

## ARDS AND NORTH DOWN BOROUGH COUNCIL

25 January 2022

Dear Sir/Madam

You are hereby invited to attend a virtual meeting of the Planning Committee of the Ards and North Down Borough Council which will be held via Zoom on **Tuesday, 1 February 2022** 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 meeting of 18 January 2022 (Copy attached)
4. Planning Applications (Reports attached)

4.1	LA06/2020/0763/F	Construction of new farm laneway to serve existing farmyard (Amended Scheme)  Land 10m west of 38C Ravara Road & 50m west of 34 & 36 Ravara Road, Ballygowan
4.2	LA06/2020/1025/F	Erection of steel portal building for storage use  30 Greyabbey Road, Ballywalter
4.3	LA06/2021/0794/F	Public Art Installation  66M West of 28 Church Street. The Ropewalk, Portaferry

5. Notice of Motion submitted by Councillor McKee and Councillor Kendall

That Council notes with concern that, since Local Government Reform in 2015, the Department for Infrastructure (and the Department for the Environment before that) has failed to commence Section 129 of the Planning Act (Northern Ireland) 2011 on the review of Old Minerals Permissions (ROMPs). Such delays in legislating for the

need for historic minerals permissions to comply with robust environmental standards has already given rise to significant harm and places undue liabilities and responsibilities on public authorities resulting from repeated Ministerial decisions since 2006 not to commence ROMPs legislation.

In recognition of the considerable pressures that the implementation of ROMPs will place on the financial and staffing resources of this Council, this Council considers the imposition of these responsibilities and liabilities upon our resources as unreasonable. Therefore, this Council calls on the Minister for Infrastructure, to urgently legislate for the removal of responsibility for the implementation, administration and delivery of ROMPs from this, and all local authorities, and for her Department to implement, administer and deliver ROMPs.

**\*\*\*IN CONFIDENCE\*\*\***

6. Update on Enforcement Matters (Report attached)

#### **MEMBERSHIP OF PLANNING COMMITTEE (16 MEMBERS)**

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

## ITEM 7.5.

3

**ARDS AND NORTH DOWN BOROUGH COUNCIL**

A meeting of the Planning Committee was held virtually on Tuesday, 18 January 2022 at 7.00 pm via Zoom.

**PRESENT:**

**In the Chair:** Councillor Cathcart

**Aldermen:** Gibson Keery  
McDowell McIlveen

**Councillors:** Adair McRandal  
Brooks McKee  
Cooper (7.03 pm) Smith, P  
Kennedy Thompson  
McAlpine (7.02pm) Walker  
McClellan (7.01 pm)

**Officers:** Director of Regeneration, Development and Planning (S McCullough), Head of Planning (A McCullough), Senior Professional and Technical Officers (P Kerr, C Rodgers, A Todd), Principal Professional and Technical Officers (G Kerr and L Maginn) and Democratic Services Officers (J Glasgow and P Foster)

**Also in**

**Attendance:** J Killen (DfI Roads), B McAlister (Agent), R Agus (MRA Partnership), S Beattie (QC), L Hughes (Applicant), P Best (Agent), R Woods MLA (speaking on behalf of objectors), A Sinclair (Agent - Footprint Architectural Design), M Bell (Speaking on behalf of Killinchy Concerned Residents - Bell Architects), R Gilmour (Agent – Robert Gilmour Architects), K Quigley (Applicant), G Thompson (Agent – GT Design)

**WELCOME**

The Chairman (Councillor Cathcart) welcomed everyone to the meeting.

**1. APOLOGIES**

No apologies were received.

**NOTED.****2. DECLARATIONS OF INTEREST**

The Chairman sought Declarations of Interest at this stage and the following declaration was made;

Alderman McIlveen – Item 4.11 - LA06/2018/1169/F – Replacement dwelling (off site) to include the demolition of existing dwelling. 85m West of 50 Kilcarn Road, Ballymacashen, Killinchy.

**NOTED.**

(Councillor McAlpine entered the meeting – 7.02 pm)

### **3. MATTERS ARISING FROM MINUTES OF PLANNING COMMITTEE MEETING OF 2 NOVEMBER 2021**

PREVIOUSLY CIRCULATED:- Copy of the above.

**RESOLVED**, on the proposal of Councillor McKee, seconded by Councillor Thompson, that the minutes be noted.

### **4. PLANNING APPLICATIONS**

#### **4.1 LA06/2020/1008/O – Erection of 9 Dwellings with access off Messines Road (Right turning lane provided). Lands immediately north of 10-18 Cambourne View and 17 Cambourne Park, Newtownards** (Appendix I)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Newtownards

**Committee Interest:** Called in by Alderman McIlveen from delegated list w/c 18 October 2021

**Proposal:** Erection of 9 Dwellings with access off Messines Road (Right turning lane provided)

**Site Location:** Lands immediately north of 10-18 Cambourne View and 17 Cambourne Park, Newtownards

**Recommendation:** Refusal

(Councillor Cooper entered the meeting – 7.03 pm)

The Planning Officer (G Kerr) outlined the detail of the application which was before members due to a call in by Alderman McIlveen and the recommendation was to refuse planning permission due to road safety issues.

Jason Killen (DfI Roads) was present to clarify any questions Members may have regarding this issue.

Members were asked to note that as this was an outline application it was the principle of development which was being considered with further details to be submitted with any reserved matters application that would be submitted if there was an overturn of the recommendation to refuse permission.

There were two objections received in relation to the application which had been addressed in the case officer report.



To provide context, the Planning Officer explained that the site was located within the development limit of Newtownards and there were no designations on the land. Referring to the images, she advised the application site was an area of grassland with large areas of gorse, bound on two sides by roads and one side by residential development. The road to the north, on which the access to the site was proposed, was a Protected Route known as Messines Road.

While the principle of housing was considered acceptable, the proposal was recommended for refusal as the proposed site would be accessed off Messines Road (A20) which was a Type 2 Protected Route. In Policy AMP 3: Access to Protected Routes in PPS3 this road fell under 'Protected Routes Designed to an Appropriate Standard as Dual Carriageways, Ring Roads, Through-Passes and By-Passes for all locations'. Planning permission would only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, in exceptional circumstances or where the proposal was of regional significance. It had not been demonstrated that the provision of housing with an access off this protected route would fall under exceptional circumstances nor was it considered to be of regional significance.

DfI Roads was consulted and recommended refusal in its consultation response – "The proposal was contrary to Planning Policy Statement 3, Access, Movement and Parking, Policy AMP 3, in that it would, if permitted, result in the creation of a new vehicular access onto a Protected Route, thereby prejudicing the free flow of traffic and conditions of general safety". Although there was only one refusal reason in relation to the application - it was considered to be an important one as it related to road safety – those members who were familiar with this road would be aware it was a busy thoroughfare and the opening up of an access onto this protected route requiring a right hand turn across traffic close to a busy roundabout was considered to be unacceptable and refusal of planning permission was recommended.

The Chairman invited questions from Members.

Referring to the Messines Road, Alderman McIlveen noted that several years ago planning permission had been passed for the MARM factory site which included an access and a dualling scheme on the Comber Road. He did not recall this issue in respect of the protected route having been mentioned in respect of that application. He sought clarity in that regard and questioned how the designation was derived, what was the appropriate standard in the policy and why was there a difference in parts of the Messines Road. He had looked online at the protected routes map and there was no difference in designation on that map.

Mr Killen explained that the protected route types were decided within each Roads Division and from the Kempstones roundabout to the Portaferry roundabout was classed as category type 2. The MARM site had a 'left in' and 'left out' and therefore vehicles would not be crossing the road; there was also an exception made in that regard to the acceptance of an access. There were other accesses around the area including Tesco etc. which were designed and built as part of the distributor road. Now with the high traffic volumes on that road there was to a need to consider each application as a new access under current policy and guidelines. Mr Killen stated that the principle of the application in respect of the road was that it should be

refused. There was a safety concern regarding the safe flow of traffic highlighting how busy that stretch of the Messines Road was at peak hours and it was felt that it would be difficult to exit the proposed development onto that road.

Alderman McIlveen posed a number of follow up questions to Mr Killen. He was of the view that there should be a central standard for the classifications of the roads rather than it being up to each division. Mr Killen explained that it was based upon what the division classed the road. In terms of the Messines Road that was classed as a Ring Road which fell under the classification of a type 2 category road. Alderman McIlveen asked if there was public record for the classifications. Mr Killen explained that each division held a spreadsheet of the road's classifications. He noted that it had been brought up in the past by the planners that DfI had not been providing notification of the type of protected route. That issue had been drawn to the attention of DfI staff and it was now acknowledged in such applications the type of protected route would be specified in responses which had been done for this application. Mr Killen recognised that the DfI road viewer only specified a protected route, it did not show any further detail on the class type and there were internal discussions to progress that detail. In relation to the MARM site, Alderman McIlveen felt it was odd that an exception had been made in relation to that site. Mr Killen advised that the application was before his time and he did not have all the information to hand. However as specified that access was a 'left in', 'left out' and measures were in place to ensure a safe access. Alderman McIlveen expressed concern in respect of the inconsistency.

The Planning Officer intervened and provided a planning context in respect of the MARM application. The then Planning Headquarters had dealt with the previous 2010 MARM application. It had been treated as an Article 31 application as it was deemed to affect the whole neighbourhood, an important application with the potential of bringing economic benefit to Newtownards and be a major employer. That application had been deemed to be acceptable by DfI Roads given that it provided a 'left in' and 'left out' access and therefore a completely difference context to the application that was before Members this evening. Alderman McIlveen highlighted that the 2015 application submitted by MARM had been substantially different from the application passed in 2010.

The Chairman noted there were speakers in attendance to present, following which Alderman McIlveen would have a further opportunity to ask questions.

At this stage, the Chairman asked that the following Speakers be brought into the meeting:

- Mr Bill McAlister - Agent
- Richard Agus – MRA Partnership
- Stewart Beattie - QC
- Leslie Hughes – Applicant

Following a slight delay in locating the speakers in the virtual gallery, the representatives were brought into the meeting.

Mr Beattie viewed the conduct of DfI Roads in respect of this application as unfair as it was categorising a route with no public consultation nor a public document to display the meanings. To have different roads classifications by each Division was contributory to neither orderly nor consistent development. Mr Beattie had been astonished by the remarks made and advised that the same mistake had been made in 2004 on the publication of PPS3 and following a PAC decision thereafter a change had been made to the policy to provide classification clarity. The Case Officer's report provided an extract of that policy map however this route did not exist on that map. DfI had published a map in 2020 with only red lines on it, the Messines Road was a protected route on the say so of DfI Roads without consultation with any other statutory authority or public body. As a protected route it was within the development limit and in his view the error in respect of the application was that DfI had directed Planning to the wrong policy as the road was in fact a type 4 category route in the absence of any formal designation. He again referred to the PAC decision in 2005 when due to ambiguity the decision was made in favour of the applicant. Mr Beattie outlined that the consequence of the approach taken by DfI Roads meant that the land designation was effectively sterilised. Representatives were surprised to hear of the safety issue being raised tonight as that matter did not arise in the first number of DfI consultations. The sole issue that was raised in the last consultation with DfI Roads was that the road was a type 2 protected route designation with no supporting documentation. Mr Beattie highlighted that DfI did not have any public documentation to describe a ring road. He outlined that their position was perfectly straightforward, accepting that the Messines Road was a protected route within the development limit. However, there was no documentation to advise otherwise that the road was a type 4 protected route. Development had been permitted along the Messines Road over a number of years. Mr Beattie did not feel the resolution of this matter an issue which the applicant or the Council should have to deal with. If DfI Roads wished to publish an amended policy map and redesignate areas that must be done lawfully and properly.

Mr Agus added that DfI Roads had consulted consistently in the first number of responses to say the Messines Road was a protected route, a type 4 and access was permitted. DfI had then requested a right turn lane at the access. The applicant was happy for that to be included and that made it safer and did not obstruct the traffic on the road.

Alderman McIlveen sought clarity in respect of the right-hand turn proposal. Mr Agus confirmed that in June 2021 DfI had advised that if Planning were minded to progress the application, they would like a right hand turn lane at the access point. An outline drawing had been submitted in that regard with the detailed design being subject to a future reserved matters application. Mr Agus stated that access to the protected route was permitted when access could not be reasonably achieved from a minor road. Therefore, access to the protected route was permitted and that was consistent with other developments along the route for e.g. Ards Shopping Centre and Tesco Petrol Station. Mr Agus advised that DfI Roads had also asked for the plan to show that the access would be extended into the rest of the white land. That plan had been submitted to show access to the development with that being extended for the potential to service other dwellings on adjacent land. That was the reasoning why it has been oversized to have large visibility splays for additional dwellings. Mr Agus felt that the road safety issues had been addressed. He viewed



the protected route matter as a planning issue and an issue where Dfl Roads had misdirected the Council advising that the Messines Road was type 2 route when it was not.

Alderman McIlveen voiced his surprise noting that it was due to the right-hand turn lane that Dfl Roads had an issue in respect of safety. Mr Agus advised that the initial application had been submitted without a right-hand turn lane however that suggestion had been incorporated to address the road safety issues. If Dfl Roads had made a reasonable suggestion consideration could have been given to that. It did not seem unreasonable to have a right-hand turn lane on a protected route.

In response to further requests for clarity from Alderman McIlveen, Mr Beattie advised that in response to the PAC decision in 2005 an amended policy had been published with a map showing the primary colours and the roads designations. The Commission specially criticised Dfl for not having any criteria or public designations. Mr Beattie stated that he struggled to articulate his surprise that the reason for the policy change had not been properly followed through. Mr Killen had outlined that the classification was not a jurisdiction-wide approach which did not support orderly or consistent development. He reiterated that where there was ambiguity that should be read to the benefit of the applicant.

Alderman McIlveen asked Mr Beattie what he would have expected for a decision to have been reached and where did this leave the Council. Dfl were an important statutory consultee and were providing one ground for refusal of the application whereas Mr Beattie was highlighting that designation could be unlawful. To be clear, Mr Beattie stated that the policy outlined that the map could be updated and in principle to show the designations was not in itself wrong. In his opinion he felt that the Planning department should follow the same line as the PAC and say because of the conduct of Dfl an ambiguity had been left, it was clear that the Messines Road was a protected route within the settlement limit, the Planning Department were entitled to make a planning judgement to treat the road as a type 4 protected route and on that basis were therefore entitled to take a different approach under the policy. Mr Beattie emphasised that he was not asking the Committee to depart from Policy, the approach from Dfl was the wrong approach and there were factual circumstances to allow for the application to be overturned.

Councillor McAlpine expressed concerns regarding the increased traffic on the Messines Road. She raised a question regarding the access and asked if there were alternatives considered and referenced the orthophotography in this regard to show what appeared to be an alternative. Mr Agus outlined that Cambourne could not be used as an access and there were no alternatives.

Alderman McDowell stated that he travelled on the Messines Road each day, it was a very busy road and there were often tailbacks. He wondered how a car could exit from the new development and turn right into the Messines Road and in that regard felt that was a traffic safety issue. Mr Agus stated that the development was the least busy access onto the route. He referred to the surrounding area highlighting the access from Tesco, the Scrabo Road and the Blair Mayne Road South where there was no right-hand turn lane.

As there were no further queries for the representatives, they were returned to the virtual public gallery. The Chairman then asked if Members had any queries for the Planning Officer or DfI Roads Official.

Councillor P Smith sought guidance if the Council were to go contrary to DfI Roads Advice. The Planning Officer stated that it was unfortunate that Planning had not received Mr Beattie's speaking notes in advance; what had been submitted was not reflective of what had been said and if that had occurred all the issues highlighted could have been checked prior to the meeting. A consultation response had been received from DfI Roads on 9<sup>th</sup> September and 4<sup>th</sup> November stating that the Messines Road was a protected route – dual carriageway/ring road and it was only by exceptional circumstances or regional significance that the application would be considered acceptable. Advice was taken from DfI Roads as the statutory consultee however she noted that the application had been refused on the basis of PPS3 and upon the advice given Planning had no reason other than to refuse on that basis.

Councillor P Smith sought a response from Mr Killen on Mr Beattie's comments. Mr Killen firstly wished to clarify his earlier remarks. He explained that there was a standardised type of road which was used across the divisions and it was up to the divisions individually to apply the types of those standards and provide a classification on the road. During this process, the DfI Case Officer had looked at alternative ways to ensure a safe access when a right-hand turn lane had been suggested. It had then come to light, the road was a type 2 protected route and that meant the matter could not be taken any further to identify a safe route. The DfI Traffic section were not content with the right-hand lane suggestion given that other accesses along the Messines and Castlebawn Roads were 'left out, left in' only. DfI Roads had suggested to the applicant that an access be looked at in Sterling Avenue, which accessed the entire green strip and that suggestion was highlighted to the applicant at the early stages.

Alderman McIlveen questioned if the consultation responses from DfI Roads were accurate and the correct designation process followed. He was interested to further understand what had occurred with DfI Roads and assumed a DfI Case Officer would have carried out checks on the type of road in the first instance. He was confused as to why a right-hand turn lane had been suggested and then considered not to be a safe option.

(Alderman McDowell withdrew from the meeting – 7.56 pm)

Mr Killen explained that internal consultation had occurred with the DfI Network Traffic section. He highlighted that there had been an internal training issue which resulted in notification on a clear position not occurring at an earlier stage. He had advised the applicant and apologised on the DfI's behalf in that respect. Mr Killen outlined the amendment which had occurred to the classification from a type 4 to a type 2.

In response to a further question from Alderman McIlveen regarding the PAC decision which Mr Beattie referred to, Mr Killen advised that he would have to check with senior management in that regard.

Councillor Walker noted that a lot of the discussion had been in respect of the internal workings within Dfl. He felt there was no option but to accept the recommendation of refusal by the Officer. On that basis, he was happy to propose.

The Chairman wished to allow the opportunity for further questions from Members before allowing a proposal.

Councillor McClean referred to the degree of ambiguity and personal judgement on the classification of the road and sought clarity in that regard. Mr Killen advised that he had sought advice from the Principal Engineer within the Traffic Section and based on his expertise had advised the road was classed as a type 2 protected route.

Councillor McClean referred to the PAC appeal and that had gone in favour of the applicant due to lack of clarity and asked if that had been considered. The Planning Officer stated that as previously alluded to Mr Beattie had not provided a speaking note on the points he had raised and this was the first time that matter had been mentioned.

With respect, Councillor McClean noted that extant judgements should be reviewed as part of the assessment of the application.

The Head of Planning disagreed with the remarks of Councillor McClean as it was impossible to recall every PAC decision. She felt the Committee had been left in a difficult position - there was a matter with a previous PAC decision that would impact this application and on the other hand a Dfl Principal Engineer was advising that the road was a type 2 protected route. This in essence was the presentation of new information and on that basis, she was recommending that the application be deferred to seek legal advice.

Councillor Walker proposed, seconded by Alderman McIlveen, that the application be deferred.

As seconder, Alderman McIlveen felt that was a sensible option to take time to look at the matters raised.

**RESOLVED, on the proposal of Councillor Walker, seconded by Alderman McIlveen, that the application be deferred.**

**4.2 LA06/2021/0744/F – Conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey ancillary Granny Annex accommodation. 5b Killinchy Road, Comber**  
(Appendix II)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Comber

**Committee Interest:** Called in by Alderman McIlveen from delegated list w/c 15 November 2021



**Proposal:** Conversion and extension of existing single storey garage including increase in ridge height to create one and a half storey ancillary Granny Annex accommodation

**Site Location:** 5b Killinchy Road, Comber

**Recommendation:** Approval

The Head of Planning outlined the detail of the application which had been brought before Planning Committee following a call-in request received from Alderman McIlveen who had stated that *'Given this is the conversion of a garage in close proximity to neighbouring dwellings and involves a raising of the height of this building to one and half storey, he would like the Committee to consider the impact of the proposal on privacy and amenity of neighbouring dwellings under the addendum to PPS7 Residential Extensions and Alterations'*.

### **Site and Surroundings**

The site was located just off the Killinchy Road, Comber and was accessed via The Grange within a well-established residential area primarily consisting of detached properties within generous plots.

### **Existing Garage**

The existing garage to be converted was located to the rear of the host dwelling at 5b and to the side of the recently constructed dwelling at 1a The Grange. The garage was single storey with a render finish and slate roof.

### **Proposed Ancillary Accommodation**

The proposal involved the conversion of the existing building including a small ground floor extension to the north-eastern gable and an increase in the ridge height of 1.7m to facilitate first floor accommodation. Two new dormer windows would be added to the south-eastern elevation of the building overlooking the rear garden of 5b as well as two small roof lights to the north-western elevation and a small ground floor window to the south-western elevation facing the adjacent dwelling at 1a The Grange.

Internally, the accommodation would provide a living area at ground floor with a small WC and at first floor two small bedrooms and a bathroom would be provided. Members were then shown a comparison of before and after to help visualise the extent of the works proposed. The relevant policies for householder proposals were contained within the Addendum to PPS7 Residential Extensions and Alterations. Policy EXT1 required proposals to be sympathetic to the appearance of both the existing property and the surrounding area and that they should also not unduly affect the privacy or amenity of neighbouring residents. It was considered that the proposal would satisfy those policy requirements. The building was already existing, therefore it was the impact of the extension and alterations which must be assessed. In this regard, both the ground floor extension and the increase in the ridge height of the building were modest in scale and would not harm the character or appearance of the area. The ridge height of the building would continue to sit below that of the host dwelling and the adjacent dwelling at 1a The Grange (approximately 1m below as annotated by the agent on the site layout plan).

With regard to the privacy and amenity of neighbouring residents, the potential impact had been thoroughly assessed. The two neighbouring properties potentially affected by the proposal were 5 Killinchy Road and 1a The Grange. Two letters of objection had been received from the occupants of 1a raising concerns in relation to loss of light and privacy to their living room. The existing garage was located approximately 4m from the closest gable end of 1a. Situated on this gable, there were two ground floor windows which served a living area. It was not considered that the increase in ridge height of the existing building by 1.7m would result in any unacceptable loss of light to the living area. In addition to the two gable windows, the room was served by double patio doors on both the southern and northern elevations of the building, meaning that the room would continue to enjoy ample lighting throughout the day and the amount of light entering the room would not be materially affected by the proposal.

With regard to privacy, only one ground floor window was proposed on the gable facing 1a. To ensure that any potential views from this window towards 1a were mitigated, it had been recommended that approval of the proposal was subject to a condition requiring obscure glazing to be fitted prior to occupation and retained in perpetuity thereafter. The proposed dormer windows to the front of the building would overlook the rear garden area of 5b with only oblique views towards the front garden of 1a which would not cause unacceptable overlooking of any private amenity space. Policy EXT1 of PPS7 stated that it was the 3-4m of private amenity space to the rear of a property which the policy sought to protect from unacceptable levels of overlooking.

With regard to No. 5 Killinchy Road, there would be no loss of privacy as no windows with the potential to overlook were proposed on the north-western elevation facing the rear garden of No. 5. The increase in the ridge height of the building was also not result in any unacceptable loss of light or overbearing impact given the distance of the building from the rear elevation of No. 5.

Objections had also been received from the occupants of 1a The Grange and 15a Killinchy Road in relation to the nature of the proposal. Concerns had been raised that the ancillary accommodation could function as a small independent dwelling unit and that it would create an undesirable precedent leading to an unacceptable density of development within the area. Policy EXT1 contained specific guidance on proposals for ancillary residential accommodation such as that proposed. It was advised that accommodation must be subordinate to the main dwelling and its function supplementary. The policy also recommended that accommodation should normally be attached to the existing property and be internally accessible from it. However, it went on to state that where an extension was not practicable and it was proposed to convert and extend an existing outbuilding, this would depend on a modest scale of accommodation being provided. It was considered that the modest scale of accommodation which included no kitchen facilities, would be subordinate to the large existing dwelling ensuring that it would continue to be used as part of the main dwelling. As a further measure, it was recommended that any approval was subject to conditions stipulating that the building could not be used at any time other than for purposes ancillary to the existing dwelling and that it should not be separated, sold off or leased from the existing property.

It was considered that the accommodation proposed could not practically and viably operate on its own. It would have no separate access or curtilage and its close positioning to the host dwelling meant that it would be highly unlikely to be sold and operated as a separate dwelling. In this respect, appeal decision 2015/E0053 for ancillary accommodation at 13 Newtown Road, Newry, was useful in the assessment of proposals for ancillary accommodation. The proposal considered under this appeal was for detached new build ancillary accommodation with a kitchen and living room on the ground floor and a bathroom and two bedrooms on the first floor. However, the Planning Appeals Commission considered that the building was very close to the main dwelling with no physical separation between the two and shared garden and parking spaces and accordingly there had not been a sub-division of the planning unit to create an independent dwelling. The current case was considered to be comparable to this appeal case.

The Head of Planning stated that having assessed the proposal against the relevant planning policies and having carefully considered all of the representations received, the Planning Department was satisfied that the proposal would not result in any unacceptable impact on the privacy or amenity of existing adjacent dwellings and it was therefore recommended that full planning permission should be granted subject to the planning conditions outlined in the officer's report.

The Chairman thanked the Officer for the presentation and sought questions from Members.

Alderman McIlveen referred to the view from the Planning Officer that there would be no 'unacceptable' loss of light and he asked what the limit of acceptability was. The Head of Planning explained that normally the light test was applied to measure the impact on adjacent properties. However, on this occasion the particular room of the dwelling at 1a had patio doors to the rear and front as well as two smaller windows on the gable. The patio doors to the front were south facing and would get the direct sunlight for most of the day. The light test set out in the addendum to PPS7 would be satisfied with both sets of patio doors. It was considered that the two small windows on the gable facing the garage were secondary windows and if the light test was to be applied on those windows it would be a 25-degree light test. It was considered that whilst it would marginally fail that 25-degree test, that would not be given any weight as there were secondary windows - main source of light) from the two patio doors.

Referring to impact on No 5, Alderman McIlveen asked if there was any shadowing impact. The Head of Planning stated that was not considered to have an impact given the distance from the rear elevation of No 5.

At this stage, the Chairman asked that Peter Best - Agent be brought into the meeting.

Mr Best noted this application had been recommended for approval and the reason for the call-in was recorded as the impact the proposal would have on privacy and amenity of neighbouring dwellings under the addendum to PPS7 residential extensions and alterations. This issue had been addressed in the Case Officer's report. Mr Best wished to add that the distance from the rear of the garage to the

legal boundary was 2m and not 1.45m as stated by the objector. He explained the relevance of this was that under the Planning (General Permitted Development) Order (Northern Ireland) 2015, Part 1, Class A, paragraph g), the height of the building would not be restricted because it was not within 2m of the boundary of the curtilage of the dwelling house and therefore would be granted under permitted development. Mr Best was of the understanding that approval would normally be granted for development that was not significantly greater in impact than that which would be allowable as permitted development. The potential for loss of privacy had been raised as an issue, though that had previously been negatively impacted by the occupants of 1A The Grange by their removal of screen planting along this boundary. That would appear to be in contravention of Condition 5 of the Planning Approval for 1A The Grange and which was currently the subject of enforcement case reference LA06/2021/0254/CA.

As there were no questions for Mr Best, the Chairman requested Officers to return him to the virtual public gallery. There were no further questions for the Planning Officer.

Proposed by Councillor Cooper, seconded by Councillor McRandal, that the recommendation to approve planning permission be adopted.

On being put to the meeting with 10 voting FOR, 2 AGAINST, 3 ABSTAINING and 1 ABSENT, the recommendation was declared. A recorded vote resulted as follows:

<b>FOR (10)</b>	<b>AGAINST (2)</b>	<b>ABSTAINING (3)</b>	<b>ABSENT (1)</b>
<b>Councillors</b>	<b>Alderman</b>	<b>Aldermen</b>	<b>Alderman</b>
Brooks	McIlveen	Keery	McDowell
Cooper		Gibson	
Kennedy	<b>Councillor</b>		
McKee	Adair		
McRandal			
McAlpine			
McClellan			
Thompson			
Smith, P			
Walker			

**RESOLVED**, on the proposal of Councillor Cooper, seconded by Councillor McRandal, that the recommendation be adopted and that planning permission be granted.

**4.3** **LALA06/2020/0253/F – Erection of 35 no. apartments with associated car parking and landscaping. Lands between 58 Kinnegar Drive and Pavilions Office Park, Kinnegar Drive, Holywood**  
(Appendices III, IV)

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

DEA: Holywood & Clondeboye

**Committee Interest:** A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

**Proposal:** Erection of 35 no. apartments with associated car-parking and landscaping

**Site Location:** Lands between 58 Kinnegar Drive and Pavillions Office Park, Kinnegar Drive, Holywood

**Recommendation:** Approval

The Planning Officer (C Rodgers) outlined the detail of the application. The site was within the settlement limits of Holywood. The site was shown as whiteland within the North Down and Ards Area Plan and was zoned for housing within draft Belfast Metropolitan Area Plan (zoning HD 03/02). The site is also located within a proposed Area of Townscape (ATC). The planning history of the site was a very important material consideration as the site had extant permission for a similar development of 33 units. (LA06/2015/0720/F)

The wider area included a mix of dwelling types, apartments and offices. Surrounding buildings range from single storey to three storeys in height and comprised a wide variety of designs and finishes. Referring to visuals of the site, the Officer advised that the site had been cleared to facilitate development following the previous grant of planning permission.

Members may recall that the previous application for 33 apartments was presented at the Planning Committee meeting in December 2017 and Members voted in favour of approval. An application for 53 units was approved on this site in 2008. That continued to be an important material consideration.

The proposal for 35 apartments represents an increase of just 2 units from the extant approval and marks a reduction of 18 units from the 2008 permission. It was considered that the amended design would cause no harm to the character of the area and the appearance of the proposed ATC.

As with the extant permission, the proposed blocks were three storeys except adjacent to the existing dwelling at 58 Kinnegar Drive where the height reduced to two storey. The proposed elevation showed how the design of the apartments would reduce the overall massing of the development from that previously approved - the outline of the previous permission was indicated by the blue line. The amended design would minimise the overall visual impact of the development.

The roof line of the proposed apartment buildings was broken up to reflect the Victorian terraces in the area - a key feature of the proposed ATC. The proposed buildings would also respect the existing building line along Kinnegar Drive. The apartments would be finished in different shades of clay facing brick which would respect the character and appearance of the proposed ATC as there were mix of building finishes within the area. The proposal would have no unacceptable adverse impact on existing residential amenity. It was considered that the height of the proposal would not result in any unacceptable adverse loss of light, rather the reduced massing would facilitate greater levels of light compared to the extant permission.

The level of communal private amenity space satisfied Creating Places standards. New planting was proposed to soften the visual impact of the development.



NIEA had provided no objection in relation to natural heritage interests. Adequate in-curtilage car parking was proposed. 53 car parking spaces would be provided for 35 apartments which met Creating Places standards.

Objectors raised concerns regarding the potential impact on roads safety, traffic impacts and the potential impact on the protected route. The proposal would create a new access onto Kinnegar Drive which was a public adopted road and did not involve direct access onto the protected route. The proposed access was approved under the extant permission for 33 units. The proposal involved an increase of just 2 units. DFI Roads provided no objection to the proposal subject to conditions to ensure provision of adequate visibility splays onto Kinnegar Drive. It was considered that the proposed increase of just 2 units would not prejudice road safety or significantly inconvenience the flow of traffic. 35 units represented a significant reduction from the 53 units approved in 2008.

The Planning Officer advised that a recent consultation response from NI Water indicated that whilst there was a public foul sewer within 20m of the proposed development boundary, the receiving foul sewerage network had reached capacity. NI Water had informed the Council that it has agreed a downstream engineering solution with the applicant to mitigate the foul capacity issue and allow connection for this development proposal. NI Water had clarified that solution was to be fully funded and delivered by the applicant. It was recommended that this restriction was secured by an obligation in a Section 76 Planning Agreement.

Objections from 23 addresses had been received. All issues raised had been carefully considered in the Development Management Report. The site was zoned for housing in the draft plan and the principle of development had long been established. No objection had been received from any consultee. Having considered all material planning matters, the Planning Officer advised that it was recommended that this application was approved.

The Chairman thanked the Officer for her presentation and sought questions from Members.

There were no questions for the Officer at this stage.

At this stage, the Chairman asked that Rachel Woods MLA be brought into the meeting who was speaking in opposition to the application.

Ms Woods indicated that she was speaking against this proposal, on behalf of residents she had been working with for years, on grounds of contravention with PPS3 Policy AMP2 and PPS7 Policy QD1, and that the planning conditions on this application need amended. The A2 was designated as a protected route and she would contend that this application did not meet the exceptional requirements in PPS3 Policy AMP2 as it stated, 'Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where; a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes'. It further stated that 'planning permission would only be granted for a development proposal involving



direct access or the intensification of the use of an existing access in exceptional circumstances or where the proposal was of regional significance'. Given this planning application was not of regional significance, it could not meet the threshold of exceptional circumstances.

Ms Woods noted that the planning report stated that access was only onto Kinnegar Drive – this did not take into consideration the area as a whole. This was direct access as there was no other access in and out of the area, bar through the Esplanade entrance and exit. Kinnegar had historic problems with parking availability - for business, for recreation, for hospitality and for existing residents. It was also used as an unofficial 'park and ride' which increased the number of vehicles in the area, as many households had no allocated car parking spaces. It was also established as an area of parking restraint and representations had consistently been made to the Department for Infrastructure for its suitability for a residents' parking scheme. Changes made to the lighting sequence at the junction with the A2 had caused well-known and well-rehearsed problems for those people attempting to enter and exit the area. A full transport assessment should take place on this site at different times of the day, and week in order for a full picture of the issues experienced in this area. The pavements and roads in the Kinnegar area were in need of significant upgrade and any further vehicle movements would only erode them further. Developer contributions could seek to address those issues. According to the traffic assessment 'the development was considered to have a minimal transport impact relative to the existing traffic flows in the area but this was submitted based on the previous ones in 2015 and during the pandemic where traffic flows were much smaller. Ms Woods indicated that she would question the trip numbers suggested, and it relied again on the previous permission granted in 2017 not reflecting current use or times of congestion.

Continuing, Ms Woods asserted that this development, due to its size and type, altered the character of the local area and was not conducive to the Policy QD1 that proposals involving intensification of site usage or site coverage would only be permitted in exceptional circumstances. Those were not exceptional circumstances. Similar comments were made in relation to PPS7. This application would involve intensification and, in the area, dwelling sizes did not go over two storeys. Pavilions Office Park was two storeys and the nearest dwellings between 39 and 49, 25 and 35 were all two. Three storey dwellings were further down into Kinnegar away from the site.

Briefly, on flooding, there was no full assessment of Policy FLD1, just an 'acceptance of the logic' by DfI, which was questionable and again an overreliance on the 2015 approval, where 'The proposal is considered as an exception to the policy as the site is on previously developed land and there is extant permission on the site that was considered acceptable against Policy FLD 1.' It was not clearly assessed in its own merit. She also noted DfI Rivers' assessment of flood risk to people (based on the Defra / Environment Agency's "Hazard to People Classification using Hazard Rating") for an uncontrolled release of water emanating from Church Road Lower and the overall hazard rating at this site was considered as low/moderate but did state that 'it has not been demonstrated to DfI Rivers that the condition, management and maintenance regime of Church Road Lower was appropriate to provide sufficient assurance regarding reservoir safety, as required under Policy FLD

5, so as to enable the development to proceed' and that should be considered further.

Highlighting some inaccuracies within the report, Ms Woods advised that the site was not vacant and the site was cleared in October 2021, and therefore in both this and previous applications given continual clearance, no EIA Determination could be completed. Residents had evidence of hedgehogs, a protected species, on the site which Council was aware of. More recently, the trees in the area mentioned were removed in May 2021. Therefore, conclusions under PPS2 could not be made. Ms Woods asked the Committee to look at adding in developer contributions, especially to under PPS3, 5.18 to make use of an existing access, given the well-known and documented issues on pavements and roads on Kinnegar Drive, and the impact this development would have and was having on them, given cracks in the opposite pavement were already appearing.

The Chairman invited questions from Members.

The Chairman noted that there was a permission on site granted in 2017 which was a fallback position. This application was a reduction in ridge height however included two more apartments and he asked if Ms Woods considered this application a betterment or not. Ms Woods advised that the views from residents in that regard were mixed due to the issues within the area. She advised that there was massive objection to the development in general and the amendments had not allayed the worries and fears of the local residents.

Ms Woods had alluded to comments from Translink in relation to the application and Councillor McKee asked for her to expand on that. Ms Woods advised that Translink had been consulted in respect of the development of this site in May 2015 and according to correspondence from Translink it had not been consulted on the current planning application nor had it been corresponded with in the series of risk mitigation measures that it had previously outlined. Ms Woods felt Members should question why Translink had not been consulted as the site was right beside the train line and she suggested that those risk mitigation measures should be looked at.

As there were no further questions for Rachel Woods MLA, she was moved to the public gallery.

The Chairman then asked that Andrea Sinclair – Agent and Richard Agus – MRA Partnership to be brought into the meeting who were speaking in support of the application.

Ms Andrea Sinclair thanked members for the opportunity to speak, stating she was from Footprint Architectural Design and was in attendance on behalf of the applicant, Beshouse Residential Properties Limited. She fully endorsed the Planning recommendation and was keen to stress that fundamental to the consideration of this proposal was the fact that a live consent for 33 units existed on the site. The application simply involved the provision of two additional apartments and a number of design amendments. Importantly, those amendments involved the reconfiguration and re-elevation of the extant approval. The roof line would be broken up by a built form that gabled onto the road frontage with the result that both the height, scale and

massing of the proposal were less than previously approved. Furthermore, the development was in a highly sustainable location and was within walking distance of Hollywood town centre and the local train station. There were no environmental constraints to the development of the site. Indeed, all statutory bodies were content with the proposal. Ms Sinclair advised that the scheme involved a substantial investment of £5.5 million and represented an opportunity to replace an overgrown site with a quality residential development that was, not only sympathetic with the character of the Kinnegar area, but which actually enhanced it.

In respect of the flood point highlighted by Ms Woods, Ms Sinclair recognised the concern that an over reliance was being placed on the existing approval however the existing approval was a consideration which needed to be taken into account. She also noted that the proposed condition 9 required a final drainage assessment to be submitted. Furthermore, NIEA had considered the impacts of the proposal and had no concerns subject to the conditions.

Ms Sinclair informed members that Mr Richard Agus of MRA Partnership was in attendance and would address the roads matters raised by Ms Woods.

Mr Agus advised that Kinnegar Road was not a protected route therefore that policy could not apply. The two additional dwellings proposed would not present a significant intensification. Rebutting the suggestion made that his traffic assessment could not be correct as it was submitted during the pandemic, he explained that the assessment was based on database information and the report had been prepared on 3 March 2020 which was before any of the lockdowns occurred. In respect of the concerns regarding car parking, Mr Agus felt those were a reason why the application should be approved as the properties would encourage a non-reliance on cars.

The Chairman invited questions from Members.

Councillor McRandal asked a number of questions as outlined below;

- The reasons why a new application had been made and was that about maximising return on profit. Ms Sinclair explained that a new developer had since acquired the site since the last application and had their own ideas as to what was a marketable product which had brought about the change in design. The site had been bought with the view to making a profit.
- Referring to the sewerage issue, Councillor McRandal asked if that had only recently arisen. As a result of the additional two units, Ms Sinclair advised that discussions and a wastewater impact assessment had been carried out with NI Water. As Ms Rodgers had alluded to, a solution had been found and would be subject to a Section 76 agreement.
- Following on, Councillor McRandal asked when that solution would be put in place. Residents were concerned regarding potential disruption and the length of time it was going to take to complete the development. That was subject to Section 76 which would tie into the planning approval and Ms Sinclair imagined that would be a prior to occupation condition. Works would be delivered by way of an Article 161, an application had been made in that

regard and once planning approval was received the developer would be in a position to commence works.

- Ms Woods had made a point regarding access onto the A2 as a protected route. Mr Agus responded advising that the policy would not allow for an access onto the protected route and there was a requirement to use the existing junction. An additional two apartments would not create an impact in that regard.

Councillor McClean referred to the intensification of the use of an existing access being given only in exceptional circumstances as referred to in policy AMP3 and sought clarity in that regard. Mr Agus explained that the proposal would access onto the public road at Kinnegar Drive and would not result in direct access onto a protected route therefore policy AMP 3 of PPS3 - access onto a protected route did not apply.

### **RECESS**

The meeting went into recess at 9.06 pm and resumed at 9.18 pm.

In relation to concerns of residents in respect of piling, Councillor McKee queried if a risk assessment had been submitted to the Council in that regard as noted in the Case Officer's report. Ms Sinclair advised that piling had taken place under the extant approval, the required report had been submitted and a special type of piling had been used to minimise the piling on the site.

Councillor McKee asked if the traffic assessment was a desk top assessment. Mr Agus advised that the document submitted was a transport assessment form and he had visited the site.

As there were no further enquiries for the representatives, the Chairman requested Officers to return Ms Sinclair and Ms Angus to the virtual public gallery. He then asked if Members had queries for the Planning Officer.

Councillor McRandal referred to the direct access onto the A2 and the implications of PPS3. The Planning Officer stated that the proposal involved direct access onto Kinnegar Drive, AMP3 was not applicable as there was no direct access onto the protected route. That was consistent and long-standing interpretation of the policy and the previous decisions had been taken in the context of PPS3 which included the protected routes policy. The matter of road safety would always be a material planning consideration regardless and was a key consideration for DfI Roads when assessing any proposal. DfI Roads had not highlighted any safety concerns in its consultation response. There was a signalised junction at the access to ensure safety. The Planning Officer stated that two additional units would fall below the definition of intensification.

Councillor McRandal referred to comments made by Ms Woods that Translink had been a consultee on a previous application but not for the two most recent applications. The Planning Officer felt it was important to note that the principle of development was established with an extant approval for 33 dwellings with the footprint of both schemes being fairly similar. Given that fallback it was not deemed

necessary to go back out to every consultee and that was an approach taken with applications. Translink would not be deemed as a statutory consultee, the application was advertised and it was welcome to submit comment.

The site backed onto the railway line and Councillor McRandal questioned if planning officers were satisfied that Translink was not a statutory consultee. The Planning Officer advised that the list of statutory consultees were set out in legislation and Translink was not listed as a statutory consultee for planning applications.

Councillor McClean asked if Planning would agree that the application would require an existing access off a protected route which was dual carriageway. The Planning Officer stated that indirectly it would, but many adopted public roads eventually led to a protected route. She reiterated that the proposal did not have direct access to the protected route and in addition the two additional units in any event would not amount to intensification.

Councillor McClean read out an extract from AMP3: Access to Protected Routes policy – 'Planning permission will only be granted for a development proposal involving direct access or the intensification of the use of an existing access in exceptional circumstances or where the proposal is of regional significance'. He welcomed guidance in that regard. It was accepted that it was not a direct access and he felt this policy should not be applied as the proposal was not an exceptional circumstance or of regional significance.

The Head of Planning wished to respond to Councillor McClean and noted that extensive discussion had already taken place at the November Planning Committee meeting in respect of Glen Road. Similar issues had been discussed at length on the protected route and the intensification where legal advice had been sought. She referred to the top of the policy which read 'The Department will restrict the number of new accesses and control the level of use of existing accesses onto Protected Routes'. As the Planning Officer had alluded to, every road in Northern Ireland led to a protected route eventually and the policy could not be applied in that respect. The response from DfI Roads detailed no objection on the basis that policy AMP3 was not engaged and Planning were content with that position.

With regards to the intensification, Councillor McClean questioned why reference was being made in that regard to the two additional units as he thought that the proposal should be considered as a whole. If that was the case he wondered if the entire development was considered as intensification. The Planning Officer stated that there was a fallback position for 33 units. Further to that, the Head of Planning noted that DCAN 15 in respect of the intensification was not planning policy. Consideration was to be given to the safe access onto the A2 and as there was a signalised junctions DfI Roads had not expressed concern in that respect.

In response to a question from the Chairman regarding piling, the Planning Officer advised that she had been on site recently and work had started to implement the extant permission.



Councillor McKee raised a question regarding developer contributions noting that Ms Woods had mentioned that the roads and pathways in Kinnegar were in need of investment and developer contributions would be welcomed. The Head of Planning advised that Belfast City Council had found itself in a difficult situation through developer contributions and the public realm. If developer contributions were to be applied to this application it would be for a stretch of pavement solely along the frontage of the development. Given that was not applied previously she would struggle to see on what ground that could be applied in this instance for two additional units. There was no appropriate policy for applying developer contributions and it regularly had been found to be un-sustainable. The Council in its Preferred Options Paper (POP) associated with its Local Development Plan had sought to address that matter.

Referring to remarks that had been made regarding the single access onto the dual carriageway, Alderman Keery highlighted that there was a road that ran past the frontage of Kinnegar Army base. Other than a gated access, that site was not vacant and when the army vacated the site completely that road accessed onto the Harbour Estate. Therefore, there was another access road from the proposed development.

Councillor McAlpine thought Translink would have been neighbour notified as landowners in the area. The Planning Officer recognised that the railway line ran along the back of the site however Translink would not constitute as an 'identified occupier' of a nearby building. She did not believe they would have been directly neighbourhood notified.

Alderman McIlveen noted that Translink were aware of the development and presumed it had not made any representations. There were a number of objections to the application but the Planning Officer did not recall seeing an objection from Translink.

Councillor P Smith proposed, seconded by Alderman McIlveen, that the recommendation be adopted and that planning permission be granted.

As proposer, Councillor P Smith noted that the genuine concerns from residents in respect of the development had been well articulated. The extant planning permission already existed and the considerations were in respect of the additional two units and the pros and cons of the two different designs.

As seconder, Alderman McIlveen noted that there was a clear fallback position. He was content the Planning Committee had done justice in the consideration of the application and the policy. He felt the policy was clear on how it should be applied in this instance and all the issues had been clearly set out in the Case Officer's report and in the presentation from the Planning Officer.

Councillor McRandal stated that he would not be supporting the proposal. He felt there had been a number of similar situations where an extant planning approval existed and the developer had submitted another application requesting further development. The issue with this application was predominantly with the traffic threshold and the capacity within Kinnegar.



On being put to the meeting with voting 11 FOR, 2 voting AGAINST, 2 ABSTAINING and 1 ABSENT, the recommendation was declared. A recorded vote resulted as follows:

<b>FOR (11) Aldermen</b>	<b>AGAINST (2) Alderman</b>	<b>ABSTAINING (2)</b>	<b>ABSENT (1) Alderman</b>
Gibson Keery McIlveen			McDowell
<b>Councillors</b>	<b>Councillors</b>	<b>Councillors</b>	
Adair Brooks Cooper Kennedy McAlpine Thompson Smith, P Walker	McRandal McKee	Cathcart McClellan	

**RESOLVED**, on the proposal of Councillor P Smith, seconded by Alderman McIlveen, that the recommendation be adopted, and that planning permission be granted.

**4.4 LA06/2019/1195/F – Two single storey infill dwellings. Lands adjacent to and south of 9 Killinakin Road, Killinchy**  
(Appendix V)

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendums (b & c).

**DEA:** Comber

**Committee Interest:** A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation

**Proposal:** Two single storey infill dwellings

**Site Location:** Lands adjacent to and South of 9 Killinakin Road, Killinchy

**Recommendation:** Approval

(Councillor Brooks left the meeting at this stage – 9.55pm)

The Planning Officer (P Kerr) outlined the detail of the application. The proposal was being presented at committee as it attracted more than 6 objections, 23 letters of objection were received from 11 addresses. Consultations were carried out with NIW, DFI Roads, NIEA and HED. No objections were raised.

The Planning Officer advised that the main issues raised in the representations were:

- Creation of ribbon development and the infilling of a visual break
- Impact on character of area
- Inadequate site lines

- Impact on AONB and impact on views
- Unwelcome precedent for the area
- Site could accommodate 3 dwellings.

(Alderman McIlveen left the meeting at this stage – 10.00pm)

As stated in the Case Officer report the initial proposal was for a single dwelling on the site and the agent then came in with an amended proposal for 2 dwellings.

The site was located on elevated land and was currently comprised of an agricultural field. The field sloped from west to east with the Killinakin Road set at a higher level than the application site.

Turning to the development plan, the site lay beyond any settlement limit in the Ards and Down Area Plan 2015, within the countryside and a designated Area of Outstanding Natural Beauty and within close proximity of an archaeological site and monument.

In respect of the regional policy considerations, the Planning Officer explained that the relevant policies were the SPPS, Planning Policy Statement (PPS)2 Natural Heritage, PPS3 Access movement and parking, PPS6 Planning Archaeology and the Built heritage and PPS 21 Sustainable Development in the Countryside. With regard to PPS2 Policy NH6 was of particular relevance to this proposal as it related to new development in an Area of Outstanding Natural Beauty. The proposed dwellings were appropriate for the AONB as siting and scale of the proposal was sympathetic to the special character of the Area of Outstanding Natural Beauty in general and of the particular locality as they were modest with low-lying low ridge with quality materials and design and in keeping with the adjacent dwellings.

The proposal respected features of importance to the character and appearance of the landscape with the modest design and scale and respecting the topography of the land. The proposal respected local architectural styles and patterns as the adjacent dwellings were low lying and well-integrated in a manner not dissimilar to this proposal; The boundary treatments were appropriate for this locality as the front boundary was to be defined by a fence with hedging behind which in keeping with surrounding dwellings. The remaining existing boundaries were to be strengthened by native species and new boundaries were to be defined by native species also. The remaining relevant policies within PPS2 Natural Heritage had also been met.

With regard to PPS6, HED assessed the proposal with regard to its close proximity to archaeological site and monument and had no objections-the amended proposal did not warrant an additional consultation.

With regard to PPS21, CTY1 directed towards CTY 8 for the proposed type of development. There were three buildings along this part of the Killinakin Road with frontage and this site represented a gap within those three buildings. The buildings were no.9's garage, no. 9 and No.1 Killinakin Road. Due to the topography of the site and surrounding land, it was considered whether or not this site represented a visual break. It was a finely balanced judgement and due to the steep rise of the land when travelling along the Killinakin Road towards the north and the fall when travelling

south it was considered that the site did not constitute a visual break. The perspective due to the topography closed the gap to a certain extent when the site was viewed in both directions.

With regard to whether or not this proposal constituted appropriate infill development and creates an appropriate pattern of development, the Planning Officer went on to explore the plot widths and gap between buildings. When a gap was more than twice the length of average plot width then it was often unsuitable for infilling with two new plots as highlighted Building on Tradition (para 4.4.1). The plot width of the proposed site was approx. 76m and gap between buildings was approx. 92m which was the critical issue. No1 Killinakin Road had a plot width of approx. 50m (46 stated in case officer's report) and that excluded the copse of trees and No.9 had a plot width of approximately 60m (56 in case officer's report) which made an average of approx. 55m. 92m was less than 110m which would suggest that the gap was suitable for infilling. The average plot size in the area was approx. 2722sq metres as stated in case officer report and each plot for proposed dwellings was approximately 3100 sq metres which was not a significant deviation from average plot size in area. Although the gap could accommodate three dwellings in general terms, in terms of planning and planning policy the proposed site could not accommodate more than two dwellings in a manner that would respect the existing development pattern along the frontage.

With regard to CTY13 and 14 integration and rural character the proposed dwellings were modest in ridge height and scale and due to the topography of the land would be integrated within the site. The dwellings would be set down from the road. Boundaries between the adjacent dwellings were to be retained and strengthened. The scale and footprint were not dissimilar to that of No.9. The design was traditional and simple and the dwellings would not be out of character in this rural location. Due to the sloping landscape, the existing pattern of development and the modest level changes required for the development, the proposal would be acceptable in the surrounding context. It was important to remember that the proposed dwellings would be part of an existing built-up frontage where the buildings were visible from the side of the road.

This proposal was also in compliance with SPPS as there was no higher policy test with regard to PPS21 Policies CTY 8, 13 and 14. Separation distances and topography of land would ensure no loss of amenity for surrounding residents.

PPS2 Natural Heritage and PPS3 Access, Movement and Parking were met. DFI Roads had no objections therefore Planning was content that the sight splays were adequate.

The Planning Officer touched on some of the planning applications raised by Bell Architects on behalf of the objectors:

- In LA06/2017/1416/O -refusal gap of 160m between buildings with an average frontage of 70m for the frontage of the dwellings. This meant that the gap was more than twice the average frontage.

- In X/2014/0255/O -refusal the gap between No57 and No52 was 120m and surrounding sites had plot widths of approx. 20m which meant that once again the gap was more than twice the average plot frontage width.
- R/2011/0771/F-refusal -we are not bound by previous Departmental decisions. Not visually linked. Gap between buildings 150m would accommodate 3 buildings in a form that would respect adjacent development patterns.

From the above decisions and their subsequent appeals, the Planning Officer was content that this proposal had been assessed appropriately. The proposal met all the relevant planning policy and approval was recommended.

The Chairman thanked the Officer for their presentation and sought questions from Members.

In response to a query from Councillor McClean about why three dwellings had not been acceptable on the site, the Officer advised that because of the pattern of developments and the widths of plots, three further dwellings would not respect the current pattern of development, the area and its character. Three houses could be accommodated within the site but they would not respect the current pattern of development and the existing dwellings with their plots width and frontages. The Officer made reference to one of the planning applications within her report and its reasons for refusal given the impact they could have on the area and the pattern of development at that location.

Councillor McClean asked to view a slide again which showed the surrounding plot sizes and the significant variances between them. He added that he would be keen to hear from other speakers why three dwellings would not be suitable for this site.

Councillor P Smith commented that in respect of CTY8 there was a need for finely balanced judgement however he stated that he would disagree with the Officer on this. He noted this was a large gap site and similar such sites had been refused and as such he would ask how this site did not fall within ribbon development.

The Officer advised that guidance was taken from the document Building on Tradition and she outlined to the Member the conditions in respect of gap widths and the widths of adjoining sites along the Killinakin Road along with their domestic frontages. She advised that as the site was not more than the average plot gap width it was considered suitable and met the required criteria.

Continuing Councillor P Smith referred to the designation of the locality as an Area of Outstanding Natural Beauty (AONB) and as such noted the site was very visual and could be seen from Whiterock on the shoreline of Strangford Lough. Materials and ridge height were considered suitable however ultimately a large agricultural field was being replaced by two substantial dwellings and as such it would have a major visual impact on the surrounding area.

In response the Officer commented that it would often be the case that agricultural fields such as this would be involved in gap sites and as such it would be up to

planners how they would assess that following the usual guidance which it was noted was also used by the PAC. The lay of the land at this site was that it sloped Northwards and looked vaster from the roadside than it did on site. As such the proposed low lying ridge heights were in her opinion modest and also there would be very little in the way of level changes on site, as the result of this development.

Councillor Walker stated that he too would share some of Councillor P Smith's concerns and in his opinion, it was a substantial gap site, however he indicated that he would look forward to hearing what other speakers had to say in due course. Continuing he made reference to CTY8 and asked why a garage would be considered as substantial and he also asked if the application for the two dwellings had been made at the Council's request or the developer's request.

In response the Officer confirmed that one house in the middle of such a large site was not appropriate and the agent had come back with an application for two dwellings which was now before Members for consideration. She added that a garage was a building that could be included in considerations in respect of built up frontage.

At this stage, the Chairman asked that Mr Murray Bell, Bell Architects, Objector, be brought into the meeting – 10.20pm.

Mr Bell thanked members for the opportunity to attend the meeting and made reference to a programme aired on television the previous evening about Strangford Lough and its preservation as an AONB and as such he would encourage the Council to embrace that and protect this natural habitat and its surroundings.

Continuing Mr Bell felt that the submission before them failed the key criteria of CTY8 and should be refused. The site was not a small site, it was not within a 'substantially built up or continuous frontage' and the site was in fact wide enough for three houses, and that was a future threat. The proposal failed CTY14 and was a threat to the character of the countryside in this most precious AONB. Any approval would set a dangerous precedent for Council.

With respect, Refusal Reasons should be advanced as follows:-

1. The proposal was contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there were no overriding reasons why this development was essential in this rural location and could not be located within a settlement.
2. 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 creation of ribbon development along the Killinakin Road.
3. The proposal was contrary to The Strategic Planning Policy Statement for Northern Ireland and policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwellings would, if permitted result in a



suburban style build-up of development when viewed with existing and approved buildings and create a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.

4. The proposal was contrary to The Strategic Planning Policy Statement for Northern Ireland and CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal would approach the top of a slope location and would be a prominent feature in the landscape and would not visually integrate into the surrounding landscape as the site was unable to provide a suitable degree of enclosure and backdrop.

Considerations:-

1. In accordance with CTY8, the site did not represent itself as a 'continuously and substantially built-up frontage'. It was open and dispersed.

There were other Ards and Down examples which supported refusal rather than approval, and in addition those failed at appeal and were dismissed as per the following examples:-

- LA06/2017/1416 REFUSAL & associated PAC 2018/A0166 Dismissal - this site failed at application and appeal as the gap was deemed to be too wide, could fit more than two houses, and was prominent in the landscape. It would be vital that Council consider the above.
- X/2014/0255/O REFUSAL & PAC 2015/A0037 Dismissal - This site failed at application and appeal as the site was deemed to be too wide, not a small gap, and able to accommodate more than two dwellings. In addition it was determined that the filling of the gap would create ribboning, which was to be avoided, amongst other factors.
- R/2011/0771/F REFUSAL & PAC 2013/A0061 Dismissal – this site failed at application and appeal as the site could also potentially fit more than two dwellings. A careful assessment of the visual impact of the frontage was assessed and it was not proven that the frontage was continuous or built-up. The site is not a small gap – it was wide at 77M or so, and as such failed to be identified as a small gap site. It was open with little integration and cover. This failed the test of integration and failed in the provision and defence of character of the countryside. It was strikingly similar to the previous three examples and accordingly should be refused. The Agent attempted to draw sustenance from the argument that the surrounding dwellings had some sort of 'average' size and width and that the proposed site conformed to this, however this was a misinterpretation of the policy. It was clear from the wording of CTY8, that the issue of fitting only two houses in the gap and sitting them in the context were sequential, they were not separate. For example, if the gap fitted three houses, then it failed. The issue of appropriate size and average width etc flowed after the basis of only two dwellings fitting in the site, and this required to be adequately explored. The proposal had not addressed this key failure.
- PPS21 P25 – para 5.34 expanded:- '5.34 Many frontages in the countryside had gaps between houses or other buildings that provided relief and visual breaks in the developed appearance of the locality and that helped maintain rural character. The infilling of those gaps would therefore not be permitted



except where it comprised the development of a small gap within an otherwise substantial and continuously built-up frontage. In considering in what circumstances two dwellings might be approved in such cases it would not be sufficient to simply show how two houses could be accommodated. Applicants must take full account of the existing pattern of development and produce a design solution to integrate the new buildings.' It was clear that the site was not at all built up. The site could actually fit three houses as demonstrated below. This was a direct conflict with CTY8 as the site must only fit a maximum of two dwellings.

If approved, this would set a dangerous precedent for other opportunistic developers. It was noted that there was a growing 'trend' of applications for 2 No. dwellings in infill sites, and those needed to be extra carefully assessed. There was a need to protect the environment carefully, not look for tenuous 'opportunity sites for infill'. There were very few two-house infill approvals in the Ards and Down area, and the Council needed to be careful about setting a dangerous precedent. The above refusals were extremely instructive. A previous Ards and Down approval showed an appropriate infill with two dwellings and demonstrated a very different 'substantial frontage'. This contrasted substantially with the Killinakin proposal. The aggressive proposed site contours did not naturally support dwellings, and that was in conflict with PPS21 and 'Building on Tradition'. The submitted 'design and access' statement was out of date and did not address the proposal for two dwellings, however updating this did not address the key failures of policy. Applicants were encouraged to submit a design concept statement setting out the processes involved in site selection and analysis, building design, and should consider the use of renewable energy and drainage technologies as part of their planning application. This should be undertaken in accordance with extant published guidance. Specific guidance for the design of buildings in a number of Areas of Outstanding Natural Beauty was contained in the relevant design guide. The landscape and visual assessment was missing, not provided and not assessed in this most precious AONB setting. The submitted site context elevations were incomplete and not professional L&V assessments. It was clear that there were wide ranging views from and across Strangford lough, and there is no assessment of this impact.

The HED consultation was out of date and referred only to a single dwelling proposal. Consideration must be given to the impact of two in this sensitive location. The proposed access and visibility splays would obliterate the roadside verge and hedge. PPS21 sought to facilitate houses in the countryside within existing landscapes and vegetation, and the wholesale clearance of roadside hedging was unacceptable. Council should be cognisant of the unsettling events of the Ministerial PAN in relation to PPS21. One of the key purposes of that PAN was to address the growing problem of the interpretation of infill, and the fact that that interpretation was becoming too loose, and that application was a prime example of that. It was considered that approving this proposal would weaken Council's ability to resist other marginal infill approaches and that would be detrimental to the countryside and environment, and in addition open the Council to inevitable judicial review proceedings. Mr Bell stated that the application should be refused.

Councillor P Smith sought clarity that if a gap site could fit three dwellings it would fail. Mr Bell confirmed that as the site could fit three houses this was a direct conflict

with CTY8 as the site must only fit a maximum of two dwellings. In response to a further query from Councillor P Smith about plot frontages, Mr Bell noted the report referred to average sizes of adjacent sites and added that a gap of 92 metres was considered a significant gap which could comfortably fit three dwellings on site.

Councillor Walker asked Mr Bell for clarification on why he felt the substantial frontage did not meet the required criteria. Mr Bell referred to the Officer's presentation and Slide 17 which he commented was remarkable as the photo showed the low density and non-substantial environment this development would sit in. He noted that in response to an earlier query the Officer had advised that it could be read in respect of numbers 1 and 9 Killinakin Road and nothing else.

As there were no further queries for Mr Bell, the Chairman requested Officers to return him to the virtual public gallery at this stage – 10.30pm.

At this stage, the Chairman asked that Mr Robert Gilmour, Agent, be brought into the meeting at this stage – 10.31pm.

Mr Gilmour thanked members for the opportunity to attend and stated that during the design process for this application the views from the existing dwellings had been taken into consideration and had been respected. The proposed dwellings were designed as low and squat buildings rather than a large building mass. Ridge heights had deliberately been kept low and the sites sat specifically lower than neighbouring dwellings and all existing views had been maintained. Continuing he made mention of the topography and view from the road and the large garage at number 9 Killinakin Road which was very prominent and right on the edge of the road with a substantial physical presence.

Continuing he confirmed the piece of land in question was big enough to build three dwellings on however that would create a site width which would not be similar to adjacent properties. He added that was why two dwellings had been applied for and that was what CTY8 was all about. Prominent views of the site from Whiterock had been mentioned and Mr Gilmour confirmed there was only one single point on that road where the site could be glimpsed.

Mr Gilmour stated that he had nothing further to add and thanked the Planning Department for processing the application and agreed with its professional assessment and recommendation.

Councillor McClean noted the comments made in respect of CTY8 which reflected that of the Officer in that while the site could fit three dwellings that would not respect the existing area. Councillor McClean read out CTY 8 and the exceptions mentioned within it and the reference to respecting current plot sizes and he asked how Mr Gilmour could present CTY8 in a manner which get the application past the go sign.

In response Mr Gilmour commented that he was unsure where the reference to three dwellings had come from but agreed that undoubtedly, they could be accommodated within the site. Indeed he added that if the site was within a development limit it was highly likely that six houses could be accommodated within the site. However all aspects of any dwelling design needed to meet the character of the area and as

such two dwellings was the right number. He added that CTY8 talked about a maximum of two which was what had been applied for and therefore in his opinion it met the policy.

Councillor McClean sought to explain to Mr Gilmour reasons why three dwellings had been mentioned as part of the consideration process of this application.

Councillor Walker referred to PPS21 and asked Mr Gilmour to address the fact that the hillside would need to be dug into in order to create a flat site. Low ridges would mean they would not be visible from the Whiterock Road however Councillor Walker asked if they would be visible lower down towards the Lough.

Mr Gilmour advised that generally there would always be some degree of cut and fill required to create a flat building platform on any site which was not absolutely level. This would have occurred in the case of the neighbouring dwellings on the Killinakin Road. In terms of views from Whiterock, Mr Gilmour indicated there was one area as you were driving out of Whiterock on the crest of a hill just before the entrance to the food processing plant where the site could be seen for a fleeting second. From lower down in Whiterock it was invisible and the only place it could be seen was at the end of a private driveway on Sketrick Island, some two miles away.

In response to a further query from Councillor Walker about ribbon development Mr Gilmour advised that in the immediate vicinity of the site there were quite a few dwellings and suggested that as such it was a relatively built up area. He added that number 8 was quite a prominent dwelling on the Killinakin Road.

As there were no further enquiries for Mr Gilmour, the Chairman requested Officers to return him to the virtual public gallery at this stage – 10.45pm.

The Chairman then asked if Members had any queries.

Councillor P Smith proposed, seconded by Councillor McClean, that the Committee disagrees with the Planners recommendation and refuses planning permission.

The proposer, Councillor P Smith stated that he did not believe the application met CTY8 criteria as the gap site was overly large, the visual impact the development would have in an AONB and to approve it could set a precedent elsewhere for the Borough. He added that furthermore he did not believe that it integrated well into the immediate rural area.

Commenting as seconder, Councillor McClean referred to the conditions within CTY8 in respect of ribbon development and Mr Gilmour's hypotheses that six dwellings could be accommodated within the site. After outlining the principles of CTY8 he agreed that it was a ribbon development which was prohibited under that policy PPS21.

Concurring with those comments, Councillor Cooper added that when Mr Gilmour had made mention of the ability to have six dwellings accommodated within this site it had set alarm bells off for him immediately. He agreed that the proposal would not

sit well in the surrounding countryside or respect the environment and its wildlife inhabitants and as such he was happy to support the proposal.

Councillor Walker stated that regrettably he found himself in similar position and as such would be supporting the proposal for refusal. Referring to Mr Gilmour's comments to be fair he suggested he had been merely illustrating that the site could accommodate up to six dwellings but his client had not chosen to do that. The matter he suggested came back to the interpretation of what a gap site was and he would be of the opinion there was not substantial continuous development and if the application was allowed to proceed a precedent would be set for the many gap sites similar to this which there were throughout the Borough. As such Councillor Walker indicated that he would be supporting the proposal.

At this stage the Head of Planning noted the Officer had not been afforded the opportunity to respond after the last speaker. However, to address the concern that this was not a substantial gap site she reminded Members that when the PAN was brought out the Department sought to try to introduce policy by way of a back door by stating that garages within a curtilage could not contribute as buildings to make up 'three or more buildings' within the policy. However the PAN had subsequently been withdrawn and officers had to continue to include the likes of a garage as part of any frontage and that had been applied in this particular case. Continuing she sought clarification on Councillor Cooper's comments in respect of wildlife considerations and if the Committee was intending to include that as a refusal reason as there was no substantial background to that to enable it to be used.

The Chairman commented that he did not believe wildlife considerations had been included as part of Councillor Smith's proposal.

At this stage the Head of Planning sought confirmation of the reasons for refusal as detailed:

- Gap site too large and could accommodate more than two dwellings,
- Visual impact unacceptable in a AONB,
- Create a precedent elsewhere in the Borough,
- It was considered that it did not integrate into the rural area.

Councillor P Smith confirmed those reasons as correct.

On being put to the meeting with 7 voting FOR, 2 voting AGAINST, 4 ABSTAINING and 1 ABSENT, the recommendation was declared CARRIED. A recorded vote resulted as follows:



<b>FOR (7)</b> <b>Councillors</b> Cooper Walker P Smith McRandal McAlpine Thompson McClellan	<b>AGAINST (2)</b> <b>Councillors</b> Adair Kennedy	<b>ABSTAINING (4)</b> <b>Aldermen</b> Gibson Keery  <b>Councillors</b> Cathcart McKee	<b>ABSENT (1)</b> <b>Alderman</b> McIlveen
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**RESOLVED**, on the proposal of Councillor P Smith, seconded by Councillor McClellan, that the Committee disagrees with the Planners recommendation and instead refuses planning permission.

- 4.5 LA06/2019/1091/F – Creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels (proposal includes a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F)  
(Appendix VI)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Ards Peninsula

**Committee Interest:** A planning (legal) agreement or modification to a legal agreement is required

**Proposal:** Creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels (proposal includes a Section 76 legal agreement to discontinue use of original site previously approved under Ref LA06/2018/0893/F)

**Site Location:** Portavogie Harbour, Portavogie

**Recommendation:** Approval

The Planning Officer (Gail Kerr) outlined the detail of the application which was for the creation of a designated area within the existing harbour estate to dismantle end of life fishing vessels. The application was before members as the proposal included a Section 76 legal agreement to discontinue use of an original site within the harbour which was previously approved through another application. Consultees had no objection with some requiring conditions to be added to the decision notice

Members were shown a slide depicting the location of the development within Portavogie Harbour. The site within the development limit of Portavogie was located to the North of the Outer Slipway on the North Quay. Currently the quayside was used primarily for loading and unloading fishing gear to and from trawlers with part of the quay being used for the storage of fishing nets. Given the coastal location the site was adjacent to designated sites Outer Ards ASSI, Outer Ards SPA and Ramsar as designated in the Ards and Down Area Plan 2015.

The planning history was a material planning consideration as permission was granted on 27 February 2019 for the creation of an area within the existing harbour estate for the dismantling of end of life fishing vessels under planning reference



LA06/2018/0893/F. The approved location was not fit for purpose as it was not possible to lift the vessels up onto the quay as there was no slipway. It had been the intention to use a crane to lift the vessel out of the water onto the quay but when the first vessel arrived it was too large to be lifted out of the water. This resulted in the vessel being tugged to the location proposed in this application (as per LA06/2019/1091/F) and pulled up onto the slipway, where it was dismantled. Members should note that the proposal did not involve any buildings, permanent structures and would only be used intermittently.

The current application before Members had been submitted to regularise the operation and to ensure that only one area was used for that use. The Council required a legal agreement to ensure that the Harbour Authority did not continue using the original approved site for any dismantling. If approval of the current planning proposal was agreed the legal agreement would be executed prior to the decision notice being issued. The applicant's noise consultants had submitted adequate information and proposed numerous mitigation measures to demonstrate that the proposed works would not cause an unacceptable noise impact to neighbouring residential properties. The Environmental Health Department of the Council was consulted in order to determine the public health impact of the proposal and had no objections subject to all the measures as specified in the Method Statement / Working Plan and supporting statement being complied with. Given the opinion of the Environmental Health Department, it was considered that the proposed works together with the mitigation measures would not cause any unacceptable impacts. The proposal would require a waste management licence from NIEA and as part of this process the site would be closely monitored to ensure adherence with procedure and policies to reduce environmental risks. Conditions included hours of operation, noise mitigation, details of acoustic barriers, noise readings, protected areas, construction method statement, EWC codes and a requirement for a waste management license.

Grant of planning permission was recommended.

The Chairman thanked the Officer for her presentation and sought questions from Members.

Councillor Adair noted this was the second planning application for this scheme and asked if the previous one was now null and void.

In response the Officer advised that the application was before Members as the proposal included a Section 76 legal agreement to discontinue use of the originally approved site.

(Alderman McIlveen joined the meeting at this stage – 11.02pm)

In response to a query from Councillor McAlpine about what measures were in place to combat noise nuisance, the Officer confirmed that Environmental Health had been consulted and was content that ongoing monitoring at the site would be undertaken along with the installation of a noise meter, as conditioned.

Councillor Thompson commented that the scheme before them was a much improved one when compared to the previous one. He noted no work would take place on Saturday, Sunday and Bank Holidays. Continuing he further noted that no dismantling works could take place until a Waste Management Licence was in place and assumed the Council would seek written confirmation of this.

The Officer indicated that it would be up to the applicant to ensure they could comply with the requirements of the permission. She acknowledged that the harbour at Portavogie was a working harbour and as such agreed that a balanced approach was required. However she reminded members of the costs incurred by Council of up to £30,000 for the removal and towing of fishing vessels to Scotland for dismantling.

At this stage Alderman Keery raised some concern with the potential for asbestos hazards when dismantling the vessels once out of the water and sought reassurance that all necessary precautions would be taken.

### **RECESS**

At this stage, 11.12pm the meeting took a 10 minute recess and resumed at 11.22pm.

At this stage, the Chairman asked that Kevin Quigley – Applicant, to be brought into the meeting 11.23pm.

Mr Quigley thanked members for the opportunity to attend the meeting and made the following comments.

He wished to update members as to the very real urgency of the need to commence dismantling vessels such as the Boy Cameron which currently had two pumps on board just to keep it afloat. It required daily attention as the risk of sinking was high, it was dangerous to access and as such staff were at risk. Some gear had been removed to keep it afloat. Another vessel, the Aquarius was currently being kept afloat by one pump and other vessels in Portavogie at risk included the Bounteous, and Good Hope Molly M.

Mr Quigley sought to offer reassurance to Members that he would take all measures necessary to minimise disruption to residential neighbours and to clarify how it was intended to achieve that. He outlined briefly the measures being taken and the difference those would make. Those measures being taken included sound mats, sound barrier, winch anchor, pinchers, time, sound monitoring, placement of skip, use of skip and minimal time on slip.

To offer further reassurance that this would not become a regular occurrence it was noted the Waste Manager of the Authority must supervise dismantling and it had capacity only to supervise three to four per year. He added that funding would only permit for that period of time. He added that it was not a forever planning permission and would be for five years maximum until an alternative could be found.

The Chairman thanked Mr Quigley for his presentation and sought questions from Members.

Councillor Adair commented that this was a situation which no one wanted adding that the relevant authorities needed to get tough with boat owners. He asked why Portavogie Harbour had been chosen for this facility.

Mr Quigley confirmed Portavogie had initially been chosen as it was the only Harbour with a slipway.

Councillor Adair noted that Portavogie was a working harbour situated close to residential areas and retailing. Referring to dormant land along the Princess Anne Road he asked if that had been considered for this purpose.

Mr Quigley commented that as it did not have access to a slipway it had not been considered, adding that to install a new one would cost millions of pounds. In response to further concerns raised by Councillor Adair about the hazards of asbestos, he confirmed they would be appropriately regulated for that process. He added that it was not the intention for the facility to be at Portavogie for longer than five years adding that he was all in favour of improving the village through providing support for landscaped areas and festivals such as the SeaFood Festival.

Councillor Adair thanked Mr Quigley for his comments, adding that on this occasion they would have to disagree and he expressed his thanks to him for all of his hard work.

In response to a query from Councillor McAlpine about the length of time required to decommission a fishing vessel, Mr Quigley advised that initially the vessel would need to be lifted out of the water and then dismantled further down the quayside. The vessel would remain on the quayside for up to five days before being broken up. A digger and bucket with the use of hydraulic cutting shears would then be used to cut up the vessel. He added that most people would be unaware that the work was taking place. In respect of lines of communication of work to be undertaken, Mr Quigley indicated that could be forwarded directly to those who required it.

Alderman Keery commented that he did not envy Mr Quigley's job and continuing he expressed concern with how any asbestos would be dealt with during the dismantling process as well as the scrap materials.

Mr Quigley confirmed that any asbestos would be dealt with appropriately under health and safety requirements and NIEA would require a record to be kept of every single item of scrap material.

As there were no further enquiries for Mr Quigley, the Chairman requested Officers to return him to the virtual public gallery at this stage – 11.46pm.

The Chairman then asked if Members had queries for the Planning Officer.

Councillor Adair proposed that the application be deferred to enable a site meeting to take place to consider matters such as visual amenity, detrimental impact to surrounding area and health & safety concerns with the removal of asbestos.

At this stage the Officer confirmed that the issue around asbestos removal was not a planning consideration and instead NIEA would oversee that process and monitor it. In respect of concerns of visual impact, she reminded Members that Portavogie Harbour was a working harbour and this proposal was for boats to be dismantled and therefore she would query what the visual impact would be.

In response Councillor Adair acknowledged that it was a working harbour and added that the proposal was close to a residential and retail area of the village. The village did not have a central square or focal point and as such the harbour fulfilled that role in Portavogie.

The Chairman advised that the issue of asbestos was invalid and should not be included within Councillor Adair's proposal.

Continuing Councillor Adair reiterated that the harbour was at the heart of the village close to its retail core and residential areas and as such he felt this proposal could have a detrimental impact upon that by placing what was effectively a scrap yard in the centre of the village. This would have a detrimental impact not only to those living in the village but those many visitors to it.

Councillor Thompson indicated that he would be happy to second Councillor Adair's proposal.

The proposer, Councillor Adair, reiterated that the Harbour was at the heart of the village close to its retail core and residential areas and he would also have concerns about the removal of asbestos during the dismantling process. He also believed that the visual amenity needed to be taken into consideration particularly given the investment coming into the village and the many visitors to it. Councillor Adair stated that he was appalled by the application and as such would ask that the Council gave consideration to the matters of concern which he had raised. Continuing he added that he had read the correspondence from objectors and he believed that the Council needed to revisit the entire proposal in conjunction with the concerns he had raised.

At this stage the Head of Planning encouraged members to reconsider the substantial benefit test that must be met for a site visit. She queried the need for a site visit to a facility which was not currently in place and also the detrimental visual impact it could have. Continuing she advised that Councillor Adair had been in touch on numerous occasions expressing his displeasure and that of many constituents who had been in touch with him stating they had not known about the meeting and as such were unable to be represented. She also noted in his last statement that he had indicated he was leading on those issues and representing those constituents and therefore she would suggest that would be conflict of interest for Councillor Adair. She questioned his proposal for a site visit given he appeared to have already decided this was not the appropriate place as it could have a detrimental impact. As the Officer had already stated this was a harbour and the proposed elements would be located within it and she would query the effectiveness of a site visit when it

remained unknown at this stage what it would look like on the ground without a vessel there.

At this stage the Officer advised that four letters of objection had been received from two separate addresses, none of which had raised the issue of visual impact. Instead the issues raised were an increase in traffic, noise, potential for debris from the dismantling process and the monument beside the Harbour which was not a material consideration for planning. She reiterated that no reference had been made to how the proposal would look.

The Chairman advised that it was up to individual members to decide how they wished to vote on this matter and he invited the proposer to sum up at this stage.

Councillor Adair stated that he had not said he was representing any objectors but rather he had come into the meeting with an open mind after having read the letters from objectors and listened to the applicant's comments. He stated that he had no conflict of interest adding that he did not live in the area or own any property in the area and therefore reiterated that he did not have any conflict of interest.

Concurring with those comments, the seconder, Councillor Thompson expressed regret that this proposal for such works had already been tried without success. He stated that in his opinion this proposal would definitely be detrimental to the people of Portavogie and therefore a site visit would be useful after hearing arguments from both sides of the debate.

At this stage Councillor McClean suggested the debate was getting silly and it was also getting late and as such suggested the matter was now put to the vote. He acknowledged that both previous speakers had indicated they would be voting against it and their minds were made up that a site meeting was required to look at something which did not exist and of which there were photographs for Members information included within the officer's pack. He reiterated the view that the matter had now got out of hand and encouraged the Chairman to take a vote on whether to have a site meeting or not.

Councillor Walker expressed the view that there was no need for a site visit and reported that he had received a phone call from a lady who lived in Portavogie earlier that morning who had informed him that a site meeting was going to be requested at this meeting as a proposal and therefore he would suggest that maybe Councillor Adair should be given the opportunity to retract his proposal should he choose to.

Councillor Adair indicated that he did not wish to do so and reiterated that he had come to the meeting with an open mind.

The proposal was put to the meeting and with 6 voting For, 6 voting Against, 2 Absent and the Chairman using his casting vote to vote Against the proposal, it was declared LOST.

Councillor McClean proposed, seconded by Councillor P Smith, that the recommendation be adopted.



Councillor Adair stated that he had read all of the documentation on this matter and listened to the debate while coming to the meeting with an open mind and as such he would be voting against it.

On being put to the meeting with 6 voting FOR, 5 voting AGAINST and 3 ABSTAINING the recommendation was declared carried. A recorded vote resulted as follows:

<b>FOR (6)</b>	<b>AGAINST (5)</b>	<b>ABSTAINING (3)</b>
<b>Councillors</b>	<b>Aldermen</b>	<b>Alderman</b>
McClellan	Keery	Gibson
P Smith	McIlveen	<b>Councillors</b>
McRandal	<b>Councillors</b>	Cathcart
McKee	Adair	McAlpine
Walker	Kennedy	
Cooper	Thompson	

**RESOLVED, on the proposal of Councillor McClellan, seconded by Councillor P Smith, that the recommendation be adopted, and that planning permission be granted.**

(Having declared an interest in the next item Alderman McIlveen left the meeting at this stage – 12.06am)

**4.11 LA06/2018/1169/F – Replacement dwelling (off site) to include the demolition of existing dwelling. 85m West of 50 Kilcarn Road, Ballymacashen, Killinchy**  
(Appendix VII)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Comber

**Committee Interest:** Called in by Alderman McIlveen from delegated list w/c 06 December 2021

**Proposal:** Replacement dwelling (off site) to include the demolition of existing dwelling

**Site Location:** 85m West of 50 Kilcarn Road, Ballymacashen, Killinchy

**Recommendation:** Refusal

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Planning Officer (A Todd) outlined the detail of the application. The application had been brought before Planning Committee following a call-in request from Ald. McIlveen from the delegated list w/c 06 December 2021:

*"Ald. McIlveen has asked that as the application relates to a replacement dwelling that is outside the established curtilage, Committee consider whether the application meets the criteria or the exceptions contained in that policy. Ald. McIlveen considers that if it meets the criteria under Policy CTY3, the application will not be contrary to Policy CTY1 or CTY8. Furthermore, he asks that committee make a determination as to whether the application is contrary to policy CTY 14 of PPS21."*

The Planning Officer explained that the site was in the countryside on the Kilcarn Road which was west of Balloo & Killinchy. The building proposed for replacement, was located in a central position within an existing group of buildings. The proposed site was the larger area to the west. There appeared to have been a total of four dwellings originally within the group - Nos. 50 and 52 which were attached, No. 54 to the right of those and the building proposed for replacement which was attached to the rear of No. 52. The building was single storey and was of stone construction with a slate roof. Externally it had a single chimney and a number of door and window openings. Internally, there was a separate living room, kitchen, bathroom and bedroom.

Following the submission of supporting information from the agent during the processing of the application, it was accepted that the building met the criteria under policy CTY3 for a replacement dwelling in that sufficient evidence was submitted to demonstrate that the building was previously used as a separate standalone dwelling rather than just as ancillary accommodation associated with the attached larger dwelling.

In respect of the proposed site, the Planning Officer advised that the site for the replacement dwelling was located 85m to the west. The dwelling would sit approximately 30m back from the road behind an area of existing trees and vegetation. However, the proposed access to the site would necessitate the removal of a significant amount of the existing trees and vegetation. The dwelling itself would be one and a half storey with a ridge height of 7m and would sit 5.5m above road level as the land rose from the road.

Policy CTY3 permitted replacement dwellings to be located off site if the curtilage of the existing dwelling was so restricted that it could not reasonably accommodate a modest sized dwelling. In this case, given that the existing dwelling had no separate curtilage of its own and was surrounded by other buildings, the Planning Department was satisfied that the replacement of the dwelling at an appropriate off-site location would be acceptable in principle provided all relevant PPS21 policies were met.

However, CTY3 required that the replacement dwelling should not have a visual impact significantly greater than the existing dwelling. It was that requirement of policy CTY3 which the proposal failed to meet.

The existing dwelling was not visible at all from any public viewpoint. In contrast, the proposed replacement dwelling would be clearly visible from the public road and therefore would have a significantly greater visual impact.

In addition to the proposal failing to meet this aspect of policy CTY3, it would also be contrary to policies CTY8 and CTY14 of PPS21 in that it would result in the extension of ribbon development along the Kilcarn Road and an undesirable build-up of development which would harm the rural character of the area. It was accepted that there was already a group of buildings at this location, however allowing a dwelling at the proposed site would extend this group further into the countryside and increase the built-up appearance along the road.

Policy CTY8 advised that ribbon development was detrimental to the character, appearance, and amenity of the countryside as it created and reinforced a built-up appearance. The policy went on to clarify that a ribbon did not have to have a continuous or uniform building line and that buildings sited back, staggered or at angles and with gaps in between can still represent ribbon development if they had a common frontage or were visually linked. In this case, the dwelling would clearly extend the existing ribbon of development along the road as could be seen from the aerial view.

It was important to note that policies CTY3, CTY8 and CTY14 must be considered alongside each other as all were applicable to the proposal. Paragraph 5 of PPS21 emphasised that proposals should be assessed against all planning policies that were relevant to it and that all the policies contained within the PPS must be read together. Therefore, it was not the case that if the proposal was considered to meet the requirements of CTY3 then policies CTY8 and CTY14 can just be disregarded.

The application had also been recommended for refusal on the grounds of a lack of information to demonstrate that there would be no adverse impact on bats. The agent was advised by the Planning Department both at pre-application stage and upon submission of the application that the NI Biodiversity Checklist should be completed and that a bat roost potential survey (BRP) would be required, however a BRP survey was only received on 2 September 2021. DAERA NED had advised that while the BRP survey identified the existing building as having low roost potential, further emergence and re-entry surveys were required in order to comply with the recommended number of minimum surveys as outlined in the guidelines. As no biodiversity checklist or ecological statement was submitted in relation to the proposed site, NED had also raised concerns regarding the potential impact of the development on protected and priority species and habitats given the presence and proposed removal of mature trees and vegetation within the proposed site.

Therefore, in summary, while the principle of a replacement dwelling was accepted in this case, a dwelling on the site proposed was considered to be contrary to policies CTY3, 8 and 14 as:

- (i) it would result in a significantly greater visual impact than the existing dwelling,
- (ii) would result in the extension of ribbon development along the road and;
- (iii) would harm the rural character of the area by reason of a build-up of development.

In addition, it had not been demonstrated that the proposal would not have an adverse impact on priority species and habitats as required by PPS2. In this case, the applicant owned other land to the rear of the existing dwelling where it may be possible to identify a more appropriate site positioned further back off the road and using an existing access which would not be contrary to the aforementioned policies.

Therefore, having assessed the proposal against the relevant planning policies the Planning Department was of the opinion that planning permission should be refused for the stated reasons.

The Chairman thanked the Officer for their presentation and sought questions from Members.

Alderman Gibson expressed concern that this was an application from 2018 for a replacement dwelling which was still intact and he queried why it had taken so long to progress the application.

In response the Officer confirmed that evidence had been submitted by the applicant in the form of photographs of the inside of the dwelling to be replaced which demonstrated its use as a dwelling house. The pre-application enquiry made in 2017 indicated that it was a standalone dwelling however officers did have concerns that it was actually an annexe to the main dwelling on the site. Subsequently further evidence was provided in the form of income tax receipts from the 1930's which demonstrated there had been four individual dwellings on the site.

Continuing, Alderman Gibson noted reference to ribbon development but noted the dwelling would be replaced with a new dwelling off site and he queried why the application had taken so long to get to this stage. He also sought clarification on the proposed height of the new dwelling in comparison to the height of the existing dwelling.

The Officer advised that the proposed height of the new dwelling would be visible above existing vegetation on site and the proposed removal of that would open up the proposed site even further. She added that the proposal was contrary to Policy CTY8 of the Planning Policy 21 and as such the proposed replacement dwelling would add to a ribbon of development along the Kilcarn Road. Continuing the officer noted the application owned land situated further back within the site and suggested that could perhaps be more acceptable.

At this stage, the Chairman asked that Gary Thompson - Agent, be brought into the meeting.

(Mr Thompson joined the meeting at this stage – 12.21am)

Mr Thompson thanked Members for the opportunity to attend the meeting and proceeded to outline that the existing dwelling to be replaced was sited right in the middle of a working farmyard and had no garden or amenity area adjacent. In fact to step out of the dwelling door was right into the path of heavy agricultural machinery and farm animals. The area chosen for the resiting was the closest suitable location without having to traverse the farm lane or farmyard.

In respect of the reasons for refusal, Mr Thompson made the undernoted comments:-

- Reason 1 - The application was site specific and to contend that the replacement should be sited with a settlement was unreasonable given that the nearest settlement was Balloo which is 3.4 kilometres away (2.1 miles)
- Reason 2 - The replacement dwelling was designed to give a single storey facade to the Kilcarn Road and was sited at approximately 3.5 m lower elevation than the dwelling to be replaced. Set back 34m from the road and to

the rear of existing mature high screen foliage and trees the proposed dwelling with a ridge height on no more than 7m would be obscured from public view as indicated on the submitted site layout.

- Reason 3 - The 116m of existing mature and dense planting along the roadside with an average depth from the road edge of 30m ensured that the proposal would not be read with any other building. The only visible indication or alteration to the landscape would be the introduction of a 5m wide access lane.
- Reason 4 - The area immediately around Ballymacashen house had historically been built up consisting of many different buildings including dwellings. This could be observed as far back as the 1832-1846 maps when at least 14 different buildings existed on the site. Thus the build-up already existed with a mixture of dwelling houses barns hay, sheds and outbuildings
- Reason 5 A "Bat Report" was submitted with a negative result in respect of roosting bats on the site. With respect to the resiting of the proposal the proposed location for the new dwelling was in a rough grass area (less favoured agricultural land) and the existing trees and established foliage was to be retained thus there would be little or no disturbance to wildlife and no unnecessary depletion of good agricultural land.

In conclusion, Mr Thompson outlined that the chosen siting when considering all aspects including services, loss of agricultural land, road safety, carbon footprint costs and ecology appeared to be the most suitable within the area.

As there were no further enquiries for Mr Thompson, the Chairman requested Officers to return him to the virtual public gallery.

(Mr Thompson left the meeting at this stage – 12.28am)

The Chairman then asked if Members had queries for the Planning Officer.

The Officer commented that the existing dwelling was clustered within an existing group however the proposed site for the new dwelling would extend that cluster further along the Kilcarn Road. She added that the land to the rear was exceptionally higher and as such would not have the same visual impact.

At this stage Councillor P Smith referred to the scale of the proposed replacement dwelling noting that it was almost six times the size of the original dwelling and sought clarification from the Officer on that.

In response the Officer confirmed that the proposed dwelling was significantly larger and while the Mr Thompson had suggested that it was more in keeping with a single storey dwelling, it was in her opinion actually a storey and a half. It was a substantial size of a dwelling and significantly larger than the existing dwelling and it would be visible from the Kilcarn Road. She added that each site was judged on its own merits however in this case the impact of ribbon development was also a factor for consideration.

Alderman Gibson commented that in the case of replacement dwellings the proposed dwelling was often larger than the existing dwelling. Continuing he noted



the lateness of the hour, 12.33am, and suggested it was difficult to make an informed judgement so late in the day and as such a cut-off point needed to be considered to ensure meetings did not continue to such times. Alderman Gibson added that he could recall many similar applications which had been approved for a much larger dwelling than the one to be replaced.

The Officer commented that no two sites were the same.

Councillor P Smith proposed, seconded by Councillor Cooper, that the recommendation be adopted.

On being put to the meeting with 8 voting FOR, 4 voting AGAINST, 1 ABSTAINING and 1 ABSENT, the recommendation was declared CARRIED . A recorded vote resulted as follows:

<b>FOR (8) Councillors</b>	<b>AGAINST (4) Aldermen</b>	<b>ABSTAINING (1) Councillor</b>	<b>ABSENT (1) Alderman</b>
Walker	Gibson	Cathcart	McIlveen
P Smith	Keery		
McRandal			
McAlpine	<b>Councillors</b>		
McClellan	Adair		
McKee	Kennedy		
Cooper			
Thompson			

**RESOLVED, on the proposal of Councillor P Smith, seconded by Councillor Cooper, that the recommendation be adopted, and that planning permission be refused.**

(Alderman McIlveen joined the meeting at this stage – 12.39am)

(Councillor McKee left the meeting at this stage - 12.40am)

**4.6. LA06/2021/1185/F, LA06/2021/1186/F, LA06/2021/1187/F, LA06/2021/1188/F & LA06/2021/1189/F - Installation of sculptures in each of the Borough's five towns to commemorate the centenary of the foundation of Northern Ireland - Comber, Donaghadee, Newtownards, Holywood, Bangor (Appendix VIII)**

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Borough of Ards & North Down

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculptures in each of the Borough's five towns to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** Comber, Donaghadee, Newtownards, Holywood, Bangor

**Recommendation:** Grant Planning Permission

**LA06/2021/1185 – Installation of Sculpture to Commemorate the Centenary of the Foundation of Northern Ireland. 40m SW of 10 The Square, Comber**  
(Appendix IX)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Comber

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** 40M SW of 10 The Square, Comber

**Recommendation:** Grant Planning Permission

The Planning Officer (G Kerr) outlined the detail of the application.

This application was for an installation of sculpture to commemorate the centenary of the foundation of Northern Ireland to be located at 40M SW of 10 The Square, Comber. The location of the site was shown on the google earth image and site location plan and Members were shown a slide which depicted the proposed installation. The proposed commemoration stone would be 0.8m high, 0.7m wide and 0.5m long, constructed from sandstone buff coloured with a smooth finish, with the top of the stone recessed in order to accommodate the NI100 paving stone (approx. 0.6m and 0.6m).

The proposal was in an Area of Townscape Character and as detailed in the case officer report it was considered that the structure respected the character and appearance of the site and surrounding area. Consultee HED was content and the recommendation was to grant planning permission.

The Chairman thanked the Officer for her presentation.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor P Smith, that the recommendation be adopted, and that planning permission be granted.**

**4.7 LA06/2021/1186 – Installation of Sculpture to Commemorate the Centenary of the Foundation of Northern Ireland. 23m East of 10 Union Street, Donaghadee (beside War Memorial)**  
(Appendix X)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Bangor East & Donaghadee

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** 23m east of 10 Union Street, Donaghadee (beside War Memorial)

**Recommendation:** Grant Planning Permission

The Planning Officer (G Kerr) outlined the detail of the application.

This application was for an installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland to be located at 23m east of 10 Union Street, Donaghadee beside the War Memorial. The location of the site was shown on the google earth image and site location plan and Members were shown a slide which showed the proposed installation which was the same to the previous presentation.

The proposal was in the Conservation Area and as detailed in the case officer report it was considered that the structure respected the character and appearance of the site and surrounding area. Relevant consultees were content and the recommendation was to grant planning permission.

The Chairman thanked the Officer for her presentation and sought questions from Members.

Councillor Cooper proposed, seconded by Alderman Kerry, that the recommendation be adopted, and that planning permission be granted.

The seconder, Alderman Keery, noted the proposed seafront location for the sculpture and asked if sandstone was an appropriate material to be used.

In response the Officer, indicated that was not a matter of concern at this stage and instead the focus was on site structure and location.

Councillor Walker noted a further sculpture installed at that location which had recently had to be raised due to ongoing incidents of dog fouling.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Alderman Keery, that the recommendation be adopted, and that planning permission be granted.**

**4.8 LA06/2021/1187 – Installation of Sculpture to Commemorate the Centenary of the Foundation of Northern Ireland. 18m West of No. 2 Conway Square, Newtownards**  
(Appendix XI)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Newtownards

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** 18m West of No. 2 Conway Square, Newtownards

**Recommendation:** Grant Planning Permission

The Planning Officer (G Kerr) outlined the detail of the application.

This application was for an installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland to be located 18m West of No. 2 Conway



Square, Newtownards. The location of the site was shown on the google earth image and site location plan and Members were shown a slide which showed the proposed installation which was the same to the previous presentation.

The proposal was located within the town centre within the vicinity of several listed buildings and as detailed in the case officer report it was considered that the structure respected the character and appearance of the site and surrounding area. Consultee HED was content and the recommendation was to grant planning permission.

The Chairman thanked the Officer for her presentation.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor Thompson, that the recommendation be adopted, and that planning permission be granted.**

**4.9 LA06/2021/1188 – Installation of Sculpture to Commemorate the Centenary of the Foundation of Northern Ireland. Redburn Square, Holywood**  
(Appendix XII)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Holywood & Clondeboye

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** Redburn Square, Holywood

**Recommendation:** Grant Planning Permission

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Planning Officer (G Kerr) outlined the detail of the application.

This application was for an installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland to be located at Redburn Square, Holywood. The location of the site was shown on the google earth image and site location plan and Members were shown a slide which showed the proposed installation which was the same to the previous presentation.

The proposal was located within the town centre in a proposed Area of Townscape Character in Draft BMAP within the vicinity of several listed buildings and as detailed in the case officer report it was considered that the structure respected the character and appearance of the site and surrounding area. Consultee HED was content and the recommendation was to grant planning permission.

The Chairman thanked the Officer for her presentation.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Alderman Keery, that the recommendation be adopted, and that planning permission be granted.**

**4.10 LA06/2021/1189 – Installation of Sculpture to Commemorate the Centenary of the Foundation of Northern Ireland. 18m east of Bangor Town Hall, Bangor (grassed area in front of main front door)**  
(Appendix XIII)

PREVIOUSLY CIRCULATED:- Case Officer's Report.

**DEA:** Bangor Central

**Committee Interest:** Applications made by the Council

**Proposal:** Installation of sculpture to commemorate the centenary of the foundation of Northern Ireland

**Site Location:** 18m east of Bangor Town Hall, Bangor (grassed area in front of main front door)

**Recommendation:** Grant Planning Permission

PREVIOUSLY CIRCULATED:- Case Officer's Report and Addendum.

The Planning Officer (G Kerr) outlined the detail of the application.

This application was for an installation of a sculpture to commemorate the centenary of the foundation of Northern Ireland to be located 18m east of Bangor Town Hall, Bangor – this was the grassed area to the front of the town hall. The location of the site was shown on the google earth image and site location plan and Members were shown a slide which showed the proposed installation which was the same to the previous presentation.

The proposal was located in the vicinity of Bangor Castle which was a listed building a historic park, garden and demesne and as detailed in the case officer report it was considered that the structure respected the character and appearance of the site and surrounding area. Consultee HED was content and the recommendation was to grant planning permission.

The Chairman thanked the Officer for her presentation and sought questions from Members.

Councillor Cooper proposed, seconded by Councillor McClean, that the recommendation be adopted, and that planning permission be granted.

The proposer, Councillor Cooper, expressed his appreciation for the installation of the sculptures adding that they would leave a lasting legacy for his beloved country, Northern Ireland, despite the fact that Sinn Fein/IRA would not allow a similar installation at Stormont.



**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor McClean, that the recommendation be adopted, and that planning permission be granted.**

## **5. UPDATE ON PLANNING APPEALS**

(Appendix XV)

PREVIOUSLY CIRCULATED:- Report dated from the Director of Regeneration, Development and Planning attaching PAC decision 2020/A0076. The report provided the undernoted detail:-

### **Decisions**

The following non determination appeal was allowed on 21 December 2021.

<b>Appeal reference:</b>	2020/A0076
<b>Application Reference:</b>	LA06/2020/0380/F
<b>Appeal by:</b>	Oasis Retail Services Ltd
<b>Subject of Appeal:</b>	Change of use from former bank (Class 2) to an amusement arcade and adult gaming centre and alterations to shop front
<b>Location:</b>	39 High Street, Newtownards

The Commissioner concluded that the proposed use was complementary to the retail uses within the Primary Retail Core, and that the appeal proposal was in accordance with policy. It was also considered that there would be little difference in the appearance of the appeal building whether used as a bank (former use) or as an amusement arcade and gaming centre. The proposed development would not have a detrimental impact on visual amenity, and that the reuse of the appeal building, currently vacant and shuttered, would be positive. The decision was attached.

### **New Appeals Lodged**

The following appeals were submitted on the 26 October, 15, 16 and 29 November, respectively.

<b>Appeal reference:</b>	2021/A0133
<b>Application Reference:</b>	LA06/2020/1169/O
<b>Appeal by:</b>	Mr Wallace Magowan
<b>Subject of Appeal:</b>	Proposed site for dwelling on an active and established farm
<b>Location:</b>	Lands approx. 30m NE of no. 31 Gransha Road South, Bangor

<b>Appeal reference:</b>	2021/A0144
<b>Application Reference:</b>	LA06/2019/0609/O
<b>Appeal by:</b>	Mr Henry McDowell
<b>Subject of Appeal:</b>	Infill dwellings and garages
<b>Location:</b>	Land between 10 and 12 Ballycreely Road, Comber

<b>Appeal reference:</b>	2021/E0051
<b>Application Reference:</b>	LA06/2021/0150/LDP
<b>Appeal by:</b>	John Spratt
<b>Subject of Appeal:</b>	Commencement of development of X/2010/0034/F in accordance with approval
<b>Location:</b>	Adjacent and north of 27 Ballybeen Road, Comber

<b>Appeal reference:</b>	2021/A0155
<b>Application Reference:</b>	LA06/2019/1176/O
<b>Appeal by:</b>	Mr Ray Jackson
<b>Subject of Appeal:</b>	2no. dwellings and garages
<b>Location:</b>	Lands between No. 59 Thornyhill Road and 44 Ballymacashen Road, Killinchy

Details of appeal decisions, new appeals and scheduled hearings could be viewed at [www.pacni.gov.uk](http://www.pacni.gov.uk).

RECOMMENDED that the Council notes this report.

The Head of Planning advised Members that in respect of the decision noted (2020/A0076) the applicant had submitted a planning application but under Article 20 of The Planning (General Development Procedure) Order (NI) 2015, they were entitled to submit an appeal to the PAC in default of a decision on the application after eight weeks.

The Council's Statement of Case sought refusal of the proposal on the basis that the use was not considered to be complementary to the established retail uses in the Primary Retail Core and if permitted would result in an adverse impact on the character, vitality and viability of the Primary Retail Core by reason of creation of blank frontage to street and the resultant break in an otherwise continuous retail frontage. The Commissioner did not sustain any of the Council's reasons as detailed within the report and the PAC decision.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor Thompson, that the recommendation be adopted.**

## **6. REVIEW OF DECISIONS FURTHER TO WITHDRAWAL OF PAN**

PREVIOUSLY CIRCULATED:- Report from the Director of Regeneration, Development and Planning detailing that members would recall that the Minister for Infrastructure published the Planning Advice Notice (PAN) relating to Sustainable Development in the Countryside on 2 August 2021. Further to receipt of various concerns regarding its content, the PAN was withdrawn on 15 October 2021.

A review of decisions issued during the period in which the PAN was presumptively valid and the weeks up to end of October 2021 took place. Within that timeframe, 25 decisions assessed under PPS 21: Sustainable Development in the Countryside were identified. None of the assessments of the proposed developments were

reliant upon the clarification provided within the PAN and as such no further action was required to be taken by the Council.

RECOMMENDED that the Council notes the content of this report.

Councillor Cooper proposed, seconded by Councillor Thompson, that the recommendation be adopted.

Further to enquiry raised by Alderman McIlveen post withdrawal of the Department's Planning Advice Note (PAN) regarding rural planning policy, the Head of Planning advised that those decisions issued between the introduction of the PAN and its withdrawal had been reviewed to ensure that none of the decisions therein were based on the elements of 'clarification' as set out within the PAN. In this regard the Planning Department was content that there would be no challenge to decisions made on that basis.

In response to a request for further clarification from Alderman McIlveen, the Head of Planning confirmed that whilst the Case Officer Reports may have made reference to the PAN, whilst presumptively valid, no refusal reasons were based on its content in relation to the current policies.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor Thompson, that the recommendation be adopted.**

(Alderman Gibson left the meeting at this stage – 12.52am)

## **7. JUDGMENT BY HUMPHREYS J REGARDING BATTERY ENERGY STORAGE SYSTEMS**

(Appendix XVI)

PREVIOUSLY CIRCULATED:- Report from the Director of Regeneration, Development and Planning attaching Draft Judgment re ABO Wind NI Limited and Energia Renewables Company 1 Limited's Application. The report detailed that it was considered prudent to bring the content of the judgment to Members' attention for information.

On 16 December 2020 the Department for Infrastructure published its Chief Planner's Update 7 ('CPU 7') which, inter alia, provided advice and guidance in relation to Battery Energy Storage Systems ('BESS'). In CPU7, the Chief Planner advised Heads of Planning that such development fell within the meaning of 'electricity generating station'.

The advice provided was contrary to a previous decision issued by the Planning Appeals Commission for the development of a BESS facility at Kells in the Antrim and Newtownabbey Borough Council area, which was refused by that Council on the grounds of unacceptable detrimental impact on visual amenity and character of the area. Contrary to objectors' concerns that the Council had not appropriately categorised the development as 'major' and that it potentially could have been considered as Regionally Significant Development, the Commissioner determined, further to evidence provided, that the proposal was not an electricity generating

facility but a facility for storing electricity that was previously generated from a primary energy source such as coal, oil, gas or wind, and as such was correctly classified as 'local' development.

Neither the objectors nor any other party sought to challenge the decision of the Commission.

### **The Chief Planner's Update**

In CPU 7 in relation to BESS the Chief Planner advised that the Department had been reviewing those types of development and contrary to the appeal decision referred to above, he stated the following:

*"I wish to formally confirm that, for the purposes of planning in Northern Ireland, the Department considers that electricity storage development falls within the meaning of an 'electricity generating station.'*

Further he continued:

*"I recognise that this is an unusual step and that the position involves a departure from the PAC decision which turned on the facts and evidential context of that particular case. However, the Department considers that there is a legitimate public interest in taking this approach and providing clarity for both councils and developers. I should highlight that this is not a legislative or policy change and is instead provided as clarification from the Department."*

In practical terms, therefore, the Heads of Planning of the Councils were being advised that applications involving 'electricity storage facilities', including BESS, should be considered as 'electricity generation' within the meaning of the 2011 Act and 2015 Regulations.

### **Implications**

The Schedule to the Planning (Development Management) Regulations (Northern Ireland) 2015 set out the classes of development belonging to the category of major development.

Class 2 related to 'Energy Infrastructure' and in relation to 'Electricity generating stations' set out the following threshold or Criteria:

1. The construction of an electricity station where its capacity is or exceeds 5 megawatts;
2. All onshore development associated with the construction of an offshore electricity generating station.

Class 9 within the Schedule related to 'All other development' to cover 'Any development not falling wholly within any single class of development described in Parts 1 to 8 above' (emphasis added), and the relevant threshold or criteria is as followed:

- a) Development that comprises 5,000 square metres or more gross floor space;  
or
- b) The area of the site is or exceeds 1 hectare.

which had implications for the categorisation of the proposal and assessment as to whether EIA was triggered.

### **The Challenge**

ABO Wind NI Ltd and Energia Renewables Company 1 Ltd challenged the position adopted by the Chief Planner on the basis that this advice or 'clarification' was wrong in law, and on the basis that the PAC decision was a correct interpretation of the 2015 Regulations in respect of the category of development applied to such development proposals.

### **The Judgment**

The Judge referred to 'Planning Appeal Principles' (2020) by William Orbinson QC in respect of the question of the precedent value of the decisions of the PAC. Mr Orbinson emphasised firstly that the PAC was a specialist independent statutory appellate body, entrusted with the task of hearing appeals from planning authorities. Then in the context of other case law examples, concluded that the decisions of the PAC "*must either be accepted or respected, or be challenged through the courts.*"

Humphreys J at paragraph [100] of the judgment set out that whilst recognising that the respondent (the Department) was not bound by the PAC decision as a matter of strict precedent, he concurred with the view expressed by Mr Orbinson that such decisions must either be accepted and respected or challenged through the courts.

The application for judicial review succeeded on the issue of statutory interpretation, legality and Wednesbury rationality, in the Humphreys J considered that the Chief Planner did not analyse the statutory provisions in Northern Ireland with sufficient rigour and did not properly ask the question "*Does a BESS development fall wholly within class 2 of the Schedule to the 2015 Regulations?*" The Judge considered that had he asked the correct question, the answer, for the reasons provided within the judgment, must be 'no.'

Given that BESS was a form of storage not expressly mentioned in the Regulations, it must therefore be the case that it fell out with Class 2 of energy infrastructure, and therefore into Class 9 of the Schedule and was subject to the thresholds contained therein.

The Judge at paragraph [101] was critical of the Department's publication of the Chief Planner's Update as "guidance" or "clarification", opining that it was a 'recipe for administrative chaos' given that planning officers of local councils were then faced with a choice between following the PAC decision or the Chief Planner's guidance/clarification.



## Review of existing permissions

On 10 August 2021, further to publication of the CPU regarding the classification of BESS development, DFI Planning requested detail of the Council's review of extant permissions, particularly with regard to environmental impact assessment. Ards and North Down Borough Council responded to advise it had reviewed the detail of one BESS development granted and was satisfied that it had applied the Development Management Regulations accordingly and had no intention of revoking on the basis of the CPU.

RECOMMENDED that the Council notes the content of this report, the attached judgment in respect of the precedent value of PAC decisions and the classification of Battery Energy Storage Systems.

The Head of Planning drew Members' attention to the attached report and judgment in relation to Battery Energy Storage Systems, which followed a challenge against the Department's Chief Planner in respect of advice given within one of his Chief Planner's Updates to Councils whereby the Department had disagreed with a decision made previously in respect of a BESS proposal by the Planning Appeals Commission. The challenge was brought in respect of the assertion that the Chief Planner's Update sought to introduce new policy by advising Councils that electricity storage development fell within the meaning of an 'electricity generating station'. The judgment also highlighted the weight to be afforded to decisions of the PAC in respect of no challenge having been made against such decisions if one disagreed. The Head of Planning highlighted that such challenges incurred significant costs but referred Members to the report and sought approval for noting.

**RESOLVED, on the proposal of Alderman McIlveen, seconded by Councillor P Smith, that the recommendation be adopted.**

## 8. QUARTERLY PERFORMANCE REPORT – 2<sup>ND</sup> QUARTER 2021/22 (Appendix XVII)

PREVIOUSLY CIRCULATED:- Report from Director of Regeneration, Development and Planning attaching report for Quarter 2 of 2021-22. The covering report detailed that the Council was required, under the Local Government Act 2014, to have in place arrangements to secure continuous improvement in the exercise of its functions. To fulfil this requirement, Council approved the Performance Management Policy and Handbook in October 2015. The Performance Management Handbook outlined the approach to Performance Planning and Management process as:

- Community Plan – published every 10-15 years
- Corporate Plan – published every 4 years (Corporate Plan Towards 2024 in operation)
- Performance Improvement Plan (PIP) – published annually (for publication 30 September 2021)
- Service Plan – developed annually (approved April/May 2021)

The Council's Service Plans outlined how each respective Service would contribute to the achievement of the Corporate objectives including, but not limited to, any relevant actions identified in the PIP.

### Reporting approach

The Service Plans would be reported to relevant Committees on a quarterly basis as undernoted:

Reference	Period	Reporting Month
Quarter 1 (Q1)	April – June	September
Q2	July – September	December
Q3	October – December	March
Q4	January - March	June

### Key points to note:

- During this quarter the Council determined one major application as follows: LA06/2019/0603/F - Proposed residential development of 108 no. dwellings At Lands south of 37-77 Court Street, Newtownards, situated within Bawn Wall and bounded by canal with vehicular access from Castlebawn roundabout. The application was subject to an extensive round of consultations given its location both within the historic setting of the Bawn Wall and directly adjacent to a watercourse. The applicant was required to be in possession of Scheduled Monument consent due to the historic fabric of the site prior to any approval of planning being granted. As the site was also within a reservoir inundation area amended plans were required which included a reconfiguration of the site layout in order to comply with the requirements set out in FLD5 of PPS 15 (Revised). Several rounds of consultation were also required with DFI Roads in order for the street layout to be of a standard where it could be adopted.
- In respect of local applications, a total of 240 decisions were issued, in addition to other work not reported upon, including pre-application discussion, review of Proposal of Application Notices, applications for Non Material Changes, and applications for Certificates of Lawfulness
- Of 40 householder decisions issued within Quarter 2 – whilst only 26 were issued within the internal target of 8 weeks, 39 issued within the 15 week target for locals.
- Planning enforcement concluded some 80 cases, whilst another 103 new cases were opened.
- There were no appeal decisions received during this quarter against refusal of planning permission.

RECOMMENDED that the report is noted.

The Head of Planning advised Members that detail was included within the report regarding performance over that particular quarter, and advised the report was for noting.

**RESOLVED, on the proposal of Councillor P Smith, seconded by Councillor Thompson, that the recommendation be adopted.**

**9. PUBLICATION OF THE NORTHERN IRELAND PLANNING MONITORING FRAMEWORK 2020/21**  
(Appendix XVIII)

PREVIOUSLY CIRCULATED:- Report from Director of Regeneration, Development and Planning attaching a infographic, which could be viewed here [Northern Ireland Planning Statistics Quarter 2 2021-22 Infographic \(infrastructure-ni.gov.uk\)](http://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-monitoring-framework-202021).

The report advised that DfI Northern Ireland Planning Monitoring Framework 2020/21 was released on 2 December 2021 and could be accessed at the link below:

<http://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-monitoring-framework-202021>

The statistical release of data tables included details of performance across the three statutory targets namely, major development applications, local development applications and enforcement cases. This took place alongside a suite of additional indicators that were intended to provide a more comprehensive assessment of planning activity. The release provided a summary of the indicators for Northern Ireland, as well as relevant indicator data for each local planning authority. Comparable data from 2018/19 and 2019/20 was also included where available.

**Planning Monitoring Framework Indicators**

The list of indicators under the new framework included the three existing statutory indicators and an existing departmental indicator, in addition to five other indicators. Those were detailed as follows:

Indicator 1	Average processing time taken to determine major applications
Indicator 1.1	Average time taken to determine major applications (excluding withdrawn applications)
Indicator 2	Average time taken to determine local applications
Indicator 2.1	Average time taken to determine local applications (excluding withdrawn applications)
Indicator 3	Proportion of enforcement cases progressed to the target conclusion within 39 weeks
Indicator 4	Percentage of applications determined under delegated powers

Indicator 5	Number of applications decided by Planning Committee and percentage of Committee decisions made against officer recommendation
Indicator 6	Percentage of appeals against refusals of planning permission that are dismissed
Indicator 7	Number of claims for costs received by Planning Appeals Commission (PAC) and number of claims awarded
Indicator 8	Percentage of regionally significant planning applications processed to a Ministerial recommendation within 30 weeks
Indicator 9	Number of applications notified to the Department and the number of these processed within the period of 28 days

### Associated Commentary

It was advised against using the data as a 'league table' as there was a wide range of inconsistencies across Councils in respect of each Council's individual procedures and processes. Those included the number and type of planning applications received; the servicing by statutory consultees in different divisional offices; resourcing within individual Councils and within central government departments; and 'Schemes of Delegation'.

RECOMMENDED that Council notes this report and the Planning Monitoring Framework at the link provided.

The Head of Planning reminded Members that this framework provided details on an additional suite of indicators (beyond the statutory target processing times) which the Department considered provided a more comprehensive assessment of planning activity across Northern Ireland. She drew Members' attention to the slight increase in the numbers of applications received and also decided when compared to the same period in the previous year. She further urged caution in making direct comparisons as those represented headline figures and did not reflect the detail of those applications determined other than their category of development and processing time.

**RESOLVED, on the proposal of Councillor P Smith, seconded by Alderman McIlveen, that the recommendation be adopted.**

### 10. **AMENDMENT TO PROTOCOL FOR THE OPERATION OF THE PLANNING COMMITTEE (FILE 160051)** (Appendix XIX)

PREVIOUSLY CIRCULATED:- Report from Director of Regeneration, Development and Planning attaching revised protocol. The report advised that members would be aware that the current Protocol for the Operation of the Planning Committee set out practical handling arrangements for the operation of that committee. It was read in conjunction with the Council's agreed Standing Orders and the Code of Conduct for Councillors. The Protocol was last amended in November 2020.



The Council at its meeting of 24 November 2021 noted a recent legal judgment with its associated implications for Planning Committees both in respect of the related Standing Orders and Protocol for the Operation of the Planning Committee.

It was agreed by Council that the relevant provisions of the Protocol would be amended whereby it referenced prohibiting members from taking part in decision-making insofar as they relate to non-attendance.

The Protocol had subsequently been amended accordingly as detailed below.

Paragraph 14 had been removed which read:

*'If the Planning Committee becomes inquorate due to Members' disqualification due to absence through all of the discussions of the application, the application will be considered afresh.'*

Paragraph 51 had been removed which read:

*Members must be present for the entire item, including the officer's introduction and update; otherwise they cannot take part in the debate or vote on that item. This also applies to those applications deferred from a previous meeting, i.e. if a Member was absent from the previous meeting at which an application was debated, but no decision reached and subsequently deferred, that Member cannot take part in the debate or vote on that application at the next meeting.*

Paragraph 59 had been amended as follows:

~~*'Where a deferral relating to a "minded to" motion is made, only those Members who considered the planning application at the previous committee meeting(s) can vote to determine the planning application. No additional speaking rights will be afforded to any person unless at the Chairperson's discretion he/she authorises same. Such speaking rights will be a maximum of 3 minutes.'*~~

Paragraph 78 had been removed which read as follows:

~~*'Only those Members who attend the site visit(s) will be eligible to take part in the discussion and vote on the planning application, as it is considered that the site visit is an extension of the determination of an application.'*~~

The Protocol for the Operation of Virtual Planning Committee during COVID had also been amended accordingly.

RECOMMENDED that Council notes this report and the revised Protocol for the Operation of the Planning Committee.

The Head of Planning advised that this report set out the detail that had subsequently been removed from the Protocol pursuant to the legal judgment on Hartlands which was discussed in the context of its implications for the Council's Standing Orders at the December Council meeting.



In respect of implications from the judgment in the context of the Standing Orders issue, call in, and operation of Planning Committee, DFC had responded to the Council highlighting that it was up to each Member to consider their own interests and to take appropriate action when deciding on planning applications. The Council's own planning lawyers continued to advocate members considering their position if they had not read the Case Officers' Reports, been present for site visits, or for presentations by officers, or listened to speakers in support or in opposition, in respect of whether it would be appropriate for them to take part in the discussion and debate and voting, if they had not been party to the full detail, in order to avoid potential legal challenge.

At this stage the Chairman commented that the amendments, while not being removed by choice, were being done so for valid reasons.

**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor Thompson, that the recommendation be adopted.**

**11. COUNCIL RESPONSE TO THE DEPARTMENT FOR INFRASTRUCTURE CONSULTATION ON SECONDARY LEGISLATION FOR THE RESERVOIRS ACT**  
(Appendix XX)

PREVIOUSLY CIRCULATED:- Report from Director of Regeneration, Development and Planning attaching Consultation Document, Table of Content of Reservoirs Act and Proposed Council Consultation Response.

Members will be aware of the Consultation issued by DFI as referenced at Item 8.2 of the Council meeting of 22 December 2021 and that delegated authority was issued to Planning Committee to issue a response.

### **Background**

The Reservoirs Act (Northern Ireland) 2015 ('the Act') came into operation in July 2015 and was purported to introduce a 'proportionate regulatory and management framework for reservoir safety in Northern Ireland'. The Act can be accessed here <https://www.legislation.gov.uk/nia/2015/8/contents>.

At that time only limited elements of the Act were commenced which included: the definition of a controlled reservoir, who is the reservoir manager, and powers of entry for the Department.

Statutory responsibility for the Reservoirs Act only transferred to the Department for Infrastructure in June 2021, some almost six years later. It is only now that the Department states it is in a position to consider further commencement of the other elements of the Act and subordinate legislation in the form of Regulations and Orders to provide clarification or the details to effectively implement the Act and enable reservoir managers to comply with the Act.

## **Planning Policy in relation to reservoirs**

Regardless of the lack of subordinate legislation at the time to support the operation of the Reservoirs Act, the then Department of the Environment published a revised Planning Policy Statement 15: Planning and Flood Risk in September 2015 which introduced Policy FLD 5: 'Development in proximity to reservoirs'. The Strategic Planning Policy Statement for NI, published in September 2015, also contains regional policy in this regard.

The Strategic Planning Policy Statement for Northern Ireland (SPPS), paragraphs 6.119 to 6.122, together with the provisions of Policy FLD5 of revised PPS 15 provides that new development will only be permitted within the potential flood inundation area of a controlled reservoir if the applicant can demonstrate that the condition, management and maintenance regime of the reservoir is appropriate to provide sufficient assurance regarding reservoir safety and the developer provides a flood risk assessment (FRA) which includes, amongst other considerations, an assessment of the downstream flood risk, including flood water depth, velocity and flow path issues.

Cognisant of the absence of subordinate legislation and issues facing planning authorities, DfI Rivers issued a Technical Guidance Note in June 2020 setting out the general approach DfI Rivers would follow when providing advice to planning authorities on all relevant applications for development within the flood inundation area of a controlled reservoir. This guidance highlights a risk still remains of inappropriate new development in the potential inundation areas of controlled reservoirs, but provides practical details associated with the implementation of the policy in the short term before the longer term solutions (i.e., the introduction of further legislation) can come into effect.

Members will be aware of the impact that the current planning policy has in relation to specific planning applications, particularly that of Queen's Parade private investor redevelopment scheme in the context of the lack of sufficient assurance regarding reservoir safety of Clandeboyne Lake, and in this context the proposed response highlights the lack of an agreed industry methodology for assessing 'Probability' of an uncontrolled release of water from a reservoir, and the impact that the lack of appropriate legislation to date has had on building investment confidence in Northern Ireland as a whole.

## **The Consultation**

The consultation (as outlined in 11.1) invites responses in relation to those sections of the Act that the Department proposes to commence, and the Regulations and Orders that it proposes to make at this time.

A table is attached for Members' information detailing the totality of the sections of the Reservoirs Act and identifying those sections currently in operation, those proposed to come into operation and those not yet consulted upon (11.2).

A draft response is attached (11.3) for discussion and agreement by Members.

Members should also note that the Heads of Planning Group is seeking an extension from DFI's Water and Drainage Policy Division in order to formulate a collective professional officer response as it is clear not all councils were aware of the consultation, as DFI Planning did not highlight to councils in the context of prevailing planning policy which is reliant upon this Act. In this response it is pertinent to highlight that this is not a consultation in relation to current planning policy and as such the Council is unable to amend such regional policy.

**RECOMMENDED** that the Council notes the content of this report and approves the proposed response to the Department's consultation on the Reservoirs Act.

The Head of Planning detailed for Members that this report provided background to the Reservoirs Act and the relevant planning policy set in the context of the legislation being appropriately commenced. She advised it contained a draft response to the various questions posed by the consultation for Members' review and approval. The officer was keen to highlight to Members that the consultation related to the proposed legislative Orders and Regulations and not the planning policy that it must currently assess proposals against.

Councillor P Smith proposed, seconded by Councillor McClean, that the recommendation be adopted.

The seconder, Councillor McClean, noted the response referred to the amount of time which had elapsed to date and in light of that he asked for the matter to be resolved as soon as possible.

At this stage the Chairman acknowledged the implications this would have on many applications not only in Bangor but throughout the entire Borough. He suggested that it was staggering that the Department was consulting now on a legislation which had been passed in 2015. He added that he had real concerns about how the Department was handling matters such as this and the implications of that on planning matters.

**RESOLVED**, on the proposal of Councillor P Smith, seconded by Councillor McClean, that the recommendation be adopted.

**12. DEPARTMENT FOR INFRASTRUCTURE (DFI) (PLANNING)  
REVIEW OF STRATEGIC PLANNING POLICY ON  
RENEWABLE AND LOW CARBON ENERGY DEVELOPMENT  
(Appendix XXI)**

**PREVIOUSLY CIRCULATED:-** Report from Director of Regeneration, Development and Planning attaching DFI Planning Issues Paper - Renewable Energy and Low Carbon Development and Issues Paper Response form. The report advised that the Department for Infrastructure (Dfi) had commenced a new review of strategic planning policy on renewable and low carbon energy.

DFI had published an issues paper, (Item 12a) 'Review of Strategic Planning Policy on Renewable & Low Carbon Energy'. There was an eight week consultation period, which commenced on 15 December and closed on 11 February 2022.

### **Detail**

The aim stated by DFI of the review was to ensure that strategic planning policy on renewable and low carbon energy development remains fit for purpose and to inform decision-making in relation to development proposals for this subject area. DFI stated that it was also intended to 'inform the local development plan (LDP) process and enable plan-makers to bring forward appropriate local policies, all within the wider contemporary context for energy and the climate emergency'.

The Issues Paper set out the background to this Review, including the wider policy context of Climate Change, National / regional targets for Renewable Energy production and a new Energy Strategy for NI. Specific planning matters to be considered for the review include:

- Energy targets & strategic planning policy;
- Locational considerations;
- Siting new wind farms in perpetuity;
- Wind turbines & amenity considerations;
- Dismantling and site restoration for new development;
- Solar farms and agricultural land;
- Co-locating renewable, low carbon and supporting infrastructure;
- Re-powering existing wind farms; and,
- Emerging technologies & other issues.

### **Next steps**

Responses to the Issues Paper were requested by e-mail to DFI by 5.00pm, Friday 11 February 2022. It was suggested to use the response form (at Item 12b) but other responses were welcome. DFI shall consider the information gathered as a result of the Issues Paper in helping to inform the way forward for this policy area. Any recommendations emerging from this review which involve policy changes would require an amendment to the Strategic Planning Policy Statement which would be taken forward in accordance with established policy making best practice. (This would include public consultation on any draft policy proposals). It was understood that DFI intended to issue a draft revised policy document in 2022.

Planning officers from the LDP team shall prepare a response which shall also include liaison with Development Management and the Council's Sustainability Officer, which will be brought to January's Council for approval.

**RECOMMENDED** that Council notes the publication of the issues paper document and outlines any areas for inclusion in the response, with a further report to be brought to January's Council with a recommended response.

The Head of Planning explained that this report detailed another consultation which was issued just before Christmas regarding a review by DFI of strategic planning policy on renewable and low carbon energy development. She invited Members to make any further contributions or to highlight issues they wished to see addressed, in order the final response could be tabled for approval at the January Council meeting to meet the deadline for response.

PC 18.01.2022

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**RESOLVED, on the proposal of Councillor Cooper, seconded by Councillor Thompson, that the recommendation be adopted.**

### **TERMINATION OF MEETING**

The meeting terminated at 1.08am.



## ITEM 4.1

## Ards and North Down Borough Council

Application Ref	LA06/2020/0763/F
Proposal	Construction of a new farm laneway to serve existing farmyard (Amended Scheme)
Location	Land 10m west of 38C Ravara Road & 50m west of 34 & 36 Ravara Road, Ballygowan DEA: Comber
Committee Interest	A Local development application attracting six or more separate individual objections which are contrary to the officer's recommendation
Validated	02/09/2020
Summary	<ul style="list-style-type: none"> <li>• Applicant is an active farmer and the agent stated that the existing laneway leading to the manure shed is inadequate and dangerous</li> <li>• New laneway will not require any major loss of any roadside hedgerow, nor will it negatively impact upon road safety or inconvenience the flow of traffic</li> <li>• If the existing laneway were adapted and widened to make adequate for farming machinery it would result in the loss of 310m of the hedgerow</li> <li>• Consultees content subject to conditions</li> <li>• Representations - 16 letters of objection from 7 addresses and 7 letters of support</li> <li>• All material issues raised dealt with in Case Officer Report</li> <li>• Natural Heritage consulted regarding letters of objection raising biodiversity issues and has confirmed that site is not a protected area</li> </ul>
Recommendation	<b>Approval</b>
Attachment	Item 4.1a – Case Officer Report

### Development Management Case Officer Report

<b>Application Ref:</b> LA06/2020/0763/F		<b>DEA:</b> Comber			
<b>Proposal:</b> Construction of a new farm laneway to serve existing farmyard (Amended Scheme)					
<b>Location:</b> Land 10m west of 38C Ravara Road & 50m west of 34 & 36 Ravara Road Ballygowan					
<b>Applicant:</b> Rose Gilbert			<b>Agent:</b> Ballymullan Architect (BMA) Ltd		
<b>Date Valid:</b> 02/09/2020			<b>Env Statement Requested:</b> No		
<b>Date last Advertised:</b> 04/11/2021					
<b>Date last Neighbour Notified:</b> 22/10/2021					
<b>Consultations:</b> Yes					
<b>Representations:</b> No					
<b>Letters of Support</b>	7	<b>Letters of Objection</b>	16 (from 7 separate addresses)	<b>Petitions</b>	0
<b>Summary of Main Issues:</b>					
<ul style="list-style-type: none"> <li>Principle of Development</li> <li>Road Safety</li> <li>Impact on Biodiversity</li> <li>Integration within the countryside</li> </ul>					
<b>Case Officer:</b>	Nicole Keizer				
<b>Recommendation:</b> Grant Planning Permission					
<b>Agreed by Authorised Officer</b>					
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 <a href="https://epicpublic.planningni.gov.uk/publicaccess/">https://epicpublic.planningni.gov.uk/publicaccess/</a>					

**1. Description of Site and Surrounding Area**

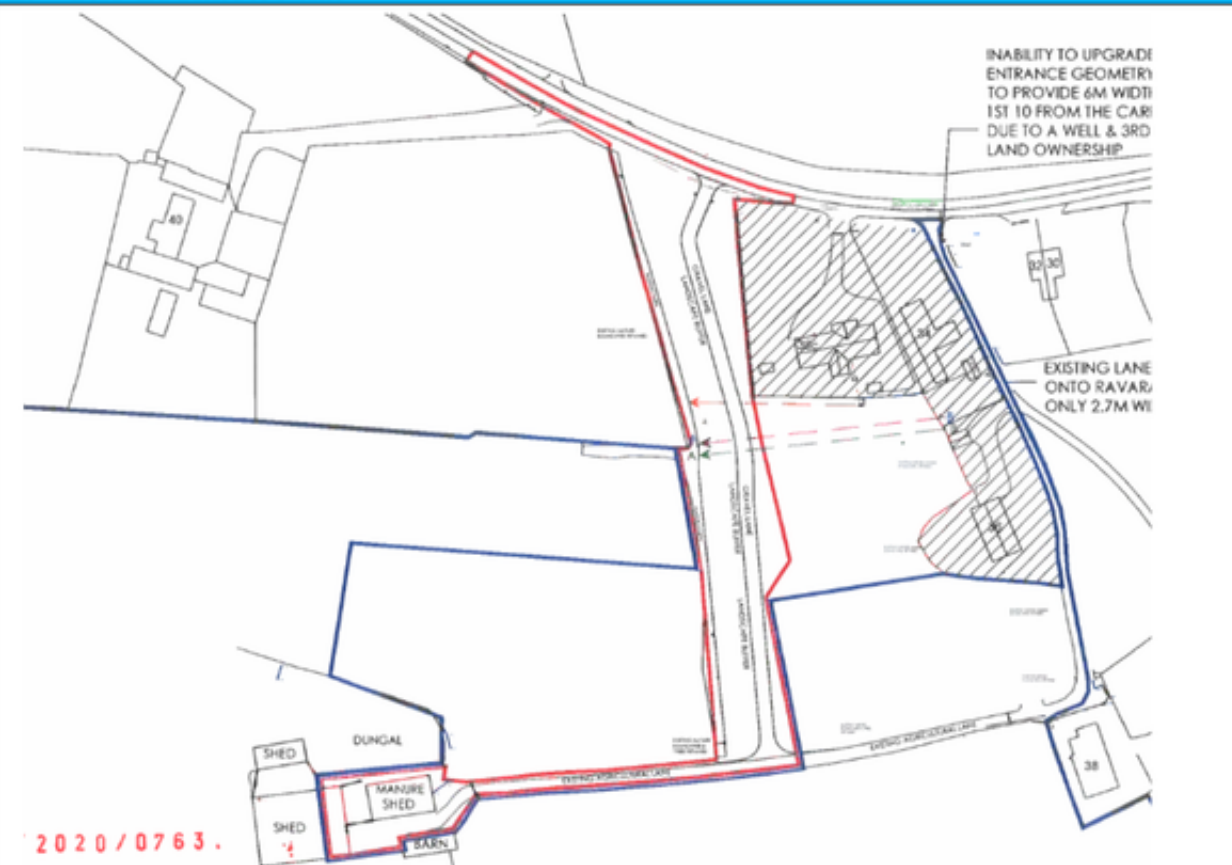
The application site is located on an agricultural field 10m west of 38C Ravara Road & 50m west of 34 & 36 Ravara Road, Ballygowan. See figure 1 which shows an aerial image of the site. Part of the field is located within the red-line boundary of the application site, with hedgerows defining the roadside boundary and western boundary. A small watercourse also runs parallel to the western boundary inside the red line. A laneway is located to the rear of the field, which leads to the existing manure shed and other associated agricultural buildings.



The surrounding area is agricultural in nature, with a mixture of detached dwellings and farm buildings found in the local vicinity.

Figure 1: Aerial image of the site

**2. Site Location Plan**



### 3. Relevant Planning History

There is no relevant planning history.

### 4. Planning Policy Framework

The relevant planning policy framework for this application is as follows:

- Ards & Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement and Parking
- Planning Policy Statement 21: Sustainable Development in the Countryside

### 5. Supplementary Planning Guidance

Relevant supplementary planning guidance for this application is as follows:

Building on Tradition: 6.78: Supplementary planning guidance contained within 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' must be taken into account in assessing all development proposals in the countryside.

### 6. Consultations

Consultation was carried out with the following statutory and non-statutory consultees and a synopsis of responses is listed:

Consultee	Response
DFI Roads	Content subject to conditions
Environmental Health	No objections
Rivers	No objections
NIEA: Water Management Unit	Standing Advice
NIEA: Regulation Unit	Content subject to conditions
NIEA: Natural Environment Division	Content subject to conditions

### 7. Consideration and Assessment

#### Principle of Development

The site described above is in the countryside as designated in the Ards and Down Area Plan 2015. The proposed development will not have any adverse impacts on any designated areas within the plan.



It must be noted that the application was originally submitted in September 2020 for an off-site replacement dwelling and new access laneway. Given the applicant was advised that the principle for a replacement dwelling could not be established, the agent amended the application form in July 2021 omitting all references to the replacement proposal and retaining solely the element required to enable the construction of the farm laneway.

The applicant is an active farmer and the agent stated that the existing laneway leading to the manure shed is inadequate and dangerous. The agent referred to the existing laneway being very narrow, and this results in agricultural contractors being unable to use the laneway with modern machinery. The applicant submitted supporting information which stated that the lane has recently been restricted in width by the erection of high-sided fences along the narrowest part of the lane. Farm vehicles and contractors' vans are unable to use the laneway for accessing the farmyard, therefore the applicant is having difficulties keeping the land in good condition for the purposes of agriculture, given the lack of access. For example, the applicant stated that one of the hay sheds in the yard has been damaged and a local contractor is unable to gain access to carry out repairs. It was stated that a new laneway will provide a safer access to the farmyard which will allow the applicant to operate the farm effectively and safely.

In addition, the lane is also shared by four different landowners, with three dwellings located off it. The agent argued that a new laneway will not require any major loss of any roadside hedgerow, nor will it negatively impact upon road safety or inconvenience the flow of traffic. In addition, it was stated that if the existing laneway were adapted and widened to make it adequate for farming machinery it would result in the loss of 310m of the hedgerow. I am satisfied that the justification for the laneway is acceptable, given the need for modern machinery to access the existing agricultural sheds on site.

### **Road Safety**

Policy AMP 2 – 'Access to Public Roads' states planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where it will not prejudice road safety or significantly inconvenience the flow of traffic; and the proposal does not conflict with Policy AMP 3. DfI Roads was consulted and offer no objections to the proposal, subject to conditions.

Access to the site will be directly on to Ravara Road. The road is not a Protected Route; therefore, policy AMP 3 does not apply.

### **Integration into the Countryside**

Policy CTY13 of PPS21 states that all proposals for development in the countryside must be sited and designated to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for access and road safety. New access routes are often visible features in the countryside and can be more obtrusive than new buildings. It is therefore important to consider the visual impact that a new access will have on the surrounding rural landscape.

The proposed laneway will run parallel to an existing field boundary that runs from the proposed new access onto Ravara Road to the south end of the field which will open

onto the existing laneway to the rear. The existing hedgerow will help screen the proposed laneway from view when travelling from the western side of the Ravara Road. When approaching the laneway from the eastern side of Ravara Road, the existing dwellings, garages and boundary treatments at Nos 34, 36 & 38C, will help block the majority of public views from this direction. The planting of Blackthorne and Hawthorne hedge along the western boundary will help to screen the laneway from view and allow the proposal to be integrated sympathetically with the rural surroundings. The additional landscaping within the 'buffer' will also help with integrating the laneway into the countryside and will soften the overall visual impact of the gravel lane. A condition relating to the submission of a landscaping and planting plan will be included to ensure that the existing hedgerows and trees are retained on site, and that any new trees/shrubs included are native species.

### **Designated Sites and Natural Heritage**

The Biodiversity Checklist submitted indicated that there was a small watercourse running through the site, and in addition, the proposal involved the removal of a small section of hedgerow. Hedgerows and watercourses are NI Priority Habitats that can provide potential for protected species including badgers, otters, nesting birds, smooth newts and bats. A number of field surveys were therefore undertaken by a qualified ecologist. The following issues and mitigation measures were identified:

- The proposed development will involve the removal of some hedgerow vegetation along the Ravara Road and along the existing access laneway. The loss of this hedgerow should be compensated for by replacement planting within the landscape plan.
- The small watercourse that flows through the site was assessed as having 'High' conservation value. The watercourse should be protected by retaining a protective buffer between the watercourse bank and the development in order to protect the riparian corridor and associated wildlife. In this case an 8m buffer will be achievable.
- All surface run-off during the construction and operational phase should be directed away from the watercourse. A suitable buffer should be maintained between the location of all construction works including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil etc. and the watercourse.
- The hedgerows and vegetation within the site have potential for nesting birds. Any necessary hedgerow clearance works should not be undertaken during the bird breeding season (which extends from 1st March to 31st August) unless an appropriate survey has been carried out by a suitably experienced ecologist which confirms the absence of active nests.
- The watercourse that runs through the site was assessed as having 'average or moderate' suitability for smooth newts. The proposed new access laneway will run along the length of the watercourse and could form a barrier for migrating newts between the watercourse and surrounding habitat. It is recommended that some underpasses in the form of drainage pipes are installed beneath the laneway.

NIEA: NED was consulted on the proposal and made the following comments:

*'NED is content that provided there is no direct discharge of untreated surface water run-off to the adjacent watercourse, appropriate pollution prevention measures are implemented during the construction and operational phases of the development and due to the distance from any designated sites, the proposal is unlikely to have a significant impact on any designated sites.*

*As highlighted in NED's previous response, the PEA identified the watercourse on site as having the potential to support smooth newts. Smooth newts are protected under the Wildlife (Northern Ireland) Order 1985 (as amended). NED is content that Drawing Number 02B, Proposed Site Block Plan shows a 10m buffer to the watercourse and 5 underpasses along the length of the laneway as recommended. NED also recommends that there is no direct discharge of untreated surface water run-off during the construction and operational phases to the watercourse and that all relevant Guidance for Pollution Prevention measures are followed. With the implementation of these mitigation measures NED is content that the proposal is unlikely to have a significant impact on the watercourse or smooth newts.*

*NED notes from Proposed Site Block Plan that a small amount of hedgerow removal is required to facilitate the proposed new access. The hedgerows on site are a Northern Ireland priority habitat. NED notes that new planting is proposed throughout the site and is content that this will provide sufficient compensation for the loss of existing hedgerows.*

*However, NED notes that non-native Beech *Fagus sylvatica* is listed on the planting schedule. NED recommends removing Beech from the Planting Schedule and replacing it with native species to enhance the biodiversity value of the site. NED recommends that an amended Planting Schedule is submitted to show the removal of non-native species and to show the species, number and size of all native species to be planted.*

*NED notes from the PEA (ATEC, Feb 2020) that several mature trees on site have been assessed as having moderate bat roosting potential. Bats are European protected species under the Habitats Regulations, and as such are subject to a strict level of protection. NED is content that these trees are to be retained. NED recommends that all retained trees and hedgerows are protected from construction works in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction – Recommendations.*

*The trees and hedgerows on site have the potential to support breeding birds. All wild birds and their nests are protected under the Wildlife (Northern Ireland) Order 1985 (as amended). Providing any vegetation removal is carried out outside the bird breeding season, as recommended in the PEA, NED considers that this is unlikely to have a significant impact on breeding birds.'*

#### Conditions

1. No development activity shall take place until a Landscaping and Planting Plan has been submitted to and approved in writing by the Planning Authority. The approved Plan shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Planning Authority. The Plan shall include the following:

- a) The retention of mature trees and hedgerows on the site;
- b) Details of the protection of retained trees and hedgerows by appropriate fencing in accordance with British Standard 5837:2012 *Trees in relation to design, demolition and construction – Recommendations*;
- c) Planting Schedule to include appropriate numbers of native species of trees/shrub;
- d) Details of the aftercare of all planting on the site.

Reason: To compensate for the loss of existing trees and hedgerows and to minimise the impact of the proposal on the biodiversity of the site.

2. No construction works, including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil, shall take place within 10m of the adjacent watercourse.

Reason: To protect the Northern Ireland priority habitats and species.

3. There shall be no direct discharge of untreated surface water run-off during the construction and operational phases to the adjacent watercourse.

Reason: To protect the Northern Ireland priority habitats and species.

In addition to consulting NIEA, an informal consultation response was received from the Shared Environmental Service (SES). The response stated that no formal consultation was required with the following stated by the officer:

- *'The proposed development is located approx. 8.3km from Strangford Lough SAC, SPA and Ramsar and will cross a watercourse/drain that is hydrologically connected to these designated sites.*
- *The proposal is to construct a new access laneway to serve extant agricultural sheds and therefore there are no operational emissions from the proposal to consider.*
- *Construction will be temporary in nature, the drain is minor in scale and has limited capacity to convey pollutants. There is an existing culverted crossing of the watercourse which it appears from drawing 01/B published on the NIPP on 22/10/2021 that the proposed lane will avail of. The hydrological distance to the designated sites is in excess of 15km.*
- *Given the nature and scale of the development, the likely duration of construction, the tenuous connection and the capacity for dilution of the River Blackwater which provides connectivity to the designated sites, is considered that any pollutants entering the drain during construction would settle out or disperse before reaching site features.'*

SES concluded that there could be no conceivable effect on any European sites from this proposal to construct a new lane.

## Other Material Considerations

### Flooding

As there is a small watercourse running through the site, DFI Rivers was consulted on the proposal and stated the following:

*'There are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within this site. An undesignated watercourse is located adjacent to the western boundary of the proposed new access lane. The site may be affected by undesignated watercourses of which we have no record.'*

*Under 6.32 of Policy PPS 15 FLD 2, an adjacent working strip along a watercourse must be retained to facilitate future maintenance by DfI Rivers, other statutory undertaker or the riparian landowners. The working strip should have a minimum width of 5m, but up to 10m where considered necessary, and be provided with clear access and egress at all times. The submitted Site Layout stamped DWG 02b is deemed compliant with policy FLD 2.'*

A drainage assessment is not required for the development. The Flood Hazard Maps (NI) indicate that there may be a potential for surface water flooding. DFI Rivers highlighted that it is the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site.

### Contamination

The agent submitted a Generic Quantitative Risk Assessment in support of the application, which assesses and determines the presence of contamination, migration pathways and forms an assessment of the hazards and risks associated with these and the extent of any environmental liability. The report relates to both the proposed replacement dwelling and laneway however given the dwelling has been removed from the proposal, both Environmental Health and NIEA: Regulation Unit were consulted and ask to comment on the laneway. Environmental Health had no objections to the proposal. NIEA: Regulation Unit made the following comments:

- 1. 'The priorities of the RU in assessing this planning application are to consider the potential for contamination to be present at the site that could impact on environmentally sensitive receptors including groundwater and surface water. It should be noted that Ards and North Down District Council is the authoritative body with respect to environmental health matters and we would ask that you ensure they have an opportunity to comment on all relevant information.'*
- 2. RU responded previously (11/02/2021) to the Planning Authority in consideration of this application and alleged illegal dumping on the site. In this response RU advised that, should illegal dumping have occurred at the site, then a site investigation and contaminated land risk assessment would be required prior to development proceeding.*
- 3. RU subsequently responded previously (21/06/2021) to the Planning Authority in consideration of a Generic Quantitative Risk assessment (GQRA) provided*



by Stratex in support of this application. Amended plans to reflect new requirements have been received in support of this application. The amended plans do not affect the findings of the GQRA and the previous RU response is reproduced below.

4. A Generic Quantitative Risk Assessment (GQRA) informed by a Preliminary Qualitative Risk Assessment (PRA) and intrusive site investigation has been provided by Stratex in support of this application. Stratex identify that the application site currently comprises of undeveloped lands and the proposal is to construct a single dwelling and garage with an access lane. Stratex present a PRA informed by a desk study. The collated information is used to develop a Preliminary Conceptual Site Model (CSM).
5. Stratex identify no significant potential sources of contamination in relation to the site. Bedrock aquifer is identified as the key environmental receptor due to the absence of significant thickness of superficial soils. Stratex conclude that there is no significant risk of contamination at this site. Intrusive site investigation and risk assessment is however presented in support of this application. The intrusive investigation comprised of the progression of five boreholes (BH1 – BH5) to a maximum depth of 4.5 meters below ground level. All boreholes were fitted with groundwater and ground gas monitoring
6. Stratex report the presence of some made ground along the line of the proposed road to the west of the site. Stratex consider this as likely to be natural soils placed there as part of some regrading works. Some bricks and concrete were encountered within made ground to the north of the site. Boreholes confirmed that the general ground conditions were: made ground; peat; sands and gravels; clays and; sandstone.
7. One groundwater sample was collected from BH3, located on the southern, down gradient part of the site. The sample was analysed for a range of contaminants of concern and concentrations determined were then screened against Generic Assessment Criteria (GAC) protective of the water environment and human health. Stratex report that no groundwater GAC values were exceeded.
8. Five soil samples were also collected and analysed and no GAC concentrations were exceeded. Ground gases were also analysed from each of the five boreholes and Stratex consider that the site falls into a low risk situation with elevated methane and carbon dioxide probably associated with the peat present.
9. Stratex conclude that the site does not pose a significant risk to environmental receptors.

RU have considered the Stratex report and note that significantly elevated concentrations of contaminants were not detected in soils or groundwaters at the site. Based on the information provided, RU support the Stratex conclusion and would have no objection to the application provided Conditions and Informatives are placed on any Planning Decision Notice, as recommended. RU further note that NIEA

*Environmental Crime Section have been advised on allegations of illegal deposition of waste at this site.'*

#### Conditions

1. If during the development works, new contamination and risks to the water environment are encountered which has not previously been identified, works should cease and the Planning Authority shall be notified immediately. This new contamination shall be fully investigated in accordance with the Land Contamination: Risk Management (LCRM) guidance available at: <https://www.gov.uk/guidance/land-contamination-how-to-manage-the-risks>

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

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

2. After completing any remediation works required, and prior to operation of the development, a verification report needs to be submitted in writing and agreed with Planning Authority. This report should be completed by competent persons in accordance with the Land Contamination: Risk Management (LCRM) guidance. The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all waste materials and risks and in achieving the remedial objectives.

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

NI Water: Water Management Unit was consulted on the proposal and stated the following:

*'The applicant should be aware there is no guarantee that discharge consent will be granted. It should be noted that Discharge Consent can only be assessed whenever the department has received an application deemed complete accompanied by the appropriate fee. When assessing a discharge consent Water Management Unit's concern is the suitability of the proposed means of effluent disposal and a number of site-specific factors need to be taken into account.*

*In addition, Water Management Unit would recommend the following condition:*

**Condition:** *Once a contractor has been appointed, a full Construction Method Statement (CMS) should be submitted to NIEA Water Management Unit, at least 8 weeks prior to the commencement of construction to ensure effective avoidance and mitigation methodologies have been planned for the protection of the water environment.*

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

## 8. Consideration of Representations

The proposal was advertised in the local press and neighbouring properties were notified. A total of 16 objection letters from seven separate addresses have been received. These representations are from a number of separate individuals occupying properties at 30, 34, 36, 38, 38C and 40 Ravara Road. It must be noted that a number of issues in the objections were raised in relation to the proposed replacement dwelling. As this has been removed from the proposal, I will not be addressing these issues relating to the dwelling. The concerns regarding the proposed laneway are précised as follows:

- Principle of development: The objectors stated that there is already a viable separate laneway leading to the sheds, therefore no new lane is required. It was further stated that there is already six access points across Springmount farmland therefore why was another one needed. In addition, it was argued that the existing laneway is more than adequate for traditional sized tractors, trailers and machinery.

I have discussed the need for the laneway above under PPS 3, and was satisfied that the justification provided by the agent was acceptable given the need for a safe and viable access to the agricultural sheds. The width of the existing laneway, along with the right-angled turn would make it difficult for large agricultural vehicles to manoeuvre the lane. In addition, there are three private houses on this shared lane and thus there is a possibility of two-way traffic. I am of the opinion that a separate laneway for agricultural vehicles would be safer for both the applicant and the homeowners along this existing laneway.

- Impact on Biodiversity: The objectors stated that wildlife will be impacted upon including moor hens, ducks, geese, tadpoles and newts. They further elaborated that the construction of the laneway would involve the dumping of over 7,000 tonnes of quarry stone which would be in direct contravention of the provisions of the Wildlife Order. In addition, comments in relation to the environmental report as submitted were made stating that the drainage pipes under the laneway for the newts would be impracticable and impossible to retain due to the boggy nature of the field. It was further asserted that subsidence and heavy vehicle usage would cause pipes to break under the weight and depth of the laneway and get clogged up in a short period of time. In addition, two of the neighbours stated that unless a waterproof dam is constructed on the west side of the lane, it will be impossible to ensure that any drainage does not flow into the existing waterway, since the lane is uphill of it. They then further stated that if a dam were constructed, it would impede the septic tank soakaways and impeded the newts' access to the waterway. It was also queried if there was scientific proof that the proposed mitigations will preserve the habitat and who will check if they are installed to a high enough standard. Rachel Woods MLA also stated that the ecology report submitted stated that the toxicity of the proposed laneway will have an adverse effect on the adjacent waterway and associated wildlife. Ms Woods argued that this was in direct breach of the Wildlife Order.



The applicant hired an ecologist to carry out an in-depth survey of the site to identify risks to protected species and habitats and provide suitable mitigation measures. NIEA: Natural Environment Division is the competent authority in respect of biodiversity and was consulted on the application and asked to review the biodiversity checklist and statement submitted. NED has stated it is content with the proposal subject to conditions. NED concluded that as long as the mitigation measures are implemented, the proposal is unlikely to have a significant impact on the watercourse or smooth newts. It is the responsibility of the applicant to comply with any conditions attached to a planning decision. If there were concerns that the conditions were not complied with, this can be reported to the enforcement section. Please note that a qualified ecologist recommended the mitigation approaches, and these have been reviewed by NIEA. The planning authority relies on the advice from NIEA as the expert in this field. It must also be noted that there is no evidence presented stating that newts were identified on the site. The ecologist only stated that the watercourse has the potential to support smooth newts. Rachel Woods' comment regarding the ecology report is incorrect, the only reference to this is a statement reading that 'in absence of mitigation, there is the potential for degradation of the adjacent aquatic habitat due to contaminated run-off or sediment resulting during construction'.

- Hedging and Planting: One of the objectors queried how planning approval could be granted subject to a hedge planting schedule that has yet to be drawn up or inspected and how does the planning department ensure that the planting will be done as planned and properly maintained. Rachel Woods MLA also asserted that the application seems to involve the removal of 310m of hedgerow which will have a major impact on local biodiversity.

The condition will require the applicant to submit a Landscaping and Planting Plan which will need to be reviewed by the Council through a Discharge of Condition application. No development activity can start until this condition has been complied with. As stated previously, if there were concerns that the conditions were not complied with, this can be reported to the Planning Enforcement Section and investigated accordingly. The comment regarding the removal of 310m of hedgerow is incorrect. Between 20-30m of hedgerow will be removed to allow for the new access and laneway, with a whole new line of hedgerow (over 100m) proposed to make up for this loss.

- Flooding: Issues regarding flooding were raised, with two of the objectors stating that all rainwater run-off and septic tank residue for the surrounding properties run directly downhill into the watercourse. They continued by stating that if a laneway was constructed then there will inevitably be a build-up of wastewater which will contribute to flooding and effluent build-up. In addition, one neighbour stated that the hardcore of the laneway will damage the fragile water table thereby increasing the flooding on No. 40's side of the sheugh and will contribute to toxicity in the water.

DFI Rivers was consulted on the proposal and offered no objections. As mentioned previously, a drainage assessment is not required for the



development, and it is the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site.

- Waste and Contamination: A neighbour reported that there had been illegal deposition of waste at this site. In addition, comments were made on the Stratex report submitted claiming that the proposed laneway is more than 10 times the footprint of the proposed dwelling (previously included) and therefore would be potentially 10 times more toxic. It was stated that an additional membrane was required to protect the environment by limiting gas release. A further comment was made stating that the emissions of carbon had not been given sufficient weight.

The NIEA Environmental Crime Unit has been advised on these allegations regarding dumping and will deal with this matter outside of the planning process. NIEA: RU has considered the Stratex report and stated that significantly elevated concentrations of contaminants were not detected in soils or groundwaters at the site. This objection was brought to the attention of Environmental Health for comment, and on 29/11/21 it stated that potential methane in an underfloor space would need to be vented whereas a pathway would be vented to air. In regard to the objection regarding the release of carbon, it is the duty of the statutory consultees to fully consider the impacts of the proposal and if carbon release were a major issue, this would have been highlighted.

- Issues with existing manure shed: The neighbours at No. 40 raised queries regarding the use and potential issues with the existing manure shed. In addition, the transport of 'toxic excrement' was also queried.

The manure shed and any other information regarding existing farm practices do not form part of this application, therefore I cannot provide comments on this.

- Privacy: The neighbour at No. 38 stated that the laneway would infringe on their privacy.

The lane is situated over 80m from this dwelling and given it will be used for agricultural vehicles I do not envisage there will be regular traffic on this laneway and therefore any loss of privacy from moving vehicles on the laneway.

- Access & Road Safety: One of the neighbours stated that DFI Roads might want to review the proposed exit onto Ravara Road as this newer proposed exit is near to No. 38's garden and will likely be beside or very near a speed limit sign which may need to be re-sited.

DFI Roads was consulted on the amended position of the laneway and offered no objections to the proposal.

- **Buffer Zone:** One of the objectors stated that the proposed buffer zone was not 8m on the map.

I have measured the landscaping 'buffer zone' and it ranges between 8-10m which correlated with the environmental report and NIEA's response.

- **Drainage of effluent from septic tank:** The neighbours at No. 34 & No. 38C asserted that the proposed development would interfere with the drainage of effluent from their septic tanks on their land. In addition, No. 38C stated that the proposed development will interfere with the sand pipe and their ability to keep it maintained.

This is a civil issue regarding land ownership and does not fall into the remit of planning.

- **Impact on Designated Sites:** Two of the objectors alleged that the laneway will intersect a scarce wetland area, with reference to it being a wetland bog. In addition, one objector went into detail about how this application will affect peatland.

NIEA:NED was emailed to review these comments and confirmed that the site does not lie within any designated (ASSI/SPA/SAC/RAMSAR) sites. NIEA: NED has provided a detailed response as discussed under 'Designated Sites and Natural Heritage' section above. In addition, NIEA was reconsulted and asked to review the objection letters received. The following was stated:

*'Natural Environment Division (NED) acknowledges receipt of the six objection letters and the one miscellaneous comment uploaded onto the Planning Portal since the 11 November 2021 in reference to the ecological impacts of the proposal. NED has considered the uploaded correspondences in relation to Natural Heritage features and refers the Local Planning Authority to NEDs previous response dated 11th of October 2021. NED advises that provided the existing plans are adhered to and the conditions outlined within NEDs previous response this will adequately mitigate for any likely impacts of the proposal and prevent any breach of legislation. It is therefore unlikely that there will be any significant impacts upon protected and/or priority species and habitats, subject to the recommended conditions and informatives contained within NEDs previous response.'*

- **Other Comments:** One neighbour stated that a new gateway and gateposts have been installed on the main laneway leading to the manure shed. This does not fall within the red line of this application therefore I have no comment to make. This complaint has been reported to the Planning enforcement section.

An objector stated that there are inaccuracies with the P1 form including the site area and the number of employees visiting the site. The site area was amended when the replacement dwelling was removed from the scheme, from 0.94 ha to 0.55ha. Any maps or reports submitted prior this amendment may state the old figure of 0.94 ha.

Another comment made stated that due to the changes in the application, this may lead government agencies to think a laneway might have less of a negative impact on our environment. All consultees were re-consulted on the amended scheme which is only for the laneway and the comments provided reflect that they were aware of these changes and have provided relevant comments regarding the laneway.

One objector stated that another small watercourse is located below the manure shed and discussed the impact of run-off. This watercourse is sufficiently removed from the proposed new laneway and was not identified by SES or NIEA. Any run-off from the existing shed is not related to this application and will not be assessed.

Several comments were made regarding inaccuracies in reports and consultation responses submitted and received. For example, it was mentioned that the ecologist did not tick yes in the checklist for 'any development within or adjacent to a site where protected species are known to be present'. All the reports submitted for this application have been undertaken by experts and professionals in their field. These reports have then been reviewed by statutory bodies who have provided detailed and considered responses. In relation to the checklist example, it must be highlighted that there is no record of protected species being recorded at the site on the NIEA map viewer. The ecologist's report is extremely detailed and has carefully considered what types of protected species the site could support.

In addition to the above objections, seven letters of support were received for this application. The comments are summarised as below:

- The existing narrow laneway is restricted by width and agricultural contractors are unable to use the laneway with modern machinery to access fields. It was stated that modern farming vehicles are significantly larger therefore an adequate access and laneway is required for access to the existing sheds. It was stated that the new laneway will not require the loss of any roadside hedgerow, nor will it negatively impact upon road safety or inconvenience the flow of traffic. It was also highlighted that a new laneway will reduce congestion and possible hazards of the existing access road.
- General comments were made in support of the applicant stating this farm has played a key role in supporting local producers and is an active participant in council food initiatives.

## 9. Conclusion

The proposal has been thoroughly assessed in the context of the development plan, prevailing planning policy and guidance, and all material planning considerations, including consultation responses and third party representations and, subject to conditions, approval is recommended.

## 10. Recommendation

**Grant Planning Permission**

## 11. Conditions & Informatives

### Conditions

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

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

2. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with the Proposed Site Layout Plan, Drawing No.02b bearing the date stamp 05<sup>th</sup> July 2021, prior to the commencement of any other development hereby permitted.

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

3. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway prior to the commencement of any other development and such splays shall be retained and kept clear thereafter.

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

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

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

5. No development activity shall take place until a Landscaping and Planting Plan has been submitted to and approved in writing by the Council. The approved Plan shall be implemented in accordance with the approved details, unless otherwise agreed in writing by the Council. The Plan shall include the following:

- a) The retention of mature trees and hedgerows on the site;
- b) Details of the protection of retained trees and hedgerows by appropriate fencing in accordance with British Standard 5837:2012 *Trees in relation to design, demolition and construction – Recommendations*;



- c) Planting Schedule to include appropriate numbers of native species of trees/shrub;
- d) Details of the aftercare of all planting on the site.

Reason: To compensate for the loss of existing trees and hedgerows and to minimise the impact of the proposal on the biodiversity of the site.

- 6. No construction works, including refuelling, storage of oil/fuel, concrete mixing and washing areas, storage of machinery/material/spoil, shall take place within 10m of the adjacent watercourse.

Reason: To protect Northern Ireland priority habitats and species.

- 7. There shall be no direct discharge of untreated surface water run-off during the construction and operational phases to the adjacent watercourse.

Reason: To protect Northern Ireland priority habitats and species.

- 8. 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.

- 9. The existing hedging along the western boundary, as shaded in green on Drawing No. 02b, bearing the date stamp 5<sup>th</sup> July 2021, shall be retained.

Reason: To ensure the continuity of visual amenity afforded by existing trees/hedges.

- 10. If any retained hedge or trees are removed, uprooted or destroyed or die within 3 years from the date of the completion of the development hereby approved another hedge or trees shall be planted at the same place and shall be of such size and species and be planted at such time to be agreed in writing by the Council within 3 months of removal.

Reason: To ensure the continuity of visual amenity afforded by existing hedges.

- 11. If during the development works, new contamination and risks to the water environment are encountered which has 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 to its satisfaction.

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

12. After completing any remediation works required, and prior to operation of the development hereby approved, a verification report is to be submitted in writing and agreed by the Council. This report should be completed by competent persons in accordance with the Land Contamination: Risk Management (LCRM) guidance. The verification report should present all the remediation and monitoring works undertaken and demonstrate the effectiveness of the works in managing all waste materials and risks and in achieving the remedial objectives.

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

13. Once a contractor has been appointed, a full Construction Method Statement (CMS) should be submitted in writing to the Council, at least 8 weeks prior to the commencement of construction to ensure effective avoidance and mitigation methodologies have been planned for the protection of the water environment. Development shall be carried out in strict accordance with the Construction Method Statement as approved.

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

14. Any necessary hedgerow clearance works should not be undertaken during the bird breeding season (which extends from 1st March to 31st August) unless an appropriate survey has been carried out by a suitably experienced ecologist which confirms the absence of active nests.

Reason: To protect Northern Ireland priority habitats and species.

15. The maintenance buffer for the watercourse, as shown in drawing 02b, bearing the date stamp 5<sup>th</sup> July 2021, must be retained to facilitate future maintenance by DfI Rivers, other statutory undertakers or the riparian landowners. The working strip should have a minimum width of 5m, but up to 10m where considered necessary, and be provided with clear access and egress at all times.

Reason: To ensure effective maintenance measures for the protection of the water environment.

16. The materials used to construct the laneway shall consist of inert material only as listed in the EWS codes table below:

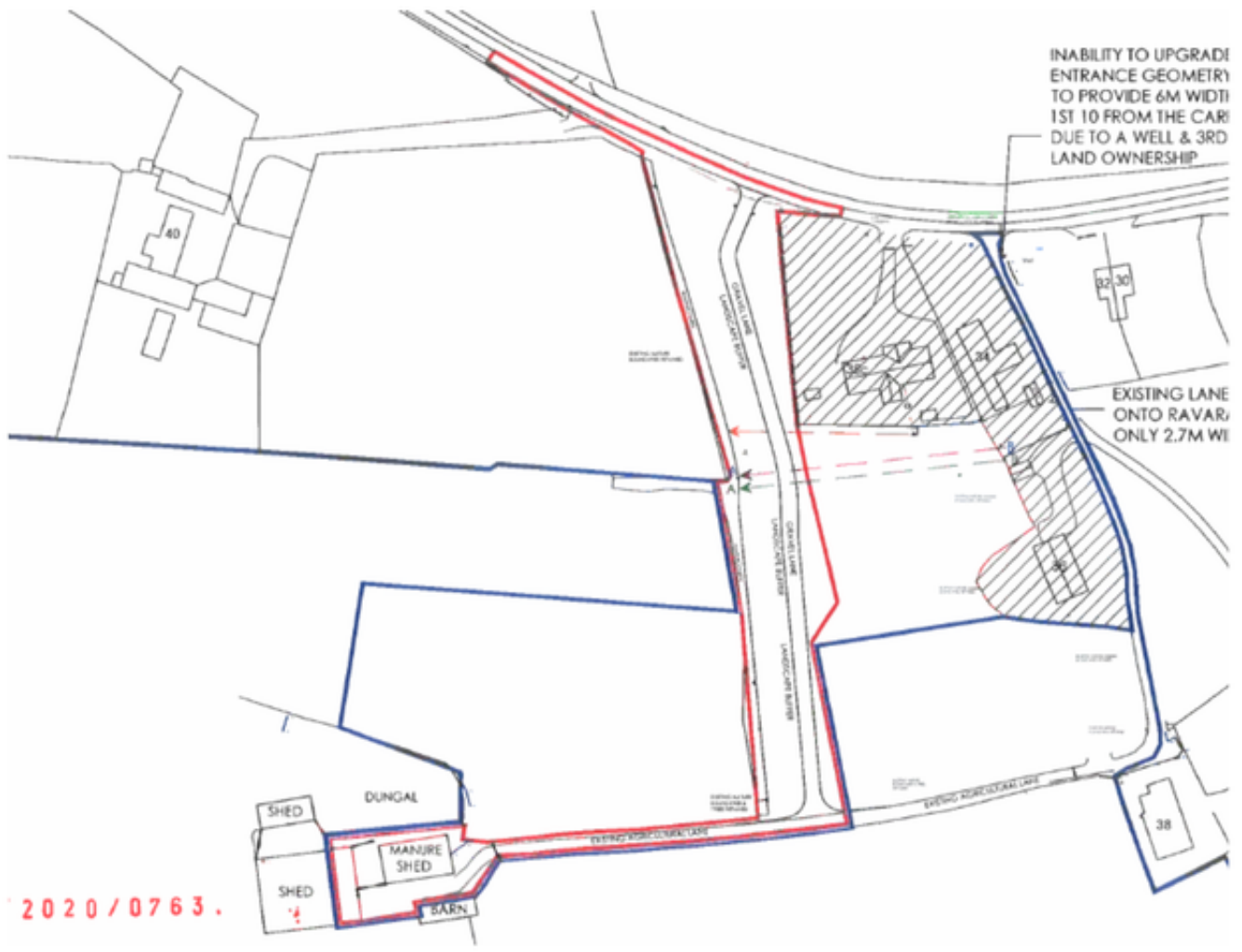
<b>EWC Code</b>	<b>Waste Description</b>
01 04 08	Waste gravel and crushed rocks other than those mentioned in 01 04 07
01 04 09	Waste sand and clays
10 12 08	Waste ceramics, bricks, tiles and construction products (after thermal processing)
10 13 04	Waste concrete
17 01 01	Concrete
17 01 02	Bricks
17 01 03	Tiles and ceramics
17 01 07	Mixtures of concrete, bricks, tiles and ceramics other than those mentioned in 17 01 06
17 05 04	Soil and stones other than those mentioned in 17 05 03
17 05 08	Track ballast other than those mentioned in 17 05 07
19 12 09	Minerals (e.g sand and stones)
20 02 02	Soil and stones

Reason: In the interest of the amenity of the surrounding area

### **Informatives**

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 Photos



*Image showing the proposed field the laneway will run through with the farm sheds shown in the distance*



*Image showing the proposed Location of new entrance*





*Image showing No. 38C from proposed location of laneway*




*Image showing existing laneway used to access farm sheds*

## ITEM 4.2

## Ards and North Down Borough Council

Application Ref	LA06/2020/1025/F
Proposal	Erection of steel portal building for storage use
Location	30 Greyabbey Road, Ballywalter DEA: Ards Peninsula
Committee Interest	A local development application attracting six or more separate individual objections which are contrary to the officer's recommendation
Validated	19/11/2020
Summary	<ul style="list-style-type: none"> <li>• Site located within development limit of Ballywalter in an area designated for industry (Industrial Policy Area)</li> <li>• All consultees content</li> <li>• 12 objections received from six separate addresses - full consideration of material objections detailed within Case Officer Report</li> <li>• Proposed building was re-located and amended from a workshop to storage building in order to protect residents' amenity</li> </ul>
Recommendation	<b>Approval</b>
Attachment	Item 4.2a – Case Officer Report



<b>Development Management Case Officer Report</b>		 <b>Ards and North Down</b> Borough Council	
<b>Reference:</b>	LA06/2020/1025/F	<b>DEA:</b> Ards Peninsula	
<b>Proposal:</b>	Erection of steel portal building for storage use		
<b>Location:</b>	30 Greyabbey Road, Ballywalter, Newtownards		
<b>Applicant:</b>	N.G Bell and Son Ltd		
<b>Date valid:</b>	19/11/2020	<b>EIA Screening Required:</b>	No
<b>Date last advertised:</b>	15/04/2021	<b>Date last neighbour notified:</b>	14/06/2021
<b>Letters of Support: 0</b>	<b>Letters of Objection: 12</b> (from 6 separate addresses)	<b>Petitions: 0</b>	
<b>Consultations – synopsis of responses:</b>			
Environmental Health		No objections subject to conditions	
<b>Summary of main issues considered:</b>			
<ul style="list-style-type: none"> <li>• Principle of the use at this location</li> <li>• Parking and Access</li> <li>• Impact on Residential Amenity</li> <li>• Visual impact</li> <li>• Impact on Biodiversity</li> </ul>			
<b>Recommendation: Grant Planning Permission</b>			
<b>Report Agreed by Authorised Officer</b>			
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 <a href="https://epicpublic.planningni.gov.uk/publicaccess/">https://epicpublic.planningni.gov.uk/publicaccess/</a>			

## 1. Site and Surrounding Area

This site consists of a well-established builders' merchants in Ballywalter. The site occupies a large roadside plot of land on the southern side of the Greyabbey Road. The yard is the last large development on this side of the road as travelling out of Ballywalter. There are a number of sheds on the site. The main building contains the office/sales area with storage area to the rear; there are a number of other buildings which appear to be for storage of building materials. There is a large yard area with products stored outside. There is a residential development located directly east of the site.

There are fields on the opposite side of the road; woodland associated with the Dunleith estate define the boundary to west and south of the yard.

## 2. Site Location Plan



## 3. Relevant Planning History

**LA06/2021/1277/LDE:** 30 Greyabbey Road, Ballywalter; Existing shavings store; Permitted Development 23/11/2021

The above CLEUD was submitted during the assessment of this application. The existing shavings store is shown in the proposed elevations within this application.

**LA06/2019/1141/F:** 30 Greyabbey Road, Ballywalter; Single storey steel portal building for use as a workshop approximately 30m south east of no.30 Greyabbey Road; Permission Granted 31.03.20

**X/2000/0652/F:** Land 20 metres west of 26 Greyabbey Road, Ballywalter; New timber store and machine shop in addition to plasterboard and cement store and showroom and offices; Permission Granted 10.12.01

#### 4. Planning Assessment

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

- Ards & Down Area Plan 2015
- Strategic Planning Policy Statement for Northern Ireland
- Planning Policy Statement 2: Natural Heritage
- Planning Policy Statement 3: Access, Movement and Parking
- Planning Policy Statement 4: Planning and Economic Development

#### **Principle of Development**

ADAP currently acts as the LDP for this area. Under the provisions of the plan, the site described above is within the settlement of Ballywalter (Proposal BR 01) and within an area zoned for industry (Industrial Policy Area).

The site is outside any town centre designation and is not within any special designations in relation the environment and architecture, or archaeology. As far as it relates to the subject matter, the development is considered to be in general conformity with the Plan subject to the specific policies considered below.

All applications for economic development must be assessed in accordance with normal planning criteria, relating to such considerations as access arrangements, design, environmental and amenity impacts, so as to ensure safe, high quality and otherwise satisfactory forms of development.

The Strategic Planning Policy Statement for NI states that during the transitional period existing policy within the Planning Policy Statements that have not been cancelled will apply. Within this context, Addendum to Planning Policy Statement 4: Planning and Economic Development is retained and forms the principal consideration in relation to this type of development. PPS 4, along with other relevant considerations, is considered below.

#### **Economic Development in Settlements**

PPS4 PED1 permits General Industrial Uses in an area specifically allocated for such purposes in a development plan or in an existing industrial/employment area provided it is of a scale, nature and form appropriate to the location.



I can confirm that the area is designated for industry within the Local Development Plan. The plan indicates that development proposals are to be assessed against the prevailing regional policies.



Figure 1: Proposed location of the shed on the site

It must be noted that the proposal has been revised from the original submission. The proposed shed was originally to be located along the boundary shared with the residential properties to the east of the site. There were a number of issues with this original location, mainly in relation to the impact the unit would have had on the amenity of the residents within Bartley Wood. As the unit proposed had a ridge height of over 7m, it would have appeared dominant and over-bearing and would have caused significant overshadowing to the gardens and ground floor windows of Nos. 25, 27, 29, 31 & 33 Bartleys Wood. There were no windows proposed to the shed therefore there were no issues regarding overlooking.

In addition to the location, the proposed use of the shed was amended from a 'workshop' to a 'storage unit'. No details were provided on the activities that could be expected to occur in the workshop, nor were any details of plant or equipment to be installed either. Environmental Health were consulted on the original proposal and stated that there were concerns regarding the intensification of the site, and that the location of this workshop could cause the occupiers of nearby dwellings to be adversely affected by noise. In view of this, the Environmental Health Department requested that this application be refused unless the applicant could provide a comprehensive noise impact assessment which can demonstrate that the proposed workshop will not cause nearby residents to be adversely affected by noise.



Given the concerns of both the residents in Bartley's Wood and the Environmental Health Department, the proposed unit was both re-located within the site and amended to be used for storage purposes only. Additional information was sought from the agent regarding proposed loading and unloading areas, along with seeking clarification regarding existing structures on site. The existing shavings store building on site did not have any planning permission therefore a CLEUD was submitted under ref. LA06/2021/1277/LDE. The shavings store was accepted as being lawful and the certificate was issued on 23<sup>rd</sup> November 2022. The agent stated the other structures were temporary storage containers which could easily be removed. The storage containers have been reported to the enforcement section for investigation. The enforcement case is being dealt with under ref. LA06/2021/0125/CA.

Policy PED 9 of PPS4 is met. The building will measure 35.5m in length by 12.7m in width, creating approximately 425sqm of new floorspace. The storage shed will be situated to the rear of the existing 'timber machine shop' and storage sheds as shown in figure 1. It will have a mono pitched roof with a maximum ridge height of 7.5m. A total of 2 steel roller doors will be located along the eastern elevation of the shed.

The proposal represents a relatively small amount of floorspace in relation to the site. Whilst the ridge height will be 1.5m higher than the existing shed it is located behind, I do not consider this to have any significant impact in terms of character of the area. The extension will use cladding similar to the existing sheds on site, and therefore I am satisfied that the materials and design are in keeping with the industrial context.

The proposal will have no impact on the character of the area. The proposed shed is to be within the existing curtilage of the business and will be sympathetic in scale and massing to the site. The commercial land use has been established and there will be no conflict with other adjacent uses.

The Council's Environmental Health department was consulted on the application and were content with the revised proposal with one condition attached:

1. The shed shall only be used for storage purposes.

Reason: To ensure the occupants of nearby residential premises are not adversely affected by noise

The proposed building will not create any flooding issues. Upon inspection of Flood Maps NI, the site is not located within an area prone to surface, pluvial or coastal flooding. The proposal will be used for storage and will not produce any emissions or effluent.

It is considered that an adequate movement pattern is available through the site. The existing boundary treatments of the site and surrounding area will help provide adequate enclosure of the site and help with screening the development. As the proposed shed is located to the rear of the existing sheds on the site, it will be well hidden from public viewpoints. There is no landscaping proposed on site however, given the positioning of the proposed development I do not believe any additional screening would be required.

**Residential Amenity**

The closest residential properties are Nos. 31-33 Bartley's Wood which are located approximately 23m from the proposed shed. The proposed shed will be conditioned to be used for storage purposes only therefore there should not be any significant noise created by the use of the shed. The shed should not cause any issues in relation to overlooking given there are no windows proposed on the shed. There should be no significant overshadowing caused to the properties along Bartley Wood given the separation distance. The rear end of their gardens may be in partial shadow in the late afternoon/evening.

**Access and Roads Safety**

There are no proposed alterations to the existing access with the public road. The application form indicates there will be no increase in vehicles at the site. I am therefore content road safety will not be prejudiced as a result of this application. The agent has indicated on the proposed block plan where the proposed loading and unloading areas will be on site. Given the site already attracts a considerable amount of traffic and the proposal will use the existing access to the site with no additional parking proposed, it was considered not necessary to consult DFI Roads. The application will not involve the loss of any existing car parking spaces.

**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.

**5. Representations**

The proposal has been advertised in the local press and neighbours have been notified as per Section 8 of The Planning (General Development Procedure) Order (Northern Ireland) 2015. A total of 12 objection letters from six separate addresses have been received. It must be noted that 5 of these 12 objection letters were received after the proposal was amended.

Seven objections were received in relation to the original submission. I agreed with a number of concerns including dominance, over-shadowing and potential noise and odour disturbance. The original position of the shed was located directly to the rear of the properties in Bartley Wood which would have been dominant in scale and would have resulted in loss of light to these properties. Given these concerns, the agent amended the plans and re-located the shed in a different position on site. In addition, the agent confirmed and amended the proposal to state that the proposed unit was to be used for storage only. I am therefore satisfied that these issues have been dealt with accordingly.

I will summarise the objections below that were received after the plans were amended:

- **Existing Structures on Site:** In relation to the amended plans, the objectors and a Councillor stated that there were existing structures within the proposed location of the new unit. I have discussed this with the agent and he has indicated that the shavings store is one of these structures and will remain on site. This structure was accepted as permitted development and will sit directly behind the proposed shed. It is shown on drawing 03B in both 'side elevations'. The other structures are storage containers and can be moved easily. I advised both the objectors and the Councillor that any other unauthorised structures on site may need to be dealt with under an enforcement case. The storage containers have been reported to the enforcement section for investigation. The enforcement case is being dealt with under ref. LA06/2021/0125/CA.
- **Vehicle Access:** The objectors mentioned that the area of the site directly to the rear of their boundaries had been cleared of structures and material, and they were concerned that this will be used as a vehicle route around the site to the new unit. The objectors stated that if this were to be used as a vehicle route it would impact upon their amenity in regard to noise and loss of privacy. The agent has shown on the proposed block plan where the proposed loading and unloading areas will be on site. This correlates with the elevational drawings of the unit which show the roller shutters on the side elevation that faces away from the residential properties to the east of the site.
- **Biodiversity Impacts:** A few of the objectors stated that the proposed unit would impact upon local biodiversity, including red squirrels and bats. The Biodiversity Checklist was referred to and did not indicate any features present on the site which would require that the agent to submit any further ecological information. The site is not located within any designated sites and is not within close proximity to any watercourses. The proposed unit will be located on the existing builder's yard and will be used for storage purposes only. While there is a wooded area to the south of the site, there are no trees or vegetation of natural heritage value present on the site itself which could be impacted by the development.
- **Additional Workshop:** The objectors believed that due to the unit being changed from a workshop to a storage unit, the applicant may want another workshop on the site. Any additional units on site would have to be applied for under a new application, with environmental health being consulted upon in reference to any noise, odour or emission issues.
- **Residential Amenity:** Other concerns were in relation to dominance, privacy and loss of light. I have assessed these in my main assessment above under 'Residential Amenity'.
- **Noise, Vermin and Traffic:** A few general objections mentioned issues in relation to noise generated from the site, an increase in vermin in gardens due to construction works and additional traffic. These issues are not related to this application. The residents would need to contact the Environmental Health Department regarding these concerns.
- **Loss of Privacy:** A rotating camera has been installed which overlooks the resident's gardens in Bartley Wood. This will need to be referred to the enforcement department as the camera may require separate planning



permission if it does not fall under the parameters of permitted development. This has been referred to the enforcement section for investigation.

## 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. The shed hereby approved shall be used solely for Class B4 storage purposes in associated with the existing Builders Merchants business at 30 Greyabbey Road, Ballywalter.

Reason: To ensure the occupants of nearby residential premises are not adversely affected by noise

3. The shed hereby approved shall not remain open for business, including deliveries, outside the hours of 08:00hrs to 17:00hrs Monday to Friday.

Reason: To ensure the occupants of nearby residential premises are not adversely affected by noise.

4. No goods, merchandise or other materials shall be stored or displayed on the hardstanding surrounding the premises as shaded green on drawing no. 02B bearing the date stamp 8<sup>th</sup> June 2021.

Reason: To safeguard the visual appearance of the premises and area.

## Informative

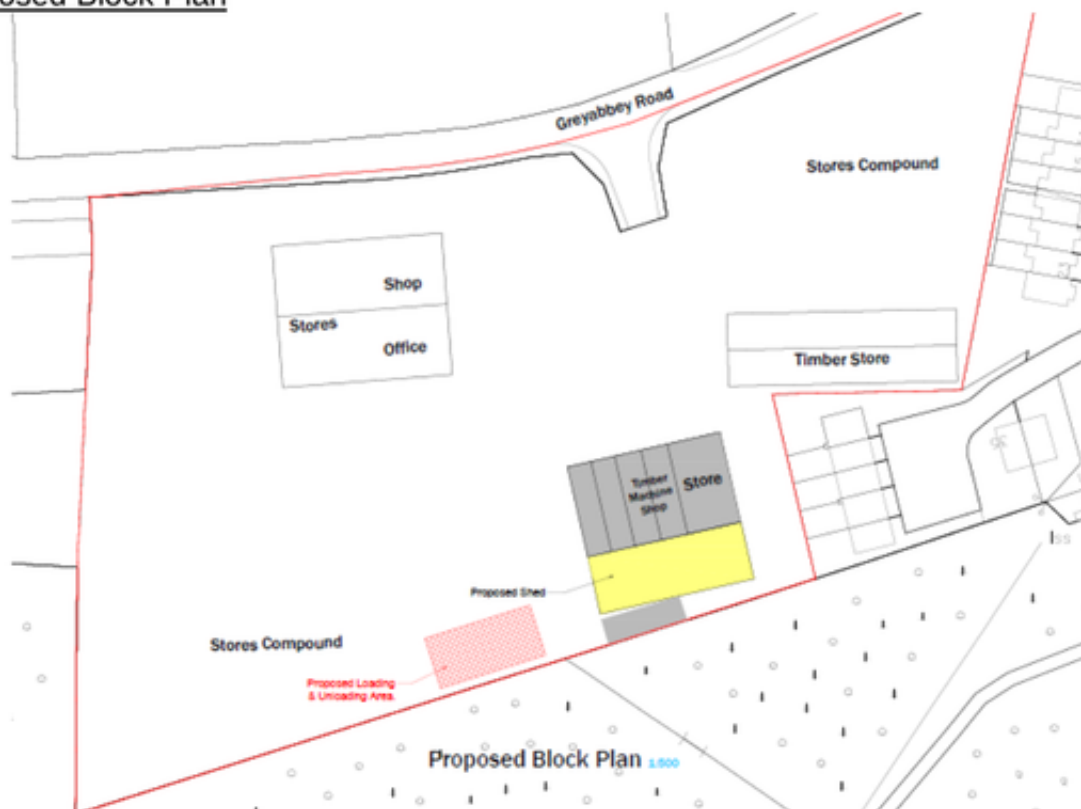
This Notice relates solely to a planning decision and does not purport to convey any other approval or consent which may be required under the Building Regulations or any other statutory purpose. Developers are advised to check all other informatives, advice or guidance provided by consultees, where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



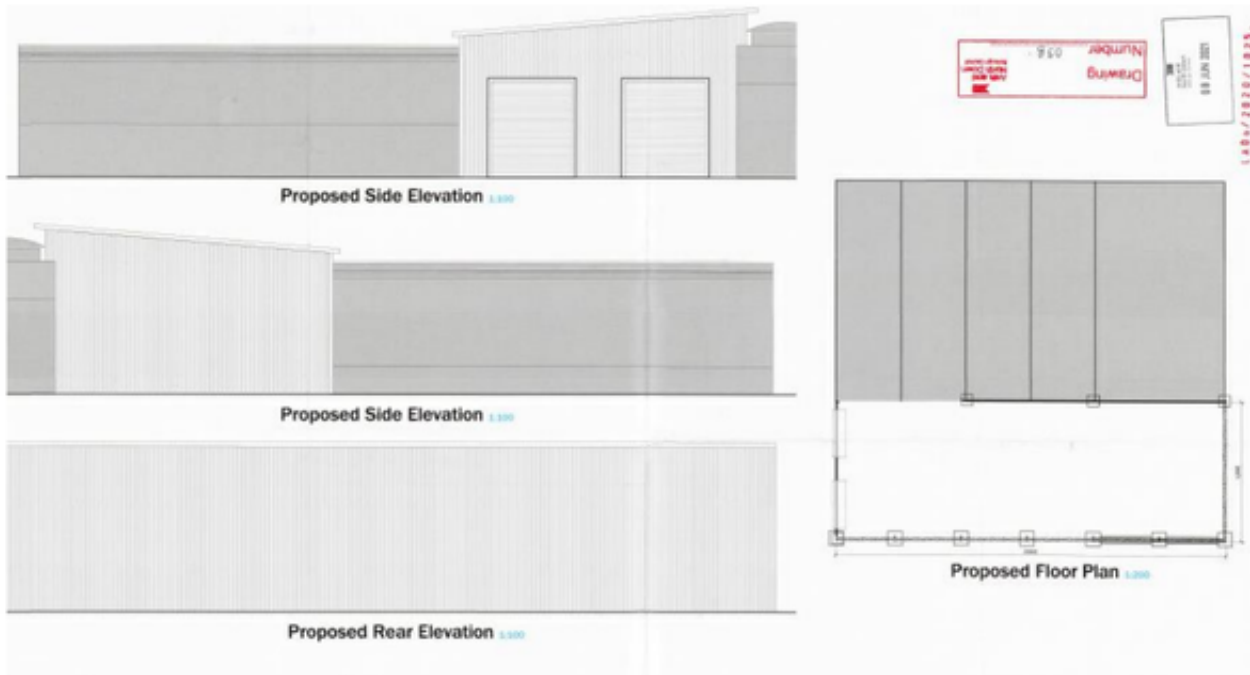
Site Location Plan



Proposed Block Plan



### Proposed Floor Plans and Elevations



Site Photos










## ITEM 4.3

## Ards and North Down Borough Council

Application Ref	LA06/2021/0794/F
Proposal	Public art installation
Location	66M West of 28 Church Street. The Ropewalk, Portaferry DEA: Ards Peninsula
Committee Interest	Application made by the Council
Validated	21/06/2021
Summary	<ul style="list-style-type: none"> <li>• Application site located within development limit and Conservation Area of Portaferry in close proximity to archaeological sites and monuments DOW032:003 (tower-house: Portaferry Castle), DOW032:031 (historic settlement: Portaferry), DOW032:004 (medieval and port-med Church and graveyard and enclosure, Templecraney)</li> <li>• Proposal takes inspiration from the SeaGen sea turbine</li> <li>• HED and Conservation Officer content with the proposal in respect of its location within Conservation Area</li> <li>• Two letters of support and one objection received - dealt with in Case Officer Report</li> </ul>
Recommendation	<b>Approval</b>
Attachment	Item 4.3a – Case Officer Report

<b>Development Management Case Officer Report</b>		 <b>Ards and North Down</b> Borough Council	
<b>Reference:</b>	LA06/2021/0794/F	<b>DEA:</b> Ards Peninsula	
<b>Proposal:</b>	Public art installation.		
<b>Location:</b>	66M West of 28 Church Street, The Ropewalk, Portaferry		
<b>Applicant:</b>	Ards & North Down Borough Council		
<b>Date valid:</b>	21/06/2021	<b>EIA Screening Required:</b>	No
<b>Date last advertised:</b>	08/07/2021	<b>Date last neighbour notified:</b>	31/08/2021
<b>Letters of Support : 2</b>		<b>Letters of Objection: 1</b>	
<b>Petitions: 0</b>			
<b>Consultations – synopsis of responses:</b>			
Historic Environment Division		No objection	
Conservation Officer		No objection	
DFI Roads		No objection	
<b>Summary of main issues considered:</b>			
<ul style="list-style-type: none"> <li>• Design of proposal;</li> <li>• Visual amenity;</li> <li>• Amenity;</li> <li>• Impact on Area of Outstanding Natural Beauty, archaeological sites and monuments, Area of Archaeological Potential, Conservation Area, Local Landscape Policy Area.</li> </ul>			
<b>Recommendation: Grant Planning Permission</b>			
<b>Report Agreed by Authorised Officer</b>			
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 <a href="https://epicpublic.planningni.gov.uk/publicaccess/">https://epicpublic.planningni.gov.uk/publicaccess/</a>			

## 1. Site and Surrounding Area

The application site consists of a triangular portion of public footpath towards the northern end of The Rope Walk. It is located immediately adjacent to the white rendered pavilion building, forming part of an overall recreational area that includes caravan pitches, a playground, park, bowling green and car park. There are car parking bays in front of the site and the other side of the Rope Walk consists of rear access, garden areas and outbuildings (and occasionally self-contained dwellings) belonging to properties in Church Street and The Square. Other surrounding uses in the immediate area include the Aquarium and a café on the corner with Castle Street. The rising lands of the Nugent Estate with associated stone wall, landscaped borders and (at a distance) the listed Portaferry House provide a backdrop to the site.

## 2. Site Location Plan



## 3. Relevant Planning History

The planning history of the application site and surrounding area reveals that it has an established principle of utilising the wider area to enhance the tourism potential of the area.

Planning Ref: X/1984/0782

Proposal: Visitor centre to include aquarium and exhibition area.

Address: Castle Park, Portaferry.

Decision: Permission Granted.

Planning Ref: X/1983/0251

Proposal: Redevelopment of existing open land to provide picnic areas, community facilities and touring caravan park.

Address: Castle Park and ancillary parkland, Portaferry.

Decision: Permission Granted.

Planning Ref: X/1983/0251

Proposal: Redevelopment of existing open land to provide picnic areas, community facilities and touring caravan park.

Address: Castle Park and ancillary parkland, Portaferry.

Decision: Permission Granted.

Planning Ref: X/1978/0710

Proposal: Provision of picnic areas and community facilities and public park.

Address: Castle Park, Portaferry.

Decision: Permission Granted.

Planning Ref: X/1978/0379

Proposal: Public recreation area.

Address: Portaferry House, Portaferry.

Decision: Permission Granted.

Planning Ref: X/1975/0691

Proposal: Change of use to public park.

Address: Church Street, Portaferry.

Decision: Permission Granted.

#### 4. Planning Assessment

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

- Ards and Down Area Plan (ADAP) 2015;
- Strategic Planning Policy Statement for Northern Ireland (SPPS);
- Planning Policy Statement (PPS) 2: Natural Heritage;
- PPS 6: Planning, Archaeology and the Built Heritage;

Planning Guidance:

There is no relevant supplementary planning guidance.

#### Principle of Development

ADAP currently acts as the Local Development Plan for this area and which sets out the designations, policies, proposals and zonings specific to Ards and the Down Area. The site is located within the Settlement Limit of Portaferry and is located within an Area of Outstanding Natural Beauty and a Conservation Area. The site is located within an Area of Archaeological Potential and is located within close proximity of archaeological sites and monuments DOW032:003 (tower-house: Portaferry Castle), DOW032:031 (historic settlement: Portaferry), DOW032:004 (medieval and port-med Church and graveyard and enclosure, Templecraney).

The SPPS sets out the guiding principle relating to development at paragraph 3.8. The principle states 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.

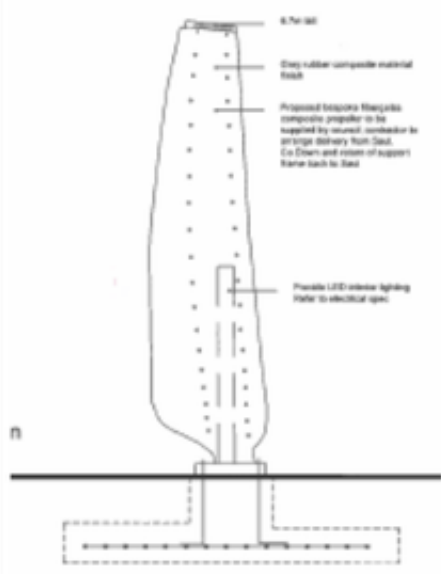


The SPPS states that archaeological and built heritage are important sources of information about our past and are often significant landmarks in the present townscape and countryside. It is acknowledged that the archaeological and built heritage constitutes an irreplaceable record which contributes to our understanding of both the present and the past, adds to the quality of our lives and promotes a sense of self.

Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. With regards to the SPPS I am satisfied that this proposal will not prejudice public safety and is respectful of the general characteristics of the area, nor will it detract from the quality and character of the locality.

**Visual Impact and impact on AONB and Conservation Area**

The proposal is for a new art installation to be erected on the triangular area of footpath adjacent to the Pavilion. The piece takes inspiration from the SeaGen sea turbine which was installed within the Lough just off the Portaferry shoreline from 2008 to its final decommissioning in July 2019. The project was significant in that it was the world's first commercial-scale tidal turbine. The installation has been designed to resemble one of the two underwater turbines that powered the SeaGen project. It is composed of composite plastic rubber, coloured grey with small holes to allow an internal LED light to shine through. The overall height is 6.7m.



Proposal



Conceptual image of proposal within the local context

The proposal is distinct in terms of its scale and design, with it inspired by the SeaGen sea turbine., and it is considered that the design and scale of the propeller respect the local history of the settlement of Portaferry.

The location of the proposal is considered acceptable. The limited public views of the proposal from beyond The Ropewalk area is deemed acceptable. The proposal is acknowledged as being sympathetically located so as not to dominate or have a detrimental impact upon the Victorian properties that characterise large parts of the

Conservation Area, nor shall it have a detrimental impact upon the designated coastline. Whilst the proposal is located within an Area of Outstanding Beauty, there are few long-range public views of the proposal from beyond The Ropewalk area.

Whilst it is acknowledged that art is subjective and part of its aim is to stimulate debate and provoke reaction, it is deemed that the unique design of the piece will contribute positively to the urban fabric of the village and further develop the sense of 'place' in the area.

Furthermore, the area is characterised by tourism uses such as Exploris Aquarium and the Hilltop Playpark. The propeller art piece takes inspiration from the SeaGen sea turbine and consequently, the artwork is grounded within the history of the settlement of Portaferry and is located in a site which is considered to inhibit the potential for the work to become an incongruous feature within the AONB.

The proposal is considered to respect the surrounding natural and man-made features to the character and appearance of the surrounding area. As per PPS 6, during the assessment of the application the Council's Conservation Officer was consulted on the application due to the location within Portaferry Conservation Area. The Conservation Officer stated no objections to the proposal with the height of the proposal having no adverse impact upon this part of the conservation area, nor the conservation area as a whole. The proposed lighting is subtle and should not be overbearing.

The proposal is deemed to be compliant with Policy BH 12: New Development in a Conservation Area.

#### **Impact on Built and Natural Heritage**

The application location is within close proximity of archaeological sites and monuments; HB24/01/025 Castle Restaurant, 1-3 Castle Street, Portaferry (Grade B1) and HB24/01/025 Former warehouse (now office), Castle Street, Portaferry (Grade B1) which are of special architectural or historic interest as set out in Section 80, of the Planning Act (NI) 2011.

HED provided a consultation response, provided under the policy requirements of the SPPS (NI) and Policy BH 11 (Development affecting the Setting of a Listed Building) of PPS 6: Planning, Archaeology and the Built Heritage, stating that the proposals are sufficiently removed in situation from the listed buildings, with the scale of development appropriate, so as to have no impact.

The application is deemed to respect and conserve features that contribute to the character, appearance or heritage of the landscape. Policy NH1 relates to European and Ramsar sites and states that planning permission will only be granted for a development proposal that, either individually, or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on those sites.

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.

Policy NH 2 of PPS 2 states that planning permission will only be granted for a development proposal that is not likely to harm a species protected by law. To this end, the NI Biodiversity Checklist has been used to identify whether the proposal is likely to adversely affect certain aspects of biodiversity including protected species. In this instance, given the scale and nature of the proposal, it has indicated that there is no reasonable likelihood of there being protected species present and therefore further investigation is not considered necessary.

The proposal is satisfactory to SPPS and PPS 2: Natural Heritage.

### **Impact on residential amenity**

The proposed public art installation of the propeller shall be located at The Ropewalk, which is acknowledged as being quite distinct from the other parts of the conservation area in terms of its character, with the area characterised by tourism such as Exploris, the caravan park, parking spaces and the park. Whilst the installation shall have a height of 6.7m it is deemed that the height of the public art shall not adversely impact upon the immediate area and environs. The artwork is intended to make a bold statement and the scale is an integral part of achieving this. The proposal will not result in the loss of residential amenity of surrounding residents due to separation distances, scale and design.

Given the appropriate scale of the proposal, its sympathetic location, the simple design and subtle LED lighting, I am of the professional planning judgement that the proposal will have no detrimental impact on levels of amenity.

### **5. Representations**

Two letters of support and one objection were received. The objection referred to the proposal being an *'unnecessary addition'* with the opinion that the proposal *'is not an art installation but a blade of a sea turbine that in no way benefitted residents'*. The letter also expressed queries regarding the budget for the proposal and that the proposal is owned by a Private Community group and should be paid for by them.

None of the concerns or queries expressed are matters that are within the remit of planning policy, with it acknowledged that art is subjective, and part of its aim is to stimulate debate and provoke reaction, with it noted that the unique design will contribute positively to the urban fabric of the village and the sense of 'place' in the area. The application is deemed as having no significant detrimental impact upon the surrounding area, a designated Conservation Area and an Area of Outstanding Natural Beauty with it acknowledged that the Council's Conservation Area officer and Historic Environment Division have no objections to the proposed development.

### **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 proposal including materials and finishes shall be as per planning Drawing No. 03 stamped received 09.06.2021.

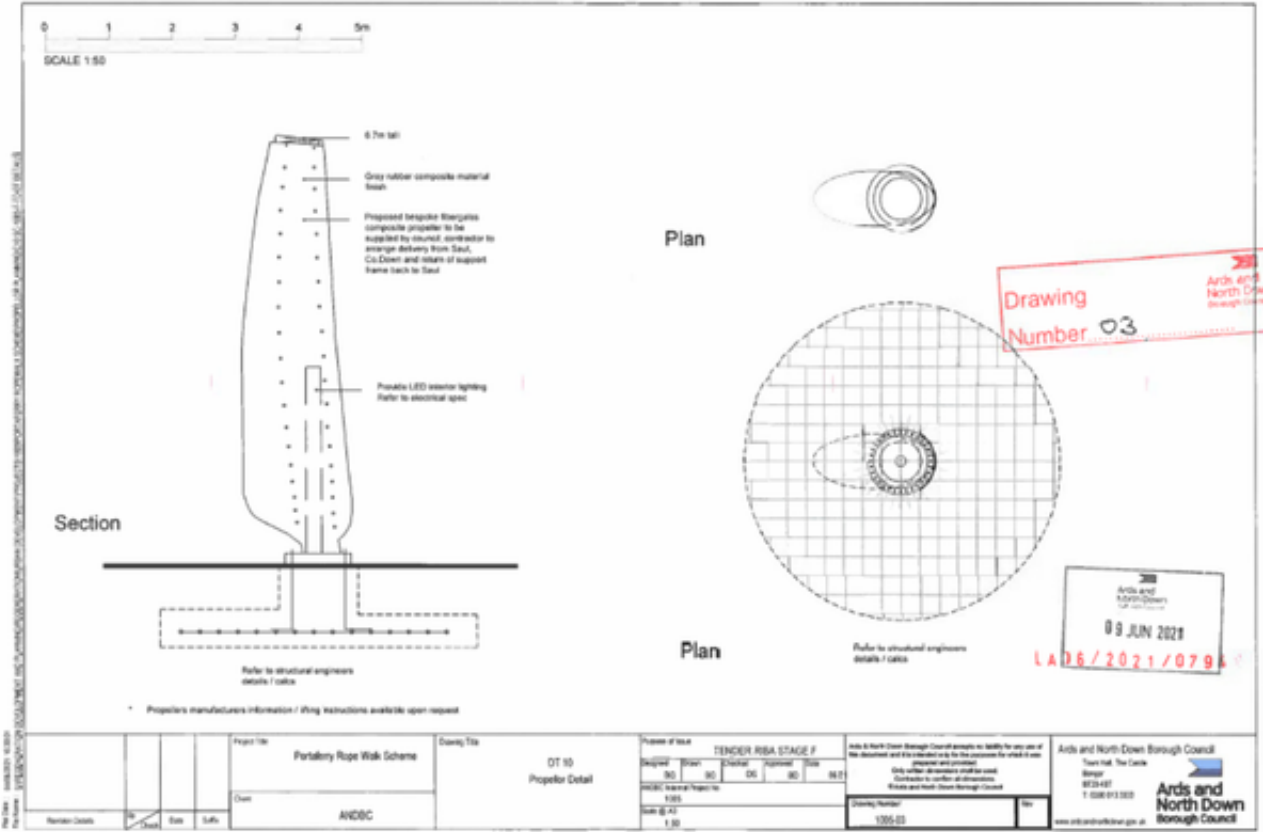
Reason: To ensure the detailed design respects the listed building in terms of scale, height, massing and alignment.

## Informative

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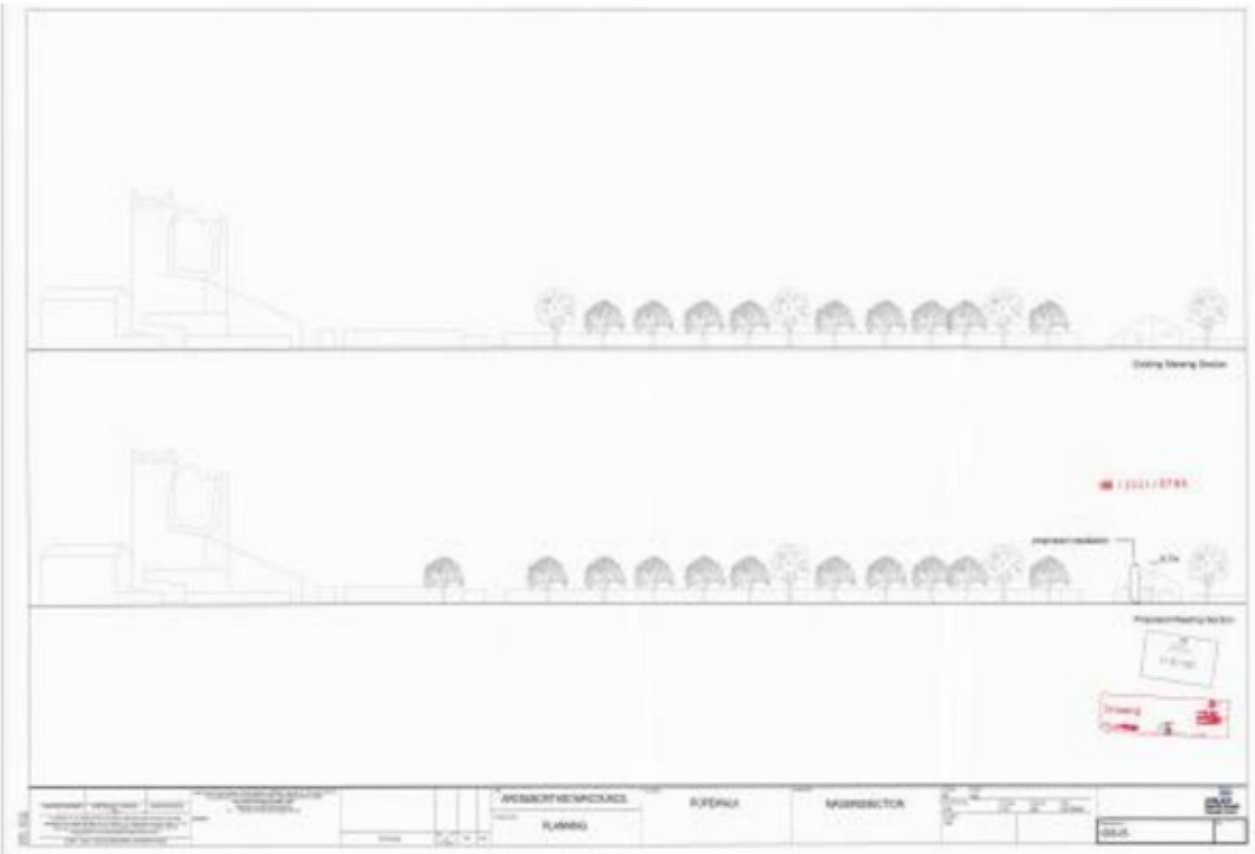




Drawing No. 03 - Propeller Details



Drawing No. 04 - Proposed 3D Visual (Existing and proposed site)



Drawing No. 05 - Existing and Proposed Massing Section