



July 7th, 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, 17th July 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 19 June, 2023

📄 *PC 19.06.2023 - Draft Minutes For Approval.pdf* Page 1

4.0 Report from the Head of Planning and Capital Development

4.1 Review of Scheme of Delegation

📄 *Item 2 - Review of Scheme of Delegation.pdf* Page 8

📄 *Appendix 2 - Planning Scheme of Delegation.pdf* Page 12

4.2 Appeal Decision - LA05/2021/0341/O

📄 *Item 3 - Appeal Decision - LA0520210341O - FINAL.pdf* Page 16

📄 *Appendix 3 - Appeal decision LA05 2021 0341 O.PDF* Page 20

4.3 Appeal Decision - LA05/2020/0785/O

📄 *Item 4 - Appeal Decision - LA0520210785O - FINAL.pdf* Page 41

📄 *Appendix 4 - Appeal Decision - LA05 2020 0785 O.PDF* Page 45

4.4 Notification by Telecommunication Operator(s) of Intention to Utilise Permitted Development Rights

📄 *Item 5 - Notifications from an Operator in respect of intention_.pdf* Page 56

📄 *Appendix 5 - List of Notifications from Telecommunication Operators in r...pdf* Page 59

4.5 Live Applications

📄 *Item 6 - Update report in relation to Older Applications.pdf* Page 60

4.6 Number of Appeals Decided in Previous Financial Year

📄 *Item 7 - Update report in relation to Appeals.pdf*

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📄 *Appendix 7 - Appeal Decisions - 01042022 - 31032023.pdf*

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5.0 CONFIDENTIAL BUSINESS - "IN COMMITTEE"

5.1 Draft Plan Strategy Update

Confidential due to containing information in relation to which a claim to legal professional privilege could be maintained in legal proceedings.

6.0 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, 19 June, 2023 at 10.00 am**PRESENT IN CHAMBER:**

Alderman M Gregg (Chairman)

Aldermen O Gawith and J Tinsley

Councillors D Bassett, 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)
 Principal Officers (RH & LJ)
 Senior Planning Officers (MB & RT)
 Member Services Officers

Mr B Martyn (Cleaver Fulton Rankin) – Legal Advisor

Adjournment of Meeting

At the outset, the Chairman, Alderman M Gregg, advised that it was necessary to adjourn the meeting for 15 minutes to allow for the arrival of the Legal Advisor.

Commencement of Meeting (10.15 am)

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 (00:02:42)

It was agreed to accept an apology for non-attendance at the meeting on behalf of the Vice-Chairman, Councillor U Mackin.

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 (00:03:51)

The following declaration of interest was made:

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2. Declarations of Interest (Contd)

- Alderman O Gawith in respect of planning application LA05/2022/0272/O, given that he had discussed some details of the application with the applicant and his agent and, therefore, could be viewed as having already formed an opinion.

3. Minutes of Special Meeting of Planning Committee held on 27 April, 2023 (00:04:35)

It proposed by Alderman O Gawith, seconded by Alderman J Tinsley and agreed that the minutes of the special meeting of Committee held on 27 April, 2023 be confirmed and signed.

4. Report from the Head of Planning & Capital Development (00:05:05)4.1 Schedule of Applications (00:05:14)

The Chairman, Alderman M Gregg, advised that there was one major application and three local called-in applications on the schedule for consideration at the meeting.

4.1.1 Applications to be Determined (00:06:15)

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.

As this was the first meeting of the Planning Committee following the recent Local Government Elections, the Head of Planning & Capital Development advised that there was a requirement for Members who were new to the Committee to undertake mandatory training. He confirmed that this had taken place and that all Members present were eligible to participate in the meeting, having attended this training.

The Head of Planning & Capital Development advised that, due to the late submission of information by a third party objector in respect of the major application, LA05/2022/0830/F, this application was being moved to the end of today's schedule. An update would be provided on the late representation received, advice around that and the implications for the decision-making process.

- (i) LA05/2022/0272/F – Proposed two detached dwellings with provision for future garages at gap between 42 Halfpenny Gate Road, Moira and Broomhedge Gospel Hall, 40a Halfpenny Gate Road, Moira (00:08:55)

Having declared an interest in this application, Alderman O Gawith left the meeting at this point (10.26 am).

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

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- (i) LA05/2022/0272/F – Proposed two detached dwellings with provision for future garages at gap between 42 Halfpenny Gate Road, Moira and Broomhedge Gospel Hall, 40a Halfpenny Gate Road, Moira (Contd)

The Committee received Mr S Wilson 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, a number of Members stated their concern that were two conflicting policies that applied to this application. The Head of Planning & Capital Development referred to a number of planning appeal decisions on similar cases that were referenced in the Planning Officer's report and stated that it may be beneficial for Members to be provided with copies of those appeal decisions to assist in the decision-making process. He asked if Members were minded to defer the application in order that Officers could provide further information on the policy context and the relevance of this to the decision-making process.

"In Committee"

It was proposed by Alderman J Tinsley, seconded by Councillor N Trimble and agreed to go "into committee", in order that legal advice could be sought. Those members of the press and public in attendance left the meeting (11.27 am).

The Council's Legal Advisor, as well as the Head of Planning & Capital Development, provided advice to Members.

Resumption of Normal Business

It was proposed by Alderman J Tinsley, seconded by Councillor N Trimble and agreed to come out of committee and normal business was resumed (11.43 pm).

Debate (Contd)

It was proposed by Alderman J Tinsley and seconded by Councillor N Trimble, that this application be deferred for one month to allow for further information to be provided in respect of planning appeal decisions on similar cases and to tease out the relevant planning policies.

Councillor P Catney proposed that the planning application be proceeded with now and put to the vote.

The Chairman, Alderman M Gregg, pointed out that the next meeting of the Committee was scheduled to take place in two weeks' time. Alderman J Tinsley amended his proposal to read that the application be deferred 'to the next meeting'. This being the case, Councillor Catney withdrew his proposal.

The proposal in the name of Alderman J Tinsley was put to the meeting and unanimously agreed.

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Adjournment of Meeting

The Chairman, Alderman M Gregg, declared the meeting adjourned for a comfort break at this point (11.48 am).

Resumption of Meeting

The Chairman, Alderman M Gregg, declared the meeting resumed (11.56 am).

Alderman O Gawith returned to the meeting at this point. Councillor D J Craig and the Director of Regeneration and Growth did not return to the meeting following the comfort break.

- (ii) LA05/2021/1112/O – Proposed new dwelling in a small gap site within a continuously built frontage and which also forms part of an established cluster at lands to the west of 6 Chapel Road, Glenavy (01:13:43)

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

The Committee received Ms L Johnson 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.

The Head of Planning & Capital Development advised that paragraph 38 of the Planning Officer's report should have referred to Policy CTY2a, not CTY2.

Debate

During debate, Councillor N Trimble stated his agreement with the Planning Officer's recommendation.

Vote

Having considered the information provided within the report of the Planning Officer, the Committee agreed, on a vote being taken, to adopt the recommendation to refuse the application, the voting being 8 in favour and 1 against.

- (iii) LA05/2022/0747/RM – Proposed infill of two dwellings and garages between 15 and 21 Church Road, Lisburn (01:46:52)

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

The Committee received Ms D Neill in order to speak in opposition to the application. A number of Members' queries were addressed.

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

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- (iii) LA05/2022/0747/RM – Proposed infill of two dwellings and garages between 15 and 21 Church Road, Lisburn (Contd)

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.

Adjournment of Meeting

Prior to adjourning for lunch, the Head of Planning & Capital Development provided Members with a copy of additional information that had been received at 1.42 am from a third party objector in respect of the major application on today's schedule, LA05/2022/0830/F, for their perusal.

The Chairman, Alderman M Gregg, declared the meeting adjourned for lunch (12.50 pm).

Resumption of Meeting

The Chairman, Alderman M Gregg, declared the meeting resumed (1.34 pm).

The Principle Officer (Local Development Plan and Planning Enforcement), joined the meeting at this stage.

- (iv) LA05/2022/0830/F – Demolition of existing buildings/structures and erection of mixed use development comprising mixed tenure residential development comprised of 36 dwelling houses, 55 apartments and 2 maisonettes; 6 Class B industrial/employment units (total 1,098 sq. metres) with service yard; 3 flexible work spaces/WiFi hubs (total 300 sq. metres); 2 take away coffee pod units; private, communal and public space, landscaping, cycle and car parking, associated site works and infrastructure and access arrangements from Moira Road at lands at 160 Moira Road, Lisburn (02:08:24)

The Head of Planning & Capital Development referred to additional information that had been received at 1.42 am from a third party objector in respect of the above application which had been circulated to Members prior to lunch. He advised that, in order to allow for full and proper consideration to be given to the information, this application was being withdrawn from today's schedule and would be considered at the July meeting. The applicant and third party objector had been notified accordingly. In response to comments by Councillor P Catney regarding the receipt of information at such a late stage, the Head of Planning & Capital Development stated that it was incumbent on the Committee to consider all information, hence the need to withdraw the application from the schedule to allow sufficient time for Officers to prepare a report for presentation to Members. This circumstance was not common but did occur occasionally.

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4.2 Statutory Performance Indicators – March 2023 and Year End (02:11:35)

The Head of Planning & Capital Development having addressed a number of queries raised, it was proposed by Alderman J Tinsley, seconded by Councillor N Trimble and agreed to note information provided in respect of statutory performance indicators for March 2023 and Year End.

4.3 Appeal Decision – LA05/2017/0772/F (02:28:40)

It was proposed by Alderman J Tinsley, seconded by Alderman O Gawith and agreed to note the information set out the report in respect of the decision of the Planning Appeals Commission regarding the above planning application.

4.4 Appeal Decision – LA05/2020/0613/F (02:30:31)

It was proposed by Alderman O Gawith, seconded by Councillor G Thompson and agreed to note the information set out the report in respect of the decision of the Planning Appeals Commission regarding the above planning application.

The Head of Planning & Capital Development agreed to provide a report to a future meeting of the Committee in respect of the percentage of planning appeals won and lost in the previous financial year.

4.5 Notification by Telecommunication Operator(s) of Intention to Utilise Permitted Development Rights (02:34:15)

It was proposed by Councillor N Trimble, seconded by Alderman O Gawith and agreed to note from the report, information regarding notification by telecommunication operators to utilise Permitted Development Rights at a number of locations.

Alderman J Tinsley raised concerns in respect of the notification of erection of a number of poles on Hannahstown Road, which was on the Ulster Grand Prix circuit. The Head of Planning & Capital Development advised that, if the proposal was in accordance with regulations, the Council could not object and it would not be normal for the Council to advise telecommunication operators that their proposal was on a race circuit. However, he agreed to seek clarification from DfI Roads Lisburn Section Office on whether a separate permit was required from DfI Roads for the carrying out of this work.

4.6 Update on Local Development Plan (02:37:54)

Members were provided with an update report in respect of the Local Development Plan. The Head of Planning & Capital Development provided a verbal update also and, together with the Principal Officer for Local Development Plan and Planning Enforcement (LJ), answered a number of queries raised. It was proposed by Councillor P Catney, seconded by Councillor N Trimble and agreed to note that:

- (a) the Local Development Plan Team would undertake the requested fact checking and respond to DfI within the two week timeframe from receipt of DfI's instruction; and

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4.6 Update on Local Development Plan (Contd)

- (b) this exercise would be issued to the Council in confidence, was not for publication and would not give rise to further debate outside of the Independent Examination process.

4.7 Enforcement Update (02:43:52)

Members having been provided with an update report in respect of enforcement action, it was proposed by Alderman J Tinsley, seconded by Councillor N Trimble and agreed that this be noted.

5. Any Other Business (02:49:10)

There was no other business.

Conclusion of the Meeting

At the conclusion of the meeting, the Chairman, Alderman M Gregg, advised that the next meeting of the Committee was scheduled to take place on Monday, 3 July, 2023. Alderman O Gawith advised that he would be unable to attend on that date and asked that his apology be recorded.

There being no further business, the meeting was terminated at 2.16 pm.

Chairman/Mayor



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 2 – Review of Scheme of Delegation

Background and Key Issues:

Background

1. In accordance with Section 31 (1) of the Planning (Northern Ireland) Act 2011, Lisburn & Castlereagh City Council (LCCC) produced a Scheme of Delegation for planning applications, enforcement and other matters delegated to an authorised officer. The scheme is required to be approved by the Department for Infrastructure.
2. The Scheme of Delegation was designed primarily to enable speedier decisions and improved efficiency in the operation of the Planning function and was to be kept under periodic review to ensure this objective was being achieved.
3. The last review of the Scheme of Delegation in 2016 came into effect on 1 March 2017.
4. Part E of the Scheme states that the Scheme of Delegation will be subject to review by the Planning Committee periodically. A recent internal audit of the operation of the Planning Unit has highlighted the need for a review to take place as it is more than five years since the last one.

Key Issues

1. This Council has largely followed the model Scheme of Delegation that had been recommended by the Department at the time the Planning function transferred to the Council.
2. It has allowed the Planning Committee to focus its finite time to considering applications that present issues that are important to the citizens of the Council area and that the Committee are best served to determine.
3. It is further noted that the Protocol for the Operation of the Committee provides Members with flexibility to request local applications to be called-in. The majority of applications heard by the committee fall into this category.
4. The purpose of this report is to consult with Members and consider whether the Scheme remains appropriate or should be amended. Part B is highlighted as this is the mechanism to allow applications to be called-in.
5. In assisting the Members in their consideration of the scheme, officers would highlight that Part C under the heading - Consideration of other Planning Matters - be amended to enable to following types of notices to be delegated to an officer of the Council:
 - Providing advice on Pre-Application Notices – with the Notice presented to the Committee for information.
 - Providing advice in relation to subsequent and repeat applications – with notification presented to the Committee for information.

Recommendation:

It is recommended that the Committee notes that :

1. Comments are to be provided to the Head of Planning and Capital Development on any proposed changes to the scheme by 21 July 2023.
2. That the scheme is amended and presented to Committee for their consideration and agreement in advance of submitting this to the Department for Infrastructure for approval.

Finance and Resource Implications:

There are no finance or resource implications.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy?

If no, please provide explanation/rationale

This is a report in relation to the periodic review of the Planning Scheme of Delegation. EQIA is not required at this stage. Any proposed amendments may be subject to screening at a later stage.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	<input type="text" value="N/A"/>	Option 2 Screen out with mitigation	<input type="text" value="N/A"/>	Option 3 Screen in for a full EQIA	<input type="text" value="N/A"/>
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?	<input type="text" value="No"/>	Has a Rural Needs Impact Assessment (RNIA) template been completed?	<input type="text" value="No"/>
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If no, please given explanation/rationale for why it was not considered necessary:

This is a report in relation to the periodic review of the Planning Scheme of Delegation. RNIA is not required at this stage. Any proposed amendments may be subject to screening at a later stage.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:

APPENDIX 2 – Review of the Planning Scheme of Delegation

HAS IT BEEN SUBJECT TO CALL IN TO DATE?

No

If Yes, please insert date:



Scheme of Delegation: Delegation of Planning Applications and Enforcement



Scheme of Delegation: Delegation of Planning Applications and Enforcement

The scheme of delegation for the determination of planning applications was agreed by the Council at its meeting XXXXXX

Part A – Mandatory Applications to be determined by the Planning Committee of the Council

By statute, certain types of application are required to be determined by the Planning Committee and therefore cannot be delegated to officers:

- Applications which fall within the Major category of development (as defined by the Planning (Development Management) Regulations (Northern Ireland) 2015);
- Applications made by the Council or an Elected Member of the Council.
- Applications relating to land in which the Council has an interest.

Part B – Delegated Applications

Applications shall be delegated for determination by the authorised officer of the Council.

All local development applications will be delegated for approval or refusal with the exception of:

- Applications which are significant departures from the Local Development Plan and which are recommended for approval.
- Applications submitted by the Council, senior Council staff,

members of Council staff involved in the consideration of planning applications, a Planning Officer or their immediate families, or the immediate family¹ of an elected Member.

- Applications which the Council considers should be referred to Committee for determination. A sound planning reason must be given for such a referral.
- Applications where the Head of Planning or other delegated officer considers that the proposal merits consideration by the Committee.
- Any application that the authorised officer is minded to approve under terms of this scheme of delegation, but which is the subject of an extant objection from a statutory consultee.
- Any application where a legal agreement is required.
- An application which has an associated application (which falls within the Major category of development (as defined by the Planning (Development Management) Regulations 2015) which is being determined by the Planning Committee.
- Any application in a rural setting which consists of five or more dwellings.

Part C – Enforcement and consideration of other Planning Matters

In addition to determining planning applications, the Council will also have to administer the enforcement of planning and the processing of other planning consents. Part 4 Section 7 (4) (b) Local Government Act (Northern Ireland) 2014 allows a Council committee to delegate to an officer of the Council.

Matters to be considered and determined by the Planning Committee of the Council

- Determination of a request to revoke or modify planning permission

Matters to be delegated to the authorised officer

- 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

¹ Immediate family for the purposes of this Scheme of Delegation refers to wife/Husband/partner, son(s), daughter(s)

the High Court for an injunction.

- Determination of any application for a certificate of lawful development.
- Determination of applications for Alternative Development Value.
- Determination of any application for listed building consent.
- Determination of any application for conservation area consent.
- Determination of any application for advertisement consent.
- Determination of any application for carry out works to trees.
- Determination of any hazardous substance consent.
- Determination of Applications for Non Material Changes
- Provide advice on Pre-Application Notices – with the Notice presented to the Committee for information.
- Provide advice in relation to subsequent and repeat applications – with notification presented to the Committee for information.
- Precise wording of Conditions/Refusal reasons relating to local applications in accordance with section 31 of the Planning Act (Northern Ireland) 2011.
- Precise wording of Conditions/Refusal reasons relating to major applications in accordance with section 7 of the Local Government Act (Northern Ireland) 2014.
- Power to formulate decision notices following decisions made in principle by the Planning Committee.
- To issue Environmental Impact Assessment screening and scoping opinions in accordance with legislative requirements.
- Making of an order to revoke or modify a planning permission
- The power to defend a Planning Appeal
- The obtaining of information under section 240 of the Planning Act (Northern Ireland) 2011
- Determination of a request for Correction of Errors in decision documents is currently legislated for
- Negotiating the terms of a Planning Agreement under section 76 of the Planning Act (Northern Ireland) 2011.

Part D – Publicity

On adoption of this scheme of delegation the Council made a copy available on the Council's website at www.lisburncastlereagh.gov.uk. A copy is also available for inspection at Island Civic Centre, The Island, Lisburn, Co Antrim, BT27 4RL

Part E – Review

This Scheme of Delegation will be subject to review by the Planning Committee periodically.



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 3 – Appeal Decision – LA05/2021/0341/O

Background and Key Issues:

Background

1. An application for two infill dwellings on lands between 25b Lough Road and 2 Belshaws Road, Ballinderry, Lisburn was refused planning permission on 01 March 2022.
2. An appeal was lodged with the Planning Appeals Commission on 26 June 2022. The procedure followed in this instance was written representations. An accompanied site visit with the Commission took place on 04 May 2023.
3. The main issues in the appeal are whether the proposed development would:
 - be acceptable in principle in the countryside;
 - integrate into the surrounding landscape;
 - further erode the rural character of the countryside;
 - have an adverse residential amenity impact; and
 - have an adverse impact upon features of natural heritage importance.
4. A decision received on 13 June 2023 indicated that the appeal was dismissed and planning permission refused.

Key Issues

1. The Commissioner at paragraph 6.8 accepts that the proposed site is not located within an otherwise substantial and continuously built up frontage. In this case, the dwelling relied up by the applicant/agent at 2 Belshaws Road was not found to extend to the Lough Road. A small field [orchard] to the north of the existing garden area, with post and wire fencing, demarcated the boundary between the two.
2. It was further highlighted at paragraph 6.9 that the site provides relief and represents an important visual break in the developed appearance of the locality. The Commissioner accepted that the development would add to ribbon development in the locality and result in a suburban style build-up of development if permitted.
3. At paragraph 6.16, the Commissioner accepted that the site lacked mature site boundaries and that the loss of roadside hedgerow would mean that any new buildings would integrate into the landscape and the proposal would have a detrimental impact on the surrounding countryside.
4. At paragraph 6.20, the Commissioner did not agree that the development would offend criterion (c) of Policy CTY14 but did accept this was a suburban style build-up of development that would harm the rural character of the area and that the proposal failed to meet criteria (b) and (d) of Policy CTY 14.
5. This first four reasons for refusal were sustained. The Commission's decision highlights the importance of taking into account the significance of the gap in terms of whether it represents an important visual break that should be retained.
6. At paragraph 6.23, the Commissioner made reference to their own observations and confirmed that they did not note any noise, odour or insects at the site or within the surroundings that would be uncommon in the rural area and as such, were not persuaded by the argument advanced by the Council in relation to adverse impact on amenity of future residents. The fifth refusal reason was not sustained.
7. The Commissioner at paragraph 6.27 states that the Council has provided no evidence of any protected species within the site nor any assessment of any adverse effects of the proposal. She states the timing of the removal of hedgerows is governed by wildlife legislation and as such she was satisfied that there would be no harm to nesting birds in the event that an additional section of hedgerow was to be removed to provide sight splays. She advises that it is for the Council to defend their objections which they have failed to do on this issue. The sixth refusal reason was not sustained.
8. Members will note that the two reasons for refusal that are not sustained are linked to noise and the impact any future development might have on the amenity of future residents and more generally to the loss of biodiversity.
9. This highlights the importance of the Council having robust information early in the application process to properly consider these types of issues. Whilst it is recognised that the Commission has the right to exercise its own judgement on these matters the evaluation appears on the face of the report to be based only on a site visit. There was no

evidence in front of the Commissioner from the applicant and whilst there is an onus on Council to be able to sustain its reasons for refusal if the information is requested and not received this must be a material consideration for the Commission to weigh in its decision.

- 10. It is normal for the Council to take a precautionary approach particularly if the proposed development could impact on natural heritage features. This was then highlighted in a consultation response from the statutory consultee. The standing advice and guidance from DAERA on this matter is not addressed in the Commissioner’s report other than to say it is not legislation or policy.
- 11. This is a matter which we will seek further clarification on in terms of the day to day operation of the Unit as it highlights to planning applicants a difference in approach to the need for bio-diversity checklists in assessing the impact a development might have on natural heritage features in a site.

Recommendation:

It is recommended that the Committee notes the report and decision of the Commission in respect of this appeal and the learning to be considered and applied.

Finance and Resource Implications:

No cost claim was lodged by any party in this instance.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy? No

If no, please provide explanation/rationale

This is a report updating the committee on a decision by the PAC and EQIA is not required.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	N/A	Option 2 Screen out with mitigation	N/A	Option 3 Screen in for a full EQIA	N/A
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?

Has a Rural Needs Impact Assessment (RNIA) template been completed?

If no, please given explanation/rationale for why it was not considered necessary:

This is a report updating the committee on a decision by the PAC and RNIA is not required.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:

APPENDIX 3 – Appeal Decision – LA05/2021/0341/O

HAS IT BEEN SUBJECT TO CALL IN TO DATE?

If Yes, please insert date:



4th Floor
92 Ann Street
Belfast
BT1 3HH

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Phone: 02890893923 (ext
81023) (direct line)

Phone: 028 9024 4710

Email: info@pacni.gov.uk

Website: www.pacni.gov.uk

Our reference: 2022/A0050
Authority
reference: LA05/2021/0341/O
13 June 2023

Dear Sir/Madam

Re:

Appellant name: Mr KEN BROWN

**Description: PROPOSED 2 NO INFILL DWELLINGS WITHINA GAP ALONG A
SUBSTANTIALLY BUILT UP FRONTAGE**

**Location: LANDS BETWEEN 25B LOUGH ROAD AND 2 BELSHAWS ROAD
BALLINDERRY, LISBURN**

Please find enclosed Commission decision on the above case.

Yours Sincerely,

Padraig Dawson
PACWAC Admin Team



Appeal Decision

4th Floor
92 Ann Street
BELFAST
BT1 3HH
T: 028 9024 4710
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Appeal Reference:	2022/A0050
Appeal by:	Mr Ken Brown
Appeal against:	Refusal of outline planning permission
Proposed Development:	2 infill dwellings
Location:	on lands between 25b Lough Road and 2 Belshaws Road, Ballinderry, Lisburn
Planning Authority:	Lisburn and Castlereagh City Council
Application Reference:	LA05/2021/0341/O
Procedure:	Written representations with Commissioner site visit on 4 th May 2023
Decision by:	The Commission, dated 13 th June 2023

The Commission has considered the report by Commissioner Harbinson and accepts her analysis of the issues and recommendation that the appeal should fail. The Commission agrees that the reasons for refusal and third party concerns in respect of Policies CTY1, CTY8, CTY13 and CTY14 of Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21) have been sustained.

Decision – the appeal is dismissed.

This decision is based on the following drawings:

Drawing No.	Title	Scale	Date
01	Site Location Map	1:2500	26 th March 2021
02	Notional Site Layout and Context	1:1250	26 th March 2021

ROSEMARY DALY
Principal Commissioner

PLANNING APPEALS COMMISSION

**THE PLANNING ACT (NORTHERN IRELAND) 2011
SECTION 58**

**Appeal by Mr Ken Brown
against the refusal of outline planning permission for
2 no. infill dwellings within a gap along a substantially built up frontage
on land between 25b Lough Road and 2 Belshaws Road, Ballinderry, Lisburn**

**Report
by
Commissioner Trudy Harbinson**

Planning Authority Reference: LA05/2021/0341/O

Procedure: Written Representation

Commissioner's Site Visit: 4th May 2023

Report Date: 30th May 2023

1.0 BACKGROUND



- 1.1 Lisburn and Castlereagh City Council received an application for outline planning permission on 26th March 2021. By notice dated 1st March 2022 the Council refused permission giving the following reasons: -
1. **The proposal is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**
 2. **The proposal is contrary to the SPPS and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would, if permitted, result in the addition of ribbon development along Lough Road as the site does not fall within a substantial and continuously built up frontage of development.**
 3. **The proposal is contrary to the SPPS and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposed site lacks long established natural boundaries/is unable to provide a suitable degree of enclosure for the buildings to integrate into the landscape and the proposed buildings would rely primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.**
 4. **The proposal is contrary to the SPPS and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings; it would, if permitted not respect the traditional pattern of settlement exhibited in the area and would, if permitted add to a ribbon of development along the Lough Road therefore resulting in a detrimental change to (further erode) the rural character of the countryside.**
 5. **The development would be contrary to Paragraphs 4.11 and 4.12 of the SPPS in that it has not been demonstrated that the proximity to adjacent farm buildings would not have an adverse impact upon the amenity of the proposed dwellings by virtue of undue noise, odours and insects.**
 6. **The proposal is contrary to the SPPS and Policy NH2 and NH5 of Planning Policy Statement 2 'Natural Heritage' and Section 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 in that insufficient information has been submitted to enable the proper determination of the application as the Biodiversity Checklist requested by the Council has not been made available. It therefore has not been demonstrated that the development will not adversely impact upon noted features of natural heritage importance i.e. birds, bats and/or badgers.**
- 1.2 The Commission received the appeal on 21st June 2022 and advertised it in the local press on 8th July 2022. Representations from third parties were received at

application and appeal stage. One letter of support received at application stage was forwarded to the Commission.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is located to the south of Lough Road and east of Belshaws Road. It is a corner site cut out of a larger agricultural field. Its southern boundary is undefined. Its eastern boundary is defined by a timber fence. The roadside boundary is defined by a ranch style fence for around a fifth of its length and over its remainder by a hedge some 1.5m in height. This hedge is set behind a grass verge. The western boundary is defined by a hedge. There is a substantial mature tree on the north-western roadside corner and an electricity pole along the western boundary. An internal hedgerow runs north to south through the site with a field gate to the east of the hedgerow which provides access into the field from Lough Road. Levels gently rise across the site from west to east.
- 2.2 A detached bungalow with a detached double garage at 25B Lough Road lies adjacent and to the east of the site. No 25A Lough Road lies further to the east, comprising a detached bungalow with an adjacent outbuilding. To the west of the appeal site lies Belshaws Road which bisects Lough Road at this juncture. A one and a half storey farm dwelling with agricultural outbuildings is located some 10m further west at 2 Belshaws Road. These buildings are set back some 50m from Lough Road and are separated from the Lough Road by an intervening field. There is a mobile home opposite the site.
- 2.3 The wider area is rural in character with agricultural fields interspersed with farm dwellings and outbuildings.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The site is located on the southern side of Lough Road at its junction with Belshaws Road. It consists of a rectangular section of land cut out of two adjacent agricultural fields. Access is gained from the Lough Road. The site area is approximately 0.6ha.
- 3.2 The site boundaries are defined by hedgerow along the northern and western boundaries and in part by post and wire fence along the eastern boundary. The southern boundary is undefined. An internal hedgerow runs across the site in a north-south direction and the land within the site rises gently in an eastern direction.
- 3.3 The land surrounding the site is mainly rural in character and predominantly in use for agricultural purposes. To the east of the site, there are two detached single storey dwellings, with ancillary outbuildings/garages fronting on to Lough Road. To the west of the site there is a 1.5 storey dwelling with associated farm outbuildings, fronting on to Belshaws Road.
- 3.4 The Strategic Planning Policy Statement for Northern Ireland Planning for Sustainable Development (SPPS) outlines at Paragraph 6.70 that all development in the countryside must integrate into its setting, respect rural character and be appropriately designed. The application is for 2 infill dwellings. There are no distinguishable differences between the SPPS and the retained Planning Policy

Statement 21 Sustainable Development in the Countryside (PPS21) that need reconciled in favour of the SPPS.

- 3.5 Policy CTY1 Development in the Countryside of PPS21 states that there are a range of types of development which are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY8 Ribbon Development.
- 3.6 Policy CTY8 of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage in terms of size, scale, siting and plot size and that meets other planning and environmental requirements. For the purposes of this policy the definition of a substantial and built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.
- 3.7 The proposed site is not located within an otherwise substantial and continuously built up frontage of development. Therefore, to permit the development as proposed would extend (add to) the extremities of an existing ribbon of development, which is noted along this section of the Lough Road via numbers 25a and 25b.
- 3.8 Numbers 25a and 25b Lough Road are seen to have a frontage onto the Lough Road. To the west of the site, the dwelling at 2 Belshaws Road and its associated outbuildings present a frontage on to Belshaws Road only.
- 3.9 The agent contends that the curtilage and garden of the farm plot extends along Belshaws Road to the Lough Road and includes a long established orchard, readable as part of the overall sites curtilage and not a separate agricultural field. They refer to and include a map of a previous planning application for 2 Belshaws Road (S/2003/0748/F) which shows the red line extending around the garden fronting onto Lough Road.
- 3.10 A detailed inspection established that the curtilage of 2 Belshaws Road does not extend to the Lough Road. There is a small field (orchard) to the north of the existing garden area, with a post and wire fence, demarcating the boundary between the two. This boundary is illustrated on the map. It is noted that the western boundary of this field/orchard area is open and therefore it is seen to be part of a larger field which wraps around the north and west of 2 Belshaws Road and is not part of the curtilage/frontage of 2 Belshaws Road.
- 3.11 Google streetview images of the orchard/field area as seen from Lough Road, (dated September 2008 and June 2012), show that the area has not been maintained as per the garden area which is within the curtilage of 2 Belshaws Road. The grass appears to be unmown and large nettles/weeds are noted. The western boundary is seen to be open and in turn connected to the overall field of which this section is part and parcel. Worn ground from cattle tracks into the area are also apparent.

- 3.12 It is noted that the occupants of 2 Belshaws Road within their objection refer to a separate field between the farm and Lough Road, and to number 2 fronting Belshaws Road and not Lough Road.
- 3.13 The policy test is therefore not met. The site is not considered to be a small gap between three buildings that share the same frontage onto Lough Road. The development as proposed relies upon buildings which front onto two different roads, Lough Road and Belshaws Road. The curtilage of the dwelling on Belshaws Road is separated from the Lough Road by the north eastern corner of a large field which wraps around 2 Belshaws Road.
- 3.14 The proposed development does not respect the existing development pattern along the frontage of the Lough Road in terms of scale, size and orientation. In the event of 2 Belshaws Road being considered to present a frontage to the Lough Road an assessment of the frontages and plot sizes with respect to the existing dwellings shows 25a Lough Road having a frontage of 55.3m, 25b Lough Road 46.0m and 2 Belshaws Road 17.6m. This provides an average frontage of 39.6m. The frontage of the proposed double infill site measures 103m, an average of 51.5m per plot which is in excess of the average plot frontage, and also in excess of the figures of 52m and 44m as put forward by the appellant, illustrating that in terms of frontage size the site would fail to respect the pattern of development along the frontage.
- 3.15 In relation to plot sizes, 25a Lough Road measures 0.3ha, 25b Lough Road 0.2ha and 2 Belshaws 0.4ha, giving an average of 0.3ha. The appeal site measures 0.6ha (0.3ha per plot) and is comparable to adjacent sites in respect of plot size. However as previously outlined the proposal is contrary to Policy CTY8 as the site does not fall within a substantial and continuously built up frontage of development.
- 3.16 Guidance provided on page 71 of Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside (BOT) with respect to the assessment of such development, illustrates that the proposed site would be unacceptable. The appellant states that the dwelling designs submitted were loosely notional and that a condition for a later reserved matters application would ensure that the guidance is satisfied. All applications are assessed based on the information provided for consideration and in this instance the principle of development was deemed unacceptable and the use of a condition to ensure that the guidance is satisfied would not apply.
- 3.17 It follows that if a development complies with Policy CTY8 it will also comply with Policy CTY1. Policy CTY1 goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement. The proposal fails to meet Policy CTY8. There is no evidence to demonstrate that there are overriding reasons why the development is essential. The proposal is unacceptable in principle and contrary to Policy CTY1.
- 3.18 Policy CTY13 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and is of an appropriate design. A new building will be unacceptable where 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. It is also unacceptable

where it is seen to rely primarily on the use of new landscaping for the purposes of integration.

- 3.19 In this instance it is considered that the site lacks mature site boundaries, and as such, the proposal would have a detrimental visual impact on the surrounding countryside. The development would rely on the use of new landscaping for integration. At present two of the four site boundaries are defined with hedging (northern roadside and western boundary) and an internal hedge is noted.
- 3.20 To provide access to the development a large section of the northern boundary would require removal to provide adequate visibility splays. Transport NI require 2.4m by 93m visibility splays. The resulting hedgerow removal required for access combined with the undefined southern boundary would result in a development that would suffer from poor levels of integration. The roadside hedge would require to be removed and replanted, the undefined southern boundary would require planting and the eastern boundary of the site (common with 25b Lough Road) does not consist of a long established natural boundary and would also require to be planted out with mature landscaping. In turn the development would rely upon new landscaping for integration.
- 3.21 In total the site provides only one established (external) boundary that can remain in place (the western Belshaws Road boundary). The removal of the roadside boundary for access would open the site up to public views and in turn result in a site which would lack integration and one that would harm the rural character of the local area.
- 3.22 Policy CTY14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. As the principle of development is considered to be unacceptable as it fails the policy tests of CTY8, it is considered therefore, that it would result in a suburban style build-up of development when viewed with existing and approved buildings within the local area. It is therefore considered that the development would not respect the traditional pattern of development found within the area, as it would add to a ribbon of development which is noted in situ, running along this section of the Lough Road. The development would in turn result in a detrimental change to (further eroding) the rural character of the countryside.
- 3.23 Paragraph 4.11 of the SPPS outlines that there are a wide range of environment and amenity considerations, including noise and air quality, which should be taken into account by planning authorities when proposing policies or managing development. It outlines that the planning system has a role to play in minimising potential adverse impacts, such as noise or light pollution on sensitive receptors by means of its influence on the location, layout and design of new development. It also advises that the planning system can positively contribute to improving air quality and minimising its harmful impacts. Paragraph 4.12 of the SPPS directs that other amenity considerations arising from development, that may have potential health and well-being implications, include design considerations, impacts relating to visual intrusion, general nuisance, loss of light and overshadowing. It advises that adverse environmental impacts associated with development can also include sewerage, drainage, waste management and water quality. However, these considerations are not exhaustive and planning authorities are best placed to identify and consider, in

consultation with stakeholders, all relevant environment and amenity considerations for their areas.

- 3.24 The Council's Environmental Health Service Unit (EH) has advised that the proposed dwelling would be located approximately 30m from a farm and that farms and associated structures have the potential to cause a loss of amenity in relation to odour, noise and insects. Advice received recommends that there should be a minimum separation distance between farm buildings and their related structures, and non-associated residential dwellings of 75m. Advice also recommends that where the development is permitted within 75m of a farm; odour, noise and insects may cause a loss in amenity and future development and sustainability of the farm could be affected by subsequent nuisance action. EH therefore advise that the proposed development is unsuitable as there may be a loss of amenity due to noise, odour and insects.
- 3.25 Given the proposed relationship between the development and the adjacent farm at 2 Belshaws Road, and the advice received from EH, it is considered that the development as proposed is contrary to paragraphs 4.11 and 4.12 of the SPPS.
- 3.26 The advice from EH was shared with the appellant however no further comment was received. In their Statement of Case they outline that the concerns raised by EH with respect to proximity of the farm buildings is in conflict with Policy CTY10 Dwellings on Farms of PPS21. They question why the 75m distance is an unwritten requirement for Policy CTY8 and the opposite of CTY10 as they are both most likely to be family homes not necessarily connected to farming activity. However, each application is assessed against prevailing policy and in this instance CTY8 is applicable and not CTY10 which requires that dwellings on farms are visually linked or sited to cluster with an established group of buildings on the farm.
- 3.27 The EH response refers to Part 7 of The Planning (General Permitted Development) Order (Northern Ireland) 2015, not planning policy. EH have used this as a tool to assess the merits of the development as proposed in relation to its proximity to 2 Belshaws Road which appears to be a working farm. A farmer applying for a farm dwelling under Policy CTY10 would be most unlikely to make a complaint to EH whereas a third party as would be the case in the scenario presented could (occupant of new dwelling outside of farm holding).
- 3.28 The appellant advises that the house locations submitted were notional and with a redesign to the layout a larger separation distance could be achieved close to the required 75m. They suggest this could be conditioned and addressed at reserved matters. They append a notional layout (appendix 6). This has not had the benefit of comment from EH. It is noted from a cursory assessment that outbuildings within the complex immediately adjacent to the road appear to have been discounted and that the closest dwelling remains within 75m of the in-situ outbuildings within the farm complex at 2 Belshaws Road.
- 3.29 The appellant references a planning approval (LA05/2017/1124/F) for 507 residential units at agricultural land south of Glenavy Road and west of Brokerstown Road. Noise and odour reports were provided to EH for consideration and the owner of the farm in question within this application was the developer. In turn this resulted in the Council utilising a Section 76 agreement which required the retention of a slurry tank

lid and also removed agricultural permitted development rights from the farm. It is considered that this example is not comparable to the situation in this appeal. No reports have been provided in respect of noise or odour, and the farm complex located at 2 Belshaws Road does not have an estate in the land in question. As such a Section 76 agreement would not be an option in this case.

- 3.30 The appellant appends further examples of approvals they consider provide guidance in respect of proximity to operating farms. Each planning application is assessed upon its own merits. In respect of applications: -
- LA05/2020/0270/F 35 Dwellings on lands 130m north of 1-11 Sir Richard Wallace Gardens, Lisburn. EH offered no objections to this.
 - LA05/2017/0732/F 2 dwellings and garages adjacent to 16 Gulf Road, Hillsborough. EH noted the site was adjacent to a number of working farm buildings not associated with the application and advised that farms have the potential to cause loss in amenity with respect to noise, odour and flies. Whilst it is noted that this approval appears similar to the appeal situation, EH offered no objection, which is not the case in the current situation.
 - LA05/2020/0137/RM 2 detached dwellings adjacent to 28d Lough Road, Upper Ballinderry, Lisburn. EH in their response refer to the close proximity of existing commercial concerns and potential for loss of amenity due to noise. Advice is provided on nuisance and no objection offered. EH comments in this instance relate to adjacent commercial premises and not to an adjacent farm yard.
- 3.31 Planning Policy Statement 2 Natural Heritage (PPS2) sets out planning policies for the conservation, protection and enhancement of our natural heritage. Natural heritage is defined as the diversity of our habitats, species, landscapes and earth science features. DAERA Natural Environment Division in their consultation response advise that no ecological information has been provided for comment.
- 3.32 As it appears that a section of roadside hedging is required to be removed to provide access to the site a NI Biodiversity checklist was requested. The requested checklist was not provided.
- 3.33 The appellant advised that engaging an ecologist was difficult as a result of the Covid 19 pandemic. Subsequently, having been advised that initial thoughts were that the principle of the proposal was unacceptable and that it would be recommended for refusal the agent was requested to discuss this matter with the applicant and advise Council of their intentions regarding the outstanding information. No further information was provided.
- 3.34 DAERA's website outlines that a biodiversity survey is 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 whether further ecological assessments/surveys may be required. As the checklist was not provided as requested, no detailed assessment of the potential impacts (if any) could take place.

- 3.35 As it appears a section of the roadside hedgerow is required to be removed a precautionary approach is taken. The development is considered contrary to the SPPS and Policies NH2 and NH5 of PPS2 insofar as they related to protected species and sites. It is considered that a negative condition for the biodiversity checklist to be provided at reserved matters as suggested by the appellant would not be appropriate.
- 3.36 If the appeal is allowed the following conditions are proposed on a without prejudice basis: -
- Standard time limits;
 - A scale plan at reserved matters showing access to be constructed with visibility splays of 2.4 x 93m on Lough Road;
 - No occupation of dwellings until in curtilage provision is made for 3 car spaces per dwelling;
 - All street furniture or landscaping obscuring or within the proposed carriageway, sight visibility splays or access to be removed, relocated or adjusted;
 - No development on site until the method of sewage disposal has been agreed with NIW or a consent to discharge has been granted;
 - Each building to be provided with sanitary pipework, foul drainage and rain water drainage as necessary for disposal of foul water and rain water;
 - Provision of a detailed site plan at reserved matters indicating the location of the proposed dwellings, the septic tanks/biodiscs and the area of subsoil irrigation for disposal of effluent;
 - No development until a plan is submitted and approved indicating existing and proposed contours, finished floor levels of proposed buildings and the position, height and materials of any retaining walls;
 - The depth of underbuilding between finished floor level and existing ground level shall not exceed 0.45m at any point;
 - The proposed dwelling shall have a ridge height of less than 7m above finished floor level;
 - No development until a landscaping scheme is submitted and approved. The approved scheme of planting to be carried out during the first planting season after commencement of development;
 - No occupation of development until the existing roadside banking and native species hedgerow has been reinstated behind the required sight visibility splays;
 - No occupation of development until all new boundaries have been defined by a timber post and wire fence with native species hedgerow/trees and mix woodland species shrub planted on the inside;
 - The existing natural screening defining the western boundary of the site shall be retained; and
 - Full details of drainage plans including attenuation measures to be submitted for approval at reserved matters stage.

4.0 THIRD PARTIES CASE

- 4.1 There are two remote dwellings fronting the Lough Road at numbers 25a and 25b Lough Road. Number 25 Lough Road sits to the upper of 25a with some 300m of agricultural land between. Number 27 Lough Road sits to the lower of 25B with a similar distance, the land between is broken by mature hedgerows, field boundaries

- and Belshaws Road. This would not constitute a substantially built-up frontage to the Lough Road.
- 4.2 Number 2 Belshaws Road sits approximately 50m along the road, it fronts and is only accessible by Belshaws Road. The garden boundary is some 22m from the Lough Road, and the remaining land fronting Belshaws Road and the Lough Road is and always has been agricultural land. This address therefore should not be considered as part of the criteria for the development proposed.
 - 4.3 The appellant claims that Belshaws Road appears as a laneway to the side garden of 2 Belshaws Road. It is a narrow road as 2 cars can pass with caution.
 - 4.4 The appellant claims that the garden of 2 Belshaws Road fronts the Lough Road and refer to a historic planning application showing a red line extending to the Lough Road. The extent of this line was unknown until now. It is assumed that a notional line was drawn by the agent at that time for no reason other than to highlight the location of the house. An original stone built wall runs along the Belshaws Road marking the end of the garden and a hedgerow runs perpendicular to the wall showing the top of the garden. The land fronting Lough Road is mapped and registered with DAERA as agricultural land.
 - 4.5 Environmental issues should be considered. Substantial portions of mature hedgerows would be removed from the Lough Road frontage and field boundaries. Both sites would back on to agricultural land. The boundary of site two would be within 10m of 2 Belshaws Road, a working farm from which there is potential noise and smell. There would also be an impact on wildlife. The appellant suggests they could create a greater distance between the proposed dwelling and the farm buildings and enclose a proposal as shown in appendix 6. The location of the farm buildings fronting on to Belshaws Road is indicated on an appended map (Map 1) showing a distance of some 29m between the closest farm building and proposed site two.
 - 4.6 An approval for two dwellings at 28d Lough Road is referenced with respect to EH proposing an informative only. In that case the farm house and proposed dwellings sat in excess of 60m apart with the farm buildings sited a further distance behind the farm house. The farm in question was also winding down into retirement with all farming activity in the yard stopping soon after.
 - 4.7 Visual impact on the immediate area should be considered. The development of the two proposed sites alongside 25A and 25B Lough Road would be ribbon development not in keeping with the surrounding addresses that are considerably spaced apart.
 - 4.8 Road traffic issues should be considered as the Lough Road is a main route to and from Lough Neagh sand pits and is in constant use with heavy lorries. The proposed entrance for the two sites would further add to a cluster of entrances (private and agricultural) already at this point of the Lough Road.
 - 4.9 Should this application be granted it would invite and encourage similar applications on the Lough Road and along Belshaws Road using loosely similar criteria.

5.0 APPELLANT'S CASE

- 5.1 The proposed site lies to the south west of Lough Road. As you approach the site, travelling west, there are 2 single storey dwellings at Numbers 25a and 25b Lough Road. These dwellings front on to Lough Road and are bound by hedges to the rear and side boundaries with a wooden fence and gate to the front of each site.
- 5.2 The site for the proposed infill dwellings stretches from the boundary of 25b Lough Road, the frontage of approximately 100m divided by a hedge, which leaves approximately 57m between 25b and the first hedge and approximately 47m for the remaining portion of the site.
- 5.3 Further along, Belshaws Road extends as a narrow lane onto the Lough Road, the garden of 2 Belshaws Road (a 1.5 storey dwelling) extends down on to Lough Road. The combination of the frontage at this point is approximately 30m.
- 5.4 The land in the area is fairly level, back from the road and with low hedges either side of the overall frontage between 25a Lough Road and the frontage of the garden for 2 Belshaws Road.
- 5.5 The first four reasons for refusal are based on whether the proposal meets all the requirements of PPS 21 Policies CTY1 and CTY8, which also incorporates CTY13 and CTY14.
- 5.6 CTY1 states that there are a range of developments which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. The policy goes on to state that planning permission will be granted for individual dwelling houses in the countryside – in this case the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with CTY8.
- 5.7 CTY8 states an exception to the rule for ribbon development will be allowed if the proposal for infill dwellings respects the existing pattern of development along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. It goes on to state that a substantially built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
- 5.8 The proposal is to develop an infill gap with two sites similar in size to the existing development at 25a and 25b Lough Road. The frontage of 25a is approximately 53.8m and the frontage of 25b is approximately 48.8m. The site at 2 Belshaws Road has a front garden which extends onto the Lough Road, the view from Lough Road into the Belshaws Road appears more as a laneway to the side of the garden to 2 Belshaws Road. The objector who resides in 2 Belshaws Road states that the land fronting on to Lough Road is agricultural land, but this is a small orchard used for domestic purposes which is evident from its limited size. Farming machinery could not get in and around such a small nook without getting caught in the orchard trees and the centre of the area in question.
- 5.9 The planning department argue that the curtilage of 2 Belshaws Road falls short and is not fronting onto Lough Road, however the map associated with Planning

Application S/2003/0748/F (for extension to dwelling at 2 Belshaws Road) clearly shows the red line extending around the garden fronting onto Lough Road. If this was not correct the Department should have returned the application and requested an application to have the curtilage extended.

- 5.10 The frontage available along the Lough Road will allow only for a maximum of 2 infill dwellings in the gap site within an otherwise substantial and continuous frontage. The frontage to site 1 will be approximately 52m which matches 25a Lough Road (current frontage 53.8m), the frontage to site 2 will be 44m which is similar to 25b measuring 48.8m and allows for access to work the land to the rear.
- 5.11 The area of 25a Lough Road is 2820sqm, the area of 25b Lough Road is 2596sqm, Site 1 is 2880sqm, site 2 is 2625sqm while the area of 2 Belshaws Road (excluding the farmyard) is 2810sqm. The plot sizes and spacing proposed compare favourably with the established plot sizes and spacing noted and would not accommodate more than 2 dwellings. Therefore the proposal respects the existing development in terms of size, scale, siting and plot size.
- 5.12 The planning department say that this is not considered to be a small gap site between 3 buildings that share the same frontage onto Lough Road. Similar applications have however been accepted and approved. LA05/2016/0309/F and LA05/2017/0490/F were acceptable under CTY8 as a gap site although the orientation and access to the building was from another road (Derrynahone Road) but the curtilage borders the Robbery Road – not necessarily with access from the land fronting on to the road in question.
- 5.13 The planning department suggest that the proposal lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the buildings to integrate into the landscape. The site would retain all the existing hedges to the side and middle of the field. At the reserved matters stage, proposed planting along the existing fence at 25b Lough Road would only help to soften this boundary and would become a welcome habitat. The hedgerow to the site frontage can be rehabilitated and replanted behind the sightlines and this can also be a reserved matter.
- 5.14 With regard to Policy CTY14 the rural character of the area will not be subject to a detrimental change as this is a gap site in an already built up area and will not result in ribbon development. The 3 existing buildings have a common frontage, are all visually linked and will not have a detrimental effect on the character, appearance and amenity of the countryside. The design of each house at reserved matters stage will be in keeping with the local area. The proposal will not erode the character of the area.
- 5.15 The concern raised by Environmental Health as to the close proximity of the farm buildings at 2 Belshaws Road are in conflict with the stipulations of PPS21 CTY10 in that any proposed dwelling approved on a farm should cluster with the established group of farm buildings. The note from environmental health seems to be taken from the planning policy regarding lawful development for farm buildings on an existing farm, the new farm buildings are required to be 75m from any dwelling not associated with the farming activity. It is questioned why it is an unwritten requirement for PPS21 CTY8 and the opposite for CTY10 as they are both most

likely to be family homes not necessarily connected to farming activity. A person choosing to occupy the proposed dwelling in a rural area would expect to encounter smells and noise from nearby farms. The house locations submitted were only notional, but with a redesign and slight change in the layout, a larger separation distance could be achieved close to the required 75m. A notional layout is included. Distance to the farm yard could be conditioned in the outline application and addressed at reserved matters stage.

- 5.16 Application LA05/2020/0676/O was refused permission as the proposed new dwelling would not cluster with an existing farm building. It would be contradictory under PPS21 if it is a requirement for one dwelling to be sited in close proximity whilst another is penalised and refused permission for a similar distance. Planning approval LA05/2017/1124/F granted a housing development beside a working farm with some separation differences of less than 45m. LA05/2020/0270/F approved 35 dwellings with approximately 50m distance from farm buildings on Beanstown Road. LA05/2017/0732/F granted two dwellings and Environmental Health's noted proximity of farm buildings was a proposed informative. LA05/2020/0137/RM approved one dwelling adjacent to 28d Lough Road, Environmental Health commented on close proximity of commercial buildings in a proposed informative.
- 5.17 A biodiversity checklist was requested. This was not provided for various reasons including covid restrictions at the time. It was indicated by planning that the application would not be recommended for approval and that the biodiversity checklist would not change that outcome and the applicant would avoid the costs involved. It could perhaps of easily been provided with no major issues of concern as there are no existing watercourses; building structures that would have been altered or demolished; there are no known protected or priority species within or adjacent to the site; nor any mature trees that would be removed associated with the proposal. As this is only an outline application, a condition for the submission of the biodiversity checklist could be a requirement for the reserved matters stage.
- 5.18 The dwelling designs submitted were very loosely notional. The planning department deemed that these were against the guidance set out in Building on Tradition and Policy CTY8, but again a condition for a later reserved matters application would ensure that the guidance is satisfied.

6.0 CONSIDERATION

- 6.1 The main issues in this appeal are whether the proposed development would: -
- be acceptable in principle in the countryside;
 - integrate into the surrounding landscape;
 - further erode the rural character of the countryside;
 - have an adverse residential amenity impact; and
 - have an adverse impact upon features of natural heritage importance.
- 6.2 Section 45 (1) of the Planning Act (Northern Ireland) 2011 states that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the

plan unless material considerations indicate otherwise. In May 2017, the Court of Appeal ruled that the adopted Belfast Metropolitan Plan 2015 (BMAP) had been unlawfully adopted. As a consequence of this decision, and as the Council has not yet adopted a plan strategy for the district as a whole, the Lisburn Area Plan 2001 (LAP) acts as the LDP for this area. In the LAP the appeal site is located in the open countryside outside any settlement limit or rural policy area defined in the plan. A further consequence of the above judgement was that the draft Belfast Metropolitan Area Plan published in 2004 (dBMAP) remains a material consideration. In dBMAP the site is located in the green belt. As the rural policies in both plans are now outdated, having been taken over by a succession of regional policies for rural development, no determining weight can be attached to them in this appeal.

- 6.3 The SPPS is material to all decisions on individual planning applications and appeals. The SPPS retains policies within existing planning policy documents until such times as a Plan Strategy for the whole of the Council area has been adopted. The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. There is no conflict between the provisions of the SPPS and the retained policy. Therefore, in accordance with the transitional arrangements set out in the SPPS, the appeal should mainly be considered in accordance with the retained policies of PPS 21 and PPS2.
- 6.4 Policy CTY1 'Development in the Countryside' of PPS21 sets out the types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It states that planning permission will be granted for an individual dwelling house in six specific cases, one of which is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8.
- 6.5 Policy CTY8 indicates that planning permission will be refused for a building which creates or adds to a ribbon of development unless the proposal meets the exception test. The exception in Policy CTY8 applies to development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.
- 6.6 To establish whether there is an infill opportunity it must be determined whether the appeal site is within a substantial and built up frontage. Policy defines a substantial and built up frontage as including a line of 3 or more buildings along a road frontage without accompanying development to the rear. In order for a building to have road frontage, the plot on which it stands must abut or share a boundary with the road, footpath or lane.
- 6.7 The dwelling and garage at 25a Lough Road and the dwelling and outbuilding at 25b Lough Road share a common frontage with the Lough Road because the plots on which they stand abut the road. They form a ribbon of development comprising four buildings and present a substantial and continuous built up frontage to the east of the appeal site.

- 6.8 The appellant relies upon the buildings at 2 Belshaws Road to achieve the policy requirement and 'bookend' the gap where the proposed dwellings would be located. However, the dwelling and agricultural outbuildings at 2 Belshaws Road are set back some 50m from the Lough Road. There is an intervening field, some 22m in depth, separating the buildings at 2 Belshaws Road from the Lough Road. From my observations the boundary between the garden of 2 Belshaws Road and the adjacent field or orchard is clearly delineated and consequently the buildings at 2 Belshaws Road do not have road frontage to the Lough Road. Their frontage is to Belshaws Road. Furthermore, the policy refers to a frontage (singular). Even if these buildings did have frontage onto the Lough Road that frontage would be broken by the Belshaws Road. Therefore, these buildings cannot count towards the substantial and continuously built up frontage given that two frontages would be relied upon.
- 6.9 In total there are four buildings with frontage to the Lough Road to the east of the appeal site and no buildings with frontage to the Lough Road to the west of the appeal site. Accordingly, the appeal site does not represent a small gap within a substantial and continuously built-up frontage. Rather, in my opinion, it provides relief and represents an important visual break in the developed appearance of the locality.
- 6.10 A ribbon of development can exist where buildings either have common frontage to the road or are visually linked with each other, or both. I have already concluded that the existing buildings at 25A and 25B Lough Road have common frontage on to the Lough Road. They also visually link with the dwelling and outbuildings at 2 Belshaws Road. The proposed additional two dwellings and garages would result in a further four buildings all with common frontage to the Lough Road. This would extend the existing ribbon of development westwards which would offend the policy. The appeal buildings would also visually link with the existing buildings at 25A Lough Road, 25B Lough Road and with 2 Belshaws Road, again adding to ribbon development in the locality and resulting in a suburban style build-up of development.
- 6.11 The appellant refers to two previous Council decisions permitted under Policy CTY8 to support their case. No detailed information was submitted on these cases so I cannot conclude with any certainty if there were similarities with the appeal proposal. In any event each case falls to be assessed on its own merits.
- 6.12 In any event, for the reasons given, the appeal site is not a small gap within an otherwise substantial and continuously built-up frontage. If approved, the proposal would add to the ribbon of development along Lough Road contrary to the provisions of Policy CTY8. Consequently, the second reason for refusal is sustained.
- 6.13 Policy CTY13 of PPS 21 'Integration and Design of Buildings in the Countryside' states that a new building will be unacceptable where any of seven criteria are engaged. The Council's second reason for refusal refers to criteria (b) and (c) of Policy CTY13. The appeal site has no established vegetation to its south or east boundaries. There is a natural hedgerow, a mature deciduous tree and an electricity pole to the western boundary and the northern boundary is defined in part by the roadside hedgerow, field gate and ranch fence.
- 6.14 The trees within the orchard adjacent to 2 Belshaws Road together with the mature tree in the northwestern corner of the site provide a degree of screening to the site

on approach from the west. However, when travelling from east to west along Lough Road, the absence of any established vegetation boundaries to the east, south and parts of the northern boundary of the site and with only a 1.5m high internal hedgerow to the west, there would be insufficient enclosure for the proposed 'first' dwelling to satisfactorily integrate. While there is a backdrop of trees to the rear of the appeal site, they sit at a lower level and as such they would not afford adequate integration for the proposed 'first' dwelling.

- 6.15 The established internal field hedgerow, western hedge boundary and northern roadside hedges all would provide a greater degree of enclosure for the 'second' proposed dwelling. However, the partial removal of some of the hedgerows to provide a paired access would unacceptably open up this part of the site to transient views along Lough Road. When travelling north along Belshaws Road open views of the proposal would also be available given the absence of any planting to the southern boundary. This means that the proposal would fail to visually integrate into the surrounding landscape.
- 6.16 All in all, I conclude that the site lacks established natural boundaries to provide a suitable degree of enclosure for the proposal as a whole, which in turn results in a reliance on the use of new landscaping for integration purposes. The proposal therefore fails to meet criteria (b) and (c) of Policy CTY13 and the third reason for refusal is sustained.
- 6.17 Policy CTY14 of PPS21 entitled 'Rural Character' states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The Council is of the view that the proposal fails to meet criteria (b), (c) and (d) of the policy.
- 6.18 Criterion (b) states that a new building will be unacceptable where it results in a suburban style build-up of development when viewed with existing and approved buildings. The existing buildings at 25A and 25B Lough Road front the Lough Road and visually link with the dwelling and outbuildings at 2 Belshaws Road. The proposed four new buildings would, when read with these existing buildings, result in a suburban style build-up of development which would further erode the rural character of the area.
- 6.19 Criterion (d) of Policy CTY 14 relates to ribbon development. I have already found that the proposal would add to a ribbon of development, and it would not be an exception under Policy CTY8. Accordingly, it would offend criterion (d) of Policy CTY14 as described above.
- 6.20 Criterion (c) states that a new building will be unacceptable where it does not respect the traditional pattern of settlement exhibited in that area. Given that the plot size, frontage and spacings between the proposed dwellings would not be dissimilar to those in the area, I find that the proposal would not offend criterion (c).
- 6.21 Notwithstanding the above, as the appeal proposal fails to comply with criteria (b) and (d) of Policy CTY 14 of PPS 21, the Council's fourth reason for refusal is sustained insofar as stated.

- 6.22 The Council have argued that the proximity of adjacent farm buildings would have an adverse impact upon the amenity of the residents of the proposed dwellings by virtue of undue noise, odours and insects. This position has been taken on the basis of advice contained within the consultation response from the Environmental Health section of the Council during the processing of the application.
- 6.23 This proposal does not seek permission for two dwellings on a farm, therefore Policy CTY10 of PPS21 is not applicable. Furthermore, the 75m requirement, as specified in Part 7 of the Planning (General Permitted Development) Order (Northern Ireland) 2015, sets a physical threshold for when development on agricultural land comprised in an agricultural unit requires planning permission. It does not necessarily preclude development within this distance. The fact is that the Council did not provide any details to demonstrate how noise, odour and insects could adversely impact upon future residents and to what extent. There is no persuasive evidence therefore that noise, odour or insects from the existing farm would unacceptably affect the residential amenity of any future residents. The appeal site is located in the rural area where low level odour and noise associated with farming activities and keeping animals is to be expected. From my own observations I did not note any noise, odour or insects at the site, or within the surroundings that would be uncommon in the rural area. Also, any potential purchasers would be aware of the surrounding context, which they would factor into their deliberations before buying a dwelling on the site. Given the particular evidential context before me, I am not persuaded that there would be an adverse impact upon the amenity of future residents. The Council has not sustained their fifth reason for refusal.
- 6.24 Policy NH2 of PPS2 states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species; or not likely to harm other statutorily protected species and which can be adequately mitigated or compensated against. Policy NH5 states planning permission will only be granted for development which is not likely to result in the unacceptable adverse impact on, or damage to, known natural heritage features worthy of protection.
- 6.25 The Council, in refusal reason six, state that the proposal is contrary to Section 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 in that insufficient information has been submitted in order to determine the application. However, Section 3 does not have any specific provision for a biodiversity checklist. Despite this, the Council sought such information and objected as it was not provided. I consider that the lack of this particular information cannot be fatal to determining this appeal as its provision is not necessary as per the legislation. The Council say that, in its absence, the appellant has not demonstrated that there will not be an adverse impact upon noted features of natural heritage including birds, bats and/or badgers. The Appellant states that there are no known protected or priority species within or adjacent to the appeal site and that the provision of a biodiversity checklist would have shown no major concerns.
- 6.26 Within their evidence the Council specifically referenced the removal of the roadside hedge to provide the required sight lines as particularly problematic in this regard. They argue that the works to create the access could impact on protected species and natural heritage features. The notional site layout indicates that a paired access would be taken from around the existing field gate where a portion of the hedge has already been removed. It would be a requirement to remove a further portion of the

hedge on either side of this gate to provide the required visibility splays. From my own assessment, given the set back of the hedge behind the grass verge and the relatively straight nature of the road at this point, only a portion of the roadside hedgerow on each side of the paired access would require removal with the remainder trimmed back. As such the roadside hedge would largely remain intact, albeit with a larger gap than present. Furthermore, the replanting of the hedgerow and the provision of other landscaping on the site could enhance biodiversity.

- 6.27 Natural Environment Division (NED) in their consultation response note there is no ecological information accompanying the application and refer the Planning Authority to the DAERA website to assist in the identification and/or assessment of adverse effects to designated sites/other natural heritage features. The DAERA website provides advice and guidance but is not policy or legislation. The Council has provided no evidence of any protected species within the site nor any assessment of any adverse effects of the proposal. The timing of the removal of hedgerows is governed by wildlife legislation and as such I am satisfied that there would be no harm to nesting birds in the event that an additional section of hedgerow was to be removed to provide sight splays. It is for the Council to defend their objections which they have failed to do on this issue. In the particular evidential context before me, I am not persuaded that the removal of a portion of roadside hedgerow is likely to harm protected species or have an unacceptable adverse impact on habitat of natural heritage importance. The sixth reason for refusal is not sustained.
- 6.28 Third party concerns were also raised with respect to road safety. Whilst the Lough Road may be used by heavy lorries, I am not persuaded that an additional two dwellings would overload the local road network or prejudice road safety. I am reinforced in that view given the lack of objection from DfI Roads to the proposal. The issues in this case are specific to this site and its surroundings. The Objectors' concerns with respect to road safety and precedent are not sustained.
- 6.29 All in all, I have found that the appeal proposal does not comply with policies CTY8, CTY13 and CTY14 of PPS21 as stated above. No overriding reasons as to why the development is essential and could not be located in a settlement have been advanced. The appeal proposal would therefore also fail to comply with Policy CTY1 of PPS21. The first four reasons for refusal are sustained and are determining.

7.0 **RECOMMENDATION**

7.1 I recommend to the Commission that the appeal be dismissed.

7.2 This recommendation relates to the following drawings: -

Drawing No.	Title	Scale	Date
01	Site Location Map	1:2500	26 th March 2021
02	Notional Site Layout and Context	1:1250	26 th March 2021

List of Documents

Planning Authority:-	A	Written Statement of Case Lisburn and Castlereagh City Council
	A1	Written Rebuttal Statement Lisburn and Castlereagh City Council
Appellant:-	B	Written Statement of Case
	B1	Written Rebuttal Statement
Third Parties	C	Written Statement of Case Mr and Mrs Kennedy (Countersigned by four residents of local addresses)
	C1	Written Rebuttal Statement Mr and Mrs Kennedy



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 4 – Appeal Decision – LA05/2020/0785/O

Background and Key Issues:

Background

1. An application for the erection of 11 detached dwellings and improvements to the existing access along Magheralave Road located to the rear of 25 – 33 Magheralave Road, Lisburn was refused planning permission on 01 March 2022.
2. An appeal was lodged with the Planning Appeals Commission within four months of the date of decision. The procedure followed in this case was the informal hearing procedure and the hearing took place on 22 September 2023.
3. The main issues in this appeal are whether or not the proposed development would:
 - be acceptable in principle;
 - prejudice road safety;
 - adversely impact on neighbouring residential amenity; and
 - have adequate means for disposal of sewage.
4. A decision received on 08 June 2023 conformed that the appeal was allowed and that planning permission was granted.

Key Issues

1. Whilst other issues were raised, the main issue was one of whether a safe means of access could be achieved to the public road. In this respect the Commissioner, having visited the site and surroundings on several occasions, agreed with the appellant that whilst the Magheralave Road was not a new housing distributor road in terms of its status and it serves both residential and non-residential traffic, given the level of traffic it carries along with the measured speed of traffic using the road and the safety feature of the speed ramps, it was considered to possess similar characteristics to such a road and that in terms of road safety, the proposed 4.8m wide access would allow for safe access to and from the site given the road characteristics and the relatively limited quantum of traffic movements that would arise from 11 new dwellings.
2. The Commissioner was not persuaded that the proposed access would present a danger to pedestrians nor would it give rise to any notable impediment to traffic travelling behind any vehicle seeking to turn into the site.
3. The Commissioner also accepted the case advanced by the appellant that the development would provide an enhanced standard of access over what is there at present.
4. With regard to potential impact on residential amenity, the Commissioner was not persuaded by the arguments advanced by third parties that the proposal would adversely affect the residential amenity of any of the properties in the vicinity of the appeal site. Furthermore, the Commissioner had no evidence that sewage infrastructure would be impacted by the proposed development.
5. The Commission places a different emphasis and weight on the policy and guidance related to the access arrangements. The Commissioner describes this decision as not creating a wider ranging precedence but does allow for a hybrid access arrangement. The issue of the detailed design is a matter for DfI Roads to advise the Council at the next application stage.
6. The position of the Commission in this case is noted. The Council will continue to apply the requirements of DCAN 15 for applications for access to the public road network.

Recommendation:

It is recommended that the Committee notes the report and decision of the Commission in respect of this appeal.

Finance and Resource Implications:

No cost claim was lodged by any party in this instance.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy?

If no, please provide explanation/rationale

This is a report updating the committee on a decision by the PAC and EQIA is not required.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	<input type="text" value="N/A"/>	Option 2 Screen out with mitigation	<input type="text" value="N/A"/>	Option 3 Screen in for a full EQIA	<input type="text" value="N/A"/>
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?	<input type="text" value="No"/>	Has a Rural Needs Impact Assessment (RNIA) template been completed?	<input type="text" value="No"/>
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If no, please given explanation/rationale for why it was not considered necessary:

This is a report updating the committee on a decision by the PAC and RNIA is not required.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:

HAS IT BEEN SUBJECT TO CALL IN TO DATE?

No

If Yes, please insert date:



Appeal Decision

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Appeal Reference:	2021/A0230.
Appeal by:	Wallace High School.
Appeal against:	The refusal of outline planning permission.
Proposed Development:	Erection of 11 no. detached dwellings, improvements to existing access along Magheralave Road and associated development.
Location:	Existing shale hockey pitch located to the rear of Nos. 25 – 33 Magheralave Road, Lisburn.
Planning Authority:	Lisburn & Castlereagh City Council.
Application Reference:	LA05/2020/0785/O.
Procedure:	Hearing on 22 September 2022.
Decision by:	Commissioner Mark Watson, dated 8 June 2023.

Decision

1. The appeal is allowed and outline planning permission is granted, subject to the conditions below.

Reasons

2. The main issues in this appeal are whether or not the proposed development would:
 - be acceptable in principle;
 - prejudice road safety;
 - adversely impact on neighbouring residential amenity; and
 - have adequate means for disposal of sewage.

Policy context

3. The Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) to be unlawful on 18 May 2017 and consequently BMAP must be disregarded. The Lisburn Area Plan 2001 (LAP), despite its vintage, operates as the local development plan (LDP) for the area the site is in. In the LAP, the appeal site lies within the Lisburn Urban Area Boundary and is not zoned for any purpose. There are no policies relevant to the appeal development and the LAP is not material.
4. A further consequence of the aforementioned Court of Appeal judgement is that the draft BMAP, published in 2004, is a material consideration in the determination of this appeal. In draft BMAP (dBMAP) the appeal site lies in the Lisburn Urban Area and is not zoned for any purpose. The dBMAP is not material.

5. The Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' (SPPS) refers at paragraph 6.137 to the need to deliver increased housing without town cramming and espouses the importance of new development respecting local character and environmental quality, as well as safeguarding the amenity of existing residents. In respect of the appeal development, there is no conflict or change in policy direction between the provisions of the SPPS and that contained in Planning Policy Statement 3 – Access, Movement and Parking (PPS3), Planning Policy Statement 7 – Quality Residential Environments (PPS7) and Planning Policy Statement 8 – Open Space, Sport and Outdoor Recreation (PPS8). PPS3, PPS7 and PPS8 remain the applicable policy documents to consider the appeal development under. Guidance contained in Development Control Advice Note 15 – Vehicular Access Standards (DCAN15) and Creating Places – Achieving Quality in Residential Environments (CP) is also of relevance.

The appeal site and proposed development

6. The appeal site comprises a shale hockey pitch and small strip of adjacent land belonging to Wallace High School (WHS) on the western side of Magheralave Road. It measures approximately 0.9 hectares in area and is predominantly flat in nature. Part of the site is in use as an overflow car park for WHS. The existing access joins the Magheralave Road adjacent and south of No. 25 Magheralave Road. There is a vehicular gate as well as a pedestrian gate alongside it, both of which are faced with closeboard wooden fencing. It is bounded to the south and eastern sides by residential development and to the north by the Thiepval Army Barracks. Nos. 23 – 33 Magheralave Road abut the eastern site boundary. The dwellings along this part of the Magheralave Road are detached, of varying design and vintage, set within generally spacious, well vegetated plots. The appeal site lies within a predominantly residential area interspersed with a number of educational and health land uses.
7. The appeal development seeks outline permission for 11 new dwellings. An indicative layout was submitted for information as part of the application. It shows the dwellings set within individual plots, with a shared surface access serving the proposed development. A detailed drawing showing road geometry at the proposed access was also submitted.

The principle of development

8. In this case the Council accepted that the appeal development met the requirements under Policy OS1 of PPS8. Objectors to the proposed development questioned the loss of the pitch to housing.
9. Policy OS1 of PPS8 states that development will not be permitted that would result in the loss of existing open space or land zoned for the provision of open space. The presumption against the loss of existing open space will apply irrespective of its physical condition and appearance. The policy goes on to state that an exception will be permitted where it is clearly shown that redevelopment will bring substantial community benefits that decisively outweigh the loss of the open space. A further exception will also be permitted where it is demonstrated that the loss of open space will have no significant detrimental impact on the amenity, character or biodiversity of an area and where either of two circumstances occur. In the case before me circumstance (ii) applies; that in the case of playing fields and sports pitches within settlement limits, it is demonstrated by the developer that

the retention and enhancement of the facility can only be achieved by the development of a small part of the existing space - limited to a maximum of 10% of the overall area - and this will have no adverse effect on the sporting potential of the facility. Policy OS1 states that this exception will be exercised only once.

10. From my assessment of the evidence, site visits and for reasons given later in this decision pertaining to amenity, I am satisfied that the proposed redevelopment of the pitch in question would have no significant detrimental impact on the amenity, character or biodiversity of the area. The appeal site represents approximately 9.6% of the wider site within the WHS complex, thus falling within the 10% threshold to qualify under the exception. According to the submitted evidence the sale and development of the appeal site would achieve a series of capital improvements to the WHS sporting facilities, namely:
 - maintenance of the drainage programme of works for rugby pitches;
 - development of a 4G rugby training pitch;
 - repair and replacement of cricket pitches;
 - a plant and machinery compound for equipment used to maintain the WHS sports pitches;
 - an external viewing gallery over that maintenance complex to facilitate spectators;
 - development of a running track; and
 - re-purposing of the tennis courts to deliver surface improvements and offer overspill tennis resource in conjunction with Tennis Fundamentals, the service provider at Wallace Park.
11. From the totality of the evidence, including the listed benefits above, which I accept could only be achieved by the sale and development of the appeal site, the redevelopment of the shale hockey pitch on the periphery of the school grounds would bring substantial community benefits through the enhancement of the WHS facilities and would not have any adverse effect on their sporting potential. I concur with the Council that the appeal development satisfies Policy OS1 of PPS8 and the related provision of the SPPS. Whilst Objectors referred to a restrictive covenant that they considered prevented sale of the site, that is not a matter for this appeal. The Objectors' concerns on these matters would not warrant the withholding of planning permission.

Road safety matters

12. The Council and Objectors considered that the appeal development would prejudice road safety. The Council and the Department for Infrastructure (DFI – hereafter referred to as the Department) objected to the Appellant's proposed use of a shared surface access, as well as the intensification of the existing access. The Department considered that the proposed access arrangement would prejudice road safety in that it did not comply with the guidance in DCAN15. At the hearing the Department's witnesses considered that pedestrian safety would be prejudiced through the use of the proposed shared surface entrance to the appeal development. They considered that a DCAN15 compliant access arrangement was necessary in order to promote safety and avoid excessive delay.
13. Policy AMP2 of PPS3 states that 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 two criteria are met; firstly that such access will not prejudice road safety or significantly inconvenience the flow of

traffic and secondly, that the proposal does not conflict with Policy AMP 3 Access to Protected Routes. The appeal development is not on a protected route, thus the second criterion is not engaged.

14. Policy AMP2 goes on to state that the acceptability of access arrangements, including the number of access points onto the public road, will be assessed against the Department's published guidance. Consideration will also be given to a number of factors including 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. The Department's published guidance in relation to new accesses onto public roads is contained within DCAN15.
15. Paragraph 1.5 of DCAN15 states that the requirements set out therein relate to new private accesses and new development access roads joining the public road. It also clarifies that all internal junctions within new potentially adoptable housing developments are covered by separate Departmental guidance on the design and layout of residential developments. CP provides this guidance. There is a clear distinction between the guidance documents and their particular remits.
16. The Appellant proposes what they term a hybrid DCAN15/CP designed layout. It would employ a 4.8m wide shared surface entrance from Magheralave Road which would then widen to 6m a short distance into the site. The Department considered that the DCAN15 standards alone, should be applicable given Magheralave Road is an existing road and not a new distributor road within a residential estate. Whilst there was discussion between the Appellant and Department during the Pre-Application Discussion process, wherein this particular approach was put forward and not outright objected to by the Department, I accept that such correspondence, meetings and any discussion therein do not necessarily amount to a firm commitment to accept a particular approach or design aspect, thus I place little weight on it.
17. DCAN15 advises that an access width of 6m and radii of 6m should be employed for all accesses save for single dwellings. CP at paragraph 19.06 states that shared surfaces should be wide enough to allow pedestrians, cyclists and vehicles to pass each other comfortably and for vehicles to manoeuvre. It further states that the normal minimum width for a shared surface is 6.0m, but it should always be 4.8m wide at its entrance. This would facilitate vehicles entering the new development at a slower and safer speed. CP also allows for dropped kerb radii, unlike DCAN15 which requires raised kerbs.
18. I visited the site and surroundings on several occasions, two of which were during peak periods. According to the submitted evidence, the Magheralave Road is a C class road which carries a weekday average of 4065 vehicles. It is within a designated 30 mph zone, although the Appellant's speed survey data provided an estimated 85%ile speed for vehicles using the road to be approximately 21 mph as a result of the traffic calming measures. This assessment was not disputed by the Department. The road is also part of a bus route. The Appellant considered that the characteristics of the road, including the number of dwellings it serves, along with the observed road speed, justified the hybrid approach for the access arrangements. The Appellant also pointed to the nearby speed reduction ramps to both the north and south of the site entrance onto Magheralave Road. The

Department stated that those were installed to ensure pedestrian safety in the area. The Appellant considered that these factors together gave the Magheralave Road the characteristics of a distributor road within a residential estate, thus incorporating standards from CP was deemed appropriate.

19. The proposed visibility splays of 2.4m x 33m in both directions can be provided. Although the Magheralave Road is not a new housing distributor road in terms of its status and it serves both residential and non-residential traffic, I nevertheless agree with the Appellant that given the level of traffic it carries, along with the observed and measured speed of traffic using the road, as well as the safety feature of the speed ramps, it possesses similar characteristics to such a road. The Department stated that it considered the incorporation of a shared surface access to be dangerous, but did not substantiate this objection beyond stating that it fell below the standard of a DCAN15 compliant access. Whilst this may be so, I agree that the actual conditions of the road onto which the appeal development would access must be taken into account.
20. In terms of road safety, I consider that the proposed 4.8m wide access would allow for safe access to and from the appeal development given the road characteristics and the relatively limited quantum of traffic movements that would arise from 11 new dwellings. Although the proposed shared surface access would mean that both vehicles and pedestrians may be using it concurrently, the same arrangement, including its width, would necessitate slightly slower entry into the proposed development by vehicles than if it were 6m wide. I am not persuaded that the proposed access arrangement would present a danger to pedestrians either when within the development or while walking along Magheralave Road. Nor am I persuaded that the access arrangement would give rise to any notable impediment to traffic travelling behind any vehicle seeking to turn into the development, as they would still be able to turn into the proposed development at a suitable but safe speed.
21. The Appellant also suggested that the appeal development would represent a betterment of the existing access arrangement. As it stands the access serves, at least in part, as an overspill car park for WHS. The appeal development would widen this access from 4.3m to 4.8m, whilst also removing the existing gates across the access. I accept that although there would be an intensification of use arising from the appeal development, it would nevertheless also provide an enhanced standard of access over what is there at present.
22. The Appellant referred to several examples of housing developments where accesses with a width less than 6m have been approved, or have been recommended for approval, despite non-compliance with DCAN15 standards. Several of these have accesses of 5.5m and not 4.8m as is proposed in this case. Two current applications within the Belfast area have 4.8m accesses with dropped kerb radii. These were undetermined at the time of the appeal. The Department stated that these were not comparable with the appeal development for various reasons. A further example noted was the development at 49 – 63 Magheralave Road where the same shared surface arrangement as is proposed in the appeal, was accepted. The only difference in that case was that access was onto a priority road which was also recently constructed, rather than being onto an older road, such as Magheralave Road itself. The nearby Thompsons Manor development, also raised by the Appellant, had a CP compliant access, though

one not strictly in accordance with DCAN15, in that its width is only 5.5m and not 6m.

23. The Appellant also drew my attention to application LA05/2022/0043/RM for 14 apartments at 283 – 285 Kingsway, Dunmurry. That development accessed onto a protected route and was deemed acceptable with a non-DCAN15 compliant standard of access. The Department in post-hearing evidence stated that there was a long history of approvals on that site. These had involved changes to the number of units from 5 houses to 14 apartments, which had included a 4.8m wide access with 6m radii. The most recent application, referred to above, involved a 4.8m wide access with lowered kerbs at 45° to the private access, which was ultimately allowed based upon the planning history associated with that site. The Department nevertheless stated that it considered this approval to be erroneous.
24. Whilst I note the approved developments referred to by the Appellant, including the Kingsway, Dunmurry development, I am not persuaded that those instances in themselves would justify the granting of permission in this case as none are comparable with the appeal development. However, they do serve to illustrate that the Department has taken an inconsistent approach to access widths and arrangements in instances, rather than a purely doctrinal one based solely upon strict application of DCAN15 standards. Furthermore, the Appellant's statement that there have been no accidents at those developments already constructed where a reduced width was permitted was not disputed by the Department.
25. This inconsistency of approach, when taken with my conclusions above that given the particular site characteristics, including those of the Magheralave Road at this location, together with the limited quantum of development sought and consequent vehicle movements, all lead me to conclude that in this particular case the proposed road layout would not prejudice road safety. For the same reasons I do not consider that the proposed hybrid access would set a wide-ranging precedent given the specific characteristics of the appeal site, including its existing (partial) vehicular parking use and the betterment of that existing access which would arise from the appeal development.
26. Objectors considered that the appeal development would add further congestion to an already busy local road network. During my site visits I noted periods when traffic did build up on the local network, with obvious peaks during the school run drop-off and collection periods. However, the level of traffic that would be generated by the development of 11 dwellings, including visitors and deliveries to those dwellings, would not be of such a level that it would significantly inconvenience the flow of traffic on the wider road network, even during peak periods. This matter would not warrant the withholding of planning permission.
27. Although the appeal development would not fully meet DCAN15 standards in terms of the proposed access, for the reasons given above I am satisfied that the appeal development can provide an access that would not prejudice road safety, for drivers or pedestrians, or significantly inconvenience the flow of traffic. Policy AMP2 of PPS3 and the related provisions of the SPSS are met. Accordingly, the Council's sole reason for refusal and the related concerns of the Objectors are not sustained.

Residential amenity matters

28. Objectors considered that the appeal development would adversely impact on the existing residential amenity of several properties through overlooking, dominance and overshadowing. Matters pertaining to potential residential amenity impacts arising from new residential development fall to be considered under criterion (h) of Policy QD1 of PPS7. Criterion (h) states that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on either or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance. This assessment of the potential impact on existing residential amenity is a matter of judgement which includes a degree of subjective appraisal.
29. Notwithstanding that the appeal development seeks outline permission, the illustrative layout submitted with the application showed how 11 dwellings could be placed within the site. The size and generally level topography of the appeal site along with its position relative to the dwellings fronting the Magheralave Road are such that I agree that sufficient separation distance between new and existing dwellings could be provided to avoid any unacceptable degree of overlooking. The same physical site characteristics and relative position of proposed dwellings to existing ones persuade me that the appeal dwellings could be designed and sited as to avoid any impression of dominance on those properties fronting Magheralave Road. The proposed dwellings would lie to the west of the dwellings along Magheralave Road and to the north of those in Thompson Manor. The position of the appeal development relative to other existing residential properties is such that when taken with the path of the sun, there would be no direct overshadowing on those properties arising from the appeal development.
30. For the reasons given above I am not persuaded that the appeal development would unacceptably adversely affect the residential amenity of any of the properties in the vicinity of the appeal site. The appeal development satisfies criterion (h) of Policy QD1 of PPS7, the policy read as a whole and the related provisions of the SPPS. The Objectors' various concerns on these matters would not warrant the withholding of planning permission.

Sewage infrastructure

31. A third party objection raised concerns as to the sewage capacity in the locality. The NI Water consultation response for the appeal development did not suggest any capacity issue at the local waste water treatment works which the appeal development would connect to. I have no evidence to consider that there would be any issue in this regard in the event that the development was to be granted permission. This matter would not warrant the withholding of planning permission.

Conclusions

32. For the reasons given above I am satisfied that the appeal development would not prejudice road safety, nor significantly inconvenience the flow of traffic. The Council's reason for refusal and the various concerns raised by the Objectors are not sustained. The appeal shall succeed. The matter of conditions remains to be considered.
33. Conditions relating to the provision of a further detailed drawing for the proposed access arrangements and their implementation are necessary to ensure a safe access is provided. A condition requiring provision of the requisite level of parking

and servicing for the 11 dwellings would also be necessary for the same reason. I am not persuaded of the necessity for a condition requiring the submission of a Private Streets Determination drawing for this outline application, as there is a separate legislative requirement to provide that to the Department when the detailed layout has been drawn up if adoption of that roadway is to be sought. The suggested condition stating that relocation or adjustment of any street furniture to achieve the access would be at the Appellant's own expense is in effect an informative, rather than a condition that would meet the legal tests for planning conditions.

34. A condition requiring that the detailed layout be in general conformity with the illustrative layout provided at outline stage would be necessary to ensure the development accords with the layout that has been judged acceptable against the various policy and other material considerations. A landscaping scheme would need to be submitted with the reserved matters application and although not specifically discussed at the hearing, its implementation during the first available planting season following occupation would be necessary in the interests of preserving visual amenity. The replacement of any trees or shrubs dying or becoming seriously damaged within five years of being planting would also be necessary for the same reason. The Appellant's Biodiversity Checklist included consideration of potential impacts on mature trees on third party land adjoining the appeal site. The ecologist who authored the submission concluded that the appeal development would not have any direct impact on those trees. I have been given no reason to disagree with this assessment. I am therefore not persuaded that a root protection zone drawing is necessary at reserved matters stage. To ensure that the development can adequately dispose of storm water and foul sewage a negative condition requiring details of those measures to be approved by the planning authority prior to occupation of the dwellings would be necessary.

Conditions

- (1) Except as expressly provided for by Conditions 2 and 5, the following reserved matters shall be as approved by the planning authority – the siting, design and external appearance of the buildings.
- (2) A plan at 1:500 scale shall be submitted as part of the reserved matters showing the access to be constructed in accordance with that shown in approved drawing 02/1 stamped received by the planning authority on 9 February 2021.
- (3) The access as finally approved shall be completed before the dwellings are occupied and shall be permanently retained.
- (4) Before the dwellings are occupied provision shall be made for parking and servicing within the site to the standard set out in Creating Places. Those agreed parking and servicing facilities shall be permanently retained.
- (5) The proposed development shall be in general conformity with that shown on drawing 03 Revised Illustrative Proposal stamped received by the planning authority on 4 November 2021.
- (6) A detailed landscaping scheme shall be submitted to the planning authority for approval at Reserved Matters stage. The scheme shall detail trees and

hedgerows to be retained and the location, numbers, species and sizes of trees and shrubs to be planted within the site. The scheme of planting as finally approved shall be carried out during the first planting season after the dwellings are occupied. Trees or shrubs dying, removed, or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.

- (7) No development shall take place until detailed proposals for disposal of storm water and foul sewage have been submitted to, and approved in writing, by the planning authority. The dwellings shall not be occupied until the approved arrangements are in place.
- (8) Application for the approval of reserved matters shall be made to the planning authority before the expiration of three years from the date of this decision.
- (9) The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

This decision relates to the following drawings submitted with the application:-

DRAWING NUMBER	TITLE	SCALE	DATE
01	Location Plan	1:1250	18/09/2020
02/1	Access and Connection Road	1:200	09/02/2021
03	Revised Illustrative Proposal	1:500	04/11/2021

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:-	Mr M Burns (L&C CC) Mrs S McCloskey (L&C CC) Ms C Duff (DFI Roads) Mr S Cash (DFI Roads)
Appellant:-	Mr S Beattie KC (inst. By Clyde Shanks Planning) Mr C Shanks (Clyde Shanks Planning) Mr R Agus (ARS Partnership) Mr G Smyth (Clyde Shanks Planning - observing)
Third Parties:-	Ms L Elliott (Objector – observing only)

List of Documents

Planning Authority:-	'A' Statement of Case & Appendices (L&C CC) 'C' Post-hearing comments on LA05/2022/0043/RM (L&C CC)
Appellant:-	'B' Statement of Case & Appendices (Clyde Shanks Planning)



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 5 – Notification by telecommunication operator(s) of intention to utilise permitted development rights

Background and Key Issues:

Background

1. The Council is notified by Openreach of their intention to utilise permitted development rights at a within the Council area to install communications apparatus.
2. The installation consist of the erection of poles in accordance with Part 18 (Development by Electronic Communications Code Operators) F31 of the Planning (General Permitted Development) Order (Northern Ireland) 2015.

Key Issues

1. The notification advises 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. The content of this recent notification is provided and attached to this report.
2. 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 Council. 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.

Recommendation:

It is recommended that Members note the detail of the notifications specific to the site identified.

Finance and Resource Implications:

There are no finance or resource implications.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy? No

If no, please provide explanation/rationale

This is a report providing notification by telecommunication operator(s) of intention to utilise permitted development rights. EQIA not required.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	N/A	Option 2 Screen out with mitigation	N/A	Option 3 Screen in for a full EQIA	N/A
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?	No	Has a Rural Needs Impact Assessment (RNIA) template been completed?	No
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If no, please given explanation/rationale for why it was not considered necessary:

This is a report providing notification by telecommunication operator(s) of intention to utilise permitted development rights. RNIA not required.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

No

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:**APPENDIX 5** – Notifications from an Operator in respect of intention to utilise permitted development rights**HAS IT BEEN SUBJECT TO CALL IN TO DATE?**

No

If Yes, please insert date:

**List of Notifications from Telecommunication Operators in relation to intentions to utilise Permitted Development Rights
July 2023 Planning Committee**

	Applicant/Agents	Operator	Location	Summary of details	Date received
1	Openreach	Openreach	Milltown Avenue	Notice of Pole Erection	13/06/2023



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 6 –Live Applications

Background and Key Issues:

Background

1. At the meeting of the Planning Committee on 19 June 2023, Members requested that a report be prepared providing a breakdown of the live applications (by duration) still under consideration by the Unit and how these are being managed.
2. A legacy application is described by DfI Planning Group, for the purpose of reporting in statistical bulletins, as an application that is received earlier than 1 April 2015. The Unit has no applications that fall into the definition of legacy.
3. It does have applications that are submitted after 2015 but have been in process for more than 12 months. A higher than average proportion of older applications in the planning system has a direct impact on the ability of the Unit to achieve good performance against the statutory targets of 15 weeks for local applications and 30 weeks for major applications.
4. Applications can remain in the planning system for longer than expected for a variety of reasons including the following:
 - Turnaround time associated with statutory consultees
 - Inadequate/incomplete surveys/technical reports or requests for additional reports to support the proposition
 - Deferrals to allow for further information to be submitted

- Requests by applicants/agents to hold applications
- Maturity in reaching agreement on Section 76 Development Agreements
- Third party challenges to applications through the Judicial Review process
- Embedding of the new IT Systems and associated processes

Key Issues

1. At the end of the financial year 2022/23, there were 864 live applications remaining undecided in the Planning Unit and of these, 288 applications are more than 1 year old. The number of applications is broken down in the table below:

Duration	Number of live applications
Less than 6 months	374
Six to twelve months	202
More than twelve months	288

Table 1: Number of live applications at the end of March 2023 (not validated)

2. Live cases lists are continuously kept under review and officers within the Development Management team continue to actively progress older applications in tandem with more recent submissions.
3. Since 1 April 2023, officers have issued a total of 82 decisions in respect of older applications. In addition, internal resources have been transferred to support the DM process and deal with the backlog. The focus is mainly on cases where the consultation process is complete and all the necessary information is available to allow the officers to conclude their assessment. It is planned that all the backlog of applications up to 2021 will be decided by the end of this calendar year.
4. The implementation of the review of the structure will also add additional professional and technical capacity into the Unit. As this resource is increased there will be a focus on triaging older applications and an emphasis on returning to a level of performance in line with the statutory target.

Recommendation:

It is recommended that Members note the numbers of older applications and the actions by officers of the Unit to manage and reduce the backlog.

Finance and Resource Implications:

There are no finance or resource implications.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy?

If no, please provide explanation/rationale

This is a report in relation to Older Applications. EQIA not required.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	<input type="text" value="N/A"/>	Option 2 Screen out with mitigation	<input type="text" value="N/A"/>	Option 3 Screen in for a full EQIA	<input type="text" value="N/A"/>
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?	<input type="text" value="No"/>	Has a Rural Needs Impact Assessment (RNIA) template been completed?	<input type="text" value="No"/>
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If no, please given explanation/rationale for why it was not considered necessary:

This is a report in relation to Older Applications. RNIA not required.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:

HAS IT BEEN SUBJECT TO CALL IN TO DATE?

No

If Yes, please insert date:



Planning Committee

17 July 2023

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 7 – Number of appeals decided in previous financial year

Background and Key Issues:

Background

1. The Planning Appeals Commission [PAC] is a statutory tribunal, independent of any government department or agency. It has a wide range of appeal functions which include matters relating to planning, listed buildings, conservation areas, advertisements, trees, roads and the environment.
2. Applicants have right of appeals to the PAC in one or more of the circumstances:
 - (a) planning permission is refused;
 - (b) planning permission is given but with conditions considered unreasonable;
 - (c) approval of the details of a proposal (called 'reserved matters') for which Planning Service or the PAC has already granted outline permission is refused ; or
 - (d) reserved matters approval is granted but with conditions considered unreasonable.

Key Issues

1. There is a trend for increased numbers of planning appeals in the Lisburn & Castlereagh City Council area in the past three years which is in addition to the normal duties that officers of the Unit undertake in processing planning applications.

2. Appeals lodged normally require officers to prepare as statement of case followed by rebuttal evidence. The officer may also on occasion be required to attend an accompanied site visit or participate in a hearing.
3. Appeals can offer direction and are used as evidence in some planning applications as precedence for similar development. As a consequence the outcome of individual appeals are reported to the planning committee to assist members, and build capacity and knowledge.
4. In the 2022/23 business year, 20 appeals were notified to the Council and 16 appeal decisions were received from the Commission.
5. Of the decisions received it was confirmed in 12 cases that the appeal had been dismissed, 3 were withdrawn and 1 was allowed. The Council, in the previous year, has had an 95 % success rate when the withdrawn appeals are excluded,
6. Members will note that the majority of planning appeals decision are for single dwellings in the countryside and that these are all dismissed. The detail of the cases are attached to this report (**see Appendix**)

Recommendation:

It is recommended that Members note the update in relation to the number of planning appeals received and the outcome of appeal decisions in the previous calendar year .

Finance and Resource Implications:

There are no finance or resource implications.

Screening and Impact Assessment

1. Equality and Good Relations

Has an equality and good relations screening been carried out on the proposal/project/policy? No

If no, please provide explanation/rationale

This is a report in relation to Planning Appeal Outcomes. EQIA not required.

If yes, what was the outcome?:

Option 1 Screen out without mitigation	N/A	Option 2 Screen out with mitigation	N/A	Option 3 Screen in for a full EQIA	N/A
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Rationale for outcome/decision (give a brief explanation of any issues identified including mitigation and/or plans for full EQIA or further consultation)

Insert link to completed Equality and Good Relations report:

2. Rural Needs Impact Assessment:

Has consideration been given to Rural Needs?

No

Has a Rural Needs Impact Assessment (RNIA) template been completed?

No

If no, please give explanation/rationale for why it was not considered necessary:

This is a report in relation to Planning Appeal Outcomes. RNIA not required.

If yes, give brief summary of the key rural issues identified, any proposed actions to address or mitigate and include the link to the completed RNIA template:

SUBJECT TO PLANNING APPROVAL:

No

If Yes, "This is a decision of this Committee only. Members of the Planning Committee are not bound by the decision of this Committee. Members of the Planning Committee shall consider any related planning application in accordance with the applicable legislation and with an open mind, taking into account all relevant matters and leaving out irrelevant consideration".

APPENDICES:

APPENDIX 7 – Report in relation to Planning Appeal Outcomes

HAS IT BEEN SUBJECT TO CALL IN TO DATE?

No

If Yes, please insert date:

Appeal Decision Outcomes - 2022/2023

Date Appeal Received	Appeal Ref	Planning Ref	Proposal and Location	Appeal Decision Date	Appeal Decision
18/08/2020	2020/A0025	LA05/2018/0307/F	Replacement dwelling with retention & conversion of existing stone built, vernacular building (former dwelling) to stables/ outbuildings 130m north of 47 Ballymullan Road, Lisburn	28/04/2022	Dismissed
06/11/2020	2020/A0094	LA05/2019/0168/F	Proposed dwelling and detached garage Vacant Site 25m south west of 33 Carnreagh Hillsborough, BT26 6LJ	30/11/2022	Withdrawn
23/11/2020	2020/A0105	LA05/2017/0772/F	Proposed retention of replacement agricultural building (Amended) To the rear of 36, 36A and 38 Halftown Road, Lisburn	18/04/2023	Dismissed
24/11/2020	2020/A0106	LA05/2019/0347/RM	Proposed 2 No additional dwellings comprising 1 No 2.5 Storey Detached and 1 No 2 Storey 3 Bed Detached Dwellings. 1 Bells Lane, Lambeg, Lisburn	25/04/2022	Dismissed
08/02/2021	2020/A0138	LA05/2019/1292/O	Proposed dwelling garage and associated site works. 60m SW of and adjacent to 240 Moira Road, Lisburn	21/06/2022	Dismissed
17/02/2021	2020/A0143	LA05/2020/0506/O	Old Mill Grove	22/12/2022	Dismissed
26/05/2021	2021/A0036	LA05/2020/0255/O	Dwelling and Garage including improvements to access. 30M South of 98 Saintfield Road, Lisburn	12/04/2022	Dismissed
26/05/2021	2021/A0037	LA05/2020/0256/O	Dwelling and Garage including improvements to access. 30M South of 98 Saintfield Road, Lisburn	12/04/2022	Dismissed
04/06/2021	2021/A0041	LA05/2021/0079/O	Replacement dwelling. land 200m north-east of 43 Ballykine Road Ballynahinch, BT24 8JE	17/08/2022	Dismissed
09/06/2021	2021/A0044	LA05/2020/0791/F	Agricultural fodder shed. Lands 30m North-East of 10 Killynure Road West, Carryduff	20/07/2022	Allowed
14/06/2021	2021/A0048	LA05/2020/0419/O	Proposed erection of 2 No. detached dwellings and garages (Infill Development). Lands between 38 and 26b Killultagh Road, Lower Ballinderry, Lisburn	04/04/2022	Dismissed
07/02/2022	2021/A0213	LA05/2021/0202/O	Proposed replacement 2 storey dwelling (CTY3-PPS21) and garage with associated site works and conversion of existing dwelling into domestic store. 40m west of 329 Gilnahirk Road, Belfast	02/12/2022	Dismissed
28/03/2022	2021/A0247	LA05/2021/1081/F	Realignment of roadway and 10 new dwellings Sites 62, 70, 71, 72 and 73 and 4, 5, 6, 7, 8 Governor's Gate Demesne Hillsborough	17/06/2022	Withdrawn
30/03/2022	2021/A0250	LA05/2017/0882/F	Construction of a 3 Storey building with 14 No apartments and 8 no ground floor retail units with on site parking (Renewal of Y/2007/0564) - 58 Comber Road, Church Quarter, Dundonald	20/09/2022	Withdrawn
25/04/2022	2022/A0014	LA05/2021/0071/O	Site for dwelling under PPS21 Policy CTY 2A - 50m South of 12 Kilcorig Road, Lisburn	26/01/2023	Dismissed
25/04/2022	2022/A0015	LA05/2021/0072/O	Site for dwelling under PPS21 Policy CTY 2A - 50m South of 12a Kilcorig Road, Lisburn	26/01/2023	Dismissed