development where access cannot reasonably be obtained from an adjacent minor road'. I am therefore of the professional planning judgement that the use of this access will not prejudice road safety or significantly inconvenience the flow of traffic.

DFI Roads had no objections providing the application is non-commercial. As stated previously, the main use of the building is for private stable use with a workshop/tool store which will be used by the applicant in connection with his carriage business. This is considered ancillary to the main use and is to support the applicant's business which is carried out off-site. The applicant has stated that there will be a maximum of 3 vehicles accessing the site on a daily basis. Development Control Advice Note 15 (DCAN 15) defines intensification of use as increasing the traffic flow using an access by more than 5%. Given the stables will not be open to members of the public, I do not consider there will be any intensification in use of the existing access. The

applicant has a right of way onto this laneway and currently uses it to access his fields upon which his horses graze.

Sewerage Disposal

The application form states that a septic tank and soakaway system will be used and that the surrounding land is within the control of the applicant. I am satisfied that the sewerage system would be a sufficient distance from third party dwellings and will not result in adverse pollution.

NIEA: Water Management Unit was consulted on the proposal and provided the following advice:

- All hardstand areas where the storage and handling of animal waste, animal feed or compost occurs must be located and designed to prevent runoff having a negative impact on the water environment.
- Any dung heaps associated with this development should be sited at least 10m away from any watercourse or drains.
- In order to reduce unnecessary run-off of surface water and to minimise the volume of dirty water produced at the site, hosepipes should not be left running to prevent dirty water from being generated by onsite activities.

It is considered that these requirements can be met by imposition of appropriate conditions.

Contaminated Land

It was identified at an early stage of this application that former activities within the surrounding area may have caused the land to be affected by contamination. A Preliminary Risk Assessment (PRA) was provided by Pentland MacDonald Ltd in support of this application which identified no unacceptable risk to environmental receptors.

NIEA: Regulation Unit was consulted and asked to provide comments on the PRA, considering the potential for contamination to be present at the site that could impact on environmentally sensitive receptors including groundwater and surface water. It has no objection subject to imposition of conditions.

The Council's Environmental Health Department (EHD) was also consulted and stated that the PRA determined that no potential contamination sources were identified at the site itself; however, there are several potentially contaminating previous land uses in the vicinity. EHD highlighted that the contamination associated with the historical landfill located to the southwest may pose a risk to the site; therefore, it was deemed appropriate that gas protection measures should be incorporated into the proposed building and as such EHD recommended conditions relating to such measures.

Designated Sites and Natural Heritage

Part 1 of NIEA's Biodiversity Checklist was employed as a guide to identify any potential adverse impacts on designated sites. No such scenario was identified. The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas and Ramsar sites has therefore been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995 (as amended).

In terms of protected and priority species, Part 2 of the Checklist was referred to and did not identify a scenario where survey information may reasonably be required.

Planning Agreement

The execution of a section 76 agreement to limit the use of the development proposal to domestic only was the most appropriate and robust mechanism to impose the required restrictions on the development in order to prevent the planning harm should the proposal be utilised for any commercial use identified by the Council during its consideration and that identified by its consultees. The proposed agreement will seek to ensure that the proposed shed is for private use only and will not have any commercial use associated with it.

5. Representations

A total of 11 objections were received for this application from six separate addresses. Further to the proposal being amended to one building rather than three separate buildings, one further objection was submitted from an existing objector.

Those material planning matters raised in submitted representations are summarised below:

- Principle of Development:** Several objectors stated that the existing shed/outbuilding on site does not have any planning permission and as such the application cannot be considered a replacement building. I have addressed this above under the section 'Principle of Development'. Given the existing outbuilding is immune from enforcement action, the proposed shed can be considered a replacement. In addition, a number of the objectors questioned the business use aspect of the business. As referred to previously, the applicant will use part of the stables for commercial work connected to his business, with the actual business use being carried out off-site. There is no existing business use on site and the fields are currently used for grazing horses.
- Septic Tank:** One of the neighbours stated that the applicant does not have a septic tank on the site. The p1 form indicates that a septic tank will be used to deal with sewerage disposal. Control of septic tanks is a matter for NIEA:WMU and would require consent accordingly. NIEA:WMU was consulted and offered no objections.

- **Access:** Several objectors stated that the proposal will result in intensification of the existing access onto a protected route. I have addressed these matters in detail under section 'Road Safety and Access' above.
- **New farmyard not in compliance with Policy CTY12:** Policy CTY 12 relates to Agriculture and Forestry Development and states permission will be granted for development on an active and established agricultural holding where certain criteria are met. This application is not for a new farmyard nor for development on agricultural holding, rather it is being assessed for a replacement building in relation to an equine business.
- **Prominence in the skyline:** One of the objectors stated that the shed will appear prominent. I have addressed these matters under section 'Principle of Development' above.
- **Land Ownership:** One of the objectors claims the 'existing right of way' access laneway is not in control of the applicant. Consequently, I contacted the applicant and asked for confirmation that Certificate C was filled in correctly. The agent confirmed the details within the P1 form were correct, which included ownership as detailed/signed as part of Certificate C with notice also served on other owners (of the access/laneway) on 03/10/15. The Council cannot become embroiled in landownership disputes as this is not a planning matter, rather a civil matter; however, the Council queried the veracity of the certificate due to the objector's concerns. If the objector does legally own the land, then he can prohibit the developer from gaining access over his land.
- **P1 form:** A number of the objectors highlighted that the existing use as described on the application form was misleading as it suggests there is an existing business use (horse breeding/carriage promotions). There is an existing dilapidated shed on the site, along with a number of scrap vehicles and an old trailer on the site. As stated previously, these are immune from enforcement action or do not constitute development. Objectors furthermore stated that whilst there are horses on the site, it is unclear whether the applicant is currently carrying out any business use. I have assessed the proposed use under 'principle of development' and have not stated there is a current business being operated on site but rather that there is an existing shed on site.

6. Recommendation

Grant Planning Permission

7. Conditions

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

Reason: To comply with the requirements of Section 61 of the Planning Act (Northern Ireland) 2011.

2. The stable building hereby approved shall be constructed in accordance with the materials and finishes in accordance with Drawing 05A, date stamped 24 January 2022.

Reason: To ensure the materials used are appropriate in the interest of maintaining the character of the surrounding countryside.

3. Prior to the commencement of any development, the existing structures shaded in green on Drawing No. 01, date stamped 27 October 2015, shall be demolished with all rubble and foundations removed.

Reason: In the interests of visual amenity and to prevent an accumulation of buildings on site.

4. All landscaping works shall be carried out in accordance with the approved details as shown on Drawing No.02a bearing the date stamp 24 January 2022. All new planting shall be permanently retained, as indicated on the same stamped drawing and shall be completed during the first available planting season after the erection of the building hereby approved.

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

5. 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 Council gives its written consent to any variation.

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

6. If during the development works, new contamination or risks to the water environment are encountered which have not previously been identified, works should cease and the Council shall be notified immediately. This new contamination shall be fully investigated in accordance with the Land Contamination: Risk Management (LCRM) guidance available at:

<https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks>.

In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Council in writing, and subsequently implemented and verified to its satisfaction.

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

7. Prior to the use of the proposed development, the applicant shall provide to the Council, for approval, a Verification Report. This report must demonstrate that the remediation measures outlined in the report entitled Preliminary Contamination risk assessment, 251a Bangor Road, Newtownards, Pentland Macdonald Ltd Report No. PM14- 1028 dated April 2014 have been implemented.

The Verification Report shall demonstrate the successful completion of remediation works and that the site is now fit for end-use. It must demonstrate that the identified potential pollutant linkages are effectively broken. The Verification Report shall be in accordance with current best practice and guidance as outlined by the Environment Agency. This report should be completed by competent persons in accordance with the Land Contamination: Risk Management (LCRM) guidance referenced above.

The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all the risks and achieving the remedial objectives.

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

8. Gas protection measures shall be installed, prior to the commencement of the use hereby approved and shall be retained in perpetuity, to meet the requirements of C665 Characteristic Situation 2, namely as a minimum:
- Concrete floor slabs
 - A proprietary gas and vapour resistance membrane
 - A passively ventilated under floor void

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

Informative

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.

Site location plan



Site Block Plan



Proposed Plans



RECEIVED
24 JAN 2022
0315/0677

Drawing Number... 05 A



- FINISHES**
- Lightweight steel framed building with corrugated cladding to walls and roof - colour Green.
 - Clear translucent roof panels for natural light.
 - Ceiling gutters and downpipes.
 - Timber sliding main central door to front elevation.
 - uPVC windows and partition doors.

Site Photos



Existing dilapidated shed on site along with scrap metal



Existing horse trailer and lorries



Public views of site along Bangor Road





Existing gravel laneway leading up to the site



Item 4.1c

Further Addendum to COR LA06/2015/0677/F

Following the publication of the case officer report in relation to the application referenced above, additional objection letters have been received. This has taken the total number of objections up to 15 from 7 different addresses.

The majority of issues raised have been addressed in the case officer report. The following issues were highlighted:

Address: The objector has stated that No. 251a does not exist and this does not refer to the applicant's residential address. The address is listed and shown on the Council's GIS and google maps. The applicant would have had to apply to Building Control to register this address on the site therefore this is not a planning matter. It is the responsibility of the agent and/or applicant to submit the correct details on the P1 form.

Preliminary Contamination Risk Assessment (PRA): The objector has stated that this assessment does not reflect the planning proposal as the report describes the proposal as a 'Farm Dwelling and detached garage', therefore the conclusions contained therein cannot possibly have any credibility or relevance to this agricultural / commercial proposal. The report states that historical landfill may have resulted in the land to be affected by contamination and the report identifies that there will be no unacceptable risk to environmental receptors. NIEA: Regulation Unit was consulted and offered no objections subject to imposition of conditions. The Council's Environmental Health Department (EHD) was also consulted and stated that the PRA determined that no potential contamination sources were identified at the site itself; however, there are several potentially contaminating previous land uses in the vicinity. EHD offered no objections subject to conditions. Both consultees were re-consulted on amended proposals and did not make any further comments. The findings in the report are relevant to the contamination of the site regardless of a proposed residential or commercial use.

Existing Commercial Business(s) operating from the site: Neighbours stated that there is no commercial business operating on the site. A number of the objectors highlighted that the existing use as described on the application form was misleading as it suggests there is an existing business use (horse breeding/carriage promotions). I have assessed the proposed use under 'principle of development' and have not stated there is a current business being operated on site but rather that there is an existing shed on site. One objector stated that the applicant had recently given evidence as part of a separate planning appeal regarding the commercial use of the site. This will not be considered as it does not form part of this application.

In addition, an objector has highlighted that the proposed block plan shows reference to an 'existing right of way business access'. This has now been removed from the plans therefore will not be 'stamped' upon approval/refusal of this application. Please see the amended block plan below:



Use not compatible with horses being kept on site: The objector stated that workshop activities such as carriage repairs and promotions are not typical equestrian activities, and the noise created by the repair work is likely to startle any animals nearby. Environmental Health was consulted and offered no objections to the proposed use or any issues with noise as a result. The agent has clarified that the workshop is for the applicant's personal use only.

Site was put up for sale: An objector stated that the site was put up for sale stating it had 'commercial' planning approval for stables. This was raised with the agent and applicant and the For Sale sign has since been removed given there was no planning permission on site (live application). If the application were to be approved, it will be subject to a planning agreement. The proposed legal agreement will ensure that the proposed shed is for private use only and will not have any commercial use associated with it. The agreement will be registered on the Statutory Charges register.

Increase in traffic movements: One objector stated that the applicant mentioned in the supporting statement that the proposal was required due to continuing growth of the businesses. The objector further elaborated that, by definition any growing businesses, this will surely have an increase in traffic therefore they have questioned the accuracy of the information provided in the P1 form which states there will be no increase in traffic movements. In addition, another objector stated that any change of use or development of the existing grazing ground would cause intensification of use & or increased vehicular movement and therefore under AMP3 of PPS3 - Protected Route Policy any form of development / business should be automatically refused. This has been covered in detail in section 'Road Safety and Access' in the COR. The agent has stated that the stables building is for the applicant's horses and for a workshop for repairs of carriages. The business use is carried out off-site hence the only traffic movements would include the applicant attending the site along with

occasional animal feed deliveries/vet check-ups. The use of the site will subject to a planning agreement as referred to above.

A comment was also received which stated that any car park or lane through the front field would also constitute development and again should be refused (or appropriate Planning Enforcement Notices served). There is an existing access in place with no new proposed access or parking shown on the plans therefore this does not need to be considered.

Reference to CTY10: One objector stated that the application fails to meet any criteria of CTY10. CTY10 relates to proposals for a dwelling on a farm therefore is not relevant to this application.

Replacement shed: It was stated by objectors that the applicant is trying to gain planning permission through the retrospective shed on site. This shed is immune from enforcement action and therefore it was considered that the replacement of this shed with a new building would be acceptable. This has been considered in detail under 'Principle of Development' in the COR.

Environmental issues: Objectors have stated that the applicant has previously disregarded rules and planning regulations on numerous occasions and has had NIEA enforcement out on the site. The contamination issues have been considered within the report with NIEA consulted on the proposal. Please note that if approved, the development is subject to a number of conditions. If any condition is not complied with, an enforcement case can be opened to investigate any unlawful activity/non-compliance with conditions.

Fencing around Site: Two of the objectors stated that there have been issues with the fencing around the site to keep the horses secure. This is not a planning matter or material to this consideration. The upkeep of the existing paddock is the responsibility of the applicant.

FOI: The objectors have stated that they would also like to apply for a Freedom of Information to disclose how much this particular application has cost the council. This is not material to this planning application and can be done outside of the planning application process. Additionally, the only detail that the Planning Service can record in relation to this case is in respect of the planning fee paid, as the Council does not record hours against application processing.

Planning agreement: One objector asked if the applicant rents the land how will the proposed plans be policed, as this would mean the land/shed will now be business related rather than personal use. The planning permission enures with the land therefore any legal agreement, enforcement action etc. is applicable to the land itself. The domestic use of the stables will be applicable to any land owner/user.


Amended Plans: One objector stated that planning policies should be reviewed and that given the amendments are vastly different from original plans the applicant should be forced to resubmit new plans. Current planning legislation (not policy) enables submission of amendments to a proposal, and the plans have been amended from 3 sheds to 1 shed for stables/workshop use. This was considered as

a more appropriate development and therefore the Council was able to process this application under this one application and the principle of consideration of the policy did not change.

ITEM 4.2

Ards and North Down Borough Council

Application Ref	LA06/2021/0506/F
Proposal	Sustainable energy system consisting of 26 No. ground mounted solar panels, a containerised battery building (total battery storage capacity of 28 KWh), back-up generator, fuel tank and associated site works.
Location	Cairn Wood, 21 Craigantlet Road, Newtownards DEA: Holywood and Clandeboye
Committee Interest	Council application
Valid	27/05/2021
Summary	<ul style="list-style-type: none"> • Proposal is a sustainable energy solution required to power existing toilet block, lights and pumps for car park drainage system • No public objections received • Consultees - no objections subject to conditions • Site lies within a Site of Local nature and Conservation Importance; however, no adverse impact on Nature Conservation • No impact on access and road safety • No adverse visual impact - well integrated by backdrop of existing woodland and additional tree planting • Complies with relevant Planning Policy under PPS18 - Renewable Energy • Approval will be conditioned to be operated in accordance with the submitted Emergency Response Plan and Handling and Management Plan for battery storage
Recommendation	Approval
Attachment	Item 4.2a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2021/0506/F	DEA: Holywood & Clandeboye	
Proposal:	Sustainable energy system consisting of an array of 26 no. ground mounted solar panels, a containerised battery building (total battery storage capacity of 28 kWh), backup generator, fuel tank and associated site works.		
Location:	Cairn Wood, 21 Craigtantlet Road, Newtownards, BT23 4TE		
Applicant:	Ards and North Down Borough Council		
Date valid:	27/05/2021	EIA Screening Required:	No
Date last advertised:	10/06/2021	Date last neighbour notified:	N/A
Letters of Support: 0		Letters of Objection: 0	Petitions: 0
Consultations – Synopsis of Responses:			
DFI Roads		No objection.	
Environmental Health		No objection.	
DFI Rivers		No objection.	
DAERA Water Management Unit		No objection. Informatives provided.	
DAERA Natural Environment Division		No objection. Recommendations and informatives provided.	
NI Fire and Rescue Service Headquarters		No objection.	
Summary of Main Issues Considered:			
<ul style="list-style-type: none"> • Principle of development • Renewable Energy and Impact on Character • Impact on Residential Amenity • Visual impact • Parking and Access • Impact on Biodiversity 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			

Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Northern Ireland Public Register (planningsystemni.gov.uk)

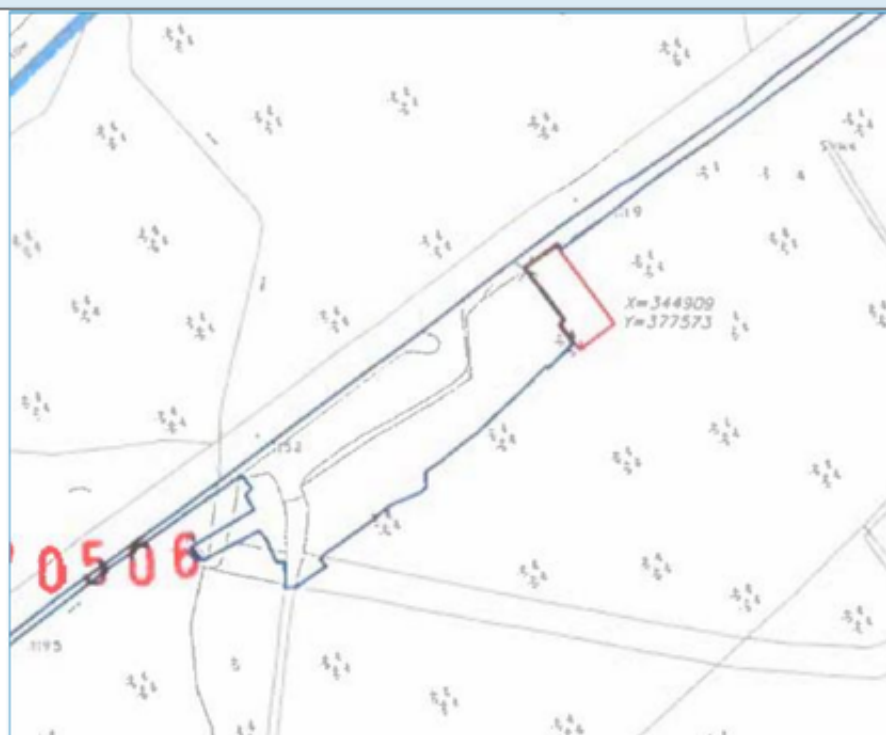
1. Site and Surrounding Area

The application site is located in the countryside outside any settlement designated in dBMAP 2015.

The site comprises land associated with Cairn Wood and is on the southern side of Craigtlet Road adjacent to the public car park for the woods. The boundaries of the site include 1m wooden fencing to the north and west. There are mature trees beyond the site to the south and east. The site has no vehicular access but is accessible from the north in a gap in the fencing and from within the wood itself. At the time of the site visit there was a shipping container on site. There are no trees within the site which consists of grassed land. The site is level with the adjacent car park and the public road (north).

The surrounding area is rural and is characterised by agricultural fields and a scattering of rural dwellings. The site is within zonings for Existing Community Woodland (ND/CW02) and a Site of Local Nature Conservation Importance (ND 02/04) as well as an Area of Flood Pondage but this does not include the applicaton site itself as the area of pondage is beyond the site to the north-east.

2. Site Location Plan



3. Relevant Planning History

Reference: LA06/2021/0095/DC

Proposal: Discharge of conditions 2, 3, 4, 5 and 7 of LA06/2019/1291/F.

Address: Cairn Wood, 21 Craigtantlet Road, Newtownards

Decision: PERMISSION GRANTED (31/03/2021)

Reference: LA06/2019/1291/F

Proposal: Extension and enhancement of existing trails comprising new walking trails, multi-use family cycle trail, upgrades to existing trails and associated information panels, way markers and seating.

Address: Cairn Wood, 21 Craigtantlet Road, Newtownards

Decision: PERMISSION GRANTED (09/12/2020)

Reference: LA06/2019/1228/F

Proposal: WC facility situated within the planning boundary of the redevelopment of the existing car park planning application LA06/2019/1032/F.

Address: Cairn Wood, 21 Craigtantlet Road, Newtownards

Decision: PERMISSION GRANTED (06.04.2020)

Reference: LA06/2019/1032/F

Proposal: Extend and enhance existing car park to include: an engineering base; a revised junction layout; additional car parking spaces and pedestrian footway; a new forest entrance path; and retaining wall.

Address: Cairn Wood, 21 Craigtantlet Road, Newtownards

Decision: PERMISSION GRANTED (06.02.2020)

Reference: LA06/2019/0848/PAN

Proposal: Improvement of existing walking trails within forest and creation of additional walking trails, creation of separate family cycle and mountain bike trail networks, creation of a wildflower meadow.

Address: Cairn Wood, Craigtantlet Road, Newtownards

Decision: VALID APPLICATION RECEIVED (20/08/2019)

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP)
- Draft Belfast Metropolitan Area Plan 2015 (dBMAP)
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement & Parking
- Planning Policy Statement 15: Revised – Planning and Flood Risk
- Planning Policy Statement 18: Renewable Energy
- Planning Policy Statement 21: Sustainable Development in the Countryside

Principle of Development

Within the North Down and Ards Area Plan the site is located within a greenbelt area and within the draft Belfast Metropolitan Area Plan the site is located in the countryside, on a protected route and inside the boundary of Designation ND 02/04 SLNCI (Cairn Wood & Reservoir). In the Planning Appeals Commission report into dBMAP no direct reference was made to the proposed SLNCI designation at Cairn Wood.

Draft BMAP Policy ENV2 Sites of Local Nature Conservation Importance advises that planning permission will not be granted for development that would be liable to have an adverse effect on the nature conservation interests of a designated site. Policy NH4 of PPS2 also advises that planning permission will only be granted for a development proposal that is not likely to have a significant adverse impact on a Local Nature Reserve or a Wildlife Refuge.

Due to the small scale of the development proposed and its location adjacent to the existing car park and main road, I am satisfied that the proposal will not result in any adverse effect on the nature conservation interests of the SLNCI. The proposal will not result in the loss of any existing trees or vegetation which contribute to the SLNCI. There are no other material provisions in the Plans that are pertinent to the proposal and therefore the determination will be based on the relevant regional planning policy and other material considerations.

As the site is located in the countryside, the proposal falls to be considered under CTY1 of PPS21 for non-residential development where it identifies that renewable energy projects may be considered against the relevant policy, specifically Policy RE 1 of PPS18.

Policy CTY1 also advises that all proposals for development in the countryside must also be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for drainage, access and road safety. Given the nature of the development the proposal does not include drainage or access works.

On sustainable development the SPPS is clear that in order to help reduce greenhouse gas emissions the growth of renewable energy systems should continue to be supported. In respect of the proposal, no conflict arises between the SPPS and the relevant, prevailing regional policy set out by PPS2, PPS3, PPS15 (Revised), PPS18 and PPS21.

Renewable Energy

Policy RE 1 of PPS18, 'Renewable Energy Development', states that development that generates energy from renewable resources will be permitted provided the proposal, and any associated buildings and infrastructure will not have an unacceptable adverse impact on:

- (a) Public safety, human health, or residential amenity.
- (b) Visual amenity and landscape character.
- (c) Biodiversity, nature conservation or built heritage interests.
- (d) Local natural resources, such as air quality or water quality.
- (e) Public access to the countryside.

The proposal is for a sustainable energy system that has been designed for the adjacent car park which will comprise of 26 no. solar panels which will charge a battery system to provide enough energy to power the pumps for the car park drainage system and the toilet block (heat/lighting) in the car park.

The adjoining site has planning permission under the references included in the Planning History section above in particular LA06/2019/1228/F and LA06/2019/1032/F. These permissions allowed for the extension of the existing car park and the new WC facility.

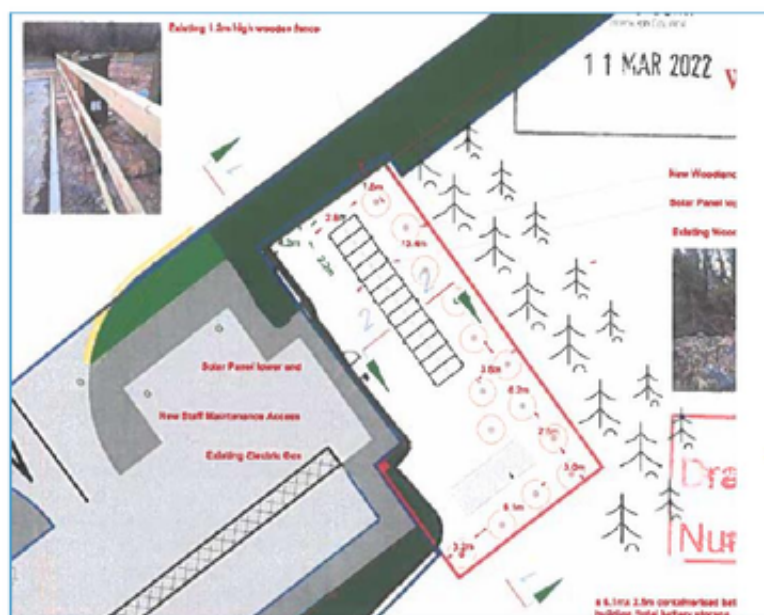


Figure 1 – Proposed Site Plan

The proposed site layout plan indicates the arrangement of the solar panels and container and includes the landscaping details which are all existing and include the wooden fencing and mature trees associated with the woodland as well as some new planting of trees.

The solar panels are located centrally and positioned to the north-west of the site with the container positioned to the south-east. The container measures approx. 2.51m by 6.14m and is 2.59m high. It will store batteries, a generator and a fuel tank. The 301w solar panels are ground mounted, black in colour and run for a length of approx. 13.4m and have a height of 2.9m. The backup generator is provided for winter months should there be insufficient energy created or stored in the solar and battery system.

Consultation has been carried out with Environmental Health and DAERA WMU and no objections have been raised. There are no residential properties in close proximity meaning there will be no impact on residential amenity.

In their response WMU have noted that battery storage plants hold additional risk of fire and explosion during their lifetime. Therefore, there is a potential health and safety risk. There are no houses adjacent, but Cairn Wood is used by the public as is the adjacent car park. The supporting information states that the diesel and batteries will be subject

to regular inspection to ensure their integrity as part of a maintenance and inspection regime.

Consultation has been carried out with the NI Fire and Rescue Service who have raised no concerns. They have recommended measures in the event of fire and advised that that any application for battery storage should take cognisance of battery storage guidance notes 1 and 2.

While the proposal involves the generation of electricity, it does not exceed the threshold of 5MW for major development as set out in the Planning (Development Management) Regulations (Northern Ireland) 2015 because the battery storage is limited to 28KW. Nor does it exceed the threshold of 0.5ha set out in schedule 2 3 (a) Energy Industry of the EIA Regs, therefore EIA screening is not required.

The Emergency Response Plan provided confirms that diesel and lithium batteries will be stored at the site as products, not waste. The diesel tank will be located within the locked steel shipping container and storage shall not exceed 1000 litres and will comply with the Control of Pollution (Oil Storage) Regulations (NI) 2010. The proposal will include up to 8 no. 3.55kWh lithium batteries located within the locked steel shipping container and will be subject to regular inspection to ensure their integrity. An accompanying report for 'Recommendations for the Storage and Handling of Fuel Oil and Management of Batteries' has also been provided.

Hazardous wastes are those which are dangerous and difficult to handle, and the Hazardous Waste Regulations apply to those who produce, broker/deal, carry and receive hazardous waste to keep, treat or dispose of. The sustainable energy system will not generate waste and the diesel and batteries in this case will be used as products in the energy system. An emergency response plan has been submitted and refers to an overview of activities on site including a list of waste management contractors who will handle any wastes arising from maintenance, remediation, or removal.

I am therefore satisfied that the proposal will not result in any unacceptable adverse impact on public safety, human health, or residential amenity.

Visual Impact

With regard to visual impact and landscape character, the application site is located in the countryside at a scenic location given the designations for a Community Woodland (ND/CW02) and a Site of Local Nature Conservation Importance (ND 02/04). However, the size and scale of the proposal is small and would not be significant enough to have an unacceptable adverse impact on visual amenity or landscape character. The container is green in colour and located to the rear of the site closer to the woodland and the ground mounted solar panels will not appear prominent with height limited to 2.9m high from ground level.



Figure 2 – Public Viewpoint (South-West)

The site is located adjacent to Craigantlet Road to the south-east on the same ground level however the surrounding land which includes the woodland itself will ensure that the proposal is well integrated. The proposal will be completely screened by the existing woodland on approach from the north-east and from the south-west approach the existing woodland to the side and rear will provide a backdrop to the proposal which will be read in conjunction with the existing car park for Cairn Wood which is immediately adjacent. Additional tree planting is also proposed within the site along the eastern and southern boundaries. For these reasons, I am content that the proposal will not result in any adverse impact on the rural character of the area.

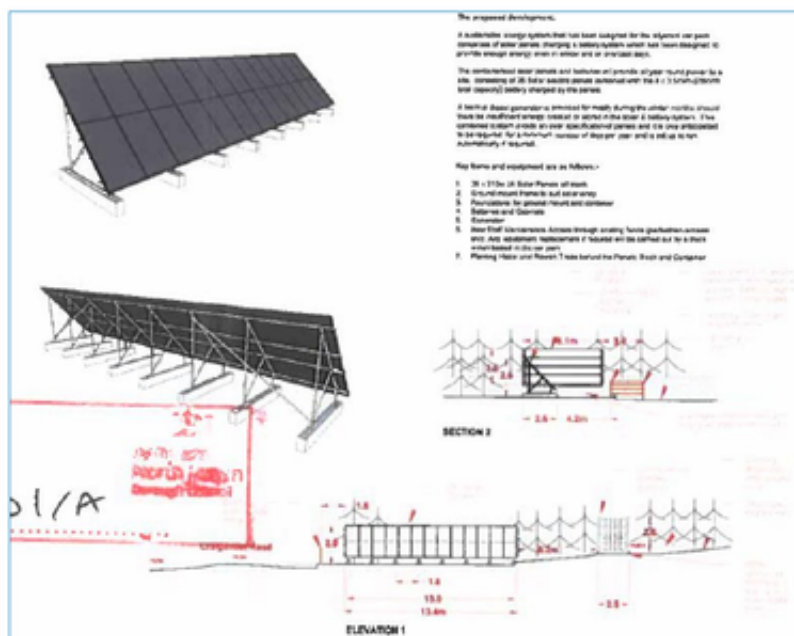


Figure 3 – Solar Panel Design

There are no built heritage interests associated with the application site and biodiversity and nature conservation will be discussed in greater detail below.

I have no concerns that the proposal will have an unacceptable adverse impact on local natural resources such as air quality or water quality. Finally, the proposal will not prevent public access to the countryside given that the application site is on vacant land adjacent to the car park and public entrance to Cairn Wood which will remain unaffected.

Overall, I am satisfied that the proposal meets the general criteria requirements set out in policy RE 1. I am satisfied that the proposal will create a high quality and sustainable form of renewable energy.

Impact on Trees/Landscape Features

The application site is vacant land which is grassed and has no trees or other landscape features. Beyond the application site in Cairn Wood there is existing woodland which will be unimpacted by the development proposal. The proposal includes a container and solar panels meaning there will be no significant building works and ground works will be minimal given the size and scale of the solar panels.

Flood Risk

There are zonings for an Area of Flood Pondage within the wider Cairn Wood, but this does not include the application site. Consultation has been carried out with DFI Rivers who have confirmed that Policies FLD 1, 2 and 3 are satisfied and that Policy FLD 4 and 5 are not applicable in this case.

Impact on the Water Environment

The proposal includes the storage of batteries, a backup generator and oil tank. An 'Emergency Response Plan' to protect the water environment and a document called 'Recommendations for the Storage and Handling of Fuel Oil and Management of Batteries' have been prepared by Pentland MacDonald in support of the application.

WMU have considered the information and the impacts of the proposal on the surface water environment and on the basis of the information is content with the proposal subject to recommendations related to the water environment.

In their response WMU have referred to the recommended conditions in the standing advice for 'Commercial or Industrial Developments' and 'Pollution Prevention Guidance'. There are no specific conditions listed in the pollution prevention guidance and the conditions relating to commercial or industrial development refers to sewage disposal and drainage systems for buildings. However, the proposal does not include any buildings therefore sewage disposal and drainage systems are not required in this case.

Access and Road Safety and Parking

DFI Roads have been consulted and offered no objections to the proposal which does not include any access works. The Craigtantlet Road is a Class B protected route, but the development proposal will not require an access or parking given the nature of the development and no intensification of use of the existing access is proposed.

Designated Sites and Natural Heritage

The potential impact of this proposal on Special Areas of Conservation, Special Protection Areas 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). The proposal would not be likely to have a significant effect on the features, conservation objectives or status of any of these sites.

A Preliminary Ecological Appraisal (PEA) by Aulino Wann & Associates has been provided in support of the application. The PEA states that the application site has been cleared and that there were no signs of badgers, bats, birds or invasive species within the site. The PEA also confirms that there are no trees on or immediately adjacent to the site that could support bat roosts.

Consultation was carried out with NED who advised that they are content with the proposal subject to a recommendation regarding the planting of new woodland. NED have stated that a number of native trees have been lost from the site but were content with the amended plan drawing No. 01/A that indicated that new planting of rowan and hazel would be carried out beyond the site amongst the existing woodland of oak, ash and hazel. NED have advised that they are content that this will compensate for any previous loss of trees even though trees are not considered to be a priority habitat. This will be subject to condition. It is therefore considered that the proposal complies with Policies NH1, NH2 and NH5 of PPS 2.

5. Representations

No letters of objection were received.

6. Recommendation

Grant Planning Permission

7. 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. No development shall take place until full details of all proposed tree planting and a programme of works for the planting of new species of rowan and hazel to the northern and eastern boundaries, as indicated on Drawing Number 01/A, date received 11th March 2022, have been submitted to and approved in writing by the Council and all tree planting shall be carried out in accordance with those details and at those times as approved.

Reason: To minimise the impact of the proposal on the biodiversity value of the site.

3. 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 Council gives its written consent to any variation.

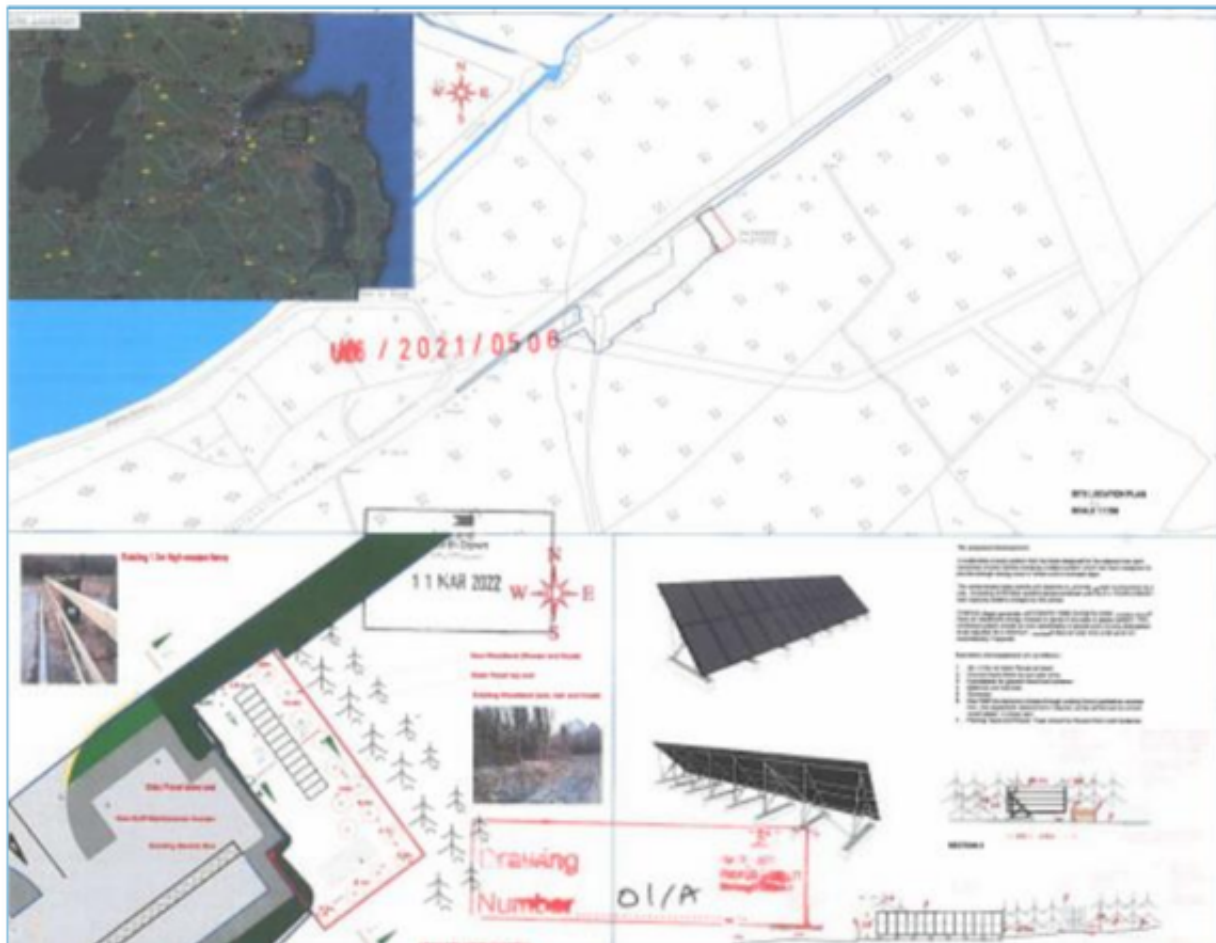
Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

4. The development shall be carried out in accordance with the 'Emergency Response Plan' (Doc 01), date received 8th September 2022, and the 'Recommendations for the Storage and Handling of Fuel Oil and Management of Batteries' (Doc 02), date received 11th March 2022.

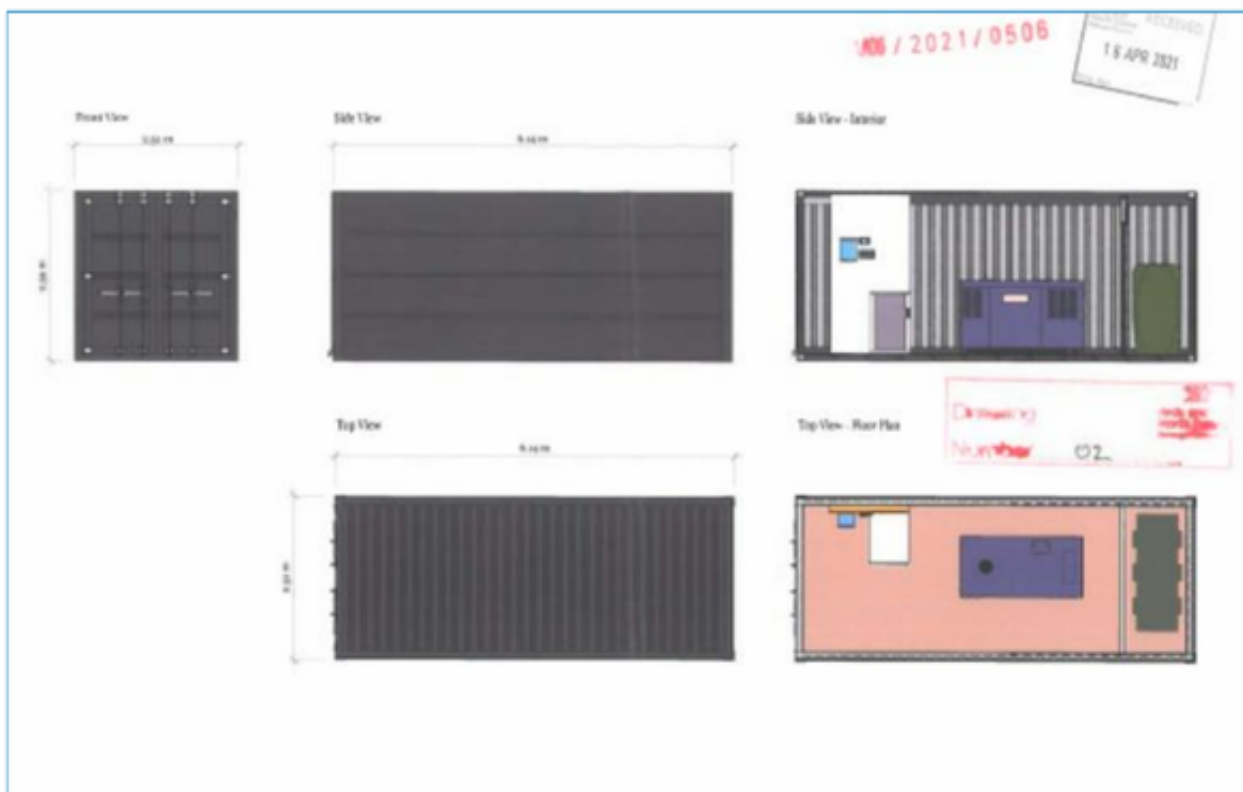
Reason: To ensure the development is carried out in accordance with the approved details.

Informatives

1. This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where relevant, on the Portal.



Drawing Number 01/A



Drawing Number 02














ITEM 4.3

Ards and North Down Borough Council

Application Ref	LA06/2021/1472/LBC
Proposal	Lightning protection system
Location	Town Hall (now City Hall), The Castle, Bangor DEA: Bangor Central
Committee Interest	Council application
Validated	21/12/2021
Summary	<ul style="list-style-type: none"> • Grade A listed building therefore planning consent required for works • Consultee HED content
Recommendation	Consent
Attachment	Item 4.3a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2021/1472/LBC	DEA: Bangor Central	
Proposal:	Lightning protection system		
Location:	Town Hall, The Castle, Bangor		
Applicant:	Ards and North Down Borough Council		
Date valid:	21.12.2021	EIA Screening Required:	No
Date last advertised:	20.01.2022	Date last neighbour notified:	n/a
Letters of Support: 0		Letters of Objection: 0	Petitions: 0
Consultations – synopsis of responses:			
HED – Listed Buildings		No objections (subject to conditions)	
Summary of main issues considered:			
<ul style="list-style-type: none"> Impact on a Listed Building 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

1. Site and Surrounding Area

This site consists of the Town Hall in Bangor. The building, known as The Castle, is a Grade A listed building on account of its special architectural merit. The building is set amidst mature parkland. The building is the administrative headquarters of the Borough and also hosts weddings. The surrounding grounds are open to the public.

A number of large, public buildings in the vicinity include a school and a police station. There is a hotel and cinema in the area. There are no residential properties nearby.

2. Site Location Plan



3. Relevant Planning History

No material planning history at the site.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP)
- Draft Belfast Metropolitan Area Plan 2015 (dBMAP)
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 6: Planning, Archaeology and the Built Heritage

Principle of Development

Despite its end date, NDAAP currently acts as the LDP for this area with dBMAP remaining a material consideration where applicable. The site above is in the settlement of Bangor. The site is also in a number of other designations in dBMAP: Existing Recreation and Open Space, Local Landscape Policy, and an Historic Park, Garden and Demesne. As the building is listed, a Design and Access Statement has accompanied the application. As there are no material provisions in the extant LDP that are pertinent to the proposal, the determination will be based on the prevailing regional policies and all other material considerations.

Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. The SPPS is material to all individual planning applications. In relation to listed buildings, the SPPS (6.13) states that 'Development involving a change of use and / or works of extension / alteration may be permitted, particularly where this will secure the ongoing viability and upkeep of the building. It is important that such development respects the essential character and architectural or historic interest of the building and its setting, and that features of special interest remain intact and unimpaired.'

Existing policy provisions that have not been cancelled by the SPPS are to remain a material consideration and are considered below.

PPS 6: Planning, Archaeology and The Built Heritage is the principal policy consideration in relation to this type of development.

Policy BH 8 Extension or Alteration of a Listed Building

Permission will normally only be granted to proposals for the extension or alteration of a listed building where all the following criteria are met:

- (a) the essential character of the building and its setting are retained, and its features of special interest remain intact and unimpaired;
- (b) the works proposed make use of traditional and/or sympathetic building materials and techniques which match or are in keeping with those found on the building; and
- (c) the architectural details (e.g., doors, gutters, windows) match or are in keeping with the building.

This proposal will involve a number of features to ensure the building is protected in the event of a lightning strike: conductor tapes will be located on roof pitches and on a number of surface mounted 'strike plates'; air rods are to be positioned at chimney stacks and pinnacles; and, a number of down conductors to be attached to exterior of the building.

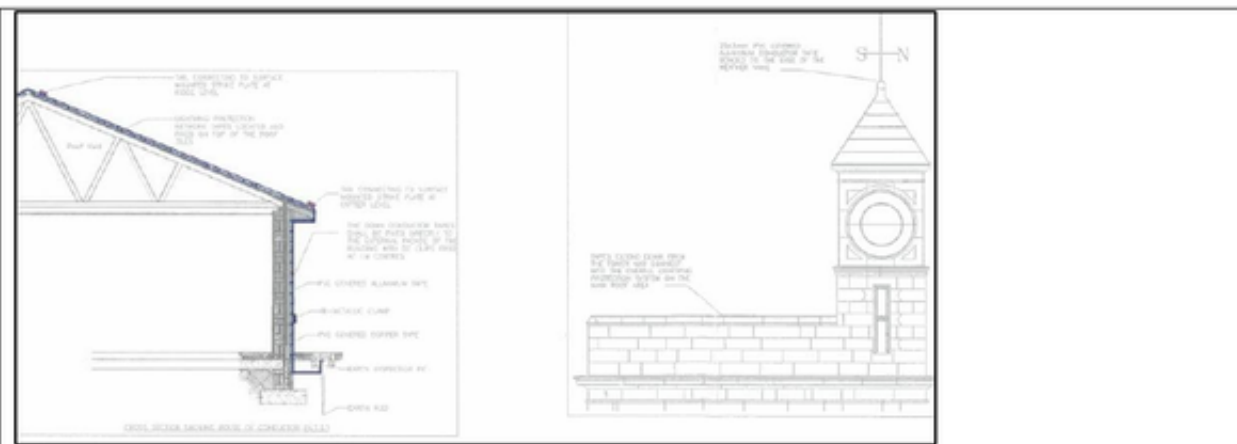
The works will be almost imperceptible. The features referenced above will be sympathetically placed along the ridge, along guttering, behind chimneys etc. Following submission of proposed visuals/photomontage, HED are now content with the proposal subject to the conditions listed below. The essential character of the building will not be materially affected. The architectural details and features of the building will not be impaired. No impact on the setting of the building.



Proposed visuals of front elevation – lighting infrastructure not visible



Example of conductor cable



Proposed cross-section and elevation

5. Representations

No representations were received.

6. Recommendation

Grant Consent

7. Conditions

1. The proposed works must be begun not later than the expiration of 5 years beginning with the date on which this consent is granted as required by Section 94 of the Planning Act (Northern Ireland) 2011.

Reason: Time Limit.

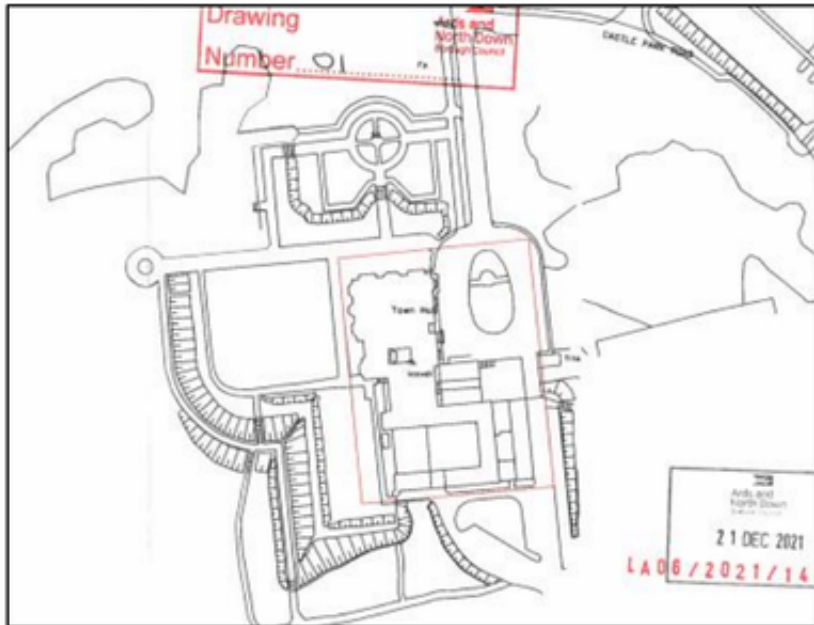
2. The lightning conductor tape shall be 'dark buff' in colour and retained as such in perpetuity; the down conductors shall be fixed into the mortar joints and shall be retained as such in perpetuity; and air rods shall be fixed behind each pinnacle and remain as such in perpetuity.

Reason: To ensure the essential character of the building and its setting are retained and its features of special interest remain intact and unimpaired and to ensure the works proposed make use of sympathetic techniques which match or are in keeping with those found on the building; and

Informative

This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees.

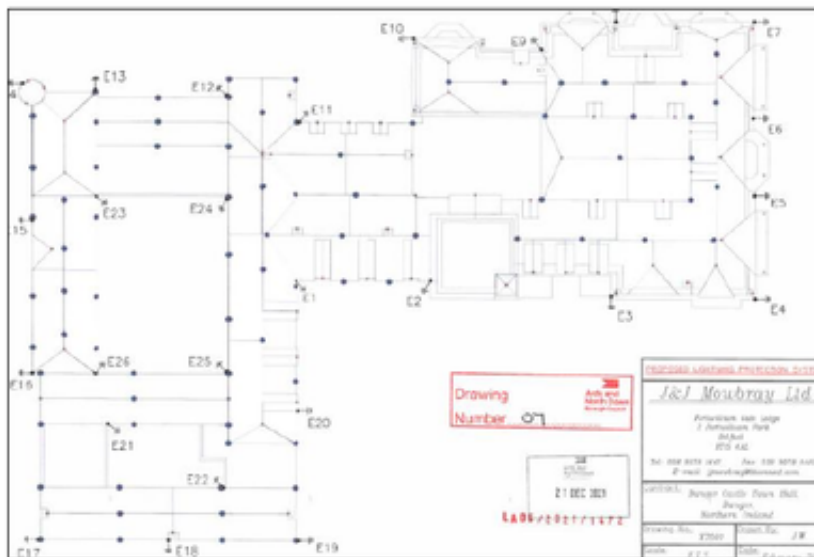
Annex



Site location plan



Front and rear elevations




Overlay of lighting protection system on roof

ITEM 4.4

Ards and North Down Borough Council

Application Ref	LA06/2023/1426/F
Proposal	Temporary siting & operation of 34m illuminated panoramic viewing wheel and 5 additional attractions between May and September 2023
Location	Open space approx. 33m NW of McKee Clock, Bangor DEA: Bangor Central
Committee Interest	Application relating to land in which the Council has an interest
Validated	02/02/2023
Summary	<ul style="list-style-type: none"> • Main issues in consideration - compliance with local development plan, impact on natural and built heritage, impact on residential amenity, visual impact • Previous approvals for same proposal considered and granted by Council's Planning Committee • No objections received • Consultee – no objections • Condition recommended relating to hours of operation
Recommendation	Approval
Attachment	Item 4.4a – Case Officer Report

Development Management Case Officer Report		 Ards and North Down Borough Council	
Reference:	LA06/2023/1426/F	DEA: Bangor Central	
Proposal:	Temporary siting & operation of 34m illuminated panoramic viewing wheel and 5 additional attractions between May and September 2023		
Location:	Open space approx 33m NW of McKee Clock, Bangor		
Applicant:	The Panoramic Wheel Company Ltd		
Date valid:	02.02.2023	EIA Screening Required:	No
Date last advertised:	09.03.2023	Date last neighbour notified:	23.02.2023
Letters of Support: 0		Letters of Objection: 0	Petitions: 0
Consultations – synopsis of responses:			
None			
Summary of main issues considered:			
<ul style="list-style-type: none"> • Scale, design and appearance • Impact on privacy or amenity of neighbouring dwellings • Impact on character and appearance of the area • Impact on biodiversity 			
Recommendation: Grant Planning Permission			
Report Agreed by Authorised Officer			
Full details of this application, including the application forms, relevant drawings, consultation responses and any representations received are available to view at the Planning Portal https://epicpublic.planningni.gov.uk/publicaccess/			

1. Site and Surrounding Area

This application consists of public amenity space adjacent to the McKee Clock in the centre of Bangor. The paved amenity area is located beside the Bangor Marina and the associated carparking. The site is often used to host small public events. The immediate area is noted for its high-quality public realm.

Retail, restaurants, and hotels are located to the east of the site on the far side of Bridge and Quay Street. A large Coastguard building is positioned to the north.

The aerial image below was taken when the wheel and amusements were previously in situ.

2. Site Location Plan



3. Relevant Planning History

Material to the current application, there has been several planning applications on the site for a temporary panoramic wheel and for associated amusements.

Planning Reference: Open space approximately 33m North West of McKee Clock Bangor and immediately South of No5 Quay Street, Bangor

Proposal: Temporary siting and operation of two amusement attractions between June 2021 and September 2021. These attractions have illumination

Decision: Permission Granted 19.08.21.

Planning Reference: LA06/2020/0134/F

Proposal: Temporary siting and operation of a 34m panoramic viewing wheel (illuminated) for 1 year (operational during months of July and August 2020 only). Temporary siting and operation of a 34m panoramic viewing wheel (illuminated) and additional 3 attractions for 2 years (operational during months of May, June and July 2021 and 2022 only).

Decision: Permission Granted 10.03.21.

Planning Reference: LA06/2019/0192/F

Proposal: Temporary siting and operation of a 34m panoramic viewing wheel and 3 No. vintage style attractions. Proposed operation dates 24th May 2019 to 21st July 2019. The wheel has illumination.

Decision: Permission Granted 6.6.19.

Planning Reference: LA06/2018/0377/F

Proposal: Temporary siting and operation of a 34m panoramic viewing wheel. Proposed operation dates 1st June 2018 to 15th July 2018. The wheel has illumination.

Decision: Permission Granted 4.7.18.

Planning Reference: LA06/2016/0684/F

Proposal: Temporary change of use of existing open space to funfair, for no more than 3 months of the year, ancillary works to include boundary fencing and area for storage vehicles.

Decision: Permission Granted.

4. Planning Assessment

The relevant planning policy framework, including supplementary planning guidance where relevant, for this application is as follows:

- North Down and Ards Area Plan 1984-1995 (NDAAP)
- Draft Belfast Metropolitan Area Plan 2015 (dBMAP)
- The Strategic Planning Policy Statement for Northern Ireland (SPPS)
- Planning Policy Statement 2: Natural Heritage (PPS 2)
- Planning Policy Statement 8: Protection of Open Space, Sport and Outdoor Recreation
- Planning Policy Statement 6: Planning, Archaeology and Built Heritage

Principle of Development

Despite its end date, NDAAP currently acts as the LDP for this area with dBMAP remaining a material consideration where applicable. Beyond its location in the settlement of Bangor, the site is within the Town Centre, a Local Landscape Policy Area, and the Bangor Urban Waterfront. Draft BMAP also identifies the site as being in an area of 'Existing Recreation and Open Space'.

Whilst there are no material provisions in the plan in relation to this specific type of development, dBMAP seeks to promote an urban renaissance and recognises town centres have a key role as prime foci for retail, service, administrative, leisure and cultural facilities. As the site is also noted as being within an area of 'Existing Recreation and Open Space', the proposal is therefore considered to be in broad agreement with the Plan subject to any prevailing regional policies.

There is a presumption against the loss of existing open space as set out in Policy OS1: Protection of Open Space, Sport and Outdoor Recreation (PPS8). However, the proposal is for a limited time only and will be complementary to the designation. I recommend adding a condition to ensure lands are returned to its former condition.

Impact on Town Centre

In relation to Town Centre and Retailing, the SPPS acknowledges it is important that planning supports the role of town centres and contributes to their success. The aim of the SPPS is to support and sustain vibrant town centres through the promotion of established town centres as the appropriate first choice location of retailing and other complementary functions.

This application relates to a 34m-panoramic wheel and 5 additional children's attractions; proposal does not involve creation of additional retail space. The proposal is consistent with the SPPS in that it seeks to promote Town Centres as the appropriate first-choice location for leisure activities. The proposal will not prejudice the objectives of the SPPS and will likely be supplementary to the role and function of the town centre.

Impact on Character of Area

The proposal relates to a 34m illuminated viewing wheel which will clearly be higher than surrounding buildings and features. The site is adjacent to the marina and will therefore be at sea level. Surrounding streets incline away from the marina. Views are therefore largely restricted to the immediate area around the marina and when travelling down towards the marina from adjoining streets. The proposal will have minimal impact on the area outside the Town Centre. The surrounding area is noted for landscaped car parks, pleasure grounds, the marina and other open spaces. I consider the proposal to be sympathetic to the surrounding character.

The application also seeks permission for 5 smaller attractions adjacent to the viewing wheel. These relate to typical attractions for children including a carousel, a 'helter

skelter' and a 'seastorm ship'. Given the surrounding lands are public amenity space I do not consider this to have any detrimental impact on the character of the area.

Impact on Built Heritage

McKee Clock tower is located approximately 35m southeast of the proposed site and is a B1 listed structure. Development will not be permitted which would adversely affect the setting of a listed building.

HED (Historic Buildings) were consulted in relation to previous applications for the same proposal. HED considered the separation distance and the temporary nature of the proposal to be sufficient to ensure no harm to Listed Building. As there are no material changes to this application to the previous, I am content there will be no detrimental impact on the Listed Building.

Impact on Residential Amenity

The SPPS also makes good neighbourliness a yardstick with which to judge proposed developments and The Council considers it important that the amenity of all residents is protected from 'unneighbourly' developments.

No residential properties were identified close to the proposal. The nearest dwellings are at least 100m away on far side of Bridge/Quay Street. This separation distance, along with the site's location in a busy area of the town centre, is considered sufficient to avoid any significant loss of amenity. Whilst the use on the site has been long-established, I informally contacted Environmental Health as a matter of good practice: I was directed to previous comments for the same proposal in which no objections were raised and no conditions were requested.

Road safety/Parking

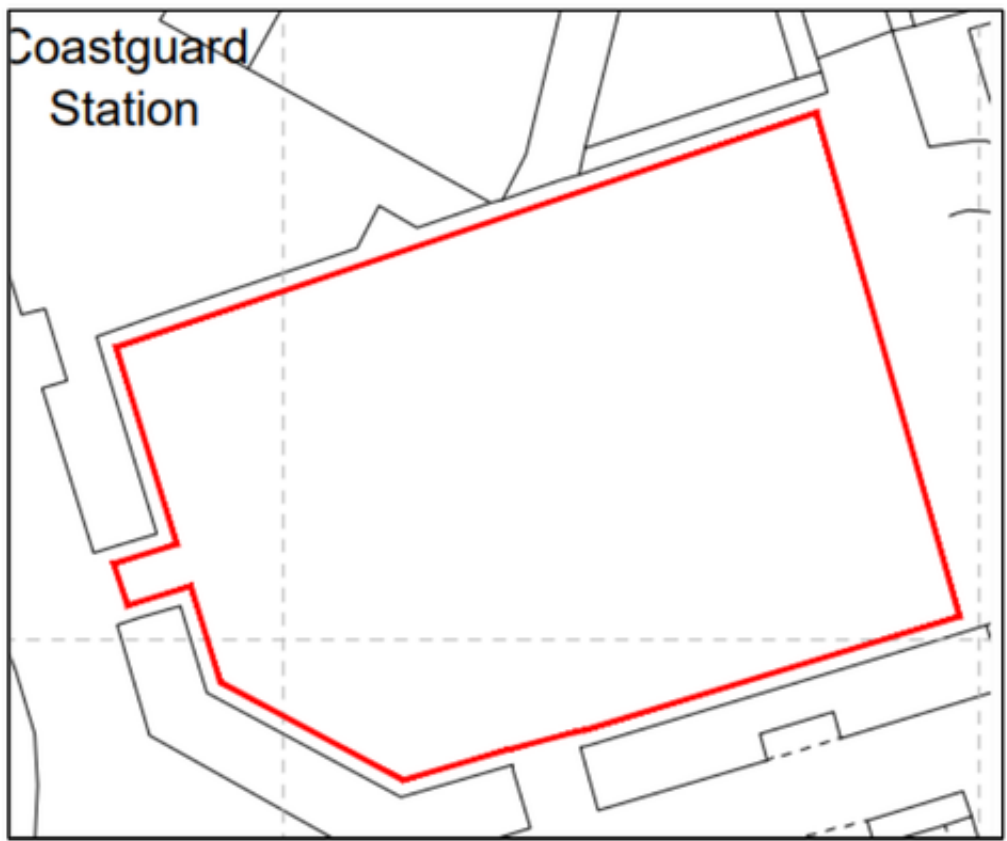
The proposal will have no impact on parking. No alterations to any access with the public road are proposed.

Impact on Designated Sites/Natural Heritage Interests

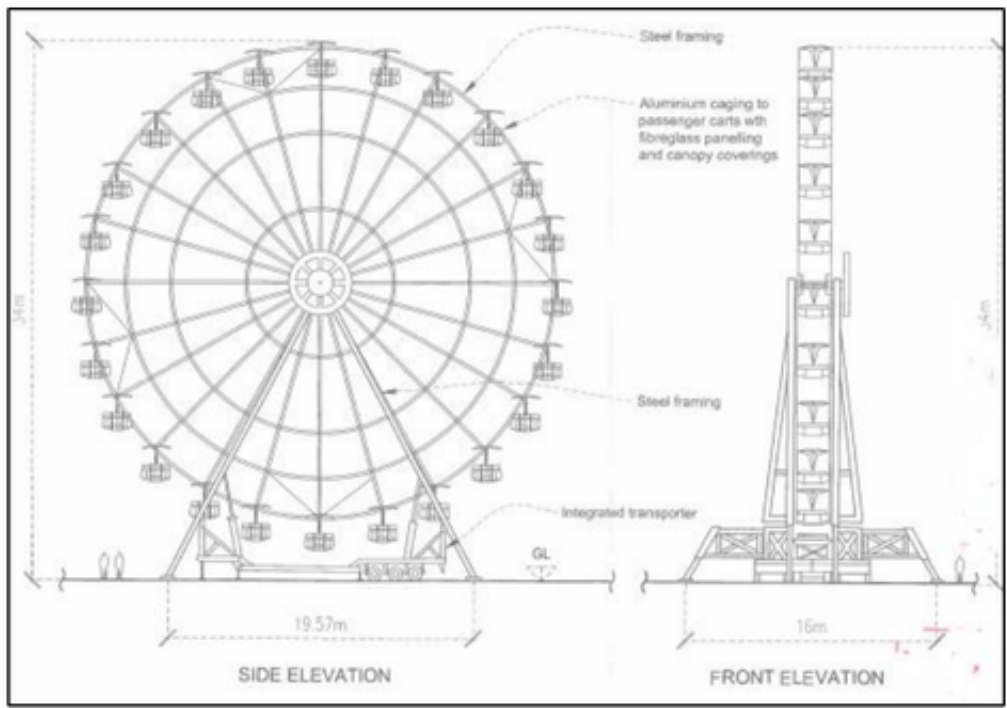
In relation to designated sites, it is not considered the development will have any impact. The NIEA's Biodiversity Checklist has been referred to, and no scenario having any potential adverse impacts on designated sites was identified. The proposal will not involve digging of founds nor will it involve works of heavy construction. The site will be over 200m from nationally and internationally designated sites. Whilst the site is close to the harbour, there are no waterways close to the development and therefore no hydrological link to any designated area. Therefore, the potential impact of this proposal on Special Areas of Conservation, Special Protection Areas 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 terms of protected and priority species, the proposal did not trigger a scenario which would reasonably require additional survey information. There is considered to be negligible impact on any species protected under law.

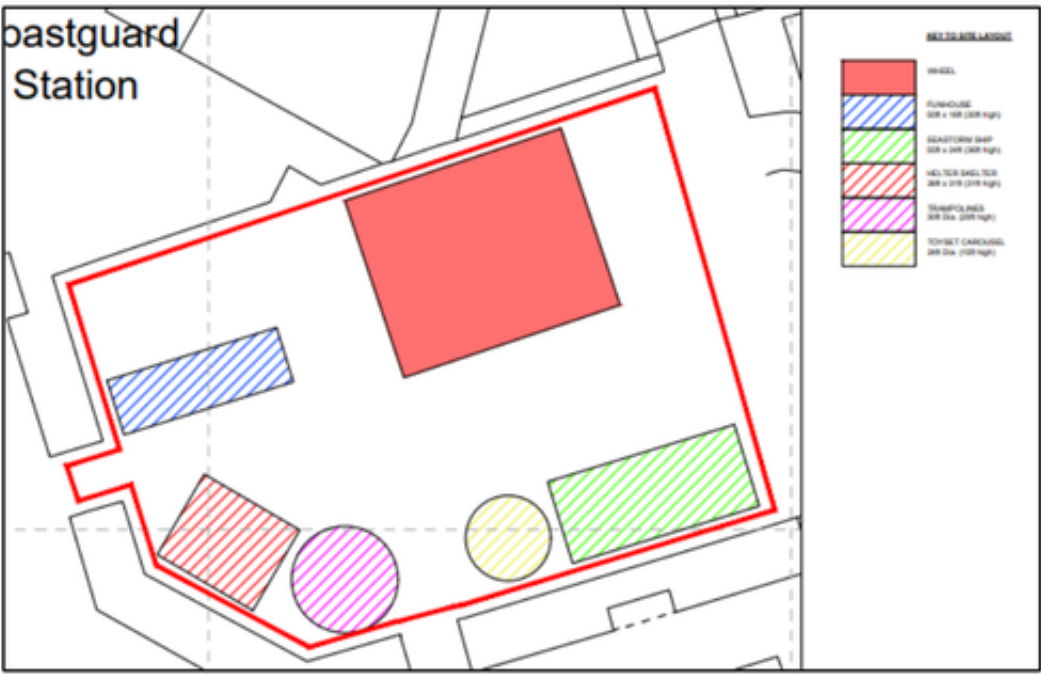
5. Representations
No representations were received.
6. Recommendation
Grant Planning Permission
7. Conditions
<ol style="list-style-type: none">1. The development hereby permitted shall be for a limited period of time from 1st May 2023 to the 30th September 2023. All apparatus associated with the development, hereby approved, shall be removed and the site shall be restored to its former condition within one week of the expiry of the specified operating period. Reason: To ensure the site is returned its use as open space.2. The use hereby permitted shall not be open to customers outside the hours of 09.00 – 22.00. Reason: To safeguard the living conditions of residents within the area.
Informative
This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose.



Site Location Plan



Elevations



Site layout



Site located in an area of open space

Unclassified

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ITEM 5

Ards and North Down Borough Council

Report Classification	Unclassified
Council/Committee	Planning Committee
Date of Meeting	04 April 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	24 March 2023
File Reference	160051
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Subject	Update on Planning Appeals
Attachments	Item 5a - PAC decision 2021/E0051 Item 5b - PAC decision 2019/E0031

Appeal Decisions

- The following appeal was dismissed on 16 March 2023.

PAC Ref	2021/E0051
Application ref	LA06/2021/0150/LDP
Appellant	Mr John Spratt
Subject of Appeal	Refusal to issue Certificate of Lawfulness of Proposed Use of Development (CLOPUD) - commencement of development of X/2010/0034/F in accordance with approval
Location	Land adjacent and north of 27 Ballybeen Road, Comber

Planning permission X/2010/0034/F was granted on 14 April 2010 for a change of house type to a previously approved farm retirement dwelling (X/2004/1658/O & X/2008/0827/RM). Condition 1 of this approval required development to have been started prior to 14 January 2011 – this being the critical date by which the development should have commenced. The appellant sought certification through the submission of a CLOPUD to demonstrate the approval granted

Unclassified

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under X/2010/0034/F could be lawfully completed, as it had been commenced in time.

As the appeal related to an approval under the Planning (Northern Ireland) Order 1991 ("the 1991 Order"), the appeal was considered within the context of the prevailing legislation at that time.

The appellant provided evidence to demonstrate that the works undertaken at the site constituted a lawful commencement of development alongside evidence of Building Control records of site visits with the appellant arguing that site levelling, rock breaking, and construction of the access and hardstanding constituted works of construction in the course of the erection of the development.

The appellant argued that the planning gain of allowing a partially erected structure to be fully completed should be considered with there being no demonstrable harm in completing the dwelling on site; however, the Commissioner opined that the matter of planning gain was not a determining factor in the consideration of the lawfulness of development.

The Commissioner was of the opinion that the evidence submitted did not demonstrate that works carried out prior to 14 January 2011 constituted works of construction in the course of erection of the buildings as required by Article 36 (1) (a) of the 1991 Order, and thus the approval had been lost and a Certificate could not be issued.

2. The following appeal against an Enforcement Notice was quashed on 20 March 2023.

PAC Ref	2019/E0031
Enforcement ref	LA06/2015/0159/CA
Appellant	Mr William Morrow & Mrs Noleen Morrow
Subject of Appeal	The alleged unauthorised raising of land with waste material and unauthorised erection of agricultural building and lean-to thereon.
Location	Land at 102 Ballydrain Road Ballydrain Comber

The appeal was brought on grounds (a) [deemed planning application], (f) and (g) as set out under section 143(3) of the Planning Act (NI) 2011. This appeal followed an appeal against the service of a Regulation 34 Notice where the Council had considered it necessary for the appellant to submit an Environmental Statement regarding the infilling of land with waste material. However, the PAC did not consider this necessary and dismissed this element following an earlier hearing.

These grounds of appeal were heard at a remote hearing on 25 October 2022.

In its decision the PAC noted that the Council withdrew its draft reasons for refusal and objections based on nature conservation, rural character and impact

Unclassified

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on residential amenity following the submission of the necessary, outstanding information within the appellant's statement of case.

The remaining issues considered in this appeal were whether: -

- the development is acceptable in principle in the countryside;
- the size and scale of the development is inappropriate;
- it integrates into its surroundings; and
- if it would be unsympathetic to its location within an Area of Outstanding Natural Beauty (AONB).

The Commission found that the development met Policies CTY 1, 12 and 13 of PPS 21 as well as Policy NH6 of PPS 2 and as such the above issues did not warrant the reasons for refusal to be sustained. As such the appeal succeeded under ground (a) [deemed application] subject to the following condition –

The hereby approved agricultural shed shall only be used to house a maximum of 25 cattle at any given time. The cattle shall only be housed in the cattle pen area of the building.

Given that planning permission was being granted, the Enforcement Notice was quashed.

New Appeals Lodged

3. The following appeal was lodged on 02 March 2023.

PAC Ref	2022/A0204
Application ref	LA06/2018/0996/F
Appellant	Cedarville Limited
Subject of Appeal	Refusal of planning permission for 8no. dwellings with associated car parking and landscaping
Location	Lands to the West of 7 Main Street and South of 6a Ballyrawer Avenue, Carrowdore

Details of appeal decisions, new appeals and scheduled hearings can be viewed at www.pacni.gov.uk.

RECOMMENDATION

It is recommended that Council notes this report.

Unclassified



Appeal Decision

4th Floor
92 Ann Street
Belfast
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

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Appeal Reference:	2021/E0051
Appeal by:	Mr John Spratt
Appeal against:	The refusal of a Certificate of Lawfulness of Proposed Use of Development
Proposed Development:	Commencement of development of X/2010/0034/F in accordance with approval.
Location:	Land adjacent and north of 27 Ballybeen Road, Comber.
Planning Authority:	Ards and North Down Borough Council
Application Reference:	LA06/2021/0150/LDP
Procedure:	Written representations and Commissioner's site visit on 16 th February 2023
Decision by:	Commissioner Kenneth Donaghey, 16 th March 2023

Decision

1. The appeal is dismissed.

Reasons

2. The application for a Certificate of Lawfulness of Proposed Use or Development (CLOPUD) was received by the Council on 10th February 2021, in accordance with Section 170 of the Planning Act (Northern Ireland) 2011 (the Act). This appeal was made under Section 173 of the Act against the Council's refusal of the application.
3. Section 170 of the Act makes provision for the issue of a CLOPUD; Section 170(1) states that ' if any person wishes to ascertain whether – (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question. Section 170 (2) indicates that if, on an application under this section, the Council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, it must issue a certificate to that effect, and in any other case it shall refuse the application.
4. Planning permission X/2010/0034/F was granted on 14th April 2010. The main issue in this appeal is whether development as approved by this planning permission has lawfully commenced to allow the completion of the dwelling. Whilst the works at the site are existing, through the submission of a CLOPUD the appellant has sought certification to demonstrate the approval granted under X/2010/0034/F can be lawfully completed.

5. The Council having considered the submitted information refused to certify that planning permission X/2010/0034/F has lawfully been implemented. Planning permission, X/2010/0034/F, for the change of house type to previously approved farm retirement dwelling (X/2004/1658/O & X/2008/0827/RM) was granted full planning permission on 14th April 2010. Condition 1 of this approval stated that the development "shall be begun before the 14th January 2011". This is the critical date by which the development should have commenced.
6. X/2008/0827/RM was approved on the 14th January 2009 and allowed the appellant two years to implement the approval. In adding condition 1 to the change of house type application (X/2010/0034/F), the Council sought to ensure that the overall time period for commencement of the development as stated on the initial grant of approval (X/2004/1658/O & X/2008/0827/RM) was not extended. The appellant stated that granting the change of house type application with such a short time period for implementation amounted to administrative unfairness. This condition was not appealed at the time of the approval being issued. Its fairness or otherwise is not a matter which is subject to this appeal.
7. This appeal relates to an approval under the Planning (Northern Ireland) Order 1991 (the 1991 Order), and it is therefore necessary I consider the matters in the context of the prevailing legislation at that time. Article 34 of the 1991 Order states that every permission granted is subject to the condition that the development to which it relates must be begun within; five years of the date on which the permission is granted; or other such period (whether longer or shorter) as the Department considers appropriate.
8. Article 36 of the 1991 Order sets out how Article 34 is to be interpreted it states that development is taken to be begun on the earliest date on which any of the operations specified in subsections (a) to (d) comprised in the development begins to be carried out. The approved development includes the erection of buildings. Therefore, Article 36(1) (a) applies in this case. It then must be determined if the works undertaken by the appellant involved any work of construction in the course of the erection of the buildings.
9. The appellant provided the following evidence to demonstrate that the works undertaken at the site constituted a lawful commencement of approval X/2010/0034/F: -
 - An invoice from WM Contracts which is dated 30th December 2010. This receipt is for works undertaken on the 10th, 11th, 12th 15th, and 16th of November 2010 and 16th December 2010. This invoice details the hire of a digger rock breaker for 20 hours, the hire of a 13-ton Hitachi for 27 ½ hours, hire of a tractor and dump trailer for 27 ½ hours and their delivery and collection on a low loader. The receipt also refers to the supply of a large quantity of type 3 stone.
 - A letter from WM Contracts, dated 28th January 2020, which states that the invoice relates to work carried out during November 2010 on the appeal site with a view to the development commencing. Works carried out include breaking rock, levelling the site and creating an access and laneway in accordance with the planning approval.

- A copy of part of the case officers report for X/2010/0034/F which refers to X/2002/0811/O and X/2007/0398/RM. This report indicated that the approval 'is started'. No further information is provided in the report in relation to commencement.
 - A copy of part of the case officers report for X/2015/0059 which contains a google earth image which dated April 2011.
 - Three further google earth images of the site taken around April 2011. These images show mounds of earth which have been excavated and stored at the site.
10. In addition to the evidence provided by the appellant, the Council has provided Building Control records of visits to the site which range from 20th May 2011 to 27th November 2011. These records refer to various visits to the site. Records indicate that foundations were excavated at the site on the 25th May 2011 and that concrete foundations were present at the site on the 27th May 2011. The appellant does not dispute that this was after the critical date for commencement of the development.
 11. The appellant argues that site levelling, breaking rock, constructing the access and hardstanding constitutes works of construction in the course of the erection of the buildings. The evidence provided by the appellant details an invoice for the hire of the equipment required to complete this work. The letter which accompanies this invoice elaborates that this work was carried out by WM Contracts with the view to the commencement of X/2010/0034/F in November 2011. It is not disputed that the works referred to were carried out at the time stated by the appellant. The excavation of the site, the levelling of the site, breaking of rock, laying of hardcore and formation of an access are all works which have been undertaken as site preparation they are not works of construction in the course of the erection of the approved building.
 12. The appellant has referred to the Section 56 (4) of the Town and Country Planning Act 1990. This is not legislation which is applicable to this jurisdiction. The appellant has also referred to Development Management Practice Note 03 – The Meaning of Development and the Requirement for Planning Permission, to demonstrate that the works which have been undertaken at the site represent development as set out within Section 23 of the Planning Act 2011. The appellant then argues if the works carried out on site constitute development, then they should represent the commencement of development. The meaning of development is a much broader scope than the application of Article 36 (1) (a) of the 1991 Order. The applicable requirement as clearly stated in the 1991 Order is 'any work of construction in the course of the erection of the buildings.'
 13. Whilst the appellant has provided various statutory definitions of what constitutes construction, these are specific to the application of the Construction Design and Management Regulations 2015. This definition is of limited assistance in the application of the 1991 Order.
 14. The excerpt from the case officers report associated with X/2010/0034/F refers to the development as granted by X/2004/1658/O & X/2008/0827/RM as being started. No supporting justification is provided in this report by the planning officer.

It is acknowledged that some works commenced at the site prior to the critical date. However, I have considered that they do not amount to construction works in the course of erection of a building as required by the 1991 Order.

15. Additionally, the appellant provided two legal articles to argue that the works undertaken at the site represent commencement of development. The article by W & S Law refers to commencement as it is referred to in the Town and Country Planning Act 1990 and as such is of limited assistance in applying the 1991 Order. The Town and Country Planning Act 1990 has a significantly looser approach to commencement than the 1991 Order. Furthermore, the legal advice note by Cleaver, Fulton, Rankin, is public advice from a private law firm published in 2010. It does not engage with the specific wording of the 1991 Order but rather focusses on the view that a material operation is required to commence a planning approval. This note also accepts that a material operation will vary on a case-by-case basis. This advice note is generic in its approach and does not assist in determining the specific nature of this appeal.
16. The appellant also argues that the planning gain of allowing a partially erected structure to be fully completed should be considered. The appellant is of the view that as there is no demonstrable harm in completing the dwelling on site, it should be allowed. The appellant made an application for a CLOPUD under Section 170 of the Planning Act. Matters of planning gain are not a determining factor in the consideration of the lawfulness of development.
17. All in all, I am not satisfied that the evidence presented allows me to conclude that the works which were carried out prior to the 14th January 2011 constitute works of construction in the course of erection of the buildings as required by Article 36 (1) (a) of the 1991 Order. As such the Council's refusal to certify the development has lawfully commenced is justified. The appeal is dismissed.

This decision is based on drawing 01, a site location plan at 1:1250, which was received by the Council on the 10th February 2021.

COMMISSIONER KENNETH DONAGHEY

2021/E0051

List of Documents

Planning Authority:-

“A1” – Written Statement of Case (Ards and North Down Borough Council)

“A2” – Rebuttal Statement (Ards and North Down Borough Council)

Appellant:-

“B1” – Written Statement of Case and Appendices (GT Design)

“B2” – Rebuttal Statement (GT Design)



Enforcement Appeal Decision

4th Floor
92 Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710
E: info@pacni.gov.uk

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Appeal Reference:	2019/E0031
Appeal by:	Mr William Morrow & Mrs Noleen Morrow
Alleged Breach of Planning Control:	The alleged unauthorised raising of land with waste material and unauthorised erection of agricultural building and lean- to thereon.
Location:	Land at 102 Ballydrain Road Ballydrain Comber
Planning Authority:	Ards and North Down Borough Council
Authority's Reference:	LA06/2015/0159/CA
Procedure:	Remote Hearing on 25 th October 2022
Decision by:	Commissioner Helen Fitzsimons on 20 th March 2023

Grounds of Appeal

1. The appeal was brought on grounds (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. There is a deemed planning application for the development referred to in the Enforcement Notice (EN).

Ground (a) – that planning permission ought to be granted for the matters stated in the notice

2. At the hearing the Council withdrew its draft reasons for refusal and objections based on nature conservation; rural character and impact on residential amenity. The remaining main issues in this appeal are whether:-
 - the development is acceptable in principle in the countryside;
 - the size and scale of the development is inappropriate;
 - it integrates into its surroundings; and
 - if it would be unsympathetic to its location within an Area of Outstanding Natural Beauty (AONB).
3. The appeal site lies in the open countryside as designated by the Ards and Down Area 2015 (ADAP) the Local Development Plan (LDP) for the area within which the appeal site lies. It is also located within a designated Area of Constraint on Mineral Development where plan Proposal COU 8 applies. As the proposal is not for Mineral Development Proposal COU 8 is not pertinent in this appeal. The appeal site lies within the Strangford Lough AONB.
4. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will operate until a Plan Strategy for the Council area is adopted. During the transitional period the SPPS retains certain existing Planning Policy Statements including

Planning Policy Statement 21 'Sustainable Development in the Countryside' and Planning Policy Statement 2 'Natural Heritage' (PPS 2).

5. Policy CTY1 of Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) sets out the range of types of development that are considered to be acceptable in the countryside. One of these is Agricultural and Forestry Development in accordance with Policy CTY 12.
6. Policy CTY 12 states that planning permission will be granted for development on an active and established agricultural or forestry holding where it is demonstrated that five stated criteria are met. There is no dispute that the appellants' holding is active and established for 6 years. The council raised objections to the proposal under the following three of the five stated criteria:-
 - (a) it is necessary for the efficient use of the agricultural holding or forestry enterprise;
 - (b) in terms of character and scale it is appropriate to its location; and
 - (c) it visually integrates into the local landscape and additional landscaping is provided as necessary.
7. The appeal site is accessed via a 270m long laneway. The appeal proposal entails the retention of some 1m deep of infill material and the erection of a shed some 4.5m high atop the infill. The shed is constructed from a concrete base with green metal cladding on top. The roof is formed by grey cladding. Its western elevation contains 3 roller shutter doors whilst that to the east (facing Strangford Lough) is open. Internally it comprises a cattle pen, a machine storage and feed/ feeding area.
8. The appellants told me that they have a 130-acre farm and take a further 10 acres in conacre. None of their farming activities are contracted out and they have their own bailer and combine harvester. Their farming activities include keeping cattle (88 in total at the date of the hearing), cutting their own silage, cutting and baling their own hay, and growing 30 acres of cereal to provide their animal feed. These activities occur over three separate locations within the holding. There are other sheds on the holding, but they are in use for housing cattle at those locations. There were a number of old farm sheds on the appeal site but these were not suitable for the appellants' modern farming needs. As a result, they were demolished and the appeal shed was built. In net terms the appeal shed has a smaller area than that provided by the demolished sheds. None of this was disputed by the Council.
9. At my site visit I noted that that a portion of the shed was laid out in pens with straw bedding and occupied by cattle. The remainder of the shed was in use as described above. Large round hay bales were stored just northeast of the shed. From what I observed at my site visit, and what the appellants told me at the hearing I am satisfied that the development was and is necessary for the efficient use of the holding. Criteria (a) of Policy CTY 12 of PPS 21 is met.
10. The policy framework at Part 2 of ADAP describes Strangford Lough as an enclosed, tranquil stretch of marine water with an indented coastline of islands or half drowned drumlins and inlets on the western side and a smoother coastline on the east, both backed by wooded estates. Extensive mudflats are exposed at low tide at the northern end of the Lough, from the Comber River estuary to the shoreline of the Ards Peninsula. The distinctive drumlin landscape of County Down gives the

landscape an intimate character and often prevents long distance views along public roads.

11. The Council argued that the extent of the infill required to build the base on which the shed is sited significantly increased the height of the ground level to an extent that is inappropriate in scale and character at this location as it does not blend unobtrusively with the surrounding landscape and fails to make use of the existing natural landform. The appeal site is set back a considerable distance from Ballydrain Road and lies in a hollow within this drumlin landscape. As anticipated by Part 2 of ADAP no long distance views are available from the road network, none of the infill works and only the upper portion of the southern gable of the shed are visible from the entrance laneway on Ballydrain Road. At this point on the road intervening mature trees and vegetation also aid the absorption of the development into the landscape.
12. Although arguments were presented regarding views from Strangford Lough, I was given no evidence to demonstrate where these were from or what could be seen or indeed if there was any degree of human activity on this part of the Lough. The Council has failed to demonstrate that the development is inappropriate in scale and character in this location and that it does not blend unobtrusively with the surrounding landscape. Criteria (b) and (c) of Policy CTY 12 of PPS 21 are met.
13. As criteria (a),(b) and (c) of Policy CTY 12 are met the development is acceptable in principle in the countryside and the draft reason for refusal based on the SPPS and PPS 21 is not sustained.
14. Policy CTY 13 of PPS 21 'Integration and Design of Buildings in the Countryside' says that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It continues that a new building will be unacceptable where (d) ancillary works do not integrate with their surroundings; or (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop. The ancillary work referred to by the Council is the infilling of land. Whilst the Council argued that the extent of the infilling has impacted on the ability of the development to successfully integrate with its surroundings including an adjacent area of Special Scientific Interest and Strangford Lough it gave me no firm evidence to demonstrate this, such as where it is visible from and the harm, if any, that has arisen. In addition, the infilled area is now self-seeding with grass and vegetation and is blending into its surroundings. I therefore disagree with the Council in this respect and criterion (d) of the policy is met. In terms of the surrounding landform, as previously discussed, the appeal site lies in a hollow within a drumlin landscape where views are limited to a glimpse of the upper portion of the southern gable which is viewed with intervening vegetation and consequently is absorbed into the landscape. Satisfactory integration is achieved and criterion (f) of the policy is also met. The Council's reason for refusal based on Policy CTY 13 of PPS 21 is not sustained.
15. At the hearing the Council added a draft reason for refusal based on the AONB location of the appeal site. Policy NH 6 of Planning Policy Statement 2 'Natural Heritage' (PPS 2) entitled 'Areas of Outstanding Natural Beauty' states that planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and that a number of criteria

are met. Criterion (a) requires that the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality. The Council considers the special character of the AONB to be the surrounding area of Strangford Lough and the physical aspects of the AONB. Having regard to the LDP I must conclude that those aspects of the AONB referred to by the council are those set out in the policy framework of ADAP referred to earlier in my decision.

16. The appellants also referred me to Page 79 of Part 3 of the LDP policy framework which describes the Strangford Lough AONB as sensitive to change increased by the high visibility of the north Lecale hills and surrounding lowlands from Strangford Lough. The analysis verifies the pressure in this area particularly on higher ground with views towards the Lough. The western coastal area of the Strangford Lough AONB is particularly vulnerable to changes, which may have an impact on its small scale, tranquil character. Pressure is particularly evident around Killinchy and Whiterock.
17. The appeal site is located on the western shores of the Lough on low ground near its edge, some distance from Whiterock and Killinchy. As previously concluded, it is absorbed into the landscape when seen from Ballydrain Road and there is no evidence from the Council regarding its visibility from Strangford Lough. The appellants argued that any views of the shed and infill would be long distance. Given the contours of the Lough edge in this area such long distance views can only be from its opposite side. Such is this distance the development is barely discernible in the landscape and there is no adverse impact on the character of the AONB.
18. Surrounding land uses are predominantly residential and agricultural in this location. At my site visit I noted a number of farm complexes in close proximity to the appeal site with large agricultural outbuildings in a position close to the Lough edge, and they form part of the character of the locality. Given this and taking account of my conclusions in paragraph 17 above the development is not unsympathetic to the character of the AONB or the locality. The Council has not sustained its draft reason for refusal based on Policy NH6 of PPS 2.
19. I agree with the Council that a condition restricting the number of livestock and their location within the shed is necessary as this is what the Air Quality Impact Assessment dated 13 June 2022 was predicated upon in relation to ammonia emissions, the conclusions of which were accepted by the council.

Decision

- The appeal on ground (a) succeeds subject to the following condition:-

The hereby approved agricultural shed shall only be used to house a maximum of 25 cattle at any given time. The cattle shall only be housed in the cattle pen area of the building.

- The Enforcement Notice is quashed

COMMISSIONER HELEN FITZSIMMONS

2019/E0031**Attendances
Council**

Mr Chris Blair (Ards and North Down Borough Council)

Appellants:-

Mr Andrew Ryan (TLT)
Mr Gerry Tumelty (Tumelty Planning Services)
Ms Christine Carr (Irwin Carr)
Mr D Dunlop (Neo Environmental)
Mrs Noleen Morrow (Appellant)
Mr William Morrow (Appellant)
Mr Richard Morrow (Appellants' Son)

Documents**Council
Appellant**

C1 Written Statement.
A1 Written Statement and Appendices

ITEM 6

Ards and North Down Borough Council

Council/Committee	Planning Committee
Date of Meeting	04 April 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	28 March 2023
File Reference	Planning Committee
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Subject	NI Water – update on North Down Coastal Fence application
Attachments	N/A

Purpose of Report

1. The purpose of this report is to update Members in respect of the fencing erected by Northern Ireland Water (NIW) around the Wastewater Pumping Station (WwPS) at Seacourt, on the North Down Coastal Path, sometime during 2019.

Background

2. Further to erection of the fencing and investigation by Planning Enforcement, a retrospective planning application was received from NIW, under LA06/2019/1007/F. Further to processing a recommendation to approve planning permission was presented to Planning Committee in August and September 2021, and April 2022, then further to receipt of legal advice requested by Members, finally in July 2022, at which the Council voted to refuse the application.
3. NIW submitted an appeal against the refusal of planning permission on 16 November 2022 – PAC reference 2022/A0145. As yet no hearing date has been confirmed by the PAC.

Submission of applications for Certificates of Lawfulness

4. Members are advised of the submission of two separate Certificates of Lawfulness, one for a Certificate of Lawfulness of Existing Use of Development (CLEUD) and Certificate of Lawfulness of Proposed Use or Development (CLOPUD) for consideration by the Planning Service in respect of both the existing fence and gate as erected (subject of the refused planning application) and for an increase in height of fencing to the Seacourt WwPS.

Certificates of Lawful Use or Development

5. If any person wishes to ascertain whether–
 - a. any existing use of buildings or other land is lawful; or
 - b. any operations which have been carried out in, on, over or under land are lawful,that person may make an application for the purpose to the council specifying the land and describing the use, operations or other matter.
6. For the purposes of the Planning Act (NI) 2011 uses and operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason). A CLEUD has been submitted on behalf of NIW in this regard in respect of the existing fencing and gate around the Seacourt WwPS.
7. If any person wishes to ascertain whether–
 - a. any proposed use of buildings or other land; or
 - b. any operations proposed to be carried out in, on, over or under land, would be lawful,that person may make an application for the purpose to the council specifying the land and describing the use or operations in question.
8. If, on an application under this section, the council is provided with information satisfying it that the use or operations described in the application would be lawful if instituted or begun at the time of the application, (i.e. complies with 'permitted development' it must issue a certificate to that effect; and in any other case it shall refuse the application. A CLOPUD has been submitted on behalf of NIW in this regard in respect of a proposed fence and gate around the Seacourt WwPS.

Permitted Development Rights

9. The Schedule to the Planning (General Permitted Development) Order (Northern Ireland) 2015 ("the GPDO") lists development that can be undertaken without the need to seek express planning consent from the planning authority. However, any such proposal in the first instance must be assessed in accordance with Article 3(8) of the above Order, as to whether or not the proposal amounts to EIA development (in accordance with The Planning (Environmental Impact

Assessment) Regulations (Northern Ireland) 2017 to consider the likely environmental impacts of any development before acting upon such PD Rights.

10. Subject to a negative EIA screening, it is a condition of the PD Rights under Article 3(1) of the GPDO that one attains confirmation prior to commencement of development that the proposal will not adversely affect the integrity of any designated site under The Conservation (Natural Habitats, etc.) Regulations (Northern Ireland) 1995(a). Confirmation of such is normally via consultation by the Council with the Shared Environmental Service for confirmation of any findings in this respect, through the CLOPUD application process, referred to above.
11. At the time that the Planning Service was investigating the fence, officers had considered the fence and gate as erected under Part 3 (Minor Operations) Class A relating to 'The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure'. Given that Class A (1) specifies that development is not permitted if 'The height of any other gate, fence, wall or means of enclosure erected or constructed exceeds 2 metres above ground level' the Planning Service considered that PD could not apply. Planning Service did also at that time consider the proposal under Part 14 of the GPDO (see details below) but considered it could not apply as the Council was not in receipt of a Habitats Regulations Assessment relevant to the site as it was within a designated site (ASSI).
12. NIW did not seek a factual determination by way of an application for a Certificate of Lawfulness of the Proposed Use or Development (CLOPUD) at this time and moved to submit the planning application which was determined and refused by Council.
13. Such a factual determination is the proper course of action in this regard as any planning advice given by officers, either verbally or in writing in the course of their duties, is offered in good faith and is based on the information and evidence provided. Advice is normally offered without the benefit of an EIA screening or shadow habitats assessment, site visit or the involvement of other consultees (both statutory and non-statutory), neighbours or other interested parties. Such views are therefore the personal opinion of that officer and are not a formal decision of, nor are they binding on, the local planning authority. The local planning authority is only bound where a formal application is submitted, and a formal decision is issued in writing.
14. NIW **now** considers that the Council erred in its assessment of the PD rights in respect of Part 3 – Minor Works, and that the works should have been assessed against the rights available under the GPDO Part 14 – 'Development by Statutory and Other Undertakers', Class H – 'Water and sewerage undertakings' part (h) – 'Development by water or sewerage undertakers consisting any other development in, on, over or under operational land, other than the provision of a building but including the extension or alteration of a building'. Class H(h) does not contain any limitation on height.

15. The purpose of the submissions of the Certificates of Lawfulness is to provide the Council with the entire rationale as to why the works, the subject of these applications, are/would be Permitted Development and to allow it to take a fully informed view.
16. The planning agent acting on NIW's behalf has contacted the Planning Appeals Commission requesting delay of the appeal hearing into the refused planning permission to enable the Council to determine these Certificates accordingly. To date the Commission has not confirmed acceptance prior to imposing a date for a hearing.
17. The Planning Service considered it prudent to bring this matter to the attention of the Planning Committee, and also to the general public, including those who had submitted objections to the planning application, as Certificates of Lawfulness are not subject to statutory advertisement in the same manner as a planning application, or available to view on the Planning Portal.
18. Officers are currently considering the submitted information for the applications, and liaising with legal representatives, and will advise Members of outcomes accordingly.

RECOMMENDATION

It is recommended that Council notes this report.