



November 29th, 2023

Chairman : Alderman M Gregg

Vice Chairman : Councillor U Mackin

Aldermen : O Gawith and J Tinsley

Councillors : D Bassett, S Burns, P Catney, D J Craig, A Martin, G Thompson and N Trimble

Notice of Meeting

A meeting of the Planning Committee will be held on **Monday, 4th December 2023 at 10:00 am**, in the **Council Chamber and Remote Locations** for the transaction of business on the undernoted Agenda.

David Burns
Chief Executive

Agenda

1.0 Apologies

2.0 Declaration of Interests

(i) Conflict of Interest on any matter before the meeting (Members to confirm the specific item)

(ii) Pecuniary and non-pecuniary interest (Member to complete the Disclosure of Interest form)

3.0 Minutes of the Planning Committee Meeting held on 6 November, 2023

📄 *PC 06.11.2023 - Draft Minutes for Adoption.pdf*

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4.0 Report from the Head of Planning and Capital Development

4.1 Schedule of Applications to be Determined:

📄 *Item 1 - Schedule of Applications - Final - Amended.pdf*

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- (i) **LA05/2021/0009/F - Proposed development of 36 dwellings with associated and ancillary site works on lands off Old Kilmore Road Moira. Located to the immediate west 1, to 19) of Danesfort and to the immediate north of Fitzwilliam House Moira**

📄 *Appendix 1.1 - DM Officer Report - Housing LA05.2021.0009.F Old Kilmore Rd - FINAL.pdf*

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- (ii) **LA05/2022/0018/F - Demolition of existing dwelling and construction of residential development comprising 19 dwellings (13 detached and 6 semi-detached), garages, parking, landscaping and associated works on Lands at 126 Hillsborough Road, Lisburn**

📄 *Appendix 1.2(a) - DM Officer Report LA0520220018F - Housing - Addendum - FINAL.pdf*

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📄 *Appendix 1.2(b) - DM Officer Report LA0520220018F - Housing - FINAL.pdf*

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- (iii) **LA05/2021/0321/F - Retention of outdoor activity area and all associated structures for the purpose of paintballing and change of use of agricultural building for reception, office and storage use associated with the paintballing activity (retrospective) at 112 Comber Road Hillsborough**

📄 *Appendix 1.3 - DM Officer Report - LA0520210321F - Paintball - FINAL.pdf*

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- (iv) **LA05/2022/0883/O - Proposed replacement dwelling at 49c Waterloo Road, Lisburn**

📄 *Appendix 1.4 - DM Officer Report - LAA0520220883O - 49c Waterloo Road -*

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- (v) **LA05/2023/0331/O - Proposed Infill Dwelling & Garage approximately 35m East of 9a Tullyrusk Road, Crumlin**
 □ *Appendix 1.5 - DM Officer Report - LA0520230331O - Tullyrusk Road - FINAL.pdf* Page 148
- (vi) **LA05/2023/0335/O - Proposed Infill Dwelling & Garage approximately 45m West of 9b Tullyrusk Road, Crumlin**
 □ *Appendix 1.6 - DM Officer Report - LA0520230335 - Tullyrusk Road - FINAL.pdf* Page 171
- (vii) **LA05/2021/0609/O – Two Dwellings and garages on land 30m North of 6 Cross Lane, Lisburn**
 □ *Appendix 1.7 - DM Officer Report - LA0520210609O - Cross Lane Infills - FINAL.pdf* Page 195
- (viii) **LA05/2021/1048/O - Site for a dwelling, garage and associated site works on lands 30m west of 7 Derriaghy Road, Lisburn**
 □ *Appendix 1.8 - DM Officer Report - LA0520211048O 30mWest7DerriaghyRoadInfillDwelling - FINAL.pdf* Page 218
- (ix) **LA05/2021/1049/O - Site for a dwelling, garage and associated site works on lands 30m east of 5 Derriaghy Road, Lisburn**
 □ *Appendix 1.9 - DM Officer Report - LA0520211049O lands30meast5DerriaghyRdInfill- FINAL.pdf* Page 244
- (x) **LA05/2020/0303/F - Demolition of existing dwelling and construction of a pair of semi-detached houses and 1 row of 4 terraced houses with associated site works and landscaping at 32 Lurgan Road, Moira and adjacent lands north west at Linen Fields, Lurgan Road, Moira**
 □ *Appendix 1.10 - DM Officer Report - LA0520200303F - Lurgan Road Moira - FINAL.pdf* Page 270
- (xi) **LA05/2022/1081/F – Infill dwelling and garage between 15 and 15a Crumlin Road Upper Ballinderry Lisburn**
 □ *Appendix 1.11 - DM Officer Report - LA0520221081O - Crumlin Road - FINAL.pdf* Page 297
- (xii) **LA05/2022/0106/O - Demolition of all structures on site and erection of 10nr detached dwellings and associated site works (additional info) Lands at 17 Glebe Manor Annahilt**
 □ *Appendix 1.12 - LA0520220106O - Glebe Annahilt - FINAL.pdf* Page 320

4.2 Pre-Application Notice: Proposed erection of industrial unit with ancillary office, car parking, landscaping and associated site and access works and solar array on lands located to the east of Lissue Road, south of Ballinderry

Road and west of Ferguson Drive, Lisburn	
📄 <i>Item 2 - LA0520230767PAN - Amended.pdf</i>	<i>Page 341</i>
📄 <i>Appendix 2(a) - Report in relation to LA0520230767PAN - Amended.pdf</i>	<i>Page 343</i>
📄 <i>Appendix 2(b) - LA05 2023 0767PAN - Application form.pdf</i>	<i>Page 346</i>
📄 <i>Appendix 2(c) - LA05 2023 0767PAN - Site Location Plan.pdf</i>	<i>Page 352</i>
4.3 Appeal Decision – LA05/2020/0614/O	
📄 <i>Item 3 - Appeal Decision - LA0520200614O - Amended.pdf</i>	<i>Page 353</i>
📄 <i>Appendix 3 - Appeal decision LA05 2020 0614 O.pdf</i>	<i>Page 355</i>
4.4 Notification by telecommunication operator(s) of intention to utilise permitted development rights	
📄 <i>Item 4 - Notifications from an Operator in respect of intention - Amended.pdf</i>	<i>Page 360</i>
📄 <i>Appendix 4 - List of Notifications from Telecommunication Operators in relation to intentions to utilise Permitted Development Rights - November 2023.pdf</i>	<i>Page 362</i>
4.5 LDP Quarterly Update	
📄 <i>Item 5 - Planning Committee LDP Quarterly Update Nov 2023 - Amended.pdf</i>	<i>Page 364</i>
4.6 Enforcement Quarterly Update	
📄 <i>Item 6 - Planning Committee Enforcement Quarterly Update Nov 2023 - Amended.pdf</i>	<i>Page 366</i>
📄 <i>Appendix 6 Enforcement Report to Comm Nov 2023 (002).pdf</i>	<i>Page 368</i>
4.7 Northern Ireland Public Services Ombudsman (NIPSO) – Tree Protection: Strengthening Our Roots	
📄 <i>Item 7 - Planning Committee NIPSO Report Trees - Amended.pdf</i>	<i>Page 369</i>
📄 <i>Appendix 7a NIPSO Letter to Lisburn & Castlereagh Council 29.09.23 - Tree Protection Overview Report.pdf</i>	<i>Page 371</i>
📄 <i>Appendix 7b NIPSO Overview Report - Tree Protection.pdf</i>	<i>Page 373</i>
📄 <i>Appendix 7c Response NIPSO re Tree Protection.pdf</i>	<i>Page 421</i>

4.8 Statutory Performance Indicators – October 2023

📄 *Item 8 - Statutory Performance Indicators - October 2023 - drafted (002).pdf*

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📄 *Appendix 8 - Lisburn_Castlereagh_October_Monthly_MI.pdf*

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5.0 Any Other Business

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LISBURN & CASTLEREAGH CITY COUNCIL

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Minutes of Planning Committee Meeting held in the Council Chamber and in Remote Locations on Monday, 6 November, 2023 at 10.04 am**PRESENT IN CHAMBER:**

Alderman M Gregg (Chairman)

Councillor U Mackin (Vice-Chairman)

Aldermen O Gawith and J Tinsley

Councillors S Burns, P Catney, D J Craig,
A Martin, G Thompson and N Trimble**IN ATTENDANCE:**Director of Regeneration and Growth
Head of Planning & Capital Development
Principal Planning Officer (RH)
Senior Planning Officers (MCO'N, MB and PMcF)
Member Services Officers

Mr B Martyn (Cleaver Fulton Rankin) – Legal Advisor

Commencement of Meeting

At the commencement of the meeting, the Chairman, Alderman M Gregg, welcomed those present to the Planning Committee. He pointed out that, unless the item on the agenda was considered under confidential business, this meeting would be audio recorded. He went on to outline the evacuation procedures in the case of an emergency.

1. **Apologies** (00:02:14)

It was agreed to accept an apology for non-attendance at the meeting on behalf of Councillor D Bassett.

At this point, the Member Services Officer read out the names of the Elected Members and Officers in attendance at the meeting.

2. **Declarations of Interest** (00:03:24)

The following declarations of interest were made:

- in respect of planning application LA05/2022/0018/F, Councillor U Mackin stated that he was a member of the Board of Lagan Valley Regional Park, which was mentioned in the Planning Officer's report, but confirmed that this matter had not been discussed in his presence;
- in respect of planning application LA05/2022/0922/F, Councillor A Martin stated that he was Chaplain at Lisburn Rangers Football Club and that he would step out when this item was being presented;

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2. Declarations of Interest (Contd)

- in respect of planning application LA05/2022/0018/F, Councillor A Martin stated that he was a member of the Board of Lagan Valley Regional Park, which was mentioned in the Planning Officer's report, but confirmed that he had not discussed the application with anyone.

3. Minutes of Meetings of Planning Committee held on 2 and 9 October, 2023 (00:06:08)

It proposed by Councillor U Mackin, seconded by Councillor G Thompson and agreed that the minutes of the meetings of Committee held on 2 and 9 October, 2023 be confirmed and signed.

4. Report from the Head of Planning & Capital Development (00:06:36)4.1 Schedule of Applications (00:06:43)

The Chairman, Alderman M Gregg, advised that there were one major application and eight local applications on the schedule for consideration at the meeting.

4.1.1 Applications to be Determined (00:06:57)

Councillor G Thompson sought an update on the decision taken at the last Planning Committee meeting that the Corporate Services Committee be requested to consider an amendment to Standing Orders that, in the interest of openness and transparency, all votes at Planning Committee meetings be 'recorded'. The Director of Regeneration and Growth confirmed that this matter had been discussed with the Director of Finance and Corporate Services, as well as the Chairman of the Corporate Services Committee; however, a report had not yet been presented to that Committee. It was agreed, at the request of Councillor G Thompson, that, until this matter was considered by the Corporate Services Committee, votes on all applications would be recorded.

The Legal Advisor, Mr B Martyn, highlighted paragraphs 43-46 of the Protocol for the Operation of the Lisburn & Castlereagh City Council Planning Committee which, he advised, needed to be borne in mind when determinations were being made.

- (i) LA05/2022/0922/F – Existing football pitch and sectional buildings/ Clubhouse of Stanley Park to be redeveloped to provide a facility with a new Community Hub building, associated parking and an improved playing surface that complies with Irish Football Association (IFA) standards. Development will also include floodlighting to playing surface. In addition, small caged training area/play area to be created to west boundary of site at Stanley Park, Lisburn Leisure Park, Lisburn (00:09:42)

Having declared an interest in this item of business, Councillor A Martin left the meeting (10.14 am).

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- (i) LA05/2022/0922/F – Existing football pitch and sectional buildings/ Clubhouse of Stanley Park to be redeveloped to provide a facility with a new Community Hub building, associated parking and an improved playing surface that complies with Irish Football Association (IFA) standards. Development will also include floodlighting to playing surface. In addition, small caged training area/play area to be created to west boundary of site at Stanley Park, Lisburn Leisure Park, Lisburn (Contd)

The Senior Planning Officer (MCO'N) presented the above application as outlined within the circulated report.

The Committee received Mr B Crawford in order to speak in support of the application. A number of Members' queries were responded to by Mr Crawford.

A number of Members' queries were responded to by Planning Officers.

Debate

During debate, Alderman O Gawith, Alderman J Tinsley, Councillor N Trimble, Councillor D J Craig, Councillor P Catney, Councillor G Thompson and the Chairman, Alderman M Gregg, all welcomed this application and stated that they were in support of the recommendation to approve. The football club was commended for its work in relation to the application and for investing in the local community.

Vote

Having considered the information provided within the report of the Planning Officer, the Committee agreed unanimously to adopt the recommendation to approve the application.

Councillor A Martin returned to the meeting (10.46 am).

Adjournment of Meeting

The Chairman, Alderman M Gregg, declared the meeting adjourned for a comfort break at this point (10.46 am).

Resumption of Meeting

The meeting was resumed at 10.54 am.

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- (ii) LA05/2021/0420/O – Site for a dwelling, garage and associated site works 35m due north of 68 Gregorlough Road, Dromore

and

- (iii) LA05/2021/0421/O – Site for a dwelling, garage and associated site works 65m due north of 68 Gregorlough Road, Dromore (00:43:54)

The Principal Planning Officer (RH) presented the above applications as outlined within the circulated report.

The Committee received:

- Mr G Duff and Ms M Wright to speak in opposition to the applications; and
- Mr N Coffey to speak in support of the applications.

A number of Members' queries were responded to by the speakers.

A number Members' queries were responded to by Planning Officers.

Debate

During debate:

- Councillor U Mackin referred to the recently adopted Local Development Plan and stressed that the new policies must be adhered to, rather than straying back into old policies and old court judgements. He considered the shed at 68 Gregorlough Road to be an agricultural building which did have a frontage to the road. Councillor Mackin was in support of the recommendation of the Planning Officer to approve this application;
- Alderman O Gawith stated that, having attended the site visit at this location and taking into account the professional advice of the Planning Officers, he was in support of the recommendation to approve this application; and
- Councillor N Trimble stated that he was of the opinion that the gap did represent a significant visual break and did not constitute a ribbon of continuous built-up frontage, although he believed the site was not most conducive to development given the layout of the road. Councillor Trimble did not consider this application to be a clear-cut approval under COU8 and was not in support of the recommendation of the Planning Officer to approve.

Vote

LA05/2021/0420/O – Site for a dwelling, garage and associated site works 35m due north of 68 Gregorlough Road, Dromore

In favour: Councillor S Burns, Councillor P Catney, Councillor D J Craig, Alderman O Gawith, Councillor U Mackin, Councillor A Martin, Alderman J Tinsley, Councillor G Thompson and the Chairman, Alderman M Gregg **(9)**

Against: Councillor N Trimble **(1)**

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The Chairman, Alderman M Gregg, declared that the Planning Officer's recommendation to approve the application was 'carried'.

LA05/2021/0421/O – Site for a dwelling, garage and associated site works 65m due north of 68 Gregorlough Road, Dromore

In favour: Councillor S Burns, Councillor P Catney, Councillor D J Craig, Alderman O Gawith, Councillor U Mackin, Councillor A Martin, Alderman J Tinsley, Councillor G Thompson and the Chairman, Alderman M Gregg **(9)**

Against: Councillor N Trimble **(1)**

The Chairman, Alderman M Gregg, declared that the Planning Officer's recommendation to approve the application was 'carried'.

Adjournment of Meeting

The Chairman, Alderman M Gregg, declared the meeting adjourned for a comfort break at this point (11.55 am).

Resumption of Meeting

The meeting was resumed at 12.05 pm.

(iv) LA05/2022/0247/F – Reconfiguration of public open space on Baronsgrange Park and erection of 9 additional dwellings (6 semi-detached and 3 detached dwellings) to enable connection to Carryduff Park to Baronsgrange development (under construction – planning Permission reference Y/2009/0160/F), Comber Road, Carryduff

and

(v) LA05/2022/0249/F – Construction of foot-bridge across the Carryduff River between Baronsgrange Park and Carryduff Park and erection of one dwelling at Baronsgrange development (under construction – planning permission reference Y/2009/0160/F), Comber Road, Carryduff (01:42:30)

The Senior Planning Officer (MB) presented the above applications as outlined within the circulated report.

The Committee received:

- Mr D Worthington to speak in support of the applications; and
- Alderman M Guy to speak in support of the applications. The Alderman did however refer to a number of concerns local residents had drawn to her attention.

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- (iv) LA05/2022/0247/F – Reconfiguration of public open space on Baronsgrange Park and erection of 9 additional dwellings (6 semi-detached and 3 detached dwellings) to enable connection to Carryduff Park to Baronsgrange development (under construction – planning Permission reference Y/2009/0160/F), Comber Road, Carryduff

and

- (v) LA05/2022/0249/F – Construction of foot-bridge across the Carryduff River between Baronsgrange Park and Carryduff Park and erection of one dwelling at Baronsgrange development (under construction – planning permission reference Y/2009/0160/F), Comber Road, Carryduff (Contd)

A number of Members' queries were responded to by the speakers.

A number of Members' queries were responded to by Planning Officers.

During the question and answer session, Members welcomed confirmation from Mr Worthington that:

- (a) the bridge would be constructed prior to any housing;
- (b) the social housing element of this application was in addition to the 15 units approved in the original application; and
- (c) no more than 7 dwellings would be constructed prior to the confirmation that planning permission was secure for the development at the alternative location and development was commenced on the site.

Debate

During debate:

- Alderman O Gawith stated that any concerns he had had been allayed and he was in support of the recommendation of the Planning Officer to approve these applications;
- Councillor U Mackin stated that, given what he had been told about how potential flooding could be alleviated into the underground system separately from the sewerage system and storm drains, he was prepared to accept that. Whilst having reservations, these were not enough to disagree with the entire development; and
- the Chairman, Alderman M Gregg, stated that there were a lot of good elements in the applications, in particular the commitment to provide affordable housing, and the bridge would be of significant benefit. He shared the concerns of Councillor Mackin around waste water but, as long as the negative condition was included, as indicated in the Officer's report, and also given the commitment by the agent (outlined at (c) above), he was content to support the recommendation of the Planning Officer to approve the applications.

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Vote

LA05/2022/0247/F – Reconfiguration of public open space on Baronsgrange Park and erection of 9 additional dwellings (6 semi-detached and 3 detached dwellings) to enable connection to Carryduff Park to Baronsgrange development (under construction – planning Permission reference Y/2009/0160/F), Comber Road, Carryduff

Having considered the information provided within the report of the Planning Officer, the Committee agreed unanimously to adopt the recommendation to approve this application.

LA05/2022/0249/F – Construction of foot-bridge across the Carryduff River between Baronsgrange Park and Carryduff Park and erection of one dwelling at Baronsgrange development (under construction – planning permission reference Y/2009/0160/F), Comber Road, Carryduff

Having considered the information provided within the report of the Planning Officer, the Committee agreed unanimously to adopt the recommendation to approve this application.

The Chairman, Alderman M Gregg, referred to construction having surpassed the 100th dwelling and asked if some urgency could be applied to the Section 76 Agreement to provide access to the play park. In response, the Head of Planning & Capital Development advised he would seek to expedite the Section 76 Agreement as soon as possible. However, he pointed out that were a number of issues to be resolved through the Council's normal governance procedure before this could happen.

Adjournment of Meeting

The Chairman, Alderman M Gregg, declared the meeting adjourned for lunch (1.08 pm).

Resumption of Meeting

The Chairman, Alderman M Gregg, declared the meeting resumed (1.45 pm).

- (vi) LA05/2021/0738/O – Replacement dwelling on land opposite and 80 metres south west of 149 Hillsborough Road, Dromara (02:39:13)

The Principal Planning Officer (RH) presented the above application as outlined within the circulated report.

The Committee received Mr A McCreedy to speak in support of the application. There were no Members' questions.

A number of Members' queries were responded to by Planning Officers.

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- (vi) LA05/2021/0738/O – Replacement dwelling on land opposite and 80 metres south west of 149 Hillsborough Road, Dromara (Contd)

Debate

During debate:

- Councillor N Trimble stated that he was not in support of the recommendation of the Planning Officer to refuse this application. He was of the opinion that the application was compliant with COU3. Additional information from Stafford Construction that had been submitted by Mr McCready was very useful. Councillor Trimble considered the majority of the building to have been intact and he was content that works carried out were of a repair nature and not a rebuilding of structure;
- Councillor U Mackin stated that the site visit had been very useful. The application was being recommended for refusal due to being contrary to COU3 in that the building identified to be replaced was not an original structure, nor did it exhibit the essential characteristics of a dwelling. Councillor Mackin stated that the definition of essential characteristics included original features such as door and window openings of a domestic scale, chimneys or fireplaces, internal walls defining separate rooms. At the site visit, Councillor Mackin had observed all of that. Of the 4 walls of the building that he observed, he estimated that more than 60-70% was original stone, without any work having been done. In light of this, Councillor Mackin was not in support of the recommendation of the Planning Officer to refuse this application;
- Alderman O Gawith stated that, at the site visit, he too had observed a substantially intact building. He did note that there had been repair and restoration carried out, some recently and some longer ago. He was not in support of the recommendation of the Planning Officer to refuse this application;
- Councillor P Catney stated that, having visited the site, there was no doubt that substantial repairs had carried out to the walls, but there was no doubt this had been a residence. He was not in support of the recommendation of the Planning Officer to refuse the application;
- Councillor G Thompson echoed previous comments. She had observed a building that had had some work done, but in terms of COU3 there were definitely 4 walls and the building was definitely a dwelling. Councillor Thompson was not in support of the recommendation of the Planning Officer to refuse this application;
- Alderman J Tinsley stated that this case was finely balanced. There was no doubt that the building had been a dwelling but there had been substantial work carried out. If this was to be approved, it could create a very dangerous precedent. Alderman Tinsley was in support of the Planning Officer's recommendation to refuse the application;
- Councillor A Martin concurred with the comments of Alderman Tinsley and, given the precedent that could be set, he was in support of the recommendation of the Planning Officer to refuse this application;

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(vi) LA05/2021/0738/O – Replacement dwelling on land opposite and 80 metres south west of 149 Hillsborough Road, Dromara (Contd)

- Alderman O Gawith stated that, whilst Alderman Tinsley and Councillor Martin made a valid point, the Committee was required to consider each application on its own merits. There was a policy failure in that COU3 allowed this situation to arise. Councillors Trimble and Martin agreed that there was a weakness in COU3 in that it provided no guidance on the level of repairs or rebuilding that was acceptable and this was something that should be looked at going forward;
- Councillor D J Craig stated that this building had definitely been a dwelling house. There was a problem in that policy COU3 was ill-defined by not dictating how much of the original building was required to be retained. Given that, at the site visit, Councillor Craig had observed 4 substantial external walls, as well as evidence of internal walls and a fireplace, he was not in support of the recommendation of the Planning Officer to refuse this application;
- the Chairman, Alderman M Gregg, stated that there was no doubt this building had been a dwelling; however it had fallen into such state of disrepair and abandonment that it could no longer be considered that all walls were substantially intact, hence why considerable repairs had been carried out, with one wall in particular having been rebuilt. In concurring with previous comments regarding the setting of precedent, Alderman Gregg was in support of the recommendation of the Planning Officer to refuse the application.

Vote

In favour: Councillor S Burns, Councillor A Martin, Alderman J Tinsley, Chairman, Alderman M Gregg **(4)**

Against: Councillor P Catney, Councillor D J Craig, Alderman O Gawith, Councillor U Mackin, Councillor G Thompson and Councillor N Trimble **(6)**

The Chairman, Alderman M Gregg, declared that the recommendation of the Planning Officer to refuse planning permission was 'lost'.

Given that the Officer recommendation to refuse planning permission had fallen, it was proposed by Councillor P Catney and seconded by Councillor N Trimble that the application be approved with the following reasons being offered:

- the application was compliant with COU3 which required the building to exhibit the essential characteristics of a dwelling, as evidenced by windows and doors of a domestic scale, internal walls, a fireplace and chimney. All 4 external walls were considered to be substantially intact and it appeared that the majority of the structure was the original building. It was apparent there had been repair work – approximately 50% on one gable wall and a similar section of the adjacent gable wall had been repaired. The repair work had been conducted using original materials from the original building. Works carried out had been of a repair nature rather than a rebuild;

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(vi) LA05/2021/0738/O – Replacement dwelling on land opposite and 80 metres south west of 149 Hillsborough Road, Dromara (Contd)

- if the requirements of COU3 were met, then COU1 was met by default; and
- the application met with COU15 and COU16 in that it would not be a prominent feature on the landscape and was a replacement rather than new dwelling;

On a recorded vote being taken, it was agreed to approve the granting of planning permission to this application, the voting being as follows:

In favour: Councillor P Catney, Councillor D J Craig, Alderman O Gawith, Councillor U Mackin, Councillor G Thompson and Councillor N Trimble **(6)**

Against: Councillor S Burns, Councillor A Martin, Alderman J Tinsley, Chairman, Alderman M Gregg **(4)**

It was proposed by Councillor U Mackin, seconded by Councillor P Catney and agreed that the precise wording of conditions to be applied to the application be delegated to the Head of Planning & Capital Development.

(vii) LA05/2022/0018/F – Demolition of existing dwelling and construction of residential development comprising 19 detached dwellings (13 detached and 6 semi-detached), garages, associated access with right hand turning lane, internal road, parking, landscaping and associated works on lands at 126 Hillsborough Road, Lisburn (03:48:00)

The Senior Planning Officer (MCO'N) presented the above application as outlined within the circulated report. It was pointed out that notification had been received earlier this morning from DfI Roads that whilst it was content with the proposal in principal, its Traffic Management Section did not consider that the right hand turning pocket was necessary as it was normally for schemes containing 50 or more houses and this proposal was for 19 houses. The agent had been made aware of this and it had no impact on access or car parking on site.

The Committee received Mr A Larkin, accompanied by Mr P Clelland and Mr D Diamond, in order to speak in support of the application. A number of Members' queries were addressed.

A number of Members' queries were responded to by Planning Officers. Following discussion, it was proposed by Alderman O Gawith and seconded by Councillor N Trimble that this application be deferred to allow for further clarification to be sought from DfI Roads in relation to the right hand turning pocket, the voting being 7 in favour and 3 against. Councillor N Trimble also encouraged that a conversation take place with the agent regarding a potential redesign to make the proposed location compliant with HOU10 in terms of the provision of affordable housing.

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Adjournment of Meeting

The Chairman, Alderman M Gregg, declared the meeting adjourned for a comfort break at this point (4.08 pm).

Resumption of Meeting

The meeting was resumed at 4.17 pm.

- (viii) LA05/2020/0106/O – Proposed dwelling and demolition of existing shed required to provide access to the site on land to the rear of 54 Crumlin Road, Upper Ballinderry (05:00:56)

The Senior Planning Officer (MB) presented the above application as outlined within the circulated report.

The Committee received Mr P McAreavey, accompanied by Ms L Johnston, in order to speak in support of the application. A number of Members' queries were addressed.

A number of Members' queries were responded to by Planning Officers.

Debate

During debate:

- Alderman O Gawith sympathised with the applicant; however, considering that the application required to adhere with policy, he was in support of the recommendation of the Planning Officer to refuse this application;
- Councillor N Trimble stated that this location was more a ribbon of development than a cluster and he was in support of the recommendation of the Planning Officer to refuse this application;
- the Chairman, Alderman M Gregg, stated that there was very clear evidence of a cluster around the crossroads and extending down the Crumlin Road. He considered the application complied with COU15 and with Building on Tradition and he was not in support of the recommendation of the Planning Officer to refuse the application

Vote

In favour: Councillor S Burns, Councillor D J Craig, Alderman O Gawith, Councillor U Mackin, Councillor A Martin, Alderman J Tinsley, Councillor G Thompson and Councillor Trimble **(8)**

Against: Councillor P Catney and the Chairman, Alderman M Gregg **(2)**

The Chairman, Alderman M Gregg, declared that the Planning Officer's recommendation to refuse the application was 'carried'.

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- (ix) LA05/2021/0946/O – Site for a dwelling, garage and ancillary site works to replace existing commercial buildings, yard and previously/last use as a Horticultural Nursery/Garden Centre at 40 metres east of 20 Mullaghcarron Road, Ballinderry Upper, Lisburn (05:24:07)

The Principal Planning Officer (RH) presented the above application as outlined within the circulated report.

The Committee received Mr N Coffey to speak in support of the application. There were no Members' questions.

A number Members' queries were responded to by Planning Officers. During discussion, it was pointed out by the Head of Planning & Capital Development that the last sentence of paragraph 94 of the Officers' report should read "Criteria (f) is not capable of being met".

Debate

There was no debate.

Vote

In favour: Councillor S Burns, Councillor P Catney, Councillor D J Craig, Councillor U Mackin, Councillor A Martin, Alderman J Tinsley, Councillor G Thompson, Councillor N Trimble and the Chairman, Alderman M Gregg **(9)**

Against: Alderman O Gawith **(1)**

The Chairman, Alderman M Gregg, declared that the Planning Officer's recommendation to refuse the application was 'carried'.

At this point, the Chairman, Alderman M Gregg, advised that agenda items 4.2 to 4.7 would be deferred for consideration at the next meeting of the Committee, due to be held on Monday, 4 December, 2023. (05:44:34)

5. Any Other Business (05:44:59)

There was no other business.

Conclusion of the Meeting

At the conclusion of the meeting, the Chairman, Alderman M Gregg, thanked those present for their attendance.

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There being no further business, the meeting was terminated at 5.01 pm.

Chairman/Mayor

Committee:	Planning Committee
Date:	04 December 2023
Report from:	Head of Planning and Capital Development

Item for:	Decision
Subject:	Schedule of Planning Applications to be Determined

1.0 **Background**

1. The following applications have been made to the Council as the Local Planning Authority for determination.
2. In arriving at a decision (for each application) the Committee should have regard to the guiding principle in the SPPS (paragraph 3.8) 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.
3. Members are also reminded about Part 9 of the Northern Ireland Local Government Code of Conduct and the advice contained therein in respect of the development management process with particular reference to conflicts of interest, lobbying and expressing views for or against proposals in advance of the meeting.

Key Issues

1. The applications are presented in accordance with the current scheme of delegation. There are twelve local applications. One of which was previously deferred to allow for further clarification to be provided in relation to the provision of a right-hand turning pocket. Two of which are presented by way of exception, one is mandatory and the balance have been Called In.
 - (a) LA05/2021/0009/F - Proposed development of 36 dwellings with associated and ancillary site works on lands off Old Kilmore Road Moira. Located to the immediate west 1, to 19) of Danesfort and to the immediate north of Fitzwilliam House Moira.
Recommendation – Approval
 - (b) LA05/2022/0018/F - Demolition of existing dwelling and construction of residential development comprising 19 dwellings (13 detached and 6 semi-detached), garages, parking, landscaping and associated works on Lands at 126 Hillsborough Road, Lisburn
Recommendation – Approval
 - (c) LA05/2021/0321/F - Retention of outdoor activity area and all associated structures for the purpose of paintballing and change of use of agricultural building for reception, office and storage use associated with the paintballing activity (retrospective) at 112 Comber Road Hillsborough.
Recommendation – Approval

- (d) LA05/2022/0883/O - Proposed replacement dwelling at 49c Waterloo Road, Lisburn.
Recommendation – Refusal
- (e) LA05/2023/0331/O - Proposed Infill Dwelling & Garage approximately 35m East of 9a Tullyrusk Road, Crumlin
Recommendation – Refusal
- (f) LA05/2023/0335/O - Proposed Infill Dwelling & Garage approximately 45m West of 9b Tullyrusk Road, Crumlin
Recommendation – Refusal
- (g) LA05/2021/0609/O – Two Dwellings and garages on land 30m North of 6 Cross Lane, Lisburn
Recommendation – Refusal
- (h) LA05/2021/1048/O - Site for a dwelling, garage and associated site works on lands 30m west of 7 Derriaghy Road, Lisburn.
Recommendation – Refusal
- (i) LA05/2021/1049/O - Site for a dwelling, garage and associated site works on lands 30m east of 5 Derriaghy Road, Lisburn.
Recommendation – Refusal
- (j) LA05/2020/0303/F - Demolition of existing dwelling and construction of a pair of semi-detached houses and 1 row of 4 terraced houses with associated site works and landscaping at 32 Lurgan Road, Moira and adjacent lands north west at Linen Fields, Lurgan Road, Moira
Recommendation – Approval
- (k) LA05/2022/1081/F – Infill dwelling and garage between 15 and 15a Crumlin Road Upper Ballinderry Lisburn.
Recommendation – Refusal
- (l) LA05/2022/0106/O - Demolition of all structures on site and erection of 10nr detached dwellings and associated site works (additional info) Lands at 17 Glebe Manor Annahilt
Recommendation – Refusal

2. The following applications will be decided having regard to paragraphs 42 to 53 of the Protocol of the Operation of the Planning Committee.

2.0

Recommendation

For each application the Members are asked to make a decision having considered the detail of the Planning Officer's report, listen to any third party representations, ask questions of the officers, take legal advice (if required) and engage in a debate of the issues.

3.0

Finance and Resource Implications

Decisions may be subject to:

- (a) Planning Appeal (where the recommendation is to refuse)
 (b) Judicial Review

Applicants have the right to appeal against a decision to refuse planning permission. Where the Council has been deemed to have acted unreasonably the applicant may apply for an award of costs against the Council. This must be made at the time of the appeal. The Protocol for the Operation of the Planning Committee provides options for how appeals should be resourced.

In all decisions there is the right for applicants and third parties to seek leave for Judicial Review. The Council will review on an on-going basis the financial and resource implications of processing applications.

4.0	<u>Equality/Good Relations and Rural Needs Impact Assessments</u>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out The policies against which each planning application is considered have been subject to a separate screening and/or assessment for each application. There is no requirement to repeat this for the advice that comes forward in each of the appended reports.	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	Summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out. The policies against which each planning application is considered have been subject to a separate screening and/or assessment for each application. There is no requirement to repeat this for the advice that comes forward in each of the appended reports.	

Appendices:

Appendix 1.1 - LA05/2021/0009/F
 Appendix 1.2 - LA05/2022/0018/F
 Appendix 1.3 - LA05/2021/0321/F
 Appendix 1.4 - LA05/2022/0883/O
 Appendix 1.5 - LA05/2023/0331/O
 Appendix 1.6 - LA05/2023/0335/O
 Appendix 1.7 - LA05/2021/0609/O
 Appendix 1.8 - LA05/2021/1048/O
 Appendix 1.9 - LA05/2021/1049/O
 Appendix 1.10 - LA05/2020/0303/F
 Appendix 1.11 - LA05/2022/1081/F
 Appendix 1.12 - LA05/2022/0106/O

Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee Meeting	04 December 2023
Committee Interest	Local (Exceptions Apply)
Application Reference	LA05/2021/0009/F
District Electoral Area	Downshire West
Proposal Description	Proposed development of 36 no. dwellings with associated and ancillary site works
Location	On lands off Old Kilmore Road Moira immediately west of 1,3, 5, 7, 9, 11, 15, 17 and 19 Danesfort and to the immediate north of Fitzwilliam House
Representations	Eleven
Case Officer	Sinead McCloskey
Recommendation	Approval

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. Therefore under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This is a local application. It is presented to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that the application requires a legal agreement to secure the delivery of affordable housing.
6. It is recommended that planning permission is granted as the proposal is in accordance with the requirements of policies HOU1, HOU3, HOU4 and HOU5 of the Lisburn and Castlereagh City Council Plan Strategy 2032 (subsequently referred to as the Plan Strategy) in that the detailed layout and design of the proposed buildings create a quality residential environment and when the buildings are constructed, they will not adversely impact on the character of the area. The development will also not have a detrimental impact on the amenity of existing residents in properties adjoining the site by reason of overlooking or dominance.
7. Furthermore, the density is not significantly different than that found in the established residential area and the proposed pattern of development is in keeping with the overall character and environmental quality of the established residential area.
8. It is considered that the proposal is also in accordance with the requirements of policy HOU10 of the Plan Strategy in that adequate provision is made for

affordable housing as an integral part of the development. This provision will be subject to a Section 76 Planning Agreement.

9. The proposal complies with Policy NH 5 of the Plan Strategy in that the development will not harm any protected species nor is it likely to result in the unacceptable adverse impact on, or damage to known habitats, species or features of Natural Heritage Importance including any European designated sites.
10. The proposed complies with policy of TRA1 the Plan Strategy in that the detail demonstrates that an accessible environment will be created through the provision of footways and pedestrian crossing points to the wider neighbourhood.
11. It is also considered that the development complies with policy TRA2 of the Plan Strategy in that the detail submitted demonstrates that the creation of new access will not prejudice road safety or significantly inconvenience the flow of traffic. Regard is also had to the nature and scale of the development, the character of the existing development, the location and number of existing accesses and the standard of the existing road network.
12. The proposal is considered to comply with the policy TRA7 of the Plan Strategy in that the detail demonstrates that adequate provision for car parking and appropriate servicing arrangements has been provided without prejudice to road safety. It will not inconvenience road users or impede the flow of traffic on the surrounding road network.
13. The proposed development complies with policies FLD 1 and FLD 3 of the Plan Strategy in that the site lies outside the 1 in 100 year fluvial flood plain and the detail submitted demonstrates that adequate drainage can be provided within the site to service the proposal.
14. The listed structure and its setting is taken account of in the design and layout of the proposal and the landscaping and open spaces preserve the heritage of this building of special and historic interest. Officers have no reason to disagree with the advice of the statutory consultee and it is considered that the proposed development complies with policy HE9 of the Plan Strategy.

Description of Site and Surroundings

Site Context

15. The application site is approximately 1.925 hectares in size and comprised primarily of agricultural land used for grazing animals. The topography of the site is relatively flat throughout, gently sloping from the lowest point on the northern boundary alongside the Old Kilmore Road to the highest point at the southern boundary.
- 16.

The northern boundary, along the Old Kilmore Road consists of a post and wire fence with a 1 metre high hedgerow intertwined along parts of the boundary. The eastern boundary is defined by the rear gardens of the adjacent development of Danesfort, and consists mostly of hedging. The grounds of the listed property (Fortwilliam House) define the southern boundary of the site, beyond which Moira Industrial Estate is located. The western boundary is defined by a tree lined avenue that serves as the entrance to Fortwilliam House, beyond which is open agricultural land.

Surrounding Context

17. The site is located on a parcel of land close to the edge and within the settlement limit of Moria.
18. While the site is an agricultural field, lands to the west, south west, north and north east have been developed with medium density housing which has a mix of single storey and two storey properties. To the north, west and south west of the site is open countryside and the land is mainly in agricultural use.

Proposed Development

19. The proposed development comprises the erection of 36 dwellings with associated and ancillary site works.
20. The following documents are submitted in support of the application:
 - Archaeological Impact Assessment
 - Tree Impact Plan
 - Preliminary Ecological Appraisal
 - Drainage Assessment
 - Transport Assessment Form
 - Smooth Newt Survey
 - Landscape Management and Maintenance Plan
 - CGI Booklet

Relevant Planning History

21. The planning history associated with the application site is set out in the table below:

Reference Number	Description	Location	Decision
LA05/2022/0964/F	Works of restoration and change of use to listed outbuildings to form; a farm shop and a coffee shop with outside seating area; demolition and replacement of unlisted farm buildings with new barn to house garden centre, new lightweight glasshouse structure and new finish to existing hard standing to form uncovered external plant display area; re-positioning of listed gate pillars and enhancement of existing access to Old Kilmore Road, localised widening to tree lined avenue, new access laneway to north-west side of listed dwelling, 34 car parking spaces and servicing area and new landscaping to laneway, car parking and servicing areas	Listed outbuildings and unlisted farm buildings including tree lined avenue to the front and agricultural land to the front and rear of Fortwilliam 40 Old Kilmore Road Moira	Approved 26 th June 2023

LA05/2022/0920/LBC	Residential development comprising apartments, semi-detached and detached dwellings (total yield of 380 dwelling units), mixed use centre, public and private open and ancillary infrastructure (amended plans)	Listed outbuildings and gate posts at Fortwilliam 40 Old Kilmore Road Moira BT67 0LZ.	Consent granted 26 th June 2023
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Consultations

22. The following consultations were carried out:

Consultee	Response
DfI Roads	No Objection
LCCC Environmental Health	No Objection
NI Water	No Objection
NIEA Natural Heritage	No Objection
NIEA Water Management Unit	No Objection
DfI River Agency	No Objection
Historic Environment Division	No Objection

Representations

23. Eleven representations in opposition to the proposal have been received. The following issues are raised:

- Proposed house types – no semi-detached properties in the area
- Plans are not in keeping with the local area
- Privacy
- Loss of light and overshadowing

- Environmental impact on birds and animals/flora and fauna
- Impact on properties
- Traffic/road safety
- Loss of sunset
- Boundary treatments
- Pollution
- Removal of vegetation
- Green belt area
- Change in view
- Awarding of planning permission to contractors
- Greater demand on GPs
- Effect on infrastructure
- Narrow footpaths and roads
- Removal of trees
- Flooding

Environmental Impact Assessment (EIA)

24. The thresholds set out in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 have been considered as part of this assessment as the site area exceeds the thresholds set out in Section 10(b) of Schedule 2, of the Planning Environmental Impact Assessment (NI) Regulations 2017.
25. An EIA determination was carried out and it was concluded given the scale and nature of the proposal that there was not likely to be any unacceptable adverse environmental impacts created by the proposed development and as such, an Environmental Statement was not required to inform the assessment of the application.

Local Development Plan

26. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on Planning applications regard must be had to the requirements of the local development plan and that the determination of applications must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

27. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

28. In accordance with the transitional arrangements the existing LAP and draft BMAP remain material considerations.
29. The LAP identifies the application site as being on land zoned for housing located within the settlement limit of Moira.
30. In draft BMAP the site is located within the settlement limit of Moira and zoned for housing within the context of Zoning MA 04/05 where the following draft KSR's are identified:
 - *Housing development shall be a minimum gross density of 20 dwellings per hectare and a maximum gross density of 25 dwellings per hectare.*
 - *Access shall be from Old Kilmore Road and Danesfort. Detailed consultation with Roads Service, DRD shall be required to identify any necessary improvements to the road network/public transport/transportation measures in the area, to facilitate development of the site. A Transport Assessment (TA) may be required to identify such improvements.*
 - *All existing trees, shrubs and hedgerows within the site and on the boundaries shall be retained, unless the Department determines that such vegetation is not of a quality to merit retention or is required to be removed to facilitate a safe means of access to the site.*
 - *A 3-5m wide landscape buffer of trees and hedges of native species shall be provided entirely within and adjacent to the Settlement Development Limit, along the western boundary of the site and outside the curtilage of any dwelling. This is to provide screening for the development and help assimilate and soften its impact on the countryside. Details of establishment, maintenance and long term management shall be formerly agreed with the Department.*
31. As mentioned above the lands are zoned for housing in the plan and this proposal is for 36 dwellings.
32. The strategic policy for Sustainable Development is set out in Part 1 of the Plan Strategy. Strategic Policy 01 – Sustainable Development states that:

The Plan will support development proposals which further sustainable development including facilitating sustainable housing growth; promoting balanced economic growth; protecting and enhancing the historic and natural environment; mitigating and adapting to climate change and supporting sustainable infrastructure.

33. The strategic policy for Creating and Enhancing Shared Space and Quality Places is set out in Part 1 of the Plan Strategy. Strategic Policy 03 – Creating and Enhancing Shared Space and Quality Places states that:

The Plan will support development proposals that contribute to the creation of an environment which is accessible to all and enhances opportunities for shared communities; has a high standard of connectivity and supports shared use of public realm. Good quality housing that supports more balanced communities must offer a variety of house types, sizes and tenures to meet different needs.

Creating shared neighbourhoods should provide opportunities for communities to access local employment, shopping, leisure, education and community facilities.

34. The strategic policy for Good Design and Positive Place Making is set out in Part 1 of the Plan Strategy. Strategic Policy 05 – Good Design and Positive Place Making states that:

The Plan will support development proposals that incorporate good design and positive place-making to further sustainable development, encourage healthier living, promote accessibility and inclusivity and contribute to safety. Good design should respect the character of the area, respect environmental and heritage assets and promote local distinctiveness. Positive place-making should acknowledge the need for quality, place-specific contextual design which promotes accessibility and inclusivity, creating safe, vibrant and adaptable places.

35. The strategic policy for Protecting and Enhancing the Environment is set out in Part 1 of the Plan Strategy. Strategic Policy 05 – Protecting and Enhancing the Environment states that:

The Plan will support development proposals that respect the historic and natural environment and biodiversity. Proposals must aim to conserve, protect and where possible enhance the environment, acknowledging the rich variety of assets and associated historic and natural heritage designations. Proposals should respect the careful management, maintenance and enhancement of ecosystem services which form an integral part of sustainable development.

36. The strategic policy for Section 76 Agreements is set out in Part 1 of the Plan Strategy. Strategic Policy 07 – Section 76 Agreements states that:

Development will be required to deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale, impact of the development and the sustainability of its location.

A developer will be expected to provide or contribute to the following infrastructure in order to mitigate any negative consequences of development:

- a) *improvements to the transport network, including walking and cycling routes, public transport or, where necessary appropriate parking provision*
- b) *affordable housing*
- c) *educational facilities and/or their upgrades*

- d) *outdoor recreation*
- e) *protection, enhancement and management of the natural and historic environment*
- f) *community facilities and/or their upgrades*
- g) *improvements to the public realm*
- h) *service and utilities infrastructure*
- i) *recycling and waste facilities.*

37. The strategic policy for Housing in Settlement Limits is set out in Part 1 of the Plan Strategy. Strategic Policy 08 Housing in Settlements states that:

The Plan will support development proposals that:

- a) *are in accordance with the Strategic Housing Allocation provided in Table 3*
- b) *facilitate new residential development which respects the surrounding context and promotes high quality design within settlements*
- c) *promote balanced local communities with a mixture of house types of different size and tenure including affordable and specialised housing*
- d) *encourage compact urban forms and appropriate densities while protecting the quality of the urban environment.*

38. The following operational policies in Part 2 of the Plan Strategy also apply.

Housing in Settlements

39. The application is for residential development and policy HOU1 - New Residential Development states that:

Planning permission will be granted for new residential development in settlements in the following circumstances:

- a) *on land zoned for residential use*
- b) *on previously developed land (brownfield sites) or as part of mixed-use development*
- c) *in designated city and town centres, and within settlement development limits of the city, towns, greater urban areas, villages and small settlements*
- d) *living over the shop schemes within designated city and town centres, or as part of mixed use development.*

The above policy applies to all residential uses as set out in Part C of the Schedule to the Planning (Use Classes) Order (Northern Ireland) 2015 (or as amended).

40. Policy HOU3 - Site Context and Characteristics of New Residential Development states:

Planning permission will be granted for new residential development where it will create a quality and sustainable residential environment which respects the existing site context and characteristics. An overall design concept, in accordance with Policy HOU6 must be submitted for all residential proposals and must demonstrate that a proposal draws upon the positive aspects of, and respects the local character, appearance and environmental quality of the surrounding area.

Proposals for residential development will be expected to conform to all the following criteria:

- a) *the development respects the surrounding context, by creating or enhancing a local identity and distinctiveness that reinforces a sense of place, and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas*
- b) *archaeological, historic environment and landscape characteristics/features are identified and, where appropriate, protected and suitably integrated into the overall design and layout of the development.*

For new residential development in areas of distinctive townscape character, including Conservation Areas and Areas of Townscape or Village Character, an increased residential density will only be allowed in exceptional circumstances.

All development should be in accordance with available published space standards.

41. Policy HOU4 - Design in New Residential Development states:

Proposals for residential development will be expected to conform to all the following design criteria:

- a) *the design of the development must draw upon the best local architectural form, materials and detailing*
- b) *landscaped areas using appropriate locally characteristic or indigenous species and private open space must form an integral part of a proposal's open space and where appropriate will be required along site boundaries to soften the visual impact of the development and assist in its integration with the surrounding area*
- c) *where identified as a Key Site Requirement adequate provision is made for necessary local community facilities, to be provided by the developer*
- d) *residential development should be brought forward in line with the following density bands:*
 - *City Centre Boundary 120-160 dwellings per hectare*
 - *Settlement Development Limits of City, Towns and Greater Urban Areas: 25-35 dwellings per hectare*
 - *Settlement Development Limits of Villages and small settlements 20-25 dwellings per hectare.*
 - *Within the above designated areas, increased housing density above the indicated bands will be considered in town centres and those locations that benefit from high accessibility to public transport facilities*
- e) *a range of dwellings should be proposed that are accessible in their design to provide an appropriate standard of access for all. The design of dwellings should ensure they are capable of providing accommodation that is wheelchair accessible for those in society who are mobility impaired. A range of dwelling types and designs should be provided to prevent members of society from becoming socially excluded*

- f) *dwellings should be designed to be energy and resource efficient and, where practical should include integrated renewable energy technologies to minimise their impact on the environment*
- g) *a proposed site layout must indicate safe and convenient access through provision of walking and cycling infrastructure, both within the development and linking to existing or planned networks; meet the needs of mobility impaired persons; and respect existing public rights of way*
- h) *adequate and appropriate provision is made for car and bicycle parking including where possible electric vehicle charging points*
- i) *the design and layout must not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance*
- j) *the design and layout should where possible include use of permeable paving and sustainable drainage*
- k) *the design and layout design must demonstrate appropriate provision is made for householder waste storage and its collection can be facilitated without impairment to the access and maneuverability of waste service vehicles*
- l) *the development is designed to deter crime and promote personal safety.*
- m) *Any proposal for residential development which fails to produce an appropriate quality of design will not be permitted, even on land identified for residential use in a development plan.*

42. The Justification and Amplification states that:

Please note the Supplementary Planning Guidance on design of residential development that will support the implementation of this policy.

43. It also states that:

Accessible Accommodation

Design standards are encouraged to meet the varying needs of occupiers and be easily capable of accommodating adaptations. Developers should ensure that a range of dwelling sizes (including internal layout and the number of bedrooms) is provided to meet a range of housing needs that facilitate integration and the development of mixed communities.

44. Given the scale of residential development public open space is required as part of the proposed development. Policy HOU5 - Public Open Space in New Residential Development states that:

Adequate provision must be made for green and blue infrastructure in public open space and for open space that links with green and blue infrastructure where possible and provides pedestrian and cycle linkages to nearby public amenity spaces. Proposals for new residential development of 25 or more units, or on sites of one hectare or more, must provide public open space as an integral part of the development, subject to the following:

- a) *the open space must be at least 10% of the total site area*
- b) *for development proposals of 300 or more units, or on sites of 15 hectares or*

more, the open space must be at least 15% of the total site area.

The following exceptions to the above open space provision will apply where:

- a) *the residential development is designed to integrate with and make use of adjoining public open space*
- b) *the provision of open space below 10% of the total site area if the proposal is located within a city or town centre or it is demonstrated that it is close to and would benefit from ease of access to existing public open space*
- c) *in the case of apartment developments or specialist housing (see Policy HOU11) where a commensurate level of private communal open space is being provided.*

Development proposals of 100 units or more, or on sites of 5 hectares or more, must be provided with an equipped children's play area unless one already exists within a reasonable and safe walking distance (generally around 400 metres) of the majority of the units within the proposal.

Public open space required by this policy will be expected to conform to all of the following criteria:

- *it is designed as an integral part of the development with easy and safe access from the dwellings*
- *it is of demonstrable recreational or amenity value*
- *it is designed, wherever possible, to be multi-functional*
- *its design, location and appearance takes into account the needs of disabled persons and it respects the amenity of nearby residents*
- *landscape and heritage features are retained and incorporated in its design and layout.*

In all cases developers will be responsible for the laying out and landscaping of public open space required under this policy.

Developers must demonstrate that suitable arrangements will be put in place for the future management and maintenance in perpetuity of areas of public open space required under this policy.

45. The following paragraph in the Justification and Amplification is modified as follows:

Public open space can be provided in a variety of forms ranging from village greens and small parks through to equipped play areas and sports pitches. In addition, the creation or retention of blue/green infrastructure, woodland areas or other natural or semi-natural areas of open space can provide valuable habitats for wildlife and promote biodiversity. To provide for maximum surveillance, areas of open space are best located where they are overlooked by the fronts of nearby dwellings.

46. As more than five dwellings are proposed there is a need to consider the requirement for affordable housing. Policy HOU10 - Affordable Housing in Settlements states that:

Where the need for Affordable Housing is identified, through the Housing Needs Assessment on sites of more than 0.5 hectares or comprising of 5 residential units or more, proposals will only be permitted where provision is made for a minimum 20% of all units to be affordable. This provision will be secured and agreed through a Section 76 Planning Agreement.

All developments incorporating affordable housing should be designed to integrate with the overall scheme with no significant distinguishable design differences, in accordance with any other relevant policies contained within this Plan Strategy.

In exceptional circumstances where it is demonstrated that the affordable housing requirement cannot be met, alternative provision must be made by the applicant, or an appropriate financial contribution in lieu must be agreed through a Section 76 Planning Agreement. Such agreements must contribute to the objective of creating mixed and balanced communities.

Proposals for the provision of specialist accommodation for a group of people with specific needs (such as purpose built accommodation for the elderly, Policy HOU11) will not be subject to the requirements of this policy.

Windfall sites will be encouraged for the development of affordable housing in suitable and accessible locations.

By exception, proposals for affordable housing could be permitted on land identified as open space, in accordance with Policy OS1, where it can be demonstrated that all of the following criteria have been met:

- a) *a demonstrable need has been identified by the Northern Ireland Housing Executive*
- b) *the application is made by a registered Housing Association or the Northern Ireland Housing Executive*
- c) *the proposal will bring substantial community benefits that decisively outweigh the loss of the open space.*

Development proposals will not be supported where lands have been artificially divided for the purposes of circumventing this policy requirement.

47. The Justification and Amplification states that:

The policy requires a minimum provision of 20% of units as affordable housing. Where up to date evidence indicates a requirement for a higher proportion of affordable housing, the council will expect developments to provide this. Where appropriate this may be indicated through key site requirements within the Local Policies Plan. It may also be secured through discussions with applicants on a case-by-case basis as part of the development management process.

48. The Glossary associated with Part 2 of the Plan Strategy states that:

Affordable Housing – affordable housing is:

- a) *Social rented housing; or*
- b) *Intermediate housing for sale; or*

c) *Intermediate housing for rent,*

that is provided outside of the general market, for those whose needs are not met by the market.

Affordable housing which is funded by Government must remain affordable or alternatively there must be provision for the public subsidy to be repaid or recycled in the provision of new affordable housing.

Archaeologically and Built Heritage

49. As the site is within close proximity to Fortwilliam House, a Grade B1 Listed Building, the impact of the proposal on this property and its setting must be considered. The site is also close to the Rought Fort, which is identified as a regionally important archaeological monument.

50. Policy HE1 – The preservation of Archaeological remains of Regional Importance and their Settings states that

The Council will operate a presumption in favour of the physical preservation in situ of archaeological remains of regional importance and their settings. These comprise monuments in state care, scheduled monuments and Areas of Significant Archaeological Interest (ASAs). Development which would adversely affect such sites of regional importance or the integrity of their settings must only be permitted in exceptional circumstances. This approach applies to such sites which, whilst not scheduled presently, would otherwise merit statutory protection.

51. Policy HE4 – Archaeological Mitigation states that:

Where the Council is minded to grant planning permission for development which will affect sites known or likely to contain archaeological remains, the Council will impose planning conditions to ensure that appropriate measures are taken for the identification and mitigation of the archaeological impacts of the development, including where appropriate completion of a licensed excavation and recording examination and archiving of remains before development commences or the preservation of remains in situ

52. Policy HE9 – Development affecting the Setting of a Listed Building states that:

Proposal which would adversely affect the setting of a listed building will not be permitted. Development proposals will normally only be considered appropriate where all the following criteria are met:

- a) *The detailed design respects the listed building in terms of scale, height, massing and alignment.*
- b) *The works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building*
- c) *The nature of the proposed respects the character of the setting of the building.*

Natural Heritage

53. Given this is a large site the potential impact on the natural environment is considered. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

Access and Transport

54. A new access is proposed to Old Kilmore Road. Policy TRA1 - Creating an Accessible Environment states that:

The external layout of all development proposals will incorporate, where appropriate:

- a) *facilities to aid accessibility e.g. level access to buildings, provision of dropped kerbs and tactile paving etc, together with the removal of any unnecessary obstructions*
- b) *user friendly and convenient movement along pathways and an unhindered approach to buildings*
- c) *priority pedestrian **and cycling** movement within and between land uses*
- d) *ease of access to car parking reserved for disabled or other users, public transport facilities and taxi ranks.*

Public buildings will only be permitted where they are designed to provide suitable access for customers, visitors and employees.

Access to existing buildings and their surroundings should be improved as opportunities arise through alterations, extensions and changes of use.

Submission of a Transport Assessment Form (TAF) and a Design and Access Statement may also be required to accompanying development proposals.

55. Policy TRA 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

56. The justification and amplification states that:

For development proposals involving a replacement dwelling in the countryside, there an existing access is available but does not meet the current standards, the Council would encourage the incorporation of improvements to the access in the interests of road safety.

57. Policy TRA8 - Active Travel Networks and Infrastructure Provision states that:

Planning permission will only be granted for proposals where public transport, walking and cycling provision forms part of the development proposal.

A Transport Assessment/Travel Plan or, if not required, a supporting statement should indicate the following provisions:

- a) *safe and convenient access through provision of walking and cycling infrastructure, both within the development and linking to existing or planned networks*
- b) *the needs of mobility impaired persons; and respect existing public rights of way*
- c) *safe, convenient and secure cycle parking.*

In addition major employment generating development will be required to make appropriate provision for shower and changing facilities.

Flooding

58. This is a large site and the drainage must be designed to take account of the impact on flooding elsewhere.

59. Policy FLD2 - Protection of Flood Defence and Drainage Infrastructure states that:

Development will not be permitted that impedes the operational effectiveness of flood defence and drainage infrastructure or hinder access for maintenance, including building over the line of a culvert.

60. Policy - FLD3 Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains states:

A Drainage Assessment (DA) will be required for development proposals that exceed any of the following thresholds:

- a) *a residential development of 10 or more units*
- b) *a development site in excess of 1 hectare*
- c) *a change of use involving new buildings and/or hard surfacing exceeding 1,000 square metres in area.*

A DA will also be required for any development proposal, except for minor development, where:

- *it is located in an area where there is evidence of historical flooding.*
- *surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features.*

A development requiring a DA will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere. If a DA is not required, but there is potential for surface water flooding as shown on the surface water layout of DfI Flood Maps NI, it remains the responsibility of the developer to mitigate the effects of flooding and drainage as a result of the development.

Where the proposed development is also located within a fluvial flood plain, then Policy FLD1 will take precedence.

Regional Policy and Guidance

Regional Policy

61. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

62. Paragraph 2.1 of the SPPS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

63. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

64. In practice this means that development which accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.

65. The site is proposed to be developed for housing development. It is stated at paragraph 6.136 that:

The policy approach must be to facilitate an adequate and available supply of quality housing to meet the needs of everyone; promote more sustainable housing development within existing urban areas; and the provision of mixed housing development with homes in a range of sizes and tenures. This approach to housing will support the need to maximise the use of existing infrastructure and services, and the creation of more balanced sustainable communities.

Retained Regional Guidance

66. Whilst not policy, the following guidance documents remain a material considerations:

Creating Places

67. The policy requires the guidance in the 'Creating Places – Achieving Quality in Residential Developments' (May 2000) to also be considered.
68. The guide is structured around the process of design and addresses the following matters:
- the analysis of a site and its context;
 - strategies for the overall design character of a proposal;
 - the main elements of good design; and
 - detailed design requirements.

69. Paragraph 7.16 provides guidance on separation distances stating:

Where the development abuts the private garden areas of existing properties, a separation distance greater than 20 metres will generally be appropriate to minimise overlooking, with a minimum of around 10 meters between the rear of new houses and the common boundary.

70. Paragraphs 5.19 – 5.20 provides guidance on the level of private open space provision as follows:

Provision should be calculated as an average space standard for the development as a whole and should be around 70 square metres per house or greater. Garden sizes larger than the average will generally suit dwellings for use by families. An area less than around 40 square metres will generally be unacceptable.

Development Control Advice Note 8 - Housing in Existing Urban Areas

71. Paragraph 4.10 states that:

Planning Service will expect applicants and designers to carry out an appraisal of the local context, which takes into account the character of the surrounding area; and new development should respect the architectural, streetscape and landscape character of the area.

Assessment

Housing in Settlements

Policy HOU 1 – New Residential Development

72. This application is for 36 residential units within the settlement limit of Moira. The land on which this development is proposed has been zoned for housing under Zoning MA 04/05 in Draft BMAP and as such, the policy tests associated with Policy HOU1 are considered to be met.

Policy HOU3 - Site Context and Characteristics of New Residential Development

73. The lands to the north include a field that has also been zoned for housing under designation MA 04/07, and which is partly built out with the residential developments at Wynfort Lodge and Oldfort Park. To the west of the site is the residential development of Danesfort.

74. The scheme comprises thirty-six detached and semi-detached dwellings. The dwellings are of different size and design but typical of a suburban setting.

75. The form and general arrangement of the buildings is considered to be characteristic of those that have been built in the surrounding residential developments to the west and north.

76. The plot sizes and general layout of the proposed development is consistent with and comparable with other built development in the general vicinity of the site.

77. Based on a review of the information provided, it is considered that the character of the area would not be significantly changed by the proposed residential development and it is considered that the established residential character of the area would not be harmed.

78. The layout of the rooms in each of the units, the position of the windows and separation distances to existing properties will also ensure that there is no overlooking into the private amenity space of neighbouring properties. The buildings are not dominant or overbearing and no loss of light would be caused.
79. Having regard to this detail and the relationship between the buildings in each plot it is considered that the guidance recommended in the Creating Place document and that criteria (a) of policy HOU3 met.
80. With regard to criteria (b), advice from Historic Environment Division (Historic Buildings) confirms that the site is in close proximity to a Grade B1 Listed Building, Fortwilliam House, 40 Old Kilmore Road, Moira.
81. Advice indicates that this building of special architectural and historic importance and is protected by Section 80 of the Planning Act (NI) 2011. It is also stated that another listed building is in close proximity to the proposal, Fairmount, 34 Old Kilmore Road, Moira.
82. The Historic Monuments division also states that the application site is in close proximity to the Rough Fort (DOW013:014, a regionally important archaeological monument in State Care.

Amendments submitted in response to concerns expressed by HED in relation to the potential impact of the proposed on the setting of the adjacent listed Fortwilliam House, are considered to be acceptable with no objection offered.

83. No other landscape characteristics/features have been identified that required integration into the overall design and layout of the development. This part of the policy is met.

Policy HOU4 - Design in New Residential Development

84. The layout as shown on the proposed drawing [03/5] describes the number of different house types proposed. A description of these house types is outlined below.
85. Sites 1-5 consist of single storey dwellings located along the eastern boundary of the site. They comprise three different house types, with a similar design theme running throughout. House types HTA and HTAh are handed versions of each other, while house type (HTA1) is a slightly smaller version of house type HTA, and with different finishes. They all have four bedrooms, a kitchen/dining/family area and a separate living area to the front. They have a family bathroom and one bedroom with an en-suite, and all have a ridge height of 6.3 metres. They are finished in sandstone clay facing brick, artificial stone cladding with natural slate effect tiles on the roof..
86. House types HTB1 and HTB1h are handed versions of each other and are located on sites 9 and 35. House type HTBh located on site 30 is effectively the same dwelling as House Type HTB1h with the exception of a small gable projection in the front lounge and the re-positioning of a bedroom window to the gable instead of the rear elevation.

87. These are all two-storey, four bedroom, detached dwellings, with a ridge height of 9.1 metres. They all have single storey rear returns and a small two storey projection along the front elevation. As above they have a kitchen/dining/family area and a separate living area to the front. They all have a family bathroom and one bedroom with an en-suite. The external finishes are the same as described above.
88. House types HTK and HTKh are also handed versions of the same house design. They are located on sites 6, 10, 13, 18, 21, 24, 29, 31, 34 and 36. They are larger two storey detached dwellings, offering the same accommodation as described above. The finishes are the same also, and they will have a ridge height of 8.9 metres. They have a single storey rear return and a smaller side projection from the gable.
89. Finally house type HTC consists of two storey, semi-detached properties, and are found on sites 7-8, 11-12, 14-17, 19-20, 22-23, 25-28 and sites 32-33. Finishes are same as other sites and the proposed ridge height is also 8.9 metres. They offer similar accommodation as described above. They have a single storey rear return and a small two storey front projection.
90. Detached garages are provided for all dwellings and are generally located to the side and behind the properties.
91. The rooms are laid out, the position of the windows arranged along with adequate separation to the boundary ensures that there is no overlooking into the private amenity space of neighbouring properties.
92. The proposed development does not conflict with surrounding land uses. It is well separated from adjoining residential development to the east and is situated at a lower ground level. The buildings are not dominant or overbearing and no loss of light would be caused.
93. A minimum of 20 metres separation distance is provided between the two-storey dwelling units which back onto each other within the proposed development. These separate distances are consistent with the guidance set out at paragraphs 5.19 – 5.20 of the Creating Places document.
94. The proposed layout is consistent with the form of housing found in the surrounding area. The proposed houses all face towards the internal service road. Two in curtilage parking spaces are provided with each dwelling. Those dwellings located on corner sites have a strong double frontage.
95. The area in front of each dwelling has a lawn, with a driveway and a small concrete path. The lawn area ensures building frontages are not dominated by hardstanding/car parking.
96. The house types provided are accessible and designed to ensure that they can provide accommodation that is wheelchair accessible for persons with impaired mobility.

97. The proposed design and finishes are considered to draw upon the materials and detailing exhibited within the surrounding area and will ensure that the units are as energy efficient as possible.
98. For the reasons outlined above, criteria (a), (e), (f) and (i) are met.
99. There is no requirement for the provision of a local community or neighbourhood facility for this scale of development. The site is accessible to a number of shops and other neighbourhood facilities in Moira. Criteria (c) is met.
100. Private outdoor amenity space is provided in the range of 56 to 182 square metres. There are only two sites at the lower end of the amenity provision, with the majority of units with gardens well in excess of the guidelines detailed in the Creating Places document. The average private amenity provision across the whole site is 98.22 square metres per unit. There is also a large area of open space to the south of the site which will have an amenity value for the dwelling with private amenity provision which at the lower end of the provision.
101. All proposed dwellings have single storey returns to the rear. The separation distances from the dwellings to the rear boundaries range from 9 – 16 metres, taken from the two-storey rear elevation of each property. There is just the one dwelling with a 9 metres separation distance to the rear. This property does not have a back-to-back relationship with another dwelling to the rear. This dwelling has a side to rear relationship with its neighbouring property. There are two garages in the rear of these gardens to mitigate against any potential adverse effects, with the garage of the property to the rear located between that area immediately to the rear of the dwelling which should be afforded the most protection in terms of privacy, and the common boundary. The separation distances are considered to be acceptable.
102. The site layout and landscape plan submitted in support of the application illustrates that the existing hedge along the eastern boundary of the site shall be retained. The landscape plan also details all proposed planting along the remaining boundaries of the site and within the development. The northern boundary is shown to have new heavy standard trees and a native hedge. The western and southern boundaries will consist of tree whip and shrub planting. Within the site, heavy standard tree planting is proposed to the front of most dwellings. The plans also indicate an area of open space to the south of the site in the form of a maintained lawn area.
103. The proposed site layout drawing includes details of other internally boundary treatments including red clay multi-facing brick, close board fence and estate style metal fencing.
104. Section 2.0 of the Landscape Management Plan provides details on general maintenance activities with maintenance of all soft landscaped areas becoming the sole responsibility of the Developer and their appointed Management Company, the agreement for which shall be set up by the Developer.
105. For the reasons outlined above, criteria (b) is considered to be met.

106. There is no requirement for the provision of a local community or neighbourhood facility for this scale of development.
107. With regard to criteria (d) the proposed density equates to 18.95 dwellings per hectare. While the key site requirements outlined above for this site indicate that a minimum of 20 units for hectare would be preferred, it is accepted that the proposal provides adequate residential provision delivered to comply with policy and indeed to create an open space buffer between the developed area and the listed building and it's setting to the south.
108. The development proposals will provide a residential density not significantly lower than that found in the established residential area and the proposed pattern of development is in keeping with the overall character and environmental quality of the established residential area. The average unit size exceeds space standards set out in supplementary planning guidance.
109. The site has a boundary with the the settlement development limit along the western boundary of the site. The landscape proposal indicate that a 3 to 5 metre planted buffer is proposed along this boundary, consisting of heavy standard tree planting and screen planting. The majority of the buffer is of the appropriate width, with only a few small areas where it has been reduced to facilitate parking and roads layout. The buffer is considered to be acceptable given the established landscape setting. A buffer of 10 metres would not be appropriate at this location .
110. This landscape buffer comprises trees and hedgerow of native species outside the curtilage of any dwelling. It provides screening for the development and help assimilate and soften its impact when viewed from the countryside. Details of establishment, maintenance and long term management shall be formerly agreed with the Council and the recommendation is subject to the inclusion of a suitably worded planning condition.
111. The internal road layout provides for safe and convenient access through the site and the provision of dropped kerbs and tactile paving will also serve to meet the needs of mobility impaired persons. Adequate and appropriate provision is also made for in curtilage parking which meets the required parking standards. Criteria (g) and (h) are considered to be met.
112. The careful delineation of plots with appropriate fencing and brickwalls will serve to deter crime and promote personal safety. Criteria (l) is considered to be met.
113. Provision can be made for householder waste storage within the driveways for each unit and its safe collection can be facilitated without impairment to the access manoeuvrability of waste service vehicles. Criteria (k) is met.

Policy HOU 5 - Public Open Space in New Residential Development

114. Detail submitted with the application indicates that the site exceeds one hectare and that more than twenty-five residential units are proposed. As such open space must be provided as an integral part of this development.
 115. The proposed layout plan indicates that 0.32 hectares of open space is provided as an integral part of the development. This equates to 16.5% of the overall site area which is in excess of the 10% requirement for residential development. This is shown to be located at the southern end of the site. In addition to providing a necessary area of open space as an integral part of the proposal, it also provides a development free buffer to protect the adjacent listed building at Fortwilliam House and its grounds.
102. For the reasons outlined above, the policy tests associated with HOU5 are met.

Policy HOU10 - Affordable Housing

103. Policy HOU10 requires a 20% affordable housing provision. In the context of the proposed scheme, this equates to 8 dwellings. The agent has confirmed in an email dated 27 October 2023 that it is their intention to prepare and submit an application for 8 apartments to replace the 4 of the semi-detached units on sites 14 – 17, and that these units will be within the affordable housing bracket.
104. This provision of 8 affordable housing units will be secured through section 76 agreement. The agreement will be contingent on no more than 28 units being constructed and occupied until this alternative provision is secured through a separate planning permission.
105. If no agreement can be reached for the apartment development the applicant will provide the balance of the units in this approved scheme as affordable housing to be delivered no more than 24 months from the date that the construction of the twenty-eighth unit is commenced.
106. The affordable housing tests associated with Policy HOU10 of the Plan Strategy are therefore capable of being met subject to this provision being secured and agreed through a Section 76 Planning Agreement.

Natural Heritage

107. A Preliminary Ecological Appraisal and Assessment carried out by Blackstaff Ecology dated November 2020 is submitted in support of the application.
108. The PEA was commissioned to assess the potential ecological impacts of the proposed application, as well as to identify the need for further ecological surveys.
109. The purpose of this PEA is to:
 - Assess the ecological value of the pre-development application site;
 - Identify any likely ecological constraints associated with the project;

- Identify whether any invasive species are present on site – specifically Himalayan balsam (*Impatiens glandulifera*), Japanese knotweed (*Fallopia japonica*) and giant hogweed (*Heraclueum mantegazzianum*).
 - Identify any mitigation measures likely to be required by the application;
 - Assess the need for further, specialist ecological surveys.
110. The document states that both a desk study was carried out and a field survey. Records obtained to assess potential impacts on species of conservation concern indicated that 38 records of 30 species within 1km of the site were provided, including species of plants, mammals and birds given special protection in various Schedule of the Wildlife (NI) Order 1985 (as amended).
111. The Phase 1 Habitat types found on site are poor semi-improved grassland, tall ruderal, hedgerows, scrub and standing water.
112. Paragraph 65 states that the proposed development is remote from any sites designated for their conservation interest and the proposal will have no effects on any protected area. The following paragraph continues by stating that there are no priority habitats within a likely zone of influence of the proposal. Local habitats are dominated by urban developments and intensive agriculture, and the proposed development is unlikely to have any effects on priority habitats. It is also stated that records derived from the NBN Atlas and from CEDaR suggest that protected species known to occur on or near the site are most likely to comprise various species of breeding bird.
113. The report comments on the protected species assessed as follows:
- **Bats** – bats are likely to use the site regularly, it is unlikely that trees lining the private road to the west of the site that may be affected by the proposed development provide significant opportunities for roosting bats. Farm buildings abutting the extreme southern end of the site may support roosting bats. Provided the buildings and walls along the site boundary are not disturbed it is likely that there will be limited potential for impacts on any resident bats.
 - **Breeding Birds** – It is likely that scrub and hedgerow habitats on the site and adjacent trees are used as nest sites by small numbers of a range of common breeding bird species. Clearance of these habitats during the bird breeding season is likely to cause loss of damage to nests and reduce breeding success of the species concerned.
 - **Common lizard** - There are few locations on the site which provide suitable basking, feeding or breeding sites for common lizard. It is unlikely that the proposed development will have an adverse effect on the species.
 - **Smooth Newt** – Ponding in boundary ditches provides sub-optimal habitats for smooth newt, but the presence/absence of the species could not be determined during the survey. The status of the species on the site can be determined using the survey methodology required by NIEA (2017).
 - **Invasive species** – No himalayan balsam, giant hogweed or Japanese knotweed were observed during the surveys, and if totally absent from the

site, the proposed project is not anticipated to be subject to any constraints imposed by such species.

114. Paragraph 53 also states that no evidence of badger activity was found within the site. A mammal trail crossing the field to the south west of the site led to/from the direction of the site and likely records badger use. The trail was clearly not used intensively, and no sett was found within 25 metres of the site boundary.
115. The assessment provides recommendations to mitigate against possible adverse effects to protected species (bats, breeding birds and smooth newt). It is stated that it is unlikely that there are any pathways for effects on any designated sites arising from proposed activities at the development site.
116. This document was sent to NIEA Natural Environment Division (NED) for consultation. They responded that they had concerns that in the absence of further information, the proposal would have an unacceptable impact on protected species and insufficient information has been submitted to establish otherwise.
117. The particular concerns were in regard to bats and newts. It is stated that bats are very sensitive to light spill, which can create a barrier to commuting and foraging behaviour. They therefore requested additional information with regard to any proposed new lighting scheme, i.e. a lighting plan providing details of proposed artificial lighting to include a map showing predicted light spillage across the site.
118. NED also observed the presence of flooded ditches and areas of standing water within the site. As such they recommended a further survey to establish the presence of newts within the site, with the survey to be carried out to NIEA specifications.
119. They also requested a revised site plan indicating the species and number of native species to be planted along the northern boundary.
120. A Smooth Newt survey was submitted and a revised drawing relating to soft landscape proposals, with both being sent onto NED for comment. In their consultation response dated October 2021, they confirmed that it is unlikely that the proposed development will have a significant impact on any designated sites.
121. In regard to bats, they commented that there are no buildings within the red line boundary of the proposed development. Submitted ecological information (Preliminary Ecological Appraisal (PEA)) has noted that adjacent buildings to the south have the potential to support roosting bats. Any works to these buildings would require further survey. As these are outside the red line boundary of the application, and Drawings submitted with the application indicate retention of these buildings, they have not been considered as part of their consultation response.
122. They continued by stating that the PEA has assessed trees on the site and 6 of these have been classified as having Low Bat Roost Potential. NED notes from the submitted Tree Report, date stamped 18th December 2020 that a number of trees on the site are to be felled or have arboricultural works. This document also

- indicates the proposed root protection area of trees was to be retained and protected during construction. As noted in the previous response and in the PEA, boundary hedgerows and treelines provide foraging and commuting habitats for bats.
123. In the previous response they had requested the submission of a lighting plan with details of proposed artificial external lighting, and to include a map showing predicted light spillage across the site, including the vegetated boundaries. No further information has been submitted in this regard, and as such it is recommended that a condition is appended to any planning approval that a lighting plan is submitted which clearly indicates a light spill of less than 1 Lux on all site boundaries.
 124. They also recommend that it is conditioned that trees and hedgerows are retained as indicated in the submitted drawings.
 125. In regard to Badgers, they stated that no evidence of this species was found. They are therefore content that, based on the information submitted, the proposed development is unlikely to impact these species.
 126. Following the request for a Smooth Newt Survey, they commented that the survey was undertaken with a NIEA Wildlife Licence, however, the report refers to the removal of vegetation from the drain during the survey, and they would highlight that further advice should have been sought from NIEA Wildlife Team before this was undertaken.
 127. However, no newts were found during the surveys, and on the basis of the information submitted, it is unlikely that the proposed development will impact this species, however, should this species be identified on the site, they state that all works must cease and further advice sought from NIEA Wildlife Team.
 128. Furthermore they have stated in their response that drawings submitted with the application note the retention of existing hedgerow on the site boundaries and removal of hedgerow along the northern boundary with new planting of a native species hedgerow along this boundary. They welcome the proposed retention of hedgerow and further proposed planting of hedgerow of native species along the northern boundary of the site and acknowledges receipt of revised Drawing – Soft Landscape Proposals which indicates proposed planting of native species as requested in their previous response.
 129. In conclusion, they have stated that on the basis of the information provided, they are content with the proposal subject to appropriate conditions and informatives to be included in any decision notice.
 130. For the reasons outlined, the proposed development will give rise to no significant adverse effects on habitats or species of ecological or nature conservation value, the proposed development is unlikely to result in any cumulative impact upon these features when considered alone or with other developments nearby and as such Policy NH5 of the Plan Strategy is capable of being met.

Access and Transport

131. The P1 Form indicates that the proposal involves the construction of a new access to the public road.
132. Detailed information submitted with the application including a Transport Assessment.
133. DfI Roads have not identified any concerns in relation to the detailed layout, access and arrangement of the parking and final PSD drawings have been returned with appropriate conditions.
134. Based on a review of the detail submitted with the application and advice from DfI Roads it is considered that the proposed complies with Policy TRA1 of the Plan Strategy as modified in that the detail demonstrates that an accessible environment will be created through the provision of footways and pedestrian crossing points.
135. It is also considered that the development complies with policy TRA2 of the Plan Strategy as modified in that the detail submitted demonstrates that the creation of new access will not prejudice road safety or significantly inconvenience the flow of traffic. Regard is also had to the nature and scale of the development, the character of the existing development, the location and number of existing accesses and the standard of the existing road network.
136. The proposal is also considered to comply with policy TRA7 of the Plan Strategy in that the detail demonstrates that adequate provision for car parking and appropriate servicing arrangements has been provided so as not to prejudice road safety or inconvenience the flow of traffic.

Planning and Flood Risk

137. The P1 Forms indicates that both surface water and foul sewage will be disposed of via mains connection.
138. A Drainage Assessment submitted in support of the application provides details of the proposed runoff and of the proposed storm and foul drainage from the site. This document was sent to DFI Rivers and NIW for consultation.
139. An initial response from DFI Rivers on the 11th February 2021 states that there are no watercourses designated under the terms of the Drainage (NI) Order 1973, within the bounds of the site. An undesignated watercourse bounds the eastern and south eastern sides of the site. The site may be affected by undesignated watercourses of which they have no record.
140. In terms of FLD2, a working strip was requested to be shown on a drawing, to facilitate future maintenance by DfI Rivers, other statutory undertakers or the riparian landowners.
141. This initial response also stated with regard to FLD3, that the Drainage Assessment only lacks current consent. In addition, they did however request that the drainage assessment is resubmitted to provide a demonstration of how

out of sewer flooding will be managed if the proposed drainage network is designed and constructed in accordance with Sewers for Adoption (SfA).

142. A Drainage Layout was subsequently submitted and sent to DfI Rivers for comment. A response was received on the 28th July 2022 stating that to fully assess this Drainage Assessment, further information is required that demonstrates the viability of the proposals by means of providing a PDE response from NIW consenting to discharge to their system and attenuation size and calculations based on the discharge rate stipulated in the PDE response letter.
143. Additional information was received from the agent, providing a response from the local office of DfI Rivers with respect to the non-requirement of the maintenance strip to the watercourse on the eastern side of the site. Following further consultation with DfI Rivers, a response was received stating that DfI Rivers Area Office in correspondence with the applicant dated 30th January 2023, states that DfI Rivers Lisburn does not require a maintenance strip at location shown in your application. As such revised they are content that FLD 2 is satisfied.
144. However in relation to FLD 3 and the information provided in the Drainage Assessment, they had requested further information that demonstrates the viability of the proposals by means of providing the outputs for the 1 in 100 year event with the addition of the 10% climate change and 10% for urban creep.
145. The output as requested for the 1 in 100 year event was submitted by the agent on the 15th March 2023, stating that they have highlighted the model has included for an additional 10% follow as a result of climate change and includes for 10% urban creep.
146. In a final consultation response from DfI Rivers on the 21st April 2023, they stated that the Drainage Assessment has demonstrated that the design and construction of a suitable drainage network is feasible. Drawing no. 20-088-A6, Location of Exceedance shows exceedance waters can be accommodated within the confines of the new access road without breaching the consented discharge rate. To ensure compliance with policy they have requested that the potential flood risk from exceedance of the network, in the 1 in 100 year event, is managed by way of a condition.
147. Water Management Unit advised that they had considered the impacts of the proposal on the water environment and would advise the proposal has the potential to adversely affect the surface water environment. A condition has been suggested to ensure that the method of sewage disposal has been agreed prior to any development being commenced on the site.
148. Advice received from NI Water confirms that there was public water supply within 20 metres of the proposed site. In relation to public foul sewer, the response advised that there is a public foul sewer within 20 metres of the proposed development boundary and that the receiving foul sewerage network has reached capacity. The public system cannot presently serve this development proposal without significant risk of environmental harm and public dis-amenity including pollution, flooding and detrimental impact on existing properties. NI

Water and the applicant have agreed a downstream engineering solution to mitigate the foul capacity issue and allow connection for this development proposal. They have provided a condition accordingly.

149. With regard to public surface water sewer, the advice confirmed that there was a surface water sewer within 20 metres of the site.
150. Confirmation was also provided to indicate that there was available capacity at the receiving Waste Water Treatment Works.
151. Officers have no reason to disagree with the advice of the consultees. Based on a review of the information and advice received from DfI Rivers, Water Management Unit and NI Water, it is accepted that the proposal complies with policies FLD2 and FLD3 of the Plan Strategy.

Historic Environment and Archaeology

152. The site is adjacent to Fortwilliam House, 40 Old Kilmore Road, Moira which is a Grade B1 Listed Building and is which is of special architectural and historic importance and is protected by Section 80 of the Planning Act (NI) 2011. The following listed building is also in close proximity to the proposal: HB19 22 053 Fairmount, 34 Old Kilmore Road, Moira, Craigavon (Grade B2).
153. The Historic Monuments division also states that the application site is in close proximity to the Rough Fort (DOW013:014, a regionally important archaeological monument in State Care.
154. They stated that they are content that the proposal satisfies the policy requirements, subject to conditions for the agreement and implementation of a developer-funded programme of archaeological works. This is to identify and record any archaeological remains in advance of new construction, or to provide for their preservation in situ.
155. Historic Environment Division, Historic Buildings were also consulted and considered that the proposal would have an adverse impact on the listed building and in its current form fails to satisfy the policy requirements of SPPS 6.12 & HE9.
156. The proposal as present initially indicated three dwellings located in the southern portion of the site, close to the adjacent Listed Building. The comments received from HED stated:
 - The current scheme would have an adverse impact on the setting of the Listed Building as consideration of the setting is not entirely evident.
 - The current scale and alignment of the current proposal cannot be absorbed by the site.
 - The density should be relaxed.
 - The avenue is significant in the setting of the listing building and houses backing up to it are a major concern, as this shall result in fencing/sheds etc along it which shall detract from the avenue.
 - B back gardens should be situated away from the avenue to better manage the setting.

- The avenue should be left with green space on either side so it can be appreciated and understood and more green space should be afforded to the front of the listed building. This would also mean additional planting along the west and southern fringe of new development to screen it from view.
157. This information was relayed to the agent to comment and address.
158. Following several amendments and consultations, the site layout was revised to exclude any development in the lower end of the site, close to the listed building. The area has been left as an area of open space for the recreational enjoyment of the residents, whilst providing a visual buffer to protect the listed building and it's setting.
159. In a final consultation response from HED Historic Buildings on the 06 May 2022, they stated that they welcome the revised application which took on board their previous concerns regarding the layout and the close proximity of houses to the listed building and they advised that they are content with the proposal without conditions.
160. Officers have no reason to disagree with the advice of the statutory consultees. It is taken account of in the design and layout of the proposal and the landscaping promotes access to and provides information about the importance of the heritage.
161. It is therefore contended that the proposed development complies with policies HE1, HE4 and HE9 of the Plan Strategy.

Consideration of Representations

162. Eleven letters of objection have been received in relation to the proposal. Consideration of the issues raised are set out in the below:

Proposed House Types

163. Concern is expressed that the statement that predominant house types in the surrounding area are detached, bungalow detached and to a lesser extent semi-detached property is not accurate with the view expressed that there are no semi-detached properties in the area. The view is expressed that there are no semi-detached houses seen from the road on Old Kilmore Road – there will be at least 4 in full view in this development. The view is expressed that the nearest semi-detached house is over 0.2 miles in Deramore Crescent.
164. The proposal contains a mix of house types, ranging from bungalows, detached and semi-detached, within an urban context. The policy does not preclude the development of semi-detached dwellings. Semi-detached dwellings are seen in Deramore Close and Earlsfort Manor, both which are within close proximity to the application site. All proposed dwellings have been assessed and are found to provide a quality residential environment.

Two Storey

165. Concern is expressed that of the 13 houses being built in Earlsfort Manor, only 4 are semi-detached representing 30% as opposed to 70% detached. In comparison the proposed development will have 24 semi-detached properties out of 36 representing 66.66% as opposed to 33.33% detached – object to so many semi-detached houses being built, in particular the semi-detached houses looking onto Old Kilmore Rd – bungalows would be better. It is disturbing to see that two storey houses are proposed within the vicinity of our property.
166. As above, the policy does not preclude semi-detached dwellings or stipulate how many are acceptable in any given development. The application offers a mix of housing types, similar to neighbouring developments. The proposal has been assessed within the context of the surroundings and the relevant policy and has found to be acceptable.

Impact on local Character

167. The view is expressed that the plans are not in keeping with the local area – all properties on both sides of the Old Kilmore Rd either have full frontal views onto the road with a minority having gable views. There are no rear views of any property overlooking the Old Kilmore Road which will be case in the development proposals - gardens will back directly onto Old Kilmore Road.
168. The three dwellings to the north of the site, located adjacent to the Old Kilmore Road, are all double fronted, with each dwelling having a projection along the northern gables finished in artificial stone cladding, creating a feature of interest. A new native species hedge is proposed along the boundary, with estate style metal fencing at the entrance to the development, softening the development at this part of the site.

Impact on Sunlight

169. A representation questions why bungalows don't continue all the way from the rear of Danesfort 1-19 with the view expressed that 2 storey limits sunlight.
170. The development proposes five bungalows and two, two storey detached dwellings along the eastern boundary. The relationship of the two storey dwellings is gable to boundary, with the eastern gable of the dwellings on plots 6 and 17 facing the boundary of the neighbouring dwellings in Danesfort, whereas the bungalows have a back to back relationship with the dwellings behind.
171. The two storey dwellings have been assessed in terms of overlooking and overshadowing and found to be acceptable, and would not result in adverse effects to the adjacent dwellings in Danesfort.

Why have green areas been moved to an area where there are very few existing houses – would this not be better to the rear of Danesfort.

172. Following extensive consultation with Historic Environment Division and advice requesting that more green space should be afforded to the front of the listed

building, the area of open space to the south of the site was agreed to be sited at this location to protect the adjacent listed building and the setting of this building

Impact on Privacy

173. Concern is expressed that the privacy and aspects to the rear of our houses will be severely affected. The view is expressed that light and privacy will be impacted as unhindered sunlight in our garden nearly all day. Loss of sunset to the rear. The two storey houses will impact privacy, will overshadow and cause loss of light.
174. The dwellings have been assessed in terms of separation distances to boundaries, overlooking, overshadowing and overdominance and it is concluded that the distances between the proposed dwelling and any neighbouring properties is acceptable and in line with Departmental guidance.

Environmental Impact

175. Concern is expressed that the proposal will impact on the large number of wildlife - birds and animals, in particular bats and frogs.
176. This has been assessed in terms of the potential impact of the development on natural heritage features and it has been concluded that the development is not likely to harm a European protected species nor is it likely to result in the unacceptable adverse impact on, or damage to known habitats, species or features of Natural Heritage Importance.

Level Differences

177. Questions are asked as to how the rear of properties be impacted as there is a ditch 3ft below the level of a garden – there is always water in the drain and is home to frogs. Concern is also expressed that the existing hedge and shuck are in poor condition, overgrown and attract vermin. The existing hedge is very old and in bad shape. The need for a good perimeter fence to be erected between the new site and our site was highlighted.
178. The plans indicated that the existing hedge along the eastern boundary is to be retained. It is also indicated that in addition to the existing hedge there will be a 1.8 metre close board fence located along most of this boundary, with the exception of that part of the boundary adjacent to the dwelling on plot 6, where there is an existing fence which will be retained and a 1.2 metre high estate style metal fence is also proposed.
179. All matters relating to site drainage have been assessed by DFI Rivers and NIEA Water Management Unit. Natural Environment Division raised no concerns in terms of any protected species being adversely affected.

Impact on Road Network

180. Concern is expressed that 50 cars have an impact on an extremely busy road – it will mean 4 junctions in a very short space. Another junction with inadequate sight lines increases the likelihood of a collision. Many vehicles speed on this road and Old Fort Road is a busy Road for a shortcut through the village.

181. The view is also expressed that additional traffic would cause gridlock on the Old Kilmore Rd at Peak times and cause visibility problems when entering or leaving the development. There is a serious traffic problem in Moira at present - this will exacerbate the problem.
182. Dfl Road have commented on the proposal and are content with the existing road layout, access arrangements and parking.

Retention of Existing Vegetation

183. Questions are asked as to whether the tree lined lane will remain unaltered or affected by the new dwellings.
184. The avenue leading to the listed dwelling to the south of the site at Fortwilliam House is outside of the application red line, and therefore is not considered within this assessment and any planting or development along this avenue cannot be conditioned as part of this application.

Impact on wildlife, flora and fauna

185. This has been assessed in terms of the potential impact of the development on natural heritage features and it has been concluded that the development is not likely to harm a European protected species nor is it likely to result in the unacceptable adverse impact on, or damage to known habitats, species or features of Natural Heritage Importance.

Pollution from Vehicles

186. While pollution emissions are a material consideration, they are not given determining weight in this instance. The site is zoned for housing and a proposal has been presented which complies with all the relevant policy, and as such determining weight is given to this consideration.

Green belt area

187. The site is located within the development limits of Moira and has been zoned for housing in Draft BMAP.

Loss of View

188. The right to a view is a material consideration but is not given determining weight in this instance. The site has been zoned for housing and the application received is found to be compliant with the zoning and the relevant policies. The separation distances are found to be acceptable in terms of potential overshadowing.

Pressure on Services

189. The proposed application is found to be policy compliant, and any additional demands on services such as GPs and resultant health effects is outside of the remit of the planning unit.

Impact on existing infrastructure

190. All the relevant statutory consultees have been consulted on the application, eg. DfI Roads and Rivers, NIW, NIEA Water Management Unit and the Environmental Department in the Council. All found that the proposal was acceptable and would have no adverse effects on existing infrastructure and that this existing infrastructure could support the proposal subject to the compliance with conditions provided.

Footpaths

191. The Private Streets Drawing indicate that a new 2.9m footpath is proposed across the full extent of the site frontage. DfI Roads have been consulted and have raised no concerns in terms of road safety.

Removal of Trees

192. The avenue leading to the farm and associated buildings at Fortwilliam House is outside the red line of this application and as such are not considered in the assessment of this application. Notwithstanding that, the agent acting on behalf of the developer did comment on the removal of trees at this location, and clarified that applicant did not remove any trees and works were done without their client's knowledge.
193. The trees were removed by the owners of the adjacent farm which is not associated with the applicant. It has been confirmed that none of these benefitted from a TPO. Nonetheless the issue has been raised with the enforcement team.

Flooding

194. A drainage assessment has been submitted for consideration and DfI Rivers have accepted its logic with advice provided. It is concluded that subject to the consideration of advice provided by DfI Rivers within their response no concerns will arise in respect of flooding and drainage within the site. NIW were also consulted and raised no concerns in regard to these issues.

Recommendation

195. The application is presented with a recommendation to approve subject to condition and a Section 76 planning agreement to ensure that the developer fulfils his obligations with regards to the delivery of affordable housing in accordance with the requirements of policy HOU10 of the Plan Strategy.

Conditions

196. The following conditions are recommended:

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

Reason: Time limit

2. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.
The hereby determines that the width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No: 20-088-A10c bearing the Area Planning Office date stamp 17th February 2023 and the Departure for Infrastructure Determination date stamp of 28th February 2023.

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

3. The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing No. 20-088-A10c bearing the Area Planning Office date stamp 17th February 2023 and the Department for Infrastructure Determination date stamp of 28th February 2023 prior to the commencement of any other works or other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.

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

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

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

5. The gradient of the access road shall not exceed 3% (1 in 33) over the first 15m outside the road boundary.

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

6. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992.
No other development hereby permitted shall be [occupied] until the works necessary for the improvement of a public road have been completed in accordance with the details outlined blue on Drawing Number 20-088-A10c

bearing the Area Planning Office date stamp 17th February 2023 and the Department for Infrastructure Determination date stamp 28th February 2023. The Department hereby attaches to the determination a requirement under Article 3(4A) of the above Order that such works shall be carried out in accordance with an agreement under Article 3 (4C).

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

7. Any existing street furniture or landscaping obscuring or located within the proposed carriageway, sight visibility splays, forward sight lines or access shall, after obtaining permission from the appropriate authority, be removed, relocated or adjusted at the applicant's expense.

Reason: In the interest of road safety and the convenience of road users.

8. Notwithstanding the provisions of the Planning (General Development) (Northern Ireland) Order 1993, no buildings, walls or fences shall be erected, nor hedges, nor formal rows of trees grown in (verges/service strips) determined for adoption. Reason: To ensure adequate visibility in the interests of road safety and the convenience of road users and to prevent damage or obstruction to services.

9. Notwithstanding the provisions of the Planning (General Development) (Northern Ireland) Order 1993 no planting other than grass, flowers or shrubs with a shallow root system and a mature height of less than 500 mm shall be carried out in (verges/service strips) determined for adoption.

Reason: In order to avoid damage to and allow access to the services within the service strip.

10. No dwelling shall be occupied until hard surfaced areas have been constructed in accordance with approved drawing no. 20-045-A2d bearing the Area Planning Office date stamp 17th February 2023 to provide adequate facilities for parking and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

Reason: To ensure that adequate provision has been made for parking.

11. No dwelling shall be occupied until that part of the service road which provides access to it has been constructed to base course; the final wearing course shall be applied on the completion of each phase.

Reason: To ensure the orderly development of the site and the road works necessary to provide satisfactory access to each dwelling.

12. Prior to the construction of the drainage network the applicant must demonstrate how any out of sewer flooding, emanating from the surface water drainage network agreed under Article 161, in a 1 in 100 year event, will be safely managed so as not to create a flood risk to the development or from the development to elsewhere.

Reason: To safeguard against surface water flood risk.

13. No development shall be commenced until the developer has entered into an agreement with NI Water under Article 161 of the Water and Sewerage Services (Northern Ireland) Order 2006.

Reason: To ensure a practical solution to sewage disposal from this site is possible

14. No development shall proceed beyond sub-floor construction until the foul sewerage network engineering solution as shown on solution design drawing to mitigate the downstream foul capacity issue as agreed with NI Water is provided by the developer to the satisfaction of NI Water. The development shall not be occupied until the developer has complied with all of the requirements set out in the agreement entered into with NI Water under Article 161 of the Water and Sewerage Services (Northern Ireland) Order 2006.

Reason: To ensure a practical solution to sewage disposal from this site is possible.

15. No development should take place on-site until the method of sewage disposal has been agreed in writing with Northern Ireland Water (NIW) or a Consent to discharge has been granted under the terms of the Water (NI) Order 1999.

Reason: This condition is both to ensure protection to the aquatic environment and to help the applicant avoid incurring unnecessary expense before it can be ascertained that a feasible method of sewage disposal is available. The applicant should note this also includes the purchase of any waste water treatment system.

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

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

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

17. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 16.

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

18. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 17. These measures shall be implemented and a final archaeological report shall be submitted to Lisburn and Castlereagh City Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with Lisburn and Castlereagh City Council.

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

19. There shall be no external lighting on the site until a Lighting 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. Specifications of lighting to be used across the site.
 - b. All measures to mitigate for the impacts of artificial lighting on bats and other wildlife, including low lighting levels to be used across the site.
 - c. A map showing predicted light spillage across the site (isolux drawing) showing a light spill of less than 1 Lux on all boundary vegetation
 - d. Bat foraging, commuting and potential roosting habitat to be kept free from any artificial lighting.

Reason: To minimise the impact of the proposal on bats and other wildlife.

20. Existing trees and hedgerow along the site boundaries shall be retained, and additional planting of trees and hedgerow shall be carried out in accordance with submitted drawing No. 03/5 dated 5th January 2023 and drawing No. 17/2 date stamped 6th February 2023.

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

21. Prior to works commencing on site, all existing trees shown on Site Layout Plan, date stamped 22nd July 2021 as being retained shall be protected by appropriate fencing in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction, and as stated within the submitted Tree Report, date stamped 18th December 2020 by Council. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Planning Authority.

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

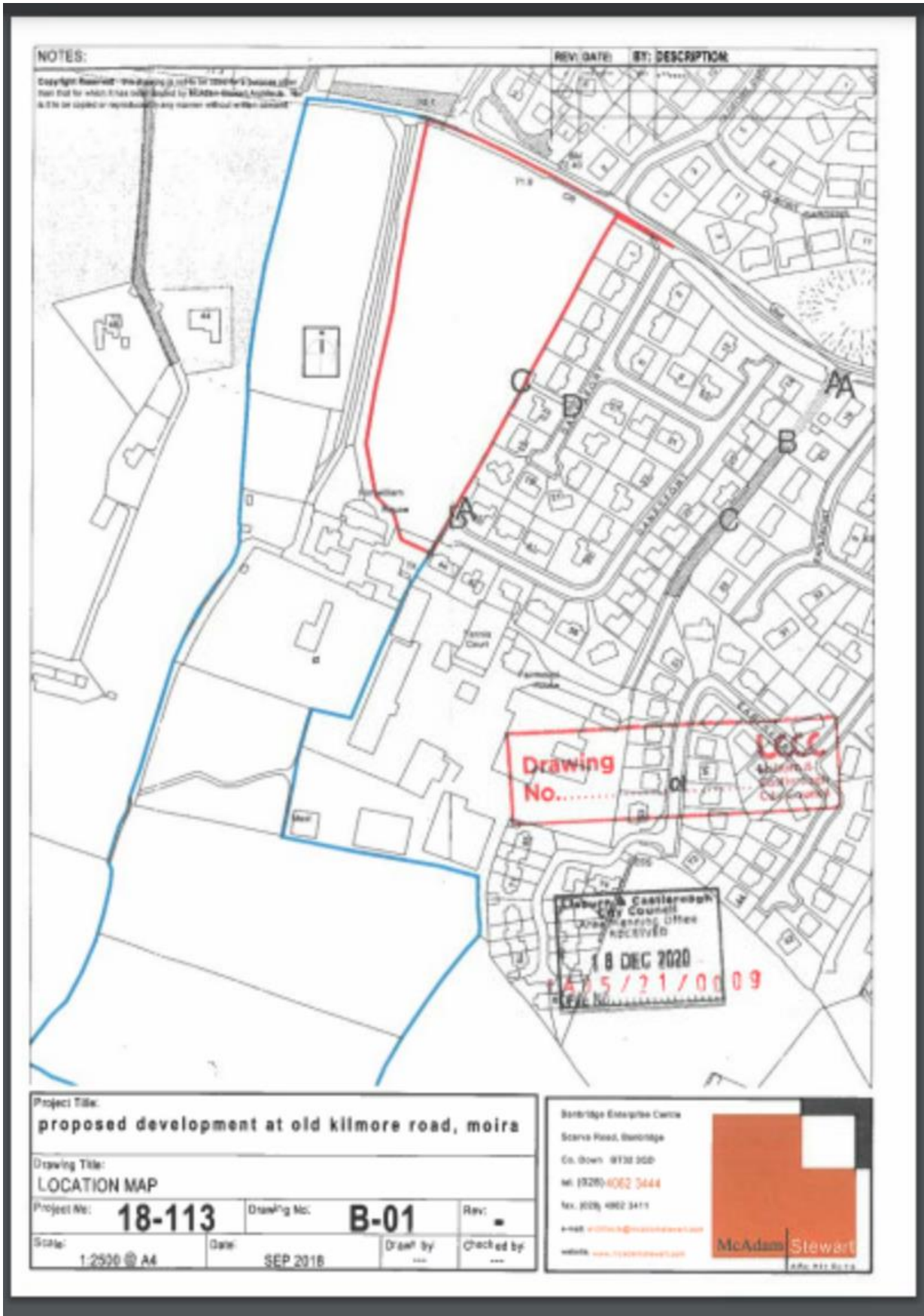
22. All hard and soft landscape works shall be carried out in accordance with Drawing No. 17/2 bearing the Council date stamped 6th February 2023 and the approved details. The works shall be carried out no later than the first available planting season after occupation of the first dwelling.

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

23. 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.

Site Location Plan – LA05/2021/0009/F



Lisburn & Castlereagh City Council

Planning Committee	
Date of Meeting	04 December 2023
Committee Interest	Local – Exceptions Apply (Addendum)
Application Reference	LA05/2022/0018/F
Date of Application	04 January 2022
District Electoral Area	Lisburn South
Proposal Description	Demolition of existing dwelling and construction of residential development comprising 19 dwellings (13 detached and 6 semi-detached), garages, associated access, internal road, parking, landscaping and associated works.
Location	Lands at 126 Hillsborough Road, Lisburn
Representations	One
Case Officer	Maire-Claire O'Neill
Recommendation	Approval

Background

1. A recommendation to approve planning permission was presented to the Committee on 06 November 2023 for the reasons outlined in the officer's report.
2. The proposal included a new access and right turn from the Hillsborough Road into the site. Not normally required for the scale of development proposed it is understood the right turn lane was volunteered by the applicant as part of their original proposal.
3. DfI Roads had indicated no objection in principle to the access arrangements. On the morning of the committee meeting, officials from DfI Roads advised officers of the Council that the right-hand turning lane required departures and relaxations from standard. Whilst their advice was unchanged in relation to the proposed access as the right turn pocket into the site was not designed to full standard they were happy for this part of the proposal to be withdrawn.
4. Following presentation of the application and consideration of representation from third parties, Members agreed to defer the application to allow for

clarification to be provided in relation to the late advice from DfI Roads in relation to the right-hand turning lane.

5. Members also sought clarification why the affordable housing contribution was being provided off-site at 90 to 96 Grand Parade and 2a Lemington Place and not in the application site.

Further Consideration

6. DCAN 15 – Vehicular Access Standards provides guidance on the standards for vehicular accesses. The advice is not withdrawn following adoption of the Plan Strategy and the advice note remains a material consideration in the assessment of this proposal.

7. With regard to right turning lanes, paragraph 5.1 of DCAN 15 states that:

A right turning lane consists of local widening of the priority road with associated carriageway markings to define a declaration taper and dedicated waiting areas for vehicles intending to turn right into a minor road.

8. It is further stated at paragraph 5.2 that:

A right turning lane will often be required where the priority road is a primary, district or local distributor (as defined in the Layout of Housing Roads - Design Guide) or a main traffic route as defined in PPS3: "Development Control: Roads Consideration".

9. This is a main traffic route and it is clarified by DfI Roads officials that the factors which they take into account as to whether a right-turning lane is required include:

- *volume of right turning traffic-requires particular consideration when total flow on the minor road exceeds 500 vehicles per day (i.e. serving more than 50 dwellings) or when right-turns into the development are the dominant movement, having regard to the relative location of the town centre or other major traffic attractor);*
- *speed and volume of priority road traffic;*
- *forward sight distance (proximity to crest or bend);*
- *junction spacing;*
- *accident history / potential;*
- *character / status of the priority road;*
- *advice in TD 42/95, DMRB4 - Volume 6; and*
- *relevant traffic model output.*

10. Whilst volunteered by the applicant it is understood that the need for a right turn lane was raised by senior DfI Roads officials when PSD drawings were presented for review and signing.

11. On their instruction clarification was sought from the internal traffic management branch as to whether any of the above factors applied. It was

confirmed that such provision was not required for a proposal of this nature and scale.

12. Taking into account the clarification offered from DfI Roads that the scale and nature of the development does not justify a need for a right turning pocket it is confirmed that the advice contained at paragraphs 122 and 128 of the main report still apply and that the proposed access will not prejudice or significantly inconvenience the flow of traffic.
13. The description of development is amended to take account of the advice of DfI Roads and the PSD drawings are amended to exclude the details of the right turning lane.
14. The affordable housing requirement for the application site is four residential units. An exception is cited that the proposed development is not in a location where units of a scale and character consistent with the type of units proposed can be designed as affordable housing.
15. The applicant offers a whole scheme on a windfall site in lieu of the affordable housing requirement at the site. The use of suitable and accessible locations is encouraged in policy HOU 10.
16. In respect of the affordable housing provision, it is confirmed that the alternative site was not granted planning permission as an affordable housing scheme.
17. The application was not made on behalf of a Housing Association and no specific exception to policy was sought by the applicant to justify the proposal as an affordable housing scheme. No planning condition is attached restricting the tenure of the proposed development.

Recommendation

18. The recommendation remains that the application is approved subject to conditions outlined below and a Section 76 Agreement requiring the developer to:
 - Make provision for affordable housing at an alternative site and that no more than 14 dwellings shall be constructed prior to the confirmation of the commencement of the development at the alternative location. Otherwise the developer will be required to provide 20% affordable housing at this site which is 3 units.
19. This addendum should be read in conjunction with the main report dated 06 November 2023.

Conditions

20. The following conditions are recommended:

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

Reason: Time limit

2. No development shall take place until drawings necessary to enable a determination to be made in accordance with Article 3 of the Private Streets (Northern Ireland) Order 1980 have been submitted to, and approved by, the Council.

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

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

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

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

4. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 3.

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

5. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 3. These measures shall be implemented and a final archaeological report shall be submitted to Lisburn and Castlereagh City Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with Lisburn and Castlereagh City Council.

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

6. Prior to any site works of any nature or development taking place, a plan showing the exact location of the protected fencing shall be submitted to and agreed with the Council in consultation with Historic Environment Division (Historic Monuments). No works of any nature or development shall be carried out within the fenced area. No erection of huts or other structures, no storage of building materials, no dumping of spoil or topsoil or rubbish, no bonfires, nor any use, turning or parking of plant or machinery shall take place within the fenced area. The fence shall not be removed until the site works and development have been completed.

Reason: to prevent damage or disturbance of archaeological remains within the application site.

7. Access shall be afforded to the site at all reasonable times to a qualified archaeologist to observe the operations and to monitor the implementation of archaeological requirements.

Reason: to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

8. Prior to the commencement of any of the development hereby approved, a final drainage assessment, containing a detailed drainage network design shall be submitted to the Council for agreement.

Reason: In order to safeguard against surface water flood risk

9. No retained tree shall be uprooted or have its roots damaged within the root protection area nor shall arboriculture work or tree surgery take place on any retained tree other than in accordance with the Arboricultural Impact Assessment & Method Statement (including the Tree Impact & Protection Plan and Tree Constraints Plan), bearing Council date stamp 22nd June 2023, without the written consent of the Council. Any approved arboricultural work or tree surgery shall be carried out in accordance with British Standard 3998:2010 Recommendations for Tree Work.

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

10. All trees and planting within the site shall be retained unless shown on the Tree Impact & Protection Plan, bearing Council date stamp 22nd June 2023 and Site Layout and Landscape Plan (date stamped 22nd June 2023) as being removed. Any trees or planting indicated on the approved drawings which die, are removed or become seriously damaged, diseased or dying, shall be replaced during the next planting season (October to March inclusive) with other trees or plants of a location, species and size to be first approved in writing by the Council.

Reason: In the interests of visual amenity.

11. Prior to any work commencing all tree protective measures, protective barriers (fencing) and ground protection is to be erected or installed as specified on the Tree Impact & Protection Plan, bearing Council date stamp 22nd June 2023 and in accordance with the British Standard 5837: 2012 (section 6.2) on any trees to be retained within the site, and must be in place before any materials or machinery are brought onto site for demolition, development or soil stripping. Protective fencing must remain in place until all work is completed and all associated materials and equipment are removed from site.

Reason: To ensure the protection of, and to ensure the continuity of amenity afforded by any existing trees to be retained within the site and on adjacent lands.

12. 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.

15. A soft strip of the roof of the building known to contain roosting bats, followed by await period of 24 hours before any further development work continues.

Reason: To ensure protection of bats and their roosts.

16. Works on the identified building due for demolition to be restricted to the periods of 15th August - 1st November and 1st March – 15th May to minimise impacts to bats.

Reason: To minimise impacts to bats.

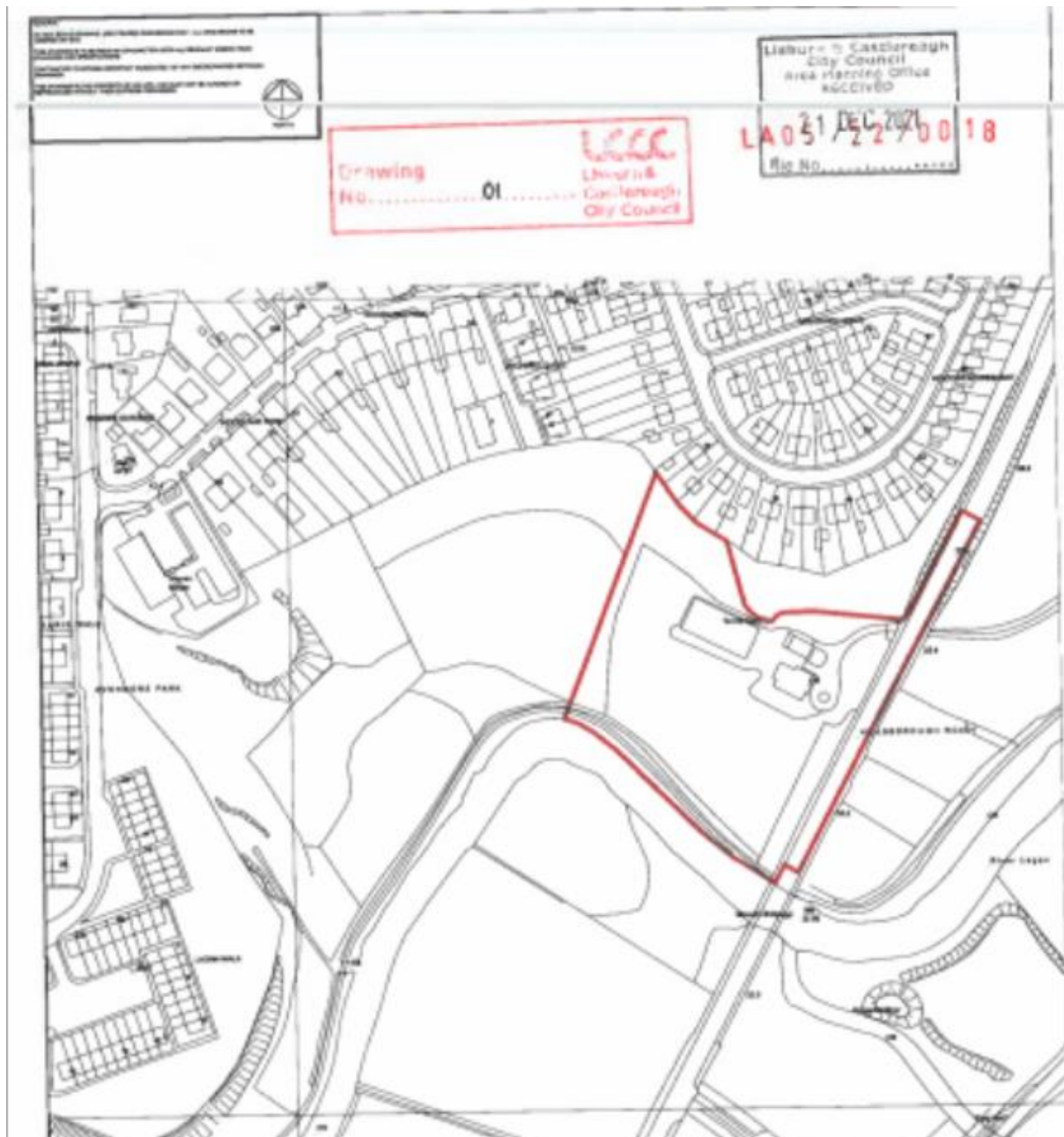
17. Compensatory bat roosting opportunities must be incorporated into the proposal and installed prior to the demolition of the existing dwelling.

Reason: To ensure compensatory roosting opportunities for bats are provided.

18. Prior to works commencing on site, all existing trees shown on Layout Plan, Drawing Number 17, as being retained shall be protected in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Planning Authority.

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

Site Location Plan – LA05/2022/0018/F



Lisburn & Castlereagh City Council

Planning Committee	
Date of Meeting	06 November 2023
Committee Interest	Local – Exceptions Apply
Application Reference	LA05/2022/0018/F
Date of Application	04 January 2022
District Electoral Area	Lisburn South
Proposal Description	Demolition of existing dwelling and construction of residential development comprising 19 detached dwellings (13 detached and 6 semi-detached), garages, associated access with right hand turning lane, internal road, parking, landscaping and associated works.
Location	Lands at 126 Hillsborough Road, Lisburn
Representations	One
Case Officer	Maire-Claire O'Neill
Recommendation	Approval

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] *Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—*

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*

- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

- [4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] *Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.*

4. In accordance with Regulation 3 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Plan Strategy applies to all applications.
5. The existing suite of planning policy statements retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

6. This is a local application. It is presented to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that the application requires a legal agreement to secure the delivery of affordable housing.
7. This application is presented to the Planning Committee with a recommendation to approve as the proposed development creates a quality residential environment. When the buildings are constructed, they will not adversely impact on the character or visual amenity of the area and is in accordance with policies HOU1 and HOU3. The requirements for meeting the policy tests of HOU3 are subject to a condition requiring an archaeological assessment before any works are carried out on site in accordance with policy HE4.
8. Furthermore, the layout and arrangement of the buildings draws on the best local architectural form, materials and detailing and the development will not have a detrimental impact on the amenity of existing residents in properties

adjoining the site by reason of overlooking or dominance. Amenity space is provided at the required standard and the access arrangements are designed to promote walking and cycling. The proposal is in accordance with the requirements of policy HOU4 of the Plan Strategy.

9. Open space is a requirement of policy as the site is more than one hectare in size. The proposal is considered to comply with policy HOU5 of the Plan Strategy in that public open space is provided as an integral part of the development at more than 10% of the total site area.
10. It is considered that the proposal is also in accordance with the requirements of policy HOU10 of the Plan Strategy in that alternative provision is to be made for affordable housing at 20% of the total number of units. This provision will be subject to a Section 76 planning agreement.
11. The proposed complies with policy of TRA1 the Plan Strategy in that the detail demonstrates that an accessible environment will be created through the provision of footways and pedestrian crossing points.
12. It is also considered that the development complies with policies TRA2 and TRA3 of the Plan Strategy in that the detail submitted demonstrates that the access will not prejudice road safety or significantly inconvenience the flow of traffic. Regard is also had to the nature and scale of the development, the character of the existing development, the location and number of existing accesses and the standard of the existing road network.
13. The proposal complies with policies TRA7 of the Plan Strategy in that it is demonstrated that an acceptable level of car parking is provided.
14. The site is also located in close proximity to Moore's Bridge (Grade B1) which is of special architectural and historic interest and is protected by Section 80 of the Planning Act (NI) 2011. HED (Historic Buildings).
15. The listed structure is taken account of in the design and layout of the proposal and the landscaping promotes access to and provides information about the importance of the heritage. Officers have no reason to disagree with the advice of the statutory consultee and it is considered that the proposed development complies with policy HE9 of the Plan Strategy.
16. The proposal complies with policy NH2 of the Plan Strategy in that the ecology report submitted in support of the application demonstrates that the proposed development will give rise to no significant adverse effects on habitats or species of ecological or nature conservation value, the proposed development is unlikely to result in any cumulative impact upon these features when considered alone or with other developments nearby.
17. The proposal also complies with policy NH5 of the Plan Strategy in that the ecology report submitted in support of the application demonstrates that appropriate mitigation and/or compensatory measures have been proposed to address the impact of the development on priority habitats and species.

18. It is accepted that the proposal complies with policies FLD3 of the Plan Strategy in that the site does not lie within the 1 in 100 year fluvial flood plain and the mitigation measures proposed ensure that all surface water discharge is attenuated and limited to greenfield run-off rates.

Description of Site and Surroundings

Site Context

19. This site is approximately 1.8 hectares in size and located on the western side of the Hillsborough Road towards the edge of Lisburn and is approximately 1.3 kilometres south west of the city centre.
20. The site is currently occupied by a large two-storey detached dwelling set on a large curtilage with a tennis court to the rear.
21. A belt of mature trees is present along the western boundary (boundary with Hillsborough Road). A small woodland area lies adjacent to the northern site boundary leading up to the rear gardens of properties in Woodview Crescent. The lands to the west are undeveloped and adjoining the site and to the south is the River Lagan and associated towpath.
22. The topography of the site slopes gently up from the river in a northerly direction towards the existing dwelling and tennis court, before rising more steeply towards the northern boundary.

Surrounding Context

23. The site is located within the development limits and is within the Lagan Valley Regional Park (LVRP). The Lagan Towpath is adjacent to the site. The lands surrounding to the north, northwest, south and southeast is primarily urban in character and mainly in residential use.

Proposed Development

24. The proposed development comprises the demolition of existing dwelling and construction of residential development comprising 19 dwellings (13 detached and 6 semi-detached), garages, associated access with right hand turning lane, internal road, parking, landscaping and associated works.
25. The application is supported with the following documents:
 - Design and Access Statement
 - Planning and Supporting Statement
 - Tree Survey Report
 - Arboricultural Report.
 - Construction Environmental Management Plan (CEMP)
 - NI Biodiversity Checklist
 - Preliminary Ecological Assessment
 - Bat Survey Report

- Preliminary Risk Assessment
- Flood Risk and Drainage Assessment
- Archaeological Method Statement
- Archaeological Monitoring Report
- Transport Assessment Form
- Residential Travel Plan
- Landscape Management Plan

Relevant Planning History

26. The relevant planning history is as follows:

Application Reference	Proposal	Decision
S/2010/0689/F	Proposed demolition of existing dwelling, construction of new 100 bed hotel with function rooms, health suite, free-standing interpretative centre, new road access with right hand turning pocket, car parking & site works.	Approved 15 February 2012

27. Full planning approval was granted on the application site for a 3 storey 100 bedroom hotel in February 2012. This proposal extended approximately 40 metres further west than the current proposal and included function rooms, health suite, parking and circulation area and comprised a new access from Hillsborough Road including a right hand turning lane.

28. This permission has now expired and as such, no weight is attached to this history in assessing this current application.

Consultations

29. The following consultations were carried out:

Consultee	Response
DfI Roads	No objection
LCCC Environmental Health	No objection
NI Water	No objection
Natural Heritage	No objection
Water Management Unit	No objection

Consultee	Response
HED Historic Monuments	No objection
Dfl River Agency	No objection
Lagan Valley Regional Park Office	No objection
Tree Officer LCCC	No objection

Representations

30. One letter of representation in opposition to the application is received. The following issues are raised:

- Proposal will result in more traffic on an already busy road.
- Concerns about the development of land to the rear of objectors property which could result in land slippage.
- Some of the proposed houses are being built on a floodplain.
- Proposal is resulting in more green space along the river being lost.

Environmental Impact Assessment (EIA)

31. The thresholds set out in the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 have been considered as part of this assessment as the site area exceeds the thresholds set out in Section 10 (b) of Schedule 2, of the Planning Environmental Impact Assessment (NI) Regulations 2015.

32. An EIA determination was carried out and it was concluded that the scale and nature of the proposal means that it is not likely to cause any significant adverse environmental impacts. As such, an Environmental Statement was not required to inform the assessment of the application.

Local Development Plan

33. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on Planning applications regard must be had to the requirements of the local development plan and that the determination of applications must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

34. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 states that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

35. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.
36. The site lies within the development limits of Lisburn in both the LAP and in draft BMAP. It is previously developed and the land is not zoned for any purpose. The north-west corner of the site is located within Old Warren Site of Local Nature Conservation (SLNCI).
38. Policy COU 15 of draft BMAP states that:

planning permission will only be granted for new development or intensification of urban development where it can be demonstrated that the proposal is appropriate to, and does not adversely affect the character of the Park, the settlement, the landscape quality and features or the visual amenity.

39. Draft BMAP states that the Lagan Valley Regional Park is a unique asset for the population of the Belfast Metropolitan Area [albeit quashed].
40. In respect of draft BMAP, page 16 states that:

Planning Policy Statements (PPSs) set out the policies of the Department on particular aspects of land use planning and apply to the whole of Northern Ireland. Their contents have informed the Plan preparation and the Plan Proposals. They are material to decisions on individual planning applications (and appeals) within the Plan Area.

In addition to the existing and emerging suite of PPSs, the Department is undertaking a comprehensive consolidation and review of planning policy in order to produce a single strategic planning policy statement (SPPS) which will

reflect a new approach to the preparation of regional planning policy. The preparation of the SPPS will result in a more strategic, simpler and shorter statement of planning policy in time for the transfer of planning powers to Councils.

41. The site is also inside the LVRP and the requirements of the Park Plan also still apply.

Lagan Valley Regional Park Local Plan 2005

42. The aim of the Lagan Valley Regional Park Local Plan 2005 are:
- To protect and enhance the natural and man-made heritage of the Park
 - To conserve the essential character of the Park and to encourage its responsible public use.
 - To seek to ensure that the various land uses and activities within the Park can co-exist without detriment to the environment.
43. There are equivalent policies in the Plan Strategy of the Lisburn and Castlereagh City Council Plan 2032 to the regional policies described in LAP and draft BMAP and which take account of the LVRP Plan.
44. As explained above, this application is for residential development and a number of strategic policies apply. The strategic policy for Housing in Settlements is set out in Part 1 of the Plan Strategy.
45. Strategic Policy 08 Housing in Settlements states that:

The Plan will support development proposals that:

- a) *are in accordance with the Strategic Housing Allocation provided in Table 3*
 - b) *facilitate new residential development which respects the surrounding context and promotes high quality design within settlements*
 - c) *promote balanced local communities with a mixture of house types of different size and tenure including affordable and specialised housing*
 - d) *encourage compact urban forms and appropriate densities while protecting the quality of the urban environment.*
46. As more than 5 residential units are proposed Strategic Policy 07 – Section 76 Agreements states that:

Development will be required to deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale, impact of the development and the sustainability of its location.

A developer will be expected to provide or contribute to the following infrastructure in order to mitigate any negative consequences of development:

- a) *improvements to the transport network, including walking and cycling routes, public transport or, where necessary appropriate parking*

- provision*
- b) *affordable housing*
- c) *educational facilities and/or their upgrades*
- d) *outdoor recreation*
- e) *protection, enhancement and management of the natural and historic environment*
- f) *community facilities and/or their upgrades*
- g) *improvements to the public realm*
- h) *service and utilities infrastructure*
- i) *recycling and waste facilities.*

Housing in Settlements

47. As residential development is proposed policy HOU1 - New Residential Development states that:

Planning permission will be granted for new residential development in settlements in the following circumstances:

- a) *on land zoned for residential use*
- b) *on previously developed land (brownfield sites) or as part of mixed-use development*
- c) *in designated city and town centres, and within settlement development limits of the city, towns, greater urban areas, villages and small settlements*
- d) *living over the shop schemes within designated city and town centres, or as part of mixed use development.*

The above policy applies to all residential uses as set out in Part C of the Schedule to the Planning (Use Classes) Order (Northern Ireland) 2015 (or as amended).

48. The design and layout of the new buildings are subject to policy HOU3 - Site Context and Characteristics of New Residential Development which states:

Planning permission will be granted for new residential development where it will create a quality and sustainable residential environment which respects the existing site context and characteristics. An overall design concept, in accordance with Policy HOU6 must be submitted for all residential proposals and must demonstrate that a proposal draws upon the positive aspects of, and respects the local character, appearance and environmental quality of the surrounding area. Proposals for residential development will be expected to conform to all the following criteria:

- a) *the development respects the surrounding context, by creating or enhancing a local identity and distinctiveness that reinforces a sense of place, and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas*
- b) *archaeological, historic environment and landscape characteristics/features are identified and, where appropriate, protected and suitably integrated into the overall design and layout of the development.*

For new residential development in areas of distinctive townscape character, including Conservation Areas and Areas of Townscape or Village Character, an increased residential density will only be allowed in exceptional circumstances.

All development should be in accordance with available published space standards.

49. The design and layout of the new buildings are also subject to policy HOU4 - Design in New Residential Development which states:
Proposals for residential development will be expected to conform to all the following design criteria:
- a) *the design of the development must draw upon the best local architectural form, materials and detailing*
 - b) *landscaped areas using appropriate locally characteristic or indigenous species and private open space must form an integral part of a proposal's open space and where appropriate will be required along site boundaries to soften the visual impact of the development and assist in its integration with the surrounding area*
 - c) *where identified as a Key Site Requirement adequate provision is made for necessary local community facilities, to be provided by the developer*
 - d) *residential development should be brought forward in line with the following density bands:*
 - *City Centre Boundary 120-160 dwellings per hectare*
 - *Settlement Development Limits of City, Towns and Greater Urban Areas: 25-35 dwellings per hectare*
 - *Settlement Development Limits of Villages and small settlements 20-25 dwellings per hectare.*
 - *Within the above designated areas, increased housing density above the indicated bands will be considered in town centres and those locations that benefit from high accessibility to public transport facilities*
 - e) *a range of dwellings should be proposed that are accessible in their design to provide an appropriate standard of access for all. The design of dwellings should ensure they are capable of providing accommodation that is wheelchair accessible for those in society who are mobility impaired. A range of dwelling types and designs should be provided to prevent members of society from becoming socially excluded*
 - f) *dwellings should be designed to be energy and resource efficient and, where practical should include integrated renewable energy technologies to minimise their impact on the environment*
 - g) *a proposed site layout must indicate safe and convenient access through provision of walking and cycling infrastructure, both within the development and linking to existing or planned networks; meet the needs of mobility impaired persons; and respect existing public rights of way*
 - h) *adequate and appropriate provision is made for car and bicycle parking including where possible electric vehicle charging points*
 - i) *the design and layout must not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance*

- j) *the design and layout should where possible include use of permeable paving and sustainable drainage*
- k) *the design and layout design must demonstrate appropriate provision is made for householder waste storage and its collection can be facilitated without impairment to the access and maneuverability of waste service vehicles*
- l) *the development is designed to deter crime and promote personal safety.*
- m) *Any proposal for residential development which fails to produce an appropriate quality of design will not be permitted, even on land identified for residential use in a development plan.*

50. The Justification and Amplification states:

Please note the Supplementary Planning Guidance on design of residential development that will support the implementation of this policy.

51. It also states that:

Accessible Accommodation

Design standards are encouraged to meet the varying needs of occupiers and be easily capable of accommodating adaptations. Developers should ensure that a range of dwelling sizes (including internal layout and the number of bedrooms) is provided to meet a range of housing needs that facilitate integration and the development of mixed communities.

52. As the site area is more than one hectare in size public open space is required as part of the proposed development. Policy HOU5 - Public Open Space in New Residential Development states that:

Adequate provision must be made for green and blue infrastructure in public open space and for open space that links with green and blue infrastructure where possible and provides pedestrian and cycle linkages to nearby public amenity spaces. Proposals for new residential development of 25 or more units, or on sites of one hectare or more, must provide public open space as an integral part of the development, subject to the following:

- a) *the open space must be at least 10% of the total site area*
- b) *for development proposals of 300 or more units, or on sites of 15 hectares or more, the open space must be at least 15% of the total site area.*

The following exceptions to the above open space provision will apply where:

- a) *the residential development is designed to integrate with and make use of adjoining public open space*
- b) *the provision of open space below 10% of the total site area if the proposal is located within a city or town centre or it is demonstrated that it is close to and would benefit from ease of access to existing public open space*
- c) *in the case of apartment developments or specialist housing (see Policy HOU11) where a commensurate level of private communal open space is being provided.*

Development proposals of 100 units or more, or on sites of 5 hectares or more, must be provided with an equipped children's play area unless one already exists within a reasonable and safe walking distance (generally around 400 metres) of the majority of the units within the proposal.

Public open space required by this policy will be expected to conform to all of the following criteria:

- *it is designed as an integral part of the development with easy and safe access from the dwellings*
- *it is of demonstrable recreational or amenity value*
- *it is designed, wherever possible, to be multi-functional*
- *its design, location and appearance takes into account the needs of disabled persons and it respects the amenity of nearby residents*
- *landscape and heritage features are retained and incorporated in its design and layout.*

In all cases developers will be responsible for the laying out and landscaping of public open space required under this policy.

Developers must demonstrate that suitable arrangements will be put in place for the future management and maintenance in perpetuity of areas of public open space required under this policy.

53. The following paragraph in the Justification and Amplification states:

Public open space can be provided in a variety of forms ranging from village greens and small parks through to equipped play areas and sports pitches. In addition, the creation or retention of blue/green infrastructure, woodland areas or other natural or semi-natural areas of open space can provide valuable habitats for wildlife and promote biodiversity. To provide for maximum surveillance, areas of open space are best located where they are overlooked by the fronts of nearby dwellings.

54. As more than five dwellings are proposed there is a need to consider the requirement for affordable housing. Policy HOU10 - Affordable Housing in Settlements states that:

Where the need for Affordable Housing is identified, through the Housing Needs Assessment on sites of more than 0.5 hectares or comprising of 5 residential units or more, proposals will only be permitted where provision is made for a minimum 20% of all units to be affordable. This provision will be secured and agreed through a Section 76 Planning Agreement.

All developments incorporating affordable housing should be designed to integrate with the overall scheme with no significant distinguishable design differences, in accordance with any other relevant policies contained within this Plan Strategy.

In exceptional circumstances where it is demonstrated that the affordable housing requirement cannot be met, alternative provision must be made by the applicant, or an appropriate financial contribution in lieu must be agreed through a Section 76

Planning Agreement. Such agreements must contribute to the objective of creating mixed and balanced communities.

Proposals for the provision of specialist accommodation for a group of people with specific needs (such as purpose built accommodation for the elderly, Policy HOU11) will not be subject to the requirements of this policy.

Windfall sites will be encouraged for the development of affordable housing in suitable and accessible locations.

By exception, proposals for affordable housing could be permitted on land identified as open space, in accordance with Policy OS1, where it can be demonstrated that all of the following criteria have been met:

- a) *a demonstrable need has been identified by the Northern Ireland Housing Executive*
- b) *the application is made by a registered Housing Association or the Northern Ireland Housing Executive*
- c) *the proposal will bring substantial community benefits that decisively outweigh the loss of the open space.*

Development proposals will not be supported where lands have been artificially divided for the purposes of circumventing this policy requirement.

55. The Justification and Amplification states:

The policy requires a minimum provision of 20% of units as affordable housing. Where up to date evidence indicates a requirement for a higher proportion of affordable housing, the council will expect developments to provide this. Where appropriate this may be indicated through key site requirements within the Local Policies Plan. It may also be secured through discussions with applicants on a case-by-case basis as part of the development management process.

56. The Glossary associated with Part 2 of the Plan Strategy states that *Affordable Housing – affordable housing is:*

- a) *Social rented housing; or*
- b) *Intermediate housing for sale; or*
- c) *Intermediate housing for rent,*

that is provided outside of the general market, for those whose needs are not met by the market.

Affordable housing which is funded by Government must remain affordable or alternatively there must be provision for the public subsidy to be repaid or recycled in the provision of new affordable housing.

Natural Heritage

57. Given the size of the site and the scale of development proposed a bio-diversity and detailed ecology report is submitted in support of this application.

58. Policy NH2 – Species Protected by Law states that:

European Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm a European protected species.

In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:

- a) *there are no alternative solutions; and*
- b) *it is required for imperative reasons of overriding public interest; and*
- c) *there is no detriment to the maintenance of the population of the species at a favourable conservation status; and*
- d) *compensatory measures are agreed and fully secured.*

National Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against.

Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

59. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

Access and Transport

60. The P1 Form indicates that access arrangements for this development involve the construction of a new access to an existing adopted estate road for both pedestrian and vehicular use.

61. Policy TRA1 - Creating an Accessible Environment states that:

The external layout of all development proposals will incorporate, where appropriate:

- a) *facilities to aid accessibility e.g. level access to buildings, provision of dropped kerbs and tactile paving etc, together with the removal of any unnecessary obstructions*
- b) *user friendly and convenient movement along pathways and an unhindered approach to buildings*
- c) *priority pedestrian and cycling movement within and between land uses*
- d) *ease of access to car parking reserved for disabled or other users, public transport facilities and taxi ranks.*

Public buildings will only be permitted where they are designed to provide suitable access for customers, visitors and employees.

Access to existing buildings and their surroundings should be improved as opportunities arise through alterations, extensions and changes of use.

Submission of a Transport Assessment Form (TAF) and a Design and Access Statement may also be required to accompanying development proposals.

62. Policy TRA 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

63. The Hillsborough Road is a protected route within a settlement. Policy TRA 3 – Access to Protected Routes states for other protected routes in settlements:

Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access where it is demonstrated that access cannot reasonably be taken from an adjacent minor road; or, in the case of residential proposals, it is demonstrated that the nature

and level of access will significantly assist in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points.

In all cases, where access to a Protected Route is acceptable in principle it will also be required to be safe in accordance with Policy TRA2. Designated protected routes within this Council area are illustrated in Supplementary Planning Guidance, Part F: Protected Routes Map

64. Car parking is proposed as an integral part of the development. Policy TRA 7 – Car Parking and Servicing Arrangements states that:

Development proposals will provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to published standards or any reduction provided for in an area of parking restraint designated in the Local Development Plan.

Beyond areas of parking restraint a reduced level of car parking provision may be acceptable in the following circumstances:

- a) *where, through a Transport Assessment or accompanying Travel Plan, it forms part of a package of measures to promote alternative transport modes*
- b) *where the development is in a highly-accessible location well served by public transport*
- c) *where the development would benefit from spare capacity available in nearby public car parks or adjacent on street car parking*
- d) *where shared car parking is a viable option*
- e) *where the exercise of flexibility would assist in the conservation of the historic or natural environment, would aid rural regeneration, facilitate a better quality of development or the beneficial re-use of an existing building.*

Proposals involving car parking in excess of the Department's published standards will only be permitted in exceptional circumstances, subject to the submission of a Transport Assessment outlining alternatives.

A proportion of the spaces to be provided will be reserved for people with disabilities.

Car parking proposals should include an appropriate number of reserved electric charging point spaces and their associated equipment.

Where a reduced level of car parking provision is applied or accepted, this will not normally apply to the number of reserved spaces to be provided.

Flooding

65. This is a large site and the drainage must be designed to take account of the impact on flooding elsewhere Policy - FLD3 Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains

A Drainage Assessment (DA) will be required for development proposals that exceed any of the following thresholds:

- a) *a residential development of 10 or more units*
- b) *a development site in excess of 1 hectare*
- c) *a change of use involving new buildings and/or hardsurfacing exceeding 1,000 square metres in area.*

A DA will also be required for any development proposal, except for minor development, where:

- *it is located in an area where there is evidence of historical flooding.*
- *surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features.*

A development requiring a DA will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere. If a DA is not required, but there is potential for surface water flooding as shown on the surface water layout of DfI Flood Maps NI, it remains the responsibility of the developer to mitigate the effects of flooding and drainage as a result of the development.

Where the proposed development is also located within a fluvial flood plain, then Policy FLD1 will take precedence.

Historic Environment and Archaeology

66. There is a scheduled monument in close proximity to the site and there may be other buried archaeology that is unknown. Policy HE4 – Archaeological Mitigation states that:

Where the Council is minded to grant planning permission for development which will affect sites known or likely to contain archaeological remains, the Council will impose planning conditions to ensure that appropriate measures are taken for the identification and mitigation of the archaeological impacts of the development, including where appropriate completion of a licensed excavation and recording examination and archiving of remains before development commences or the preservation of remains in situ.

67. The site is close to listed structure and policy HE9 – Development affecting the Setting of a Listed Building states that:

Proposals which would adversely affect the setting of a listed building will not be permitted. Development proposals will normally only be considered appropriate where all the following criteria are met: a) the detailed design respects the listed building in terms of scale, height, massing and alignment b) the works and architectural details should use quality materials and techniques (traditional and/or sympathetic) in keeping with the listed building c) the nature of the use proposed respects the character of the setting of the building.

Regional Policy and Guidance

Regional Policy

68. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

69. As this proposal is for new housing in a settlement it is stated at paragraph 6.136 that:

The policy approach must be to facilitate an adequate and available supply of quality housing to meet the needs of everyone; promote more sustainable housing development within existing urban areas; and the provision of mixed housing development with homes in a range of sizes and tenures. This approach to housing will support the need to maximise the use of existing infrastructure and services, and the creation of more balanced sustainable communities

70. The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy have been drafted to be consistent with the SPPS.

In assessing development proposals planning authorities must apply the Department's published guidance. In determining a development proposal likely to generate a significant volume of traffic, planning authorities should require the developer to submit a Transport Assessment so as to facilitate assessment of the transport impacts; this should include mitigation measures where appropriate. The Transport Assessment may include a travel plan, agreed with DRD Transport NI, or the relevant transport authority, that sets out a package of complementary measures to secure the overall delivery of more sustainable travel patterns and which reduces the level of private car traffic generated.

In assessing the appropriate amount of car parking, account should be taken of the specific characteristics of the development and its location, having regard to 59 See draft guide to Transport Assessment (published by DOE and DRD, 2006) the Department's published standards and any reduction in standards provided for through a LDP or Transport Assessment.

In determining proposals for public and private car parks, including extensions, the planning authority should be satisfied that there is a need for the development by reference to the councils overall parking strategy following a robust analysis by the applicant. In such cases the planning authority should consult with DRD, or the relevant transport authority. Other relevant planning considerations when determining such proposals will include traffic and environmental impacts and the proposals compatibility with adjoining land uses.

71. Given the size of the site and the extent of land proposed for development in regard to Natural Heritage paragraph 6.174 of the SPPS state that :

Planning authorities should apply the precautionary principle when considering the impacts of a proposed development on national or international significant landscape or natural heritage resources.

72. Paragraph 6.182 of the SPPS further states that:

Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

73. Paragraph 6.198 of the SPPS states that:

Planning authorities should ensure that the potential effects on landscape and natural heritage, including the cumulative effect of development are considered. With careful planning and design the potential for conflict can be minimised and enhancement of features brought about.

74. Again give the size of the site and the potential for surface water run-off to exacerbate flooding elsewhere in regard to flood risk, Paragraph 6.103 of the SPPS states that:

The aim of the SPPS in relation to flood risk is to prevent future development that may be at risk from flooding or that may increase the risk of flooding elsewhere.

75. Paragraph 6.132 of the SPPS further states that:

All planning applications will be determined with reference to the most up to date flood risk information available. The planning authority should consult Rivers Agency and other relevant bodies as appropriate, in a number of circumstances, where prevailing information suggests that flood risk or inadequate drainage infrastructure is likely to be a material consideration in the determination of the development proposal. The purpose of the consultation will often involve seeking advice on the nature and extent of flood risks and the scope for management and mitigation of those risks, where appropriate.

Assessment

Policy HOU 1 – New Residential Development

76. This application is for residential development on land previously developed for a dwelling within the settlement limit of Lisburn. There is a presumption in favour of development on this type of site subject to all other planning and environmental considerations being satisfied. As criteria (c) of the policy applies the requirements of policy is met.

Policy HOU3 - Site Context and Characteristics of New Residential Development

77. The surrounding context is characterised mainly by suburban residential development which comprises a mix of two-storey and one and a half storey semi-detached dwellings mainly finished with a brown brick façade.
78. The River Lagan and towpath is located beyond the southern boundary of the site.
79. There is a large area to the rear of the site which comprises mature trees and other vegetation consistent with a mature woodland setting close to the river in the regional park.
80. The dwellings located along the Hillsborough Road are of varying age, design scale and mass. There is no predominant form of housing. Immediately adjacent to the site these are large two-storey dwellings on generous plots. Lisburn Care home is located on the opposite side of the Road.
81. The planning statement indicates at page 9 that the dwellings will be two storey and that the scale, proportions and massing of the built development is appropriate to the character of the site and surrounding context.
82. For the reasons outlined above, it is accepted that the proposed development will respect the suburban form of housing found in the local context and the scheme is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance. Criteria (a) is met.
83. Paragraph 6.3 of the Planning Supporting Statement makes reference to the landscape quality and features of this part of the LVRP being characterised by the woodland to the north of the site, mature road front vegetation along Hillsborough Road, riparian vegetation adjacent to the River Lagan and the undeveloped lands to the west [outwith the application site].
84. It is these features that contribute to amenity, landscape and ecological value of the site. They have been identified, protected and incorporated into the proposed layout.
102. The residential character of the area will not be significantly changed or significantly harmed by the proposed development. The trees surrounding the site are protected by a TPO and the majority of them are shown to be retained and augmented where necessary with native planting along with standard and heavy standard trees.
85. Whilst the planning statement indicates that there are no features of the archaeological environment and built heritage present on the site advice from Historic Environment Division confirms that the site is in close vicinity of a scheduled, raised rath or early medieval homestead (DOW014:038).
86. Advice indicates that this is a monument of regional importance scheduled for protection under the Historic Monuments and Archaeological Objects (NI) Order 1995. The application site is also in the vicinity of two sites that are entered in

the Department's Industrial Heritage Record, Moore's Bridge (IHR02869) and Costello's Bridge (IHR02870).

87. The recorded sites and monuments nearby and the location of the site adjacent to the ford of Lagan and Ravernet rivers indicate a significant potential for further, previously unrecorded archaeological remains to be encountered within the application site.
88. That said, the impact of the proposal has been considered and advice provided that it complies with policy subject to conditions for the agreement and implementation of a developer funded programme of archaeological works.
89. The Council accept the advice provided by HED. There is a requirement under policy HE4 where the Council is minded to grant planning permission to recommend this be subject to the use of a negative planning condition requiring archaeological investigation and mitigation. Criteria (b) of policy HOU3 is met subject an archaeological evaluation being carried out before any other development is carried out on the site.

Policy HOU4 - Design in New Residential Development

90. The layout as shown on the proposed Site Layout and Landscape drawing published to the Planning Portal on 04 October 2023 demonstrates that there are a number of different house types proposed. A sample description of some of these house types is outlined below.
91. House type 1A is a four-bedroom detached dwelling comprising approximately 170 square metres of floor space. It has a red brick finish and reconstituted stone on some surrounds. The windows comprise white sliding sash and composite doors.
92. House type 4b comprises a 2-storey detached 4 bedroom dwelling (9 metres in height). It has a red brick façade with stone surround to doors and windows and slate roof. There is a rear return with a flat roof and key light roof lantern.
93. The dwellings are all two storey in height. Some have integral garages and others are detached.
92. The layout of the rooms in each of the units, the position of the windows along with the separation distance also ensures that there is no overlooking into the private amenity space of neighbouring properties.
93. The development on the site does not conflict with surrounding land uses. It is well separated from adjoining residential development on the north and is situated at a lower ground level. The buildings are not dominant or overbearing and no loss of light would be caused.
94. A minimum of 20 metres separation distance is provided between units which back onto each other within the proposed development. These figures are consistent with the guidance set out at paragraphs 5.19 – 5.20 of the Creating Places document.

95. The proposed layout is consistent with the form of housing found in the surrounding area. The proposed houses all face towards the internal service road.
96. The house types provided are accessible and designed to ensure that they are capable of providing accommodation that is wheelchair accessible for persons with impaired mobility.
97. The proposed design and finishes are considered to draw upon the materials and detailing exhibited within the surrounding area and will ensure that the units are as energy efficient as possible.
98. For the reasons outlined above, criteria (a), (e), (f) and (i) are considered to be met.
99. There is no requirement for the provision of a local community or neighbourhood facility for this scale of development. The site is accessible to a number of shops and other neighbourhood facilities in Lisburn. Criteria (c) is met.
100. Private outdoor amenity space for each unit ranges from 70 square metres – 245 square metres which is well in excess of the guideline stipulated in Creating Spaces. The rear gardens range from 12 metres to 19 metres and this is considered acceptable.
101. The landscape plan demonstrates that the mature trees along the site frontage with the Hillsborough Road are retained. Extra heavy standard tree planting is shown to line the access into the site and to supplement gaps in roadside planting.
102. An Arboricultural report was submitted with the application as there are a number of TPO trees within the site boundaries. In its executive summary, it is stated that the layout of the development proposal has also been designed to ensure the incorporation and protection of trees and vegetation along the riparian corridor by the River Lagan and to the west, in recognition of their contribution to the visual amenity and character of the Lagan Towpath, and ecological contribution to the nearby Site of Local Nature and Conservation Importance (SLNCI).
103. The findings also indicate that some of the trees to be removed are subject to a Tree Preservation Order. A large number of these trees are younger ornamental species planted as landscaping around the existing dwelling and driveway and offer limited or no public visual amenity. The other TPO trees that will be impacted include an early mature treeline along Hillsborough Road that were previously granted removal under a planning application in 2012 for a new entrance.
104. However, a landscape plan submitted as part of the application proposes a diverse mix of new trees within the site. This new planting will include a varied age and mix of native and non-native trees. The landscape plan proposes tree planting along the northern boundary and by Hillsborough Road to complement

and enhance the existing mature tree population and to strengthen the future amenity and ecological benefits provided by trees in this area.

105. The tree officer in the council has been consulted on a number of occasions throughout the processing of the application. In the latest response dated 4 September 2023, it was concluded that the amended layout in relation to the TPO is welcomed, in particular the removal of Sites 21-25 and the relocation of Site 1. It is considered that these amendments will protect the overall integrity of the TPO along the Hillsborough Road, particularly when the replacement planting has been carried out. Conditions are also proposed.
106. The proposed site layout drawing includes details of other internal boundary treatments including formal and informal hedges to housing areas and block retaining walls having regard to the change in topography across the site. The retaining structures are green faced to soften any impact.
107. For the reasons outlined above, criteria (b) is met.
- 101 With regard to criteria (d) the proposed density equates to 16.13 dwellings per hectare which is much less than that found in the established residential area and the proposed pattern of development is in keeping with the overall character and environmental quality of the established residential area. The average unit size exceeds space standards set out in supplementary planning guidance.
103. The internal road layout provides for safe and convenient access through the site and the provision of dropped kerbs and tactile paving will also serve to meet the needs of mobility impaired persons. Adequate and appropriate provision is also made for in curtilage parking which meets the required parking standards. Criteria (g) and (h) are considered to be met.
108. The careful delineation of plots with appropriate fencing will serve to deter crime and promote personal safety. Criteria (l) is considered to be met.
109. Provision can be made for householder waste storage within the curtilage of each unit and its safe collection can be facilitated without impairment to the access manoeuvrability of waste service vehicles. Criteria (k) is met.

Policy HOU 5 - Public Open Space in New Residential Development

104. Detail submitted with the application indicates that the site exceeds one hectare and as such, open space must be provided as an integral part of this development.
105. The proposed layout plan indicates that 2014 square metres of open space is provided as an integral part of the development. This equates to 12.7% of the overall site area which is in excess of the 10% requirement for residential development. This space extends along the sites boundary with the existing towpath.

106. The development is designed to allow for easy access to the towpath which adds quality to the proposal.
107. For the reasons outlined above, the policy tests associated with HOU5 are met.

Policy HOU10 – Affordable Housing

108. The proposal includes more than 5 dwellings. The Agent indicates in an email dated 21 August 2023, that it is their intention to make alternative provision through the delivery of an affordable housing scheme on lands located off Leamington Place, Grand Street Lisburn. It explains that this site already benefits from planning permission [LA05/2021/1142/F] and that works are due to commence on site soon.
109. The policy does state that that in exceptional circumstances alternative provision can be made off-site by the applicant. A case is made that the scale and mature of the proposed development does not lend itself to the provision of affordable housing. This is a suburban location and the proposed housing falls outside the normal cost parameters for affordable housing. Another more sustainable location closer to the City Centre is offered along with a larger number of units than the minimum required by policy. The mix and type of affordable units are subject to consultation with the NIHE.
110. An exception is demonstrated for the reasons outlined above and subject to a section 76 agreement, the tests associated with Policy HOU10 are met.

Natural Heritage

111. A Preliminary ecological Assessment (PEA) prepared by Blackstaff Ecology has been submitted as part of the application to assess the likely impact of the proposal upon ecological sites, species and Habitats.
112. The PEA highlighted the need for bay surveys to be carried out as the existing house and garage were identified as having bat roost potential and they are identified as to be demolished to facilitate the proposed development.
113. These surveys were carried out and as a result of the activity observed, it is recommended that removal of the roofs of these 2 buildings is undertaken at the appropriate time of year to allow the bats to be fly away or be moved by an experienced ecologist.
114. No other evidence of any other protected species has been identified in or surrounding the site.
115. The northwest corner and strips along the western boundary of the application site are located on the eastern edge of the Old Warren SLNCI, which extends almost a mile north west of the site along the river corridor. It is noted for its floodplain habitats and associated flora.
116. The layout of the development has been designed to protect and maintain these habitats along the southern boundary of the site and mature belt of

vegetation along the Hillsborough Road frontage which fall within the SLNCI designation and are protected by the TPO on the site.

117. In paragraph 97 of the PEA, it identifies the small area of SLNCI located on steeply sloping ground in the north-west corner of the site to be in poor condition, overall being overrun with bramble scrub. This part of the SLNCI lies well outside of the floodplain and does not contain any wetland habitats.
118. Furthermore, a Construction Environment Management Plan (CEMP) has been submitted to mitigate against any likely significant effects on these designations from the proposed development.
119. It is therefore considered that due to limited biodiversity value and in the context of the overall impact on the wider SLNCI, that development of this area will not have a significant impact on the old Warren SLNCI in accordance with requirements of ENV 2 of draft BMAP.
120. Based on a review of the detail submitted with the application and the advice received from NED, it is accepted that appropriate mitigation and/or compensatory measures have been proposed to outweigh the impact on priority habitats and priority species consistent with policies NH2 and NH5 of the Plan Strategy.

Access and Transport

Policy TRA1 Creating an Accessible Environment

121. The proposed development will link with existing pedestrian infrastructure in the area and tactile paving, dropped kerbs and a new pedestrian refuge island across the A1 will be provided to assist pedestrians crossing the proposed site access.

Policy TRA2 Access to Public Road

122. The proposal involves a new access and right hand turning pocket onto the Hillsborough Road which is a protected route. The proposed access is similar to the one approved under the hotel application.
123. Vehicle and pedestrian access to the site will be directly from A1 Hillsborough Road via a reconfiguration of the existing site access. The site access is located approximately 500m north from the Hillsborough Road/ Ravernet Road/ Blairs Road Signal-Controlled Junction.
124. A Transport Assessment Form (TAF) is submitted in support of the application. It provides detail of Travel Characteristics, Transport Impacts and Measures to mitigate impacts/influence travel to the site.
125. The detail contained within the TAF illustrates that the proposed site access can accommodate the additional traffic movements associated with the development proposals.

126. Accordingly, the vehicle movements associated with the proposed development are not anticipated to cause any noticeable impact on the surrounding area. Pedestrian and cyclist access to the site will be via the exiting footway provision along A1 Hillsborough Road.
127. As set out in the TAF, there are 5 bus stops within 400 metres of the application site providing services to Ballynahinch, Newcastle, Newry, Belfast City Centre and local city service around Lisburn itself.
128. Advice received from DfI Roads confirms that they have no objection subject to endorsement of PSD drawings.

TRA3 – Access onto Protected Route

129. As explained above, the proposal involves a new access and right hand turning pocket onto the Hillsborough Road which is a protected route. In this case, there is no opportunity for access to be taken from an adjacent road and the detail submitted in terms of access arrangements along with the provision of a right hand turning lane will assist with the creation of a quality environment without compromising road safety or resulting in an unacceptable proliferation of access points.
130. Advice received from DfI Roads confirms that they have no objection and as such, it is accepted that the tests associated with Policy TRA3 have been met.

TRA7 – Carparking and servicing arrangements in new developments

131. The proposal is required to provide 54 parking spaces to fully comply with parking standards. The proposed site layout will include 55 parking spaces in accordance with parking standards and this is deemed acceptable.
132. The TAF explains that parking will conform to the guidelines for housing contained within Creating Places and the demand is based on in-curtilage supply, type of dwelling and size of dwelling.
133. A Travel Plan was also submitted in support of the application. The objective of this Travel Plan is to set out a long-term strategy to maximise the opportunity for those travelling to the site to avail of sustainable travel modes and to reduce the dependency on travel by private car.
134. In accompanying this Travel Plan, a Residential Travel Pack will be provided to the residents of the development, which will provide detailed information relating to the sustainable transport modes of walking, cycling and public transport.
135. The information in the travel plan details that Translink Smartlink Cards are available for use on all bus services from the site to the city centre, reducing the cost of travel on Metro and Ulsterbus services.

136. In addition, the residents and visitors will be made aware of Translink's a-link initiative, as the financial savings could incentivise travellers to make use of public transport.
137. The consultants have stated that the Travel Plan will encourage cycling to and from the proposed development by:
- Promoting the economic, health and environmental benefits of cycling – saves money, helps lose weight, delivers a less polluted journey;
 - Providing copies of Sustrans leaflets at information areas as well as a link to the online map;
 - Promoting cycling activities/ elements of Sustrans; and
 - Making residents aware of the Bike2Work initiative
138. Based on a review of the information and the advice received it is considered that the proposal satisfies the policy tests associated with policies TRA1, TRA2, TRA3 and TRA7 of the Plan Strategy.

Historic Environment and Archaeology

139. The application site is in the close vicinity of a scheduled, raised rath or early medieval homestead (DOW014:038). This is a monument of regional importance scheduled for protection under the Historic Monuments and Archaeological Objects (NI) Order 1995. The application site is also in the vicinity of two sites that are entered in the Department's Industrial Heritage Record, Moore's Bridge (IHR02869) and Costello's Bridge (IHR02870).
140. The recorded sites and monuments nearby and the location of the site adjacent to the ford of Lagan and Ravernet rivers indicate a significant potential for further, previously unrecorded archaeological remains to be encountered within the application site. HED (Historic Monuments) has considered the impacts of the proposal.
141. HED (Historic Monuments) were consulted and are content that the proposal satisfies policy requirements, subject to conditions for the agreement and implementation of a developer-funded programme of archaeological works. This is to identify and record any archaeological remains in advance of new construction, or to provide for their preservation. It is therefore recommended that conditions are attached to the decision notice.
142. The site is also located in close proximity to Moore's Bridge (Grade B1) which is of special architectural and historic interest and is protected by Section 80 of the Planning Act (NI) 2011. HED (Historic Buildings) also has considered the impacts of the proposal on the designation and on the basis of the information provided advises that it is content with the proposal without conditions.
143. Officers have no reason to disagree with the advice of the statutory consultees. It is taken account of in the design and layout of the proposal and the landscaping promotes access to and provides information about the importance of the heritage.

144. It is therefore contended that the proposed development complies with policies HE4 and HE9 of the Plan Strategy.

Flooding

145. The P1 Forms indicates that both surface water and foul sewage will be disposed of via mains connection.
146. A Drainage and Flood Assessment submitted in support of the application provides details of the existing runoff and post development run off.
147. With regard to existing run off, it explains that the existing site is 4.03 hectares and is a greenfield. It advises based on the existing site layout and applying a surface water run off rate of 10 l/s/ha that the site generates 40.3 l/s.
148. With regard to post development runoff, it explains that it is proposed to construct new storm sewers to serve the development and that it is proposed to limit the discharge to a maximum of 50 l/s from Network 1 as per current adoption agreement. IN addition, 11.1 l/s and the schedule 6 consented rate will be discharged from Network 2 to the adjacent, undesignated watercourse.
149. The assessment indicates that these rates are achieved through use of flow control devices with approximately 402m³ [Network 1] and 222m³ [Network 2] of attenuation provided within oversized drainage infrastructure.
150. It also indicates that the proposed network provides considerable attenuation for return periods exceeding the performance requirements of Sewers for Adoption NI.
151. An addendum to the Drainage Assessment received in July 2022 addressed comments from DfI Rivers in a response dated September 2020 in respect of changes to the site layout and levels. This addendum provides details on a review undertaken in relation to drainage options and detailed design of the storm and foul drainage networks to ensure compliance with consented rates of discharge.
152. In addition to the provisions for storm drainage, foul sewage will be discharged to the existing sewer network to the south east of the site. External works to create capacity in the existing public sewer network have been agreed with NI Water and are to be delivered in advance of occupation.
153. Advice received from DfI Rivers on 22 September 2020 confirmed that the site does not lie within the 1 in 100 year fluvial flood plain and as such, they had no reason to object to the proposed development from a drainage or flood risk perspective.
154. In relation to Policy FLD 3, the response confirms that the mitigation measures proposed to ensure that all surface water discharge is attenuated and limited to greenfield run-off rates is agreed and whilst not responsible for the preparation of the Drainage Assessment report accepts its logic and has no reason to disagree with its conclusions.

155. Water Management Unit advised that they had considered the impacts of the proposal on the water environment and would advise the proposal has the potential to adversely affect the surface water environment.
156. Advice received from NI Water confirms that there was public water supply within 20 metres of the proposed site. In relation to public foul sewer, the response advised that a formal sewer connection application was required to be made for all developments including those where it is proposed to re-use existing connections.
157. With regard to public surface water sewer, the advice confirmed that there was no surface water sewer within 20 metres of the site.
158. Confirmation was also provided to indicate that there was available capacity at the receiving Waste Water Treatment Works.
159. Officers have no reason to disagree with the advice of the consultees. Based on a review of the information and advice received from DfI Rivers, Water Management Unit and NI Water, it is accepted that the proposal complies with policy FLD3 of the Plan Strategy.

Consideration of Representations

160. The following points of objection have been raised and are considered below:

Proposal will result in more traffic on an already busy road

161. As detailed above, the proposal meets the relevant policies. The proposed access and car parking is acceptable and the proposal will not prejudice road safety.

Concerns about the development of land to the rear of objector's property which could result in land slippage

162. Material weight cannot be afforded to this assertion as no contrary evidence has been put forward to substantiate this claim. Retaining is proposed where appropriate and any alternative design that is required to support a boundary with a neighbouring property may require separate approval in its own right.

Some of the proposed houses are being built on a floodplain.

163. No dwellings are proposed to be built on the flood plain and the Assessments submitted illustrate that the proposal will not result in an increase in flood risk.

Proposal is resulting in more green space along the river being lost.

164. The proposal is located on lands within the development limits and open space is provided as part of the overall scheme. No designated areas of open space will be lost due to the proposal.

Recommendation

165. The application is presented with a recommendation to approve subject to conditions outlined and a Section 76 Agreement requiring the developer to:

- Make provision for affordable housing at an alternative site and that no more than 14 dwellings shall be constructed prior to the confirmation of the commencement of the development at the alternative location. Otherwise the developer will be required to provide 20% affordable housing at this site which is 3 units.

Conditions

166. The following conditions are recommended:

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

Reason: Time limit

2. No development shall take place until drawings necessary to enable a determination to be made in accordance with Article 3 of the Private Streets (Northern Ireland) Order 1980 have been submitted to, and approved by, the Council.

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

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

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

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

4. No site works of any nature or development shall take place other than in accordance with the programme of archaeological work approved under condition 3.

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

5. A programme of post-excavation analysis, preparation of an archaeological report, dissemination of results and preparation of the excavation archive shall be undertaken in accordance with the programme of archaeological work approved under condition 3. These measures shall be implemented and a final archaeological report shall be submitted to Lisburn and Castlereagh City Council within 12 months of the completion of archaeological site works, or as otherwise agreed in writing with Lisburn and Castlereagh City Council.

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

6. No site works of any nature or development shall take place until a fence has been erected around the area specified, on a line to be agreed with the Historic Environment Division (Historic Monuments). No works of any nature or development shall be carried out within the fenced area. No erection of huts or other structures, no storage of building materials, no dumping of spoil or topsoil or rubbish, no bonfires, nor any use, turning or parking of plant or machinery shall take place within the fenced area. The fence shall not be removed until the site works and development have been completed.

Reason: to prevent damage or disturbance of archaeological remains within the application site.

7. Access shall be afforded to the site at all reasonable times to any archaeologist nominated by the Department for Communities – Historic Environment Division to observe the operations and to monitor the implementation of archaeological requirements.

Reason: to ensure that identification, evaluation and appropriate recording of any archaeological remains, or any other specific work required by condition, or agreement is satisfactorily completed.

8. Prior to the commencement of any of the development hereby approved, a final drainage assessment, containing a detailed drainage network design shall be submitted to the Council for agreement.

Reason: In order to safeguard against surface water flood risk

9. No retained tree shall be uprooted or have its roots damaged within the root

protection area nor shall arboriculture work or tree surgery take place on any retained tree other than in accordance with the Arboricultural Impact Assessment & Method Statement (including the Tree Impact & Protection Plan and Tree Constraints Plan), bearing Council date stamp 22nd June 2023, without the written consent of the Council. Any approved arboricultural work or tree surgery shall be carried out in accordance with British Standard 3998:2010 Recommendations for Tree Work.

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

10. All trees and planting within the site shall be retained unless shown on the Tree Impact & Protection Plan, bearing Council date stamp 22nd June 2023 and Site Layout and Landscape Plan (date stamped 22nd June 2023) as being removed. Any trees or planting indicated on the approved drawings which die, are removed or become seriously damaged, diseased or dying, shall be replaced during the next planting season (October to March inclusive) with other trees or plants of a location, species and size to be first approved in writing by the Council.

Reason: In the interests of visual amenity.

11. Prior to any work commencing all tree protective measures, protective barriers (fencing) and ground protection is to be erected or installed as specified on the Tree Impact & Protection Plan, bearing Council date stamp 22nd June 2023 and in accordance with the British Standard 5837: 2012 (section 6.2) on any trees to be retained within the site, and must be in place before any materials or machinery are brought onto site for demolition, development or soil stripping. Protective fencing must remain in place until all work is completed and all associated materials and equipment are removed from site.

Reason: To ensure the protection of, and to ensure the continuity of amenity afforded by any existing trees to be retained within the site and on adjacent lands.

12. 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.

14. There shall be no demolition works carried out on the building with a known bat roost prior to the granting of a NIEA Wildlife Licence. In order to satisfy the provisions of the Habitats Regulations, it must be shown in a method statement that the proposed development will not have a detrimental impact on the conservation status of the species in its natural range. Please note that this licence may be subject to further conditions.

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

15. A soft strip of the roof of the building known to contain roosting bats, followed by await period of 24 hours before any further development work continues.

Reason: To ensure protection of bats and their roosts.

16. Works on the identified building due for demolition to be restricted to the periods of 15th August - 1st November and 1st March – 15th May to minimise impacts to bats.

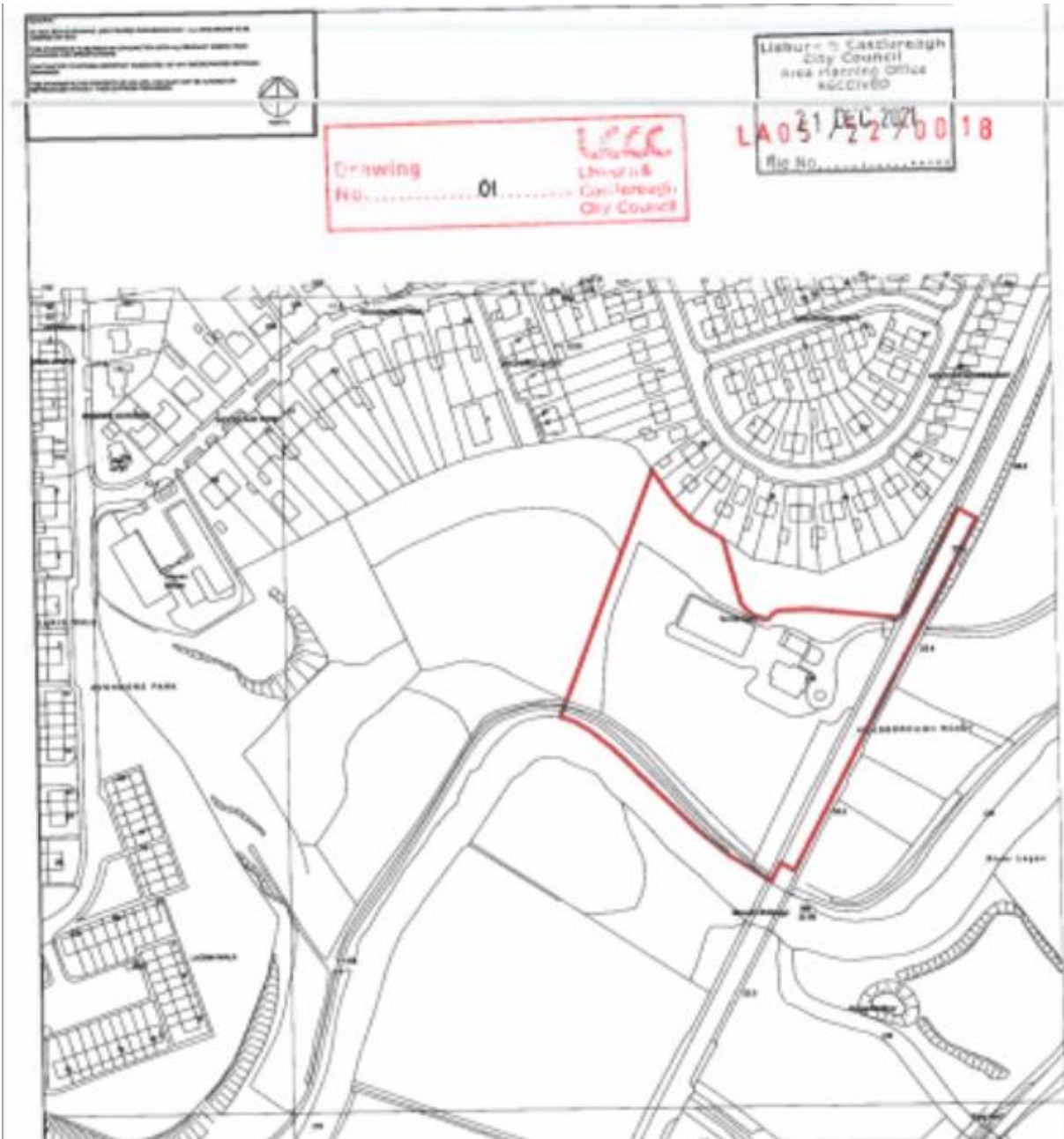
Reason: To minimise impacts to bats.

17. Compensatory bat roosting opportunities must be incorporated into the proposal and installed prior to the demolition of the existing dwelling.

Reason: To ensure compensatory roosting opportunities for bats are provided.

18. Prior to works commencing on site, all existing trees shown on Layout Plan, Drawing Number 17, as being retained shall be protected in accordance with British Standard 5837:2012 Trees in relation to design, demolition and construction - Recommendations. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the written approval of the Planning Authority.

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



Lisburn & Castlereagh City Council

Planning Committee	
Date of Committee	04 December 2023
Committee Interest	Local Application [Called In]
Application Reference	LA05/2021/0321/F
Date of Application	23 May 2021
District Electoral Area	Downshire East
Proposal Description	Retention of outdoor activity area and all associated structures for the purpose of paintballing and change of use of agricultural building for reception, office and storage use associated with the paintballing activity (retrospective)
Location	112 Comber Road, Hillsborough
Representations	Two
Case Officer	Sinead McCloskey
Recommendation	Approval

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. In accordance with Regulation 3 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Plan Strategy applies to all applications.
5. The existing suite of planning policy statements retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

6. This application is categorised as a local application. It is presented to the Committee in accordance with the Protocol for the Operation of the Planning Committee in that it has been Called In.
7. The application is recommended for approval in that it is considered that the proposed development complies policies COU1, COU15 and COU16 of the Plan Strategy.

8. In addition, the proposal complies with policies OS3 and OS6 of the Plan Strategy.
9. The proposal is also in accordance with policy tests associated with HE2, NH5, TRA2 and WM2 are also satisfied.

Description of Site and Surroundings

Site

11. The site is located approximately 270 metres to the south of the Comber Road Lisburn. It is accessed via an existing lane serving that serves a dwelling at 112 Comber Road and an existing karting track.
12. There are several large agricultural buildings located between the application site and the dwelling. Large areas of hard standing around these buildings provide access to other parts of the site. It is also used for the parking of vehicles in association with the established karting track.
13. The application site is located within a densely wooded area, at a higher level than the surrounding land. The trees are mature and are approximately 10 -14 metres in height. The boundary of the site consists of some dense hedging and a post and wire fence.
14. A number of wooden structures associated with the operation of the proposed activity were constructed within the site.

Surroundings

15. The site is located within the countryside and the immediate surrounding area is mostly rural in nature characterised by farmland, farm outbuildings and residential properties.

Proposed Development

16. This is a full application for the retention of outdoor activity area and all associated structures for the purpose of paintballing and change of use of agricultural building for reception, office and storage use associated with the paintballing activity (retrospective).
17. The following additional information was submitted in support of the application:
 - Supporting statement
 - Biodiversity Checklist and Preliminary Ecological Assessment and associated Badger Survey

- Noise Impact Assessments
- Transport Assessment Form
- Parking Survey

Relevant Planning History

18. The planning history associated with the application site is set out in the table below:

Reference Number	Description	Location	Decision
LA05/2016/0009/LDE	Karting Business-Commercial kart track and associated buildings	112 Comber Road, Hillsborough	Certified March 2016

Representations

19. Two representations in opposition to the proposal has been received on behalf of a neighbouring landowner.

20. In summary, the following issues are raised:

- Validity of application
- Necessity for EIA
- Necessity of a Habitats Regulation Assessment and full ecological survey
- Unacceptable amenity effects on people living nearby
- Noise disturbance and effects of cartridges on livestock and animals
- Requirement for a Section 76 Agreement to provide noise attenuation measures and restricted operating hours/seasonal requirements
- Ongoing dispute with the karting business
- Application is contrary to Policy OS5
- Sound mitigation measures are required if approved

21. The issues raised in the objections have been considered as part of the assessment of this application.

Consultations

22. The following consultations were carried out:

Consultee	Response
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Consultee	Response
LCCC Environmental Health	No objection
DfI Roads	No objection
NIEA – Water Management Unit	No objection
NIW	No objection
NIEA – Natural Environment Division	No objection
Historic Environment Division	No objection

Environmental Impact Assessment (EIA)

23. The application site is not located within a sensitive area as defined at paragraph 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017.
24. That said, as the retrospective proposal adds cumulatively to a development that falls under part 11(a) – Permanent racing and test trackers for motorised vehicles of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 and as the site area exceeds the threshold the proposal has been considered against Part 13(a) – change or extension of development listed.
25. The assessment had regard to the characteristics of the development, its location and potential impacts. The cumulative impact of the adjacent racing enterprise and the outdoor paintballing activities running in tandem is considered in noise impact assessments. The scale of the operation and means that there is unlikely to be any significant environmental affect that would require assessment. Visitors to the site are likely to be attracted to both activities and it does not necessarily follow that there would be a significant increase in the scale of operations.
26. Regard is also had to the link between drainage from the site and impact on designated sites. No significant impact was identified and an Environmental Statement was not considered to be required.

Local Development Plan

27. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

28. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

29. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations. The site is located in the Green Belt in LAP and at page 49 it states:
that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.
30. In draft BMAP (2004) this site was located in the open countryside and the Belfast Metropolitan Area Green Belt. It is stated at page 17 of the associated Plan Strategy document that:
The Department has begun progressively to replace the Rural Strategy. The Planning Strategy section of the Rural Strategy has been superseded by the RDS, whilst the topic policy sections are progressively being replaced by PPS's. The Rural Strategy remain material considerations until superseded by PPS's.
31. In the subsequent revision to draft BMAP (2014) this site is located in the open countryside but reference to the Belfast Metropolitan Area Green Belt is removed. It is stated at policy SETT 4 at page 32 of Part 3 Volume 1 that:
The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

32. There are equivalent policies in the Plan Strategy of the Lisburn and Castlereagh City Council Plan 2032 to the regional policies described in LAP and draft BMAP.
33. This is a retrospective application for paint balling in the open countryside. The strategic policy for outdoor recreation in the countryside is set out at page 118 of Part One of the Plan Strategy.
34. It states that:

The Plan will support development proposals that:

- a) *protect and enhance existing open space and provide new open space provision*
- b) *support and protect a network of accessible green and blue infrastructure*
- c) *support and promote the development of strategic and community greenways.*

35. At Part 2 of Plan Strategy Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

36. This is a retrospective application for 'other no-residential uses' not in accordance with policies COU11 to COU 14. The proposal is for an outdoor recreation activity which falls to be assessed against the requirements of policies OS3 and OS6.
37. As policy COU 1 requires all forms of development to meet the general criteria of policies COU15 and COU16 these are also considered

Outdoor Recreational Activities

38. This is a retrospective application for the change of use of land for paintballing. It includes the erection of structures on the land for the operation of activity. Policy OS3 – Noise-Generating Sports and Outdoor Recreational Activities states:

Proposals for the development of sport or outdoor recreational activities that generate high levels of noise will only be permitted where all the following criteria are met:

- a) *There is no conflict, disturbance or nuisance caused to people living nearby other noise sensitive uses*
- b) *There is no conflict, disturbance or nuisance caused to farm livestock and wildlife*
- c) *There is no conflict, disturbance or nuisance caused to the enjoyment of the natural environment/nature conservation and the historic environment.*

39. Policy OS6 – Outdoor Recreation in the Countryside states:

Proposals for outdoor recreational use in the countryside will be permitted where all of the following criteria are met:

- a) *There is no adverse impact on features of importance to natural environment/nature conservation, or the historic environment*
- b) *There is no adverse impact on visual amenity or the character of the local landscape and the development can be readily absorbed into the landscape by taking advantage of existing vegetation and/or topography*
- c) *There is no adverse impact on the amenities of people living nearby*
- d) *Any ancillary buildings or structures are designed to a high standard taking into account the needs of people with disabilities are of a scale appropriate to the local area, and are sympathetic to the surrounding environment in terms of their siting, layout and landscape treatment.*
- e) *Public safety is not prejudiced and the development is compatible with other countryside uses in terms of the nature, scale, extent and frequency or timing of the recreational activities proposed.*

Integration and Design of Buildings in the Countryside

40. Policy COU15 - Integration and Design of Buildings in the Countryside states

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

- a) *it is a prominent feature in the landscape*

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

Rural Character and other Criteria

41. Policy COU16 – Rural Character and other Criteria

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Habitats, Species or Features of Natural Heritage Importance

- 42. As the proposal is located within a densely wooded area, consideration is given to the potential for adverse impact or damage to be caused to priority species. A bio-diversity checklist and preliminary ecology assessment is submitted with the application.
- 43. It is stated at policy NH5 Habitats, Species or Features of Natural Heritage Importance that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f)

features of the landscape which are of major importance for wild flora and fauna g) rare or threatened native species h) wetlands (includes river corridors) i) other natural heritage features worthy of protection.

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.

Historic Environment and Archaeology

44. Policy HE2 The Preservation of Archaeological Remains of Local Importance and their Settings states that

Proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings shall only be permitted where the Council considers that the need for the proposed development or other material considerations outweigh the value of the remains and/or their settings.

Waste Management

45. The proposal attracts visiting members of the public and the use of an existing toilet block is proposed at the adjacent karting track. Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

46. The use of an existing unaltered access to a public road is proposed. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

47. The justification and amplification states:

For development proposals involving a replacement dwelling in the countryside, where an existing access is available but does not meet the current standards, the Council would encourage the incorporation of improvements to the access in the interests of road safety.

Regional Policy and Guidance

48. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals.

49. It is stated a paragraphs 1.11 of the SPPS that:

Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

50. The Plan Strategy was adopted on 26 September 2023. The operational policies in Part 2 are considered to take precedence over the retained suite planning policy statements in accordance with paragraph 1.11 of the SPPS.

51. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance

52. This proposal is for a retrospective application for paintballing activity. Paragraph 6.212 of the SPPS states that *the Northern Ireland countryside lends itself to accommodating a wide range of recreational activities. LDPs should contain policy for the consideration of development proposals for outdoor recreation in the countryside. In doing so councils should have regard to a range of issues including:*

- *visual and residential amenity;*
- *public safety, including road safety;*
- *any impact on nature conservation, landscape character, archaeology or built heritage; and*
- *accessibility*

53. It is also stated at paragraph 6.207 that:

The precise location of intensive sports facilities can be contentious, and by their very nature and scale can give rise to particularly complex planning considerations such as impact on amenity, and sustainability issues. Such facilities shall be located within settlements in order to maximise the use of existing infrastructure. As an exception a sports stadium may be allowed outside of a settlement, but only where clear criteria is established, which can justify a departure from this approach.

54. Intensive sports facilities are described in the SPPS as:
for the purpose of the SPPS, is defined as a purpose built indoor or outdoor resource which facilitates one or more activity fundamental to maintaining individual health and fitness. This may include stadia, sports halls, leisure centres, swimming pools and other indoor (and outdoor) sports facilities. They can also serve as a focus for the community.

55. It is further stated at paragraph 6.78 of the SPPS that:

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

56. The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy have been drafted to be consistent with the SPPS.

Assessment

57. This is a retrospective application for the retention of an outdoor paintballing recreational use and the change of use of part of an agricultural building to an associated reception, office and storage. The site is located within a wooded area to the rear of the dwelling and outbuildings at 112 Comber Road.

58. For clarity this proposal is not considered to be an intensive sports facility as described in the SPPS. Whilst more than one outdoor activity is located at the site the activities are not considered to be fundamental to maintaining individual health and fitness. The requirements of paragraph 6.207 are not considered to apply to this proposal.

Policy OS6 - Outdoor Recreation in the Countryside

59. With regards to criterion (a), a Biodiversity Checklist and Preliminary Ecological Assessment (PEA) along with a Badger Survey were submitted in support of the application.
60. The Ecological Statement within the Biodiversity Checklist and PEA provides an evaluation of potential impacts on protected sites and/or Protected Habitats and Species.
61. It explains that the site is not located with any site that has been designated for its nature conservation importance. Sites of national importance are identified some 10 kms from the site with the closest site of local nature conservation importance identified to be some 280 metres north east of the site.
62. It is acknowledged that a small tributary of the Ravernet River is located to the south east of the site and that this river is hydrologically connected to Inner Belfast Lough.
63. With regard to protected Habitats and Species, the ecological statement notes that the site consists of an area of coniferous plantation and that it is adjacent to a working farm and business. It notes that the plantation is bounded by grassland and hedgerow vegetation.
64. The habitats within and surrounding the site were assessed as having potential for protected species including badgers, nesting birds and smooth newts and as such, additional surveys have been carried out in support of the application.
65. Section 3.2.2 of the PEA provides details of the protected species evaluation. With regard to Bats, it acknowledges that the habitats immediately surrounding the application site were assessed as having moderate potential for foraging and commuting bats and that the area of woodland would provide a commuting corridor to other vegetated features.
66. There were no potential roost features identified on any of the semi mature conifers that occurred within the site. An ash tree with heavy growth of thick stemmed ivy was considered to provide moderate bat roosting potential.
67. With regard to buildings, the assessment notes that an existing outbuilding within the farm will be used to store paint balling materials and that this structure will not be altered. Another building within the yard is not impacted by the development.
68. With regard to birds, it is acknowledged that the area of coniferous woodland would provide nesting habitat for larger species of birds. That said, no obvious nests were noted during investigations.

69. With regard to smooth newts, no areas of standing water or suitable newt habitat were identified within the application site.
70. The badger survey demonstrates that there are no signs of badger activity within the site. An active main sett is investigated outside of the site whereby NIEA would normally recommend a 30m buffer zone. The site is greater than 50 metres from the sett and would also fall outside the exclusion buffer. The survey comments that noise generated from paintballing activity are unlikely to have an impact on badgers as they are underground during the operational daylight hours.
71. Natural Environment Division acknowledged the findings of the PEA and Badger Survey in a response received on 30 July 2021. That said, advice received acknowledged that whilst the PEA and Badger Survey did not locate any badger setts within 30 metres of the red line boundary of the site, a main badger sett was located a short distance beyond this and as such, there is a probability that badgers will utilise the site as a foraging ground.
72. The advice having regard to the nature of the application confirmed that it was not likely to have a negative impact upon the badgers. The advice recommends that the applicant's attention to Article 10 of the Wildlife Order, referencing in particular badgers.
73. A review of constraints associated with the application site identified that it was within close proximity to a feature of the historic environment. Advice from Historic Environment Division (HED) confirmed that the site was in close proximity to a monument of local importance - enclosure DOW14:025 which is an example of an early medieval enclosed farmstead.
74. The advice explains that while there are no above ground remains, they would expect below ground archaeological remains to have survived within the area of the enclosure and in close proximity to it. No objection was offered.
75. The area associated with this enclosure was located to the north east of the application site and outside of the red line. The proposed development will not therefore impact this area of archaeological interest, as the development proposals only relate to that land shown within the red line.
76. Having regard to the detail associated with the ecology assessments and the advice from statutory consultee, the proposal will not give rise to adverse impacts on features of importance to the natural environment/nature conservation or the historic environment. Criteria (a) is considered to be met.
77. With regard to criteria (b) and having regard to the existing vegetated nature of the site which provides screening from key vantage points, it is considered that the use of the planted area for outdoor recreational use in form of paintballing will not have an adverse impact on the visual amenity or character of the local landscape. Criteria (b) is considered to be met.

78. A noise impact assessment was submitted in support of the application with an addendum assessment submitted to demonstrate consideration of the cumulative impacts of the proposal. There has been extensive consultation with Natural Environment Division in respect of the ecology and the Environmental Health Unit of the Council in relation to potential impact on amenities of people living nearby.
79. The initial consultation response from Environmental Health advised that paintballing activities had the potential to impact on amenity with respect to noise.
80. The applicant was asked to provide an acoustic report to demonstrate the impact of the development on any sensitive receptor. The report was required to be undertaken in accordance with any relevant standards, identifying all appropriate noise sources and to assess the potential impact from these sources. The report also had to provide any proposed mitigation measures as necessary.
81. Following the submission of the initial Noise Impact Assessment (NIA) on the 29 November 2021, Environment Health returned a consultation providing direction on the relevant guidance to be used to assess potential impacts.
82. The advice indicated that paintballing noise may be viewed as being incongruous within the existing noise climate due to the acoustic features of the noise and as such, consideration was required to be given to the character and level of the existing noise climate compared to the character and level of noise associated with the paintballing activity. Detailed directions were also provided in this regard.
83. The applicant was also asked to provide details of the predicted noise levels at any relevant noise sensitive receptor. Environmental Health noted that whilst the NIA demonstrated that the application would not significantly impact on the nearby residential premises, it was not considered that the assessment fully addressed the noise impact from the proposal.
84. Several amended versions of the NIA were subsequently provided for consideration and in a response dated 02 May 2023 Environmental Health advised as follows:

'that as noted, Environmental Health completed separate background noise levels and recorded a prevailing LA90 level of 36dB(15mins) at an adjacent noise sensitive receptor. This background monitoring location would be representative of the other noise sensitive receptors. Provided the noise from the proposal does not exceed the background noise level the significant of effect associated with the development should be negligible. Within the noise impact assessment the predicted noise level associated with the development at the nearest noise sensitive receptor is 26.7dB. Compliance with level should ensure that the impact associated with the development will be negligible.'

Similarly the highest LAfmax level at the nearest noise sensitive receptor is predicted as 47dB. Within the noise impact assessment the maximum noise level associated with the development have been shown to be similar to the existing maximum noise levels. The significance of effect associated with LAfmax level cannot be assessed in the same manner as LAeq level, and whilst distinct noise events may be audible as noise sensitive their effect may only be viewed as slight in comparison to the existing noise environment.

Environmental Health are content with the proposed development in principle'.

85. The paintballing activity is confined to the wooded area, which is abutted by fields owned by the applicant as shown outlined in blue on the OS map. These fields will provide a buffer to the neighbouring properties, as will the existing farm buildings to the north of the site.
86. Based on a review of the information, advice from the consultee and having regard to the fact that the nearest sensitive receptor is approximately 225 metres distant from the site, officers having taken this advice into account consider that the proposal will have no adverse impact on the amenities of people living nearby and Criteria (c) is considered to be met.
87. The application is retrospective and the wooded area to be used for the outdoor recreational activity is set back from the Comber Road by approximately 270 metres. Several wooden structures [five] have been erected within the wooded area, to provide shelter from paintball attack. Four of these are wooden with the fifth, a netted shelter. The tallest structure is 3.4 metres in height, with the remaining being just over 2 metres in height.
88. These structures are designed to sympathetic to their environment having been constructed mostly of wood. They are relatively small in scale when taken in context of the wooded area, consisting of tall, mature trees. Other small structures consist of small lines of timber fence and rows of used car tyres.
89. The structures are not readily visible within the site as they are designed and positioned to be discrete structures and to allow them to be absorbed into the existing dense vegetation.
90. Part of an existing agricultural outbuilding [50.4 square metres] will be used as a reception, office and storage use associated with the paintballing activity. The development does not propose the erection of any other structures and the removal of trees from this area is not proposed. Criteria (d) is considered to be met.
91. As explained above, areas of hard standing is evident around the existing outbuildings and the detail submitted with the application demonstrates that these spaces will be used for parking. A related parking survey confirms that car parking is provided for 14 spaces on site and that this is sufficient to serve the needs of both the paintballing and karting activities.

92. No additional areas hardstanding is required to provide for extra parking facilities to cater for the application proposal. An existing access is to be used and DfI Roads having considered the detail offer no objection.
93. The nature of the proposed outdoor recreational use is one that requires an area of open space, with natural features present to allow for the activity to be carried out. This wooded area, provides a suitable environment for such an activity and its nature and scale along with its distance from other farming and recreational uses will ensure that it is compatible with other countryside uses. Criteria (e) is considered to be met.
94. As the proposal complies with Policy OS3 it therefore also complies with Policy COU1 of the Plan Strategy.

Policy OS3 - Noise-Generating Sports and Outdoor Recreational Activities

95. The nature of the proposed outdoor activity is that noise will be generated from a number of sources namely users participating in the activity and the discharge of paint pellets.
96. For the reasons set out above within the context of policy OS6(c) considerations, the proposed paintballing activities will not cause conflict, disturbance or nuisance to people living nearby or other noise sensitive uses and as such, criteria (a) is considered to be met.
97. For the reasons set out within the context of Policy OS6(a) considerations and having regard to the location of the activity with a densely wooded area and the separation distances between the site and adjacent farmland it is considered that the proposed paintballing activities will not cause conflict, disturbance or nuisance to farm livestock and wildlife.
98. The proposal is contained within an existing, densely wooded area. The justification and amplification of Policy OS3 states
'only in locations where the impact of noise can be effectively contained and minimised by the use of natural features, such as landform or woodland, should proposals generally be considered.'
99. For the reasons set out within the context of Policy OS6(a) considerations, the proposal will not cause conflict, disturbance or nuisance to the enjoyment of the natural environment/nature conservation and the historic environment.
100. Furthermore, an informal consultation with Shared Environmental Services confirmed the potential impact of this proposal on European Sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended). The proposal would not have any conceivable effect on the features of any European Site.

Integration and Design of Buildings in the Countryside

101. No new buildings are required as the proposal involves the re-use of an existing building. That said, a number of small wooden structures are proposed to be sited discretely within the wooded area. Given the sites location with a wooded area, these buildings/structures are not considered to be prominent features in the landscape. Criteria (a) is met.
102. Again, given the nature of the 'buildings' proposed, it is considered that the outdoor use and associated structures are capable of clustering with the dwelling and outbuildings at 112 Comber Road. Criteria (b) is met.
103. Having regard to the site's location within a wooded area and the presence of an existing dwelling and related outbuildings, it is considered that the development will blend into the landform as these features provide a suitable backdrop. Criteria (c) is met.
104. The very nature of the site (being a dense, wooded area) provides ample aid integration without reliance on new landscaping. The wooded area is well defined and the trees provide screening for the associated structures and activity itself.
105. From the outside, the wooded area will appear no different than it would without the activity taking place. For these reasons, criteria (d) and (e) are met.
106. No new buildings are proposed within this application. The proposal includes the re-use of an existing building with only a very small portion being given over to this activity, amounting to approximately 50 square metres floorspace and the provision of a number of small-scale wooded structures. The design and finishes of these structures are acceptable and appropriate to the outdoor use.
107. No new access, laneway or areas of hardstanding are required to service the proposal and as such, the impact of any ancillary works is minimal, and no large area of hard standing is necessary. Criteria (g) is met.

Rural Character

108. For the reasons outlined above within the context of COU15 (a) and (b) considerations, criteria (a) and (b) of Policy COU16 is met.
109. The proposal utilises an existing wooded area and part of an existing building. Whilst it introduces an outdoor recreational use into the open countryside, it is adjacent to an established outdoor use and as such, is considered to respect the existing pattern of development exhibited within the immediate context. Criteria (c) is met.
110. The proposed site is not located close to a settlement and therefore it would not mar the distinction between a settlement and the surrounding countryside,

resulting in urban sprawl. Criteria (d) is met.

111. For the reasons outlined earlier in the report, the proposal will not adversely impact the rural character of the area. Criteria (e) is met.
112. For the reasons outlined earlier in the report, the proposal will not have an adverse impact on residential amenity. Criteria (f) is met.
113. All necessary services are available without significantly impacting the rural character. No new access or parking provision is required, nor is a new building to house the reception facilities proposed. Instead, the proposal involves the re-use of an existing building. Most, if not all ancillary works are existing. Criteria (g) and (h) are met.
114. No changes to the existing access arrangements to the public road have been requested and as such, it is accepted that the existing access is to a standard so as not to cause prejudice to road safety or significantly inconveniencing the flow of traffic.
115. DFI Roads having reviewed a Transport Assessment Form and a Parking Survey offer no objection to the proposal. Officers have no reason not to accept the advice of the statutory consultee. Criteria (i) is considered to be met.

Access and Transport

116. The proposal involves the use of an existing unaltered access to a public road. This is the access serves an established karting enterprise. There is an area of existing parking provision included within the red line boundary.
117. DfI Roads have reviewed the detail of the application and offer no objection.
118. On the basis of the information submitted and consultation with DfI Roads it is considered that the proposal would not prejudice road safety or significantly inconvenience the flow of traffic. It is considered that the proposal complies with TRA2 of the Plan Strategy.

Natural Heritage

119. Consideration of Natural Heritage matters are set out earlier in the report within the context of Policy OS3 considerations.
120. An informal consultation with Shared Environmental Services confirmed the potential impact of this proposal on European Sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended). The proposal would not have any conceivable effect on the features of any European Site.

121. For the reasons outlined, the proposal complies with Policy NH5 of the Plan Strategy as modified in that no protected habitat would be negatively affected by the proposal.

Historic Environment and Archaeology

122. As explained above with the context of Policy OS3(a) considerations, the application site is close proximity to an enclosure (DOW014:025), a monument of local importance.
123. For the reasons outlined above, it is accepted that the proposal satisfies the requirements of Policy HE 2 of the Plan Strategy and that the proposed development will not adversely affect archaeological sites or monuments with are of local importance or their settings.

Consideration of Representations

124. Two representations in opposition to the proposal have been received. Consideration of the issues raised are set out in the following paragraphs with additional detail provided as appropriate in the sections above.

Application is not valid - red line (site area) not accurate, no figure is provided to show an increase in the number of visitors to the site, incorrect fee, plans unclear regarding the building to be used as a store and whether it has planning permission

125. Following a review of the details provided with the application, amendments and information were sought from the applicant in relation to the site area, the completion of question 25 on the P1 Form to provide an indication of expected increase in vehicles and persons to the site, clarification to any planning permission obtained in relation to the existing building.
126. A Biodiversity Checklist was also requested. Amendments were made to the site area and a Transport Assessment Form was submitted. No additional fee was required.

The application should be subject to an EIA

127. A nil EIA determination was returned. The cumulative impact of the racing and the paintballing was considered through reports dealing with the cumulative noise impacts. The proposal was not considered not to warrant an Environmental Statement for the reasons outlined earlier in the report.

The proposed development should be screened to determine whether an appropriate assessment is required (in relation to the Habitats Regulation Assessment)

128. A Biodiversity Checklist submitted along with a Preliminary Ecological Assessment and a Badger Report. The assessment as outlined above demonstrates that the proposal will not have an adverse impact on natural heritage features. Furthermore, advice from Shared Environmental Services confirms that the potential impact of this proposal on European Sites has been assessed in accordance with the requirements of Regulation 43 (1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended). The proposal would not have any conceivable effect on the features of any European Site.

Policy OS3 - The existing development is already having an unacceptable impact on the amenities of people living nearby, and without mitigation measures in place for the existing facility, the addition of a paintballing facility will only add to the level of interference with amenity

129. The existing development was confirmed as being lawful in 2016. Noise issues associated with the operation of this facility are currently being considered by the Council.
130. Whilst this proposal is not revisited, the cumulative noise impact of both uses operating at the same time has formed part of the noise assessments and for the reasons outlined earlier in the report, and having regard to advice from the statutory consultee, the paintballing activity will not result in an unacceptable impact on the amenities of people living nearby.

Policy OS5 – The nature of paintballing activities is that there are sporadic loud noises, which can startle wildlife and interfere with livestock. Surrounding land is used for equestrian activities and the grazing of sheep and cattle – noise impact on animals, particularly horses and wildlife.

131. Following the submission of several Noise Impact Assessments and consultation with Environment Health, no concerns were raised in terms of noise disturbance.
132. Following consultation with NIEA NED they responded stating that they had no concerns regarding the impact of the proposal on natural heritage interest, only drawing attention to the Badger Sett beyond the site boundary.
133. The area around the site is within the ownership of the applicant and whilst concern has been expressed in relation to the potential impact of the proposal on horses utilising adjacent fields, no evidence is provided to support this assertion. Based on a review of the information and advice to date, it is considered that there will be no unacceptable disturbance to neighbouring farm livestock.

Cartridges uses can be dangerous to wildlife

144. No evidence is provided to support this assertion. That said, consultation has been carried out with NIEA NED with regards to natural heritage interests and they have confirmed that they are content.
145. It is understood that Paintball pellets are spherical gelatine capsules containing primarily polyethylene glycol, other non-toxic and water-soluble substances, and dye. Paintballs are made of materials found in food items and control over the ingestion of animals of any substance outside of the remit of planning.

Protected species use the site – a full ecological survey should be carried out.

146. As explained earlier in the report, detail associated with a Biodiversity Checklist Preliminary Ecological Assessment and a Badger Report have been considered as part of the application process and it is accepted that the proposal will have no adverse impact on designated sites and other natural heritage interests, and on the basis of the information provided had no concerns subject to conditions.

If planning permission is granted, the applicant should be required to enter into a Section 76 Agreement to provide noise attenuation measures at the existing race track and at the proposed paintball facility. Operating hours should be restricted to 9-5pm Monday – Saturday. The paintballing facility should not be permitted to operate during bird breeding season.

147. Environmental Health recommended the inclusion of conditions relating to the operating hours, suggesting 0900-2000 hours to safeguard the living conditions of nearby residents particularly with regard to the effects of noise.
148. No other conditions relating to noise attenuation measures have been suggested by Environmental Health, with the only other suggested condition relating to the noise levels and what level should not be exceeded. No noise attenuation measures can be applied to the existing race track as this development is not included within the current development proposals and it has been approved under a separate application.
149. Where matters can be dealt with by way of condition, a Section 76 Agreement will not be required.

Impact the development will have on the neighbouring property – the neighbours have been engaged in an ongoing dispute about the noise of the karting business since 2014

150. Impact on amenity remains a material consideration. A separate concern of nuisance was investigated by the Environmental Health Unit in parallel and it is understood that an abatement notice is in place.

The application has been assessed against the relevant planning policy and detailed consultation has been undertaken with the relevant statutory consultees. The cumulative effect on the amenity of the neighbour residents are considered the proposal is found to be compliant with policy and will not

have a detrimental impact on the amenity of neighbouring properties by reason of noise or nuisance.

Part 2 and 4 of Policy OS3 of PPS8 should be considered.

151. Following the adoption of the Plan Strategy by resolution of the Council on 26 September 2023, PPS8 is no longer a material consideration in the assessment of this application. The application is assessed against Strategic Policy 17 Open Space, Sport and Outdoor Recreation of the new Plan Strategy and the operation policies associated with Part 2 of the Plan Strategy.
152. For the reasons outlined earlier in the report, the proposal has been found compliant with all parts of the new policy for the reasons outlined in the above report.

The proposal is contrary to Item 2 of Policy OS5 as the residents in the adjacent property have horses in the land bordering the Karting facility

154. For the reasons outlined above, the application is found to be compliant with Policy OS3 in the Plan Strategy (the Policy equivalent of Policy OS5 in PPS8).
155. The proposal is located within an existing densely wooded area, which will contain and minimise the impact of the noise. The land around the site is within the ownership of the applicant. The closest field to the site outside of applicant's control is approximately 80m to the south east, with most land separated from the site well in excess of this 80m distance.

If planning permission was granted proper sound mitigation measures are required.

156. As above, extensive consultation was sought from Environmental Health in relation to potential noise impacts and conditions provided to mitigate against any potential adverse effects on residential amenity. No conditions were provided relating to mitigating measures of the proposal.

Conclusions

157. It is considered that the proposed development complies with the requirements of paragraph 6.73 of the SPPS and policies COU1, COU15 and COU16 of the Plan Strategy.
158. The proposal complies with policies OS3 and OS6 of the Plan Strategy.
159. The proposal is also in accordance with other planning and environmental considerations and the policy test of NH5, TRA2 and WM2 are also satisfied.

Recommendations

160. It is recommended that planning permission is approved.

Conditions

161. The following conditions are recommended:

- This decision is issued under Section 55 of the Planning Act (Northern Ireland) 2011 and is effective from the date of this permission.

Reason: This is a retrospective application.

- The operating hours of the development hereby approved shall not exceed 0900 - 2000 hours.

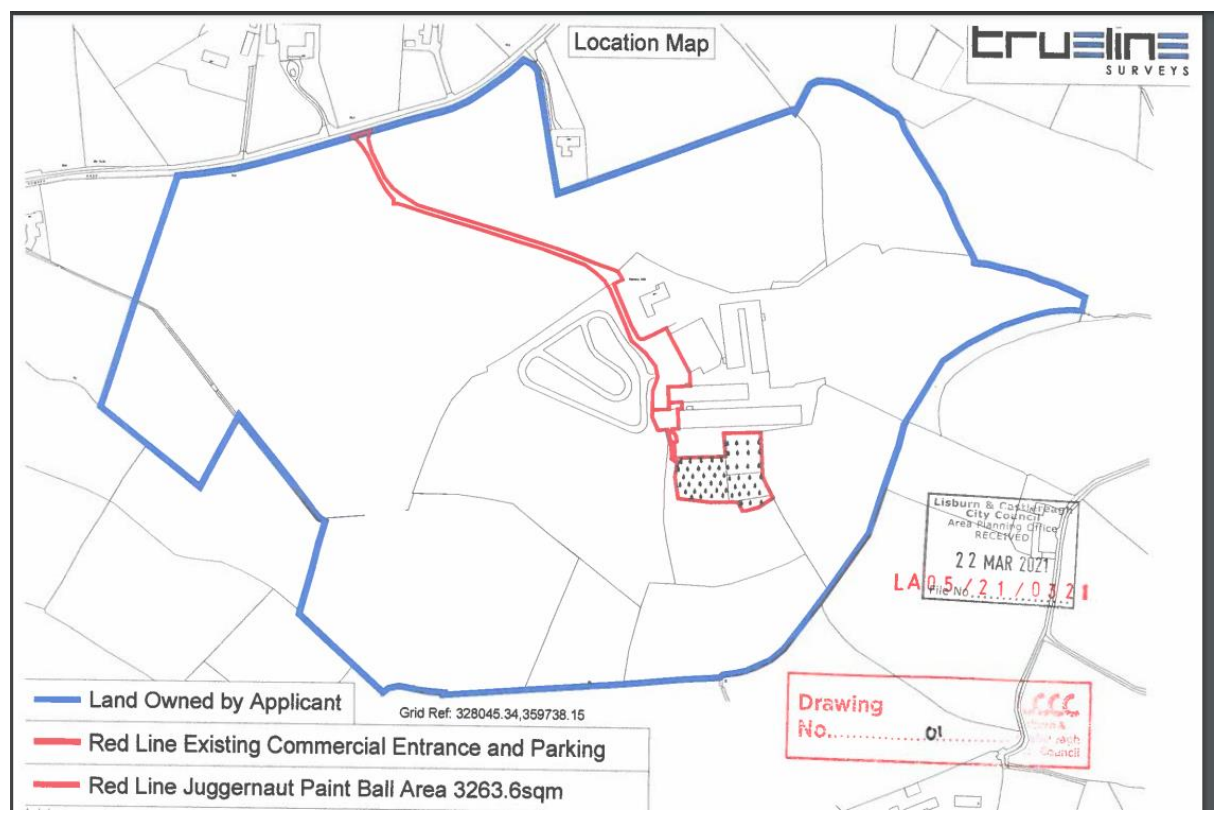
Reason: To safeguard the living conditions of nearby residents particularly with regard to the effects of noise

- The rated noise level (LAeq(1hr)) associated with the development hereby approved shall not exceed the values provided in Table 1 below measured or predicted at the boundary of the relevant noise sensitive receptor.

Address	(LAeq(1hr))
Site 210m NE of 20 Cabra Road	29.0
31 Magheradartin Road	23.4
20 Cabra Road	28.4
116 Comber Road	28.1
109 Comber Road	24.0

Reason: To safeguard the living conditions of nearby residents particularly with regard to the effects of noise.

Site Location Plan – LA05/2021/0321/F



Lisburn & Castlereagh City Council

Planning Committee	
Date of Committee	04 December 2023
Committee Interest	Local Application [Called In]
Application Reference	LA05/2022/0883/O
Date of Application	26 th September 2022
District Electoral Area	Downshire West
Proposal Description	Proposed replacement dwelling
Location	49c Waterloo Road, Lisburn
Representations	Two
Case Officer	Laura McCausland
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*

- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

- [4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

- [1.11] *Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.*

4. Therefore under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This application is categorised as a local application. It is referred to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
6. The proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not an acceptable form of development in the countryside.
7. The proposal is contrary to criteria (a)(i) of policy COU3 of the Lisburn and Castlereagh City Council Plan Strategy in that the curtilage is not so restricted that it could not reasonably accommodate a modest sized dwelling.
8. The proposal is contrary to criteria (a)(ii) of policy COU3 of the Lisburn and Castlereagh City Council Plan Strategy in that the applicant has not been demonstrated that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.

9. The proposal is contrary to criteria (b) of policy COU3 of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if approved would have a visual impact significantly greater than the existing building.
10. The proposal is contrary to policy COU15 of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if approved would be a prominent feature in the landscape nor would it be sited to cluster with an established group of buildings. Furthermore the site lacks long established natural boundaries is unable to provide a suitable degree of enclosure for the building to integrate into the landscape. In addition the development relies primarily on the use of new landscaping for integration and it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a back drop.
11. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if permitted would be unduly prominent in the landscape. Furthermore, the development is not sited to cluster with an established group of buildings and it fails to respect the pattern of settlement exhibited in that area and as such would result in an adverse impact to and further erode the rural character of the area.

Description of Site and Surroundings

Site

12. This site is irregular in shape and located at 49C Waterloo Road. A modest, rectangular, single storey property with white painted rendered walls, pitch corrugated roof, white uPVC windows and door to the rear elevation is located on site. All external walls and roof are intact.
13. During the site inspection the property was vacant but undergoing extensive internal renovation works.
14. There is a large garden area to the rear of the property with hardstanding to the front. A decked area with hot tub has been erected to the southern side of the property. Parking is available to the southern side of the property. Access is via a shared laneway from the Waterloo Road.
15. The site is relatively flat across the site where the existing building is located. The agricultural lands identified within the balance of the site to the north west of the dwelling slopes downwards from the access lane to the rear of the site in an east to west direction.
16. The application site encompasses the dwelling, shared laneway and agricultural lands to the northwest of the property. The northern boundary is undefined, the southern boundary is in part undefined and defined in part by hedgerow, the western boundary is largely undefined with sparse tree cover the

northern direction boundary is undefined and the eastern boundary is comprised of tall mature vegetation.

Surroundings

17. The character of the immediate area is predominately rural in nature and the land is mainly in agricultural use. There is a build-up of development in the locality of the site comprised of predominantly single storey properties and outbuildings.
18. The site is in close proximity to the Ravernet Road and Ballynahinch Road.

Proposed Development

19. Outline permission is sought for a replacement dwelling. A Design Access Statement and two Addendums, Biodiversity checklist and Bat Roost Potential [BRP] Report accompany the application.

Relevant Planning History

20. The planning history associated with the building to be replaced is set out in the table below:

Reference Number	Location	Description	Decision
S/2015/0207/LDE	Opposite 49 Waterloo Road	Dwelling	Not certified 25 th July 2016
LA05/2021/1265/LDE	49c Waterloo Road	Existing single storey dwelling	Certified 18 th March 2022

21. The planning history is a material consideration in the assessment of this application.
22. A plan submitted and certified within the in application LA05/2021/1265/LDE identified the curtilage associated with the dwelling at 49c Waterloo Road. This curtilage is significantly different to that associated with the red line boundary submitted in association with the current application.
23. The proposed curtilage/amenity area around the dwelling to be replaced has been significantly altered. The curtilage as certified has been reduced to include dwelling footprint but also extended to include two agricultural fields located north west and south west of the dwelling.

24. These agricultural lands are physically separated from the certified dwelling and curtilage by the shared laneway and the preferred off-site location is now shown to be sited on agriculture land.
25. On 23 June 2023 the initial (original) red line was reduced to exclude an agricultural field located to the south western of the existing dwelling. The now preferred alternative off site location is sited in the agricultural field north west of the existing dwelling. This alternative siting is considered later in the report.

Consultations

26. The following consultations were carried out:

Consultee	Response
NI Water	No objection
Water Management Unit	No objection
Environmental Health	No objection
DfI Roads	No objection
NED	No objection
DFI Rivers	No objection
Shared Environmental Services	No objection

Representations

27. Two representations were received from the owner/occupies of 53 Waterloo Road and 53a Waterloo Road, Lisburn. These representations are available to view on the Planning Portal via the following link.

<https://planningregister.planningsystemni.gov.uk>

28. In summary, the following issues are raised:
 - Detrimental impact on current rural nature
 - Light pollution create detrimental impact on local wildlife

- Proposed site not in current location but significantly west of the current site in a rural location
- The proposed dwelling is substantially larger than current small structure.
- Previously no building where dwelling to be located.
- Detrimental impact on wildlife
- Detrimental impact on surface run off and drainage in the surrounding area.

Local Development Plan

29. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

30. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

31. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.
32. The site is located in the countryside in the Lisburn Area Plan (LAP) and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

33. In draft BMAP (2004) this site is also identified as being located in the open countryside. The Plan Strategy document states that:

The Department has begun progressively to replace the Rural Strategy. The Planning Strategy section of the Rural Strategy has been superseded by the RDS, whilst the topic policy sections are progressively being replaced by PPS's. The Rural Strategy remains material considerations until superseded by PPS's.

34. In the subsequent revision to draft BMAP (2014) this site is located in the open countryside. It is stated at policy SETT 4 at page 32 of Part 3 Volume 1 that: *The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.*

35. It is then stated in the supplementary text under the policy at pages 32 and 33 that:

PPS 7: Quality Residential Environments and PPS 7 Addendum: Safeguarding the Character of Established Residential Areas set out the prevailing regional planning policies for achieving quality in the design and layout of new residential developments. They embody the Government's commitment to sustainable development and the Quality Initiative. They contain criteria-based policies against which all proposals for new residential development, including those on land zoned will be assessed, with the exception of single dwellings in the countryside. These will continue to be assessed under policies contained in PPS 21: Sustainable Development in the Countryside.

36. There is equivalent policy provision contained in the Plan Strategy to those regional policies described in LAP and draft BMAP.

37. This application is for new housing in the open countryside. The Plan Strategy strategic policy for new housing in the countryside [Strategic Policy 09] states:

The Plan will support development proposals that:

- (a) provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) protect the established rural settlement pattern and allow for vibrant sustainable communities.*

38. The following operational policies in Part 2 of the Plan Strategy also apply.

39. The proposal is for a replacement dwelling. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

40. As explained this is an application for a replacement dwelling and in accordance with the requirements of Policy COU1, the application falls to be assessed against policies COU3, COU15 and COU16 of the Plan Strategy.

Replacement Dwellings

41. Policy COU3 – Replacement Dwellings states:

Planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. For the purposes of this policy all references to ‘dwellings’ includes buildings previously used as dwellings.

In cases where a dwelling has recently been destroyed, for example, through an accident or a fire, planning permission may be granted for a replacement dwelling. Evidence about the status and previous condition of the building and the cause and extent of the damage must be provided.

Non-Listed Vernacular Buildings

The retention and sympathetic refurbishment, with adaptation if necessary, of non-listed vernacular dwellings in the countryside will be encouraged in preference to their replacement in accordance with policies COU4 and HE13.

In all cases where the original dwelling is retained, it will not be eligible for replacement again. Equally, this policy will not apply where planning permission has previously been granted for a replacement dwelling and a condition has been imposed restricting the future use of the original dwelling, or where the original dwelling is immune from enforcement action as a result of non-compliance with a condition to demolish it.

Replacement of Non-Residential Buildings

Favourable consideration will be given to the replacement of a redundant non-residential building with a single dwelling, where the redevelopment proposed would bring significant environmental benefits and provided the building is not listed or otherwise makes an important contribution to the heritage, appearance or character of the locality. Non-residential buildings such as domestic ancillary buildings, steel framed buildings designed for agricultural purposes, buildings of a temporary construction and a building formerly used for industry or business will not be eligible for replacement under this policy.

In addition to the above, proposals for a replacement dwelling will only be permitted where all of the following criteria are met: a) the proposed replacement dwelling must be sited within the established curtilage of the existing building, unless either (i) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (ii) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits; b) the overall size of the new dwelling must not have a visual impact significantly greater than the existing building; c) the design of the replacement dwelling should be of a high quality appropriate to its rural setting.

Integration and Design of Buildings in the Countryside

42. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

Rural Character and other Criteria

43. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Habitats, Species or Features of Natural Heritage Importance

- 44. As the existing building is being replaced consideration is given to the potential for any adverse impact or damage which could be caused to priority species such as bats. Supporting ecological reports are submitted in conjunction with the application.
- 45. It is stated at policy NH5 Habitats, Species or Features of Natural Heritage Importance that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.

Waste Management

- 46. A private package treatment plant is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need

for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

47. The proposal involves the alteration of an existing access to the public road. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

48. The justification and amplification states:

For development proposals involving a replacement dwelling in the countryside, where an existing access is available but does not meet the current standards, the Council would encourage the incorporation of improvements to the access in the interests of road safety.

Flooding

49. This is a large site and drainage must be designed to take account of the impact on potential flooding elsewhere.

50. Policy FLD2 - Protection of Flood Defence and Drainage Infrastructure states that:

Development will not be permitted that impedes the operational effectiveness of flood defence and drainage infrastructure or hinder access for maintenance, including building over the line of a culvert.

51. Policy - FLD3 Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains states:

A Drainage Assessment (DA) will be required for development proposals that exceed any of the following thresholds:

- a) *a residential development of 10 or more units*
- b) *a development site in excess of 1 hectare*
- c) *a change of use involving new buildings and/or hard surfacing exceeding 1,000 square metres in area.*

A DA will also be required for any development proposal, except for minor development, where:

- *it is located in an area where there is evidence of historical flooding.*
- *surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features.*

A development requiring a DA will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere. If a DA is not required, but there is potential for surface water flooding as shown on the surface water layout of DfI Flood Maps NI, it remains the responsibility of the developer to mitigate the effects of flooding and drainage as a result of the development.

Where the proposed development is also located within a fluvial flood plain, then Policy FLD1 will take precedence.

Regional Policy and Guidance

Regional Policy

52. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

53. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance

54. This proposal is for replacement dwelling. Bullet point two of paragraph 6.73 of the SPPS states that:

provision should be made for the replacement of existing dwellings where the building to be replaced exhibits the essential characteristics of a dwelling and, as a minimum all external structural walls are substantially intact. Replacement dwellings must be located within the curtilage of the original dwelling where practicable, or at an alternative position nearby where there are demonstrable benefits in doing so. Replacement dwellings must not have a visual impact significantly greater than the existing building. In cases where the original building is retained, it will not be eligible for replacement again. Planning permission will not be granted for the replacement of a listed dwelling unless there are exceptional circumstances.

55. It is further stated at paragraph 6.78 of the SPPS that:

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

Retained Regional Guidance

56. Whilst not policy, the following guidance document remains a material consideration:

Building on Tradition

57. Paragraph 5.1.3 of Building on Tradition states that:

Replacement projects can help to reinvigorate our rural landscape through the sensitive redevelopment of the historic footprints of long established buildings. Sites for replacement projects can prove an attractive option for building in the countryside as they will generally have key services in place in terms of access, water and power etc. but will also have well established mature boundaries that will already have achieved a strong visual linkage with the landscape. Renewing development on these sites reinforces the historic rural settlement pattern.

58. At paragraph 5.2, it provides basic rules for replacement dwellings as follows:

The replacement dwelling should generally be placed as close as possible to the footprint of the original house, unless significant benefits are apparent in terms of visual and functional integration.

The replacement dwelling should be of a form and scale that integrates well with the characteristics of the site. Replacement dwellings should not be of an excessive size in comparison to the original building or be located a significant distance away from the original footprint unless there are clear and evident benefits.

The proposal takes full advantage of the retention of established and mature landscape and boundary features and retains the discreet character of existing access points.

Use is made of recycled building materials in the new proposal.

59. It also notes with regards to visual integration that the following points be considered:
- Work with the contours (not against them)
 - Look for sheltered locations beside woodland
 - Make use of natural hollows
 - void full frontal locations where bad weather can damage buildings
 - Avoid north facing sloping sites (difficult to achieve good passive solar gains)
 - Look for sites with at least two boundaries in situ and preferably three
 - Look for sites that face south (easy to achieve good passive solar gains).
60. It also includes design principles that have been considered as part of the assessment:
- Get the size and scale right relative to what is existing.
 - Understand and reflect the character and layout of the group in terms of the relationship between buildings and landscape.
 - Avoid the use of typical suburban features such as dormer and bay windows, porticos and pediments on the building and concrete kerbs, tarmac, blockwork walls, pre-cast concrete fencing and ornate gates and lampposts around the site.
 - Retain existing hedgerows, boundaries and mature vegetation.
 - Acknowledge building lines and informal setbacks.
 - Maximise rural landscape treatments such as gravelled lanes and driveways, grass verges and local native species for new planting.
61. With regards to waste water treatment, Building on Tradition [page 131] states that

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by

drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Assessment

Replacement Dwellings

62. The first part of the policy requires the applicant to demonstrate that the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external walls are substantially intact.
63. Following examination of the building during site inspection it is accepted that the building to be replaced exhibits the essential characteristics of a dwelling in that; all four walls are substantially intact, and window and door openings are of domestic scale.
64. No chimney or internal fireplace were not present however despite internal extensive renovation works internal walls clearly defined individual rooms within the building consistent with its occupation as a dwelling.
65. It is therefore accepted that building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external walls are substantially intact and that this part of the policy is met.
66. Turning to the balance of the policy tests associated with COU3, criteria as (a) – (c) the following assessment is made.
67. Details associated with the application including those of the biodiversity checklist and BRP Report clarify that the existing building/dwelling is to be demolished and an alternative position is sought on agricultural lands northwest of that existing dwelling.
68. The existing curtilage of dwelling to be replaced was inspected and the reflects the drawings relating to the domestic curtilage of CLUD application LA05/2021/1265/LDE in March 2022.
69. There appears to be no physical change having occurred to restrict the certified curtilage associated with the dwelling at this time. The proposal red line submitted with this application does not accurately reflect the previous certified drawings and domestic curtilage associated with the dwelling to be replaced.
70. It is considered that within the boundaries of the previously certified dwelling and associated curtilage that a modern single storey dwelling with sufficient

amenity space could be accommodated without the need to consider an alternative site.

71. The red line as presented gives the impression that the existing curtilage is restricted. The existing parking area and the associated amenity area has been excluded to satisfy policy criteria a(i).
72. It is considered that the site provides sufficient space for a modern dwelling to be erected and for adequate amenity space to be provided. Criteria a(i) is not met.
73. Detail provided within the submitted Design Access Statement suggests that an offsite location for the replacement dwelling to an alternative position would result in demonstratable amenity benefits.
74. The use of the shared lane and shared hard standing area to the front of existing dwelling both pose a potential treat to pedestrian injury by vehicular traffic and the preferred location at an alternative site would help alleviate this concern. This would also increase the actual and visual separation distance between the proposed dwelling and the neighbouring property 49 creating a perceived amenity benefit.
75. Currently both properties have individual private amenity space to the side and rear of the properties. The dwelling to be replaced currently has amenity space located to the side and rear of the property. The property at 49 also from visual inspection has considerable private amenity space located to the rear of the property and an area of hard standing and garden to the side of the property.
76. The design and access statement states that the building at the centre of this application was erected in its current location without the benefit of seeking planning permission, that was later certified through a CLUD.
77. At that time there was no issue regarding the separation distances to any of the neighbouring dwellings. It is noted that the applicant in recent years has installed an unscreened decked area including a hot tub to the southern side of the property.
78. It would however appear that the applicant does not have any concerns in relation to the existing separation distances impacting upon his own or other associated residential amenity at this location. These actions would appear to be at odds with the view expressed by the Agent that an alternative site is required to provide private amenity space.
79. Due to the scale and design of the dwellings and associated site layout at this location it is considered that there is no demonstrable harm to any residential amenity at this location created by existing separation distance provided. The amenity space of neighbouring dwellings is predominantly set to the rear and as a result is private in nature.

80. Having considered the available site and surrounding properties it is considered that there is sufficient private amenity space at the current location to serve a new dwelling while retaining the private amenity space of the neighbouring properties.
81. It is also considered that the separation distances are not likely to be altered significantly and that a replacement within the existing curtilage can be provided without negatively impacting upon the residential amenity in terms of overlooking or loss of privacy within the existing curtilage without the requirement of an alternative site.
82. Vehicular traffic accessing any property at this location will avail of the joint laneway this will not be significantly altered by relocating the dwelling to the preferred location.
83. The case advanced by the agent that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits is not accepted for the reasons outlined in the following paragraphs.
84. The preferred location is sited within an existing agricultural field, lacking established boundary treatments. The information submitted in support of the application does not clarify to any extent what other landscape benefits this preferred location may offer.
85. The Addendum to Design Access Statement considers there to be landscape benefits in retaining three trees within the existing curtilage of the dwelling to be replaced and that further development within proximity to these trees would damage their roots as identified by the agent. Within the submitted ecology report no importance or ecological significance is attached to any of 3 trees identified by the agent in the amended statement.
86. The potential for the existing dwelling to impact on the root system of the trees identified were considered by the Councils tree officer. Advice received confirms that a TPO is not attached to any identified trees and removal of such would be acceptable if required.
87. For reasons set out above it is deemed that the curtilage is not so restricted that it could not reasonably accommodate a modest sized dwelling. It has subsequently not been shown that an alternative position nearby would result in demonstrable landscape, access or amenity benefits therefore the proposed development is not in accordance with COU3 (a)(i) and (ii) and an alternative location is not acceptable in principle.
88. With regard to criteria (b) of COU3 and without prejudice to the view already expressed above, it is considered that a single storey dwelling could be sited and designed within the existing curtilage so as not to have had a visual impact significantly greater than the existing building.
89. Development within the alternative site as proposed would be considered to have a visual impact significantly greater than existing building as the site when

viewed from long and short distances from the south western approach critical views from the Ravernet Road, despite some degree of screening any development at this location will have an increased visual impact in the landscape than the existing building.

90. Even a single storey dwelling at the alternative site when viewed from critical long approach northern views along the lane will have a significantly greater visual impact than the existing building as the existing dwelling to be replaced is completely concealed from all vantage points on this approach due to tall mature trees, but the alternative location is not afforded the same degree of screening. Criteria (b) has not been met.

COU15 Integration and Design of Buildings in the Countryside

91. Having regard to the topography and the existing vegetation, it is considered that a dwelling cannot be sited and designed so as not to present as prominent feature within the local landscape. Criteria (a) is not met.
92. Details submitted indicates that the proposed dwelling will be positioned outside of the footprint of the existing dwelling at an alternative site within an agricultural field that does not contain any other development. The dwelling to be replaced is one building and does not relate to any other building located at the preferred of site location. For these reasons, the proposed replacement dwelling is not shown to be sited with an established group of buildings. Criteria (b) has not been met.
93. With regard to criteria (c), topography of the alternative site slopes from the front of the site to the rear of the site, as per the proposed red line, the site lacks natural features, buildings and landscaping to provide a suitable backdrop therefore the development is not capable of being sited so as to blend into the landscape. Criteria © is not met.
94. Whilst the site lacks long established natural boundaries as per the proposed redline, the presence of a degree of sporadic tree and hedging planting is insufficient and significant additional planting would be required to provide a suitable degree of enclosure for an appropriately designed dwelling. For this reasons, criteria (d) and (e) are not capable of being met.
95. The application is an outline application and as such, no design details are submitted. That said,
96. and without prejudice to the view expressed in relation to the principle of the proposed development, it is considered that ancillary works given the nature of the site in respect of its topography would be minimal. Whilst an exact preferred siting area has not been provided it is considered that criteria (g) is capable of being met.

COU16 Rural Character and other criteria

97. The alternative site does not provide any buildings for the proposed dwelling to cluster with. The site is physically divorced from the existing dwelling that is to be demolished by laneway and tall screening. When viewed from long and short northern approaches all existing development is completely hidden and therefore the alternative site does not read to cluster with the established group of buildings and any development on the alternative site would be regarded to be unduly prominent. These matters are dealt with in the preceding section and for the same reasons criteria (a) and (b) have not been met.
98. The proposed dwelling seeks to be located at an alternative site to the opposite side of the access lane to the existing dwelling and neighbouring properties. The proposed plot size is significantly larger than that of existing plot and the offsite location does not respect the established pattern of settlement and criteria (c) has not been met.
99. This site lies within the open countryside and does not abut any settlement limit. The proposed alternative site would result in urban sprawl into the surrounding countryside that would result in an adverse impact on the rural character of the area thus criteria (d) and (e) has not been met.
100. Due to the proposed location no adverse impact on existing residential amenity occurs. Criteria (f) has been met.
101. During site inspection and detail provided on the application form confirm that criteria (g) and (h) can be met in that all of the proposed services are provided underground or from existing overhead lines therefore no adverse environmental impact will be created, nor will any ancillary works harm the rural character at this location.
102. Criteria (i) has been satisfied as the detail demonstrates that a safe access can be provided. DFI Roads offer no objection to the proposed development.

Policy WM2 - Waste Management

103. LCCC Environmental Health and Water Management Unit were consulted and offer no objections in principle offer standing advice.
104. Consideration of flood risk is included as a criteria for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soakaway designed to an appropriate standard. No flood risk is identified.

Access and Transport

105. Detail submitted with the application indicates that permission is sought for a replacement dwelling with unaltered access to a public road to serve to an existing access for both vehicular and pedestrian use.
106. DfI Roads have been consulted and offer no objection subject to standard conditions. Therefore, it is considered that the proposed development is in accordance with Policy TRA2 and will not prejudice road safety or significantly inconvenience the flow of vehicles.

Natural Heritage

107. A Biodiversity checklist and BRP Report carried out by an ecologist has been submitted in support of the application. Survey information relates to all lands included within initially proposed and revised redlines.
108. Natural Environment Division and Water Management Unit have been consulted and offer no objection subject to conditions should approval be recommended.
109. It is considered that the proposed development complies with Policy NH5 of the Plan Strategy and that the development will not result in an unacceptable adverse impact on or damage to habitats, species or features of Natural Heritage Importance.

Flooding

110. Considering Policy FLD 1 - DfI Rivers are satisfied that the applicant has submitted a revised site layout showing the finish floor level should be a minimum of 600mm above the 1 in 100 year fluvial flood plain.
111. With regard to Policy FLD 2 -DfI Rivers requested a working strip of appropriate width is retained to enable riparian landowners to fulfil their statutory obligations/responsibilities. The applicant has demonstrated that they are leaving a minimum working strip of 5 metres along the watercourse to facilitate future maintenance. DfI Rivers are satisfied with this proposal in relation to FLD 2.
112. With regard to Policy FLD 4 DfI Rivers advises artificial modification of a watercourse is normally not permitted unless it is necessary to provide access to a development site or for engineering reasons. This is a matter for Planning NI. Any culverting approved by Planning Service will also be subject to approval from DfI Rivers under Schedule 6 of the Drainage Order 1973 and are dependent on each other.
113. On consideration of the information provided DfI Rivers, Water Management Unit and NI Water offer no objection to the proposed development.
114. Therefore the proposed development it is considered to be in accordance with policies FLD 1, 2, and ,4 of the Plan Strategy

Consideration of Representations

115. Consideration of the 2 representations are as noted below;

Proposal will have a detrimental impact on the rural area

116. The proposal development is contrary to planning policy and it has been determined that it will have an adverse impact on the character of this rural area.

Proposal will create light pollution

117. No evidence to support this view has been submitted. A refusal on this basis could be substantiated.

Proposal location is not on site of original building

118. The proposed replacement is not in-situ and is considered off site, The location is not appropriate and is contrary to policy and therefore unacceptable.

The proposal is much larger than the original building

119. While this is an outline application it is acknowledged in one of the refusal reasons is that the proposal will have a significantly greater visual impact due to its proposed location and is therefore unacceptable.

Impact on wildlife

120. No evidence *has been put forward to substantiate this.*

Conclusions

121. For the reasons outlined above, the proposal fails to meet the requirements of policies COU1, COU3, COU15 and COU16 of the Plan Strategy.

Recommendations

122. It is recommended that planning permission is refused.

Refusal Reasons

123. The following refusal reasons as recommended:

- The proposal is contrary to the SPPS, and policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not an acceptable form of development in the countryside.
- The proposal is contrary to policy COU3 (a)(i) of the Lisburn and Castlereagh City Council Plan Strategy in that the curtilage is not considered so restricted that it could not reasonably accommodate a modest sized dwelling.
- The proposal is contrary to policy COU3(a)(ii) of the Lisburn and Castlereagh City Council Plan Strategy in that the applicant has not demonstrate that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.
- The proposal is contrary to COU3 (b) of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if approved would have a visual impact significantly greater than the existing building.
- The proposal is contrary to policy COU15 of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if approved would be a prominent feature in the landscape nor would it be sited to cluster with an established group of buildings. The site lacks long established natural boundaries being unable to provide a suitable degree of enclosure for the building to integrate into the landscape. The development would rely primarily on the use of new landscaping for integration and it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a back drop.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that a dwelling if permitted would be unduly prominent in the landscape. The development is not sited to cluster with an established group of buildings and fails to respect the pattern of settlement exhibited in that specific location and as such would result in an adverse impact on the rural character of the area.

Site Location Plan – LA05/2022/0883/O



Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee Meeting	04 December 2023
Committee Interest	Local Application (Called in)
Application Reference	LA05/2023/0331/O
Date of Application	17 April 2023
Proposal Description	Proposed infill dwelling and garage
Location	Approximately 35 metres east of 9a Tullyrusk Road, Crumlin, BT29 4JA
Representations	Two
Case Officer	Laura McCausland
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] *Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—*

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*

- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

- [4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. Therefore, under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This application is categorised as a local application. It is referred to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
6. The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not a type of development which in principle is considered to be acceptable in the countryside.
7. The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site does not sit within a substantial and continuously built-up frontage and would if approved, add to ribbon of development along the Tullyrusk Road.
8. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved would have an adverse impact on rural character of the area.

Description of Site and Surroundings

Site

9. The 0.46 hectare site is rectangular in shape and located within the open countryside on agricultural lands approximately 35 metres east of 9a Tullyrusk Road Road, Crumlin.
10. The site is in agricultural use and the topography is relatively flat across the site. The land gradually rises west to east. The northern boundary is defined by a wire fence and tall sparse trees, the western boundary comprises of sheep wire fencing, the eastern and southern boundaries are undefined abutting agricultural lands. Access is via an agricultural gate directly from Tullyrusk Road.

Surroundings

11. The site is seen to be located within open countryside outside the settlement of Crumlin. It is seen to be located between numbers 9, 9a and 9b Tullyruk Road which are dwellings surrounded by agricultural lands.
12. The character of the immediate area is rural in nature and comprised mainly of agricultural lands, farm holdings and single dwellings in the countryside. Properties in the immediate area are single storey in height, of traditional design with large garden areas.

Proposed Development

13. Outline planning permission is sought for a Dwelling & Garage. A Design Access Statement and Biodiversity Checklist has been submitted in support of the application.

Relevant Planning History

14. The planning history associated with the application site is set out in the table below:

Reference Number	Description	Location	Decision
LA05/2023/0335/O	Dwelling and Garage	Approximately 45 metres west of 9b Tullyrusk Road, Crumlin	Pending

15. This application is one of two applications which, when combined seek to provide for two dwellings and garages. The applications are progressed in tandem.

Consultations

16. The following consultations were carried out:

Consultee	Response
DFI Roads	No objections
LCCC EHO	No objections
NI Water	No objections
NIEA	No objections

Representations

17. Two representations in opposition to the proposal have been received. The following issues have been raised:
- The development would result in additional traffic where there is already heavy machinery on road.
 - Infill development would affect the price of property.
 - Development of the site would contribute to “housing development” on the road.
 - Developer plan for commercial gain as opposed to maintaining the rural way of life.
18. These issues are considered as part of the assessment of the application.

Local Development Plan Context

19. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

20. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

21. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.

22. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

23. In draft BMAP (2004) this site was located in the open countryside. It is stated at page 17 of the associated Plan Strategy document that:

The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

24. There are equivalent policies in the Plan Strategy to the regional policies described in LAP and draft BMAP.

25. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy.

26. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) provide appropriate, sustainable, high quality rural dwellings, whilst protecting*

rural character and the environment

- (b) *resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) *protect the established rural settlement pattern and allow for vibrant sustainable communities.*

Development in the Countryside

27. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

28. As explained this is an application for an infill dwelling and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

29. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built up frontage must be visually linked.

30. The justification and amplification of COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

31. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

32. The justification and amplification of this policy states that:

All landscape features which are required to be retained will be appropriately conditioned to be protected prior to the commencement of any other site works including site clearance.

Rural Character and other Criteria

33. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

34. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

35. The proposal requires the construction of a new access onto the public road. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

36. The justification and amplification states:

New development will often affect the public road network surrounding it. This policy seeks to avoid or mitigate adverse impacts and ensure that proposed access arrangements are safe and will not unduly interfere with the movement of traffic.

Development proposals involving a new access, or the use of an existing access must be in compliance with the requirements of the Department's Development Control Advice Note 15, Vehicle Access Standards (2nd Edition, published in August 1999). For the purposes of this policy, a field gate is not an existing access.

The proximity of the proposed access to junctions, other existing accesses and the total number of accesses onto a given stretch of road are relevant matters in the assessment of traffic hazards. The combining of individual access points along a road will be encouraged as this can help to improve road safety.

Control over the land required to provide the requisite visibility splays will be required to ensure that they are retained free of any obstruction. This may be subject to a planning condition requiring that no development shall take place until the works required to provide access, including visibility splays, have been carried out.

Natural Heritage

37. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be

permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

38. The justification and amplification states:

Priority habitats and species may fall within and beyond designated sites. They include both European (as identified under Annex I and II of the Habitats Directive and Annex I of the Birds Directive) and/or Northern Ireland priority habitats and species, identified through the Northern Ireland Biodiversity Strategy (NIBS) (in pursuance of the statutory duties under the Wildlife and Natural Environment (NI) Act 2011.)

'Other' natural heritage features worthy of importance are most likely to include those located along green and blue infrastructure, trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity. Certain other features which make a significant contribution to biodiversity may also be included.

To ensure international and domestic responsibilities and environmental commitments with respect to the management and conservation of biodiversity are met, the habitats, species and features mentioned above are material considerations in the determination of planning applications.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk.

Regional Policy and Guidance

Regional Policy

39. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

40. Paragraph 2.1 of the SPPS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

41. It states that:

The planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. Planning authorities should therefore simultaneously pursue social and economic priorities alongside the careful management of our built and natural environments for the overall benefit of our society.

42. Paragraph 3.6 of the SPPS states:

Planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.

43. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

44. In practice this means that development which accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.

45. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built-up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

46. It is further stated at paragraph 6.78 of the SPPS that:

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

The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy (as modified) have been drafted to be consistent with the SPPS.

Consideration of the Courts:

47. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scoffield delivered judgment in Gordon Duff's Application (Re Glassdrumman Road, Ballynahinch) for Judicial Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.
48. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) *Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) *Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) *In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the*

strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.

- (iv) *Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built-up frontage. This concept is not identical to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.*
- (v) *Where the planning authority is satisfied that there is a substantial and continuously built-up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
- (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement."*

49. Officers have borne in mind that the policy in COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 is similarly restricted as CTY8 and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains new and significant definition of the buildings to be taken into account.
50. Whilst not policy, the following guidance documents remain material considerations:
- Building on Tradition
51. Whilst a guidance document, as opposed to a policy document, the SPPS states;
- 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.*
52. With regards to Policy CTY 8, Building on Tradition states;

4.4.0 *Introducing a new building to an existing cluster (CTY 2a) or ribbon CTY 8 will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.*

4.4.1 *CTY 8 Ribbon Development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses (or appropriate economic development project), within an otherwise substantial and continuous built up frontage. Where such opportunities arise, the policy requires the applicant to demonstrate that the gap site can be developed to integrate the new building(s) within the local context.*

53. The guidance notes that:

- It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
- When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
- Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
- A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.

54. It also notes at the following paragraphs that;

4.5.0 *There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.*

4.5.1 *As a general rule of thumb, gap sites within a continuous built up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.*

55. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.

56. It includes infill principles with examples that have been considered as part of the assessment:

- Follow the established grain of the neighbouring buildings.
- Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.

- Design in scale and form with surrounding buildings
- Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity
- Use a palette of materials that reflect the local area

57. With regard to wastewater treatment, Building on Tradition [page 131] states:

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Development Control Advice Note 15 – Vehicular Access Standards

58. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.'

Assessment

59. The first step in the assessment is to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of COU8 describes a ribbon as:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the

locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

60. The site location plan denotes existing buildings adjacent to the application site and the site adjacent which is subject to another application LA05/2023/0335/O that are to be considered in the assessment.
61. A concept plan received in May 2023 also identifies the buildings that are to be relied upon as providing a substantial and continuously built-up frontage. These include the dwelling at 9 Tullyrusk Road and its garage, the dwelling at 9a Tullyrusk Road and its domestic stable block and the dwelling and garage at 9b Tullyrusk Road.
62. Officers are satisfied that the proposal does engage ribbon development with a number of buildings either side of the site all of which present with frontages to the Tullyrusk Road.

The issue of exception

63. The next step is to consider whether the proposal comes within the exception set out in the policy.
64. The first step is to consider whether there is a substantial and continuously built up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
65. Within the Justification and Amplification section of policy COU 8 the following guidance is noted;

For the purposes of this policy a building's frontage must extend to the edge of the public road or private laneway and not be separated from it by land or development outside of its curtilage.

66. As you move along the Tullyrusk Road in an eastern direction, there is an awareness of road frontage development comprising a detached, single storey property with orientation side gable ended facing onto the Tullyrusk Road, with cream rendered walls, concrete roof tiles, brown uPVC windows and detached double garage of same material finish at 9 Tullyrusk Road and its detached garage.
67. Adjacent to 9 Tullyrusk Road, there is a detached single storey property with integral garage, orientation side gable ended facing onto the Tullyrusk Road with cream rendered walls, concrete roof tiles and brown UPVC windows at 9a Tullyrusk Road. To the rear of this dwelling and within its curtilage there is a detached domestic stable block.
68. There is then the application site and adjacent to it, the site associated with LA05/2023/0335/O. To the east of the site associated with LA05/2023/0335/O there is a detached 1.5 storey red brick property with concrete roof tiles and white

- UPVC windows and detached double garage that both orientation front facing onto the Tullyrusk Road and an associated detached garage at 9b Tullyrusk Road.
69. There is visual buffer of tall fir trees between the site and dwelling at 9b Tullyrusk Road.
 70. Within the context of the definition of substantial and continuously built up frontage it is considered that the domestic garages and stable blocks are excluded from the assessment. The dwelling at 9b is also discounted as it is considered that the trees provide a distinct visual buffer which conceals the building from all transient and static views and that this means that there is no visually linkage with other development along the road frontage.
 71. For reasons set out above it is considered that the site does not fall within a substantial and continuously built-up frontage of development at this part of the Tullyrusk Road.
 72. The next step is to consider whether a small gap exists sufficient to accommodate two dwellings. In considering whether a small gap site exists, whilst the policy text and supplementary guidance recognise that such a site may be able to accommodate two infill dwellings which respect the existing development officers have not assumed that any site of that size is necessarily a small gap site within the meaning of the policy.
 73. Without prejudice to above mentioned officers remain mindful that the issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching restrictive purpose of the policy.
 74. The gap measured from the building at 9a Tullyrusk Road to 9b Tullyrusk Road is 160 metres.
 75. Supporting information provided by the agent indicates plot frontages as follows:
 - No. 9 – 65.8m,
 - No. 9a – 31.5m,
 - Adjacent application site 0331/O - 56m,
 - Application site 0335/O – 58m,
 - No. 9a – 86m
 76. These measurements are not disputed and the average frontage is therefore considered to be 58.75 metres.
 77. The site has a frontage of 58 metres which is broadly in keeping with the average site frontage which measures 58.75 metres.
 78. This application is one of two applications adjacent to each other that together seek permission for two dwellings within this agricultural field. Therefore, assessment on this basis takes account of the combined plot frontages of both the site and the adjacent application site LA05/2023/0335/O.

79. The frontage of both agricultural fields is 114.01m. This divided by two provides for two frontages of 57 metres which is comparable with the existing average site frontage of 58.75m. It is accepted that the frontage of both sites could accommodate two dwellings.
80. It is also a requirement for the dwellings to respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.
81. An assessment of the existing plot sizes along the frontage is set out in the table below:

Site Area	Hectares
No. 9a Tullyrusk Road	0.37
No. 9b Tullyrusk Road	0.7
No. 9 Tullyrusk Road	0.8
Average	0.62

82. The site has an area of approximately 0.47ha. the site area combined with the adjacent site is 94.4 hectares. A plot size of 0.47 hectares is not significantly at odds with the average plot size in the ribbon.

Building on a Tradition

83. The Building on Tradition document is written in relation to previous policy PPS21 CTY8 that no longer carries determining weight. Consideration of guidance contained at 4.4.0 and 4.4.1 examples provided on page 71 are given some material weight in the assessment of this proposal as the site when considered with application site LA05/2023/0335/O is sufficient in size to accommodate two dwellings consistent with the existing pattern of development. The words 'a maximum of' no longer apply.
84. Guidance at 4.5.0 and 4.5.1 are applicable in that the site for reasons set out above is considered not to be located within a continuously built-up frontage of development and would not be seen to provide an important visual break.
85. On review of measurements set out above introduction of proposed development would be in keeping with the established pattern of development pattern at this locality.
86. Whilst the site when considered with application site LA05/2023/0335/O would be able to accommodate two dwellings, because the first policy test is not met the site is not considered to be acceptable as it fails to satisfy policy COU8 and if approved would create a ribbon of development (both on its own and in conjunction with LA05/2023/0335/O).

Integration and Design of Buildings in the Countryside

87. Without prejudice to the view expressed in relation to the principle of development, given flat topography of the site and existing boundary treatment a dwelling of appropriate size and scale could be sited and orientated so as not to present as a prominent feature within the local landscape. Criteria (a) is capable of being met.
88. A dwelling could be sited to cluster with No. 9b and its domestic garage allowing the development to blend with existing buildings and landform. It is considered that existing boundaries when considered with application LA05/2023/0335/O would provide a suitable degree of enclosure for the building to integrate into the landscape without primarily relying on the use of new landscaping. Criteria (b), (c) and (d) are capable of being met.
89. This is an outline application and no detail design has been provided. That said, it is considered that a dwelling could be sited and designed having regard to the character within the immediate area. Criteria (f) is capable of being met.
90. Given the nature of the site it is considered that required ancillary works associated with the access and any other infrastructure above or below ground could be designed so as to integrate into the surroundings without harm to the rural character. Criteria (g) is capable of being met.

Rural Character

91. Again without prejudice to the view expressed in relation to the principle of development, a new dwelling of appropriate designed and scale would not be an unduly prominent feature within the local landscape. Criteria (a) is capable of being met.
92. Criteria (b) is considered to be met as the proposed development is sited to cluster with dwelling and stable block at 9a Tullyrusk Road.
93. It is considered that a dwelling at this site and the adjacent site are capable of being developed so as to respect the pattern of development along the road frontage. Criteria c is capable of being met.
94. The site is sufficiently removed from any surrounding settlement to mar the distinction between any settlement limit and the surrounding countryside thus criteria (d) has been met.
95. That said, the proposal for the reasons outlined earlier in the report is not an exception to Policy COU8 and as such, it would if approved add to an existing ribbon of development along Tullyrusk Road and have an adverse impact on the rural character of the area. Criteria e is not met.
96. Without prejudice to the view expressed in relation to the principle of development, a dwelling of appropriate siting and design could be development to ensure that it would not have an adverse impact upon neighboring residential amenity thus criteria (f) capable of being met.

97. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature of the landscape at this location.
98. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

Policy TRA 2 – Access to public roads

99. As above as per the application form the proposed development seeks to construct a new access onto a public road and provide 3 parking spaces.
100. DFI Roads have been consulted and are seen to offer no objections to the proposed development therefore policy TRA2 of draft Plan Strategy has been met.

Policy WM2 - Waste Management

101. Detail submitted with the application indicates that the source of water supply will be from mains and surface water will be disposed of via soakway. LCCC Environmental Health and NI water were consulted and offer no objection.
5. Consideration of flood risk is included as a criterion for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soak-away designed to an appropriate standard. No flood risk is identified.
6. Based on a review of the information and advice received from consultees, it is accepted that a septic tank and the area of subsoil irrigation for the disposal of effluent can be sited and designed so as not to create or add to a pollution problem. The requirements of policy WM2 of the Plan Strategy are met in full.

Natural Heritage

102. A Biodiversity Checklist prepared by the agent has been provided.
103. NIEA have been consulted and are content with the proposed development therefore it is deemed that polices NH5, subject to relevant conditions and informatives. No adverse harm shall arise in regard to any noted interests of natural heritage importance either within the site or remote from it.
104. For the reasons outlined, the proposal complies with Policy NH5 of the Plan Strategy as modified in that no protected habitat would be negatively affected by the proposal.

Consideration of objections

105. Two letters of objection have been received to date. Consideration of the issues raised are as set out below;

The development would result in additional traffic where there is already heavy machinery on road.

106. DFI Roads have no objection in principle to the proposal and it is considered to meet the requirements of Policy TRA2 of the Plan Strategy.

Infill development would affect the price of property

107. This is not a material planning consideration that would be given significant weight in the assessment of the application.

Development of the site would contribute to “housing development” on the road,

108. It is considered that the proposal would have an adverse impact on the character of the area by adding to a ribbon of development along the Tullyrusk road.

Developer plan for commercial gain as opposed to maintaining the rural way of life.

109. This is not a planning consideration however in terms of the assessment it is concluded the proposal would negatively impact the rural character by virtue of ribboning along the road.

Conclusions and Recommendation

110. It is recommended that planning permission is refused.

Refusal Reasons

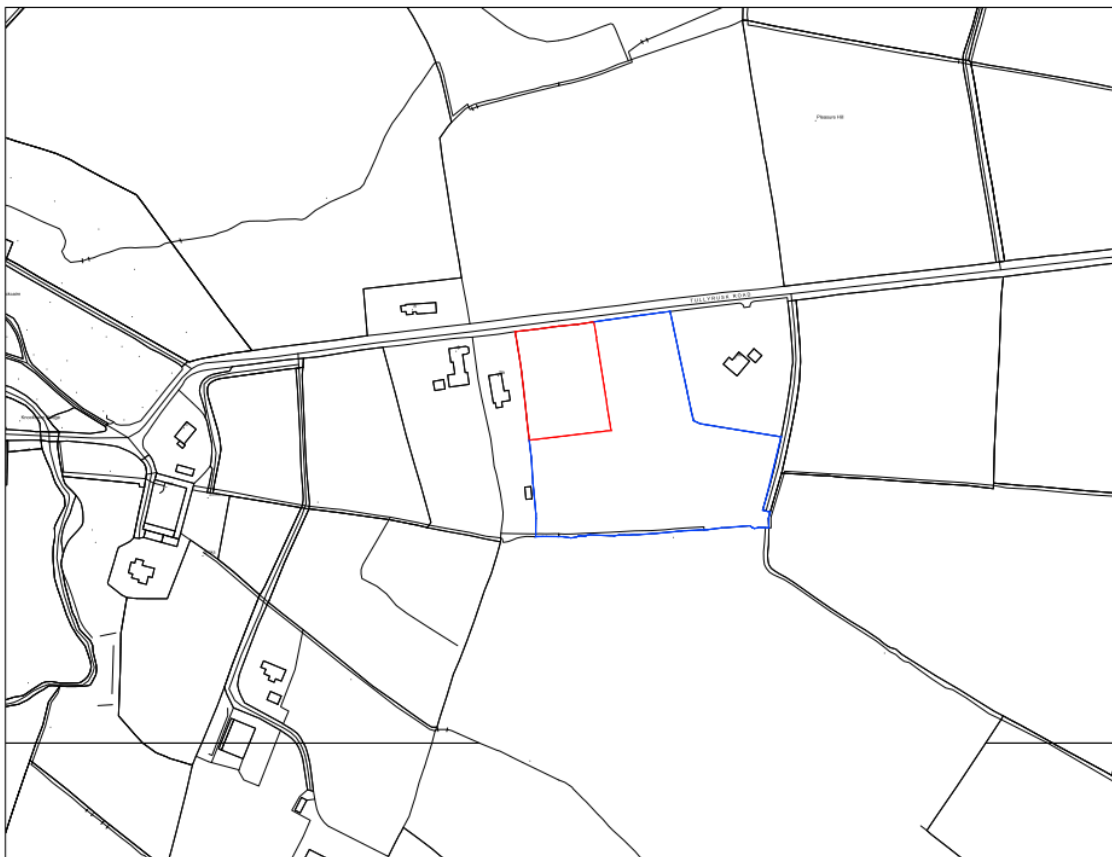
111. The following refusal reasons are recommended:

- The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is not a type of development which in principle is considered to be acceptable in the countryside.
- The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site does not sit within a substantial

and continuously built-up frontage and would if approved, add to ribbon of development along the Tullyrusk Road.

- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved would have an adverse impact on rural character of the area.

Site Location Plan – LA05/2023/0331/O



- Site Location - 0.44Ha
- Land Owned

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No.	Description	Date	By

Planning

Project No.	AP348-02a
Project Description	Proposed Dwelling & Garage Approximate Site East of Tullyrusk Road, County Wick
Client	For McKeownagh
Date	23/11/2022
Drawing No.	PS001
Drawn by	JM
Checked by	MH
Scale	1/2500

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Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee Meeting	04 December 2023
Committee Interest	Local Application (Called in)
Application Reference	LA05/2023/0335/O
Date of Application	18 April 23
Proposal Description	Proposed infill dwelling and garage
Location	Approximately 45 metres west of 9b Tullyrusk Road, Crumlin, BT29 4JA
Representations	Three
Case Officer	Brenda Ferguson
Recommendation	REFUSAL

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*

- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

- [4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

- [1.11] *Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.*

4. Therefore under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This application is categorised as a local application. It is referred to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
6. The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is not a type of development which in principle is considered to be acceptable in the countryside.
7. The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site does not sit within a substantial and continuously built-up frontage and would if approved, add to ribbon of development along the Tullyrusk Road.
8. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved would have an adverse impact on rural character of the area.

Description of Site and Surroundings

Site

9. The 0.47 hectare site is rectangular in shape and located within the open countryside on agricultural lands approximately 45 metres west of 9b Tullyrusk Road , Crumlin.
10. The site is in agricultural use and the topography is relatively flat across the site. The land gradually rises west to east.
11. The northern boundary is defined by a wire fence and tall sparse trees, the western and southern boundaries are undefined and the eastern boundary is defined by post and wire fence with large dense fir trees beyond the site. Access is via an agricultural gate directly from Tullyrusk Road.

Surroundings

12. The site is to be located within open countryside outside the settlement of Crumlin. It lies between numbers 9, 9a and 9b Tullyrusk Road which are dwellings surrounded by agricultural lands.
13. The character of the immediate area is rural in nature and comprised mainly of agricultural lands, farm holdings and single dwellings in the countryside. Properties in the immediate area are single storey in height, of traditional design with large garden areas.

Proposed Development

14. Outline planning permission is sought for a Dwelling & Garage. A Design Access Statement and Biodiversity Checklist has been submitted in support of the application.

Relevant Planning History

15. The planning history associated with the application site is set out in the table below:

Reference Number	Description	Location	Decision
LA05/2023/0331/O	Proposed Infill Dwelling & Garage	Approximately 35m East of 9a Tullyrusk Road, Crumlin	Pending

16. This application is one of two applications which, when combined seek provide for two dwellings and garages. The applications are progressed in tandem.

Consultations

17. The following consultations were carried out:

Consultee	Response
DFI Roads	No objections
LCCC EHO	No objections
NI Water	No objections
NIEA	No objections
Health and Safety Executive (NI)	No objections
Historic Monuments Unit	No objections

Representations

18. Three representations in opposition to the proposal have been received to date. The following issues have been raised:
- The development would result in additional traffic where there is already heavy machinery on road.
 - Infill development would affect the price of property.
 - Development of the site would contribute to “housing development” on the road.
 - Ownership of the land within the red line
 - Developer plan for commercial gain as opposed to maintaining the rural way of life.
 - Lack of communication from Council for neighbours/third parties
 - Ecological concerns
 - Land to rear of sites will be landlocked and no access will be gained
 - Design and Access statement inaccurate
 - Overlooking/loss of privacy concerns
 - Concerns regarding surface rain water drainage and mains capacity

19. These issues are considered as part of the assessment of the application.

Local Development Plan Context

20. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

21. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

22. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.

23. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

24. In draft BMAP (2004) this site was located in the open countryside. It is stated at page 17 of the associated Plan Strategy document that:

The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

25. There are equivalent policies in the Plan Strategy to the regional policies described in LAP and draft BMAP.
26. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy.
27. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) *provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) *resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) *protect the established rural settlement pattern and allow for vibrant sustainable communities.*

Development in the Countryside

28. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

29. As explained this is an application for an infill dwelling and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

30. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built up frontage must be visually linked.

31. The justification and amplification of COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

32. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

33. The justification and amplification of this policy states that:

All landscape features which are required to be retained will be appropriately conditioned to be protected prior to the commencement of any other site works including site clearance.

Rural Character and other Criteria

34. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

35. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

36. The proposal requires the construction of a new access onto the public road. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of*

- vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

37. The justification and amplification states:

New development will often affect the public road network surrounding it. This policy seeks to avoid or mitigate adverse impacts and ensure that proposed access arrangements are safe and will not unduly interfere with the movement of traffic.

Development proposals involving a new access, or the use of an existing access must be in compliance with the requirements of the Department's Development Control Advice Note 15, Vehicle Access Standards (2nd Edition, published in August 1999). For the purposes of this policy, a field gate is not an existing access.

The proximity of the proposed access to junctions, other existing accesses and the total number of accesses onto a given stretch of road are relevant matters in the assessment of traffic hazards. The combining of individual access points along a road will be encouraged as this can help to improve road safety.

Control over the land required to provide the requisite visibility splays will be required to ensure that they are retained free of any obstruction. This may be subject to a planning condition requiring that no development shall take place until the works required to provide access, including visibility splays, have been carried out.

Natural Heritage

38. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*

- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

39. The justification and amplification states:

Priority habitats and species may fall within and beyond designated sites. They include both European (as identified under Annex I and II of the Habitats Directive and Annex I of the Birds Directive) and/or Northern Ireland priority habitats and species, identified through the Northern Ireland Biodiversity Strategy (NIBS) (in pursuance of the statutory duties under the Wildlife and Natural Environment (NI) Act 2011.)

'Other' natural heritage features worthy of importance are most likely to include those located along green and blue infrastructure, trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity. Certain other features which make a significant contribution to biodiversity may also be included.

To ensure international and domestic responsibilities and environmental commitments with respect to the management and conservation of biodiversity are met, the habitats, species and features mentioned above are material considerations in the determination of planning applications.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk.

Regional Policy and Guidance

Regional Policy

40. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are

material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

41. Paragraph 2.1 of the SPPS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

42. It states that:

The planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. Planning authorities should therefore simultaneously pursue social and economic priorities alongside the careful management of our built and natural environments for the overall benefit of our society

43. Paragraph 3.6 of the SPPS states:

Planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.

44. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

45. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

46. It is further stated at paragraph 6.78 of the SPPS that:

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

The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy (as modified) have been drafted to be consistent with the SPPS.

Consideration of the Courts:

47. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scoffield delivered judgment in Gordon Duff's Application (Re Glasdrumman Road, Ballynahinch) for Judicial Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.

48. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) *Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) *Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) *In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning*

authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.

- (iv) *Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.*
 - (v) *Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
 - (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement."*
49. Officers have borne in mind that the policy in COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 is similarly restricted as CTY8 and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains new and significant definition of the buildings to be taken into account.

50. Whilst not policy, the following guidance documents remain material considerations:

Development Control Advice Note 15 – Vehicular Access Standards

51. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular

accesses. *This Development Control Advice Note (DCAN) sets out and explains those standards.'*

Building on Tradition

52. Whilst a guidance document, as opposed to a policy document, the SPPS states;

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.

53. With regards to Policy CTY 8, Building on Tradition states;

4.4.0 Introducing a new building to an existing cluster (CTY 2a) or ribbon CTY 8 will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.

4.4.1 CTY 8 Ribbon Development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses (or appropriate economic development project), within an otherwise substantial and continuous built up frontage. Where such opportunities arise, the policy requires the applicant to demonstrate that the gap site can be developed to integrate the new building(s) within the local context.

54. The guidance notes that:

- It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
- When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
- Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
- A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.

55. It also notes at the following paragraphs that;

4.5.0 There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.

4.5.1 As a general rule of thumb, gap sites within a continuous built up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an

important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.

56. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.
57. It includes infill principles with examples that have been considered as part of the assessment:
- Follow the established grain of the neighbouring buildings.
 - Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.
 - Design in scale and form with surrounding buildings
 - Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity
 - Use a palette of materials that reflect the local area
58. With regard to wastewater treatment, Building on Tradition [page 131] states:

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Development Control Advice Note 15 – Vehicular Access Standards

59. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular

accesses. *This Development Control Advice Note (DCAN) sets out and explains those standards.'*

Assessment

60. The first step in the assessment is to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of COU8 describes a ribbon as:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

61. The site location plan denotes existing buildings adjacent to the application site and the site adjacent which is subject to another application LA05/2023/0331/O that are to be considered in the assessment.
62. A concept plan received in May 2023 also identifies the buildings that are to be relied upon as providing a substantial and continuously built up frontage. These include the dwelling at 9 Tullyrusk Road and its garage, the dwelling at 9a Tullyrusk Road and its domestic stable block and the dwelling and garage at 9b Tullyrusk Road.
63. Officers are satisfied that the proposal does engage ribbon development as there are a number of buildings either side of the site all of which present with frontages to the Tullyrusk Road.

The issue of exception

64. The next step is to consider whether the proposal comes within the exception set out in the policy.
65. The first step is to consider whether there is a substantial and continuously built up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
66. Within the Justification and Amplification section of policy COU 8 the following guidance is noted;

For the purposes of this policy a building's frontage must extend to the edge of the public road or private laneway and not be separated from it by land or development outside of its curtilage.

67. As you move along the Tullyrusk Road in an eastern direction, there is an awareness of road frontage development comprising a detached, single storey property with orientation side gable ended facing onto the Tullyrusk Road, with cream rendered walls, concrete roof tiles, brown uPVC windows and detached double garage of same material finish at 9 Tullyrusk Road and its detached garage.
68. Adjacent to 9 Tullyrusk Road, there is a detached single storey property with integral garage, orientation side gable ended facing onto the Tullyrusk Road with cream rendered walls, concrete roof tiles and brown UPVC windows at 9a Tullyrusk Road. To the rear of this dwelling and within its curtilage there is a detached domestic stable block.
69. There is then the site associated with LA05/2023/0331/O and the application site. To the east of the application site there is a detached 1.5 storey red brick property with concrete roof tiles and white UPVC windows and detached double garage that both orientation front facing onto the Tullyrusk Road and an associated detached garage at 9b Tullyrusk Road.
70. There is visual buffer of tall fir trees between the site and dwelling at 9b Tullyrusk Road.
71. Within the context of the definition of substantial and continuously built up frontage it is considered that the domestic garages and stable blocks are excluded from the assessment. The dwelling at 9b is also discounted as it is considered that the trees provide a distinct visual buffer which conceals the building from all transient and static views and that this means that there is no visually linkage with other development along the road frontage.
72. For reasons set out above it is considered that the site does not fall within a substantial and continuously built-up frontage of development at this part of the Tullyrusk Road.
73. The next step is to consider whether a small gap exists sufficient to accommodate two dwellings. In considering whether a small gap site exists, whilst the policy text and supplementary guidance recognize that such a site may be able to accommodate two infill dwellings which respect the existing development officers have not assumed that any site of that size is necessarily a small gap site within the meaning of the policy.
74. Without prejudice to above mentioned officers remain mindful that the issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching restrictive purpose of the policy.
75. The gap measured from the building at 9a Tullyrusk Road to 9b Tullyrusk Road is 160 metres.
76. Supporting information provided by the agent indicates plot frontages as follows:
 - No. 9 – 65.8m,
 - No. 9a – 31.5m,

- Adjacent application site 58m,
 - Application site – 56m,
 - No. 9a – 86m
77. These measurements are not disputed and the average frontage is therefore considered to be 58.75 metres.
78. The application site has a frontage of 56 metres which is broadly in keeping with the average site frontage which measures 58.75 metres.
79. This application is one of two applications adjacent to each other that together seek permission for two dwellings within this agricultural field. Therefore, assessment on this basis takes account of the combined plot frontages of both the site and the adjacent application site LA05/2023/0331/O.
80. The frontage of both agricultural fields is 114.01m. This divided by two provides for two frontages of 57 metres which is comparable with the existing average site frontage of 58.75m. It is accepted that the frontage of both sites could accommodate two dwellings.
81. It is also a requirement for the dwellings to respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.
82. An assessment of the existing plot sizes along the frontage is set out in the table below:

Site Area	Hectares
No. 9a Tullyrusk Road	0.37
No. 9b Tullyrusk Road	0.7
No. 9 Tullyrusk Road	0.8
Average	0.62

83. The site has an area of approximately **0.47ha**. the site area combined with the adjacent site is 94.4 hectares. A plot size of 0.47 hectares is not significantly at odds with the average plot size in the ribbon.

Building on a Tradition

84. The Building on Tradition document is written in relation to previous policy PPS21 CTY8 that no longer carries determining weight. Consideration of guidance contained at 4.4.0 and 4.4.1 examples provided on page 71 are given some material weight in the assessment of this proposal as the site when considered with application site LA05/2023/0331/O is sufficient in size to accommodate two dwellings consistent with the existing pattern of development. The words ‘a maximum of’ no longer apply.

85. Guidance at 4.5.0 and 4.5.1 are applicable in that the site for reasons set out above is considered not to be located within a continuously built-up frontage of development and would not be seen to provide an important visual break.
86. On review of measurements set out above introduction of proposed development would be in keeping with the established pattern of development pattern at this locality.
87. Whilst the site when considered with application site LA05/2023/0331/O would be able to accommodate two dwellings, because the first policy test is not met the site is not considered to be acceptable as it fails to satisfy policy COU8 and subsequently if approved would add to a ribbon of development (both on its own and in conjunction with LA05/2023/0331/O).

Integration and Design of Buildings in the Countryside

88. Without prejudice to the view expressed in relation to the principle of development, given flat topography of the site and existing boundary treatment a dwelling of appropriate size and scale could be sited and orientated so as not to present as a prominent feature within the local landscape. Criteria (a) is capable of being met.
89. A dwelling could be sited to cluster with No. 9b and its domestic garage allowing the development to blend with existing buildings and landform. It is considered that existing boundaries when considered with application LA05/2023/0331/O would provide a suitable degree of enclosure for the building to integrate into the landscape without primarily relying on the use of new landscaping. Criteria (b), (c) and (d) are capable of being met.
90. This is an outline application and no detail design has been provided. That said, it is considered that a dwelling could be sited and designed having regard to the character within the immediate area. Criteria (f) is capable of being met.
91. Given the nature of the site it is considered that required ancillary works associated with the access and any other infrastructure above or below ground could be designed so as to integrate into the surroundings without harm to the rural character. Criteria (g) is capable of being met.

Rural Character

92. Again without prejudice to the view expressed in relation to the principle of development, a new dwelling of appropriate designed and scale would not be an unduly prominent feature within the local landscape. Criteria (a) is capable of being met.
93. Criteria (b) is considered to be met as the proposed development is sited to cluster with the dwelling and garage at 9b Tullyrusk Road.

94. It is considered that a dwelling at this site and the adjacent site are capable of being developed so as to respect the pattern of development along the road frontage. Criteria c is capable of being met.
95. The site is sufficiently removed from any surrounding settlement to mar the distinction between any settlement limit and the surrounding countryside thus criteria (d) has been met.
96. That said, the proposal for the reasons outlined earlier in the report is not an exception to Policy COU8 and as such, it would if approved add to an existing ribbon of development along Tullyrusk Road and have an adverse impact on the rural character of the area. Criteria e is not met.
97. Without prejudice to the view expressed in relation to the principle of development, a dwelling of appropriate siting and design could be development to ensure that it would not have an adverse impact upon neighboring residential amenity thus criteria (f) capable of being met.
98. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature of the landscape at this location.
99. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

Policy TRA 2 – Access to public roads

100. As above as per the application form the proposed development seeks to construct a new access onto a public road and provide 3 parking spaces.
101. DFI Roads have been consulted and are seen to offer no objections to the proposed development therefore policy TRA2 of the LCCC Plan Strategy has been met.

Policy WM2 - Waste Management

102. Detail submitted with the application indicates that the source of water supply will be from mains and surface water will be disposed of via soakway. LCCC Environmental Health, NI water and Water Management Unit were consulted and offer no objection.
103. Consideration of flood risk is included as a criterion for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process.

Foul and storm discharge is normally through a soak-away designed to an appropriate standard. No flood risk is identified.

104. Based on a review of the information and advice received from consultees, it is accepted that a septic tank and the area of subsoil irrigation for the disposal of effluent can be sited and designed so as not to create or add to a pollution problem. The requirements of policy WM2 of the Plan Strategy are met in full.

Natural Heritage

105. A Biodiversity Checklist prepared by the agent has been provided. The checklist and its contents have been considered and the Council are content that the proposed development will not have any adverse impact on natural heritage features.
106. Existing boundaries are to remain and it is considered therefore that policies NH1 and NH5 of the Plan Strategy are met. No adverse harm shall arise in regard to any noted interests of natural heritage importance either within the site or remote from it.
107. For the reasons outlined, the proposal complies with Policy NH5 of the Plan Strategy as modified in that no protected habitat would be negatively affected by the proposal.

Consideration of objections

108. Three letters of objection have been received to date. Consideration of the issues raised are as set out below;

The development would result in additional traffic where there is already heavy machinery on road

109. DFI Roads have been consulted with regards to the proposal and are content subject to conditions. The proposal is said to be compliant with Policy TRA2 of the Plan Strategy.

Infill development would affect the price of property

110. This is not a material planning consideration that would be given significant weight in the assessment of the application.

Development of the site would contribute to "housing development" on the road.

111. It is considered that the development of the subject site and the adjacent site would lead to the addition of ribboning along the Tullyrusk Road and have an adverse impact on the rural character.

Ownership of the land within the red line

112. The agent has been asked to provide a response to the land ownership query and has advised that the sightlines lie within the existing verge which is controlled by DFI Roads who are responsible for the verge maintenance. They have further stated that there are no works required on neighbouring land to provide the visibility splay and there is no requirement to complete certificate C.

Developer plan for commercial gain as opposed to maintaining the rural way of life

113. Commercial gain is not a material planning consideration given weight in the assessment of this application.

Lack of communication from Council for neighbours/third parties

114. The relevant neighbours abutting and/or adjoining the application site have been notified including the objector.

Ecological concerns

115. A biodiversity checklist has been submitted by the agent and the Council are in agreement with the findings and conclude there will be no detrimental adverse impact on natural heritage features of interest.

Land to rear of sites will be landlocked and no access will be gained

116. The land to the rear lies outside of the red line and does not form part of the consideration of the planning application.

Design and Access statement inaccurate

117. The design and access statement has been submitted in support of the application and it is considered the proposal is not acceptable.

Overlooking/loss of privacy concerns

118. The proposal is for outline permission only and no details in relation to the design/layout/height of the dwelling has been provided. It is considered that a suitable ridge height condition limiting the dwelling to single storey will ensure there is no impact on residential amenity however it is considered unacceptable in principle and contrary to the SPPS and Policies COU1, COU8 and COU16 of the Plan Strategy.

Concerns regarding surface rain water drainage and mains capacity

119. The site does not lie within an area of fluvial or surface water flooding and sewerage is to be disposed of via a septic tank with storm water discharge via a soakaway subject to discharge consent from DAREA. NI Water, Environmental Health are content.

Conclusions and Recommendation

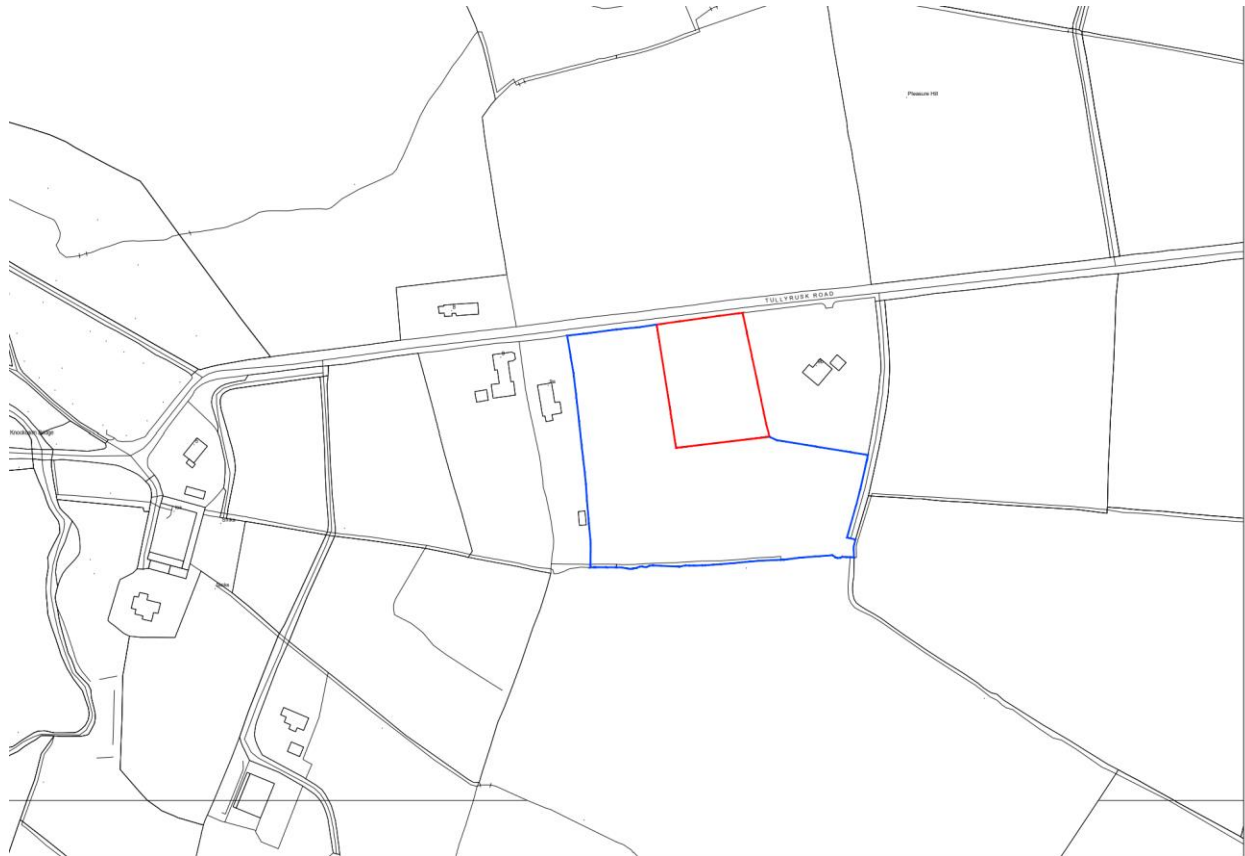
120. It is recommended that planning permission is refused.

Refusal Reasons

121. The following refusal reasons are recommended.

- The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is not a type of development which in principle is considered to be acceptable in the countryside.
- The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site does not sit within a substantial and continuously built-up frontage and would if approved, add to ribbon of development along the Tullyrusk Road.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved would have an adverse impact on rural character of the area.

Site Location Plan – LA05/2023/0355/O



Lisburn & Castlereagh City Council

Planning Committee	
Date of Committee	04 December 2023
Committee Interest	Local Application [Called In]
Application Reference	LA05/2021/0609/O
Date of Application	18 May 2021
District Electoral Area	Lisburn South
Proposal Description	Two dwellings and garages
Location	30m North of 6 Cross Lane, Lisburn
Representations	One
Case Officer	Cara Breen
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. In accordance with Regulation 3 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Plan Strategy applies to all applications.
5. The existing suite of planning policy statements retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

6. This application is categorised as a local application. It is presented to the Committee in accordance with the Protocol for the Operation of the Planning Committee in that it has been Called In.
7. The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not a type of development which in principle is acceptable in the countryside.
8. The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the gap is not considered to be a small gap, sufficient to accommodate two dwellings whilst respecting the existing pattern of development along Cross Lane. Furthermore, the development, if approved, would add to a ribbon of development along Cross Lane.

9. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development does not respect the traditional pattern of settlement exhibited in that area and as such would, if permitted, result in an adverse impact on the rural character of the area.

Description of Site and Surroundings

Site

10. The application site is located 30 metres north of 6 Cross Lane, Lisburn. The application site is part of a larger area of unused overgrown land which is accessed via a break in the roadside boundary vegetation.
11. The roadside boundary and the north eastern boundary are demarcated by mature trees/vegetation. The north western and south eastern boundaries are undefined.
12. In relation to topography, the application site is relatively level

Surroundings

13. The application site lies in the open countryside outside of any defined settlement limit. The area is rural in character and predominantly agricultural in use, characterized by drumlin topography.
14. The application site is neighboured by a derelict former dwelling to the north west and by dwellings at 2, 4 and 6 Cross Lane to the south.

Proposed Development

15. Outline Planning permission is sought for 2 dwellings and garages.

Relevant Planning History

16. The planning history associated with the application site is set out in the table below:

Reference Number	Description	Location	Decision
LA05/2018/0826/F	Replacement dwelling and garage	Adjacent to 6 Cross Lane Lisburn	Permission Granted

Consultations

17. The following consultations were carried out:

Consultee	Response
DAERA Water Management Unit	No Objection
DAERA Natural Environment Division	No Objection
LCCC Environmental Health	No Objection
DfI Roads	No Objection
NI Water	No Objection

Representations

18. One representation was received in relation to the proposal . The purpose of the letter was to inform the Council that bats may be present on the application site.

Local Development Plan Context

Local Development Plan Context

19. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

20. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old

Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

21. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

22. In draft BMAP (2004) this site was located in the open countryside and the Belfast Metropolitan Area Green Belt. It is stated at page 17 of the associated Plan Strategy document that:

The Department has begun progressively to replace the Rural Strategy. The Planning Strategy section of the Rural Strategy has been superseded by the RDS, whilst the topic policy sections are progressively being replaced by PPS's. The Rural Strategy remain material considerations until superseded by PPS's.

23. In the subsequent revision to draft BMAP (2014) this site is located in the open countryside but reference to the Belfast Metropolitan Area Green Belt is removed. It is stated at policy SETT 4 at page 32 of Part 3 Volume 1 that:

The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

24. There are equivalent policies in the Plan Strategy of the Lisburn and Castlereagh City Council Plan 2032 to the regional policies described in LAP and draft BMAP.

25. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) resist urban sprawl in the open countryside which mars the distinction*

- between the rural area and urban settlements*
- (c) *protect the established rural settlement pattern and allow for vibrant sustainable communities.*

Development in the Countryside

26. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

27. As explained this is an application for an infill dwelling and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

28. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built-up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built-up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.

Buildings forming a substantial and continuously built-up frontage must be visually linked.

29. The justification and amplification of COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

30. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

31. There are landscape features including trees and hedgerow and it is stated in the justification and amplification of this policy that:

All landscape features which are required to be retained will be appropriately conditioned to be protected prior to the commencement of any other site works including site clearance.

Rural Character and other Criteria

32. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*

- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

33. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

34. A new access is proposed to the public road. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

Regional Policy and Guidance

35. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals.

36. It is stated a paragraphs 1.11 of the SPPS that:

Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

The Plan Strategy was adopted on 26 September 2023. The operational policies in Part 2 are considered to take precedence over the retained suite planning policy statements in accordance with paragraph 1.11 of the SPPS.

37. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

38. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

39. It is further stated at paragraph 6.78 of the SPPS that:

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

40. The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy have been drafted to be consistent with the SPPS.

Consideration of the Courts

41. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scofield delivered judgment in

Gordon Duff's Application (Re Glasdrumman Road, Ballynahinch) for Judicial Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.

42. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.*
- (iv) Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical*

to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.

- (v) *Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
 - (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement.”*
43. Officers have borne in mind that the policy in COU8 of the Plan Strategy 2032 is a restrictive policy and that any infill application is an exception to the prohibition on ribbon development.
44. Whilst not policy, the following guidance documents remain material considerations:

Building on Tradition

45. Whilst a guidance document, as opposed to a policy document, the SPPS states;
- 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.*
46. With regards to Policy CTY 8, Building on Tradition states;
- 4.4.0 *Introducing a new building to an existing cluster (CTY 2a) or ribbon CTY 8 will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.*
 - 4.4.1 *CTY 8 Ribbon Development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses (or appropriate economic*

development project), within an otherwise substantial and continuous built up frontage. Where such opportunities arise, the policy requires the applicant to demonstrate that the gap site can be developed to integrate the new building(s) within the local context.

47. The guidance notes that:

- It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
- When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
- Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
- A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.

48. It also notes at the following paragraphs that:

4.5.0 There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.

4.5.1 As a general rule of thumb, gap sites within a continuous built up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.

49. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.

50. It includes infill principles with examples that have been considered as part of the assessment:

- Follow the established grain of the neighbouring buildings.
- Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.
- Design in scale and form with surrounding buildings
- Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity
- Use a palette of materials that reflect the local area

51. With regard to waste water treatment, Building on Tradition [page 131] states:

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Development Control Advice Note 15 – Vehicular Access Standards

48. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.'

Natural Heritage

Species Protected by Law

49. Policy NH2- Species Protected by Law states:

'European Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm a European protected species.

In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:

- a) there are no alternative solutions; and*
- b) it is required for imperative reasons of overriding public interest; and*
- c) there is no detriment to the maintenance of the population of the species at a*

favourable conservation status; and

d)compensatory measures are agreed and fully secured.

National Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against.

Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.'

Habitats, Species or Features of Natural Heritage Importance

50. Policy NH5 – Habitats, Species or Features of Natural Heritage Importance states;

'Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

a)priority habitats

b)priority species

c)active peatland

d)ancient and long-established woodland

e)features of earth science conservation importance

f)features of the landscape which are of major importance for wild flora and fauna

g)rare or threatened native species

h)wetlands (includes river corridors)

i)other natural heritage features worthy of protection including trees and woodland.

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.'

Assessment

Policy COU1 – Development in the Countryside

51. Policy COU1 states that the details of operational policies relating to acceptable residential development are set out in policies COU2 to COU10.
52. The application relates to two proposed infill dwellings. Therefore, the principle of development is to be assessed against Policy COU8 in the first instance.

Policy COU8 – Infill/Ribbon Development

53. As the Courts have noted in the Glasdrumman Road, Ballynahinch Judicial Review, and for the reasons described above, it is acknowledged that the regional policy in PPS 21 Policy CTY8 is restricted and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to Policy COU8, however it is noted that COU8 contains new criteria, to include a definition of what type of buildings can be taken into account.
54. The initial step is to consider whether the proposal would create or add to a ribbon of development. The Justification and Amplification text of Policy COU8 describes a ribbon as:

‘A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.’

55. It is contended that the proposal would engage ribbon development by virtue of the fact that there are three existing dwellings beside one another at 2, 4 and 6 Cross Lane immediately to the south of the application site and a derelict former dwelling to the northwest of the application site.
56. All of the buildings share a common frontage to Cross Lane. The application site falls between the existing dwelling at 6 Cross Lane and the derelict former dwelling to the north west.

The issue of exception

57. Whilst the premise of Policy COU8 is that Planning permission will be refused for a building(s) which creates or adds to a ribbon of development, it does however advise that there may be exceptions whereby the development of a small gap, sufficient to accommodate two dwellings within an otherwise substantial and continuously built-up frontage, may be acceptable. The exceptions test also requires that the proposed dwellings respect the existing pattern of development in

terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings and the buildings forming the substantial and continuously built up frontage must be visually linked.

58. The first step in determining whether an 'infill' opportunity exists is to identify whether an otherwise substantial and continuously built-up frontage is present on the ground.
59. Policy COU8 states that for the purposes of this policy, a substantial and continuously built-up frontage is a line of four or more buildings, of which at least two must be dwellings (excluding domestic ancillary buildings such as; garages, sheds and greenhouses) adjacent to a public road or private laneway.
60. The associated Justification and Amplification text of Policy COU8 notes that for the purposes of this policy, a building's frontage must extend to the edge of the public road or private laneway and not be separated from it by land or development outside of its curtilage.
61. It is acknowledged that the dwellings at 2, 4 and 6 Cross Lane and the derelict dwelling to the north west of the application site all have curtilages which extend to Cross Lane and therefore all present a frontage to it.
62. For the reasons outlined, it is accepted that there is a substantial and continuously built up frontage in situ and therefore the proposal meets the first exceptions test of Policy COU8.
63. The second step in the process of determining whether an infill opportunity exists or not is to identify if the gap site is small.
64. Policy COU8 relates to the gap between road frontage buildings. The gap is measured between the two closest (applicable) existing buildings either side of the application site.
65. In this instance, this is the gap between the existing dwelling at 6 Cross Lane and the derelict former dwelling to the north west of the application site. This gap measures 61 metres approximately.
66. Guidance set out in Building on Tradition advises that when a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill.

Within this context, it is considered that with an average existing frontage width (2, 4, 6 and derelict former dwelling) of approximately 22 metres, a gap of 61 metres is not a small gap and as such, this part of the policy test is not met.

67. The proposed development is also required respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.

68. In terms of assessing whether the existing pattern of development would be respected, the Justification and Amplification associated with COU8 states;
- 'Assessment of what constitutes an existing pattern of development must take account and have regard to the size and scale of buildings, their siting and position in relation to each other and the size and width of individual plots upon which they are situated.'*
69. Whilst it is acknowledged that the application seeks outline planning permission only and that full design details have not been provided, an indicative Site Layout Map has been submitted with the application.
70. With regards to siting, the Site Layout Map depicts two dwellings which would follow a similar building line to the existing dwellings within the frontage. As such, no concern is raised in relation to the potential for the dwellings to be sited to respect the existing pattern of development.
71. In relation to design, the submitted Site Layout Map illustrates two dwelling footprints which appear to be akin to that of the dwelling which was approved as a replacement dwelling for the derelict dwelling to the north west of the site under LA05/2018/0826/F (although not constructed to date).
72. The existing dwellings at 2, 4 and 6 Cross Lane along with the derelict former dwelling to the north west of the application site comprise a range of buildings types including two storey to single storey buildings with a mix of designs. There is no dominant architectural style.
73. Taking this into account, it is considered that a dwelling of appropriate design could be achieved with the design details could be assessed in full at Reserved Matters stage. Therefore, there are no concerns in relation to design in the context of the existing pattern of development.
74. The submitted Site Layout Map depicts two proposed dwellings on the application site which would occupy a footprint of 113.25 metres squared each. The existing dwellings at 2, 4 and 6 Cross Lane and the derelict former dwelling to the north west of the application site occupy footprints of approximately 68 metres squared, 95 metres squared, 202 metres squared and 81 metres squared respectively. This gives an average footprint of 111.5 metres squared. Based on this analysis, it is considered that the indicative footprints of 113.25 metres squared would be acceptable in the context of the existing pattern of development and there are no concerns in respect to size and scale.
75. With regards to plot size, the boundaries associated with 2, 4 and 6 Cross Lane would appear to have been altered. The changes to these curtilages do not benefit from planning permission.
76. The assessment of plot sizes is made against the curtilages as shown on the submitted Site Location Map. The existing plot sizes within the substantial and continuously built-up frontage are as follows:

- 2 Cross Lane – 0.19 hectares
 - 4 Cross Lane – 0.19 hectares
 - 6 Cross Lane – 0.195 hectares
 - Derelict dwelling to north west of site - 0.056 hectares (approx.)
77. This equates to an average plot size of 0.16 hectares. The proposed plot size for each dwelling is 0.058 hectares.
78. Whilst these are below the average plot size they are similar in size to the former dwelling to the north west of the application site.
79. In terms of existing plots widths, the following widths are noted:
- 2 Cross Lane - 28 metres,
 - 4 Cross Lane - 23 metres,
 - 6 Cross Lane 27 metres, and
 - The derelict dwelling to north west of site west 11 metres.
80. This equates to an average frontage width of circa 22 metres which is much larger than the frontage widths at the proposed site which are approximately 4.5 metres in width.
81. It is therefore considered that the proposal would not meet the third component of the exceptions test, in that the proposal would not respect the existing pattern of development by way of plot width.
82. The final test associated with Policy COU8 is that the buildings forming the substantial and continuously built-up frontage must be visually linked. Standing to the road edge at the front of the application site, it is contended that all four buildings are visually linked.
83. For the reasons outlined above, it is considered that the proposed development would fail respect the existing pattern of development in terms of frontage width. It is considered that the proposed development would add to a ribbon of development along the eastern side of Cross Lane.

Policy COU15 - Integration and Design of Buildings in the Countryside

84. As explained full design details have not been submitted for consideration. That said, a Site Layout Map shows the indicative configuration of two dwellings within the application site and their vehicular accesses.
85. The Site Layout Map depicts two dwellings each with a footprint shape and size akin to that of the dwelling which was approved as a replacement dwelling to the north west of the application site under LA05/2018/0826/F. The footprint of each dwelling would occupy 113.25m² (as shown) to include integral garages.
86. Having regard to the road trajectory, the existing mature boundary vegetation (particularly to the rear and to the northern boundary of 6 and the close proximity of and positioning of neighbouring buildings it is considered that the application

- site could accommodate two dwellings without presenting as prominent features in the landscape. Criteria (a) is capable of being met.
87. It is also considered that the proposed dwellings would be seen to cluster with the neighbouring three dwellings immediately to the south of the application site and the derelict dwelling to the north west of the site. Criteria (b) is capable of being met.
 88. Dwellings could be designed so as to blend with the landform and existing natural features (including the mature vegetation to the rear boundary) which provide a backdrop. Criteria (c) is capable of being met.
 89. The majority of the existing natural boundaries to the front and rear of the application site are capable of being retained to aid integration consistent with guidance set out in Building on Tradition. In addition, it is considered that the close proximity of neighbouring buildings could also provide a degree of enclosure. Criteria (d) is capable of being met.
 90. Whilst it is acknowledged that new landscaping and augmentation would be required, having regard to the presence of existing natural boundaries, it is not considered that the proposed scheme would rely primarily on new landscaping for the purposes of integration. Criteria (e) is capable of being met.
 91. As explained above, the Site Layout Map demonstrates that dwellings could be sited and designed appropriate to the locality. Criteria (d) is capable of being met.
 92. Detail associated with the Site Layout Map demonstrates that the development can take paces without the need for sweeping suburban style driveways. Having regard to the existing ground levels two dwellings could be accommodated without the requirement for unacceptable cut and fill (excavation) or large retaining structures. Criteria (f) is capable of being met.
 93. For the reasons outlined above, the policy tests associated with policy COU15 are capable of being met.

Policy COU16 - Rural Character

94. For the reasons outlined above, it is considered that two dwellings could be accommodated within the application site without appearing as unduly prominent in the landscape. Criteria (a) is capable of being met.
95. As noted above, the proposed dwellings could be seen to cluster with the existing dwellings within the frontage. Criteria (b) is capable of being met.
96. As demonstrated with the context of Policy COU8, it is not considered that the proposal would respect the traditional pattern of settlement exhibited in the area, in that it would add to a ribbon of development, the gap is too big and it would not respect the existing frontage width. Criteria (c) is not met.

97. The application site is located wholly within the open countryside, outwith any designated settlement limit, as are the other buildings which constitute the frontage. It is therefore not considered that the proposed scheme would mar the distinction between a settlement and the surrounding countryside, nor would it result in urban sprawl. Criteria (d) is capable of being met.
98. By virtue of adding to a ribbon of development and failing to respect the established pattern of development, the proposal would have an adverse impact on the rural character of the area. Criteria (e) is not met.
99. In terms of residential amenity, it is considered that a dwelling could be sited and orientated within the site so as not to have an adverse impact on residential amenity. The Council Environmental Health Unit offered no objection. Criteria (f) is capable of being met.
100. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent lands. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature
101. of the landscape at this location.
102. The installation of a new shared vehicular access to/from Cross Lane is proposed. DfI Roads were consulted as part of the processing of the application and subsequently responded with no objection. Officers have no reason to disagree with the advice offered and the requirement of COU16 is met.

Access and Transport

Policy TRA2 - Access to Public Roads

103. Cross Lane is not a designated protected Route. Detail indicates that a new shared vehicular access is proposed to serve the development for vehicular and pedestrian use.
104. Visibility splays of 2.4m x 70m to the north west and 2.4m x 79m to the south have been proposed.
105. The Proposed Site Layout Plan depicts how the provision of parking and turning within each site could be achieved.
106. DfI Roads having reviewed the detail of the application offer no objection subject to standard conditions.
107. Based on a review of the information and the advice received from the statutory consultee, it is accepted that a vehicular access to the public road could be accommodated without prejudice to road safety or an inconvenience to the flow of traffic. Policy tests associated with policy TRA2 are capable of being met.

Waste Management

Policy WM2 – Treatment of Waste Water

108. The detail submitted with the application (Application Form) indicates that the source of water supply is to be from Mains sources. Surface water is to be disposed of by soakaways and foul sewage is to be disposed of via septic tank.

LCCC Environmental Health, Water Management Unit and NI Water having considered the detail of the application offer no objection.

109. Consideration of flood risk is included as a criteria for assessment in Policy WM2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soakaway designed to an appropriate standard. No flood risk is identified.

110. Based on a review of the information and advice received from consultees, there are no concerns with regards to the proposal insofar as it relates to Policy WM2 – Treatment of Waste Water.

Natural Heritage

Policy NH5 - Habitats, Species or Features of Natural Heritage Importance

111. It is acknowledged that the application site was not occupied by any buildings at the time of site inspection and therefore no demolition of buildings would be required to accommodate the proposal.

112. A NI Biodiversity Checklist (September 2021) completed by Sterna Environmental Ltd. was submitted during the processing of the application.

113. DAERA Natural Environment Division having reviewed the detail of the application offer no objection. Officers have no reason to disagree with this advice.

114. Taking all of the above into account, there are no concerns with regards to the proposal insofar as it relates to policy NH5.

Conclusions and Recommendation

115. The recommendation is to refuse Planning permission as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not a type of development which in principle is acceptable in the countryside.

116. The proposal is contrary policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the development, if approved, would add to a ribbon of

development along Cross Lane. There is no small gap sufficient to accommodate two dwellings whilst respecting the existing pattern of development. The proposal would not be appropriate to the existing widths in the frontage.

117. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development does not respect the traditional pattern of settlement exhibited in that area and as such would, if permitted, result in an adverse impact on the rural character of the area.

Refusal Reasons

118. The following reasons for refusal are proposed:

- The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development is not a type of development which in principle is acceptable in the countryside.
- The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the gap is not considered to be a small gap, sufficient to accommodate two dwellings whilst respecting the existing pattern of development along Cross Lane. Furthermore, the development, if approved, would add to a ribbon of development along Cross Lane.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the proposed development does not respect the traditional pattern of settlement exhibited in that area and as such would, if permitted, result in an adverse impact on the rural character of the area.



Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee Meeting	04 December 2023
Committee Interest	Local Application (Called In)
Application Reference	LA05/2021/1048/O
Date of Application	28 September 2021
District Electoral Area	Killultagh
Proposal Description	Site for a dwelling, garage and associated site works
Location	Lands 30 metres west of 7 Derriaghy Road Lisburn
Representations	Two
Case Officer	Richard McMullan
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

- 3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

- 4. Therefore, under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

- 5. This application is categorised as a local application. It is referred to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
- 6. The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that it is not a type of development which in principle is considered to be acceptable in the countryside.
- 7. The proposal is contrary policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the development, if approved, would create a ribbon of development along the Derriagh Road. Furthermore, the development is not sited within a substantial and continuously built-up frontage, nor is the gap site sufficient to accommodate two dwellings whilst respecting the existing pattern of development in terms of frontage width and plot size.

8. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved fail to respect the pattern of development, result in urban sprawl and in turn adversely impact the rural character of the area.

Description of Site and Surroundings

Site

9. The site is located to the northern side of the Derriaghy Road, Lisburn. It is located between numbers 5 and 7 Derriaghy Road. The site consists of the eastern section of a larger grassed agricultural field.
10. Access to the land is to be gained via an existing access point which serves the properties at 1, 3 & 5 Derriaghy Road.
11. The application site is noted to be rectangular in shape, with an area of approximately 0.3 hectares in size and the ground rises quite steeply in a northern direction from the roadside towards the rear of the site.
12. The northern site boundary is defined by mature hedging, as is the eastern boundary. The southern site boundary is defined by a wooden ranch fence with mature trees/hedging noted adjacent to it. The western site boundary in contrast is seen to be undefined.

Surroundings

13. The site is located within a rural landscape to the north of Lisburn City. There are agricultural lands to the north. To the south dense residential development within Lisburn City. To the west of the site is Boomers Reservoir.

Proposed Development

14. Outline planning permission is sought for a dwelling, garage and associated site works. The following information is submitted in support of the application:
 - N.I. Biodiversity Checklist
 - Ecological Statement

Relevant Planning History

15. The relevant planning history associated with the application site is set out in the table below:

Reference	Location	Description	Decision
LA05/2021/1049/O	Lands 30m east of 5 Derrriaghy Road Lisburn BT28 3SF	Site for a dwelling, garage and associated site works	Pending

16. This application is one of two applications seeking two infill dwellings within the larger field. The application is assessed in tandem with application LA05/2021/1049/O.

Consultations

17. The following consultations were carried out:

Consultee	Response
DFI Roads	No objections
LCCC EHO	No objections
NI Water	No objections
NIEA NED	No objections
NIEA WMU	No objections
SES	No objections

Representations

18. Two representations in opposition to the proposal have been received. The following issues have been raised.
- P2a land ownership challenge/landowners do not permit permission for laneway to be used as access point for application as submitted. This matter has been clarified by the Agent.
 - Intensification of use of existing access point/access inappropriate given its angle joining onto the Derrriaghy Road. Dfl Roads offers no objection.

- Access not designed for so many houses. DfI Roads offers no objection

Local Development Plan Context

19. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

20. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

21. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.

22. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

23. In draft BMAP (2004) this site was located in the open countryside. It is stated at page 17 of the associated Plan Strategy document that:

The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

24. There are equivalent policies in the Plan Strategy to the regional policies described in LAP and draft BMAP.
25. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy.
26. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) *provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) *resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) *protect the established rural settlement pattern and allow for vibrant sustainable communities.*

Development in the Countryside

27. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

28. As explained above this is an application for infill development and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

29. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built up frontage must be visually linked.

30. The justification and amplification of COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

31. Policy COU15 - Integration and Design of Buildings in the Countryside states

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

32. The justification and amplification of this policy is modified to include the following:

All landscape features which are required to be retained will be appropriately conditioned to be protected prior to the commencement of any other site works

including site clearance.

Rural Character and other Criteria

33. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

34. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

35. Detail associated with the application indicates that it is proposed to use an existing unaltered access to a public road for vehicular use. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

36. The justification and amplification states:

New development will often affect the public road network surrounding it. This policy seeks to avoid or mitigate adverse impacts and ensure that proposed access arrangements are safe and will not unduly interfere with the movement of traffic.

Development proposals involving a new access, or the use of an existing access must be in compliance with the requirements of the Department's Development Control Advice Note 15, Vehicle Access Standards (2nd Edition, published in August 1999). For the purposes of this policy, a field gate is not an existing access.

The proximity of the proposed access to junctions, other existing accesses and the total number of accesses onto a given stretch of road are relevant matters in the assessment of traffic hazards. The combining of individual access points along a road will be encouraged as this can help to improve road safety.

Control over the land required to provide the requisite visibility splays will be required to ensure that they are retained free of any obstruction. This may be subject to a planning condition requiring that no development shall take place until the works required to provide access, including visibility splays, have been carried out.

37. The Derrigly Road is a Protected Route. Policy TRA3 Access to Protected Routes states

The Council will restrict the number of new accesses and control the level of use of existing accesses onto Protected Routes as follows:

Motorways and High Standard Dual Carriageways – All locations

Planning permission will not be granted for development proposals involving direct access. An exception may be considered in the case of motorway service area.

Other Dual Carriageways, Ring Roads, Through-Passes and By Passes – All locations

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.

Other Protected Routes – Outside Settlement Limits

Planning permission will only be granted for a development proposal in the following circumstances:

- i. For a replacement dwelling in accordance with Policy COU3 where the dwelling to be replaced is served by an existing vehicular access onto the Protected Route;*
- ii. For a farm dwelling or a dwelling serving an established commercial or industrial enterprise where access cannot be reasonably achieved from an adjacent minor road. Where this cannot be achieved, proposals will be required to make use of an existing vehicular access onto the Protected Route; and*
- iii. For other developments which would meet the criteria for development in the countryside where access cannot be reasonably achieved from an adjacent minor road. Where this cannot be achieved, proposals will be required to make use of an existing vehicular access onto the Protected Route.*

In all cases the proposed access must be in compliance with the requirements of Policy TRA2.

Other Protected Routes – Within Settlement Limits

Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access where it is demonstrated that access cannot reasonably be taken from an adjacent minor road; or, in the case of residential proposals, it is demonstrated that the nature and level of access will significantly assist in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points.

In all cases, where access to a Protected Route is acceptable in principle it will also be required to be safe in accordance with Policy TRA2.

Designated protected routes within this Council area are illustrated in Supplementary Planning Guidance, Part F: Protected Routes Map.

38. The justification and amplification states:

There has been a long established policy of restricting access onto the main roads that facilitate the efficient movement of traffic over long distances in Northern Ireland. These roads contribute significantly to economic prosperity by providing efficient links between all the main towns, airports and seaports, and with the Republic of Ireland.

The roads onto which this policy of access control is exercised are known as 'Protected Routes' and comprise:

- *primary routes*
- *routes between the principal city or town in each council and/ or cross border*
- *routes to ports and airports*
- *selected routes with high traffic flows.*

This encompasses the roads element of the Regional Strategic Transport Network contained in the Regional Development Strategy, 2035.

The Department for Infrastructure (DfI) Roads, is responsible for establishing and updating protected routes throughout the Council area. Further details of their functions can be obtained at www.infrastructure-ni.gov.uk

Natural Heritage

39. Policy NH1 European and Ramsar Sites – International states:

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

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

Where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Council, through consultation with the Department of Agriculture, Environment and Rural Affairs (DAERA), is required by law to carry out an appropriate assessment of the implications for the site in view of the site's conservation objectives. Only after having ascertained that it will not adversely affect the integrity of the site, can the Council agree to the development and impose appropriate mitigation measures in the form of planning conditions.

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

- a) *there are no alternative solutions; and*
- b) *the proposed development is required for imperative reasons of overriding public interest; and*
- c) *compensatory measures are agreed and fully secured.*

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

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

40. The justification and amplification states:

The Council will consider the precautionary principle when determining the impacts of a proposed development on international significant landscape or natural heritage resources.

A development proposal which could adversely affect the integrity of a European or Ramsar site may only be permitted in exceptional circumstances as laid down in the relevant statutory provisions.

A list of existing international sites and further information can be found at www.daera-ni.gov.uk.

Candidate Special Areas of Conservation are sites that have been submitted to the European Commission, but not yet formally adopted.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk. This Biodiversity Checklist is intended to provide a 'step by step' tool which can be used by applicants and their agents to help identify if a development proposal is likely to adversely affect any biodiversity and natural heritage interests and what information may be reasonably required to accompany a planning application in order to comply with the relevant legislation and planning policy.

41. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be

permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

42. The justification and amplification states:

Priority habitats and species may fall within and beyond designated sites. They include both European (as identified under Annex I and II of the Habitats Directive and Annex I of the Birds Directive) and/or Northern Ireland priority habitats and species, identified through the Northern Ireland Biodiversity Strategy (NIBS) (in pursuance of the statutory duties under the Wildlife and Natural Environment (NI) Act 2011.)

'Other' natural heritage features worthy of importance are most likely to include those located along green and blue infrastructure, trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity. Certain other features which make a significant contribution to biodiversity may also be included.

To ensure international and domestic responsibilities and environmental commitments with respect to the management and conservation of biodiversity are met, the habitats, species and features mentioned above are material considerations in the determination of planning applications.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk.

Regional Policy and Guidance

Regional Policy

43. The SPSS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPSS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPSS within 5 years.

44. Paragraph 2.1 of the SPSS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.
45. It states that:

The planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. Planning authorities should therefore simultaneously pursue social and economic priorities alongside the careful management of our built and natural environments for the overall benefit of our society

46. Paragraph 3.6 of the SPPS states:

Planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.

47. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

48. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

49. It is further stated at paragraph 6.78 of the SPPS that:

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

The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy (as modified) have been drafted to be consistent with the SPPS.

Consideration of the Courts:

50. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scofield delivered judgment in Gordon Duff's Application (Re Glassdrumman Road, Ballynahinch) for Judicial

Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.

51. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.*
- (iv) Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical*

to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.

- (v) *Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
- (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement."*
52. Officers have borne in mind that the policy in COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 is similarly restricted as CTY8 and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains new and significant definition of the buildings to be taken into account.

53. Whilst not policy, the following guidance documents remain material considerations:

Development Control Advice Note 15 – Vehicular Access Standards

54. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.'

Building on Tradition

55. Whilst a guidance document, as opposed to a policy document, the SPPS states;

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.*

56. With regards to Policy CTY 8, Building on Tradition states;

4.4.0 *Introducing a new building to an existing cluster (CTY 2a) or ribbon CTY 8 will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.*

4.4.1 *CTY 8 Ribbon Development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses (or appropriate economic development project), within an otherwise substantial and continuous built up frontage. Where such opportunities arise, the policy requires the applicant to demonstrate that the gap site can be developed to integrate the new building(s) within the local context.*

57. The guidance notes that :

- It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
- When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
- Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
- A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.

58. It also notes at the following paragraphs that;

4.5.0 *There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.*

4.5.1 *As a general rule of thumb, gap sites within a continuous built up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.*

59. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.

60. It includes infill principles with examples that have been considered as part of the assessment:
- Follow the established grain of the neighbouring buildings.
 - Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.
 - Design in scale and form with surrounding buildings
 - Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity
 - Use a palette of materials that reflect the local area

61. With regard to wastewater treatment, Building on Tradition [page 131] states:

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Assessment

62. As the Courts have noted in the Glassdrumman Road, Ballynahinch Judicial Review, and for the reasons described above officer's bear in mind that the regional policy in PPS21 CTY8 is restricted and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains new and significant definition of the buildings to be taken into account.
63. The first step is therefore to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of COU8 describes a ribbon as:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to

ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

64. A 'site location/context map' has been provided for consideration. It illustrates, existing buildings adjacent to the application site, the existing access and existing visibility splays.
65. Officers are satisfied that the proposal does engage ribbon development. Either side of the site (taking into account LA05/2021/1049/O) as a number of buildings are in place, fronting onto the Derriaghy Road.
66. To the east of the site buildings associated with 7 & 7a Derriaghy Road are noted. It consists of a large, detached dwelling house and one outbuilding (which last gained a temporary permission for residential use The buildings are contained within the one curtilage with a single access point from a laneway which in turn provides access to the Derriaghy Road. The curtilage of 7/7a extend to the Derriaghy Road.
67. To the west of the site is the lands associated with planning application LA05/2021/1049/O. Adjacent to this field to the west, is a detached dwelling house with an associated ancillary garage associated with 5 Derriaghy Road.
68. Further to the west of 5 Derriaghy Road there is a building associated with 1 and 3 Derriaghy Road can be noted. This building present a semi-detached pair of dwellings with ancillary buildings. The curtilage of these buildings do not extend to the public road however and are not counted for the purposes of this assessment.

The issue of exception

69. The next step is to consider whether the proposal comes within the exception set out in the policy.
70. The first step is to consider whether there is a substantial and continuously built up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
71. Within the Justification and Amplification section of policy COU 8 the following guidance is noted;

For the purposes of this policy a building's frontage must extend to the edge of the public road or private laneway and not be separated from it by land or development outside of its curtilage.

72. The dwelling associated with 7 and 7a Derriaghy Road is included but the associated outbuilding within the curtilage is considered to be domestic ancillary building and as such is discounted. Furthermore, a review of LPS data for domestic properties provides no record in relation to a separate building at 7a. No CLUD is submitted to confirm a separate use.

73. The dwelling at 5 Derriaghy Road is counted but the associated ancillary domestic garage is discounted from the assessment.
74. For the reasons outlined above, it is considered that there is not a line of 4 buildings of which two are dwellings and as such the application site does not fall within a substantial and continuously built up.
75. The next step is to consider whether a small gap exists sufficient to accommodate two dwellings.
76. In considering whether a small gap site exists, whilst the policy text and supplementary guidance recognise that such a site may be able to accommodate two infill dwellings which respect the existing development officers have not assumed that any site of that size is necessarily a small gap site within the meaning of the policy.
77. Officers remain mindful that the issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching restrictive purpose of the policy.
78. The gap measured from closest buildings at number 7 to that at number 5 Derriaghy Road is approximately 80 metres.
79. The frontage associated with 5 Derriaghy Road 43.3 metres with the frontage associated with 7 Derriaghy Road measuring 69.4m. The average frontage is therefore seen to measure **56.35m**.
80. The application site presents a frontage of **38 metres** to the Derriaghy Road. This is well below the existing average site frontage which measures **56.35m** and if approved would fail to respect the pattern of development in so far as it relates to frontage widths.
81. An assessment of the existing plot sizes is set out in the table below:

Existing Site Area	Ha.
No. 5 Derriaghy Rd	0.4h
No. 7 Derriaghy Rd	0.4h
Average	0.4h

82. The application site has an area of approximately **0.3 hectares**. The plot size is less than the average plot size and as such, the development would fail to respect the existing pattern in so far as it relates to plot size.
83. The Building on Tradition document is written with a different policy in mind and the guidance contained at 4.4.0 and 4.4.1 and the worked examples on page 71 are given limited material weight in the assessment of this proposal as the site is

not sufficient in size to accommodate two dwellings consistent with the existing pattern of development. The words 'a maximum of' will no longer apply.

84. The general criteria at 4.5.0 and 4.5.1 still apply. In this case, it is seen that the site does not fall within a continuously built up frontage of development. As a consequence it would not be seen to be an important visual break as the site does not fall within a substantial and continuously built up frontage of development.

Policy COU15 - Integration and Design of Buildings in the Countryside

85. Without prejudice to the view expressed in relation to the principle of development, no issues with respect to prominence shall arise given the nature of the topography of the site and existing in situ mature site boundaries noted on the ground. A dwelling of appropriate size and scale would be not seen as a prominent feature within the local landscape. Consideration would be given to the use of a ridge height condition in the event of the principle of development being seen to be acceptable. Criteria a is capable of being met.
86. As the development is seen to be sited between dwellings either side (5 and 7 Derriaghy Road) it is considered that criteria b is capable of being met.
87. Without prejudice to the view expressed in relation to the principle of development a dwelling of appropriate scale, massing, design and finishes. would be able to blend into the site, utilising the rising topography to the rear of the site, existing mature site boundaries as noted on the ground (which could be secured via condition) and also adjacent buildings etc. The northern boundary of the site would also be seen to provide a good backdrop for the development. Criteria c is capable of being met.
88. Three of the sites four boundaries are defined by mature hedging which would provide for a suitable degree of enclosure for the development to integrate into the site and local landscape. The undefined western boundary could be landscape via condition to further aid with this. For the reasons outlined, it is not considered that the proposal would rely upon new landscaping for the purposes of integration. Criteria d and e are capable of being met.
89. Without prejudice to the view expressed in relation to the principle of development, this is an outline application and no detail design has been provided. That said, it is considered that a dwelling could be sited and designed having regard to the character within the immediate area. Criteria (f) is capable of being met.
90. Given the nature of the site it is considered that required ancillary works associated with the access and any other infrastructure above or below ground could be designed so as to integrate into the surroundings without harm to the rural character. Criteria (g) is capable of being met.

Policy COU16 - Rural Character

91. Again without prejudice to the view expressed in relation to the principle of development, a new dwelling of appropriate designed and scale would not be an unduly prominent feature within the local landscape. Criteria (a) is capable of being met.
92. Criteria (b) is considered to be met as the proposed development is capable of being sited to cluster with the dwelling and garage at Derriaghy Road.
93. For the reasons outlined within the context of policy COU8, the proposed development if approved would fail to respect the pattern of development along the road frontage. Criteria c is not met.
94. The proposal if approved would result in urban sprawl which in turn would have an adverse impact on the rural character of the area contrary to criteria d and e.
95. Without prejudice to the view expressed in relation to the principle of development, a dwelling of appropriate siting and design could be development to ensure that it would not have an adverse impact upon neighboring residential amenity thus criteria (f) capable of being met.
96. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature of the landscape at this location.
97. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

Policy TRA 2 – Access to public roads

98. Detail associated with the application indicates that it is proposed to use an existing unaltered access to a public road for vehicular use.
99. DfI Roads have considered the detail of the proposal and no objection is offered. Having regard to the nature and scale of the proposed development and the advice from DfI Roads, it is accepted that the proposal will not prejudice road safety or significantly inconvenience the flow of vehicles nor does it conflict with policy TRA 3 Access to Protected Routes.
100. The policy tests associated with TRA2 are considered to be met.

Policy TRA 3 – Access to Protected Routes

101. The Derriaghy Road is a protected route located outside of a defined settlement.

102. It is not possible for the development as proposed to take access from an adjacent minor road as there are none available given the location of the site and its relationship to the local road network. That said, the development seeks to utilise the existing access point onto the Protected Route that serves 1,3 and 5 Derriaghy Road.
103. DFI Roads has indicated that a new access to the protected route would not be acceptable. The advice received offers no objection to the proposal which seeks to make use on an existing access to the public road.
104. DFI Roads has indicated that a new access to the protected route would not be acceptable. The advice received offers no objection to the proposal which seeks to make use on an existing access to the public road.
105. For the reasons outlined, it is accepted that the use of an existing access is acceptable and that it will not compromise standards of road safety along the protected route. Policy TRA3 is capable of being met.

Policy WM2 - Waste Management

106. Detail submitted with the application indicates that the source of water supply will be from mains and surface water will be disposed of via public storm drain and foul via mains. LCCC Environmental Health, NI water and Water Management Unit were consulted and offer no objection.
107. Consideration of flood risk is included as a criteria for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soak-away designed to an appropriate standard. No flood risk is identified.
108. Based on a review of the information and advice received from consultees, it is accepted that a septic tank and the area of subsoil irrigation for the disposal of effluent can be sited and designed so as not to create or add to a pollution problem. The requirements of policy WM2 of the Plan Strategy are met in full.

Natural Heritage

109. Ecological information in the form of a N.I. Biodiversity Checklist and an ecological statement has been provided for and considered in respect of the development as proposed. Both have been provided by an ecologist.
110. DAERA NED have indicated that they have considered the information as provided and refers the planning authority to standing advice.
111. The ecological information provided outlines that the site and surrounding 30m buffer were searched for evidence of badger with no specific observations being made of this species. It is outlined that mammal trails were noted in the northern hedgerow and snuffling was noted along the northwestern hedgerow of the site.

The site while having no badgers evident within it at the time of survey is deemed to be suitable for use by commuting and foraging badgers. As a consequence it is considered that a pre-construction survey is undertaken for this species in order to ensure that opportunist setts have not been excavated within the site or within 30 metres of same.

112. In the event of approval it is considered that the above issues could be secured via the use of an appropriate condition requiring the submission of a pre-commencement badger survey etc.
113. Other issues raised in relation to excavation pits/trenches can also be covered via the imposition of relevant conditions.
114. No issues of concern shall arise with regard to any designated or non-designated sites as indicated within the supporting ecological report/information provided.
115. SES unit have also outlined that they have no objections to the development. It is indicated that;

'The field for the sites has a good 60m land buffer to Boomers Dam. That is the only potential environmental pathway to any European Site (Belfast Lough) over 20km away through tributaries of the Lagan system'.

Given the above, no viable environmental pathways to any European Site concluded'.

'The potential impact of this proposal on European Sites has been assessed in accordance with the requirements of Regulation 43(1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended). The proposal would not have any conceivable effect on the features of any European Site'.

116. Taking the above into account the development is in keeping with the requirements of policies NH1 and NH5 No adverse harm shall arise in regard to any noted interests of natural heritage importance either within the site or remote from it.

Conclusions and Recommendation

117. The recommendation is to refuse planning permission as the proposal is not in accordance with the requirements of policies COU1, COU8 and COU16 of the Plan Strategy.

Refusal Reasons

120. The following refusal reasons are recommended:

- The proposal is contrary policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy (as modified by the Direction of the Department) in that it is not a type of development which in principle is considered to be acceptable in the countryside.
- The proposal is contrary policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the development, if approved, would create a ribbon of development along the Derrriaghy Road. Furthermore, the development is not sited within a substantial and continuously built-up frontage, nor is the gap site sufficient to accommodate two dwellings whilst respecting the existing pattern of development in terms of frontage width and plot size.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved fail to respect the pattern of development, result in urban sprawl and in turn adversely impact the rural character of the area.

Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee Meeting	04 December 2023
Committee Interest	Local Application (Called In)
Application Reference	LA05/2021/1049/O
Date of Application	28 September 2021
District Electoral Area	Killultagh
Proposal Description	Site for a dwelling, garage and associated site works
Location	Lands 30 metres east of 5 Derriaghy Road Lisburn
Representations	Three
Case Officer	Richard McMullan
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. Therefore, under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This application is categorised as a local application. It is referred to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
6. The application is recommended for refusal as it is considered that the proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that it is not a type of development which in principle is considered to be acceptable in the countryside.
7. The proposal is contrary policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the development, if approved, would create a ribbon of development along the Derriagh Road. Furthermore, the development is not sited within a substantial and continuously built-up frontage, nor is the gap site sufficient

to accommodate two dwellings whilst respecting the existing pattern of development in terms of frontage width and plot size.

8. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved fail to respect the pattern of development, result in urban sprawl and in turn adversely impact the rural character of the area.

Description of Site and Surroundings

Site

9. The site is located to the northern side of the Derriaghy Road, Lisburn. It is located between numbers 5 and 7 Derriaghy Road. The site consists of the eastern section of a larger agricultural field.
10. Access to the land is to be gained via an existing access point which serves the properties at 1, 3 & 5 Derriaghy Road.
11. The application site is noted to be rectangular in shape, with an area of approximately 0.3 hectares in size and the ground rises quite steeply in a northerly direction from the roadside towards the rear of the site.
12. The northern site boundary is defined by mature hedging. The eastern site boundary is undefined. The western boundary consists of a wooden ranch fence with the landscaping of 5 Derriaghy Road noted adjacent to it. The southern site boundary consists of a wooden ranch fence with mature trees and hedging adjacent to it.

Surroundings

13. The site is located within a rural landscape to the north of Lisburn City. There are agricultural lands to the north. To the south dense residential development within Lisburn City. To the west of the site is Boomers Reservoir.

Proposed Development

14. Outline planning permission is sought for a dwelling, garage and associated site works. The following information is submitted in support of the application:
 - N.I. Biodiversity Checklist
 - Ecological Statement

Relevant Planning History

15. The relevant planning history associated with the application site is set out in the table below:

Reference	Location	Description	Decision
LA05/2021/1049/O	Lands 30m east of 5 Derriaghy Road Lisburn	Site for a dwelling, garage and associated site works	Pending

16. This application is one of two applications seeking two infill dwellings within the larger field. The application is assessed in tandem with application LA05/2021/1048/O.

Consultations

17. The following consultations were carried out:

Consultee	Response
DFI Roads	No objections
LCCC EHO	No objections
NI Water	No objections
NIEA NED	No objections
NIEA WMU	No objections
SES	No objections
NIE	No objections

Representations

18. Three representations in opposition to the proposal have been received. The following issues have been raised.

- P2a land ownership challenge/landowners do not permit permission for laneway to be used as access point for application as submitted. This matter has been addressed by Agent.
- Intensification of use of existing access point/access inappropriate given its angle joining onto the Derriaghy Road. Dfl Roads offer no objection.
- Access not designed for so many houses. Dfl Roads offer no objection
- Objector's property is to rear of proposed site and concern is expressed in respect of the proposed height of the development which may affect privacy and views of the Mourne Mountains. Also not made aware of the application. A building could be sited and designed so as not to impact on amenity of neighbouring properties.

Local Development Plan Context

19. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

20. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

21. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.

22. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

23. In draft BMAP (2004) this site was located in the open countryside. It is stated at page 17 of the associated Plan Strategy document that:

The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

24. There are equivalent policies in the Plan Strategy to the regional policies described in LAP and draft BMAP.
25. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy.
26. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) protect the established rural settlement pattern and allow for vibrant sustainable communities.*

Development in the Countryside

27. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

28. As explained above this is an application for infill development and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

29. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built up frontage must be visually linked.

30. The justification and amplification of COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

31. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

- a) *it is a prominent feature in the landscape*
- b) *it is not sited to cluster with an established group of buildings*

- c) *it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop*
- d) *the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape*
- e) *it relies primarily on the use of new landscaping for integration*
- f) *the design of the building is inappropriate for the site and its locality*
- g) *ancillary works do not integrate with their surroundings.*

32. The justification and amplification of this policy is modified to include the following:

All landscape features which are required to be retained will be appropriately conditioned to be protected prior to the commencement of any other site works including site clearance.

Rural Character and other Criteria

33. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

34. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

35. Detail associated with the application indicates that it is proposed to use an existing unaltered access to a public road for vehicular use. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

36. The justification and amplification states:

New development will often affect the public road network surrounding it. This policy seeks to avoid or mitigate adverse impacts and ensure that proposed access arrangements are safe and will not unduly interfere with the movement of traffic.

Development proposals involving a new access, or the use of an existing access must be in compliance with the requirements of the Department's Development Control Advice Note 15, Vehicle Access Standards (2nd Edition, published in August 1999). For the purposes of this policy, a field gate is not an existing access.

The proximity of the proposed access to junctions, other existing accesses and the total number of accesses onto a given stretch of road are relevant matters in the assessment of traffic hazards. The combining of individual access points along a road will be encouraged as this can help to improve road safety.

Control over the land required to provide the requisite visibility splays will be required to ensure that they are retained free of any obstruction. This may be subject to a planning condition requiring that no development shall take place until the works required to provide access, including visibility splays, have been carried out.

37. The Derrigly Road is a Protected Route. Policy TRA3 Access to Protected Routes states:

The Council will restrict the number of new accesses and control the level of use of existing accesses onto Protected Routes as follows:

Motorways and High Standard Dual Carriageways – All locations

Planning permission will not be granted for development proposals involving direct access. An exception may be considered in the case of motorway service area.

Other Dual Carriageways, Ring Roads, Through-Passes and By Passes – All locations

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.

Other Protected Routes – Outside Settlement Limits

Planning permission will only be granted for a development proposal in the following circumstances:

- i. For a replacement dwelling in accordance with Policy COU3 where the dwelling to be replaced is served by an existing vehicular access onto the Protected Route;
- ii. For a farm dwelling or a dwelling serving an established commercial or industrial enterprise where access cannot be reasonably achieved from an adjacent minor road. Where this cannot be achieved, proposals will be required to make use of an existing vehicular access onto the Protected Route; and
- iii. For other developments which would meet the criteria for development in the countryside where access cannot be reasonably achieved from an adjacent minor road. Where this cannot be achieved, proposals will be required to make use of an existing vehicular access onto the Protected Route.

In all cases the proposed access must be in compliance with the requirements of Policy TRA2.

Other Protected Routes – Within Settlement Limits

Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access where it is demonstrated that access cannot reasonably be taken from an adjacent minor road; or, in the case of residential proposals, it is demonstrated that the nature and level of access will significantly assist in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points.

In all cases, where access to a Protected Route is acceptable in principle it will also be required to be safe in accordance with Policy TRA2.

Designated protected routes within this Council area are illustrated in Supplementary Planning Guidance, Part F: Protected Routes Map.

38. The justification and amplification states:

There has been a long established policy of restricting access onto the main roads that facilitate the efficient movement of traffic over long distances in Northern Ireland. These roads contribute significantly to economic prosperity by providing efficient links between all the main towns, airports and seaports, and with the Republic of Ireland.

The roads onto which this policy of access control is exercised are known as 'Protected Routes' and comprise:

- primary routes*
- routes between the principal city or town in each council and/ or cross border*
- routes to ports and airports*
- selected routes with high traffic flows.*

This encompasses the roads element of the Regional Strategic Transport Network contained in the Regional Development Strategy, 2035.

The Department for Infrastructure (DfI) Roads, is responsible for establishing and updating protected routes throughout the Council area. Further details of their functions can be obtained at www.infrastructure-ni.gov.uk

Natural Heritage

39. Policy NH1 European and Ramsar Sites – International states:

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

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

Where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Council, through consultation with the Department of Agriculture, Environment and Rural Affairs (DAERA), is required by law to carry out an appropriate assessment of the implications for the site in view of the site's conservation objectives. Only after having ascertained that it will not adversely affect the integrity of the site, can the Council agree to the development and impose appropriate mitigation measures in the form of planning conditions.

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

- a) there are no alternative solutions; and*

- b) *the proposed development is required for imperative reasons of overriding public interest; and*
- c) *compensatory measures are agreed and fully secured.*

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

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

40. The justification and amplification states:

The Council will consider the precautionary principle when determining the impacts of a proposed development on international significant landscape or natural heritage resources.

A development proposal which could adversely affect the integrity of a European or Ramsar site may only be permitted in exceptional circumstances as laid down in the relevant statutory provisions.

A list of existing international sites and further information can be found at www.daera-ni.gov.uk.

Candidate Special Areas of Conservation are sites that have been submitted to the European Commission, but not yet formally adopted.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk. This Biodiversity Checklist is intended to provide a 'step by step' tool which can be used by applicants and their agents to help identify if a development proposal is likely to adversely affect any biodiversity and natural heritage interests and what information may be reasonably required to accompany a planning application in order to comply with the relevant legislation and planning policy.

41. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*

- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

42. *The justification and amplification states:*

Priority habitats and species may fall within and beyond designated sites. They include both European (as identified under Annex I and II of the Habitats Directive and Annex I of the Birds Directive) and/or Northern Ireland priority habitats and species, identified through the Northern Ireland Biodiversity Strategy (NIBS) (in pursuance of the statutory duties under the Wildlife and Natural Environment (NI) Act 2011.)

'Other' natural heritage features worthy of importance are most likely to include those located along green and blue infrastructure, trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity. Certain other features which make a significant contribution to biodiversity may also be included.

To ensure international and domestic responsibilities and environmental commitments with respect to the management and conservation of biodiversity are met, the habitats, species and features mentioned above are material considerations in the determination of planning applications.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk.

Regional Policy and Guidance

Regional Policy

43. The SPSS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPSS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are

material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

44. Paragraph 2.1 of the SPPS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

45. It states that:

The planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. Planning authorities should therefore simultaneously pursue social and economic priorities alongside the careful management of our built and natural environments for the overall benefit of our society

46. Paragraph 3.6 of the SPPS states:

Planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.

47. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

48. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.

49. It is further stated at paragraph 6.78 of the SPPS that:

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

The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy (as modified) have been drafted to be consistent with the SPPS.

Consideration of the Courts:

50. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scoffield delivered judgment in Gordon Duff's Application (Re Glasdrumman Road, Ballynahinch) for Judicial Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.

51. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) *Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) *Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) *In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning*

authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.

- (iv) *Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.*
- (v) *Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
- (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement."*

52. Officers have borne in mind that the policy in COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 is similarly restricted as CTY8 and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains new and significant definition of the buildings to be taken into account.

53. Whilst not policy, the following guidance documents remain material considerations:

Building on Tradition

54. Whilst a guidance document, as opposed to a policy document, the SPPS states;

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.

55. With regards to Policy CTY 8, Building on Tradition states;

4.4.0 Introducing a new building to an existing cluster (CTY 2a) or ribbon CTY 8 will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.

4.4.1 CTY 8 Ribbon Development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses (or appropriate economic development project), within an otherwise substantial and continuous built up frontage. Where such opportunities arise, the policy requires the applicant to demonstrate that the gap site can be developed to integrate the new building(s) within the local context.

56. The guidance notes that:

- It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
- Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
- When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
- Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.
- A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.

57. It also notes at the following paragraphs that;

4.5.0 There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.

4.5.1 As a general rule of thumb, gap sites within a continuous built up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.

58. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.

59. It includes infill principles with examples that have been considered as part of the assessment:

- Follow the established grain of the neighbouring buildings.

- Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.
- Design in scale and form with surrounding buildings
- Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity
- Use a palette of materials that reflect the local area

60. With regard to wastewater treatment, Building on Tradition [page 131] states:

If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Development Control Advice Note 15 – Vehicular Access Standards

61. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.'

Assessment

62. As the Courts have noted in the Glasdrumman Road, Ballynahinch Judicial Review, and for the reasons described above officer's bear in mind that the regional policy in PPS21 CTY8 is restricted and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to

COU8, however COU8 contains new and significant definition of the buildings to be taken into account.

63. The first step is therefore to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of COU8 describes a ribbon as:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

64. A 'site location/context map' has been provided for consideration. It illustrates, existing buildings adjacent to the application site, the existing access and existing visibility splays, a notional siting and also reference to adjacent proposal subject to another application (ref: LA05/2021/1048/O).
65. Officers are satisfied that the proposal does engage ribbon development. Either side of the site (taking into account LA05/2021/1048/O) as a number of buildings are in place, fronting onto the Derriaghy Road.
66. To the east of the site 7 & 7a Derriaghy Road consists of a large, detached dwelling house and one outbuilding (which last gained a temporary permission for residential use which appears to have expired) The buildings are contained within the one curtilage with a single access point from a laneway which in turn provides access to the Derriaghy Road. The curtilage of 7 and 7a extend to the Derriaghy Road.
67. The buildings associated with Derriaghy Road are located to the west of the application site. They consist of a detached dwelling house with an associated ancillary garage.
68. Further to the west of 5 Derriaghy Road there is a pair of semi-detached dwellings at 1 and 3 Derriaghy Road with ancillary outbuildings. The curtilage of these buildings do not extend to the public road however and are not counted for the purpose of assessment.

The issue of exception

69. The next step is to consider whether the proposal comes within the exception set out in the policy.
70. The first step is to consider whether there is a substantial and continuously built up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
71. Within the Justification and Amplification section of policy COU 8 the following guidance is noted;

For the purposes of this policy a building's frontage must extend to the edge of the public road or private laneway and not be separated from it by land or development outside of its curtilage.

72. The dwelling at 7 and 7a Derriaghy Road is included but the associated outbuilding within the curtilage is considered to be domestic ancillary building and as such is discounted. Furthermore, a review of LPS data for domestic properties provides no record in relation to a separate building at 7a. No CLUD is submitted to confirm a separate use.
73. The dwelling at 5 Derriaghy Road is counted but the associated ancillary domestic garage is discounted from the assessment.
74. For the reasons outlined above, it is considered that there is not a line of 4 buildings of which two are dwellings and as such the application site does not fall within a substantial and continuously built up.
75. The next step is to consider whether a small gap exists sufficient to accommodate two dwellings.
76. In considering whether a small gap site exists, whilst the policy text and supplementary guidance recognise that such a site may be able to accommodate two infill dwellings which respect the existing development officers have not assumed that any site of that size is necessarily a small gap site within the meaning of the policy.
77. Officers remain mindful that the issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching restrictive purpose of the policy.
78. The gap measured from closest buildings at 5 and 7 Derriaghy Road is approximately 80 metres.
79. The frontage associated with 5 Derriaghy Road 43.3 metres with the frontage associated with 7 Derriaghy Road measuring 69.4m. The average frontage is **56.35m**.
80. The application site presents a frontage of 38 metres to the Derriaghy Road. This is well below the existing average site frontage which measures 56.35 metres and if approved would fail to respect the pattern of development in so far as it relates to frontage widths.
81. An assessment of the existing plot sizes is set out in the table below:

Existing Site Area	Ha.
No. 5 Derriaghy Rd	0.4h
No. 7 Derriaghy Rd	0.4h

Average	0.4h
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82. The application site has an area of approximately 0.3 hectares. The plot size is less than the average plot size and as such, the development would fail to respect the existing pattern in so far as it relates to plot size.
83. The Building on Tradition document is written with a different policy in mind and the guidance contained at 4.4.0 and 4.4.1 and the worked examples on page 71 are given limited material weight in the assessment of this proposal as the site is not sufficient in size to accommodate two dwellings consistent with the existing pattern of development. The words 'a maximum of' will no longer apply.
84. The general criteria at 4.5.0 and 4.5.1 still apply. In this case, it is seen that the site does not fall within a continuously built up frontage of development. As a consequence it would not be seen to be an important visual break as the site does not fall within a substantial and continuously built up frontage of development.

Policy COU15 - Integration and Design of Buildings in the Countryside

85. Without prejudice to the view expressed in relation to the principle of development, no issues with respect to prominence shall arise given the nature of the topography of the site and existing in situ mature site boundaries noted on the ground. A dwelling of appropriate size and scale would be not seen as a prominent feature within the local landscape. Consideration would be given to the use of a ridge height condition in the event of the principle of development being seen to be acceptable. Criteria (a) is capable of being met.
86. As the development is seen to be sited between dwellings either side (5 and 7 Derriaghy Road) it is considered that criteria b is capable of being met.
87. Without prejudice to the view expressed in relation to the principle of development a dwelling of appropriate scale, massing, design and finishes would be able to blend into the site, utilising the rising topography to the rear of the site, existing mature site boundaries as noted on the ground (which could be secured via condition) and also adjacent buildings etc. The northern boundary of the site would also be seen to provide a good backdrop for the development. Criteria c is capable of being met.
88. Three of the sites four boundaries are defined by mature hedging which would provide for a suitable degree of enclosure for the development to integrate into the site and local landscape. The undefined western boundary could be landscape via condition to further aid with this. For the reasons outlined, it is not considered that the proposal would rely upon new landscaping for the purposes of integration. Criteria d and e are capable of being met.
89. Without prejudice to the view expressed in relation to the principle of development, this is an outline application and no detail design has been provided. That said, it is considered that a dwelling could be sited and designed having regard to the character within the immediate area. Criteria (f) is capable of being met.

90. Given the nature of the site it is considered that required ancillary works associated with the access and any other infrastructure above or below ground could be designed so as to integrate into the surroundings without harm to the rural character. Criteria (g) is capable of being met.

Policy COU16 - Rural Character

91. Again without prejudice to the view expressed in relation to the principle of development, a new dwelling of appropriate designed and scale would not be an unduly prominent feature within the local landscape. Criteria (a) is capable of being met.
92. Criteria (b) is considered to be met as the proposed development is capable of being sited to cluster with the dwelling and garage at Derrigby Road.
93. For the reasons outlined within the context of policy COU8, the proposed development if approved would fail to respect the pattern of development along the road frontage. Criteria © is not met.
94. The proposal if approved would result in urban sprawl which in turn would have an adverse impact on the rural character of the area contrary to criteria (d) and (e).
95. Without prejudice to the view expressed in relation to the principle of development, a dwelling of appropriate siting and design could be development to ensure that it would not have an adverse impact upon neighboring residential amenity thus criteria (f) capable of being met.
96. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature of the landscape at this location.
97. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

Policy TRA 2 – Access to public roads

98. Detail associated with the application indicates that it is proposed to use an existing unaltered access to a public road for vehicular use.
99. DfI Roads have considered the detail of the proposal and no objection is offered. Having regard to the nature and scale of the proposed development and the advice from DfI Roads, it is accepted that the proposal will not prejudice road safety or significantly inconvenience the flow of vehicles nor does it conflict with policy TRA 3 Access to Protected Routes.
100. The policy tests associated with TRA2 are considered to be met.

Policy TRA 3 – Access to Protected Routes

101. The Derriaghy Road is a protected route located outside of a defined settlement.
102. It is not possible for the development as proposed to take access from an adjacent minor road as there are none available given the location of the site and its relationship to the local road network. That said, the development seeks to utilise the existing access point onto the Protected Route that serves 1,3 and 5 Derriaghy Road.
103. DfI Roads has indicated that a new access to the protected route would not be acceptable. The advice received offers no objection to the proposal which seeks to make use on an existing access to the public road.
104. For the reasons outlined, it is accepted that the use of an existing access is acceptable and that it will not compromise standards of road safety along the protected route. Policy TRA3 is capable of being met.

Policy WM2 - Waste Management

105. Detail submitted with the application indicates that the source of water supply will be from mains and surface water will be disposed of via public storm drain and foul via mains. LCCC Environmental Health, NI water and Water Management Unit were consulted and offer no objection.
106. Consideration of flood risk is included as a criterion for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soak-away designed to an appropriate standard. No flood risk is identified.
107. Based on a review of the information and advice received from consultees, it is accepted that a septic tank and the area of subsoil irrigation for the disposal of effluent can be sited and designed so as not to create or add to a pollution problem. The requirements of policy WM2 of the Plan Strategy are met in full.

Natural Heritage

108. Ecological information in the form of a N.I. Biodiversity Checklist and an ecological statement has been provided for and considered in respect of the development as proposed. Both have been provided by an ecologist.
109. DAERA NED have indicated that they have considered the information as provided and refers the planning authority to standing advice.
110. The ecological information provided outlines that the site and surrounding 30m buffer were searched for evidence of badger with no specific observations being made of this species. It is outlined that mammal trails were noted in the northern hedgerow and snuffling was noted along the northwestern hedgerow of the site.

The site while having no badgers evident within it at the time of survey is deemed to be suitable for use by commuting and foraging badgers. As a consequence it is considered that a pre-construction survey is undertaken for this species in order to ensure that opportunist setts have not been excavated within the site or within 30 metres of same.

111. In the event of approval it is considered that the above issues could be secured via the use of an appropriate condition requiring the submission of a pre-commencement badger survey etc.
112. Other issues raised in relation to excavation pits/trenches can also be covered via the imposition of relevant conditions.
113. No issues of concern shall arise with regard to any designated or non-designated sites as indicated within the supporting ecological report/information provided.
114. SES unit have also outlined that they have no objections to the development. It is indicated that:

'The field for the sites has a good 60m land buffer to Boomers Dam. That is the only potential environmental pathway to any European Site (Belfast Lough) over 20km away through tributaries of the Lagan system'.

Given the above, no viable environmental pathways to any European Site concluded'.

'The potential impact of this proposal on European Sites has been assessed in accordance with the requirements of Regulation 43(1) of the Conservation (Natural Habitats, etc.) (Northern Ireland) 1995 (as amended). The proposal would not have any conceivable effect on the features of any European Site'.

115. Taking the above into account, the development is in keeping with the requirements of policies NH1 and NH5,. No adverse harm shall arise in regard to any noted interests of natural heritage importance either within the site or remote from it.

Conclusions and Recommendation

116. The recommendation is to refuse planning permission as the proposal is not in accordance with the requirements of policies COU1, COU8 and COU16 of the Plan Strategy.

Refusal Reasons

117. The following refusal reasons are recommended:

- The proposal is contrary policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy in that it is not a type of development which in principle is considered to be acceptable in the countryside.
- The proposal is contrary policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy in that the development, if approved, would create a ribbon of development along the Derriaghy Road. Furthermore, the development is not sited within a substantial and continuously built-up frontage, nor is the gap site sufficient to accommodate two dwellings whilst respecting the existing pattern of development in terms of frontage width and plot size.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy in that the development if approved fail to respect the pattern of development, result in urban sprawl and in turn adversely impact the rural character of the area.

Site Location Plan – LA05/2021/1049/O



Lisburn & Castlereagh City Council

Planning Committee	
Date of Meeting	04 December 2023
Committee Interest	Local Application (Exceptions Apply)
Application Reference	LA05/2020/0303/F
Date of Application	07 April 2020
District Electoral Area	Downshire West
Proposal Description	Demolition of existing dwelling and construction of a pair of semi-detached houses and a row of four terraced houses with associated site works and landscaping
Location	32 Lurgan Road Moira and adjacent lands north west at Linen Fields Lurgan Road Moira
Representations	Twenty-five
Case Officer	Brenda Ferguson
Recommendation	APPROVAL

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) *a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*
- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

[4] Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. In accordance with Regulation 3 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Plan Strategy applies to all applications.
5. The existing suite of planning policy statements retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

6. This is a local application. It is presented to the Committee for determination in accordance with the Protocol for the Operation of the Committee in that the application requires a section 76 agreement to secure the delivery of affordable housing.
7. It is considered that the detailed layout and design of the residential units creates a quality residential environment in accordance with the requirements of policies HOU1, HOU3 and HOU4 of the Plan Strategy and when the buildings are constructed, they will not adversely impact on the character of the area or have a detrimental impact on the amenity of existing residents in properties adjoining the site.

8. Furthermore, the density is not significantly higher than that found in the established residential area and the proposed pattern of development is in keeping with the overall character and environmental quality of the established residential area.
9. It is considered that the proposal is also in accordance with the requirements of policy HOU10 of the Plan Strategy in that it has been demonstrated that provision is to be made for affordable housing within the site.
10. The proposal complies with policies NH2 and NH 5 of the Plan Strategy in that the detail demonstrates that the development is not likely to result in the unacceptable adverse impact on, or damage to known habitats, species or features of natural heritage importance.
11. The proposed complies with policy TRA1 the Plan Strategy in that the detail demonstrates that an accessible environment will be created through the provision of footways.
12. It is also considered that the development complies with policy TRA2 of the Plan Strategy in that the detail submitted demonstrates that the extension of the existing access will not prejudice road safety or significantly inconvenience the flow of traffic. Regard is also had to the nature and scale of the development, the character of the existing development, the location and number of existing accesses and the standard of the existing road network.
13. The proposal is considered to comply with policy TRA7 of the Plan Strategy in that the detail demonstrates that adequate provision for car parking and appropriate servicing arrangements has been provided so as not to prejudice road safety or inconvenience the flow of traffic.
14. The proposal also complies with policy TRA8 in that it promotes public transport, cycling and walking as an alternative to the use of the car.
15. The proposed development complies with policy tests set out in policies FLD 1 and FLD 3 of the Plan Strategy in that the site lies outside the 1 in 100 year fluvial flood plain and the detail submitted demonstrates that adequate drainage can be provided within the site to service the proposal.

Description of Site and Surroundings

Site

16. The proposed site is located to the east of the existing development at Linen Fields, and Waringfield Park, Moira. The site is irregular in shape, however becomes narrower towards the rear where it abuts the development at Waringfield Park. There is an existing detached single storey white rendered

dwelling, 32 Lurgan Road, a garage and an outbuilding within the site fronting onto the Lurgan Road.

17. Boundaries consist of hedging to the north and west, tall conifers to the east and an agricultural gate to the south which backs onto Waringfield.

Surroundings

18. Residential development surrounds the site. There is a mix of two-storey detached, semi-detached and terraced dwellings. Linen fields has two-storey semi-detached and terraced cream rendered properties and Waringfield contains 1.5 and two-storey red/brown brick dwellings.

Proposed Development

19. The application is for full planning permission for the demolition of existing dwelling and construction of a pair of semi-detached houses and a row of four terraced houses with associated site works and landscaping.

Relevant Planning History

20. The following planning history is relevant to the site:

Reference Number	Description	Location	Decision
LA05/2018/0399 /F	Proposed change of house type from extant planning approval: S/2008/0177 to include sunrooms and garages at sites 5,6,7,8,56,57,58,59,66,67,68,69, 82 & 83 (Postal numbers 4,2,1,3,89,91,93,95,97,99,101,103,16 & 14 respectively) Linen Fields, Lurgan Road, Moira	Postal numbers 4,2,1,3,89,91, 93,95,97,99, 101, 103 16 & 14 (site numbers 5,6,7,8,56,57, 58,59, 66, 67, 68, 69, 82 & 83) Linen Fields, Lurgan Road, Moira	Permission granted 08/08/18
LA05/2016/0183 /F	Proposed housing development of 28 units comprising 4 detached, 16 town houses & 8 apartments, site works and landscaping. Substitution for 30 Apartments and 4 townhouses on sites 1-28 and 76-81 of permission S/2008/0177/F.	2-28 Lurgan Road Moira	Permission granted 02/08/17
S/2008/0177/F	Residential Development - Erection of 82 units to include 52 dwellings and 30 apartments, car parking, open space, landscaping and associated works.	2-28 Lurgan Road Moira	
S/1991/0809	Housing Development (155)	'WARINGFIELD' SOUTH OF 32 LURGAN ROAD MOIRA	Permission granted 25/02/92
S/1990/1079	Housing Development (27 Detached Dwellings)	LANDS SOUTH OF NO 32 LURGAN ROAD MOIRA	Permission granted 30/01/91
S/1989/0841	Housing development 220 units	SOUTH OF NO 32 LURGAN ROAD MOIRA	Permission granted 27/09/1990

Consultations

21. The following consultations were carried out:

Consultee	Response
DfI Roads	No Objection
LCCC Environmental Health	No Objection
NI Water	No Objection
Natural Heritage	No Objection
DAERA Water Management Unit	No Objection

Representations

22. Twenty-five representations in opposition to the proposal have been submitted. The following issues are raised:

- Concerns in relation to proposed entrance onto Waringfield Park
- Drawing 05/214/500 misrepresents the existing turning head and roadway
- Concern in relation to location of bin stores
- Objection to proposed access for parking and location of garages to serve apartments
- Lack of details in relation to boundary treatments, security measures and control of pedestrian access to prevent a public thoroughfare
- Concerns relating to the bin collection arrangement and number of bins
- Concern that garage openings onto Waringfield Park could lead to a thoroughfare for pedestrians
- Concern regarding assigned parking to front of property at Linen Fields.
- Lands to the rear of semi-detached properties not clearly identified on plan as being garden areas

23. These issues are considered as part of the assessment below.

Local Development Plan

Local Development Plan Context

24. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on Planning applications regard must be had to the requirements of the local development plan and that the determination of applications must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

25. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

26. In accordance with the transitional arrangements the existing Lisburn Area Plan 2001 and draft BMAP remain material considerations.
27. In both the statutory development plan and the draft BMAP, the application site is identified as being within the defined Settlement Development Limit of Moira.
28. The policies in the BUAP were superseded by the incremental introduction of regional policy over time. There are equivalent policies in the Plan Strategy to the regional policies described in draft BMAP.
29. Housing is proposed. Strategic Policy 01 – Sustainable Development states that:

The Plan will support development proposals which further sustainable development including facilitating sustainable housing growth; promoting balanced economic growth; protecting and enhancing the historic and natural

environment; mitigating and adapting to climate change and supporting sustainable infrastructure.

30. Strategic Policy 03 – Creating and Enhancing Shared Space and Quality Places states that:

The Plan will support development proposals that contribute to the creation of an environment which is accessible to all and enhances opportunities for shared communities; has a high standard of connectivity and supports shared use of public realm. Good quality housing that supports more balanced communities must offer a variety of house types, sizes and tenures to meet different needs.

Creating shared neighbourhoods should provide opportunities for communities to access local employment, shopping, leisure, education and community facilities.

31. Strategic Policy 05 – Good Design and Positive Place Making states that:

The Plan will support development proposals that incorporate good design and positive place-making to further sustainable development, encourage healthier living, promote accessibility and inclusivity and contribute to safety. Good design should respect the character of the area, respect environmental and heritage assets and promote local distinctiveness. Positive place-making should acknowledge the need for quality, place-specific contextual design which promotes accessibility and inclusivity, creating safe, vibrant and adaptable places.

32. Strategic Policy 05 – Protecting and Enhancing the Environment states that:

The Plan will support development proposals that respect the historic and natural environment and biodiversity. Proposals must aim to conserve, protect and where possible enhance the environment, acknowledging the rich variety of assets and associated historic and natural heritage designations. Proposals should respect the careful management, maintenance and enhancement of ecosystem services which form an integral part of sustainable development.

33. More than five dwellings are proposed and Strategic Policy 07 – Section 76 Agreements states that:

Development will be required to deliver more sustainable communities by providing, or making contributions to, local and regional infrastructure in proportion to its scale, impact of the development and the sustainability of its location.

A developer will be expected to provide or contribute to the following infrastructure in order to mitigate any negative consequences of development:

- a) *improvements to the transport network, including walking and cycling routes, public transport or, where necessary appropriate parking provision*

- b) *affordable housing*
- c) *educational facilities and/or their upgrades*
- d) *outdoor recreation*
- e) *protection, enhancement and management of the natural and historic environment*
- f) *community facilities and/or their upgrades*
- g) *improvements to the public realm*
- h) *service and utilities infrastructure*
- i) *recycling and waste facilities.*

34. Strategic Policy 08 Housing in Settlements states that

The Plan will support development proposals that:

- a) *are in accordance with the Strategic Housing Allocation provided in Table 3*
- b) *facilitate new residential development which respects the surrounding context and promotes high quality design within settlements*
- c) *promote balanced local communities with a mixture of house types of different size and tenure including affordable and specialised housing*
- d) *encourage compact urban forms and appropriate densities while protecting the quality of the urban environment.*

35. The following operational policies in Part 2 of the Plan Strategy also apply.

Housing in Settlements

36. As this application is for residential development and policy HOU1 - New Residential Development states that:

Planning permission will be granted for new residential development in settlements in the following circumstances:

- a) *on land zoned for residential use*
- b) *on previously developed land (brownfield sites) or as part of mixed-use development*
- c) *in designated city and town centres, and within settlement development limits of the city, towns, greater urban areas, villages and small settlements*
- d) *living over the shop schemes within designated city and town centres, or as part of mixed use development.*

The above policy applies to all residential uses as set out in Part C of the Schedule to the Planning (Use Classes) Order (Northern Ireland) 2015 (or as amended).

37. Policy HOU3 - Site Context and Characteristics of New Residential Development states:

Planning permission will be granted for new residential development where it will create a quality and sustainable residential environment which respects the existing site context and characteristics. An overall design concept, in accordance

with Policy HOU6 must be submitted for all residential proposals and must demonstrate that a proposal draws upon the positive aspects of, and respects the local character, appearance and environmental quality of the surrounding area. Proposals for residential development will be expected to conform to all the following criteria:

- a) *the development respects the surrounding context, by creating or enhancing a local identity and distinctiveness that reinforces a sense of place, and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas.*
- b) *archaeological, historic environment and landscape characteristics/features are identified and, where appropriate, protected and suitably integrated into the overall design and layout of the development.*

For new residential development in areas of distinctive townscape character, including Conservation Areas and Areas of Townscape or Village Character, an increased residential density will only be allowed in exceptional circumstances.

All development should be in accordance with available published space standards.

38. Policy HOU4 - Design in New Residential Development states:

Proposals for residential development will be expected to conform to all the following design criteria:

- a) *the design of the development must draw upon the best local architectural form, materials and detailing*
- b) *landscaped areas using appropriate locally characteristic or indigenous species and private open space must form an integral part of a proposal's open space and where appropriate will be required along site boundaries to soften the visual impact of the development and assist in its integration with the surrounding area*
- c) *where identified as a Key Site Requirement adequate provision is made for necessary local community facilities, to be provided by the developer*
- d) *residential development should be brought forward in line with the following density bands:*
 - *City Centre Boundary 120-160 dwellings per hectare*
 - *Settlement Development Limits of City, Towns and Greater Urban Areas: 25-35 dwellings per hectare*
 - *Settlement Development Limits of Villages and small settlements 20-25 dwellings per hectare.*
 - *Within the above designated areas, increased housing density above the indicated bands will be considered in town centres and those locations that benefit from high accessibility to public transport facilities*
- e) *a range of dwellings should be proposed that are accessible in their design to*

provide an appropriate standard of access for all. The design of dwellings should ensure they are capable of providing accommodation that is wheelchair accessible for those in society who are mobility impaired. A range of dwelling types and designs should be provided to prevent members of society from becoming socially excluded

- f) *dwellings should be designed to be energy and resource efficient and, where practical should include integrated renewable energy technologies to minimise their impact on the environment*
- g) *a proposed site layout must indicate safe and convenient access through provision of walking and cycling infrastructure, both within the development and linking to existing or planned networks; meet the needs of mobility impaired persons; and respect existing public rights of way*
- h) *adequate and appropriate provision is made for car and bicycle parking including where possible electric vehicle charging points*
- i) *the design and layout must not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance*
- j) *the design and layout should where possible include use of permeable paving and sustainable drainage*
- k) *the design and layout design must demonstrate appropriate provision is made for householder waste storage and its collection can be facilitated without impairment to the access and maneuverability of waste service vehicles*
- l) *the development is designed to deter crime and promote personal safety.*
- m) *Any proposal for residential development which fails to produce an appropriate quality of design will not be permitted, even on land identified for residential use in a development plan.*

39. The Justification and Amplification states that:

Please note the Supplementary Planning Guidance on design of residential development that will support the implementation of this policy.

40. It also states that:

Accessible Accommodation

Design standards are encouraged to meet the varying needs of occupiers and be easily capable of accommodating adaptations. Developers should ensure that a range of dwelling sizes (including internal layout and the number of bedrooms) is provided to meet a range of housing needs that facilitate integration and the development of mixed communities.

41. As more than five dwellings are proposed there is a need to make provision for affordable housing. Policy HOU10 - Affordable Housing in Settlements states that:

Where the need for Affordable Housing is identified, through the Housing Needs Assessment on sites of more than 0.5 hectares or comprising of 5 residential units

or more, proposals will only be permitted where provision is made for a minimum 20% of all units to be affordable. This provision will be secured and agreed through a Section 76 Planning Agreement.

All developments incorporating affordable housing should be designed to integrate with the overall scheme with no significant distinguishable design differences, in accordance with any other relevant policies contained within this Plan Strategy.

In exceptional circumstances where it is demonstrated that the affordable housing requirement cannot be met, alternative provision must be made by the applicant, or an appropriate financial contribution in lieu must be agreed through a Section 76 Planning Agreement. Such agreements must contribute to the objective of creating mixed and balanced communities.

Proposals for the provision of specialist accommodation for a group of people with specific needs (such as purpose built accommodation for the elderly, Policy HOU11) will not be subject to the requirements of this policy.

Windfall sites will be encouraged for the development of affordable housing in suitable and accessible locations.

By exception, proposals for affordable housing could be permitted on land identified as open space, in accordance with Policy OS1, where it can be demonstrated that all of the following criteria have been met:

- a) *a demonstrable need has been identified by the Northern Ireland Housing Executive*
- b) *the application is made by a registered Housing Association or the Northern Ireland Housing Executive*
- c) *the proposal will bring substantial community benefits that decisively outweigh the loss of the open space.*

Development proposals will not be supported where lands have been artificially divided for the purposes of circumventing this policy requirement.

42. The Justification and Amplification states that:

The policy requires a minimum provision of 20% of units as affordable housing. Where up to date evidence indicates a requirement for a higher proportion of affordable housing, the council will expect developments to provide this. Where appropriate this may be indicated through key site requirements within the Local Policies Plan. It may also be secured through discussions with applicants on a case-by-case basis as part of the development management process.

43. The Glossary associated with Part 2 of the Plan Strategy states that:

Affordable Housing – affordable housing is:

- a) *Social rented housing; or*
- b) *Intermediate housing for sale; or*

c) *Intermediate housing for rent,*

that is provided outside of the general market, for those whose needs are not met by the market.

Affordable housing which is funded by Government must remain affordable or alternatively there must be provision for the public subsidy to be repaid or recycled in the provision of new affordable housing.

Natural Heritage

44. Given there are existing buildings on site to be demolished, the potential impact on the natural environment is considered.

45. Policy NH2 - Species Protected by Law states that:

Planning permission will only be granted for a development proposal that is not likely to harm a European protected species. In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:

a) there are no alternative solutions

b) it is required for imperative reasons of overriding public interest; and there is no detriment to the maintenance of the population of the species at a favourable conservation status

c) compensatory measures are agreed and fully secured.

46. In relation to National Protected Species the policy states that:

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against. Development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

47. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

a) priority habitats

b) priority species

c) active peatland

d) ancient and long-established woodland

e) features of earth science conservation importance

f) features of the landscape which are of major importance for wild flora and fauna

g) rare or threatened native species

h) wetlands (includes river corridors)

- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

Access and Transport

48. The proposal involves the continuation of an existing access that leads to units within the Linen Fields development. Policy TRA1 - Creating an Accessible Environment states that:

The external layout of all development proposals will incorporate, where appropriate:

- a) *facilities to aid accessibility e.g. level access to buildings, provision of dropped kerbs and tactile paving etc, together with the removal of any unnecessary obstructions*
- b) *user friendly and convenient movement along pathways and an unhindered approach to buildings*
- c) *priority pedestrian and cycling movement within and between land uses*
- d) *ease of access to car parking reserved for disabled or other users, public transport facilities and taxi ranks.*

Public buildings will only be permitted where they are designed to provide suitable access for customers, visitors and employees.

Access to existing buildings and their surroundings should be improved as opportunities arise through alterations, extensions and changes of use.

Submission of a Transport Assessment Form (TAF) and a Design and Access Statement may also be required to accompanying development proposals.

49. Policy TRA 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the

creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

50. The justification and amplification states that:

For development proposals involving a replacement dwelling in the countryside, there an existing access is available but does not meet the current standards, the Council would encourage the incorporation of improvements to the access in the interests of road safety.

51. Policy TRA7 - Car parking and Servicing Arrangements in New Development states that:

Development proposals will provide adequate provision for car parking and appropriate servicing arrangements. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to published standards or any reduction provided for in an area of parking restraint designated in the Local Development Plan.

Beyond areas of parking restraint a reduced level of car parking provision may be acceptable in the following circumstances:

- a) *where, through a Transport Assessment or accompanying Travel Plan, it forms part of a package of measures to promote alternative transport modes*
- b) *where the development is in a highly-accessible location well served by public transport*
- c) *where the development would benefit from spare capacity available in nearby public car parks or adjacent on street car parking*
- d) *where shared car parking is a viable option*
- e) *where the exercise of flexibility would assist in the conservation of the historic or natural environment, would aid rural regeneration, facilitate a better quality of development or the beneficial re-use of an existing building.*

Proposals involving car parking in excess of the Department's published standards will only be permitted in exceptional circumstances, subject to the submission of a Transport Assessment outlining alternatives.

A proportion of the spaces to be provided will be reserved for people with disabilities.

Car parking proposals should include an appropriate number of reserved electric charging point spaces and their associated equipment.

Where a reduced level of car parking provision is applied or accepted, this will not normally apply to the number of reserved spaces to be provided.

52. Pedestrian access and cycling is already taken account of in the design of the wider development within Linen Fields. Policy TRA 8 – Active Travel Networks and Infrastructure Provision states that:

Planning permission will only be granted for proposals where public transport, walking and cycling provision forms part of the development proposal. A Transport Assessment/Travel Plan or, if not required, a supporting statement should indicate the following provisions:

- a) safe and convenient access through provision of walking and cycling infrastructure, both within the development and linking to existing or planned networks*
- b) the needs of mobility impaired persons; and respect existing public rights of way*
- c) safe, convenient and secure cycle parking.*

In addition major employment generating development will be required to make appropriate provision for shower and changing facilities.

Flooding

- 53. The drainage for the scale of development proposed must be designed to take account of the impact on flooding elsewhere.
- 54. Policy - FLD3 Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains states:

A Drainage Assessment (DA) will be required for development proposals that exceed any of the following thresholds:

- a) a residential development of 10 or more units*
- b) a development site in excess of 1 hectare*
- c) a change of use involving new buildings and/or hard surfacing exceeding 1,000 square metres in area.*

A DA will also be required for any development proposal, except for minor development, where:

- *it is located in an area where there is evidence of historical flooding.*
- *surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features.*

A development requiring a DA will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere. If a DA is not required, but there is potential for surface water flooding as shown on the surface water layout of DfI Flood Maps NI, it remains the responsibility of the developer to mitigate the effects of flooding and drainage as a result of the development.

Regional Policy

55. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals.

56. Paragraph 2.1 of the SPPS recognises that an objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being.

57. It states that:

planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. Planning authorities should therefore simultaneously pursue social and economic priorities alongside the careful management of our built and natural environments for the overall benefit of our society.

58. Paragraph 3.6 of the SPPS states:

planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.

59. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

60. In practice this means that development which accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.

61. The proposal involves the erection of dwellings. It is stated at paragraph 6.136 that:

The policy approach must be to facilitate an adequate and available supply of quality housing to meet the needs of everyone; promote more sustainable housing development within existing urban areas; and the provision of mixed housing development with homes in a range of sizes and tenures. This approach to housing will support the need to maximise the use of existing infrastructure and services, and the creation of more balanced sustainable communities.

Retained Regional Guidance

62. Whilst not policy, the following guidance documents remain a material considerations.

Creating Places

63. The policy requires the guidance in the 'Creating Places – Achieving Quality in Residential Developments' (May 2000) to also be considered.
64. The guide is structured around the process of design and addresses the following matters:
- the analysis of a site and its context;
 - strategies for the overall design character of a proposal;
 - the main elements of good design; and
 - detailed design requirements.

65. Paragraph 7.16 provides guidance on separation distances stating:

Where the development abuts the private garden areas of existing properties, a separation distance greater than 20 metres will generally be appropriate to minimise overlooking, with a minimum of around 10 meters between the rear of new houses and the common boundary.

66. Paragraphs 5.19 – 5.20 provides guidance on the level of private open space provision as follows:

Provision should be calculated as an average space standard for the development as a whole and should be around 70 square metres per house or greater. Garden sizes larger than the average will generally suit dwellings for use by families. An area less than around 40 square metres will generally be unacceptable.

Development Control Advice Note 8 - Housing in Existing Urban Areas

67. Paragraph 4.10 states that:

Planning Service will expect applicants and designers to carry out an appraisal of the local context, which takes into account the character of the surrounding

area; and new development should respect the architectural, streetscape and landscape character of the area.

Assessment

Policy HOU1 New Residential Development

68. This application is for two semi-detached dwellings and 4 terraced dwellings. The site lies within the Moira Settlement limit and is a brownfield site with an existing dwelling in-situ. Housing lies to the east within the Linen Fields development and to the south and west within the Waringfield Park and Waringfield Drive developments. As the proposed development is located on brownfield land within an established residential area in a settlement the policy tests associated with policy HOU1 are considered to be met.

Policy HOU3 Site Context and Characteristics of New Residential Development

69. The application site fronts onto the Lurgan Road, Moira and backs onto Waringfield Park. The eastern boundary immediately abuts the Linen Fields housing development and the layout proposed will be read as a continuation of this with the terraced houses reflecting the same footprint, design and materials to the ones opposite (sites 1-4 Linen Fields).
70. The area is characterised by a mixture of house types including two-storey cream rendered detached, semi-detached and terraced properties and red/brown brick 1.5 and two-storey detached properties within the Waringfield developments.
71. Car parking for the four terraced properties is assigned to the front and in-curtilage parking is provided for the semi-detached dwellings with private driveways to the side of each.
72. The proposed dwellings are two-storey in height with a maximum ridge height of 9.1 metres in keeping with the area.
73. For the reasons outlined above, the proposed development will respect the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of the dwellings, landscaped and hard surfaced areas. Criteria (a) is considered to be met.
74. No archaeological, historic environment or landscape characteristics/features have been identified that require to be integrated into the overall design/layout. Criteria (b) is considered to be met.

Policy HOU4 - Design in New Residential Development

75. The layout as shown on the proposed drawing 02/d dated 05 October 2022 demonstrates that there are two house types proposed.
76. Units 89-90 relate to the semi-detached plots and units 94-97 are for the terraced dwellings. Floor plans for the terraces include a living room and kitchen/dining room at ground floor level and bedrooms/bathroom/ensuite at first floor level. The semi-detached dwellings have a similar layout with a single storey sunroom at the rear.
77. The ridge height of the semi-detached dwellings are 8.15 metres and the terraced units measure at 8.2 metres in height.
78. Finishes for the semi-detached dwellings consist of a natural slate roof, smooth painted rendered external walls, uPVC sash windows with concrete sills and painted timber external doors.
79. Finishes for the terraces are the same.
80. In terms of layout, the detail associated with the proposed layout ensures that the building lines within the Linen Fields development are respected. The terraced units sit opposite the units 1-4 and replicate their design, scale, massing, footprint and materials. The semi-detached units at the rear continue from units 82 -83 Linen Fields and again reflect the design, scale, massing, height and material of these semi-detached dwellings.
81. The dwellings are orientated to face the access road and unit 97 within the block of terraces is double fronted so that the elevation facing onto the Lurgan Road is visually acceptable. Private rear amenity space is provided for all units.
82. The detail of the proposed layout demonstrates that there are appropriate separation distances between the proposed dwellings and existing dwellings so as not to have an adverse impact on residential amenity.
83. Externally, site 97 is the closest dwelling to the common boundary with neighbouring dwellings however maintains a suitable separation distance of 10.5 metres to the rear of 8 Waringfield Drive. These separation distances are considered to be acceptable in line with guidance stipulated in the Department's Creating Places document.
84. The layout of the rooms in each of the units, the position of the windows along with the separation distance also ensures that there is no overlooking into the private amenity space of neighbouring properties. The buildings are not dominant or overbearing and no loss of light would be caused.
85. The proposed dwellings are considered to have a modern design which complements the surrounding built form. The proposed design and finishes are considered to draw upon the materials and detailing exhibited within the surrounding area and will ensure that the units are as energy efficient as possible.

86. For the reasons outlined above, criteria (a), (e), (f) and (i) are considered to be met.
87. Detail submitted with the application demonstrates that the provision of private amenity space varies from 60 square metres minimum to a maximum of 360 square metres. As an average, 131 square metres is provided across the site which is in excess of the standards contained with Creating Places for a medium density housing development made up of three and four bedroom dwellings.
88. The site layout illustrates that the existing fencing and hedging will be retained to all sides of the site (except where required to facilitate the development) and the agricultural gate to the rear will be replaced with a 1.8 metres high boarded timber fence so as to close off access onto Waringfield Park.
89. For the reasons outlined above, criteria (b) is considered to be met.
90. There is no requirement for the provision of a local community or neighbourhood facility for this scale of development. That said, it is noted that the development is within suitable walking distance of the local facilities within Moira.
91. With regard to criteria (d) the proposed density is not significantly higher than that found in the established residential area and the proposed pattern of development is in keeping with the overall character and environmental quality of the established residential area. The average unit size exceeds space standards set out in supplementary planning guidance.
92. The internal road layout provides for safe and convenient access through the site and the provision of dropped kerbs and tactile paving will also serve to meet the needs of mobility impaired persons. Adequate and appropriate provision is also made for in curtilage and shared surface parking which meets the required parking standards. Criteria (g) and (h) are considered to be met.
93. The careful delineation of plots with appropriate fencing will serve to deter crime and promote personal safety. Criteria (l) is considered to be met.
94. Provision can be made for householder waste storage within the driveways for each unit and its safe collection can be facilitated without impairment to the access manoeuvrability of waste service vehicles. Criteria (k) is met.

Policy HOU10 – Affordable Housing in Settlement

95. A letter has been provided by the agent from Co-ownership company indicating the developer's intention to offer site 95 (within the terraced units) as intermediate housing for sale.
96. It is considered that the agent has demonstrated that provision will be made within the site for affordable housing in line with the policy requirement of a

minimum of 20% and as such, the policy test associated with HOU10 can be met subject to section 76 agreement.

Access and Transport

97. The P1 Form indicates that the development involves the construction of a new access to a public road for both vehicular and pedestrian use. The access proposed will be a continuation of the Linen Fields internal access road and no new access will be created onto the Lurgan Road.

TRA1 – Creating an Accessible Environment

98. Detail associated with the application shows that the vehicular access and internal road layout has been designed to an adoptable standard in accordance with the Private Streets Determination drawing.
99. The drawings submit with the application indicates that none of the dwellings will have garages but that all will have appropriate car parking provision in line with current standards.
100. DfI Roads have not identified any concerns in relation to the detailed layout, access and arrangement of the parking and have approved the PSD drawings.
101. For the reasons outlined above, the tests associated with TRA1 are capable of being met.

TRA2 Access to Public Roads

102. The detail submitted demonstrates that the continuation and extension of use of the existing access for 6 additional dwellings will not prejudice road safety or significantly inconvenience the flow of traffic.
103. Regard is also had to the nature and scale of the development, the character of the existing development, the location and number of existing accesses and the standard of the existing road network.

TRA7 Car Parking and Servicing Arrangements

104. For the reasons outlined earlier in the report, the detail demonstrates that adequate provision for both in-curtilage and shared surface car parking as a continuation of the existing arrangements and appropriate servicing arrangements have been provided so as not to prejudice road safety or inconvenience the flow of traffic. The tests associated with Policy TRA7 are capable of being met.

TRA8 Active Travel Networks and Infrastructure Provision

105. The proposal also complies with policy TRA8 in that the proposal as an extension of Linen Fields promotes public transport, walking and cycling as part of the wider residential scheme. A Transport Assessment/Travel Plan was not required in this instance.

Natural Heritage

106. A biodiversity checklist and Bat Roost Potential Survey has been submitted in support of the application. The BRPS has been carried out by qualified ecologists and concludes that both the buildings and trees within the site present negligible potential for bat roosts and no additional surveys are required.
107. A number of trees are required to be felled along the western boundary that currently abuts the Linen Fields development. All trees were considered to have negligible bat roost potential and it is concluded that the development proposal is not likely to harm a European protected species.
108. For the reasons outlined above, it is considered that the proposal complies with the SPPS and Policies NH2 and NH 5 of the Plan Strategy in that the detail demonstrates that the development is not likely to result in the unacceptable adverse impact on, or damage to known habitats, protected species or features of Natural Heritage Importance.

Flooding

109. In consideration of Policy FLD1 the site does not lie within the 1 in 100 year fluvial or surface water floodplain. A Flood Risk Assessment is therefore not required on this occasion.
110. With regard to Policy FLD 3, the proposal does not meet the criteria for the submission of a Drainage Assessment and therefore no conflict arises with this policy.
111. Water Management Unit has also considered the impacts of the proposal on the surface water environment and in a response received Water Management Unit has also considered the impacts of the proposal and in a response received on 19 May 2020 refer the Planning Authority to DAERA Standing Advice.
112. NI Water has identified in their response that there is available capacity at the Moira Waste Water Treatment Works to serve the site. In relation to foul sewer connection they have advised that developer is required to consult with NIW and may wish to requisition a surface water sewer to serve the proposed

development and / or obtain approval from Rivers Agency for discharge to a watercourse.

113. In relation to surface water sewer connection the developer is required to consult with NIW and may wish to requisition a surface water sewer to serve the proposed development and / or obtain approval from Rivers Agency for discharge to a watercourse.
114. Officers have no reason to disagree with the advice of the consultees. Based on a review of the information and advice received from DfI Rivers, Water Management Unit and NI Water, it is accepted that the proposal complies with policies contained within the Plan Strategy.

Consideration of Representations

115. Consideration of the issues raised by way of third-party representations are set out in the paragraphs below:

Concerns in relation to proposed entrance onto Waringfield Park

116. The plans have since been amended and there is now no proposed access onto Waringfield Park

Drawing 05/214/500 misrepresents the existing turning head and roadway

117. The latest site plan bearing the Council date stamp 7th July 2022 and referenced as drawing no. 02C have been amended to reflect the latest proposals and what is currently on the ground.

Concern in relation to location of bin stores

118. Apartments are no longer proposed as part of the revised scheme therefore the bin storage areas have been removed altogether and a service management plan is no longer required.

Objection to proposed access for parking and location of garages to serve apartments

119. As above, the apartments have been removed altogether from the scheme and replaced with semi-detached dwellings which have incurtilage parking. No access onto Waringfield Park is proposed.

Lack of details in relation to boundary treatments, security measures and control of pedestrian access to prevent a public thoroughfare

120. There is no access proposed onto Waringfield Park and the existing boundary treatments are to remain unchanged. A landscaping plan has been submitted identifying existing and proposed planting and/or fencing.

Concerns relating to the bin collection arrangement and number of bins provided

121. There is no longer proposed bin store areas and the semi-detached dwellings will be accessed through Linen Fields therefore bins will be collected via this route. DFI Roads are satisfied with the arrangements shown on the site layout.

Concern that garage openings onto Waringfield Park could lead to a thoroughfare for pedestrians.

122. This has been amended and there is no longer a proposed access leading onto Waringfield Park.

Concern regarding assigned parking to front of property at Linen Fields.

123. The development proposes a public footway and access road leading into the site as a continuation of the Linen Fields Development. DFI Roads are content with these arrangements and have not identified any concerns. The previous approval LA05/2016/0183/F which included 14 Linen Fields (site 83) does not clearly identify the area in question as parking spaces. The issue is a civil matter and one which cannot be dealt with through the remit of this application.

Lands to the rear of semi-detached properties not clearly identified on plan as being garden areas.

124. A landscaping plan has been submitted identifying the rear of the semidetached properties as private garden areas. The layout arrangements as proposed are considered to be acceptable.

Conclusions

125. For the reasons outlined above and subject to section 76 Agreement, the proposal is considered to comply with the SPPS and policies HOU1, HOU3, HOU4 and HOU10 of the Plan Strategy.
126. It is also considered to comply with policies NH2, NH 5, TRA1, TRA2, TRA7, and TRA8 of the Plan Strategy.

Recommendations

127. It is recommended that planning permission is approved subject to a section 76 agreement to secure the delivery of affordable housing at this location.

Conditions

128. The following conditions are recommended:

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

Reason: Time limit

2. The Private Streets (Northern Ireland) Order 1980 as amended by the Private Streets (Amendment) (Northern Ireland) Order 1992. The width, position and arrangement of the streets, and the land to be regarded as being comprised in the streets, shall be as indicated on Drawing No. 20-156-A10f bearing the Area Planning Office date stamp 05 May 2023 and the Department for Infrastructure Determination date stamp of 15 May 2023.

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

3. All hard and soft landscape works shall be carried out in accordance with Drawing 02/d, bearing the Council date stamped 5th October 2022 and the approved details. The works shall be carried out no later than the first available planting season after occupation of that phase of the development.

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

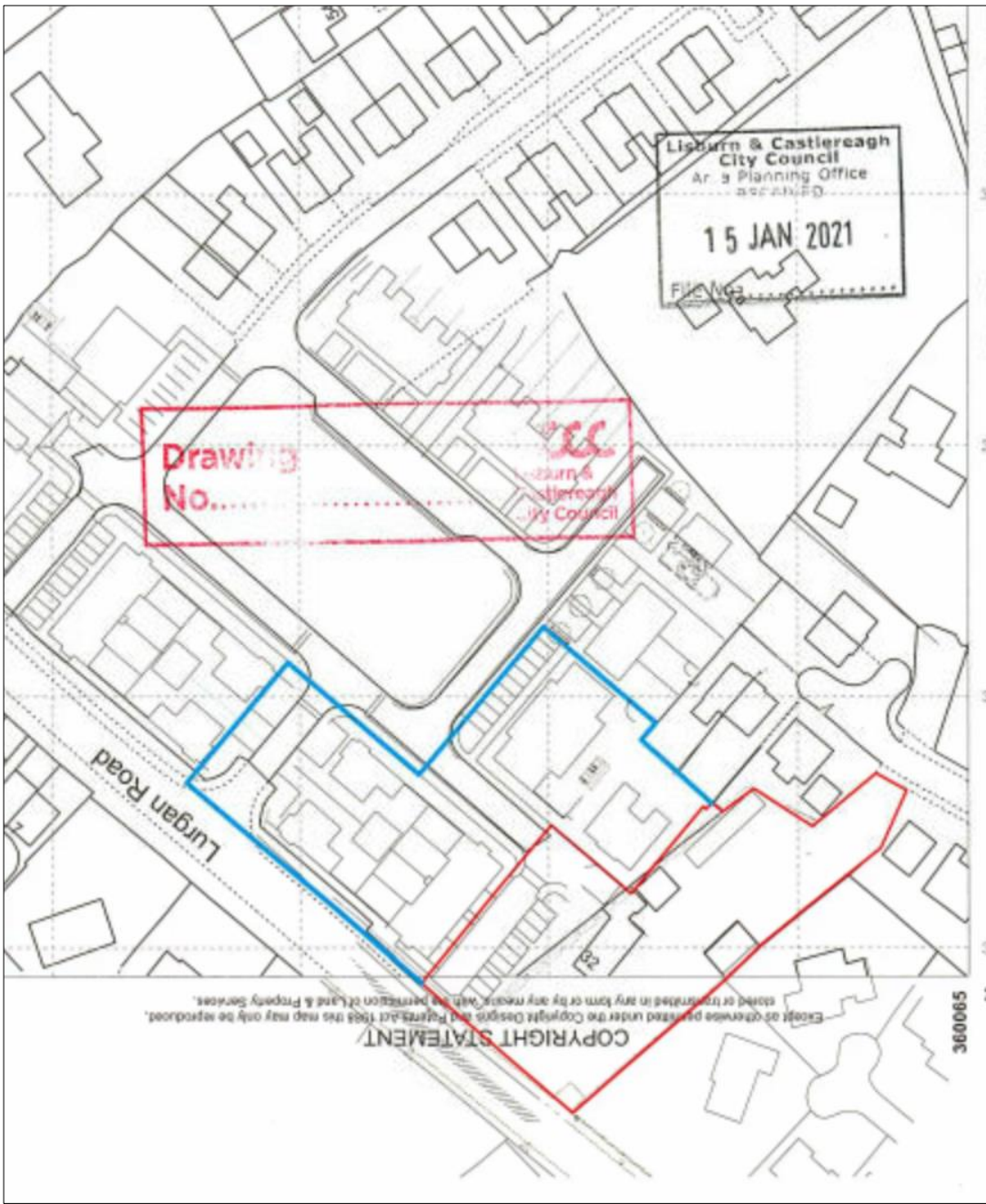
4. If within a period of 5 years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that 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.

5. No retained tree shall be cut down, uprooted or destroyed or have its roots damaged. Any retained tree that is removed, uprooted or destroyed shall be replaced within the next planting season by another tree or trees in the same location of a species and size as specified by the Council.

Reason: To ensure the continuity of amenity afforded by existing trees

Site location Plan – LA05/2020/0303/F



Lisburn & Castlereagh City Council

Planning Committee	
Date of Meeting	04 December 2023
Committee Interest	Local Application [Called In]
Application Reference	LA05/2022/1081/O
Date of Application	16 November 2022
District Electoral Area	Killtulagh
Proposal Description	Dwelling and garage
Location	Between 15 and 15a Crumlin Road, Upper Ballinderry
Representations	One
Case Officer	Richard McMullan
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and regional policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—

- (a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and*

- (b) *any conflict between a policy contained in a departmental development plan and those of the plan strategy must be resolved in favour of the plan strategy.*

Discontinuance of departmental development plan on adoption of local development plan

- [4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

- [1.11] *Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.*

4. Therefore under both the regulations and policy, the Plan Strategy applies to all applications and the existing policies retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

5. This is a local application presented to Committee in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
6. The proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is not a type of development which in principle is acceptable in the countryside.
7. The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site is not a substantial and continuous built-up frontage; the site is not of sufficient size to accommodate two dwellings and the development would if permitted fail to respect the existing pattern of development in terms of plot size adding to a ribbon of development.
8. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development would if permitted fail to respect the traditional pattern of settlement resulting in an adverse impact on rural character of the area due to urban sprawl.

Description of Site and Surroundings

Site

5. The application site is located on the western side of the Crumlin Road between two existing properties at 15 and 15a Crumlin Road, Upper Ballinderry, Lisburn.
6. The application site is 0.82 hectare. It comprises an access to 15a which transverses the site from west to east. Two stone pillars mark this access point.
7. Another new access is formed towards the northern side of the site which extends to the west connecting with another access that runs parallel to the Crumlin Road.
8. The eastern roadside boundary is undefined. The northern boundary adjacent to 15a Crumlin Road is defined in part by mature trees. . The boundary to the south, is defined by a post and wire fence. The western boundary to the internal laneway is defined by hedgerow interspersed with trees.

Surroundings

9. The site is located within a rural location and the land is mainly in agricultural use. There is evidence of a local build-up of development with a number of detached dwellings located along the roadside and on lanes behind.

Proposed Development

10. The application seeks outline planning permission is sought for a dwelling and garage.

Planning History

11. The following planning history linked to the site is set out in the table below:

Reference	Description of Development	Location	Decision
LA05/2020/0231/O	Site for infill dwelling	Between 15 and 15a Crumlin Road Upper Ballinderry	Withdrawn
LA05/2022/0083/F	Section 54 application to vary Condition 02 of	5c Crumlin Road Ballinderry	Under Consideration

Reference	Description of Development	Location	Decision
	Planning Approval LA05/2017/1292/F	Upper Lisburn BT28 2JU	
LA05/2022/0085/F	Section 54 application for Variation of Condition 04 of planning application S/2004/1133/F. (amended proposal description)	15a Crumlin Road Ballinderry Upper Lisburn BT28 2JU	Under Consideration
LA05/2022/0090/F	Proposed new entrance to serve replacement dwelling	Land at 15a Crumlin Road Upper Ballinderry Lisburn	Approved

12. The applicant raises an issue of administrative fairness stating that the Council had committed to approve a dwelling at this location following withdrawal of application LA05/2020/0231/F. This issue is addressed later in the report.
13. Applications LA05/2022/0083/F, LA05/2022/0085/F and LA05/2022/0090/F are also a relevant material consideration as these applications were linked to the engagement with the applicant and his agent at the time the first application was withdrawn.

Consultations

14. The following consultations were carried out:

Consultee	Response
DFI Roads	No objection
LCCC EHO	No objection
NI Water	No objection
NIEA NED	No objection

Representations

15. No representations in opposition to the proposal have been received.

Local Development Plan

16. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

17. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the

Planning Appeals Commission Public Local Inquiry Reports.

18. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.

19. The site is located in the Green Belt in LAP and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

20. In draft BMAP (2004) this site was in the open countryside and the Belfast Metropolitan Area Green Belt. It is stated at page 17 of the associated Plan Strategy document that:

The Department has begun progressively to replace the Rural Strategy. The Planning Strategy section of the Rural Strategy has been superseded by the RDS, whilst the topic policy sections are progressively being replaced by PPS's. The Rural Strategy remain material considerations until superseded by PPS's.

21. In the subsequent revision to draft BMAP (2014) this site is located in the open countryside but reference to the Belfast Metropolitan Area Green Belt is removed. It is stated at policy SETT 4 at page 32 of Part 3 Volume 1 that:

The policies contained in A Planning Strategy for Rural Northern Ireland, except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.

22. There are equivalent policies in the Plan Strategy to the regional policies described in LAP and draft BMAP.

23. This application is for new housing in the open countryside. The strategic policy for new housing in the countryside is set out in Part 1 of the Plan Strategy. Strategic Policy 09 Housing in the Countryside states:

The Plan will support development proposals that:

- (a) provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) protect the established rural settlement pattern and allow for vibrant sustainable communities.*

24. The following operational policies in Part 2 of the Plan Strategy also apply.

Development in the Countryside

25. This is an application for a single dwelling in the open countryside. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10.

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

26. As explained this is an application for an infill dwelling and in accordance with the requirements of Policy COU 1, the application falls to be assessed against policies COU8, COU 15 and COU 16.

Infill/Ribbon Development

27. Policy COU8 – Infill/Ribbon Development states:

Planning permission will be refused for a building which creates or adds to a ribbon of development.

Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built-up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built-up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway.

The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built-up frontage must be visually linked.

28. The justification and amplification of Policy COU8 states:

A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.

Integration and Design of Buildings in the Countryside

29. Policy COU15 - Integration and Design of Buildings in the Countryside states

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and of an appropriate design.

A new building will not be permitted if any of the following apply:

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

Rural Character and other Criteria

30. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area.

A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*

- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Waste Management

31. A septic tank is proposed and Policy WM 2 - Treatment of Waste Water states:

Development proposals to provide mains sewage Wastewater Treatment Works (WwTWs) will be permitted where it is demonstrated to the Council there is a need for new or extended capacity requirements and the new facilities comply with the requirements of Policy WM1.

Development relying on non mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk.

Access and Transport

32. A new access is proposed to the public road and Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

33. The justification and amplification states:

New development will often affect the public road network surrounding it. This policy seeks to avoid or mitigate adverse impacts and ensure that proposed access arrangements are safe and will not unduly interfere with the movement of traffic.

Development proposals involving a new access, or the use of an existing access must be in compliance with the requirements of the Department's Development Control Advice Note 15, Vehicle Access Standards (2nd Edition, published in

August 1999). For the purposes of this policy, a field gate is not an existing access.

The proximity of the proposed access to junctions, other existing accesses and the total number of accesses onto a given stretch of road are relevant matters in the assessment of traffic hazards. The combining of individual access points along a road will be encouraged as this can help to improve road safety.

Control over the land required to provide the requisite visibility splays will be required to ensure that they are retained free of any obstruction. This may be subject to a planning condition requiring that no development shall take place until the works required to provide access, including visibility splays, have been carried out.

Natural Heritage

34. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature.

In such cases, appropriate mitigation and/or compensatory measures will be required.

35. The justification and amplification states:

Priority habitats and species may fall within and beyond designated sites. They include both European (as identified under Annex I and II of the Habitats Directive and Annex I of the Birds Directive) and/or Northern Ireland priority habitats and species, identified through the Northern Ireland Biodiversity Strategy (NIBS) (in pursuance of the statutory duties under the Wildlife and Natural Environment (NI) Act 2011.)

'Other' natural heritage features worthy of importance are most likely to include those located along green and blue infrastructure, trees and woodland which do not fall under the priority habitat or long-established woodland categories but are in themselves important for local biodiversity. Certain other features which make a significant contribution to biodiversity may also be included.

To ensure international and domestic responsibilities and environmental commitments with respect to the management and conservation of biodiversity are met, the habitats, species and features mentioned above are material considerations in the determination of planning applications.

It is recommended that all development proposals be accompanied by a Biodiversity checklist, further details of which can be obtained at www.daera-ni.gov.uk.

Regional Policy and Guidance

36. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

37. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance

38. This proposal is for infill development. Paragraph 6.73 of the SPPS states that:

provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development

39. It is further stated at paragraph 6.78 of the SPPS that:

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

40. The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at. The policies in the Plan Strategy (as modified) have been drafted to be consistent with the SPPS.

Consideration of the Courts:

41. Officers have paid close attention to consideration of this planning policy by the High Court. On the 24th May 2022 Mr Justice Scoffield delivered judgment in Gordon Duff's Application (Re Glassdrumman Road, Ballynahinch) for Judicial Review. Whilst Officers are advised that this decision is under appeal, the Court discussed the general approach to be taken to the policy assessment of such applications, and they are important to bear in mind as the interpretation of policy is a matter for the Courts.
42. That case involved CTY8 and at paragraph [91] the Judge stated:

In light of the amount of litigation which has been generated in relation to Policy CTY8 and the designation of the present case as being in the nature of a 'lead' case in relation to Mr Duff's applications, I venture the following summary which (I hope) will be of assistance to decision-makers in this field:

- (i) *Where planning permission is sought on the basis of the infill housing exception contained within Policy CTY8 (being one of those instances where development in the countryside is in principle acceptable for the purposes of Policy CTY1), the first question is whether the proposal would create or add to ribbon development. If the answer to that question is 'no', the exception within CTY8 is not relevant. Whilst this means the proposal would not fall foul of the first sentence of Policy CTY8, or sub-paragraph (d) of Policy CTY14, it also means that the exception within Policy CTY8 will not provide a basis for the grant of permission. Whether a proposal will create or add to a ribbon of development is a matter of planning judgement but, in light of the purpose of the relevant policies, this concept should not be restrictively interpreted.*
- (ii) *Where the proposal will create or add to ribbon development, it is in principle unacceptable. It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8 and Policy CTY14 in this regard (taking into account the strength of the wording of those policies and the fact that Policy CTY8 contains an express exception which is not engaged in the case).*
- (iii) *In the second of these instances, where the only basis for the argument that the proposal is acceptable in principle for the purposes of Policy CTY1 is the infill exception, and the planning authority is satisfied that the infill exception is not engaged, the authority should also direct itself to whether Policy CTY1 also requires refusal of the application. Where Policy CTY1 also points to refusal, there is a very strong policy presumption in favour of refusal and the planning authority should only grant permission if satisfied, on proper planning grounds, that it is appropriate to disregard breach of Policies CTY1, CTY8 and CTY14 because those breaches are outweighed by other material considerations pointing in favour of the grant of permission, again bearing in mind both the*

strength of the policy wording and the fact that the proposal does not fall within the specified exceptions built into the relevant policies.

- (iv) *Where the infill exception is relied upon, the next question is whether there is a substantial and continuously built up frontage. This concept is not identical to a 'ribbon of development' and is more narrowly defined. Whether there is such a frontage is also a question of planning judgement but, in light of the purpose of the policy, this concept should be interpreted and applied strictly, rather than generously.*
 - (v) *Where the planning authority is satisfied that there is a substantial and continuously built up frontage, the next question is whether there is a small gap site. Although the policy text and supplementary guidance recognises that such a site may be able to accommodate two infill dwellings which respect the existing development pattern, it should not be assumed that any site up to that size is necessarily a small gap site within the meaning of the policy. The issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching purpose of the policy.*
 - (vi) *Where there is a small gap site, the authority should nonetheless consider whether, by permitting that site to be infilled, it is acting in accordance with, or contrary to, the purpose of the exception within the policy (which is to permit development where little or nothing is lost in terms of rural character because of the existing substantial and continuously built up frontage). Consistently with the guidance in Building in Tradition, this should include consideration of whether the grant of permission will result in the loss of an important visual break in the developed appearance of the local area. That, again, is a matter of planning judgement."*
43. Officers have borne in mind that the policy in COU8 of the Lisburn and Castlereagh City Council Plan Strategy is similarly restricted as CTY8 and that any infill application is an exception to the prohibition on ribbon development. However the plan strategy contains new interpretation of relevant buildings that are important new considerations.

Retained Regional Guidance

44. Whilst not policy, the following guidance documents remain material considerations:

Building on Tradition

45. Whilst not policy, and a guidance document, the SPPS states:
- *It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.*
 - *Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.*

- *When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.*
 - *Some ribbon development does not have a consistent building set back. Where this occurs the creation of a new site in the front garden of an existing property is not acceptable under CTY 8 if this extends the extremities of the ribbon.*
 - *A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.*
46. It also notes that:
- 4.5.0 *There will also be some circumstances where it may not be considered appropriate under the policy to fill these gap sites as they are judged to offer an important visual break in the developed appearance of the local area.*
- 4.5.1 *As a general rule of thumb, gap sites within a continuous built-up frontage, exceeding the local average plot width may be considered to constitute an important visual break. Sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.*
47. Regard has been had to the principles and examples set out in Building on Tradition in considering this proposal and planning judgement applied to the issues to be addressed.
48. It includes infill principles with examples that have been considered as part of the assessment:
- *Follow the established grain of the neighbouring buildings.*
 - *Allow for clear definition of front and back, public and private sides to the plot which help address overlooking issues.*
 - *Design in scale and form with surrounding buildings*
 - *Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity*
 - *Use a palette of materials that reflect the local area*
49. With regards to the provision of waste treatment facilities on the site, Building on Tradition [page 131] states that:
- If Consent for Discharge has been granted under the Water (Northern Ireland) Order 1999 for the proposed development site, a copy of this should be submitted to accompany the planning application. This is required to discharge any trade or sewage effluent or any other potentially polluting matter from commercial, industrial or domestic premises to waterways or underground strata. In other cases, applications involving the use of non-mains sewerage, including outline*

applications, will be required to provide sufficient information about how it is intended to treat effluent from the development so that this matter can be properly assessed. This will normally include information about ground conditions, including the soil and groundwater characteristics, together with details of adjoining developments existing or approved. Where the proposal involves an on-site sewage treatment plant, such as a septic tank or a package treatment plant, the application will also need to be accompanied by drawings that accurately show the proposed location of the installation and soakaway, and of drainage ditches and watercourses in the immediate vicinity. The site for the proposed apparatus should be located on land within the application site or otherwise within the applicant's control and therefore subject to any planning conditions relating to the development of the site.

Development Control Advice Note 15 – Vehicular Access Standards

50. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 explain that:

The Department's Planning Policy Statement 3 "Development Control: Roads Considerations" (PPS3) refers to the Department's standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.

Assessment

51. As the Courts have noted in the Glassdrumman Road, Ballynahinch Judicial Review, and for the reasons described above officer's bear in mind that the regional policy in PPS21 CTY8 is restricted and that any infill application is an exception to the prohibition on ribbon development. The same approach applies to COU8, however COU8 contains a new and significant definition of the buildings to be taken into account.
52. The first step is therefore to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of COU8 describes a ribbon as:
- A ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development.*
53. Officers are satisfied that the proposal does engage ribbon development. There are two dwellings either side of the application site, namely 15 and 15a Crumlin Road. The application site is located between these buildings.

54. The property at 15 Crumlin Road comprises a modest single storey roadside dwelling. This dwelling is set below the road. There are a number of other buildings within the curtilage of 15 Crumlin Road including:
- two single-storey agricultural buildings which extend into the site along the northern boundary;
 - A larger agricultural building to the rear; and
 - A domestic outbuilding to the southern side of the site access.
55. The property at 15a Crumlin Road comprises a one and a half storey dwelling with a double detached garage and a stone cladded porch projection. This dwelling is set back from the road by approximately 2 metres.
56. The buildings are visually linked when travelling along the Crumlin. This is sufficient to conclude that the proposal does engage ribbon development.

The issue of exception

57. The next step is to consider whether the proposal comes within the exception set out in the policy.
58. The first step is to consider whether there is a substantial and continuously built-up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
59. Whilst no concept plan is submitted in support of the application, a proposed site layout plan assists with the identification of the following buildings:
- A dwelling at 15a Crumlin Road
 - A dwelling at 15 Crumlin Road
60. The agricultural buildings by virtue of their orientation and location within the site to the rear are not counted as forming part of the substantial and continuously built-up frontage. The shed to the south is also discounted as being a domestic ancillary building.
61. For the reasons outlined, this first part of the policy test is not considered to be met.
62. Without prejudice to the view expressed above and in consideration of whether a small gap site exists, whilst the policy text and supplementary guidance recognise that such a site may be able to accommodate two infill dwellings which respect the existing development pattern officers have not assumed that any site of that size is necessarily a small gap site within the meaning of the policy.
63. Officers remain mindful that the issue remains one of planning judgement, and one which should be approached bearing in mind the over-arching restrictive purpose of the policy.

64. In a previous application it was concluded that no gap existed as the site was on top of the access to a dwelling to the rear of 15 Crumlin Road and behind the access to 15a Crumlin Road.
65. The approval and implementation in part of application LA05/2022/0090/F creates a gap between the buildings at 15 and 15a Crumlin Road which is measured to be 44 metres.
66. The frontage width of 15 Crumlin Road measures 40 metres and the frontage of number 15a Crumlin Road 65 metres. The frontage width of the application site is 35 metres. This provides for an average road frontage of approximately 46 metres.
67. Having regard to these plot frontage measurements, the gap is not considered to be a small gap sufficient to accommodate two dwellings whilst respecting the established pattern of development.
68. Two sites would have widths of 17.5 metres. This is much smaller than the average frontage of 46 metres.
69. The policy also requires that the dwellings respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.
70. Using the site location map submitted with the application, the following plot sizes are measured:
 - 15 Crumlin Road has a plot area of 3052.4 metres squared
 - 15a Crumlin Road has a plot area of 1678.1 metres squared
 - The application site has a plot area of 2334.5 metres squared
71. The average plot size measures approximately 2355 metres squared. To provide for two dwellings, this plot would need to be subdivided into two resulting in a plot size of approximately 1177.5 metres squared.
72. This would be significantly less than the average plot size and not in keeping with the established pattern of development.
73. The Building on Tradition document is written with a different policy in mind and the guidance contained at 4.4.0 and 4.4.1 and the worked examples on page 71 are limited material weight in the assessment of this proposal as the site is not sufficient in size to accommodate two dwellings consistent with the existing pattern of development. The words 'a maximum of' will no longer apply.
74. That said, the general criteria at 4.5.0 and 4.5.1 still apply and for the reasons outlined above, the site is not a small gap capable of accommodating two dwellings whilst respecting the existing pattern of development.

75. Whilst it is noted that the application form is not amended to two dwellings regard is also given to a notional layout drawing submitted informally by the Agent on 22 August 2023 for two dwellings within the gap. This drawing does not address the concern expressed in relation to there not being a line of four or more buildings along the frontage nor are access arrangements explained.
76. Furthermore, the drawing simply presents a concept of three equal sized plots with no regard given to the characteristics of the actual plot associated with 15a currently – a plot that currently has a frontage of 65 metres and a plot size of 1678.1 metres squared is now presented as having a frontage of approximately 22 metres. No weight is attached to the drawing and the application is assessed on the basis of what is applied for which is a single dwelling.

Integration and Design of Buildings in the Countryside

77. Without prejudice to the view expressed that the proposed development is not an exception to Policy COU8, a dwelling of appropriate size and scale would also be a prominent feature within the local landscape given the absence of a back drop and the limited vegetation to roadside boundary when viewed from surrounding vantage points. Criteria (a) is not met.
78. Any dwelling would be able to be sited so as to cluster with the existing buildings to the north and south. Criteria (b) is capable of being met.
79. That said, there is no existing vegetation along the eastern boundary with the Crumlin Road and very limited existing vegetation along the southern boundary with 15 Crumlin Road and only partial existing vegetation along the boundary with 15a Crumlin Road. In addition, there are no natural features to provide a backdrop or help the development blend into the landform. Criteria (c) is not met.
80. The site also lacks long established natural boundaries and is therefore unable to provide a suitable degree of enclosure for the building to integrate into the landscape.
81. With the exception of the western boundary and part of the boundary to the north, all other boundaries are not defined with any established natural boundaries and as such, the development if approved would rely on the use of new landscaping for integration.
82. For the reasons outlined, criteria (d) and (e) are not considered to be met.
83. As this application seeks outline approval only, no detailed design details have been provided for consideration apart from a proposed site layout. That said, it is accepted that a dwelling of an appropriate rural design could be presented at reserved matters stage. Criteria (f) is capable of being met.
84. Given the nature of the site it is considered that required ancillary works associated with the access and any other infrastructure above or below ground

could be designed so as to integrate into the surroundings without harm to the rural character. Criteria (g) is capable of being met.

Rural Character and other criteria

85. For the reasons outlined above, a new building would be prominent in the landscape. Criteria (a) is not met.
86. For the reasons outlined within the context of policy COU8 a new dwelling would not respect the traditional pattern of settlement exhibited in the area. Criteria (c) is not met.
87. Whilst the proposal does not mar the distinction between a settlement and surrounding countryside, it does result in urban sprawl by adding to a ribbon of development which in turn has an adverse impact on the rural character of the area. Criteria (d) and (e) are not met.
88. In relation to criteria (f) a dwelling is capable of being sited and designed to ensure that the proposal does not have an adverse impact on neighboring residential amenity levels. This criteria is capable of being met.
89. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines along the road frontage or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works will not harm the character of the area as they are already a feature of the landscape at this location.
90. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

The issue of administrative fairness

91. At a meeting with the applicant in respect of application LA05/2020/0231/O officers advised that that the application was going to be recommended for refusal as no gap existed at this part of the Crumlin Road as the site did not have frontage to the road.
92. The site where the dwelling was proposed was behind and partly on top of the access for an existing dwelling behind 15 Crumlin Road and the proposed access for 15a Crumlin Road not fully implemented in accordance with the condition attached to this permission. The drawings submitted with the application also showed works to construct a lane and an access not included as part of the application description and outside of the application site.
93. It was confirmed that no weight would be given in the decision making process to potential alternative means of access were no planning permission was granted to vary or not comply with the conditions of an earlier approval. This application did

not seek to modify those permissions and no alternative means of access (following the grant of planning permission) had been constructed to justify this site having frontage to the Crumlin Road and being considered an exception to the infill policy.

94. The option to withdraw the application was one of number of options discussed and the advice offered must be considered in the context of a meeting that was arranged to explain the reasons why officers of the Council were recommending the application for refusal. It is acknowledged that the option to withdraw was made time limited to allow the officer to conclude her assessment. It was not binding on the applicant withdraw the application.
95. Officers did answer the question in the meeting that if a gap existed would the other requirements of policy be met. Without prejudice to any application process that might follow it was accepted there were sufficient buildings within the meaning of policy to demonstrate there was a substantial and continuous built up frontage and that if a house was propose in the gap seemed to be broadly consistent with the established pattern of development.
96. No advice was offered on how and when the applications should be submitted. Three applications followed to regularise the access arrangements and one of those applications (LA05/2022/0090/F) was approved in October 2022. This application was not delayed. The initial submission was not agreed to by Dfl Roads and was subject to amendment. The other two applications are not decided but show the same access arrangements.
97. The application for the dwelling was not submitted until November 2022 approximately 12 months after the meeting in respect of application LA05/2020/0231/F took place. The advice offered two years ago is not binding on the Council and must be considered for what it is - advice offered to an applicant framed in the context of a discussion about a refusal of permission for an infill dwelling and the reasons offered as to why the proposed access arrangements could not be afforded weight in the decision-making process. It is not accepted that any administrative unfairness occurred.
98. As the application remains undecided and as the circumstances are changed in the intervening period the Council is required to determine this application on the basis of the policy that is now adopted.

Access and Transport

99. Detail submitted with the application indicates that the proposal involves the use of an existing unaltered access to a public road for both pedestrians and vehicles to use. This relates to the new access approved within the context of planning application LA05/2022/0090/F.
100. Dfl Roads have been consulted and offer no objections subject to conditions in relation to the provision of access arrangements and car parking at reserved matter stage.

101. Based upon a review of the information provided and the advice from statutory consultees, it is accepted that a new access to the public road can be accommodated without prejudice to road safety or significant inconvenience to the flow of traffic. The requirements of policy TRA2 of the Plan Strategy are met in full.

Waste Management

102. Detail submitted with the application indicates that source of water supply will be from mains and surface water disposed of via soak away and foul via septic tank. A treatment plant and soak away are shown to the rear of the site.
103. LCCC Environmental Health were consulted and offer no objection.
104. Advice from Water Management Unit refers to standing advice and explains that the onus is on the applicant to ensure that all other regulatory consents are in place.
105. Consideration of flood risk is included as a criteria for assessment in policy WM 2. This proposal is not of sufficient scale to require the submission of a flood risk assessment and consent to discharge is required as a parallel consent process. Foul and storm discharge is normally through a soak-away designed to an appropriate standard. No flood risk is identified.
106. Based on a review of the information and advice received from consultees, it is accepted that a septic tank and the area of subsoil irrigation for the disposal of effluent can be sited and designed so as not to create or add to a pollution problem. The requirements of policy WM2 of the Plan Strategy are met in full.

NIE Infrastructure

107. The site layout drawing shows that an electric pole is to be relocated to the perimeter of the site.

Conclusion and Recommendation

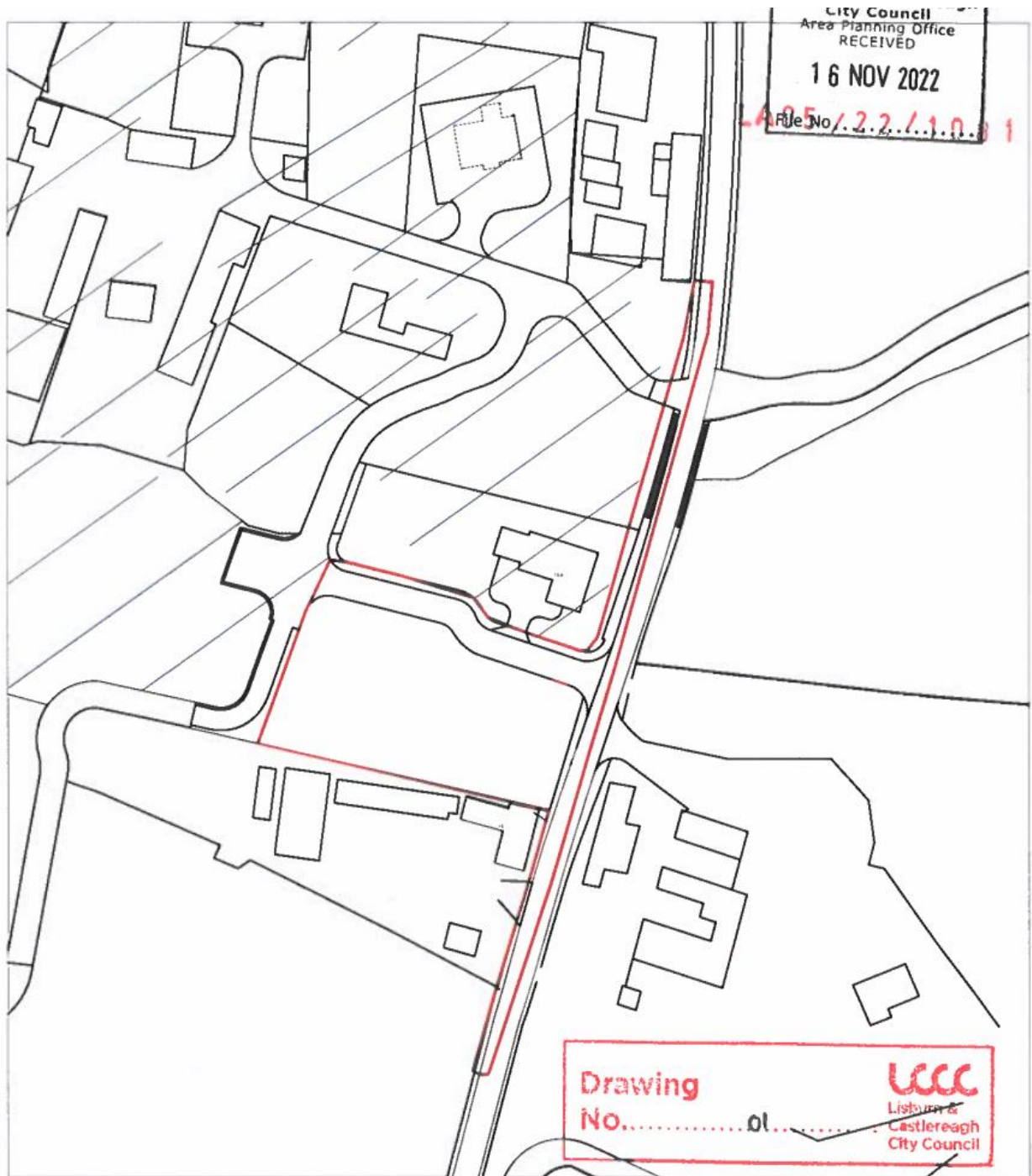
108. For the reasons outlined, the application is considered to be contrary to policies COU1, COU8 and COU16 of the Plan Strategy.

Refusal Reasons

109. The following reasons for refusal are proposed:

- The proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is not a type of development which in principle is acceptable in the countryside.
- The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the site is not a substantial and continuous built up frontage; the site is not of sufficient size to accommodate two dwellings and the development would if permitted fail to respect the existing pattern of development in terms of plot size adding to a ribbon of development.
- The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development would if permitted fail to respect the traditional pattern of settlement resulting in an adverse impact on rural character of the area due to urban sprawl.

Site Location Plan – LA05/2021/1081/O



Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Committee	04 December 2023
Committee Interest	Local Application [Exceptions Apply]
Application Reference	LA05/2022/0106/O
Date of Application	31 January 2022
District Electoral Area	Downshire East
Proposal Description	Demolition of all structures on site and erection of 10 detached dwellings and associated site works
Location	Lands at 17 Glebe Manor, Annahilt.
Representations	Fourteen
Case Officer	Catherine Gray
Recommendation	Refusal

Adoption of Plan Strategy

1. The Plan Strategy was adopted by resolution of the Council on 26 September 2023.
2. The key statutory and policy provisions are as follows:

Planning (Local Development Plan) Regulations (NI) 2015.

The schedule to the 2015 regulations provides as follows:

Departmental development plan and plan strategy as local development plan

[3] *Where a plan strategy is adopted by a council or approved by the Department in accordance with Part 2 of the 2011 Act—*

(a) a reference to the local development plan in the 2011 Act or any enactment relating to planning is a reference to the departmental development plan and the plan strategy read together; and

(b) any conflict between a policy contained in a departmental

development plan and those of the plan strategy must be resolved in favour of the plan strategy.

Discontinuance of departmental development plan on adoption of local development plan

[4] *Where a council adopts a local policies plan for its district (or the Department approves a local policies plan for that district) so much of the departmental development plan as relates to that area shall cease to have effect.*

Strategic Planning Policy

3. The Strategic Planning Policy Statement for Northern Ireland (the SPPS) provides at paragraph 1.11:

[1.11] Where a council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date.

4. In accordance with Regulation 3 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 the Plan Strategy applies to all applications.
5. The existing suite of planning policy statements retained under the transitional arrangements in the SPPS cease to have effect, regardless of the date of the planning application being received.

Summary of Recommendation

6. This is a local application. The application is presented to the Planning Committee in accordance with the Scheme of Delegation in that the proposal relates to an application for five or more dwellings in a rural location.
5. The proposal is contrary to Paragraph 6.73 of the SPPS and policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy, in that it is not a type of development which in principle is considered to be acceptable in the countryside.
6. The proposal is contrary to policy COU15 of the Lisburn and Castlereagh City Council Plan Strategy, in that the development is not sited to cluster with an established group of buildings.
7. The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy, in that the development is not sited to cluster with an established group of buildings, it does not respect the traditional pattern of

settlement exhibited in the area, if permitted would mar the distinction between the defined settlement limit of Annahilt and the surrounding countryside, result in urban sprawl and have an adverse impact on the rural character of the area.

Description of Site and Surroundings

Site

8. The application site comprises a two storey dwelling (17 Glebe Manor), its associated outbuildings (a mixture of single and two-storey) and surrounding lands adjacent (rough grazing land and a section that currently has rubble deposited on it).
9. The site is accessed via a short laneway off Glebe Manor, situated between 15 and 19 Glebe Manor.
10. The site partially runs along the settlement development limit of Annahilt, and partially along existing field boundaries. West and south of the site is existing housing development which has an urban context being located within the boundary of the settlement.
11. Within the site there is evidence of removal of planting including trees cut down, within the southern portion of the site.

Surroundings

12. North and east of the application site there is open countryside with other farms and residential properties in the distance.
13. Directly adjacent and south of the application site is Rocklands housing development consisting of detached dwellings on medium sized plots.
14. Directly adjacent and west of the application site is Glebe Manor housing development consisting of detached dwellings on medium sized plots.

Proposed Development

15. This is an outline application for the demolition of all structures on site and erection of ten detached dwellings and associated site works.
16. Supporting Information provided within this application included the following;
 - Design and Access Statement on the proposed layout plan received 31 January 2022 which has been superseded by a design and access statement on the proposed layout plan received 14 July 2022.
 - Drainage Assessment (JKB Consulting) received 27 April 2022.
 - Bat Roost Potential Survey (Willow Environmental) received 15 March 2023.

- Bat Activity Survey (Willow Environmental) received 15 March 2023.
- Biodiversity checklist (Willow Environmental) received 19 July 2023.

Relevant Planning History

17. The planning history associated with the site is set out in the table below.

Planning Reference	Proposal	Decision
S/2009/0714/O	Replacement of existing dwelling	Permission Granted 03/11/2009
S/2010/0037/F	Proposed barn conversion to single storey dwelling	Permission Granted 10/06/2010
S/2010/0686/F	Proposed barn conversion to dwelling	Permission Refused 26/11/2011 Appeal Upheld 30/11/2012
S/2013/0019/F	Proposed barn conversion to 2 storey dwelling	Permission Granted 29/08/2013
S/2013/0021/O	Replacement dwelling	Permission Granted 03/09/2013

Consultations

18. The following consultations were carried out:

Consultee	Response
NI Water	No objection
DAERA Water Management Unit	No objection
LCCC Environmental Health	No objection
DfI Roads	No objection

Consultee	Response
NI Water	No objection
DAERA Water Management Unit	No objection
LCCC Environmental Health	No objection
DfI Rivers Agency	No objection
DAERA Natural Environment Division (NED)	No objection
Historic Environment Division (HED): Historic Buildings	No objection
Historic Environment Division (HED): Historic Monuments	No objection

Representations

19. Fourteen letters of representation in opposition to the proposal have been received. The following issues were raised:
- Outside the development limit of Annahilt / Local Development Plan
 - Refusal or delay until the Lisburn Castlereagh 2032 Area Plan is adopted
 - Negative impact on the character of the area
 - Impact on natural heritage
 - Increased traffic and road infrastructure
 - Sewerage
 - Drainage/Flooding
 - Infrastructure
 - Impact on adjacent archaeological site
 - Lack of information
 - Land ownership

Local Development Plan

20. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.

Plan Strategy 2032

21. It is stated at Part 1 of the Plan Strategy that:

Transitional arrangements will apply in relation to the existing Plan designations. The existing Development Plans which remain in effect for different parts of the Council area are set out in Chapter 2 (Existing Development Plans). Following adoption the Development Plan will be the Plan Strategy and any old Development Plan, with the Plan Strategy having priority in the event of a conflict. Regulation 1 state that the old Development Plans will cease to have effect on adoption of the new LDP at Local Policies Plan (LPP) stage.

The Belfast Metropolitan Area Plan (BMAP) was intended to be the Development Plan on its adoption in September 2014. This Plan was subsequently declared unlawful following a successful legal challenge and therefore remains in its entirety un-adopted.

BMAP in its post-inquiry form was at an advanced stage and therefore remains a material consideration. Draft BMAP (November 2004) in its pre-inquiry form also remains a material consideration in conjunction with recommendations of the Planning Appeals Commission Public Local Inquiry Reports.

22. In accordance with the transitional arrangements the existing Local Development Plan and draft BMAP remain material considerations.
23. The site is located in the countryside in the Lisburn Area Plan (LAP) and at page 49 it states:

that the Departments regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date.

24. In draft BMAP (2004) this site is also identified as being located in the open countryside. The Plan Strategy document states that:

The Department has begun progressively to replace the Rural Strategy. The Planning Strategy section of the Rural Strategy has been superseded by the RDS, whilst the topic policy sections are progressively being replaced by PPS's. The Rural Strategy remain material considerations until superseded by PPS's.

25. In the subsequent revision to draft BMAP (2014) this site is located in the open countryside. It is stated at policy SETT 4 at page 32 of Part 3 Volume 1 that: *The policies contained in 'A Planning Strategy for Rural Northern Ireland', except where superseded by prevailing regional planning policies, will apply to the entire Plan Area.*
26. It is then stated in the supplementary text under the policy at pages 32 and 33 that:

PPS 7: Quality Residential Environments and PPS 7 Addendum: Safeguarding the Character of Established Residential Areas set out the prevailing regional planning policies for achieving quality in the design and layout of new residential developments. They embody the Government's commitment to sustainable development and the Quality Initiative. They contain criteria-based policies against which all proposals for new residential development, including those on land zoned will be assessed, with the exception of single dwellings in the countryside. These will continue to be assessed under policies contained in PPS 21: Sustainable Development in the Countryside.

27. There are equivalent policies in the Plan Strategy of the Lisburn and Castlereagh City Council Plan 2032 to the regional policies described in LAP and draft BMAP.
28. This application is for ten houses in the open countryside. The strategic policy for new housing in the countryside [Strategic Policy 09] states:

The Plan will support development proposals that:

- (a) *provide appropriate, sustainable, high quality rural dwellings, whilst protecting rural character and the environment*
- (b) *resist urban sprawl in the open countryside which mars the distinction between the rural area and urban settlements*
- (c) *protect the established rural settlement pattern and allow for vibrant sustainable communities.*

29. The following operational policies in Part 2 of the Plan Strategy also apply.

Development in the Countryside

30. The proposal is for the demolition of existing buildings (one dwelling associated outbuildings) with 10no. detached dwellings in the open countryside.
31. Policy COU 1 – Development in the Countryside states:

There are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10

Details of operational policies relating to acceptable non-residential development proposals are set out in policies COU11 - COU14.

There are a range of other non-residential development proposals that may in principle be acceptable in the countryside. Such proposals must comply with all policy requirements contained in the operational policies, where relevant to the development.

Any proposal for development in the countryside will also be required to meet all of the general criteria set out in Policies COU15 - COU16.

32. As explained this is an application for 10 dwellings in the open countryside. It does not engage policies COU2, COU3, COU4, COU6, COU7, COU8, COU9 and COU10. The application is not made by a registered housing association or the NIHE to meet an identified affordable housing need. The requirements of policy COU5 is also not engaged.
33. As the proposal does not fit within the categories of acceptable residential development it remains to be considered if there are any material consideration to weigh to support the proposal being treated as an exception to policy COU 1. The proposal is also to be considered against the general planning criteria of policies COU15 and COU16 of the Plan Strategy.

Integration and Design of Buildings in the Countryside

34. Policy COU15 - Integration and Design of Buildings in the Countryside states:

In all circumstances proposals for development in the countryside must be in accordance with and sited and designed to integrate sympathetically with their surroundings and be of an appropriate design. A new building will not be permitted if any of the following apply:

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

Rural Character and other Criteria

35. Policy COU16 – Rural Character and other Criteria states:

In all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area. A new development proposal will be unacceptable where:

- a) *it is unduly prominent in the landscape*
- b) *it is not sited to cluster with an established group of buildings*
- c) *it does not respect the traditional pattern of settlement exhibited in that area*
- d) *it mars the distinction between a settlement and the surrounding countryside, or otherwise results in urban sprawl*
- e) *it has an adverse impact on the rural character of the area*
- f) *it would adversely impact on residential amenity*
- g) *all necessary services, including the provision of non mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality*
- h) *the impact of ancillary works (with the exception of necessary visibility splays) would have an adverse impact on rural character*
- i) *access to the public road cannot be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.*

Natural Heritage

- 36. As existing buildings are being replaced consideration is given to the potential for an adverse impact or damage to be caused to priority species such as bats. Supporting ecological reports are submitted with the application.
- 37. Policy NH2 Species Protected by Law states:

European Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm a European protected species.

In exceptional circumstances a development proposal that is likely to harm these species may only be permitted where:

- a) *there are no alternative solutions; and*
- b) *it is required for imperative reasons of overriding public interest; and*
- c) *there is no detriment to the maintenance of the population of the species at a favourable conservation status; and*
- d) *compensatory measures are agreed and fully secured.*

National Protected Species

Planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against.

Development proposals are required to be sensitive to all protected species, and sited and designed to protect the, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.

38. Policy NH5 Habitats, Species or Features of Natural Heritage Importance states that:

Planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:

- a) *priority habitats*
- b) *priority species*
- c) *active peatland*
- d) *ancient and long-established woodland*
- e) *features of earth science conservation importance*
- f) *features of the landscape which are of major importance for wild flora and fauna*
- g) *rare or threatened native species*
- h) *wetlands (includes river corridors)*
- i) *other natural heritage features worthy of protection including trees and woodland.*

A development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features listed above may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.

Access and Transport

39. The proposal involves use of an upgraded existing access to the public road. Policy TRA2 – 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:

- a) *it will not prejudice road safety or significantly inconvenience the flow of vehicles; and,*
- b) *it does not conflict with Policy TRA3 Access to Protected Routes.*

Consideration will also be given to the nature and scale of the development, character of existing development, the contribution of the proposal to the creation of a quality environment, the location and number of existing accesses and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase.

Flooding

40. The size of the site and scale of development proposed gives rise to consideration of drainage and flooding. Policy FLD3 Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains states:

A Drainage Assessment (DA) will be required for development proposals that

exceed any of the following thresholds:

- a) a residential development of 10 or more units
- b) a development site in excess of 1 hectare
- c) a change of use involving new buildings and/or hardsurfacing exceeding 1,000 square metres in area.

A DA will also be required for any development proposal, except for minor development, where:

- it is located in an area where there is evidence of historical flooding.
- surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features.

A development requiring a DA will be permitted where it is demonstrated through the DA that adequate measures will be put in place so as to effectively mitigate the flood risk to the proposed development and from the development elsewhere. If a DA is not required, but there is potential for surface water flooding as shown on the surface water layout of Dfl Flood Maps NI, it remains the responsibility of the developer to mitigate the effects of flooding and drainage as a result of the development.

Where the proposed development is also located within a fluvial flood plain, then Policy FLD1 will take precedence.

Historic Environment and Archaeology

- 41. The site is located in the setting of a B1 listed building and has the potential to impact on below ground archaeological features.
- 42. Policy HE2 The Preservation of Archaeological remains of Local Importance and their Settings states:

Proposals which would adversely affect archaeological sites or monuments which are of local importance of their settings shall only be permitted where the Council considers that the need for the proposed development or other material considerations outweigh the value of the remains and/or their settings.

- 43. Policy HE9 Development affecting the Setting of a Listed Building states:

Proposals which would adversely affect the setting of a listed building will not be permitted. Development proposals will normally only be considered appropriate where all the following criteria are met:

- a) the detailed design respects the listed building in terms of scale, height, massing and alignment

b) the works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building

c) the nature of the use proposed respects the character of the setting of the building.

Regional Policy and Guidance

Regional Policy

44. The SPPS was published in September 2015. It is the most recent planning policy and it is stated at paragraph 1.5 that:

The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of Local Development Plans (LDP) and are material to all decisions on individual planning applications and appeals. The Department intends to undertake a review of the SPPS within 5 years.

45. Paragraph 3.8 of the SPPS states:

that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

46. It is further stated at paragraph 6.78 of the SPPS that:

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

47. The SPPS remains a material consideration of significant weight irrespective of what stage the Local Development Plan making process is at.

Retained Regional Guidance

48. Whilst not policy, the following guidance document remains a material consideration:

Building on Tradition

49. Paragraph 1.3.0 states that this document will guide you towards high quality sustainable building practices and architectural design in the countryside.

50. It also notes with regards to visual integration that the following points be considered:

- *Work with the contours (not against them)*
- *Look for sheltered locations beside woodland*
- *Make use of natural hollows*
- *Avoid full frontal locations where bad weather can damage buildings*
- *Avoid north facing sloping sites (difficult to achieve good passive solar gains)*
- *Look for sites with at least two boundaries in situ and preferably three*
- *Look for sites that face south (easy to achieve good passive solar gains).*

51. It also includes design principles that have been considered as part of the assessment:

- *Get the size and scale right relative to what is existing.*
- *Understand and reflect the character and layout of the group in terms of the relationship between buildings and landscape.*
- *Avoid the use of typical suburban features such as dormer and bay windows, porticos and pediments on the building and concrete kerbs, tarmac, blockwork walls, pre-cast concrete fencing and ornate gates and lampposts around the site.*
- *Retain existing hedgerows, boundaries and mature vegetation.*
- *Acknowledge building lines and informal setbacks.*
- *Maximise rural landscape treatments such as gravelled lanes and driveways, grass verges and local native species for new planting.*

Development Control Advice Note 15 – Vehicular Access Standards

52. The policies in PPS 3 are replaced by the Plan Strategy but the guidance in Development Control Advice Note 15 – Vehicular Access Standards states at paragraph 1.1 explain that:

The Department’s Planning Policy Statement 3 “Development Control: Roads Considerations” (PPS3) refers to the Department’s standards for vehicular accesses. This Development Control Advice Note (DCAN) sets out and explains those standards.

Assessment

53. The application seeks the demolition of all structures on site and erection of 10 detached dwellings and associated site works.

Development in the Countryside

54. Policy COU1 Development in the Countryside makes provision for a range of acceptable types of residential development proposals, as set out in policies COU 2 to COU10. None of these policies are engaged.

55. No supporting information is presented other than an appeal history by the applicant to justify why the proposed development should be treated as an exception to policy.
56. In correspondence from the agent dated 22 December 2022, reference is made to appeal 2009/A0245 in the Commission grant planning permission for a proposal as an exception to policy as rounding off of the settlement limit.
57. The case is presented that this appeal is comparable to the proposed development in that the appeal site, like the application site, is flanked by development on two sides and is previously developed land.
58. In consideration of this appeal decision, it is noted that the proposal was for the erection of 12 terraced and semi-detached houses on lands adjoining the rear boundaries of 32, 33, 42 to 47 Ardgrange, Grangemore Park, Londonderry.
59. The appeal site is not considered to be directly comparable to the application site or indeed the proposal as the appeal site was small in scale with part of the site falling within the statutory development limit for the City. The appeal proposal saw a small extension to the edge of the development limit.
60. The decision of the Commission reported that the development limit at that time did not follow along any physical boundaries and taking the physical boundaries alongside other material factors it was considered that the appeal proposal would result in a logical rounding off of the settlement limit.
61. In comparison, with the exception of the access, this application site is wholly outside the Settlement Development Limit of Annahilt and would if approved lead to urban sprawl and mar the distinction between the countryside and the settlement development limit of Annahilt.
62. The requirements of policy COU1 are not met and this is not a rounding off opportunity as the site is not all previously developed land lying into the settlement limit with development adjacent on two boundaries. The scale of development is excessive and the settlement limit is drawn at this location to constrain development rather than promote it.

Policy COU15 - Integration and Design of Buildings in the Countryside

73. In terms of policy COU15, it is considered that the proposal would not be a prominent feature in the landscape due to the levels and its surrounding topography and landscape. Criteria (a) is capable of being met.
74. The proposal seeks to demolish all the existing buildings on the site and to replace them with 10 dwellings. The proposal would not be sited to cluster with an established group of buildings, in the countryside. The existing adjacent housing development are discounted as they are within a different policy context. Criteria (b) is not met.

75. It is considered that the proposal would blend with the landform and the existing boundary treatments and existing natural boundary features would provide a backdrop when viewed from public viewpoints. Criteria (c) and (d) are met.
76. It is considered that new landscaping would not be relied on to integrate the proposed new buildings into the landscape. Criteria (e) can be met.
77. The outline application seeks to establish the principle of development only and as such, no design details have been provided. That said, dwellings could be sited and designed to be appropriate to the site and its locality. Such detail would be further considered at reserved matters stage. Criteria (f) is capable of being met.
78. The nature and scale of ancillary works required to service 10 dwellings at this location are not likely to present any issues in relation to integration. Criteria (g) is capable of being met.

Policy COU16 - Rural Character and Other Criteria

79. In terms of policy COU16, it is considered that the proposal would not be unduly prominent in the landscape due to the levels and its surrounding topography and landscape. Criteria (a) is capable of being met.
80. The proposal would not be sited to cluster with an established group of buildings in the countryside. The existing adjacent housing development are discounted as they are within a different policy context. Criteria (b) is not met.
81. The proposal would not respect the traditional pattern of settlement exhibited in the area as the proposal is for 10 dwellings in the open countryside, in a rural area that is mainly characterised by single dwellings set in their own curtilage along the roadside and farm complexes set back along farm lanes. Criteria (c) is not met.
82. The proposal is adjacent to Annahilt with the western and southern boundaries having a common boundary with the settlement development limit. The site is not enclosed whilst it is previously developed it is not so intensively developed that it is part of the character of the settlement. The existing buildings do not lie into the settlement limit with development on two sides. Given the scale of development proposed if developed this would mar the distinction between the settlement limit of Annahilt and the surrounding countryside and result in urban sprawl. Criteria (d) is not met.
83. The proposal would result in urban sprawl by virtue of build-up of development which in turn has an adverse impact on the rural character of the area by reason of urban sprawl. Criteria (e) is not met.
84. It is considered that adequate separation distances can be provided between the proposed dwellings and neighbouring dwellings and as such, no issues of

concern would arise from the development as proposed in respect of neighbouring residential amenity. Criteria (f) is capable of being met.

85. In respect of criteria (g) and (h) all of the proposed services are provided underground or from existing overhead lines nearby or adjacent to the site. No adverse environmental impact is identified in terms of connecting this development to services and the ancillary works would not harm the character of the area as they are already a feature of the landscape at this location.
86. In respect of criteria (i) for the reasons set out in the following paragraphs, access to the public road can be achieved without prejudice to road safety or significantly inconveniencing the flow of traffic.

Access and Transport

116. The proposed access is via the existing laneway to be upgraded for both vehicular and pedestrian use.
117. DfI Roads have been consulted and offer no objections subject to conditions in relation to the provision access arrangements and car parking at reserved matter stage.
118. Based upon a review of the information provided and the advice from statutory consultees, it is accepted that a new access to the public road can be accommodated without prejudice to road safety or significant inconvenience to the flow of traffic. The requirements of policy TRA2 of the Plan Strategy are met in full.

Natural Heritage

119. The application site is not within or adjacent to any designated areas such as and there are no watercourses or streams within or adjacent to the site that would give rise to any natural heritage considerations.
120. The existing buildings on the site are proposed for demolition in order to accommodate the proposal.
121. A biodiversity checklist completed by Willow Environmental has been submitted for consideration which gave rise to the requirement for species survey. A bat roost potential survey and a bat survey was also completed by Willow Environmental and submitted for consideration.
122. Natural Environment Division have been consulted and advise that they have no Natural Heritage objections to the proposed development.
123. Taking the above into account, it is accepted that the proposal would not result in demonstrable harm being caused to any feature of natural heritage importance and as such the requirements of policies NH2 and NH5 are considered to be met.

Flooding

124. The proposal meets the threshold for a drainage assessment, and one has been submitted for consideration, completed by JKB Consulting Engineers.
125. DfI Rivers Agency have been consulted and have raised no objections to the proposal and provided one standard condition.
126. Based on the information submitted it is considered that the proposal would not cause or exacerbate flooding and that the proposal complies with the requirements of policy FLD3.

Historic Environment and Archaeology

127. The application site is within a buffer zone surrounding a ListedB1 Alms houses at 236-240 Ballynahinch Road, Annahilt.
128. HED Historic Buildings have been consulted on the proposal and advise that they consider the listed building is sufficiently removed from the application site and the setting will remain unaffected by the development.
129. The application site is also within a buffer zone surrounding an archaeological site and monument.
130. HED Historic Monuments have been consulted and advise that they have assessed the application on the basis of the information provided and is content that the proposal will not harm any features of the monument or any buried archaeological remains.
131. Based on the advice from HED and the information submitted it is considered that the proposal would not harm the historic environment or any sites of archaeological significance. The proposal is in accordance with and policies HE2 and HE9 of the Plan Strategy.

Consideration of Representations

132. Consideration of the issues raised by way of third party representation are set out below.

Outside the development limit of Annahilt / Local Development Plan

133. Concerns have been raised about the proposal being outside the development limit of Annahilt. The view is expressed that there is already land available within the Annahilt area to meet the housing need of the area until a new area plan is adopted. Objectors also states that there are no overriding reasons to support an extension of the development limit to accommodate the planning application. Consideration needs to be undertaken sympathetically and

carefully. The current plan is consistent with decisions taken by the Planning Appeals Commission.

134. It is agreed that the proposal is outside the settlement development limit of Annahilt and is within the countryside. The proposal is unacceptable in principle and does not comply with the policies in the Local Development Plan.

Refusal or delay until the Lisburn Castlereagh 2032 Area Plan is adopted

135. The view is expressed that the planning application should be refused, or at the very least, delayed until the Lisburn Castlereagh 2032 Area Plan is adopted.
136. A recommendation has been made and the determination of the application would not be held until both parts of the Local Development Plan is adopted in full. There is an established policy context against which this proposal can be assessed.

Negative impact on the character of the area

137. Concern has been raised about the impact of the proposal on the character of the area and its negative impact.
138. It is agreed that the proposal would have a negative impact on the rural character of the area and that the development would result in urban sprawl. The reasons for this are detailed above.

Impact on natural heritage

139. Concern is raised about the wilful destruction of trees, hedges and habitats within the application site. The view is expressed that this was for agricultural purposes and that are horrified to discover that the natural habitats have been sacrificed that in order that a building application could be made without hindrance.
140. It is acknowledged that there has been some recent changes to the site. Trees are cut back and hedgerow is removed. This was before the application was submitted and there is no history of the landscape features being protected. The impact of the proposal on the remaining natural heritage features has been assessed as part of this planning application.

Increased traffic and road infrastructure

141. The view is expressed that the homes in Glebe Manor would suffer through increased traffic passing existing houses. Also the view is expressed that the increase in traffic would increase the likelihood of an accident with pedestrians and cyclists particularly children. The view is expressed that there is a lack of information on transportation issues and that no visibility splays are shown on the plans.

142. On the basis of the information submitted, it is considered that a safe access to the proposed could be accommodated. DfI Roads have no objection to the proposal in terms of road safety or traffic impact. Officers have no reason to disagree with the advice of DfI Roads. The requirement for the access to be constructed to an adopted standard and for the visibility splays to be provided to the correct standard can be subject to condition.

Sewerage

143. Concern is raised that NI Water have not raised issues with existing capacity of Annahilt Sewerage system.
144. NI Water and Water Management Unit have raised no objections or concerns regarding sewerage.

Drainage/Flooding

145. Concern has been that there has been no drainage assessment to consider the impact of the development and concern is raised about the submitted drainage assessment. The view is expressed that policy FLD 5 is also of relevance given the nearby location of Lough Erne.
146. A drainage assessment has been submitted for consideration with the application. DfI Rivers Agency have been consulted on the proposal. They have reviewed the drainage assessment and have raised no objections and provided a standard condition to be placed on the decision if the proposal is approved. Rivers Agency confirm that policy FLD 5 is not relevant to this proposal.

Infrastructure

147. Concerns has been raised that local facilities and utilities may not be sufficient to support an increase in the number of residents without further investment.
148. DfI Rivers, NIW and DAERA have all been consulted as part of the application process and have raised no objections to the proposal. Officers have no reason to disagree with the advice of the relevant consultees.

Impact on adjacent archaeological site

149. Concern is raised about the impact of the proposal on an adjacent archaeological site.
150. Historic Environment Division have been consulted on the proposal and advise that on the basis of the information provided that no feature of built heritage is impacted. The reasons for this are set out above.

Lack of information

151. The view is expressed that whilst only seeking outline approval, they find that the application to be incomplete and invalid.
152. The application is valid and through the processing of the application additional information has been submitted to allow a complete assessment of the proposal.

Land ownership

153. The view is expressed that from the site location plan the access arrangement adjacent to no's 15 and 19 Glebe Manor appears to fall out with the applicants ownership.
154. It is the responsibility of the applicant/developer to ensure that they have ownership or control of all lands.

Conclusions

155. For the reasons outlined above, the proposal is contrary to policies COU1, COU15 and COU16 of the Plan Strategy.

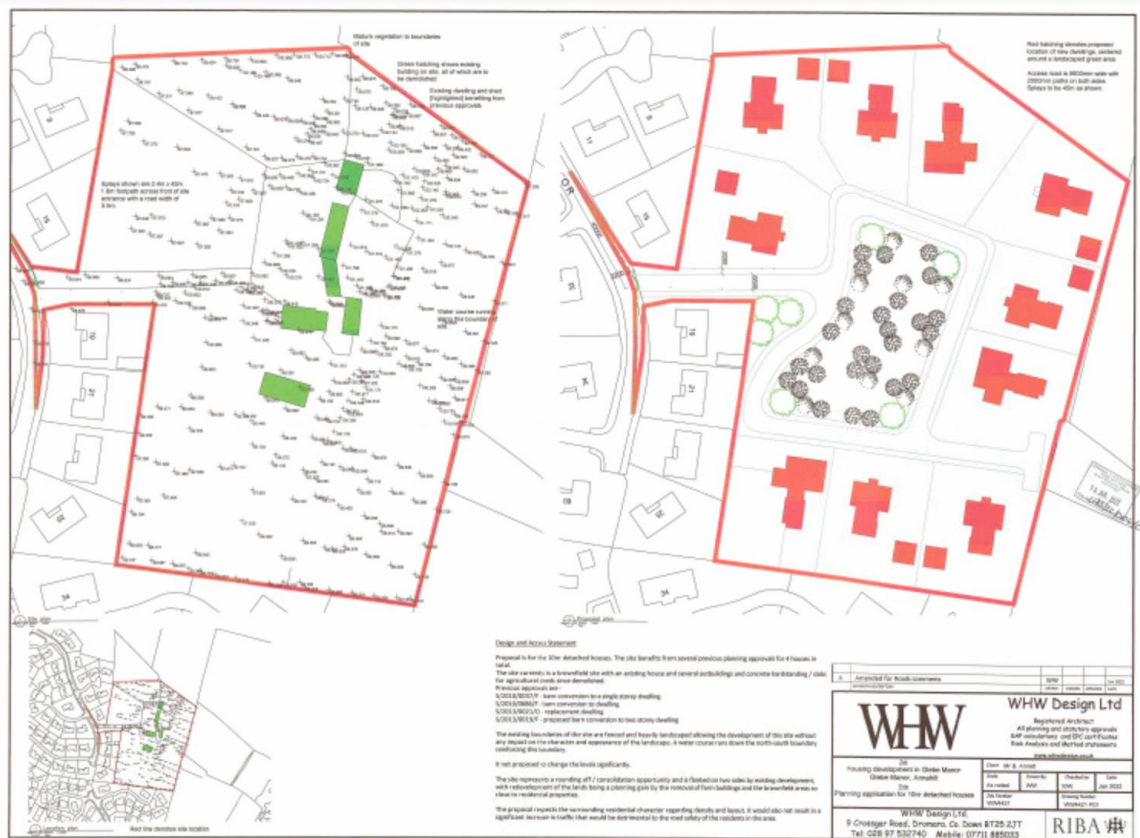
Recommendations

156. It is recommended that planning permission is refused.

Refusal Reasons

157. The following refusal reasons are recommended:
- The proposal is contrary policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy, in that it is not a type of residential development which is acceptable in principle in the countryside.
 - The proposal is contrary to policy COU15 of the Lisburn and Castlereagh City Council Plan Strategy, in that the development is not sited to cluster with an established group of buildings.
 - The proposal is contrary to policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy, in that the development is not sited to cluster with an established group of buildings, it does not respect the traditional pattern of settlement exhibited in the area, if permitted would mar the distinction between the defined settlement limit of Annahilt and the surrounding countryside, result in urban sprawl and have an adverse impact on the rural character of the area.

Site Location Plan – LA05/2022/0106/O



Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 2 – Proposed erection of industrial unit with ancillary office, car parking, landscaping and associated site and access works and solar array on lands located to the east of Lissue Road, south of Ballinderry Road and west of Ferguson Drive, Lisburn

1.0	<p><u>Background</u></p> <p>1. Section 27 of the Planning Act (Northern Ireland) 2011 requires a prospective applicant, prior to submitting a major application, to give notice to the appropriate Council that an application for planning permission is to be submitted.</p> <p><u>Key Issues</u></p> <p>1. Section 27 (4) of the Planning Act (Northern Ireland) 2011 stipulates what information a PAN must contain. The attached report (see Appendix) set out how the requirement of the legislation and associated guidance has been considered as part of the submission.</p>	
2.0	<p><u>Recommendation</u></p> <p>It is recommended that the Members note the content of the Pre-application Notice attached and that it is submitted in accordance with the relevant section of the legislation and related guidance.</p>	
3.0	<p><u>Finance and Resource Implications</u></p> <p>There are no finance or resource implications.</p>	
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	<p>Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out</p> <p>This is a report in relation to the serving of a Pre-Application Notice on the Council in relation to a major application. The Notice is served in accordance with legislative requirements and EQIA is not required.</p>	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No

4.4	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out.</p> <p>This is a report in relation to the serving of a Pre-Application Notice on the Council in relation to a major application. The Notice is served in accordance with legislative requirements and no RNIA is required.</p>	
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Appendices:	Appendix 2(a) - Report in relation to LA05/2023/0767PAN Appendix 2(b) – LA05/2023/0767/PAN – PAN Form Appendix 2(c) – LA05/2023/0767/PAN – Site Location Plan
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Lisburn & Castlereagh City Council

Council/Committee	Planning Committee
Date of Meeting	04 December 2023
Responsible Officer	Conor Hughes
Date of Report	18 October 2022
File Reference	LA05/2023/0767/PAN
Legislation	Section 27 of the Planning Act (Northern Ireland) 2011
Subject	Pre-Application Notice (PAN)
Attachments	PAN Form and Site Location Plan

Purpose of the Report

1. The purpose of this report is to advise Members of receipt of a Pre-Application Notice (PAN) for the erection of industrial unit with ancillary office, car parking, landscaping, associated site and access works and solar array.
2. The site is located to the east of Lissue Road, south of Ballinderry Road and west of Ferguson Drive, Lisburn.

Background Detail

3. Section 27 of the Planning Act (Northern Ireland) 2011 requires that a prospective applicant, prior to submitting a major application must give notice to the appropriate council that an application for planning permission for the development is to be submitted.
4. It is stipulated that there must be at least 12 weeks between the applicant giving the notice (through the PAN) and submitting any such application.
5. The PAN for the above described development was received on 27 September 2023. The earliest possible date for the submission of a planning application is week commencing 18 December 2023.

Consideration of PAN Detail

6. Section 27 (4) stipulates that the PAN must contain:
A description in general terms of the development to be carried out;
7. The description associated with the FORM PAN1 is as described above.

8. Having regard to the relevant section of the legislation and paragraph 2.4 of Development Management Practice Note 10, it is considered that an adequate description of the proposed development has been provided.

The postal address of the site, (if it has one);

9. The postal address identified on the FORM PAN1 is as described above.
10. Having regard to the relevant section of the legislation and paragraph 2.4 of Development Management Practice Note 10, it is accepted that an adequate description of the location has been provided.

A plan showing the outline of the site at which the development is to be carried out and sufficient to identify that site;

11. Having regard to the relevant section of the legislation and paragraph 2.4 of Development Management Practice Note 10, it is accepted that a site location plan with the extent of the site outlined in red and submitted with the PAN form is sufficient to identify the extent of the site.

Details of how the prospective applicant may be contacted and corresponded with;

12. Having regard to the relevant section of the legislation and paragraph 2.4 of Development Management Practice Note 10 it is noted that the FORM PAN1 as amended and associated covering letter includes details of how the prospective applicant may be contacted and corresponded with.
13. The Form PAN1 includes the name and address of the agent. Any person wishing to make comments on the proposals or obtain further information can contact the agent Turley at Hamilton House, 3 Joy Street, Belfast, BT2 8LE.
14. In addition to the matters listed above, regulation 4 of the Planning (Development Management) Regulations (Northern Ireland) 2015 sets out that a PAN must also contain the following.

A copy (where applicable) of any determination made under Regulation 7 (1)(a) of the Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2015 in relation to the development to which the proposal of application notice relates;

15. Having regard to the relevant section of the legislation and paragraph 2.5 of Development Management Practice Note 10 it is noted that question 9 of the FORM PAN 1 indicates that no environmental impact assessment determination has been made.
16. It is accepted that this reference is made without prejudice to any future determination being made or the applicant volunteering an Environmental Statement.

A copy of any notice served by the Department under Section 26(4) or (6) i.e. confirmation (or not) of the Department's jurisdiction on regionally significant developments

17. Having regard to the relevant section of the legislation and paragraph 2.5 of Development Management Practice Note 10 it is considered that the form of development proposed is not specified in the Planning (Development Management) Regulations (Northern Ireland) 2015 as a major development (i.e. regionally significant) prescribed for the purpose of section 26 (1) of the Planning Act (Northern Ireland) 2011 and it is noted that consultation with the Department has not taken place.

An account of what consultation the prospective applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take

18. Having regard to the relevant section of the legislation and paragraph 2.5 of Development Management Practice Note 10 the account of what consultation the prospective applicant proposes to undertake, when such consultation is to take place, with whom and what form it will take has been provided.

The PAN form indicates that a public event will take place at Lagan View Enterprise Centre, Drumbeg Drive, Old Warren Estate, Lisburn on 30 November 2023 at 3pm.

The event will be publicised in the Ulster Star on the week of the 17 November 2023.

Leaflets will also be distributed to properties within 500 metres of the proposed development and a consultation phone line promoted on the leaflet.

Hard copies of material can also be provided to parties unable to access the public event.

Elected members for the DEA identified as having an interest received a copy of the Proposal of Application Notice on 29 September 2023.

Recommendation

19. In consideration of the detail submitted with the Pre-Application Notice (PAN) and in respect of community consultation, it is recommended that the Committee note the information submitted.



www.lisburncastlereagh.gov.uk/resident/planning
Lisburn & Castlereagh City Council, Civic Headquarters, Lagan Valley Island, Lisburn, BT27 4RL
Tel: 028 9244 7300
E-mail: planning@lisburncastlereagh.gov.uk

Proposal of application notice
Planning Act (Northern Ireland) 2011

Publication of applications on planning authority websites

Please note that the information provided on this application form and in supporting documents may be published on the Authority's website. If you require any further clarification, please contact the Authority's planning department.

Are you an agent acting on behalf of the applicant?

- Yes
No

Applicant Details

Name/Company

Title: Other, Other

First name

Surname

Company Name: Killutagh Estates

Address

Address line 1: 2nd Floor

Address line 2: Linenhall

Address line 3: 32-38 Linenhall Street

Town/City: Belfast

BT2 8BG

Country

United Kingdom

347

Contact Details

Telephone number

***** REDACTED *****

Mobile number

***** REDACTED *****

Email address

Agent Details

Name/Company

Company / Organisation

Turley

Title

Mrs

First name

Donna

Surname

Lyle

Address

Address line 1

Hamilton House

Address line 2

Address line 3

3 Joy Street

Town/City

Belfast

Postcode

BT2 8LE

United Kingdom

Contact Details

348

Telephone number

***** REDACTED *****

Mobile number

07467335314

Email address

***** REDACTED *****

Ref no.

KILB3013

Site Address

Disclaimer: Recommendations can only be based on the answers given to the questions.

If you cannot provide a postcode, then further details must be provided below for 'Description of site location' by providing the most accurate site description you can in order to help locate the site.

Number

Suffix

Property Name

Address Line 1

Lands located to the east of Lissue Road, south of Ballinderry Road

Address Line 2

and west of Ferguson Drive.

Town/city

Lisburn

Postcode

Description of site location (must be completed if postcode is not known)

Description

Lands located to the east of Lissue Road, south of Ballinderry Road and and west of Ferguson Drive, Lisburn.

Easting co-ordinates (x)

323217

364213

349

Site Area

What is the area of the site?

4.45

Hectares

Please note - due to the size of site area this application may also be subject to the completion of an Environmental Impact Assessment report (EIA).

Please give a concise and accurate description of all elements of the proposed development that requires consent, including the purpose for which the land / buildings are to be used. Provide details of all buildings proposed and any ancillary works including access arrangements associated with the proposal. Please also include details of any demolition if the site falls within a designated area.

Description of Proposed Development

Please give a brief description of the proposed development

Proposed erection of an industrial unit with ancillary office, car parking, landscaping and all associated site and access works including the provision of on site solar array.

Please indicate what type of application is being requested

- Outline permission
 Full permission

Floorspace Summary

Does the proposal include floorspace?

- Yes
 No

What is the total gross floor space of proposed development (sq m)?

10000

Renewable Energy

Does your proposal involve renewable energy development?

- Yes No

Determinations

Has a determination been made as to whether the proposed development would be of Regional Significance?

- Yes
 No

No

350

Details of Proposed Consultation

Please add separate details for each proposed consultation

Proposed public event: Public Information Event

Venue: Lagan View Enterprise Centre, Drumbeg Drive, Old Warren Estate, Lisburn, BT28 1NY

Date and time: 30/11/2023 15:00

Please add separate details for each publication used for the above consultation

Publication

Name of publication Ulster Star

Proposed advert date start 17/11/2023

Proposed advert date finish 17/11/2023

Please specify details of any other consultation methods including distance from site for notifying neighbouring properties (e.g. 100m, 200m etc.) and method of notification (please include date, time and with whom)

Leaflets distributed to properties within 500m of the proposed development.

Consultation phone line promoted on project leaflet.

Hard copies of materials can be provided to parties unable to access public event.

Details of any other publicity methods (e.g. leaflets, posters)

Leaflets will include free-post feedback form and will provide a postal address and consultation telephone number for interested parties to use to provide feedback or ask questions.

Details of Other Parties Receiving a copy of this PAN

Are there any other parties receiving a copy of this PAN?

Yes No

Please state which other parties have received a copy of this Proposal of Application Notice

Details for elected member(s) for District Electoral Area

Elected member(s) for District Electoral Area:

Lisburn South DEA - Cllr Tim Mitchell (UUP), Cllr Alan Givan (DUP), Cllr Peter Kennedy (Alliance), Cllr Paul Porter (DUP), Cllr Andrew Ewing (DUP) AND Cllr Amanda Grehan (Alliance).

Date notice served:

29/09/2023

Other(s):

Lagan Valley MLAs - Robbie Butler MLA (UUP), David Honeyford MLA (Alliance), Paul Givan MLA (DUP), Emma Little-Pengelly MLA (DUP) and Sorcha Eastwood MLA (Alliance).

Date notice served:

29/09/2023

Other(s):

Lagan Valley MP - Sir Jeffery M.Donaldson MP (DUP)

Date notice served:

29/09/2023

Authority Employee/Member

Are you/the applicant/applicant's spouse or partner, a member of staff within the council or an elected member of the council?

- Yes
- No

Are you/the applicant/the applicant's spouse or partner, a relative of a member of staff in the council or an elected member of the council or their spouse or partner?

- Yes
- No

It is an important principle of decision-making that the process is open and transparent.

Declaration

The information I / We have given is correct and complete to the best of my knowledge and belief.

I / We agree to the outlined declaration

Signed

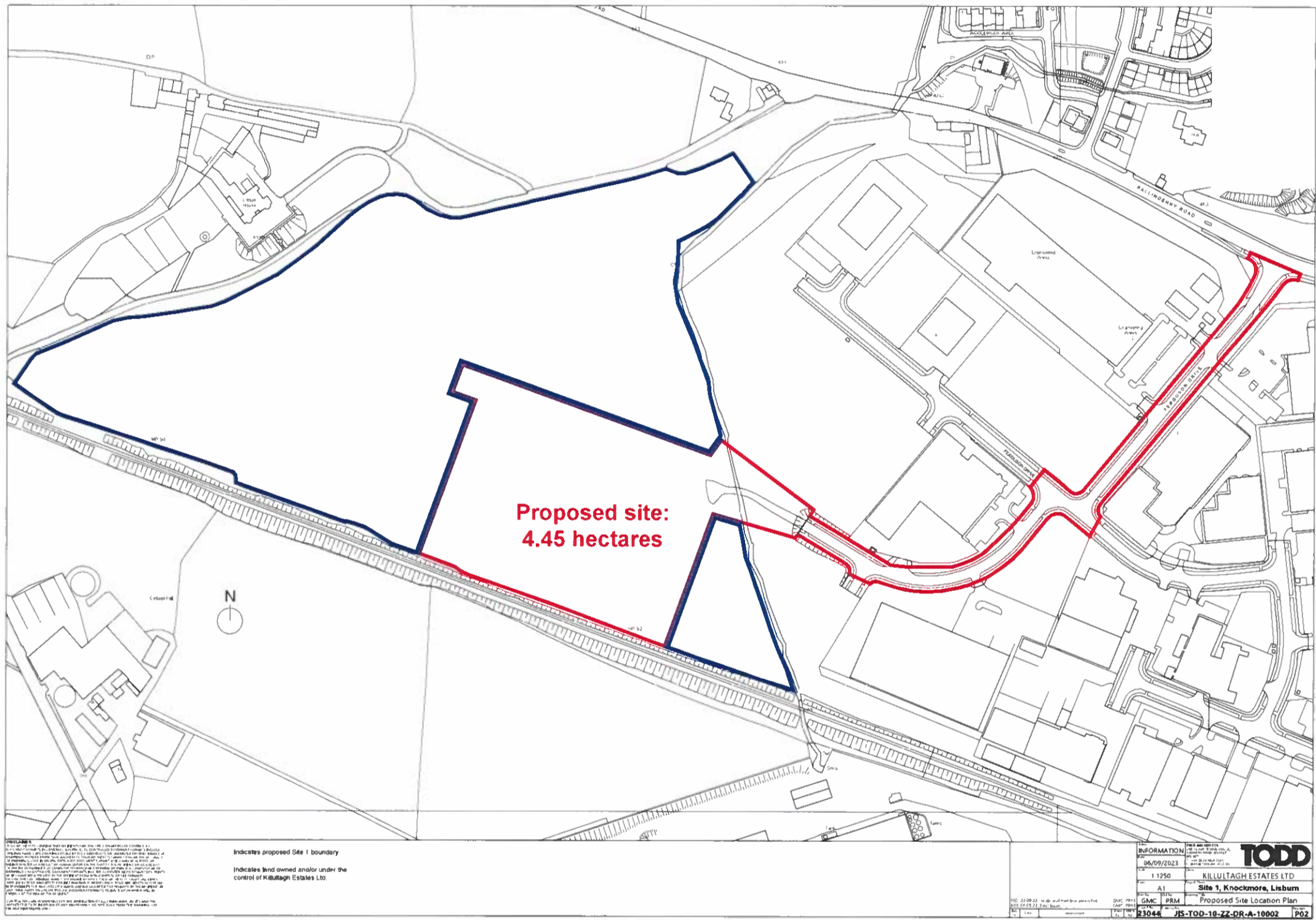
Donna Lyle

Date

27/09/2023

This information may be shared with other departments within the authority for the purposes of promoting investment. Please indicate by ticking the box below that you are providing your personal data on the basis of consent and are positively agreeing that it is shared with these departments and used for the purpose described, who may contact you and consider tailored support to meet your needs. Please note that availing of this service will have no influence on the planning process or the likelihood of you receiving planning permission.

I consent for my personal data to be shared with other departments within the authority



NOTES

1. This plan is prepared for the purpose of illustrating the proposed site boundary and is not intended to be used for any other purpose.

2. The proposed site boundary is shown in blue and is subject to the approval of the relevant planning authority.

3. The land owned and/or under the control of Killtagh Estates Ltd is shown in red.

4. The plan is based on the best available information and is not intended to be used for any other purpose.

5. The plan is not to be used for any other purpose.

Indicates proposed Site 1 boundary

Indicates land owned and/or under the control of Killtagh Estates Ltd.

INFORMATION		TODD
DATE	06/09/2023	
PROJECT NO.	11250	KILLTAGH ESTATES LTD
CLIENT	A1	Site 1, Knockmore, Lisburn
DESIGNER	GMC PRM	Proposed Site Location Plan
SCALE	1:1000	
PROJECT NO.	23044	JS-TOD-10-ZZ-DR-A-10002 P02

Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 3 – Appeal Decision – LA05/2020/0614/O

1.0 **Background**

1. An application for dwelling and garage in the side garden of 21 Moss Brook Road, Carryduff was refused planning permission on 27 June 2022.
2. Notification that an appeal had been lodged with the Planning Appeals Commission was received on 14 December 2022. The procedure followed in this instance was written representations and the Commissioner visited the site on 14 August 2023.
3. The main issues in the appeal are whether the proposed development would be acceptable in principle in the countryside and the impact a new building on the site would have on the rural character of the area.
4. A decision received on 02 October 2023 indicated that the appeal was dismissed.

Key Issues

1. A preliminary matter is addressed at paragraph 2 of the decision whereby confirmation is provided that the assessment of the Commission is based on an amended proposal discussed at the Planning Committee on 09 May 2022.
2. Consistent with the view held by the Council, the Commissioner at paragraph 11 acknowledged that the existing curtilage of 21 Moss Brook Road would be significantly reduced to accommodate the proposed development and that the dwelling, despite its small scale, would appear crammed into the site and squeezed into the gap. For these reasons, the Commissioner accepted that the development would fail to respect the existing development pattern along the road frontage and that the test of policy was not met.
3. At paragraph 12, the Commissioner, having regard to the established settlement pattern along Moss Brook Road, also agreed that the dwelling would cause a detrimental change to the character of this rural area as the building would be squeezed onto the site and result in a built-up and suburban appearance when compared to the dispersed dwellings in large curtilages adjacent.
4. The Commission also noted that the other examples of approvals could not be directly compared to this application and that it must be considered on its own merits having regard to the site-specific circumstances.
5. Members will note that the Commission does not make reference to the Plan Strategy despite it being adopted by Council on 26 September 2023 and the

	decision being issued after this date. As the appeal is dismissed however there is no need to pursue this matter further.	
2.0	<p><u>Recommendation</u></p> <p>It is recommended that the Committee notes the report and decision of the Commission in respect of this appeal.</p>	
3.0	<p><u>Finance and Resource Implications</u></p> <p>No cost claim was lodged by any party in this instance.</p>	
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out</p> <p>This is a report updating the committee on a decision by the PAC and EQIA is not required.</p>	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out.</p> <p>This is a report updating the committee on a decision by the PAC and RNIA is not required.</p>	

Appendices:

Appendix 3 – Appeal Decision – LA05/2020/0614/O



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BT1 3HH

355

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Lisburn & Castlereagh City Council, Local Planning
Office

Our reference: 2022/A0101
Authority
reference: LA05/2020/0614/O
2 October 2023

Dear Sir/Madam

Re:

Appellant name: Mrs. Ella Ferguson

Description: Site for dwelling, garage and associated site works (infill opportunity as per CTY8 of PPS 21)

Location: Side garden of 21 Moss Brook Road, Carryduff, BT8 8AJ

Please find enclosed Commission decision on the above case.

Yours Sincerely,

Padraig Dawson
PACWAC Admin Team



Appeal Decision

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Appeal Reference:	2022/A0101
Appeal by:	Mrs E Ferguson
Appeal against:	The refusal of outline planning permission
Proposed Development:	Site for dwelling and associated site works (infill opportunity as per Policy CTY 8 of PPS 21)
Location:	Side garden of 21 Moss Brook Road, Carryduff, BT8 8AJ
Planning Authority:	Lisburn and Castlereagh City Council
Application Reference:	LA05/2020/0614/O
Procedure:	Written representations and Commissioner's site visit on 14 August 2023
Decision by:	Commissioner McShane, dated 2 October 2023.

Decision

1. The appeal is dismissed.

Preliminary Matter

2. Planning permission was sought for a dwelling and garage on a site demarcated by the red line shown on the Site Location / Context Maps (LPA Drwg No.01 and Drwg No.02/1), dated November 2020. In June 2021, an email from the Agent requested that amended drawings be considered (APP Drwg Nos. 001B and 002B). The site, which is within the original red line, is smaller and the proposed development is for a dwelling only. The amended proposal was discussed at the Planning Committee meeting held on 9 May 2022. My assessment is based upon the amended proposal.

Reasons

3. The main issues in this appeal are:
 - whether the appeal proposal is acceptable in principle; and
 - its impact on rural character.
4. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP) unless material considerations indicate otherwise. As the Belfast Metropolitan Area Plan 2015 (BMAP) was declared unlawful by the Court of Appeal in May 2017, the Belfast Urban Area Plan 2001 (BUAP) operates as the LDP for the area. The draft Belfast Metropolitan Area Plan (dBMAP) remains a material consideration. The appeal site is located outside any designated settlement development limit identified in the plans. There are no plan policies pertinent to this proposal.

5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) is material to decisions on individual planning applications and appeals. Paragraph 6.73 of the SPPS sets out the strategic policy for residential development in the countryside that should be considered in the determination of planning applications. The SPPS identifies Planning Policy Statement 21 (PPS 21) as a retained policy document. PPS 21 is applicable to all planning applications for development located in the countryside.
6. Policy CTY 1 of PPS 21 lists a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Planning permission will be granted for residential development in the countryside in specific circumstances. The Appellant argues that the appeal proposal comprises the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY 8.
7. Policy CTY 8 entitled 'Ribbon Development' states that planning permission will be refused for a dwelling that creates or adds to a ribbon of development. Such development is regarded as detrimental to the character, appearance and amenity of the countryside. Notwithstanding that this form of development has been consistently opposed, policy goes on to state that an exception will be permitted for the development of a gap site providing four elements are met. Namely, the gap site must be within an otherwise substantial and continuously built-up frontage; the gap site must be small; the existing development pattern along the frontage must be respected; and other planning and environmental requirements must be met.
8. The first step in determining whether an infill opportunity exists is to identify whether there is a substantial and continuously built-up frontage present. For the purpose of policy this "includes a line of three or more buildings along a road frontage". There is no dispute that the hen house / green house, the dwelling (No.21), its garage and outbuilding comprise a substantial and continuously built-up frontage. The first element of the policy is met.
9. Policy CTY 8 relates to gaps between buildings and the gap site is required to be small. For the purpose of policy that is "sufficient only to accommodate up to a maximum of two houses". There is no dispute that the 34m gap between the henhouse / green house and the dwelling is small. The second element of the policy is met.
10. The parties dispute the third element of the policy, which requires that the existing development pattern along the frontage must be respected. An historic estate agent's brochure for No.21 referred to an "adjacent site (133 x 62ft), being ideal for further dwelling, *subject to planning permission*" (my emphasis). Nonetheless, the appeal site comprises part of the curtilage of No.21 and is currently a vegetable garden.
11. The existing curtilage of No.21 would be reduced significantly to accommodate the appeal site and allow for the balance of the gap in the vicinity of the hen house / green house. The existing 75m frontage would be reduce to 45m to accommodate the 18m wide appeal site. The proposed dwelling, notwithstanding its small scale, would appear crammed onto the appeal site and squeezed into the gap between

the hen house / green house and No.21. As such, it would fail to respect the existing development pattern along the frontage. The third element of the policy is not met.

12. The fourth step requires that other planning and environmental requirements must be met. In this respect, the Council raised objections based upon Policy CTY 14. It states that planning permission will be granted for development in the countryside where it does not cause a detrimental change to, or further erode the rural character of the area. The settlement pattern along Moss Brook Road is dispersed and comprises large, detached, road frontage dwellings standing in extensive curtilages as well as dwellings and outbuildings set back from the road along laneways. The proposed dwelling, which would be squeezed onto the site, would result in a built-up and suburban appearance. Such an incident of development would cause a detrimental change to the character of this rural area and would be contrary to Policy CTY 14. The fourth element of the policy is not met.
13. The Appellant referenced two other decisions by the Council, which it is claimed set a precedent for approving the appeal proposal (S/2014/0297/O and LA05/2021/0626/O and LA05/2023/0111/RM respectively). However, I have not been persuaded that the circumstances of those sites or the issues arising are directly comparable to those in the current appeal. The Council's decisions on those appeals do not justify approval of the appeal proposal, which is contrary to policy. Furthermore, each proposal must be assessed on its own merits in its site-specific circumstances.
14. The proposed development fails to meet the four elements within Policy CTY 8; therefore, it fails to qualify as an exception. There is no infill opportunity. The Council has sustained its second and third reasons for refusal based upon Policies CTY 8 and 14 of PPS 21.
15. Policy CTY 1 states that other types of development in the countryside will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. No evidence was submitted in this respect. The proposal fails to comply with Policy CTY 1 and is unacceptable in the countryside. The Council has sustained its first reason for refusal based upon Policy CTY 1.
16. The Council has sustained its three reasons for refusal based upon Policies CTY 1, 8 and 14. Accordingly, the appeal must fail.

This decision is based on the following drawing:-

- APP Drwg 001B: Site Location Map, dated June 2021 (Scale 1:1250)

COMMISSIONER MCSHANE

Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 4 – Notification by telecommunication operator(s) of intention to utilise permitted development rights

1.0	<p><u>Background</u></p> <ol style="list-style-type: none"> The Council is notified by two operators, Cornerstone and Openreach, of their intention to utilise permitted development rights at ten locations within the Council area to install communications apparatus. The installations consist of fixed line apparatus, upgrades to existing radio base stations and replacement of headframe and antenna in accordance with Part 18 (Development by Electronic Communications Code Operators) F31 of the Planning (General Permitted Development) Order (Northern Ireland) 2015. <p><u>Key Issues</u></p> <ol style="list-style-type: none"> The notifications advise the Council of the location of the apparatus where they intend to utilise permitted development rights. Detail is also provided in relation to the nature and scale of the works proposed. Only the schedule of locations where the works are proposed has been appended to the report (see Appendix). However the content of notifications detailed above are provided separately on decision time to assist Members in understanding the scope and nature of the proposed works. No comment is provided on the requirement for planning permission for the equipment listed. This letter is also referred to the enforcement section of the Unit. They will write separately to the operator should it be considered that the requirements of the Regulations cannot be met at any of the locations specified by either operator.
2.0	<p><u>Recommendation</u></p> <p>It is recommended that Members note the detail of the notifications specific to the sites identified.</p>
3.0	<p><u>Finance and Resource Implications</u></p> <p>There are no finance or resource implications.</p>
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>

4.1	Has an equality and good relations screening been carried out?	No
4.2	<p>Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out</p> <p>This is a report providing notification by telecommunication operator(s) of intention to utilise permitted development rights. EQIA not required.</p>	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	<p>Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out.</p> <p>This is a report providing notification by telecommunication operator(s) of intention to utilise permitted development rights. RNIA not required.</p>	

Appendices:	Appendix 4 – Notifications from an Operator in respect of intention to utilise permitted development rights
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List of Notifications from Telecommunication Operators in relation to intentions to utilise Permitted Development Rights December 2023 Planning Committee

	Applicant/Agents	Operator	Location	Summary of details	Date received
1	Cornerstone	BT	33 Glenavy Road, Knocknadona, Lisburn	The proposed works comprise the removal of the existing headframe, 3 No. antennas and 6 No. RRUs. Installation of a 5m tower extension and the re-installation of the headframe complete with 6 No. replacement antenn No. replacement RRUs and 2 No. 300mm dishes. All other works within the existing equipment cabin.	14/09/2023
2.	Openreach	BT	2A GORTGRIB DRIVE,Belfast	Regulation 5 Notice of Intention to Install Fixed Line Broadband Apparatus.	20/09/2023
3.	Openreach	BT	18A Glenavy Road, Lisburn	Regulation 5 Notice of Intention to Install Fixed Line Broadband Apparatus.	21/09/2023
4.	Cornerstone	O2	Dillons Hill, Ballymote Road, Glenavy	Proposed upgrade works at existing telecommunications installation	25/09/2023
5.	Cornerstone	O2	Lakeview Farm, 10 Lough Road, Upper Ballinderry	Proposed upgrade to existing radio base station installation	03/10/2023
6.	Openreach	BT	26 Ballycreely Road BT23 5PX	Regulation 5 Notice of Intention to Install Fixed Line Broadband Apparatus.	04/10/2023
7.	WHP Telecoms/ Cornerstone	Virgin/ O2	At Dillons Hill, Ballymote Road, Glenavey, BT29 4NR	Proposed re-location of 3No. existing Antenna & 9No. existing ERS. Proposed installation of 3No. new Antenna on proposed Yoke Brackets fixed to existing mast. Proposed installation of 6No. new ERS on existing steelwork. Proposed installation of 2No. new Equipment Cabinets within existing Cabin. Proposed upgrades to existing Equipment Cabinet within existing Cabin. All other Ancillary Development thereto.	10/10/2023
8	Cornerstone	Virgin/O2	Lake View, Land at Lakeview Farm, 10 Lough Road, Lisburn, BT28 2PQ	Removal of 3 No. antennas and 3 No. RRUs. Installation of 3 No. replacement	18/10/2023

				antennas, 9 No. replacement RRUs, 1 No. 300mm dish and 1 No. 600mm dish on the existing lattice tower. All other works within the existing equipment cabin.	
9	Cornerstone	BT	BT EXCHANGE, RAILWAY STREET, LISBURN, BT28 1XP	Removal of existing 1no. 5.5m tower on steel beams with 3no. Antennas and 12 no. ERS. Installation of proposed 1no. 6m tower on proposed support grillage. Installation of 6no. Antennas onto proposed tower. Installation of 12no. ERS onto proposed tower. Installation of 6no. filters onto proposed tower. Installation of 2no. Dishes onto proposed tower. Refreshment of equipment within existing Cabinet. Ancillary works therein	01/11/2023
10	Openreach	BT	6, Corby Drive, County Antrim, Lisburn	Regulation 5 Notice of Intention to Install Fixed Line Broadband Apparatus.	10/11/2023

Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 5 - LDP Quarterly Update

1.0	<p><u>Background</u></p> <p>1. The Council's Local Development Plan 2032, Plan Strategy, was adopted following resolution by full Council on 26 September 2023. The policies in the Plan Strategy replace the retained suite of Planning Policy Statements. Members will note from their papers how the policy is being applied in the decision making process.</p> <p><u>Next Steps</u></p> <p>1. Work on the Local Policies Plan has now commenced. This includes:</p> <ul style="list-style-type: none"> • Development of a work programme and updated timetable • Assessment of the evidence base required to support the site specific policies, proposals, zonings and designations in relation to housing, employment, retailing, natural and built environment, and infrastructure • Development of procurement briefs in order to appoint appropriate experts to assist the Council in its site specific policies, proposals, zonings and designations • Implementation of the Plan Strategy Monitoring Framework is required to inform the policies and proposals of the Local Policies Plan <p>2. Details surrounding the procurement process and an amended timetable will be presented to Members in due course. This programme of work accords with the Planning Act (NI) 2011, the Planning (LDP) Regulations (NI) 2015.</p>		
2.0	<p><u>Recommendation</u></p> <p>Members are asked to note the next steps on the preparation of the LDP.</p>		
3.0	<p><u>Finance and Resource Implications</u></p> <p>Members should note owing to business needs of the Planning Unit, the LDP team is now operating at a reduced capacity. This being kept under review quarterly.</p>		
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>		
4.1	<table border="1"> <tr> <td>Has an equality and good relations screening been carried out?</td> <td>No</td> </tr> </table>	Has an equality and good relations screening been carried out?	No
Has an equality and good relations screening been carried out?	No		

4.2	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out</p> <p>This is a report updating the committee on the status of the Plan and EQIA is not required.</p>	
4.3	<p>Has a Rural Needs Impact Assessment (RNIA) been completed?</p>	No
4.4	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out.</p> <p>This is a report updating the committee on the status of the Plan and RNIA is not required.</p>	

Appendices:	N/A
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Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 6 - Enforcement Quarterly Update

1.0	<p><u>Background</u></p> <ol style="list-style-type: none"> 1. The Council continues to operate its planning enforcement powers under delegated authority in accordance with the Council's Enforcement Strategy (published on website). 2. It is stated at paragraph 15 of the Protocol for the Operation of the Planning Committee that Planning Officers will prepare a quarterly report on the progress of formal enforcement cases which will be circulated detailing the number of notices issued, and convictions obtained. <p><u>Key Issues</u></p> <ol style="list-style-type: none"> 1. One live prosecution is pending, one conviction is obtained and one formal notice issued in this quarter. 2. The total number of live cases by category is also presented to the Members for completeness and for understanding of the general scope and nature of the work officers are engaged in (see Appendix). 	
2.0	<p><u>Recommendation</u></p> <p>Members are asked to note the Planning Enforcement Update on its caseload.</p>	
3.0	<p><u>Finance and Resource Implications</u></p> <p>Members should note owing to business needs of the Planning Unit, the Enforcement team is now operating at a reduced capacity. This being kept under review quarterly.</p>	
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	<p>Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out</p> <p>This is a report updating the committee on its Planning Enforcement caseload and EQIA is not required.</p>	

4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out.</p> <p>This is a report updating the committee on its Planning Enforcement caseload and RNIA is not required.</p>	

Appendices:	Appendix 6: Enforcement Update - Caseload
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Planning Enforcement Quarterly Update – Planning Committee – 06 November 2023

Item Number	Title	Background and Key Issues
Planning Committee		
1	Cases with Court Proceedings (in this quarter)	<p>LA05/2019/0237/CA - Lands opposite 18 Tansy Road, Lisburn</p> <p>Non-compliance with Enforcement Notice, contest set for 21st November 2023</p> <p>LA05/2022/0276/CA - Multiple locations throughout the LCCC Area</p> <p>Display of multiple unauthorised Advertisements, defendant fined £1,000 on 15th September 2023</p>
2	Current Enforcement Caseload (in this quarter)	<p>Current Planning Enforcement Live Case list: 346 cases</p> <p>Nature of Breach:</p> <p>Unauthorised Advertisements: 42 cases Operational Development: 180 cases Breach of Condition: 47 cases Change of Use: 73 cases Demolition in Conservation Area: 1 cases Unauthorised Works to Protected Trees: 3 cases</p> <p>Notices issued: 1</p>

Committee:	Planning Committee
Date:	04 December 2023 (report carried over from the November Committee meeting)
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Northern Ireland Public Services Ombudsman (NIPSO) – Tree Protection: Strengthening Our Roots

1.0 Background

A report by the Northern Ireland Public Services Ombudsman (NIPSO) with observations and recommendations to the Department for Infrastructure and Local Councils on how to improve Tree Protection was issued to the Chief Executives of all 11 Councils in Northern Ireland, on 29 September 2023.

The report follows from previous investigations undertaken by NIPSO in July 2022, when all Local Councils and the Department for Infrastructure were informed of an 'Own Initiative investigation' under Section 8 of the Public Services Ombudsman (Northern Ireland) Act 2016, into how public bodies effectively promote, administer and enforce the statutory protection of trees.

The Ombudsman indicates in correspondence that she has chosen not to proceed to full investigation at this time, but notes that she may choose to reassess the need for further investigation in the future.

Tree Protection Orders are a legislative provision and made in accordance with the Planning (Trees) Regulations (Northern Ireland) 2015. Authority is delegated in respect of the application of the regulations to officers of the Council. Requests to lop, top or fells trees are processed by request.

On occasion planning applications include proposals that impact on trees protected by a tree preservation order. The grant of planning permission is another form of consent and may be a matter for consideration by the Committee.

The Ombudsman has published an overview report and requests that the Council provide any comments on factual accuracy by 13 October 2023 (an extension of time was sought and agreed until Friday 20 October 2023).

The Ombudsman has further requested that the observations and recommendations be tabled with the Planning Committee and the report and cover letter is attached (**see Appendices**). She offers the Committee the opportunity of further engagement with her office following publication of the report.

The report makes 26 recommendations for improvement the purpose of which is to make a positive contribution to the protection of trees within the Northern Ireland planning system.

	The response on the factual accuracy of the recommendations is attached (see Appendix).	
2.0	<u>Recommendation</u>	
	Members are asked to note the content and recommendations of the overview report by NIPSO with recommendations for improvement and the related response on the factual accuracy of the recommendations.	
3.0	<u>Finance and Resource Implications</u>	
	None	
4.0	<u>Equality/Good Relations and Rural Needs Impact Assessments</u>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out	
	This is a report advising the committee on the NIPSO Report 'Tree Protection: Strengthening our Roots' and EQIA is not required	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	Brief summary of the key issues identified and proposed mitigating actions or rationale why the screening was not carried out.	
	This is a report advising the committee on the NIPSO Report 'Tree Protection: Strengthening our Roots' and RNIA is not required.	

Appendices:	Appendix 7a and 7b: NIPSO correspondence and overview report with recommendations to the Department for Infrastructure and Local Councils for improvement
	Appendix 7c: Response to the factual accuracy of the recommendations

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Our Ref: 202001965

29 September 2023

Mr. David Burns
Chief Executive
Lisburn & Castlereagh City Council
Island Civic Centre
The Island
LISBURN
BT27 4RL

By email

david.burns@lisburncastlereagh.gov.uk
wendy.hughes@lisburncastlereagh.gov.uk

Dear Mr Burns,

THE PUBLIC SERVICES OMBUDSMAN ACT (NORTHERN IRELAND) 2016

In July 2022 I wrote to all local councils and the Department for Infrastructure (the Department) proposing an Own Initiative investigation, under section 8 of the 2016 Act¹, into how public bodies effectively promote, administer and enforce the statutory protection of trees.

In setting out my proposal, I requested considerable information from each council and the Department to help inform my decision making. The proposal stage also involved returning to several councils to seek further clarity on the information provided, and a meeting with Department Officials earlier this year.

After careful consideration and having regard to my published criteria², including whether I consider the issue is the best and most proportionate use of investigative resources, I have chosen not to proceed to full investigation at this time. The information gathered during the proposal stage was however comprehensive and has allowed me to draw out significant observations and recommendations.

I have set out the basis upon which I make these observations and recommendations within the enclosed overview report, '*Tree Protection: Strengthening Our Roots*'. The report has also been shared with the Department, and I am of the view that it can make a positive contribution to ongoing work in this area.

¹ [Public Services Ombudsman Act \(Northern Ireland\) 2016 \(legislation.gov.uk\)](#)

² [Own Initiative Criteria](#)

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The protection of trees within the Northern Ireland planning system continues to be a key issue of concern that is in the public interest, and I encourage all local councils and the Department to utilise this opportunity to make the recommended improvements.

Although I have chosen not to proceed to full investigation at this time, it should be noted that I may choose to reassess this issue in the future. I would therefore be grateful if Lisburn & Castlereagh City Council continues to engage with my Office on this matter and that alongside the other councils and the Department coordinate providing updates of any changes made following my report.

Given the public interest in this area, I have also decided to publish my overview report and **request that you provide any comments you may have on factual accuracy by 13 October**. Should you be unable to respond within the requested timeframe please contact the Own Initiative team at Owninitiative@nipso.org.uk so that a new timeframe can be considered.

My team had noted that in response to a Freedom of Information request dated 21 May 2023 to the Council, that a Tree & Woodland Strategy v.1 Jan 2023 was provided³. No information on this strategy can however be located on the Council's website and I would be grateful if you could advise if it is in place and when it came into operation, and I will amend my report accordingly.

Please also advise as to whether the observations and recommendations in my report is to be tabled with your Planning Committee. Should the Committee consider engagement with my Office on this matter to be helpful, we would be happy to arrange following publication.

Yours sincerely,



MARGARET KELLY
Northern Ireland Public Services Ombudsman

³ [Tree planting data - a Freedom of Information request to Lisburn and Castlereagh City Council - WhatDoTheyKnow](#)

TREE PROTECTION: STRENGTHENING OUR ROOTS

An overview report by the Northern Ireland Public Services Ombudsman with recommendations to the Department for Infrastructure and Local Councils for improvement.

The Role of the Ombudsman

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act) and includes a discretionary power to undertake investigations on her Own Initiative, with or without a prior complaint(s) being made.

Under Section 8 of the 2016 Act the Ombudsman may launch an investigation where she has reasonable suspicion that there is systemic maladministration or that systemic injustice has been sustained (injustice as a result of the exercise of professional judgement in health and social care).

In order to make a determination on reasonable suspicion, the Ombudsman initially gathers information relating to an issue of concern. This may include desktop research, contact with the body concerned, the use of a strategic enquiry, consultation with Section 51 bodies, etc. The Ombudsman assesses this information against her published Own Initiative Criteria in order to decide whether or not to proceed with an investigation.

Where the Ombudsman determines that an issue has not met her published criteria, but she considers that an overview of her actions in considering an investigation could provide learning, she may determine it appropriate to provide any relevant organisations with an overview report.

What is Maladministration and Systemic Maladministration?

Maladministration is not defined in the legislation but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

Systemic maladministration is maladministration which has occurred repeatedly in an area or particular part of the public service. Systemic maladministration does not have to be an establishment that the same failing has occurred in the 'majority of cases', instead it is an identification that an issue/failing has repeatedly occurred and is likely to occur again if left unremedied; or alternatively, an identification that a combination or series of failings have occurred throughout a process which are likely to occur again if left unremedied.

¹ [Own Initiative Criteria](#)

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Executive Summary

Within the planning system in Northern Ireland, the Department for Infrastructure (the Department) and local councils have statutory duties to consider the protection of trees. The effective promotion, administration and enforcement of tree protection is critical to long term strategies to improve the social, environmental and economic well being of our areas and people. Trees have a key role not only in increasing biodiversity and combating climate change but are also increasingly recognised for the value they add to homes and public spaces and for their wide ranging benefits to public health.

Within recent years much attention has been given to the importance of planting more trees, and I welcome the many initiatives that have been undertaken in this area. There is however also a need for a renewed focus on recognising our existing trees as valuable infrastructure assets which need to be carefully managed and protected. The importance of protecting trees within our planning system is even more critical given that it has been established that Northern Ireland ranks amongst the worst in the world for biodiversity loss², is one of the lowest in Europe for woodland cover³ and is likely to fall short of its 2050 net zero emissions target.⁴

In July 2022 I wrote to the Department and all eleven councils to advise that concerns had been raised with my Office indicating potential systemic maladministration in how public bodies fulfil their duties to protect trees within the planning system. I had also noted ongoing and significant public confidence issues, including community distress, consistently reported in the public domain. This included concerns about the extent that works to 'protected' trees (including the removal of) were granted and that adequate enforcement action was not being taken in response to wilful destruction.

I shared with the Department and councils a proposal to investigate using my own initiative powers. I requested information from the Department and each council to help inform my decision making in this matter. Whilst I have chosen not to proceed to full investigation at this time, the information gathered during the proposal stage was comprehensive and has allowed me to draw out significant observations and recommendations.

The [Principles of Good Administration](#) are the standards by which I expect public bodies to deliver good administration. The first principle is **getting it right** and in [Section 1](#) I set out the main strategies, policies and procedures which I have been advised are currently in place to deliver council functions to protect trees. Whilst some councils have developed comprehensive tree strategies to align their actions in this important area of planning this is not yet evident in all council areas. There is

² A 2021 NHM & RSPB study ranks Northern Ireland as 12th lowest, out of 240 countries/territories, for biodiversity intactness. Available from: [biodiversity-intactness-index-summary-report-v5-1-1.pdf](#)

³ 9% Northern Ireland, 19% Scotland, 15% Wales, 10% England, *National Statistics on Woodland* produced by Forest Research, approved by UK Statistics Authority, 16 June 2022. Available from: [Woodland Statistics](#). EU-27 averages at 40%, [Woodland cover targets.pdf \(defra.gov.uk\)](#)

⁴ [Advice-report-The-path-to-a-Net-Zero-Northern-Ireland \(1\).pdf](#), March 2023.

also an absence of procedural guidance to supplement the legislative framework around tree protection, which I consider is necessary to ensure consistency in decision making processes and to promote the application of good practice. I further consider that the Department has a greater role to play in developing regional guidance and in facilitating the sharing of best practice.

In [Section 2](#), I outline how Tree Preservation Orders (TPOs) are administered and the variation in the number of TPOs requested and approved across council areas. A TPO is an order made by a planning authority which provides statutory protection to specific trees, groups of trees or woodlands. Whilst recognising this continues to be an evolving area of expertise, further work is required by both the Department and councils to establish how best to assess the 'amenity' value of a tree when considering the use of TPOs. This should include councils documenting a clear methodology and exploring better use of valuation software in this process. The Department should also issue guidance on the key TPO terms contained within the legislation.

Within this section I also note the potential for greater **openness and transparency** through increased electronic mapping of TPOs and provision of online access to the TPO registers. Council websites should provide clear information about the process that members of the public can follow to request a TPO, and the schemes of delegation should outline where the decision making on making TPOs sits within the council.

Similarly, there is the opportunity for increased transparency about the granting of works to protected trees. Within [Section 3](#), I outline the variation in the volume of applications made and approved across the region. Councils should consider the potential of publishing details of the applications and decision making to increase accountability and public confidence. The introduction of community notification for residents likely to be affected, which is a procedure recommended in England, should also be examined as a way of improving engagement in the planning system.

When considering how application for works are processed, it is important that councils clarify the circumstances in which independent evidence is required to support the applications for work and the parties responsible for obtaining it. **Being customer focused** involves public bodies explaining clearly what they expect of a service user as well as what is expected from the public body. Consistency of approach in processing applications for works could be further supported by all councils having standardised forms available online and signposting the use of the planning portal.

To comply with the principle of **acting fairly and proportionately**, the actions and decisions of public bodies should be free from interests that could prejudice their actions and decisions. Within [Section 4](#), I considered how councils approach cases in which the council wishes to carry out work to a protected tree on land which it owns, and the processes used to investigate where a council is suspected of a breach. The responses highlighted the variation in council awareness and interpretation of the governing legislation and best practice in this area. Department

and councils should agree clear procedural guidance to comply with the legislation and to ensure potential conflicts of interest are being appropriately managed.

The need for adequate oversight and engagement between the Department, councils and statutory undertakers in respect of the removal of protected trees on operational land is discussed in [Section 5](#). Public bodies must work effectively together to mitigate against adverse impact, but also proactively communicate with the public on why, and how, the work is being undertaken.

When taking decisions, public bodies should ensure that the measures taken are proportionate to the objectives pursued. Taking appropriate enforcement action, to prevent or remedy harm, is central to the effectiveness and credibility of the planning system and to meeting the principle of **putting things right**.

Within [Section 6](#), the figures gathered regionally provide insight into the level of enforcement action taken in respect of reported breaches of planning control concerning protected trees. Out of 369 tree protection breaches reported to councils over a three year period, only one resulted in formal enforcement action being taken. No cases were brought to court. I have not carried out an analysis of the individual decision making however the low level of enforcement activity should be a concern for councils as they seek to improve the environmental quality of their area.

The figures further showed that nearly one fifth of the overall number of cases were closed as 'not expedient', indicating that a breach was established but that the council decided not to take further action having applied the 'expediency test'. I have recommended an examination of these cases to establish if the approaches taken are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. Council enforcement strategies should also provide clear information on the 'expediency test' and ensure there is sufficient oversight when enforcement decisions are taken under delegated authority.

I also recommend that the Department collate, monitor and publish enforcement data specific to tree protection enforcement cases to further enhance scrutiny at a regional level.

In adhering to the principle of **seeking continuous improvement**, public bodies should actively seek and welcome all feedback to improve their public service delivery. I was pleased to note that whilst all councils asserted that they meet their obligations to protect trees, several welcomed the proposal as an opportunity to review policies and practice for potential improvements.

Having considered the responses to my investigation proposal I have made 26 recommendations for improvement which I have shared with the Department and councils. I am hopeful this will make a positive contribution to the protection of trees within the Northern Ireland planning system. If required, I may choose to reassess this issue in the future.

The Statutory Duty to Protect Trees

The Planning Act (Northern Ireland) 2011 (the 2011 Act) introduced a new two-tier system for the delivery of planning functions in Northern Ireland. This system, which came into effect in April 2015, resulted in the majority of planning functions passing from the Department for Infrastructure (the Department) to local councils.

The eleven local councils have responsibility for delivering most operational planning functions including the determination of planning applications and the investigation of alleged breaches of planning control. The Department retains responsibility for regional planning policy and legislation as well as monitoring and reporting on the performance of local councils. It also retains certain reserved enforcement powers and continues to make planning decisions in respect of regionally significant and 'called-in' planning applications.

Figure 1: A map of the 11 local councils in Northern Ireland

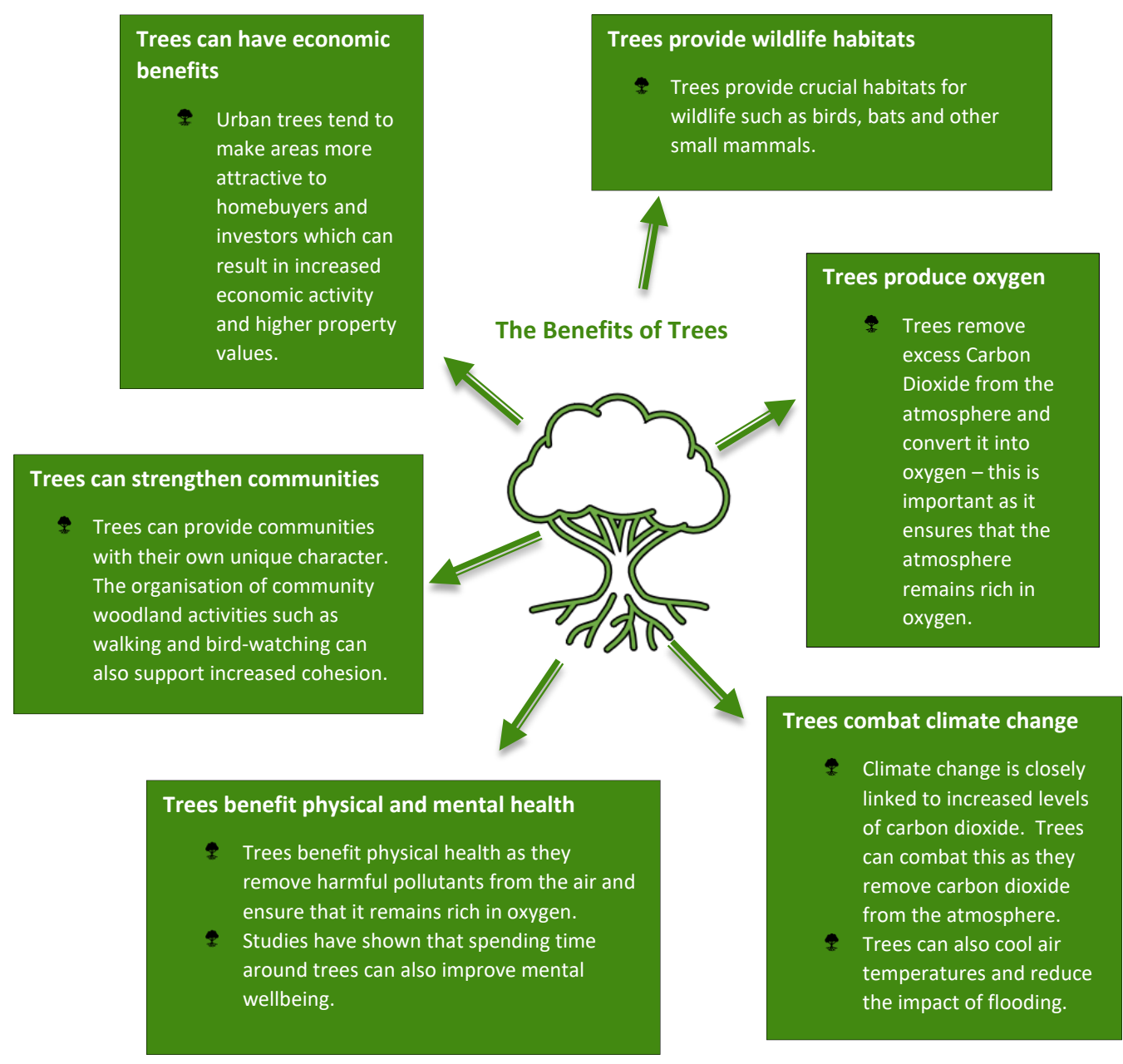


The 2011 Act places statutory duties on councils and the Department to make adequate provision for the protection of trees, where appropriate, within the planning system.⁵ It is vital that these duties are fully understood and implemented. This means that councils should protect existing trees, as well as promoting further planting of trees. Trees provide many important benefits for both members of the public and the natural environment. Key benefits include the fact that they provide

⁵ [Planning Act \(Northern Ireland\) 2011, Chapter 3, s.121-128](#)

habitats for wildlife, play a significant role in combating climate change and bring important advantages for public health.⁶

Figure 2: The Benefits of Trees



⁶ A 2021 study carried out by Forest Research found that trees provide significant benefits for wellbeing & estimated that the mental health benefits associated with visits to UK woodlands save £185 million in mental health treatment costs annually. [Valuing the mental health benefits of woodlands \(forestresearch.gov.uk\)](https://www.forestresearch.gov.uk/valuing-the-mental-health-benefits-of-woodlands)

It is recognised that not all trees are considered as requiring statutory protection and that there is a need to scrutinise and prioritise the protection of trees determined to be of greater value. This continues to be an evolving area of expertise. Native trees, for example, are thought to be more beneficial for biodiversity than non-native trees.⁷ Areas of ancient woodland are also extremely valuable natural assets which are of greater environmental benefit than younger trees.⁸

The importance of public bodies upholding and promoting their responsibilities to protect trees is further reinforced by the growing concerns in relation to the current state of Northern Ireland's trees and woodland areas. Northern Ireland is one of the least wooded areas in Europe⁹ and it has the lowest density of woodland coverage in the United Kingdom.¹⁰ It was also recently ranked the 12th worst out of 240 countries in terms of biodiversity loss.¹¹ Within the last Biodiversity Strategy¹² for Northern Ireland, it was highlighted that land use change and development has a major impact on biodiversity. The important role which planning controls and policy play in mitigating against biodiversity loss was also emphasised. Northern Ireland's comparatively low level of woodland cover and lack of biodiversity therefore reinforces how important it is for planning authorities to take proactive steps to protect the region's existing tree assets.

The planning system in Northern Ireland currently protects trees in three main ways:

1. *Tree Preservation Orders*

Tree Preservation Orders (TPOs) are statutory protections afforded to trees under the 2011 Act.¹³ The 2011 Act gives local councils the 'discretionary' power to make TPOs where they consider that it is 'expedient in the interests of amenity'. Whilst the making of new TPOs primarily sits under the remit of councils, the Department also retains the power to make them in certain circumstances. The 2011 Act is supplemented by The Planning (Trees) Regulations (Northern Ireland) 2015 (the 2015 Regulations) which set out the form which TPOs should take along with the procedures to be followed when making, confirming and revoking TPOs.¹⁴

A TPO can be applied to a single tree or a group of trees. Whilst the issuing of a TPO is discretionary, where one is made the planning authority has a duty to enforce it. If a tree is protected by a TPO it is necessary to apply for consent from the

⁷ [Biodiversity: why native woods are important - Woodland Trust](#)

⁸ [Ancient woodland, ancient trees and veteran trees: advice for making planning decisions - GOV.UK \(www.gov.uk\)](#)

⁹ The Woodland Trust reports that Northern Ireland has just over 8.7% woodland cover [Our Work in Northern Ireland - Woodland Trust](#) compared to a European average of 40% - see [Woodland cover targets Detailed evidence report.pdf \(defra.gov.uk\)](#)

¹⁰ [State of the UK's Woods and Trees 2021 \(woodlandtrust.org.uk\)](#), pg.29

¹¹ [48398rspb-biodiversity-intactness-index-summary-report-v5-1-1.pdf](#) (2021)

¹² The former Department of the Environment published a [Biodiversity Strategy for Northern Ireland](#) in July 2015 in compliance with The Wildlife and Natural Environment Act (Northern Ireland) 2011 (WANE). WANE places a duty on all public bodies to conserve biodiversity when exercising their functions ([s.1](#)).

¹³ [Planning Act \(Northern Ireland\) 2011, s.122 -124](#)

¹⁴ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015](#)

council or, in some circumstances, the Department before carrying out any felling or pruning work. Breach of a TPO is a criminal offence which can result in a fine of up to £100,000 on summary conviction or an unlimited fine on conviction on indictment.¹⁵

2. Conservation Areas

Conservation Areas are areas designated by planning authorities as having special architectural or historic interest. Trees located in conservation areas receive similar protection to those which are protected by TPOs. It is a criminal offence to carry out works to trees in conservation areas without first serving notice on the council or, in certain circumstances, the Department.¹⁶ If the council or the Department objects to any proposed works, it can make a formal TPO to protect the tree(s).

3. Planning Conditions

Trees can also be protected by planning conditions attached to grants of planning permission.¹⁷ A planning condition may, for example, stipulate that an existing tree or trees must be retained.

Breach of a planning condition protecting trees is not a criminal offence. If a breach is identified a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice can however give rise to a criminal offence which is punishable by a fine of up to £1000 on summary conviction.¹⁸

It is notable there is a considerable penalty variation between breaches of TPOs and planning conditions, with the maximum fine for a breach of a TPO significantly higher than a breach of a planning condition notice. Given the differing levels of protection, planning authorities should carefully consider in each case whether a planning condition or TPO or both provides the most effective safeguard. It is not considered reasonable to use planning conditions as the means to secure long term protection of trees, where TPOs are available for this purpose.

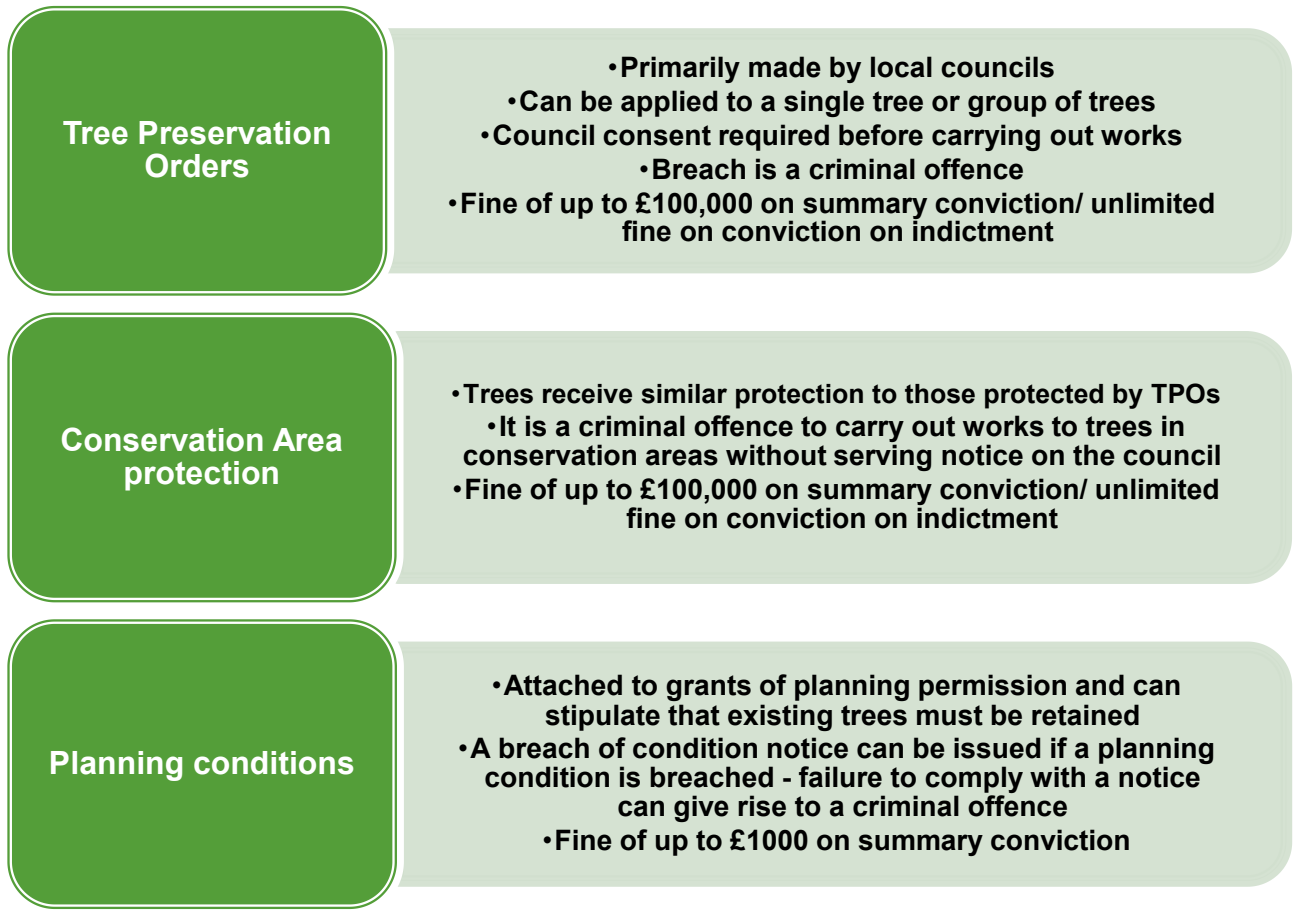
¹⁵ [Planning Act \(Northern Ireland\) 2011, s.126 \(1\)](#)

¹⁶ [Planning Act \(Northern Ireland\) 2011, s. 127 \(1-4\)](#)

¹⁷ [Planning Act \(Northern Ireland\) 2011, s.121](#)

¹⁸ [Planning Act \(Northern Ireland\) 2011, s.152](#)

Figure 3: The three main ways in which the Northern Ireland planning system protects trees



Section 1: Strategies, Policies and Procedures

1.1 The Councils

All eleven councils were asked to provide my Office with copies of the policies and procedures which they have in place to fulfil their duties to effectively promote, administer and enforce the protection of trees.

Whilst recognising the autonomy of each council to develop local policy, the responses highlighted several points of concern including an absence of strategies in some council areas and a lack of procedural guidance to underpin key functions. This section will set out my observations in respect of:

- (i) Local Development Plans;
- (ii) Strategies;
- (iii) Schemes of Delegation; and
- (iv) Procedural Guidance.

(i) Local Development Plans

The 2011 Act requires each council to prepare its own Local Development Plan (LDP).¹⁹ A council's LDP is intended to be a 15-year framework which sets out a vision for how the council area should look in the future in terms of the type and scale of development. The legislation requires each LDP to be made up of a Plan Strategy and a Local Policies Plan. Whilst it was originally anticipated that it would take approximately three years for councils to complete their LDPs, it is concerning to note that none of the LDPs have been completed despite the passage of more than eight years.²⁰ In its recent review of Planning in Northern Ireland, the Northern Ireland Audit Office (NIAO) commented on the lack of progress made in completing LDPs and made a recommendation in relation to reviewing timetables for completion and streamlining the remaining steps of the process.²¹

It is concerning to note that none of the LDPs have been completed despite the passage of more than seven years.

Most of the councils referred to their LDPs when providing copies of their policies and procedures to protect trees. Some of the councils shared copies of their draft Plan Strategies²² and I welcome the fact that most appear to be including information in relation to the protection of trees within these strategies. I consider that the LDPs present a good opportunity for councils to set out a long-term vision for how they will balance development with the need to protect trees and woodland within the council

¹⁹ [Planning Act \(Northern Ireland\) 2011, Part 2](#)

²⁰ The former DOE's *Strategic Planning Policy for NI* (2015) set out an indicative timeframe for the completion of LDPs - [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\)](#), pg.30

²¹ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\)](#) – see LDP recommendation on pg.26

²² Three councils have adopted their Plan Strategies since my initial enquiries – Fermanagh & Omagh Council in March 23, Belfast City Council in May 23 and Lisburn & Castlereagh in June 23.

area. However, it is not possible to comment substantively on the effectiveness of the Plan Strategies as, to date, most have not been adopted by the councils.

It should also be noted that most of the councils also referred to using regional planning guidance to assist them in setting planning conditions to protect trees, which I will discuss further in section 1.2. A number of councils provided my Office with sample planning conditions used to protect trees.

I note and welcome that Belfast City Council has also recently published 'Trees and Development' planning guidance to supplement policies in its LDP, to support its aims to 'protect, promote and preserve' trees.²³

(ii) Strategies

Tree and Woodland Strategies

Alongside local plans, the development of Tree and Woodland Strategies are a way in which councils can set out their long-term approach for managing the trees within their council area. Three councils currently have such strategies, or supporting policies, in place.²⁴ Whilst these strategies do not solely relate to the protection of trees, most contain some information in relation to the approaches which the councils are currently taking in this area. For example, one council stated that it only carries out tree works where necessary whilst another stated that it avoids the unnecessary removal or disfigurement of trees with 'amenity' or high wildlife value.

3 councils currently have tree strategies. 8 councils do not have tree strategies however 3 currently have draft strategies.

The remaining eight councils do not have tree strategies in place however three are currently working on draft strategies.²⁵ I note Belfast City Council's draft strategy was shared for public consultation and welcome the level of detail which it contains as well as its commitment to protecting Belfast's tree population.

I would encourage the councils which do not currently have tree strategies in place to consider the benefits of developing one. I would also encourage councils which do have tree strategies to review their strategies to ensure they are comprehensive.

²³ [Trees and Development \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk)

²⁴ Ards and North Down Borough Council has published a Tree and Woodland Strategy -

[Ards and North Down Tree and Woodland Strategy .pdf \(ardsandnorthdown.gov.uk\)](https://www.ardsandnorthdown.gov.uk)

Armagh Banbridge & Craigavon Borough Council has published a Tree Management Policy -

<https://www.armaghbanbridgecraigavon.gov.uk/download/51/policies/37522/tree-managment-policy.pdf>

Lisburn and Castlereagh City Council provided my Office with a copy of its current Tree Policy. This policy is not available online and the council stated within its response that it is currently working on a much wider and more in-depth strategy.

²⁵ Belfast City Council published its [Draft Strategy](#) in January 2023 as part of a public consultation which ran from January until April 2023. Newry Mourne and Down District Council stated that it was preparing a draft tree strategy which would be published for consultation. Causeway Coast and Glens Borough Council also provided me with a copy of its draft Tree Risk Management Plan.

The strategies should include the different functions of the council to ensure priorities in this area are aligned. For example, the role of enforcement activity to remedy and prevent harm should be sufficiently valued in the context of protecting tree stock, biodiversity and public health.

I note that one council included the appointment of a Tree Officer as one of the proposed actions within its tree strategy and within their responses to my investigation proposal, six councils referred to having designated Tree Officers. The appointment of Tree Officers appears to be increasingly common across the councils with the aim to promote the protection of trees.

It is also critical that within their strategies councils consider how effectively they are communicating with the public in this important area. Ten of the eleven councils currently have dedicated tree preservation sections within their websites. Whilst it is encouraging that the majority of councils do provide online information in this area, it is concerning that one council does not and I would urge it to rectify this as soon as possible. Throughout this report I highlight several areas and make recommendations for increased availability of information to the public.

Enforcement strategies

*All of the
councils have
Planning
Enforcement
Strategies*

An effective enforcement strategy is key to remedying, and indeed preventing, harm to trees already subject of protection through planning conditions, TPOs or location within a conservation area. A planning enforcement strategy sets out a council's enforcement objectives as well as how breaches of planning control are investigated. These strategies also outline how the investigation of enforcement complaints are prioritised.

All of the local councils have planning enforcement strategies in place. They are very similar in content and, whilst none are specific to trees, all of the council strategies refer to TPO breaches when outlining enforcement priorities. It is notable that all of the councils give complaints about alleged TPO breaches the highest possible priority for investigation. I will however set out several significant concerns I have identified in respect of 'Enforcement Activity' later in this report within [Section 6](#).

(iii) Schemes of Delegation

Under the 2011 Act, it is a statutory requirement for councils to have schemes of delegation for planning.²⁶ Schemes of delegation outline which decisions are made by the Planning Committee and which are delegated to council officers.

²⁶ 2011 Act – s.31

Whilst all of the local councils have developed their own schemes of delegation, there is some variation in relation to the decision-making mechanisms which councils are employing around TPOs. Some councils delegate all decision-making in this area to council officers whereas others require their Planning Committees to play a role in certain aspects of TPO decision-making.

There is variation across the councils in relation to how decisions around TPOs are made.

The wording of some of the schemes of delegation has however the potential to cause confusion. Of the three councils whose Planning Committees retain decision making functions for making TPOs, it is not clear from the schemes if the Planning Committees review **all** requests for TPOs or only those which council officers recommend are made.²⁷ It is also not clear how they would operate where there is a need to act quickly to protect trees. Open and transparent information about the process is necessary not only for Committee and council officers to ensure procedural compliance, but also to instill public confidence in the process.

It is also notable that, within their schemes of delegation, two councils refer to delegating functions which they do not possess. Both of these councils state that they delegate the revocation of TPOs to council officers however this runs contrary to the 2011 Act which does not extend this power to local councils. Whilst I note that the Department, in its 2022 Review of the Implementation of the 2011 Act, indicated that it intended to bring forward proposals to permit councils to vary or revoke TPOs, this is not currently enacted in law.²⁸

I would encourage all councils to review their schemes of delegation to ensure that they are satisfied that decision making processes on TPOs are given the appropriate priority. Councils should also ensure that their schemes are clear and accurate.

(iv) Procedural Guidance

The responses to my investigation proposal indicate that there is variation regarding the extent to which councils have developed procedural guidance to supplement the legislative framework around trees subject to TPOs and conservation area protection. Whilst it is correct that the governing statutory instruments set out the legal obligations the planning authorities must comply with, policies and procedures are necessary to outline the practical steps required to fulfil these duties. Procedural guidance helps to provide clarity and consistency in the process and supports good administration to help get decisions right.

²⁷ For example, in response to an individual complaint made against a council to this Office, the council stated that ‘a decision not to place a TPO does not have to go to the Planning Committee.’ The wording of the Council’s Scheme of Delegation could however be interpreted that *all* requests for TPOs are considered and determined by the Committee.

²⁸ [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](https://www.ni.gov.uk) – P.66.

Although some of the councils provided copies of procedural guidance documents, it is of concern that other councils do not appear to have developed any of their own procedural guidance. It is also worth highlighting that some of the guidance documents provided are outdated and contain inaccuracies. For example, a procedural document in place within one of the councils dates back to 2010 and contains incorrect references to the Department being the primary decision maker in relation to applications for works to protected trees. In another council, guidance which purports to demonstrate their procedures for dealing with applications for works to protected trees on council owned land fails to refer to the Department's decision-making role in these cases.

I consider this further evidence of why it is important that councils supplement the legislative framework in this area with up to date guidance and I strongly encourage all councils to take steps to implement detailed and accurate written procedures.

1.2 The Department

It is notable that in response to my queries some councils referred to a lack of regional support from the Department. One council referred to a lack of support in relation to tree preservation work, and another stated that there was a 'significant gap' in regional advice and guidance. Reference was also made to a loss of expertise and resource following the transfer of planning powers to local councils.

In response to my investigation proposal, the Department was asked to provide details of the guidance which it provides to support local councils in relation to the protection of trees. Some of the guidance relied upon by the Department as being available for councils is significantly outdated and does not reflect the transfer of planning powers to the councils.

This section will outline my observations in respect of the Department's:

- Guidance specific to the protection of trees;
- Regional planning guidance and policies; and
- Enforcement Practice Notes.

(i) Guidance specific to the protection of trees

In response to asking what guidance is provided to councils, the Department provided two pieces of guidance which focus on the protection of trees. Both of these documents were issued by its predecessor department, the Department of the Environment (DOE):

- *Tree Preservation Orders: A Guide to Protected Trees*²⁹ (the 2011 guidance)
- *Trees and Development: A Guide to Best Practice*³⁰ (the 2003 guidance)

The 2011 guidance is specific to TPOs and covers a number of areas including the criteria used to assess a potential TPO and how TPOs are processed. The 2003

²⁹ [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

³⁰ [Trees and Development - A Guide to Best Practice \(infrastructure-ni.gov.uk\)](http://infrastructure-ni.gov.uk)

guidance focuses on the value of trees and how they can be accommodated in the construction process. The following areas of concern have been identified in relation to these documents:

1. The guidance is outdated – neither of the documents have been updated to reflect the legislative and departmental changes which have occurred since their original publication. The 2011 guidance, for example, contains several inaccurate references to the now non-existent DOE having primary responsibility for making TPOs and processing applications for works to protected trees. It has not been updated to reflect the fact that these powers now sit primarily with the local councils.
2. The guides are aimed at members of the public rather than the councils – although the Department highlighted these documents as being guidance which they provide to support local councils, it is clear the guides are primarily written for members of the public³¹ and developers rather than councils. Given the intended reader is the general public, it is even more concerning that the information presented is inaccurate.

The Department's failure to provide an updated guide, providing clear information on the current roles and duties of the Department and councils, has the potential to cause confusion. It may further risk creating a perception that it does not view the protection of trees as an area of priority within the planning system.

I note that both guides contain explanatory notes (dated 2019) that existing guidance within the documents will cease to have effect once the councils have adopted their Plan Strategies, only three councils have adopted their strategies to date. Adoption across the remaining councils is likely to take some time yet. Notwithstanding that the current guides may cease to have effect, I am of the view that given its oversight and monitoring remit, the Department should have a continued role to develop best practice guidance in this area to support councils.

I also note that the Department has not developed any internal procedural guidance specific to its own responsibilities and duties within the regime to supplement the legislative framework, for e.g., should the Department be asked to revoke or amend a TPO. Nor did it issue procedures by which a council must seek consent from the Department for works, an area of concern which I discuss further within [Section 4](#).

I encourage the Department to consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. The establishment of a Tree Forum with representatives from both the Department and the councils may be beneficial in strengthening relationships and knowledge sharing.

³¹ The 2011 guidance opens with the statement, *'This leaflet is intended to provide advice for tree owners, conservation groups and the general public on protected trees.'*

(ii) Regional planning guidance and policies

In addition to the 2003 and 2011 guides outlined, the Department also provided my Office with a number of wider regional guidance documents and policies in respect of land use and planning development. Most of the councils referred to using these guidance and policy statements to assist them in setting planning conditions to protect trees. It is worth noting that some of these documents will also cease to have effect once the councils adopt their Plan Strategies whereas others will remain in force.³²

In responding to my investigation proposal, the Department also referred to the Strategic Planning Policy Statement³³ (SPPS) for Northern Ireland which aims to consolidate existing planning policies and provides further information in relation to the transitional arrangements which are in place pending councils adopting their Plan Strategies.

Whilst the wider regional guidance documents do refer to the need to protect trees and woodland areas, they are very broad in scope and do not go into the specifics of how trees can be protected. Similarly to the 2003 and 2011 guidance referred to above, the wider regional guidance documents are dated and, when read in isolation from the SPPS, they do not reflect the transfer of planning powers to the local councils.

(iii) Enforcement Practice Notes

The Department has also published four enforcement practice notes which are designed to guide planning officers through the enforcement process.³⁴ These practice notes deal primarily with procedural matters whilst also setting out good practice. They are not specific to the protection of trees but they do provide councils with general guidance which can be applied to the investigation of alleged tree protection breaches. Enforcement Practice Note 3 is particularly useful as it provides guidance in relation to the stages which councils should follow when carrying out enforcement investigations.³⁵ The guidance was developed in 2016 and I note there are no enforcement practice notes, or guidance issued, which outlines the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. I will discuss this issue further in [Section 4](#).

³² Guidance which will cease to have effect:-

- [PPS 2: Natural Heritage \(infrastructure-ni.gov.uk\)](#) (2013)
- [Planning Policy Statement 6 \(PPS 6\): Planning, Archaeology and the Built Heritage \(infrastructure-ni.gov.uk\)](#) (1999)
- [PPS 6 Addendum: Areas of Townscape Character \(infrastructure-ni.gov.uk\)](#) (2005)

Guidance which will remain in force:-

- [best practice guidance pps23.pdf \(infrastructure-ni.gov.uk\)](#) (2014)
- [Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside \(infrastructure-ni.gov.uk\)](#) (2012)
- [Creating Places - Achieving Quality in Residential Environments \(infrastructure-ni.gov.uk\)](#) (2000)

³³ [Strategic Planning Policy Statement for Northern Ireland \(SPPS\) \(infrastructure-ni.gov.uk\) \(2015\)](#)

³⁴ [Enforcement Practice Notes | Department for Infrastructure \(infrastructure-ni.gov.uk\)](#)

³⁵ [Enforcement Practice Note 3 Investigative Approaches \(infrastructure-ni.gov.uk\)](#)

Section 1 Strategies, Policies and Procedures- recommendations

Recommendation 1: All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.

Recommendation 2: Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their Schemes of Delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.

Recommendation 3: Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of, or alongside, planning conditions to best secure the long term protection of trees.

Recommendation 4: The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.

Recommendation 5: The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and setting up a regional Tree Forum. The Department and councils should also utilise the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.

Section 2: Tree Preservation Orders

The 2011 Act provides a discretionary power for councils to make a TPO to protect a specific tree or woodland from deliberate or willful damage. Members of the public can submit requests for TPOs to their local councils. TPOs can also be initiated by the councils themselves and the Department has the power to make TPOs in consultation with the appropriate council.³⁶

From my enquiries I have established that across the region there are variations in how TPO records are maintained by councils, and the level of information is made available to the public. There are also variations in the processes to request a TPO and in the rates of requests received.

This section will set out my observations in respect of:

- TPO records (The Orders, Registers and Mapping);
- TPO requests and approval rates across the councils; and
- Criteria for making TPOs.

2.1 TPO records

The Orders

It is imperative that councils make and maintain accurate TPO records so that they can easily identify protected trees to process applications for works, investigate potential breaches and monitor their overall approach to tree preservation.

The 2015 Regulations³⁷ set out the form that an Order must take. When a TPO is made it should include the following information:

- The total number of tree(s) protected by an order; and
- A map showing the precise location of the protected tree(s).

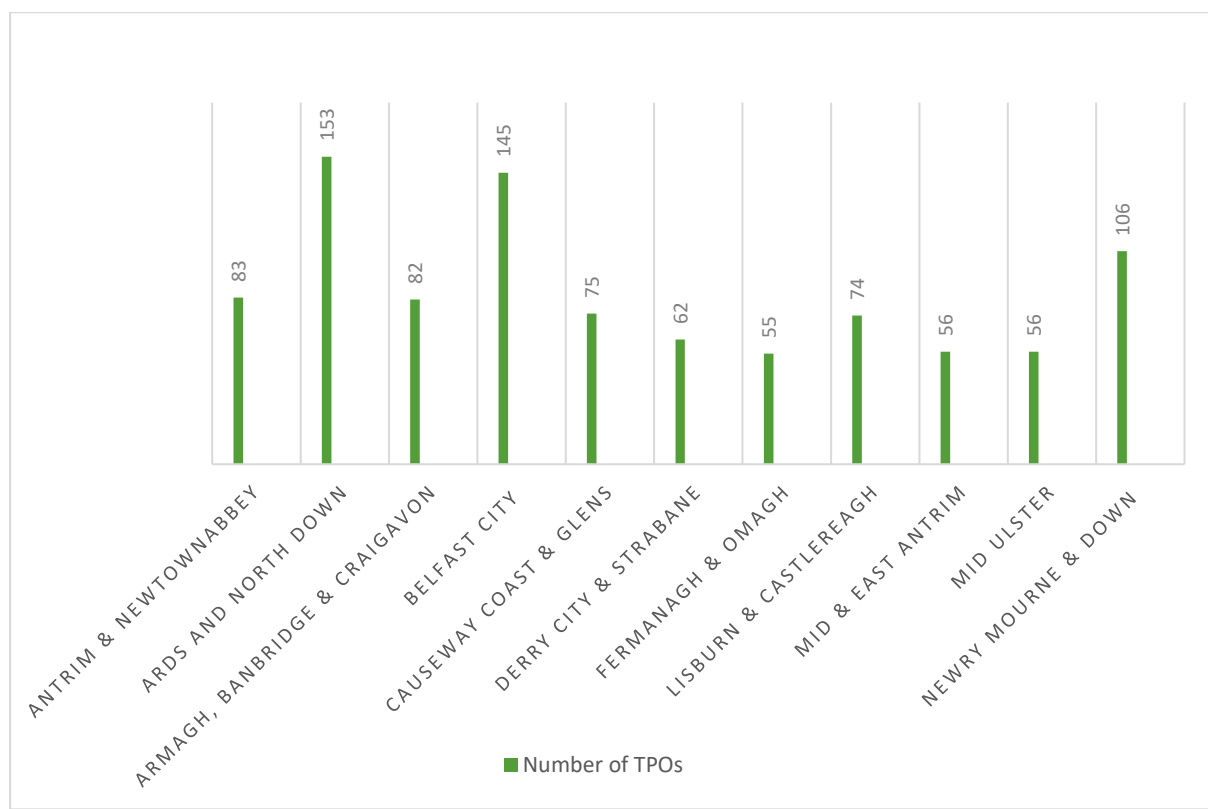
It is also good practice to regularly review the TPOs in place and evidence that the tree(s) still requires protection, for example, with an up-to-date health and condition survey.

I established from my enquiries that there were 947 TPOs in place throughout Northern Ireland in July 2022. The numbers varied across the councils, ranging from 55 in one council area to 153 in another.

³⁶ Department's power - 2011 Act – s.124(1)

³⁷ [The Planning \(Trees\) Regulations \(Northern Ireland\) 2015, S.2.](#)

Figure 4: The number of TPOs in place across the council areas in July 2022



As part of my investigation proposal, I also asked each of the councils to clarify how they maintain their TPO records. Most of the councils indicated that they maintain their records on their TPO registers. It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas.

The councils were also asked to confirm how often they review their TPO records. There was variation in the responses received with some councils appearing to be more proactive in their reviews than others.

- **One council did not refer to carrying out any reviews** of its TPO records.
- **Two councils** stated that they **only review individual TPO records upon receipt of specific requests** such as applications to carry out works.
- **Eight councils** indicated that they have **carried out wider, proactive reviews** of all of their TPO records however the majority of these reviews appear to have been one-off exercises rather than part of a rolling review programme.

Within their responses to my investigation proposal, two councils raised concerns in relation to whether some of the TPOs which they inherited from the former DOE were legally sound. It has been suggested that some inherited TPOs had not been confirmed by the DOE. One of the two councils advised it has now rectified the issues it identified, and the other council remains in the process of doing so. This highlights the importance of ensuring there is clear procedural guidance to follow in respect of making TPOs and that records are subject to regular review.

I am concerned that the issues identified by the two councils around inherited TPOs may be a wider problem and I am not satisfied this matter has been adequately addressed at a regional level. A failure to tackle this issue has the potential to negatively impact on the regulation of works to protected trees and taking enforcement action against breaches.

I would strongly encourage all councils to carry out detailed reviews of their TPO records to ensure that all TPOs in place remain valid. Councils should also ensure that their reviews of TPO records are not stand-alone exercises and that they form part of an ongoing programme of review and monitoring of their approach to tree preservation. Councils should support the regular review of records, and adequacy of information available, by carrying out site visits to check on the health of the protected trees, or indeed whether they have been subject of harm since the order was put in place.

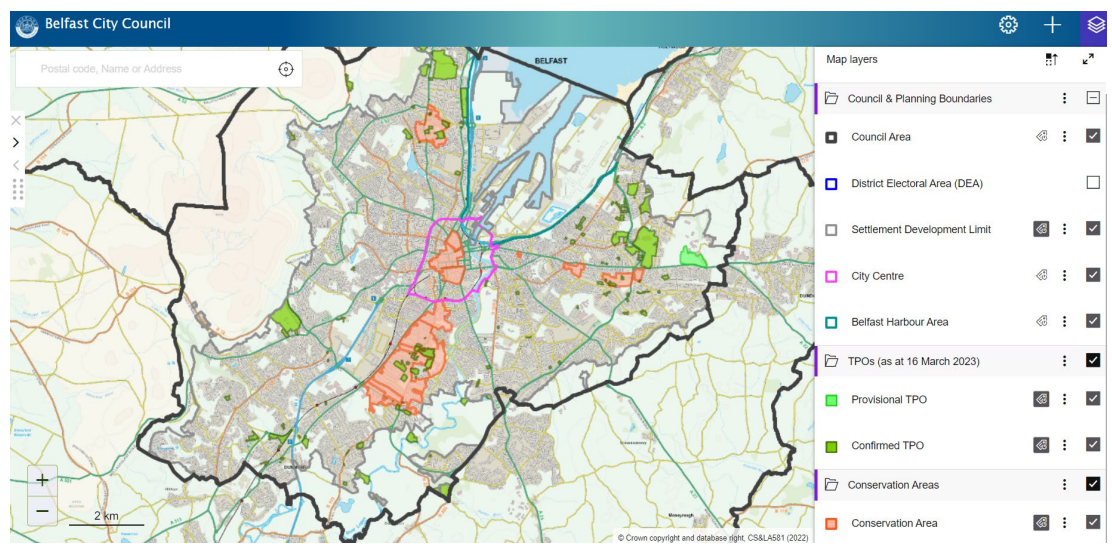
TPO Registers and Mapping

It is a requirement under the 2011 Act for all councils to keep registers containing information in relation to the TPOs within their council areas. A council’s TPO register must also be available for inspection by the public at all reasonable hours.³⁸ When responding to my investigation proposal, the majority of councils confirmed that they have physical TPO registers which can be made available for public inspection at their offices.

I also made enquiries to establish if councils had mapped the TPOs within their area and what information they make available online. It should be noted that the 2004 Environmental Information Regulations made it a statutory requirement for public authorities to progressively make environmental information that they hold available by electronic means which are easily accessible.³⁹ Accessibility of this information to the public is critical in making sure they are alert to the protections that are in place, both to ensure that they do not carry out unauthorised works and to support the reporting of breaches.

Nine out of the eleven councils have created interactive Geographic Information System (GIS) maps which display the locations of TPOs within their council areas. Six of these nine councils signpost to their maps within the tree preservation sections of their websites however the other three councils do not. Two out of these three councils advised my Office that they do not make their maps available to the public as they are for internal use only. Of the two councils which do not currently have GIS maps, one has advised that it hopes to develop one at some stage this year.

Figure 5: Belfast City Council’s GIS map (accessed 23/5/23)



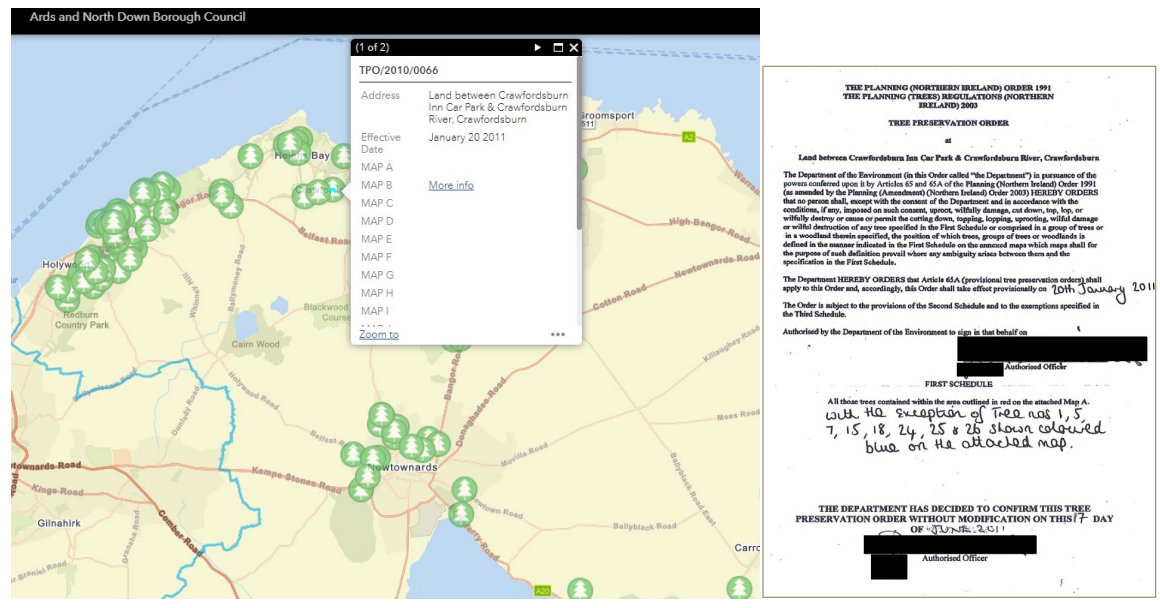
There is also some variation across the councils in the information which they include within their interactive maps. Whilst all of the maps display the locations of TPOs within the council area, only three also highlight conservation areas.

³⁸ 2011 Act, s.242

³⁹ [The Environmental Information Regulations 2004, s.4 \(1\)](#)

I note however that only one council’s map includes the facility to review the original documentation and maps associated with each TPO. The provision of this documentation online is an example of good practice. I am of the view that it would be beneficial for all councils to electronically map the TPOs within their area and provide online access to the TPO register and associated documentation.

Figure 6: Ards and North Down Borough Council’s GIS map (accessed 20/07/23)

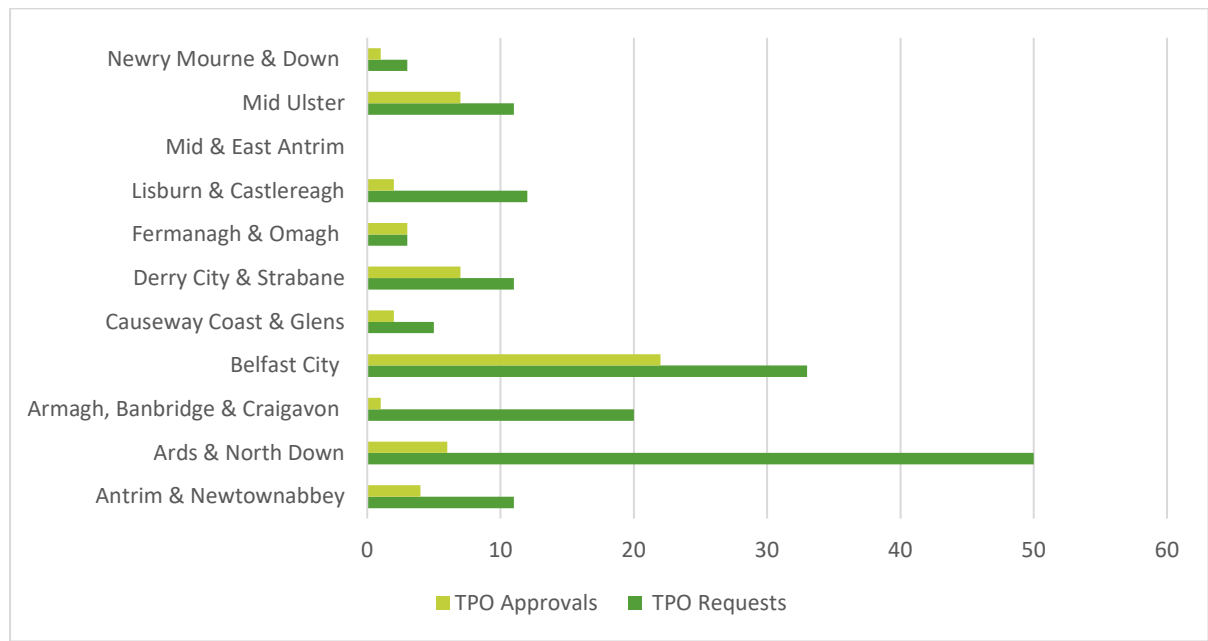


I am further of the view that a regional map may also be beneficial. I have been advised by the Department that it has engaged with the Woodland Trust on this matter. Working with interested parties, the Department as the duty bearer should take the lead in developing a regional map which displays the locations of all TPOs in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

2.2 TPO requests and approval rates across the councils

There is variation across the councils regarding the number of TPO requests which are received; one council reported receiving 50 requests within the last three years whilst another council did not receive any. Differences have also been identified in relation to council approval rates for TPO requests ranging from 10% to 88%. Although variation across the councils is to be expected and not in itself a cause for concern, the level of variation may benefit from having increased scrutiny and guidance at regional level.

Figure 7: Council TPO requests and approvals over a 3-year period during 2019-2022

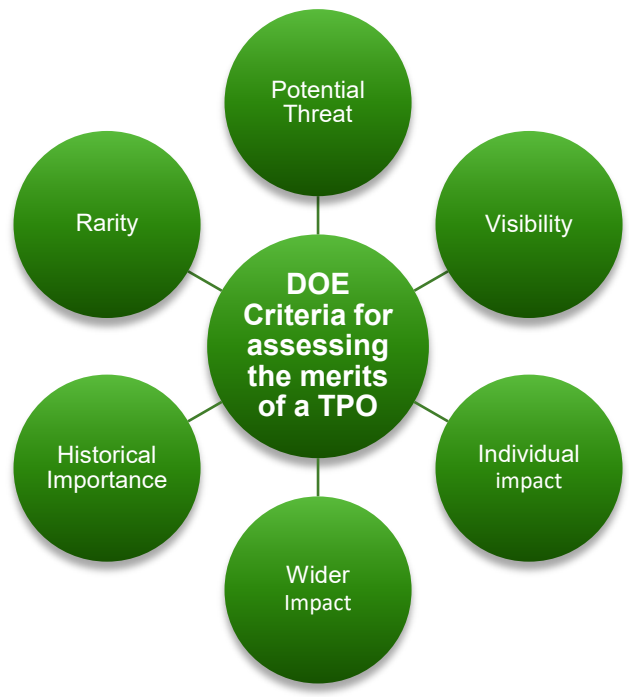


2.3 Criteria for making TPOs

The 2011 Act provides councils with the power to make TPOs where they feel it is ‘in the interests of amenity’. The term ‘amenity’ is not defined in the legislation and the Department has not provided any recent guidance in relation to how it should be interpreted. The former DOE did however publish a list of criteria for assessing the merits of imposing TPOs as part of its 2011 guidance.⁴⁰

⁴⁰ See [Tree Preservation Orders - A Guide to Protecting Trees \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk), pg.4

Figure 8: Criteria published by the DOE in 2011 for assessing the merits of imposing TPOs



Within their responses to my investigation proposal, most of the councils referred to using this criterion when assessing whether or not to impose TPOs. Whilst the criteria remains valid, I note there is limited guidance provided about the factors to consider under each criteria. It may therefore be beneficial for councils to work together to further develop and document the methodology (including the potential use of valuation software⁴¹) that they use to assist in assessing the ‘amenity’ value of trees.

I consider that the Department also has an important role to play in providing further guidance for councils in relation to the definition of the term ‘amenity’ so that an appropriate methodology to assess trees is developed and applied by councils. When responding to the Department’s Call for Evidence regarding its Review of the Implementation of the 2011 Planning Act, a number of councils highlighted the need for further guidance from the Department in relation to the term ‘amenity’. In its response, the Department committed to considering whether there is a need for it to provide further guidance in relation to ‘certain TPO terms’.⁴² The Department has not published any further guidance or provided an update in relation to its progress.

Processes for Requesting TPOs

Some of the councils do not provide any information on their websites detailing the processes which should be followed by members of the public who wish to submit

⁴¹ Some of the councils are already familiar with this type of software and methodology. In its 2022 study of Belfast’s Urban Forest Belfast City Council, for example, made use of i-tree software & the CAVAT methodology – see [Belfast Technical Report \(treeconomics.co.uk\)](https://www.treeconomics.co.uk/)

⁴² [Review of the Implementation of the Planning Act \(NI\) 2011 - Report - January 2022 \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/), pg,65-66

requests for TPOs. It is notable that the councils with no information on their websites about how to request a TPO are those which received the lowest number. Other councils do provide information however, in some cases, the detail provided is limited and does not outline the type of evidence which is required to support a request for a TPO. Only one of the councils has the facility for online submission of TPO requests via its own website and it is worth noting that this facility was only recently introduced.

None of the councils currently include any information within the TPO sections of their websites on the use of Northern Ireland's new planning portal for the online submission of TPO requests'.⁴³ The new planning portal was launched by the Department in December 2022 and is currently being used by all of the councils apart from Mid Ulster. It has the functionality to accept online requests for TPOs. This development should help to standardise the TPO request process across the councils however it is disappointing that none of the councils have updated their websites to include information in relation to this new process. I would encourage all of the councils to review the content of their websites to ensure that clear and accurate information is being provided in relation to the processes which members of the public can follow when requesting TPOs. All methods for requesting TPOs, including the new online process, should be highlighted.

Councils should also ensure that, as well as dealing with requests from members of the public for TPOs, appropriate consideration is given to the initiation of TPO requests by council officers with responsibilities in this area. A proactive approach should be taken by councils to identifying trees which could benefit from protection and a strategy for identifying appropriate trees could be set out within a council's wider tree strategy.

⁴³ Northern Ireland's new planning portal launched on 5 December 2022. It replaces the old planning portal and is currently being used by 10 out of the 11 councils. Mid Ulster launched its own separate portal in June 2022.

Section 2 Tree Preservation Orders - recommendations

Recommendation 6: Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.

Recommendation 7: All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.

Recommendation 8: The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

Recommendation 9: Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

Recommendation 10: In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.

Recommendation 11: All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.

Section 3: Applications for Works to Protected Trees

If a tree is protected by a TPO it is necessary to apply to the relevant council or, in certain circumstances, the Department for consent to carry out any felling or pruning work. The council or the Department has a range of options which are:

- grant full permission for the works;
- grant permission subject to conditions; or
- refuse consent.

There are however some exemptions to seeking consent, for example, it is not necessary to seek permission for works to trees which are dead or have become dangerous.⁴⁴ The owner must however ensure they have proof that the tree is dead or dangerous, and it is recommended that they make the relevant planning authority aware of the proposed works prior to them being carried out.

The process is also slightly different for trees located in conservation areas as notice of any proposed works must be served on the council or, in some cases, the Department; if the council or the Department objects to the proposed works, a TPO can be made to protect the tree(s).

I have identified examples of both good practice and concern in this area. This section will set out my observations in respect of:

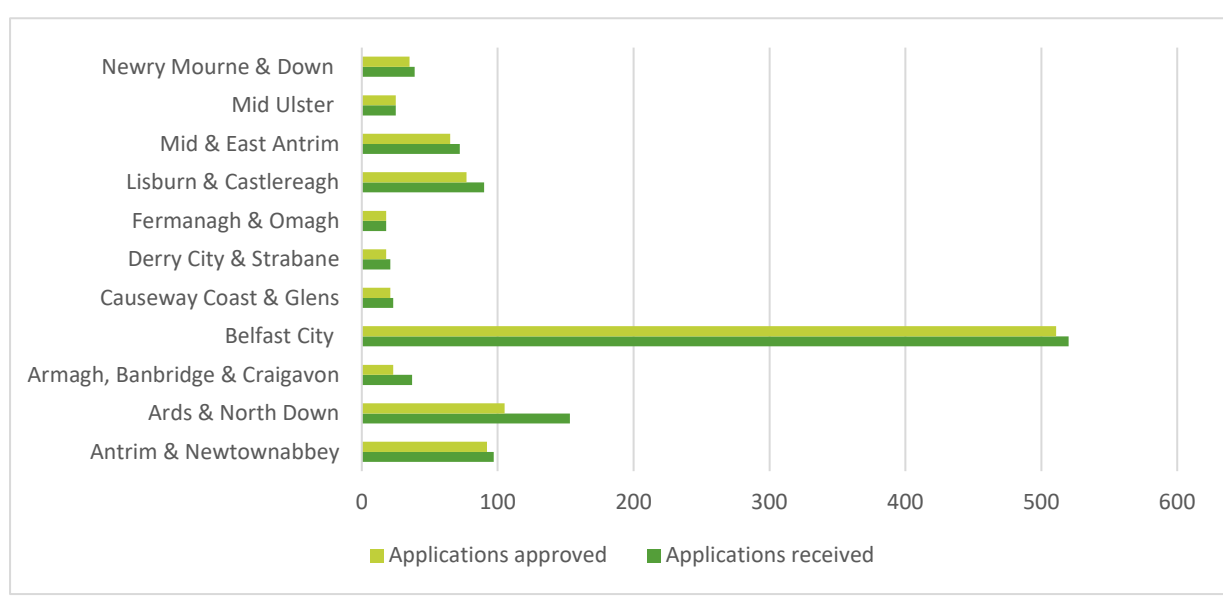
- Level of applications and approval rates across the councils;
- Processes for applying for works to protected trees;
- The use of independent evidence to support applications for works to protected trees; and
- Publication and notification procedures.

3.1 Level of applications and approval rates across the councils

There is variation across the councils in relation to the number of applications for works to protected trees which they are receiving with some councils receiving far greater numbers than others. One council reported receiving 520 applications within the last three years whereas another council received just 18. There is less disparity in relation to approval rates for these applications as these are high across the majority of the councils, ranging from 73% to 100%.

⁴⁴ 2011 Act, s.122 (5)

Figure 9: Applications for works to protected trees which were received and approved by councils over a three-year period during 2019-2022



The following key trends have been identified from the figures reported by the councils over a three year period during 2019-22:

- **Four councils** reported **approval of all** of their decided applications.
- **Five councils** reported **approval of 90% and over** of their decided applications.
- The remaining **two councils** reported **approval of more than 70%** of their decided applications.
- The **average approval rate** across the councils during this time period was **93%**.

3.2 Processes for applying for works to protected trees

Decision making on works to protected trees is a delegated function⁴⁵ which means that for the most part council officers, and not the planning committee, will grant or refuse the applications. Within the responses to my investigation proposal, the councils provided information in relation to how they process applications for works

⁴⁵ 8 councils clearly state within their Schemes of Delegations that this is a delegated function. The other 3 councils don't directly comment within their schemes of delegation.

to protected trees. Further information was also obtained from the council websites. I have identified some concerns about the variation of the level of information made available to the public on the need to apply for works to protected trees and the accessibility of the process.

Whilst most of the councils provide information on their websites detailing the processes which members of the public should follow when submitting applications for works to protected trees⁴⁶ some councils provide more detail than others. For example, some provide information in relation to the different procedures which apply dependent upon whether a tree is protected by a TPO or located within a conservation area whereas others do not highlight any differences. It is disappointing to note that two councils do not publish any information on their websites in respect of this matter.

Nine of the councils have developed their own application forms which applicants are required to complete when applying to carry out works to protected trees, however only seven councils make these forms available online. Furthermore, only two councils currently have facilities on their websites for online submission. Whilst it is encouraging that these councils have this facility, it is surprising that none of the other councils provide this as an option. It is also notable that none of the council websites direct applicants to the new planning portal which has the functionality to accept online applications for works to protected trees.

3.3 The use of independent evidence to support applications for works to protected trees

Concerns have also been raised with my office in relation to councils approving applications for works to protected trees (including the felling of trees) without independent evidence to support the need for the works. Evidence to support an application could include for example, an arboricultural report assessing the health and condition of a tree, if reported to be of risk to the public or surrounding property.

The responses to my investigation proposal indicate that there is variation in the approaches being taken by the councils in this area.

- **Two councils** indicated that they **always require independent evidence** in support of applications for works to protected trees.
- **Two councils** stated that they **require independent evidence in the majority of cases**.
- The remaining **seven councils did not address this** within their responses to my investigation proposal.

⁴⁶ 9 of the 11 councils provide information on their websites in relation to submitting applications for works to protected trees.

A review of the different application forms for works which are currently being used by the councils provides some further insight into the varied approaches being taken.

- **Five** of the application forms list the circumstances in which independent evidence **‘must be provided’**.
- **One** application form lists the circumstances in which independent evidence should **‘usually’** be provided.
- **One** application form states that independent evidence **‘may be requested’**.
- **One** application form states that independent evidence is **‘strongly encouraged’**.
- **One** application form **does not make any reference** to independent evidence.

Whilst the information available indicates that there may be some variation in the approaches councils are taking to the use of independent evidence, it has not been possible to reach any firm conclusions in relation to how the councils are acting in practice. It is my view that the councils need to review and provide clarity in relation to the circumstances in which they require independent evidence to be provided in support of applications for work to protected trees. Councils should also clarify whether the onus to provide independent evidence is always placed on the applicant or whether there are situations in which the councils themselves will obtain their own independent evidence whilst assessing applications.

Given the lack of clarity about the gathering and use of independent evidence to support applications, the high approval rates for works are a matter of concern. In my view, works to protected trees should be fully supported by independent evidence to ensure it is in the wider public interest.

3.4 Publication and notification procedures

Publication

Whilst I note that there is no statutory requirement to publish pending or concluded applications for works, I would encourage councils to explore the potential of making this information publicly available in an accessible format. It is common practice for local authorities in England to publish applications for works to protected trees via their online planning registers.⁴⁷ This enables members of the public to view copies

⁴⁷ Of a sample of 10 local authorities in England, 9 published applications for works on their online planning registers. It is worth noting that s.12 of the Town and Country Planning (Tree Preservation) (England) Regulations places a duty on local authorities to keep planning registers which include ‘details of every

of application forms, supporting evidence and details of decisions. If local councils published similar information, it might serve to increase transparency around decision making in this area.

I welcome the recent motion⁴⁸ passed by Ards and North Down Council *‘for transparency and in response to growing public interest’* for regular reports to be made to the Planning Committee to include:

- The number of applications for works to protected trees;
- Whether granted or refused; and
- The basis for the decision making.

Consideration was also to be given by the Council to uploading these details to the planning portal or its website to ensure public access. I note reports have since been submitted to the Planning Committee and are available on the website⁴⁹, however navigating access is difficult. The details do not appear to have been uploaded on the planning portal. The reports also do not outline the basis for the decision made.

I note that none of the other councils publish any details of pending or concluded applications for works to protected trees.

Notification

It is also notable that none of the councils have processes in place for notifying local residents of pending applications for works to protected trees. Whilst it is a statutory requirement to notify any affected persons of the making of a TPO, there is no statutory requirement to notify affected persons of proposed works to protected trees.⁵⁰ Councils should explore whether it would be possible to introduce community notification procedures for residents likely to be affected by proposed works to protected trees. In England, whilst there is no statutory notification procedure for proposed works to protected trees, the government has issued guidance which recommends that local authorities consider displaying site notices or notifying affected residents where they are likely to be affected by an application or where there is likely to be significant public interest.⁵¹

Notifying local residents of proposed works which are likely to impact upon them could increase transparency and bolster community engagement in the application process. There has been considerable criticism of the lack of community

application under an order and of the authority’s decision’. See - [The Town and Country Planning \(Tree Preservation\)\(England\) Regulations 2012 \(legislation.gov.uk\)](#). The former Ministry of Housing, Communities and Local Government published guidance in 2014 which encouraged local authorities to make their registers available online. [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#) (para 77).

⁴⁸ [Ards & North Down Planning Committee Minutes, 1 March 2022](#)

⁴⁹ [Planning Committee \(06/12/2022\) \(ardsandnorthdown.gov.uk\)](#), p77-78. [Planning Committee \(07/03/2023\) \(ardsandnorthdown.gov.uk\)](#), p52-53.

⁵⁰ [s.3 of the 2015 Regulations](#) places an obligation on councils to notify interested persons of the making of a TPO and allow a 28 day period during which objections and representations can be submitted.

⁵¹ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](#), para 77

engagement in Northern Ireland's planning system⁵² and the Department itself has recognised that reform is required.⁵³ The Department potentially has a role to play in producing best practice guidance for councils around notification procedures.

Section 3 Applications for Works to Protected Trees - recommendations

Recommendation 12: Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

Recommendation 13: Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.

Recommendation 14: Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.

Recommendation 15: Councils should explore the potential to publish details of applications for works to protected trees in an accessible format.

Recommendation 16: Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

Recommendation 17: The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).

⁵² In its 2022 report, the Open Government Network was critical of the NI planning system's lack of meaningful engagement with local communities, describing it as a system which 'has evolved to prioritise efficiency and growth above community needs or environmental sustainability' (pg.5) [NIOGN-OLG-REPORT.pdf](#) (opengovernment.org.uk)

⁵³ In its 2022 report, the DFI's Planning Engagement Partnership set out 8 recommendations to enhance the quality and depth of community engagement in both local and regional planning – see [Planning Your Place: Getting Involved - March 2022](#) (infrastructure-ni.gov.uk)

Section 4: Protected Trees on Council Owned Land

If a protected tree is located on council owned land, this can result in a situation where the council itself is the applicant in a tree works request or suspected of a tree protection breach. It is crucial that cases where the council is in this position are dealt with transparently and that conflicts of interest are avoided or adequately managed. The processes and decision making in these cases must also be perceived as fair to ensure that public confidence is not negatively impacted.

I have identified a number of concerns in respect of:

- Cases in which the council is the applicant in a tree works request; and
- Cases in which the council is suspected of a breach of tree protection.

4.1 Cases in which the council is the applicant in a tree works request

If a council wishes to carry out work to a protected tree on land which it owns, it must seek consent from the Department rather than approving an application for works itself. This is a statutory requirement under Regulation 10 of the Planning General Regulations (Northern Ireland) 2015 which states that councils cannot seek consent from themselves.⁵⁴

The responses to my investigation proposal highlighted that there is variation across the councils in relation to their awareness and interpretation of Regulation 10. Whilst some councils do appear to be aware of the need to refer, others seem to have been either unaware of or not applying Regulation 10 correctly.

⁵⁴ Regulation 10 states - *Where an interested council is seeking a consent of a council under Parts 3, 4 (except chapters 1 and 2 of that Part) or 5 (except sections 157 to 163) of the 2011 Act other than planning permission to develop land or a consent to display an advertisement pursuant to regulations made under section 130 and that council is itself the council by whom such consent would be given, it shall make an application for such consent to the Department.* [The Planning General Regulations \(Northern Ireland\) 2015 \(legislation.gov.uk\)](https://www.legislation.gov.uk/uksi/2015/1000/regulations/10)

- **One council does not appear to be aware of Regulation 10** and advised that it refers applications for works to protected trees on council owned land to its own senior officers or the Planning Committee.
- **Two councils** were aware of Regulation 10 but their responses to my proposal indicate that they are **not applying it correctly in practice**. One of these councils incorrectly referred to the fact that Regulation 10 only applies if a protected tree is located within a conservation area.
- **Six councils** do seem to have **the correct understanding** of the implications of Regulation 10. However, it is notable that one council stated that it only recently became aware of Regulation 10 when the Department highlighted it in connection with a high-profile case in which the council was seeking to remove a number of trees within a conservation area on council owned land.
- **Two councils did not address the approach** which they take to Regulation 10 within their responses to my investigation proposal.

This variation in council approaches is concerning and supports the need for the Department to provide clarity. It further demonstrates the importance, as outlined in [Section 1](#), of having clear procedural guidance that underpins the legislative framework. The Department should work with the councils on developing clear procedural guidance in relation to the processes which councils should follow when they wish to carry out works to protected trees on their own land.

4.2 Cases in which the council is suspected of a breach of tree protection

The councils were also asked to clarify whether they followed any different processes if the council itself was suspected of involvement in a tree protection breach. Whilst a number of the councils did not clearly address this within their responses to my investigation proposal, amongst those that did, the majority referred to following the same processes regardless of who was suspected of the breach. Only two of the councils made reference to referring enforcement cases involving the council to the Department.

- **Six councils** stated that they **follow the same processes** regardless of who is suspected of the breach.
- **Two councils** made reference to **referring these cases to the Department** however it was notable that only one of these councils indicated that this was common practice; the other council suggested that referral to the Department was optional.
- **Three councils did not clearly address this issue** within their responses.

Whilst there is no statutory requirement for enforcement cases involving the councils to be referred to the Department, I recognise and support the introduction of a mechanism to investigate these cases to manage potential conflicts of interest, whether real or perceived. I consider that there is a need for the Department to explore with the councils how best independent investigation of a reported or suspected breach by councils of tree preservation could be achieved. There is also the need for the Department to consider and set out the procedures to be followed where the Department is suspected of a breach, and how to introduce a mechanism to manage conflict of interests in such circumstances.

Section 4 Protected Trees on Council Owned Land - recommendations

Recommendation 18: The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.

Recommendation 19: The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision making process.

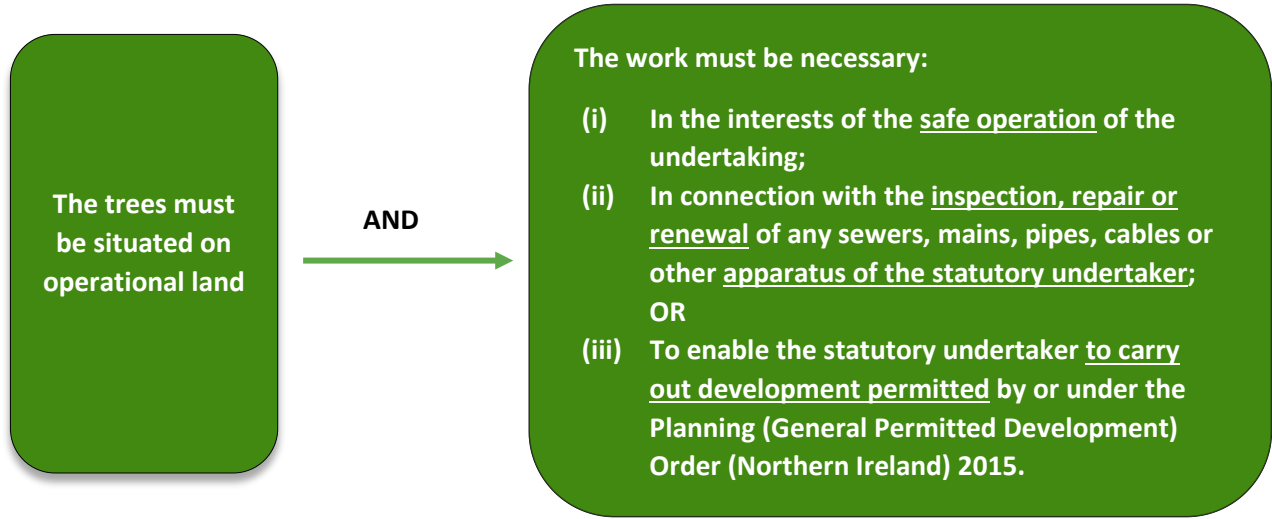
Section 5: Statutory Undertakers

Statutory undertakers are bodies and organisations which have been given statutory powers to carry out certain public functions. Examples include transport providers and utility companies.⁵⁵ Concerns have been raised with my office in relation to statutory undertakers removing protected trees and the oversight of their actions.

5.1 Statutory undertakers: the legislation

There are legislative provisions which enable statutory undertakers to remove protected trees without consent in certain circumstances. Schedule 3 of the 2015 Regulations enables statutory undertakers to carry out works to protected trees without council consent in specific circumstances. The trees must be situated on operational land and the work must be necessary for either safety reasons, in connection with the inspection, repair or renewal of apparatus or to enable a statutory undertaker to carry out permitted development.⁵⁶

Figure 10: The circumstances in which statutory undertakers can carry out work to protected trees without consent



⁵⁵ s.250 of the 2011 Planning Act provides a definition of a statutory undertaker - [Planning Act \(Northern Ireland\) 2011 \(legislation.gov.uk\)](#)

⁵⁶ [2015 Regulations – Sch 3, s.2\(b\) \(i\)-\(iii\)](#)

Whilst the legislative framework sets out the circumstances in which statutory bodies can act, I am concerned there may be a lack of guidance between statutory undertakers and planning authorities to underpin this important area. I consider that effective engagement in this matter is critical as the work carried out by statutory undertakers is often significant in scale with the potential to adversely impact on the biodiversity of an area and public confidence. For example, it was reported that Translink proposed to remove 141 trees, including some protected trees, at Carnalea train station, Bangor for safety reasons.⁵⁷ There is therefore an onus on public bodies to examine and consult on how they can best carry out work which may necessitate the removal of trees and how any harmful impact may be mitigated.

5.2 Guidance and monitoring

I note that the Department has not issued any guidance for statutory undertakers in relation to how the Schedule 3 exemptions should be interpreted. Whilst I recognise that there are situations in which statutory undertakers are justified in removing protected trees, I consider that there is a need for direction from the Department in relation to best practice in this area. It is notable that guidance has been issued in other jurisdictions. In England, the former Ministry of Housing, Communities and Local Government included guidance on exceptions for tree works carried out by statutory undertakers within its 2014 guidance document on tree protection. This guidance is fairly brief but it does advise statutory undertakers to liaise with local authorities prior to carrying out any work to protected trees.⁵⁸

The Department should also consider whether it could play a role in the oversight and monitoring of the activities of statutory undertakers in relation to the removal of protected trees across the region.

5.3 Engagement and co-operation

Councils also have a role to play in ensuring that they engage with statutory undertakers in relation to tree protection issues. It is unclear to what extent engagement and co-operation takes place, in particular where a statutory undertaker considers consent is not required for works, and I would encourage the councils and statutory undertakers to consider how it can be better facilitated. I welcome the fact that Belfast City Council has set out a number of actions aimed at increasing co-operation with utilities providers within its draft tree strategy. The actions put forward include the setting up of engagement workshops, the provision of training and the implementation of a tree charter.⁵⁹ This type of co-operation is to be encouraged as it provides councils with a good opportunity to promote the importance of tree protection to statutory undertakers.

⁵⁷ [Reaction to the removal of 141 trees in Carnalea \(greenparty.org\)](https://www.greenparty.org.uk/news/2018/04/12/Reaction-to-the-removal-of-141-trees-in-Carnalea)

⁵⁸ [Tree Preservation Orders and trees in conservation areas - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/623423/Tree_Preservation_Orders_and_trees_in_conservation_areas_-_GOV.UK_(www.gov.uk).pdf) – para 85

⁵⁹ [Draft Belfast Tree Strategy \(belfastcity.gov.uk\)](https://www.belfastcity.gov.uk/media/10113/draft-belfast-tree-strategy) – see section C3.

Section 5 Statutory Undertakers- recommendations

Recommendation 20: The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations.

Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.

Recommendation 21: Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

Section 6: Enforcement Activity

Planning authorities have a duty to investigate reports of alleged breaches of planning control and take formal enforcement action where it is appropriate to do so. Under the 2011 Act, local councils have primary responsibility for planning enforcement within their council areas. The Department retains certain reserve enforcement powers and is also responsible for monitoring the performance of the councils.

It is important to note that the powers available to planning authorities to take enforcement action are discretionary, and where a breach is established, the authority must consider whether it is 'expedient' to take formal action. Whilst 'expediency' in planning is not defined, the concept is described within departmental guidance as a test of whether the activity is '*causing unacceptable harm to the environment and/or public amenity, having regards to the provisions of the local development plan and to any other material considerations*'.⁶⁰

Taking enforcement action which is proportionate to the seriousness of the breach, including the extent of the harm caused, is central to the effectiveness and credibility of the planning system. Whilst planning enforcement is intended to be remedial rather than punitive, it is critical that it is robust in its response and that the interests of the environment and the public are not marginalised. It is also important to highlight that unlike some other breaches of planning control, where unauthorised works to protected trees are carried out, including removal, it is not possible for the breach to be fully rectified.

It is of note that over recent years, a number of local authorities in Great Britain, have pursued significant prosecutorial action in respect of breaches of tree protection. This has included considering how the offenders (landowners and contractors) benefited from the proceeds of the crime, as well as the harm caused by the planning breach.⁶¹ In contrast if enforcement is not taken seriously by local councils, or is perceived as not being taken seriously, both the effectiveness and public confidence in the planning system is undermined.

Concerns were raised with my Office that local councils appear to be reluctant to take enforcement action where tree protection breaches have been identified. I requested that all eleven councils provide relevant data on the action taken over a three year period in respect of reported tree protection breaches. This section will set out my observations and recommendations in respect of:

- Council enforcement powers in tree protection cases;
- Recent trends in tree protection enforcement cases;
- Cases closed as 'Not Expedient';
- Council enforcement strategies and procedures; and
- Monitoring of Tree Protection Enforcement Activity by the Department.

⁶⁰ [Enforcement Practice Note 1 Introduction to Planning Enforcement \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/enforcement-practice-note-1-introduction-to-planning-enforcement)

⁶¹ See [Landowner and contractor fined £255,000 for tree destruction | Enfield Council](#) and [Homeowner Fined Under Proceeds Of Crime Act For Cutting Back Tree - Timms Solicitors \(timms-law.com\)](#)

6.1 Council enforcement powers in tree protection cases

The councils have various strong enforcement powers available to them under the 2011 Act and this section will briefly outline the main enforcement powers which can be used in tree protection cases.⁶²

TPOs

Councils can pursue prosecutions against individuals found to be in breach of TPOs. Contravention of a TPO by undertaking works likely to destroy a protected tree is identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence which is punishable by a fine of up to £100,000 on summary conviction or an unlimited fine on indictment.

Councils also have the responsibility to enforce measures, subject to a TPO, for the landowner to replace trees by planting a tree or trees of a specified size and species. Where this is not complied with within the specified period, councils have the power to enter onto land to replant trees subject of the TPO and recover costs.

Conservation area protection

Councils can also pursue prosecutions for breaches of conservation area protections. Breach of a conservation area protection by undertaking works likely to destroy a protected tree(s) is also identified within planning enforcement guidance as a 'direct offence'. It is a criminal offence punishable by the same penalties which apply to TPO breaches.

Councils also have the responsibility to serve a notice on a landowner to replant a tree or trees of an appropriate size and species in the same space in a conservation area.

Planning conditions

Breach of a planning condition which protects trees is not a criminal offence in itself. If a breach has been identified, a council can take formal enforcement action by issuing a breach of condition notice. Failure to comply with the requirements of a breach of condition notice is a criminal offence which is punishable by a fine of up to £1000 on summary conviction.

6.2 Recent trends in tree protection enforcement cases

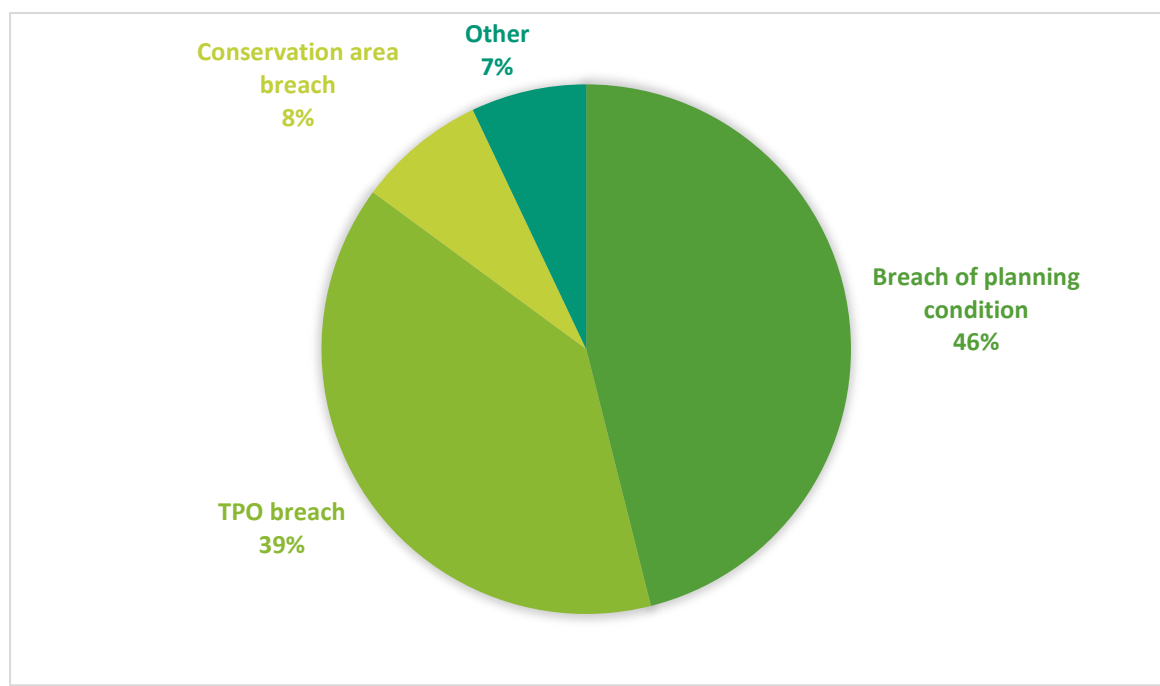
The responses to my investigation proposal highlighted a number of trends in relation to the type and outcome of tree protection enforcement cases which were reported to the councils over a three year period, during 2019-2022. It should be noted that this data is not available centrally and had to be collated from each of the councils individually.

⁶² [Planning Act \(Northern Ireland\) 2011, s.126, 127, 152, 164, 166 & 167](#)

Types of case

From the data provided to my Office, it was identified that 369 tree protection breaches were reported to the councils over the three year period. The most commonly reported breaches were in relation to alleged contraventions of planning conditions with 170 reported in total. 144 of the cases which were reported related to alleged breaches of TPOs and 29 were in relation to alleged breaches of conservation area protections.

Figure 11: Breakdown of type of tree protection cases opened by councils over the three year period during 2019-2022



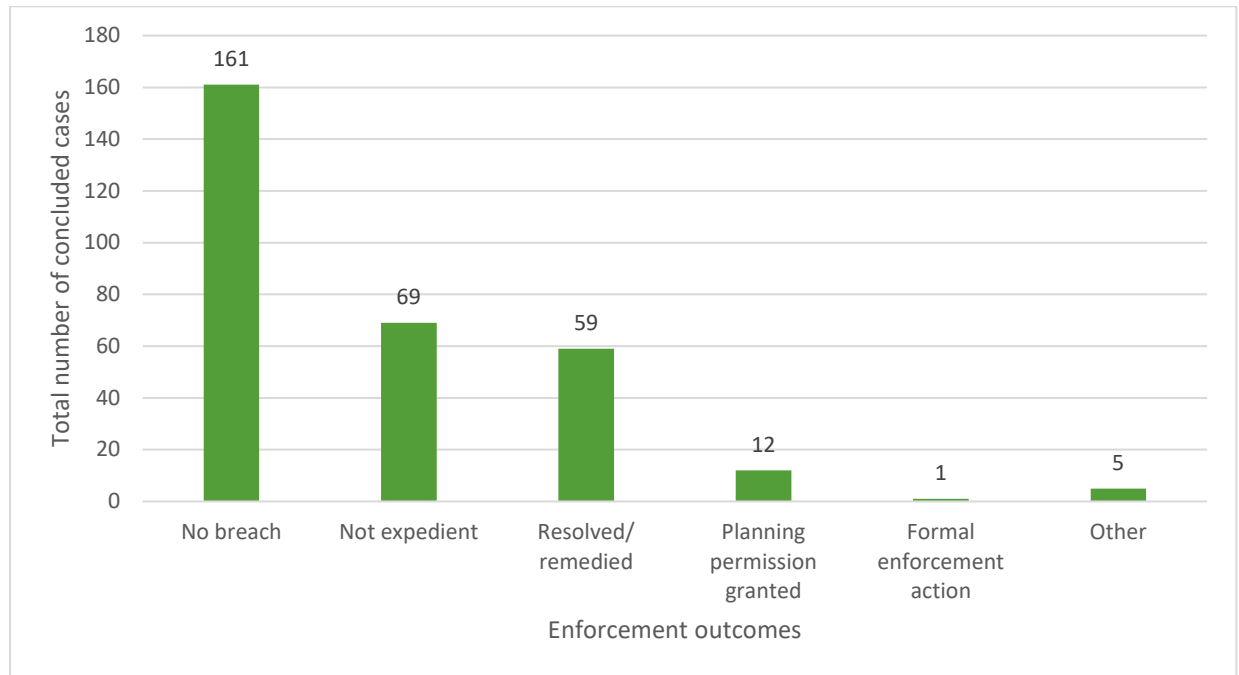
Outcomes

The most frequently reported outcome in tree protection enforcement cases was a finding of no breach which was reported in 52% of cases. The second most common outcome which was reported in 22% of cases was a conclusion that it would not be 'expedient' to investigate the alleged breach any further. This was followed closely by 18% of cases which were classified as remedied or resolved.

Formal enforcement action⁶³ was only reported to have been taken in one case (a breach of condition notice was issued) and none of the councils have pursued any prosecutions within a three year period. The fact that only one council has taken formal enforcement action has the potential to support concerns about the approach of councils in this area, however this cannot be determined without review of the casework.

⁶³ The issuing of an Enforcement Notice or the service of a Breach of Conditions Notice. Failure to comply with either constitutes an offence.

Figure 12: Breakdown of council enforcement outcomes in tree protection cases over a three year period during 2019-2022



6.3 Cases closed as ‘Not Expedient’

When considering the overall outcome trends, it is worth noting that nearly one fifth of the overall number of tree protection cases were closed as ‘not expedient’, with percentage variation between the type of breaches reported.

Over a three year period:

- 15% of reported planning conditions breaches;
- 22% of reported TPO breaches; and
- 42% of reported conservation area breaches resulted in a ‘not expedient’ outcome.

This area is of particular interest, as having determined this category of outcome, it is indicative the council has established a breach but having applied the expediency test has decided not to take further action. The level of tree protection cases determined as ‘not expedient’ appears to sit somewhat at odds with the priority outwardly stated by councils to be given to the protection of trees. I consider that it would be valuable for the Department and councils to examine the recorded considerations and develop an analysis of whether the reasoning is in keeping with best practice in enforcement guidance and council priorities.

Furthermore, given the ‘direct offence’ nature of TPO and conservation area breaches, it would be useful to establish the extent to which ‘expediency’ should be

applied and whether there are repeat issues that could be identified and acted upon. For example, whether the maintenance of records including identifying that orders had not been confirmed by the DOE (as outlined in [Section 2](#)), or a potential lack of public knowledge about the processes to apply for works to trees (as outlined in [Section 3](#)) are repeat factors.

I also consider that it would be valuable to include analysis of the small number of 'other' outcomes, in which various descriptions of outcomes were presented. It was concerning that in one reported TPO breach, the closure category of 'immune' was used when this is not an outcome that is applicable to a 'direct offence'.

There is also a notable variation across the councils in relation to the proportion of cases with the outcome 'not expedient'. One council reached this outcome in 38% of its cases whereas 3 others reported a significantly smaller proportion of 'not expedient' outcomes at just 12%. Given this level of variation I recommend that when examining the recorded reasoning and overall analysis for 'not expedient' outcomes, that the Department and councils consider whether there are differences in council approaches to apply the expediency test.

The analysis of 'not expedient' and 'other' outcomes in reported breaches of tree protection cases may also contribute to work recommended by the NIAO in the area of planning enforcement. Within its 2022 review of planning in Northern Ireland, the NIAO examined overall trends in all enforcement cases across Northern Ireland between 2015-2020.⁶⁴ It noted a substantial variation in percentages of outcome type across councils (including non-expedient cases) and recommended that the Department and the councils carry out further investigations to ensure that enforcement cases are being processed consistently in Northern Ireland.

6.4 Council enforcement strategies and procedures

As outlined in [Section 1](#), all councils have planning enforcement strategies in place and have the autonomy to set local priorities. In addition to identifying areas of concern from the data provided on enforcement activity, I note several issues that require further consideration in respect of council enforcement strategies and procedures, specific to tree protection and wider enforcement policy and practice.

Factors to be taken into account when assessing expediency

Expediency is a key concept within planning enforcement as councils only take enforcement action when they consider that it is expedient to do so. Within the enforcement strategies reviewed by my Office, it is noted that some of the councils refer to factors taken into account when assessing expediency, whereas others do not. I would encourage all councils to review their strategies to ensure clear information is provided on the expediency test, including the range of factors taken into account when assessing whether or not to take enforcement action.

⁶⁴ [NIAO Report - Planning in NI.pdf \(niauditoffice.gov.uk\), p.32-34](#)

Sign off procedures for 'not expedient' decisions

None of the councils include any detail within their enforcement strategies in relation to their sign off procedures for 'not expedient' decisions. It is not clear if senior or other verifying council officers are involved in signing off or reviewing these decisions. Given the level of discretion in this area, I would encourage all councils to consider whether there is sufficient oversight of 'not expedient' decisions within their strategies and procedures.

Although not specific to breaches of tree protection, it is of note that I reported earlier this year on an enforcement planning case in which I found that the council did not document full and accurate reasons on why it did not consider it expedient to take enforcement action which I considered was maladministration.⁶⁵

Tree specific enforcement policies

The local council enforcement strategies are broad in scope and cover all areas of planning enforcement. I note that some local authorities in England have implemented enforcement policies specific to tree protection to supplement the main council planning enforcement strategy and I would encourage local councils to consider whether it may be beneficial to implement similar policies.

Reporting Tree Protection Breaches

Despite having these significant enforcement powers to protect trees, I note that only five of the councils reference within their tree preservation sections that it is a criminal offence to carry out works to protected trees without consent, whereas others do not make any reference to the consequences of breaches. Furthermore, none of the councils publish any information within the tree preservation sections of their websites regarding the processes which members of the public should follow when reporting suspected tree protection breaches. Whilst most of the councils do publish information in relation to the reporting of general planning breaches within the planning enforcement sections of their websites, I consider that it is important to also include or signpost this information within the tree preservation sections of their websites.

I also note that the new planning portal has the functionality to accept online planning enforcement complaints⁶⁶ and some councils do refer to this within the planning enforcement sections of their websites. I would encourage all of the councils to ensure that they highlight or signpost this functionality within the tree preservation sections of their websites.

⁶⁵ [NIPSO s44 Investigation Report ref202002188 - 30 March 2023](#)

⁶⁶ [Northern Ireland Public Register \(planningsystemni.gov.uk\)](#)

6.5 Monitoring of Tree Protection Enforcement Activity by the Department

As part of its oversight and monitoring role, the Department currently publishes quarterly and annual statistical bulletins which contain data in relation to a number of aspects of planning including the following data on enforcement cases⁶⁷:

- The number of enforcement cases opened by councils;
- The number of enforcement cases closed by councils;
- The number of enforcement cases concluded by councils;
- Enforcement case conclusion times;
- The percentage of enforcement cases closed by councils within 39 weeks; and
- The number of court actions taken by councils (including a breakdown of prosecutions and convictions).

This data is broken down by council area and, whilst it is useful for identifying broad overall trends, it is limited by the fact that it is not broken down by types of enforcement case. The Department do not collate or publish enforcement data which is specific to tree protection cases. I note that an Assembly Question seeking to establish regional enforcement figures on reported tree protection breaches was not answered, as the figures were available only at council level.⁶⁸

The Department should consider routinely collating and publishing enforcement data which is specific to tree protection cases. As well as making it easier for the Department to carry out its monitoring role, the availability of this data may also serve to increase public confidence that enforcement in this area is being taken seriously.

⁶⁷ [Planning activity statistics | Department for Infrastructure \(infrastructure-ni.gov.uk\)](https://www.infrastructure-ni.gov.uk/planning-activity-statistics)

⁶⁸ See AQW6798/12-22 - [Written Questions Search Results \(niassembly.gov.uk\)](https://www.niassembly.gov.uk/written-questions-search-results)

Section 6 Enforcement Activity- recommendations

Recommendation 22: The Department and councils should examine the reported tree protection breaches closed as 'not expedient' and 'other', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

Recommendation 23: Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for 'not expedient' decisions are robust.

Recommendation 24: Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

Recommendation 25: Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.

Recommendation 26: The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.



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Date: 20 October 2023

Owninitiative@nipso.org.uk

By email only

Your Ref: 202001965
Our Ref: NIPSO Report Trees

Dear Sir/Madam,

The Chief Executive has requested that I respond on his behalf to your letter of 29 September 2023. Please see the below response from Lisburn & Castlereagh City Council in relation to your overview report 'Tree Protection: Strengthening our Roots'.

The report and Council comments on the factual accuracy of the recommendations are being tabled to our Planning Committee (for noting) on 06 November 2023.

I can also confirm that the Tree and Woodland Strategy was approved at a meeting of the Leisure and Community Services Committee on 07 February 2023 and is in operation from that date. It can also be found from 02 October 2023 on the Council website at:

<https://www.lisburncastlereagh.gov.uk/things-to-do/parks-and-open-spaces/the-big-tree-project>

Yours faithfully

Conor Hughes
Head of Planning and Capital Development

(Enc)

Section 1 Strategies, Policies and Procedures - recommendations

Recommendation 1

All councils should develop and implement tree strategies which ensure the relevant functions across the council are aligned to the agreed objectives. Councils which already have tree strategies in place should review their strategies to ensure that they are comprehensive.

Lisburn & Castlereagh City Council has a 'Tree and Woodland Strategy' which outlines the Council's approach to managing and preserving the existing trees on its land. The Strategy sets objectives for ten years and will be subject to annual and bi-annual monitoring. As the Strategy is only in operation from February 2023 it is considered to be current and comprehensive and that a review is not required at this time.

The Strategy refers to trees protected through Tree Preservation Orders. The Council's Planning Unit is committed to conserving and retaining existing trees and other features where it is considered that they have landscape or amenity value and uses its powers to protect trees where necessary. This is in line with its duties as set out under the Planning Act (Northern Ireland) 2011.

Recommendation 2

Councils should review their schemes of delegation for planning to ensure that decision making processes in respect of TPOs are being given the appropriate level of priority and are in line with the objectives set out within tree strategies. Councils should also ensure that their Schemes of Delegation are clear and accurate, including specifying exactly what matters are presented to, and decided by, Committee in this area.

The Council's Scheme of Delegation sets out clearly which functions under the Planning Act are delegated to an authorised officer (Senior Planner or above) in relation to trees as follows:

- The making of a Tree Preservation Order
- Confirmation of a provisional Tree Preservation Order
- The serving of a provisional Tree Preservation Order
- The investigation of breaches of planning control proceedings through the issuing of planning contravention notices, temporary stop notices, enforcement notices, stop notices, breach of condition notices, fixed penalty notices, Replacement of Trees Notice and all other powers under Part 5 of the Planning Act (Northern Ireland) 2011 including powers of entry, commencement of proceedings in a Magistrates Court and application to the High Court for an injunction.

Although the tree function is fully delegated, the Planning Committee is briefed on request, or where there has been public interest for example the reporting of on-going enforcement investigations/proceedings. The scheme of delegation has been recently reviewed and subject to consultation with Members. No issues were raised in respect of trees.

Recommendation 3

Councils should ensure that they have their own procedural guidance in place to supplement the legislative framework around trees which are subject to TPOs and conservation area protection. Given the difference in the level of protection afforded, the guidance should also set out clearly the circumstances TPOs should be used instead of, or alongside, planning conditions to best secure the long term protection of trees.

This Council provides guidance on the planning pages of its website to advise on its Tree Preservation Orders, Trees in Conservation Areas and Trees protected by planning conditions.

The legislation provides a basis for planning approvals on a site protected by a TPO to supersede the TPO protection, where considered appropriate. This applies in respect of full planning permissions and approvals of reserved matters.

It should also be noted that it is not lawful (in respect of the six legal tests for planning conditions) to protect trees on a site by virtue of both a planning condition and a TPO, as this would be duplication of protection already afforded by a TPO.

Schedule 3 2(c) of the Planning (Trees) Regulations (NI) 2015 advises that the Order does not apply where a planning application has been approved and therefore there is no need to submit a consent for works.

Should a planning application be received and it is brought to our attention that there are trees that may be worthy of protection on the site, the Council will apply its six criteria as outlined in the Plan Strategy Supplementary Planning Guidance to decide whether or not to impose a TPO.

If the TPO is confirmed, the planning application will be required to be considered in the context of the trees that have been identified for protection. Should the trees not meet the six criteria to be considered worthy of TPO protection, the case officer may decide to protect the trees through planning conditions instead.

Recommendation 4

The Department should update and issue guides regarding the protection of trees, to reflect the current roles and responsibilities of the Department and the councils. The Department should also develop its own procedural guidance on areas in which it has retained responsibilities.

No guidance has issued from the Department nor is the Working Group (see below) supported or attended by the Department.

Recommendation 5

The Department should consider how it could work more closely with the councils to provide a greater level of support and establish mechanisms for sharing good practice and expertise. This could include issuing best practice guidance for councils in relation to developing effective Tree Strategies and the agreed mechanism to consider my report and recommendations, and collectively develop an action plan.

The Council participated in a Council-wide Tree 'Working Group' which was established early in 2017 and which met quarterly. The Working Group continued to meet up until late 2019 but as a result of the response to the COVID 19 pandemic and resources having to be focused into other areas, it was postponed. A meeting has been convened for October 2023 to continue this important forum for discussion in respect of consistency of approach to meet our duties as appropriate.

Councils will continue to feedback to the Department on good practice identified by this group through the Strategic Planning Group forum. This Council will participate in any working group convened by the Department arising out of this recommendation.

Section 2 Tree Preservation Orders – recommendations

Recommendation 6

Councils should carry out detailed reviews of their TPO records to ensure that all of the TPOs which are in place remain valid. Councils should also ensure that they develop and implement processes for the regular review of their TPO records which should also be supported by carrying out site visits.

On transfer of planning powers to Councils, approximately 60 TPOs transferred to the Council, none of which had been reviewed by the Department since their implementation.

Given the age of a large number of these TPOs, it is inevitable that the situation on site has changed considerably. Some have planning approvals and are built on. Others have submitted consents over the years which may have included felling and naturally the health and condition of certain trees will have deteriorated significantly.

No monies transferred in respect of this area of work and this presents an additional cost burden to Councils in terms of assessing existing TPOs, including undertaking health and condition surveys by a qualified arboriculturist, the administrative resource required in serving and publicising provisional TPOs, assessing consent for works applications, tree enforcement investigations, and responding to consultations on planning applications where there are TPO trees on site or which may be affected by the proposal.

This Council only has one dedicated Tree Officer, who is a chartered Town Planner within the Local Development Plan team, and therefore the Council must allocate it work priorities as appropriate.

Consideration will be given to a programme of work but this is subject to Member agreement and dependant on whether additional resource becomes available. In the interim a sample of 5 will be reviewed to better understand the scope and nature of the work required.

This comment is framed however in the context that the process of review is complicated further by the lack of legislation to enable councils to revoke any Order

served by the previous planning authority. It would have been useful if such an exercise in relation to monitoring of Orders had been carried out prior to transfer in 2015'

Recommendation 7

All councils should electronically map TPOs and conservation areas within their area and provide the public with online access to the TPO register and associated documentation.

This Council has in place an interactive map which shows the location of sites protected by a TPO. It includes an address which is linked to a reference number should a member of the public require any further information on the detail of the record. Additionally the interactive map also shows the boundary of the Council's three conservation areas.

Recommendation 8

The Department should take the lead in developing a regional GIS map showing the locations of all TPOs and conservation areas in Northern Ireland. The regional map should be regularly updated and easily accessible to the public in an online format.

The Council would have no objection in principle to sharing data for a regional dataset subject to the appropriate governance and sharing agreements being put in place.

Recommendation 9

Councils should develop and document the methodology (including the potential use of valuation software) used to assess the 'amenity' value of trees.

The Council assesses the suitability of a TPO for a site using the six criteria outlined in its Plan Strategy – Supplementary Planning Guidance. This guidance is developed consistent with established good practice and learned evaluation judgement. This recommendation may not be necessary if most Councils follow similar methodologies.

Recommendation 10

In its 2022 Review of the Implementation of the 2011 Act, the Department committed to considering whether there is a need for it to provide further guidance for councils in relation to certain TPO terms. My report also supports the need for further guidance on key terms, and I recommend the Department proceeds to issue this.

There is no advantage in Councils devising their own TPO terms. This is a duplication of resources. The legislation applies to all Council Areas and the Department has the authority to issue regional guidance.

Recommendation 11

All councils should review the content of their websites to ensure that they provide clear and accurate information in relation to the processes which members of the public can follow when requesting TPOs. In addition to ensuring the process to request TPOs is accessible to the public, councils should also consider what mechanisms are in place internally to initiate TPO requests effectively.

Lisburn & Castlereagh City Council is currently reviewing the content of its website and this includes the information in relation to TPOs. The Planning Unit has provided an update which links to the recently updated Planning Portal which allows online submission of a request for consent for works or request for a TPO. This is likely to be the shared experience of at least 10 Councils and this recommendation may no longer be required.

Section 3 Applications for Works to Protected Trees – recommendations

Recommendation 12

Councils which do not currently use application forms for processing applications for works to protected trees should develop standard application for works forms.

Lisburn & Castlereagh City Council has developed its own application form for consent for works to protected trees however as advised above, this should be replaced by the Planning Portal as the main tool for ensuring applications are made.

Recommendation 13

Councils should review the content of their websites to ensure adequate information is provided to members of the public about the requirement to apply for works to protected trees, how to apply and that the application process is accessible.

The content of the planning pages on the website relating to this matter contain adequate information, and as referenced above, we have provided the link to the Planning Portal system for such requests.

Recommendation 14

Councils should provide clarity in relation to the use of independent evidence to support applications for works to protected trees. The circumstances in which independent evidence is required and the parties responsible for obtaining it should be clarified.

Applicants proposing to undertake work to protected trees are advised that they may wish to seek advice from a qualified tree surgeon who can make appropriate recommendations for work. However there is no legislative requirement for the Council to insist on the use of qualified arboriculturists/tree surgeons in this regard,

but where it appears to the Council to be advisable, we will request as appropriate on a case-by-case basis.

Recommendation 15

Councils should explore the potential to publish details of applications for works to protected trees in an accessible format

The Council will consider this recommendation further in respect of applications for works to protected trees. For future consent applications, the new Planning Portal (referred to previously) will capture such consents, which is why it is considered important for this to be the sole vehicle for submitting consents.

The Council already has a requirement to hold a register in relation to TPOs which includes requests for consent to carry out works (under Section 242 of the Planning Act (NI) 2011).

Recommendation 16

Councils should explore the potential to introduce community notification procedures for residents likely to be affected by proposed works to protected trees.

There is no legislative basis for the Council to make these applications public and no ability in legislation to consider representations in the context of consent for works to protected trees.

The Council in implementing a full or provisional TPO serves notice on the owner, a copy of the order is attached to the tree(s) in an obvious location, and neighbours are also be notified by letter.

Whilst it is acknowledged there may be a wider public amenity issue in certain circumstances, it considers that to introduce such procedures would raise expectations that neighbouring properties can object to the works and in terms of the legislation they are not material for the Council's decision making.

The Council considers that this would require an amendment to legislation. It should also be noted that there is no legislative basis for a neighbour/objector to partake in any appeal brought by an applicant who has had an application for consent for works to protected trees refused by the Council.

The Council considers that this would impose another significant burden on the Planning Unit in terms of administrative and Tree Officer resources, where there is no legislative basis. This recommendation may need to be redrafted or withdrawn.

Recommendation 17

The Department should consider issuing best practice guidance in relation to publication and notification procedures (this could sit within the wider guidance recommended in Recommendation 5).

The Council refers you to its comments on Recommendation 16 above.

Section 4 Protected Trees on Council Owned Land - recommendations

Recommendation 18

The Department and councils should agree and issue clear procedural guidance in relation to the processes which councils should follow when they seek to carry out works to protected trees on their own land.

See comment under Recommendation 10.

Recommendation 19

The Department should develop a best practice approach on the independent investigation of reported breaches of tree protection by councils. It should update its enforcement practice notes to include the procedural steps that should be taken when the planning authority (council or the Department) is suspected of the breach. The Department should also consider whether further legislation is required in this matter to provide the necessary clarity and independence in the decision-making process.

As above

Section 5 Statutory Undertakers- recommendations

Recommendation 20

The Department should issue best practice guidance on the exemptions for statutory undertakers which are contained within Schedule 3 of the 2015 Regulations. Guidance should include that statutory undertakers liaise with the relevant planning authorities prior to carrying out work to a protected tree and comply with best arboricultural practice in undertaking the work. Statutory undertakers should also report when work has been carried out without notification and review whether the work carried out was necessary and undertaken in a way that was least damaging.

This approach for Departmental guidance in respect of exemptions for statutory undertakers would require a legislative basis to be meaningful. This recommendation may need to be withdrawn or redrafted.

Recommendation 21

Councils should introduce mechanisms to facilitate increased levels of engagement and co-operation with statutory undertakers in relation to the protection of trees.

Linked to the comments above this may need to be redrafted.

Section 6 Enforcement Activity- recommendations

Recommendation 22

The Department and councils should examine the reported tree protection breaches closed as 'not expedient' and 'other', to establish if factors relied upon within the recorded reasoning are in keeping with enforcement guidance and council priorities, and whether there are repeat issues that can be acted upon to prevent future breaches. This should include examining the rigour of the investigation and whether sufficient effort was made to establish a breach.

Lisburn & Castlereagh City Council takes its planning enforcement duties very seriously and prioritises breaches regarding protected trees as outlined within its published Enforcement Strategy.

It should be noted that in terms of having sufficient evidence to establish a direct offence through prosecution, it is highly unlikely that a member of the public will admit to such an offence, unless there is specific evidence which attaches them directly to the crime (eg video footage etc).

Each case is likely to be different and to undertake an historical review is impractical and unlikely to objectively achieve better practice.

Reference is made to shared experience through the tree working group. There is also the opportunity for information sharing on best practice through the enforcement working group. This forum may be best placed to assist the Department in drafting regional guidance that would assist in informing periodic reviews of enforcement strategies.

Recommendation 23

Councils should review their enforcement strategies to ensure clear information is provided on the expediency test and that oversight procedures for 'not expedient' decisions are robust.

As above.

Recommendation 24

Councils should consider developing specific Tree enforcement policy to supplement the overall council planning enforcement strategy.

This is already provided for within legislation and the Council's existing Enforcement Strategy.

Recommendation 25

Councils should update the tree preservation sections of their websites to highlight that it is a criminal offence to carry out works to protected trees without consent. The websites should also contain clear information on how members of the public can report suspected tree protection breaches.

The Council will update this website reference in respect of directing the public to how to report a suspected breach in relation to protected trees.

Recommendation 26

The Department should collate, monitor and publish enforcement data which is specific to tree protection enforcement cases.

The Council will engage with the Department on this matter if this recommendation is taken forward.

It should however be noted that in certain planning enforcement cases regarding protected trees the Council cannot evidence who committed the offence and whether it was a deliberate act, in which case a prosecution cannot be brought.

In these cases the remedy is to seek replanting through a replanting notice and then enforcing its compliance as appropriate (see Comment provided under Recommendation 22).

Committee:	Planning Committee
Date:	04 December 2023
Report from:	Head of Planning and Capital Development

Item for:	Noting
Subject:	Item 8 – Statutory Performance Indicators – October 2023

1.0 **Background**

1. The Planning Act (Northern Ireland) 2011 sets out the legislative framework for development management in NI and provides that, from 1 April 2015, Councils now largely have responsibility for this planning functions.
2. The Department continues to have responsibility for the provision and publication of official statistics relating to the overall development management function, including enforcement. The quarterly and annual reports provide the Northern Ireland headline results split by District Council. This data provides Councils with information on their own performance in order to meet their own reporting obligations under the Local Government Act (Northern Ireland) 2014.

Key Issues

1. The Department for Infrastructure has provided the Council with monthly monitoring information against the three statutory indicators. A sheet is attached (**see Appendix**) summarising the monthly position for each indicator for the month of October 2023.
2. This data is invalidated management information. The data has been provided for internal monitoring purposes only. They are not validated official statistics and should not be publicly quoted as such.
3. Members will note that the performance against the statutory target for local applications for October 2023 was 45.3 weeks with performance year to date noted to be 40.7 weeks. Our continued focus on reducing the number of older applications from 2019, 2020 and 2021 means it is unlikely that the Council will return to good performance for local applications in the short term but the implementation of a structural review and improvement plan should see an overall improvement against this target by the end of the financial year.
4. It is important to note that legal challenges, changes in our reporting requirements, the introduction of a new IT system, and other resource constraints have cumulatively impacted on our ability to improve performance in relation to local applications.
5. Performance in relation to major applications for October 2023 was 0 weeks as no decisions for major applications issued that month. One application was planned to issue but was delayed as a consequence of a Section 76 planning agreement not being progressed.

	<p>6. That said, performance year to date noted to be 46.9 weeks. The types of major applications that remain with the Unit are complex in nature and involve protracted consultation processes. These are being managed and it remains in the work programme a target to bring at least one major application forward to Committee each month.</p> <p>7. The challenge in achieving good performance consistently can depend on a number of unrelated factors all of which can mask good performance generally. One significant factor is the requirement for many of the applications in this category requiring legal agreements. Our practice for dealing with agreements is under review.</p>	
2.0	<p><u>Recommendation</u></p> <p>It is recommended that the Committee notes the information.</p>	
3.0	<p><u>Finance and Resource Implications</u></p> <p>There are no finance or resource implications.</p>	
4.0	<p><u>Equality/Good Relations and Rural Needs Impact Assessments</u></p>	
4.1	Has an equality and good relations screening been carried out?	No
4.2	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out</p> <p>This is a report outlining progress against statutory targets and EQIA is not required.</p>	
4.3	Has a Rural Needs Impact Assessment (RNIA) been completed?	No
4.4	<p>Brief summary of the key issues identified and proposed mitigating actions <u>or</u> rationale why the screening was not carried out.</p> <p>This is a report outlining progress against statutory targets and RNIA is not required.</p> <p>.</p>	

Appendices:

Appendix 8 – Statutory Performance Indicators – October 2023

Statutory targets monthly update - October 2023 (unvalidated management information)

Lisburn and Castlereagh

DATA HIGHLIGHTED YELLOW IS EXPERIMENTAL

	Major applications (target of 30 weeks)				Local applications (target of 15 weeks)				Cases concluded (target of 39 weeks)			
	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 30 weeks	Number received	Number decided/withdrawn ¹	Average processing time ²	% of cases processed within 15 weeks	Number opened	Number brought to conclusion ³	"70%" conclusion time ³	% of cases concluded within 39 weeks
April	2	1	49.6	0.0%	56	45	57.8	11.1%	27	7	44.1	71.4%
May	0	1	102.2	0.0%	67	71	35.6	15.5%	28	25	95.8	48.0%
June	0	1	44.2	0.0%	75	71	33.6	14.1%	28	16	20.7	93.8%
July	0	-	-	-	62	8	44.2	25.0%	13	12	27.6	83.3%
August	1	-	-	-	56	79	37.2	16.5%	23	7	41.9	71.4%
September	0	1	25.6	100.0%	47	62	43.4	11.3%	39	31	23.4	90.3%
October	0	-	-	-	65	62	45.3	8.1%	16	23	26.8	95.7%
November	-	-	-	-	-	-	-	-	-	-	-	-
December	-	-	-	-	-	-	-	-	-	-	-	-
January	-	-	-	-	-	-	-	-	-	-	-	-
February	-	-	-	-	-	-	-	-	-	-	-	-
March	-	-	-	-	-	-	-	-	-	-	-	-
Year to date	3	4	46.9	25.0%	428	398	40.7	13.3%	174	121	29.9	80.2%

Source: NI Planning Portal

Notes:

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

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

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