



March 1st, 2022

Chairman : Councillor A Swan

Vice Chairman : Alderman J Tinsley

Aldermen : W J Dillon MBE, D Drysdale, O Gawith and A Grehan

Councillors : J Craig, M Gregg, U Mackin, J McCarthy and John Palmer

Notice of Meeting

A meeting of the Planning Committee will be held on **Monday, 7th March 2022 at 10:00 am**, in the **Council Chamber / Zoom** for the transaction of business on the undernoted Agenda.

David Burns

Chief Executive

Agenda

Covid-19 Safety Measures

Covid 19 Safety Measures When attending meetings in the Council Chamber you are asked to observe the following measures to ensure the safety of your Council colleagues and members of staff:

Prior to meetings if you are experiencing symptoms of COVID-19 please do not attend. Book a test and self-isolate.

Whilst not compulsory, you are encouraged to satisfy one of the three following conditions before attending meetings:-

- been fully vaccinated for more than two weeks;
- or have had a negative PCR test or rapid lateral flow test taken within 48 hours of meetings (a lateral flow test taken at home will need to be reported into the public reporting system);
- or evidence of a positive PCR test result for COVID-19 within the previous 180 days and following completion of the self-isolation period.

Please be reminded of the following measures which remain in place: Face coverings must be worn indoors unless seated at a desk. They must be worn when leaving the Council Chamber for any reason.

Good hand hygiene should be adhered to and hand sanitiser is available in the ground floor foyer and the Council Chamber.

Social distancing remains strongly advised. Desks will be distanced at 1m apart and you should keep face-to-face contact to a minimum. Lisburn & Castlereagh City Council fully supports the NI Executive in its call for people to make safer choices.

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)

 *Disclosure of Interests form.pdf*

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3.0 Minutes of the Planning Committee Meeting held on Monday 7 February 2022

 *PC 07 02 2020 Draft Minute with PU amends.pdf*

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4.0 Report from the Head of Planning and Capital Development

4.1 Schedule of Applications to be Determined:

- (i) LA05/2020/1056/F - Extension of burial plot spaces at three locations within existing cemetery, Blaris Road, Lisburn.
 □ Appendix 1(a) - DM Officer Report - LA0520201056 - Blaris Cemetery exte....pdf Page 25
- (ii) LA05/2020/0617/F - Proposed two infill dwellings and garages (Amended Application Form) Between 184 and 188 Hillhall Road, Lisburn
 □ Appendix 1(b)(i) - DM Officer Report - LA0520200617F - Hillhall Infillspdf Page 44
 □ Appendix 1(b)(ii) - DM Officer Report - LA0520200617F - Hillhall Infills....pdf Page 52
- (iii) LA05/2021/0928/O - Site for a dwelling, garage including ancillary site works, 30m north of 39 Garlandstown Road Glenavy
 □ Appendix 1(c)(i) - DM Officer Report - LA0520210928O - Garlandstown Road....pdf Page 72
 □ Appendix 1(c)(ii) - DM Officer Report - LA0520210928O - Garlandstown Roa....pdf Page 78
- (iv) LA05/2019/0782/F - Proposed alterations to existing residential home to include two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at 2 & 4 Ashley Park (Amended plans) at Residential Home, 19 Church Road Carryduff.
 □ Appendix 1(d)(i) - DM Officer Report - LA0520190782F - Extension to Nu....pdf Page 92
 □ Appendix 1(d)(ii) - DM Officer Report - LA0520190782F - Extension to n....pdf Page 100
- (v) LA05/2017/0021/F – Demolition of existing buildings and erection of care home (Class 3(b) of the schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing (amended information) at 531 Saintfield Road Belfast BT8 8ES.
 □ Appendix 1(e)(i)- DM Officer Report - LA0520170021F - Nursing Home - Sec....pdf Page 118
 □ Appendix 1(e)(ii) - Note of Site meeting iro Saintfield Road 0021 - FINA....pdf Page 131
 □ Appendix 1(e)(iii)- DM Officer Report - LA0520170021F - Nursing Home - A....pdf Page 133
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| (vi) | LA05/2021/1178/F – Erection of dwelling house north and adjacent to 32 Killynure Road West, Killynure, Carryduff. | <ul style="list-style-type: none"> ▢ <i>Appendix 1(f) - DM Officer Report - LA0520211178F - 32 Killynure Road -pdf</i> Page 173 |
| (vii) | LA05/2020/0011/O - Proposed replacement of existing stone dwelling 275m south west of 15 Fort Road, Crumlin, Antrim | <ul style="list-style-type: none"> ▢ <i>Appendix 1(g) - DM Officer Report - LA0520200011O - Fort Road - FINAL.pdf</i> Page 188 |
| (viii) | LA05/2021/0423/O - Proposed new dwelling and 320m NW of 8 Clontariff Road, Upper Ballinderry, Lisburn, BT28 2JD | <ul style="list-style-type: none"> ▢ <i>Appendix 1(h) - DM Officer Report - LA0520210423 Clontariff Road - FINA....pdf</i> Page 203 |
| (ix) | (i) LA05/2018/0862/F - Proposed Infill site for 2 dwellings between 26 & 30 Magheraconluce Road, Hillsborough. | <ul style="list-style-type: none"> ▢ <i>Appendix 1(i) - DM Officer Report - LA0520180862F - Magheraconluce Roadpdf</i> Page 219 |
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| 4.2 | Item 2 - Statutory Performance Indicators – January 2022 | <ul style="list-style-type: none"> ▢ <i>Item 2 - Statutory Performance Indicators - JAN - FINAL.pdf</i> Page 237 ▢ <i>Appendix 2 - Lisburn_Castlereagh_Jan_Monthly_MI - Jan 2022.pdf</i> Page 239 |
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5.0 Any Other Business

LISBURN & CASTLEREAGH CITY COUNCIL

MEMBERS DISCLOSURE OF INTERESTS

The Northern Ireland Local Government Code of Conduct for Councillors under Section 6 requires you to declare at the relevant meeting any pecuniary interest that you may have in any matter coming before any meeting of your Council. This information will be recorded in a Statutory Register. On such matters you must not speak or vote. Subject to the provisions of Sections 6.5 to 6.11 of the Code, if such a matter is to be discussed by your Council, you must withdraw from the meeting whilst that matter is being discussed

In addition you must also declare any significant private or personal non-pecuniary interest in a matter arising at a Council meeting (please see also Sections 5.2 and 5.6 and 5.8 of the Code). Subject to the provisions of Sections 6.5 to 6.11 of the Code, you must declare this interest as soon as it becomes apparent and you must withdraw from any Council (including committee or sub committee meeting) when this matter is being discussed.

In respect of each of these, please can you complete the form below as necessary.

1. Pecuniary Interest

Meeting (Council or Committee - please specify and name):

Date of Meeting: _____

Item(s) in which you must declare an interest (please specify item number from report):

Nature of Pecuniary Interest:

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2. Private or Personal non Pecuniary interest

Meeting (Council or Committee - please specify and name):

Date of Meeting: _____

Item(s) in which you must declare an interest (please specify item number from report):

Nature of Private or Personal non Pecuniary Interest:

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| Name: |
| Address: |

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| Signed: | Date: |
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If you have any queries please contact David Burns, Chief Executive, Lisburn & Castlereagh City Council

LISBURN & CASTLEREAGH CITY COUNCIL**Minutes of Meeting of the Planning Committee held remotely and in the Council Chamber, Island Civic Centre, The Island, Lisburn, on Monday 7 February 2022 at 10.15 a.m.****PRESENT:**Present in Chamber:

Alderman J Tinsley (Vice-Chairman) in the Chair

Aldermen WJ Dillon, D Drysdale, O Gawith

Councillors M Gregg, U Mackin

Present in Remote Location

Councillor A Swan (Chairman)

Alderman A Grehan

Councillor J Palmer

IN ATTENDANCE:Present in Chamber:

Head of Planning and Capital Development

Member Services Officer (PS)

Member Services Officer (BF)

Present in Remote Location:

Director of Service Transformation

Principal Planning Officer (RH)

Senior Planning Officer (RT)

Senior Planning Officer (MB)

B Martyn, Legal Advisor - Cleaver Fulton Rankin

Commencement of Meeting

The Vice-Chairman, Alderman J Tinsley, welcomed everyone to the meeting which was being live streamed to enable members of the public to hear and see the proceedings. He explained that the Chairman, Councillor A Swan was unable to attend physically in the Council Chamber but would be joining via zoom which meant that he, as Vice-Chairman, would be Chairing the meeting.

He stated that Planning Officers, the Legal Advisor and those speaking for or against the applications would be attending the meeting remotely.

The Vice-Chairman advised on housekeeping and evacuation procedures. The Member Services Officer then read out the names of the Elected Members in attendance at the meeting.

1. Apologies

It was agreed that apologies for non-attendance at the meeting would be recorded from Councillor J Craig and Councillor J McCarthy.

2. Declarations of Interest

The Chairman sought Declarations of Interest from Members and reminded them to complete the supporting forms which had been left at each desk. He indicated that a form would also be available for those Members attending remotely.

The following Declarations of Interest were made:

- Councillor U Mackin referred to LA05/2020/0617/F and stated that Lagan Valley Regional Park was referred to in the Report and he was on the Board of that organisation, however he had not pre-determined the application.
- Councillor A Swan referred to LA05/2020/0617/F and stated that Lagan Valley Regional Park was referred to in the Report and he was on the Board of that organisation, however he had not pre-determined the application. He also advised that he had been approached by the applicant requesting a deferral of the determination but he had offered no response.

3. Minutes of the Planning Committee Meeting held on 10 January 2022

It was proposed by Alderman O Gawith, seconded by Councillor M Gregg, and agreed that the minutes of the Committee meeting held on 10 January 2022 as circulated be signed.

4. Report from the Head of Planning and Capital Development

4.1 Schedule of Applications

The Chairman reminded Members that they needed to be present for the entire determination of an application. If absent for any part of the discussion they would render themselves unable to vote on the application.

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

- (i) LA05/2020/0617/F - Proposed two infill dwellings and garages (Amended Application Form) Between 184 and 188 Hillhall Road, Lisburn

The Chairman advised that a request has been received from the applicant requesting that the determination of this application be deferred pending further information. The Head of Planning and Capital Development went on to summarise the request for time to submit amended plans addressing the design concerns outlined in the planning officer's report.

Alderman J Dillon said that he would need a very good reason to accede to such a request. He felt that the design element was only a small part of the reasons outlined for refusal.

Councillor U Mackin said that he felt that if there was additional information then the determination request should be allowed and he proposed that this course of action be taken.

Alderman O Gawith concurred and seconded the proposal which was then put to a vote. The vote tied and with the Chairman having the deciding vote, he voted in favour of the proposal to defer and the proposal was therefore carried.

The determination of the application was therefore deferred for a period of one month pending the receipt of further information.

- (ii) LA05/2020/0593/F - Proposed phase 2 residential development comprising 65 residential units (22 apartments, 18 semi-detached dwellings and 25 detached dwellings) garages and ancillary works including proposed amendment to Phase 1 site frontage approved under LA05/2015/0609/F (Amended scheme) on Lands at 43 47 and 49 Lurgan Road and lands to west of 33 Lurgan Road Moira

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

The Committee received Ms L Shannon who wished to speak in support of the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- She fully concurred with the recommendation of the Planning Officers.
- There were no objections from statutory consultees.
- The application was fully policy compliant.
- The proposal was sited within settlement limits.
- She urged approval.

Ms Shannon then responded to Members' queries as follows:

- Alderman J Tinsley asked for clarification on the amount of open public space incorporated and was advised that it was 10% in total.

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- Alderman O Gawith asked how many journeys this development would add in peak times, he also referred to the apartments and asked how they would impact on the main road and how close they were to the road. Mr C Bryson, who was present with Ms Shannon responded that the apartments were set back and that planting would be incorporated to soften the impact, he advised that some would face the road but the separation distance was from the road was 5 metres. Mr T Cousins who was also present with Ms Shannon advised that it had been calculated that there would be around 33 additional journeys during peak times, 1 car every two minutes or so and therefore not significant, he also advised that a turning pocket had been incorporated.

There then followed a question and answer session with the planning officers during which the following issues arose:

- Alderman D Drysdale asked where the letters of objection had come from and was advised that they were mainly from adjacent developments including those to the south on the other side of the road.
- Alderman O Gawith asked for clarification on the finished height of the apartment block and was advised that the finished floor level was 66.20 and the level at the road was 63.66.
- Councillor U Mackin asked a number of questions - clarification on the closest play area, the amount of open space which was usable. He also referred to a building on the map asking what this was and sought clarification on comments made by NI Water asking why this had not been conditioned.
- The Head of Planning and Capital Development outlined the open space available to the residents and advised that closest play park was at Moira Demesne. He advised that the building referred to was now redundant and it was confirmed by Ms Shannon that it was due to be demolished. He also advised that the comment made by NI Water was a standard response and that was why it was not felt necessary to impose a condition. He outlined the planning history at the location and advised that NI Water had committed to connection.
- Councillor M Gregg referred to previous planning history and asked for the cumulative number of dwellings at the site, he wondered if, when this was taken into account, the threshold for including a play area would have been met. He said that the density was slightly lower than the Key Site Requirements and sought clarification on this. He also sought information on what parts of the site were zoned for housing and confirmation of the settlement limits. He asked for information on the ridge heights vis a vis the surrounding housing.
- The Head of Planning and Capital Development and the Principal Planning Officer used maps to outline the extent of the zoning and the relationship of the development to the settlement limits. The differences between Key Site Requirements was explained and it was also highlighted that density was considered to be acceptable. Regarding the cumulative number of dwellings, it was confirmed that this totalled approximately 88 which kept it under the threshold for a play area. It was also highlighted that there was another entrance which served 5 houses. Mr S Cash from Department for

Infrastructure (Roads) was present at the meeting and he went on to outline how they had considered the road network proposals at the location.

Regarding ridge height, the Head of Planning and Capital Development confirmed that this was in keeping with surrounding housing.

- Councillor M Gregg then sought further clarification on zoning in draft BMAP.
- The Head of Planning and Capital Development and the Principal Planning Officer provided further clarification including any key difference in the key site requirements.
- Alderman O Gawith then referred to the reference to an additional 33 journeys per day at peak times and asked Mr Cash from the Department for Infrastructure (Roads) for his comments on this. Mr Cash confirmed that this is what would be expected. Alderman O Gawith said he felt this seemed low.

During the ensuing debate, the following comments were made:

- Alderman J Dillon said that his reservations had been addressed and he would be supporting the recommendation. He said that a Moira bypass was what was needed in the area to deal with traffic, however he felt the traffic island would assist in this instance.
- Councillor A Swan said that the land was zoned for development and therefore he would be supporting it.
- Alderman D Drysdale said that the debate had been first class and that he would be supporting the recommendation.
- Alderman O Gawith referred to the open space and asked if there was any room for negotiation with the developer asking them to put in a play area, he asked if that would require the determination of the application to be deferred. The Head of Planning and Capital Development said that members had the opportunity to defer the determination of the application if they so wished.
- Councillor M Gregg said that during the presentation and discussion on this application a number of issues had arisen. He said that he had issue with the ridge height of the apartments given that the land falls away, he said he did not see how this design was in keeping with the local area. He said that given the Key Site Requirement issue and the play park issue he did not feel that he could support this.
- Alderman D Drysdale said that not all residents wanted play parks in their area, it was a very subjective matter, he said that the Committee could only deal with what was before them.
- Alderman J Dillon concurred and went on to outline instances in the past where residents had contacted him as they had issues with play parks.

At this stage Alderman O Gawith proposed deferring the determination of the application to allow for negotiation with the developer regarding play provision.

The Head of Planning and Capital Development said that it was within the Committee's right to ask for the decision to be deferred for further consideration. He said that the challenge would be in reconciling the need for play against the policy with the request but that the decision was ultimately theirs to make.

The proposal was seconded by Councillor M Gregg and members proceeded to vote on it. The vote tied and with the Chairman having the deciding vote, he voted against the proposal which therefore fell and members proceeded to determine the application.

The Committee, having considered the information provided within the Report of the Principal Planning Officer, and by those making representations, agreed by a vote of 6:2 with 1 abstention to approve the application as outlined in the report and subject to the conditions stated therein.

Adjournment of Meeting

The Chairman declared the meeting adjourned at 11.45 am

Resumption of Meeting

The Chairman declared the meeting resumed at 12.00 noon

(Alderman A Grehan did not return to the meeting due to another engagement).

- (iii) LA05/LA05/2019/0782/F - Proposed alterations to existing residential home to include: two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at No's 2 & 4 Ashley Park (Amended plans) at Residential Home, 19 Church Road Carryduff,

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

The Committee received Mr T Mills who wished to speak in opposition to the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- This entrance was located in a small cul-de-sac.
- The main issue was the movement of vehicles into and out of Ashley Park.
- He felt it was astonishing that the Planning Unit did not feel that this would have a serious impact on residents of Ashley Park.
- He felt that DfI (Roads) had supported this without due consideration, they had not even noticed that the wrong road name had been incorporated.
- He said that DfI (Roads) had not tested any of the applicant's assumptions.
- He said that due to the fact that they had lost some land at the rear of their homes to allow for a road meant that residents of Ashley Park used the amenity space at the front of their properties.

Mr Mills then responded to Members' queries as follows:

- Alderman D Drysdale referred to parking concerns and asked whether there were parking issues currently, prior to the extension. He was advised that there were not however there were general traffic issues in the area which

would be exacerbated by the proposed extension and he went on to outline these.

The Committee received Councillor N Anderson who wished to speak in opposition to the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- Residents were concerned at the nature, scale and appropriateness of the development.
- Incompatibility and parking issues were highlighted.
- Road Safety issues were highlighted.
- Dfl (Roads) due diligence issues were highlighted.

Councillor Anderson then responded to Members' queries as follows:

- Alderman J Tinsley asked how much amenity space was lost. Councillor N Anderson responded that the issue was the access and how this will impact on residents of Ashley Park. He said that a traffic assessment needed to be carried out to look at the issue, he said that the access changed the character and amenity of the area.
- Alderman D Drysdale referred to the staffing issues raised in Councillor Anderson's written submission and sought clarification. Councillor Anderson said that there was no consideration of shift working in DCAN 9.
- Alderman J Dillon sought clarification on how the entrance would impact on the houses and was advised by Councillor Anderson that residents of Ashley Park tended not to use their rear gardens due to the road, this entrance would increase traffic going right past their main amenity space.
- Councillor A Swan asked whether staff would be coming and going during the night. Councillor Anderson replied that there would be some comings and goings during the night and he highlighted the attendance of doctors and ambulances.
- Alderman J Dillon asked whether conditioning would alleviate concerns and Councillor Anderson replied that he would like to see a traffic survey carried out.

The Committee received Mr Ronan Downey who wished to speak in support of the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- The application meets current policy requirements.
- The initial error with the street name was made by surveyors.
- The design has been cut back to respond to the requirements of Ashley Park's context.
- Regarding parking, he outlined how the figures had been arrived at.
- Dfl (Roads) have no objections and have responded on four separate occasions.

Mr Downey then responded to Members' queries as follows:

- Alderman D Drysdale stated that the issue was the Ashley Park access and the staffing parking issue, he asked whether this had been discussed with management. Mr Downey advised that the proposal would not lead to a doubling of staff parking requirements.

There then followed a question and answer session with the planning officers during which the following issues arose:

- Councillor M Gregg referred to paragraph 59 of the report which referred to shift working and he sought clarification on this. He also sought clarification on DCAN 9 parking requirements.
- The Head of Planning and Capital Development advised that there was a requirement as part of the process for a form to be completed regarding parking. This form indicated that for existing 18 bed scenario there would be 6 full time and 3 part time staff and that for the proposed 36 bed scenario the ratio would be 9 full time and 3 part time staff. He went on to clarify the current parking arrangements and the future parking provision. He said that there were no current parking issues highlighted, the number of spaces would more than double and therefore the requirements of DCAN 9 is met. The Senior Planning Officer (MB) confirmed that the Parking Standards document had been taken on board and under it the arrangements were acceptable.
- Councillor M Gregg read out DCAN 9 stating that he felt that it required 22 spaces rather than 17. The Senior Planning Officer stated that Parking Standards, as agreed by Dfl (Roads) had been the calculation that had been used in this instance. There was some discussion on DCAN 9 requirements and calculations were carried out.
- The Head of Planning and Capital Development confirmed that it transpired that DCAN 9 was not met as was alluded to earlier, however, Parking Standards, which had been updated in October 2019 was met. The Head of Planning and Capital Development advised that DCAN 9 was published in the 1990s, Parking Standards had been updated in 2019 however both documents needed to be taken account of in assessing the need for parking. He outlined the potential future demands on parking and how planners would have weighed this in bringing forward a recommendation. Councillor M Gregg asked for the site layout slide with parking indicated to be put on screen and this was done.
- Alderman D Drysdale said that there would be deliveries, doctors, ambulances and other traffic movements all increasing on site, not to mention the impact of the construction. He concurred with the need for a traffic survey to be carried out as requested by Councillor N Anderson.
- The Head of Planning and Capital Development advised that the current access from Church Road would be closed and the main entrance would be the one from Ashley Park. Regarding the request for a traffic survey, he outlined the different types of traffic information options and how parking was considered. He said that it was an option for the Committee to defer the determination of this application for a Parking Survey to be carried out but it may not change the outcome.

Alderman D Drysdale said that more information was needed for the parking and access arrangements and he proposed deferring the determination of the

application pending further information being obtained on parking arrangements, staff numbers, traffic movements and to allow for a site visit to be convened.

The Head of Planning and Capital Development said that it would be unusual for a Traffic Impact Assessment to be provided in such a case however clarification could be sought. Alderman D Drysdale said that as well as staff parking, he wished to include the other potential parking situations alluded to. The proposal was seconded by Councillor J Palmer.

The Chairman said he would be taking two separate votes, one on the proposal to defer pending further information and one on the proposal to defer pending a site visit being arranged.

By a show of hands the proposal made by Alderman D Drysdale and seconded by Councillor J Palmer to defer the determination of the application to allow for further information on the need for a Transport Assessment and parking survey to be explored, clarification to be provided on staffing and for further consideration to be given in relation to potential impact of the new access on residential amenity.

By a show of hands the proposal made by Alderman D Drysdale and seconded by Councillor J Palmer to defer the determination of the application to allow for a site visit to be convened fell.

The determination of the application was therefore deferred for a period of one month pending further information as outlined above.

Adjournment of Meeting

The Chairman declared the meeting adjourned at 1.05 pm

Resumption of Meeting

The Chairman declared the meeting resumed at 1.45 pm

- (iv) LA05/2020/0604/O – Proposed site for new dwelling and garage on lands between 63 and 69 Bresagh Road Boardmills Lisburn

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

The Committee received Mr D Donaldson who wished to speak in support of the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- The concern appeared to be one of the site frontage size, the policy refers to a small gap which is what this is.

- He outlined that other frontages in the area accommodated more than 1 building.
- He said that this proposal was consistent with plot pattern in the area.
- He acknowledged that the access proposition is unusual but it would not have any detrimental effect and he urged approval.

Mr Donaldson then responded to Members' queries as follows:

- Councillor A Swan asked why the proposed access had been chosen and was advised that the frontage was narrow and there would have been visibility splay issues, this access was already in situ and had less of an impact.
- Alderman J Dillon sought clarification on the entrance which was provided by Mr Donaldson. Alderman Dillon asked whether Mr Donaldson felt that a back garden development was policy compliant. Mr Donaldson said that this was not a back garden development and he went on to outline how it fitted comfortably into the gap.
- Alderman J Dillon sought clarification on the retention of a large tree which was outlined by Mr Donaldson.

There were no questions for the Planning Officers.

During the ensuing debate, the following comments were made:

- Alderman J Dillon said he would be uncomfortable approving this application and would be supporting the recommendation to refuse.

The Committee, having considered the information provided within the report of the Principal Planning Officer and by those making representations, agreed by a majority of 7:1 with 0 abstentions to refuse the application as outlined in the Officer's report.

At this stage the Chairman advised that, due to exceptional circumstances the speaker on the next application would be doing so in person and was on his way to the Council offices. In the meantime the committee would proceed to deal with the other items on the Report of the Head of Planning and Capital Development.

4.2 Handling of planning appeal contrary to officer recommendation - LA05/2020/0971/F

Members were reminded that in October 2021, an application for a proposed detached dwelling to the rear of 65 Antrim Road, Lisburn was presented to the Committee with a recommendation to approve. It had been agreed by members, by a majority of 3 to 5 with 1 abstention that the recommendation would not be upheld. The Committee were advised that in the event of an appeal against a refusal of planning permission contrary to an officer recommendation, the Committee should decide who should attend the appeal to defend the decision.

The following options were available to members:

- a. Council shall require Planning Officers to prepare the case for written submission and /or attend the appeal even if it is against their recommendation;
- b. Members who proposed and seconded the motion to refuse contrary to officer recommendation may be called as Council witnesses; and
- c. Planning consultants or different planning officers from those who made the original recommendation may be used.

The Committee was advised that an appeal had been lodged against the Council's decision but that no date for this had yet been set.

Alderman J Dillon proposed that option A be taken as he felt that the original planning officers should be able to outline the Committee's thoughts on the case and defend the decision however there was no seconder for this proposal.

Alderman O Gawith proposed that option C be taken forward with different Planning Officers from those who made the original decision being used to defend the decision. This proposal was seconded by Councillor M Gregg and it was agreed by the Committee that Option C be taken forward.

Alderman J Dillon wished it to be noted that he was not in favour of this course of action.

4.3 Update on Planning Application LA05/2021/0124/F

Members were provided with an update on the above Planning Application which was for a dwelling, garage and associated site works 100 metres south of 23A Lower Ballinderry Road, Lisburn which was presented to the Committee for determination at its meeting on 10 January 2022. They were advised of changes to the proposal which allowed the application to be determined under delegated authority in accordance with the scheme of delegation as an approval of permission.

It was agreed that the information be noted.

4.4 Submission of Pre-application Notice (PAN) for the redevelopment of an existing football pitch and sectional buildings/clubhouse to provide a facility with a new Community Hub and improved playing surface at Stanley Park Lisburn.

Members were advised that the above PAN had been submitted and they were provided with information including a site plan. It was agreed that the information be noted.

It was also agreed by the Committee that clarification be sought on which Members of Council should have been notified of this Pre-application Notice.

4.5 Appeal Decision in respect of planning application LA05/2019/0211/F

Members were reminded that an application for a new apartment block comprising 4 two-bedroom apartments and 1 three-bedroom apartment with associated parking, site works and landscaping was refused planning permission on 20 October 2020. They were provided with information on an Informal Hearing which was held on 14 October 2021 with the main issue being whether the proposed development would create a quality residential environment. A copy of the Appeal Decision was provided to Members which advised that the Appeal had been dismissed.

It was agreed that the information be noted.

4.6 Referral Directions for applications LA05/2018/1154/O and LA05/2018/1155/F (Blaris & Knockmore Link Road)

Members of the Committee were provided with an update on the following applications:

- LA05/2018/1154/O – Proposed mixed use development to include new housing (1300 dwellings) and commercial floor space (754,000 square feet) 1.6km M1-Knockmore link road, riverside parkland and ancillary works on lands at Blaris, Lisburn (lands between existing M1 Junction 8/ A101 roundabout and Moira Road/ Knockmore Road junction); and
- LA05/2018/1155/F – Construction of a new link road (1.6km) connecting the existing M1 junction 8/A101 roundabout to existing Moira/Knockmore Road Junction at Lands at Blaris Lisburn (lands between existing M1 junction 8/A101 roundabout and Moira Road/Knockmore Road junction)

The Committee was reminded that at the Meeting held in April 2021 Members had supported the officer recommendation to approve planning permission for both applications subject to the Council entering into a Section 76 Agreement with the developer.

In advance of any decision being issued and in accordance with Direction issued by the Department for Infrastructure under the powers conferred on it by Articles 17 and 18 of the Planning (General Development Procedure) Order (NI) 2015 in January 2019, the Council's decision to approve planning permission was notified to the Department on 12 May 2021.

Members were provided with copies of correspondence dated 4 January 2022 from the Chief Planning Officer & Director of Regional Planning which advised that the Department for Infrastructure, in exercise of its powers conferred on it by Section 29 (1) of the Planning (Northern Ireland) Act 2011, has directed that the

Council refer to it for determination applications LA05/2018/1154/0 and LA05/2018/1155/F.

The reasons for requiring the applications to be referred were set out but no other information was provided to support the decision. Members of the Committee were advised that Officers were currently considering the implications of the Department's decision.

A verbal update was provided by the Head of Planning and Capital Development on the detail of the papers copied to the Department and Alderman J Dillon expressed his delight that papers had been submitted. There was some discussion on the challenges ahead.

Alderman D Drysdale proposed that correspondence be sent from the Chairman of the Planning Committee outlining the issues the Committee had with the decision taken by the Department for Infrastructure. Alderman J Dillon concurred with this proposal and suggested that the correspondence be sent jointly by the Chairman of the Planning Committee and the Right Worshipful the Mayor.

It was agreed on receipt of response from the Department in relation to the Councils letter of 25 January 2022 that further consideration would be given to a joint letter issuing.

"In Committee"

It was proposed by Alderman O Gawith, seconded by Councillor M Gregg and agreed that the meeting go "in committee" to receive legal advice in the absence of members of the press and public.

Legal Advice

There was a discussion in respect of the called in application at Blaris and the PAN. Legal Advice was sought and the information provided was noted.

After consideration it was agreed by the Committee that correspondence as proposed and seconded be sent however this should be deferred pending further reports from officers.

It was also agreed that reference to the NI Audit Office comments should be made in said correspondence.

Resumption of Normal Business

It was proposed by Alderman J Dillon, seconded by Alderman O Gawith and agreed to come out of committee and normal business was resumed.

Resumption of the Schedule of Applications

At this stage the Chairman advised that, due to exceptional circumstances the speaker on the next application would be doing so in person.

- (v) LA05/2021/0928/O - Site for a dwelling, garage including ancillary siteworks on site, 30m north of 39 Garlandstown Road Glenavy

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

The Committee received Mr Nigel Coffey who wished to speak in support of the application and who had provided the Committee with a written submission in advance of the meeting and highlighted the following:

- He addressed the refusal reasons and felt that the map he had submitted showed that this proposal did respect the existing pattern of development.
- He said that the visual barrier referred to in the report did not exist.
- He outlined that the proposal would also meet the requirement of CTY2a and he urged approval.

Mr Coffey then responded to Members' queries as follows:

- Alderman J Tinsley sought clarification on how measurements had been taken, this was outlined by Mr Coffey. Alderman Tinsley asked Mr Coffey for his comments on the statement by planners that this would create a ribbon of Development. Mr Coffey said that there was a gap and therefore no ribbon would be created.
- Councillor A Swan sought clarification on the replacement of no 39 which was provided by Mr Coffey.
- Alderman J Dillon sought some further information on the content of the map submitted by Mr Coffey which was provided.

There then followed a question and answer session with the planning officers during which the following issues arose:

- Alderman J Dillon said he was glad to see a speaker returning to the Council Chamber.
- Councillor M Gregg asked why the original dwelling at no 39 had not been demolished. The Head of Planning and Capital Development referred to the drawing submitted by Mr Coffey and outlined the buildings at the location and their frontages and plot sizes. He explained how the planners had reached their decision that this application did not respect the existing development. The Principal Planning Officer put up another slide to illustrate this and it was emphasised that frontage was only one factor, plot size also needed to be considered. It was confirmed that the building beside no 39 was used for storage and that there was no planning history relating to it.

During the ensuing debate, the following comments were made:

- Councillor U Mackin referred to the fact that opposite the proposed site, on the other side of the road there was a hall, he asked if this did not constitute a cluster and could the application be considered differently if it were to be applied for under policy CTY2a.
- The Head of Planning and Capital Development brought the relevant policy up on the screen and read it out. He said that a number of policy criteria might be met however but it is considered against that policy. In order to provide proper advice to the members the application would need to be deferred to allow the proposal to be considered against that policy.

Alderman J Dillon then suggested deferring the determination of the application to allow for it to be considered under a different policy. Other members concurred with this suggestion and the Head of Planning and Capital Development confirmed that this could be done if members so wished.

It was then proposed by Councillor U Mackin, seconded by Alderman J Dillon and unanimously agreed by the Committee that the determination of the above planning application be deferred for one month to allow for additional information to be considered.

4.7 Dfl Consultation on Review of Strategic Planning Policy on Renewable & Low Carbon Energy

(Alderman D Drysdale left the meeting at 3.40 pm and returned at 3.45 pm)

Members of the Committee were provided with information on Department for Infrastructure Consultation on the Review of Strategic Planning Policy on Renewable and Low Carbon Energy together with a summary of the key issues and draft response. It was agreed that the information be noted.

Councillor M Gregg expressed his concern at some of the technologies listed as being 'emerging'. The Head of Planning and Capital Development advised that technology was ever changing and went on to explain why these had been included.

4.8 Battery Energy Storage Systems [BESS] – Judicial Review

Members were reminded that an update had been provided in April 2021 that TLT solicitors served a Pre-Action Protocol Letter on the Solicitors Office of the Department for Infrastructure on 15 March 2021 in respect of advice offered in the Chief Planner's Update (CPU) 7.

They were further advised that the correspondence had advised that judicial review proceedings were also lodged on 15 March 2021 on a protective basis

with copies of letters sent to each Council as potential interested parties in the matter.

Members were advised of the issues raised in the correspondence and of the key issues and it was agreed that the information be noted.

4.9 Development Management Practice Note 9a - Unauthorised Environmental Impact Assessment (EIA) Development

Members of the Committee had been provided with information on Development Management Practice Note 9a – Unauthorised Environmental Impact Assessment (EIA) development which is designed to guide planning authorities and officers through the regulatory procedural requirements and legal principles relating to unauthorised Environmental Impact Assessment (EIA) development and deals primarily with both procedures and good practice.

Key issues were highlighted and it was agreed that the information be noted.

4.10 Planning Statistical Bulletin – Second Quarter 2021/22

Members of the Committee had been provided with a copy of the Department for Infrastructure Northern Ireland Planning Statistics covering the second quarter of 2020/2021 which had been published on Thursday 16 December 2021. The Bulletin provides an overview of planning activity across NI and summary statistical information on Council progress across the three statutory targets for major development, local development and enforcement.

It was agreed that the information be noted.

4.11 Statutory Performance Indicators – December 2021

Members were provided with a copy of Statutory Performance Indicators for December 2021 and after a verbal update from the Head of Planning and Capital Development it was agreed that the information be noted.

4.12 Notification by telecommunication operator(s) of intention to utilise permitted development rights

Members were advised that the Council had been notified by five telecommunication operators of their intention to utilise permitted development rights at a total of seven locations within the Council area to install electronic communications apparatus in accordance with Part 18 (Development by Electronic Communications Code Operators) F13 of the Planning (General Permitted Development) Order (NI) 2015. A list of the locations was provided to the Committee together with a summary of the proposals.

It was agreed that the information be noted.

4.13 May Committee Meeting

It was highlighted by the Head of Planning and Capital Development that the scheduled date of the May 2022 Committee Meeting fell on a bank holiday and therefore it had been agreed with the Chairman that the Meeting be held on Monday 9th May 2022

It was agreed that the information be noted.

5. Any Other Business

5.1 Alderman J Tinsley Update on the Planning Portal

In response to a question from Alderman J Tinsley, the Head of Planning and Capital Development updated that the 'go live' date was 15 August 2022 with a testing period running with two systems in tandem for three months until December 2023.

The information was noted.

5.2 Councillor M Gregg Typographical error

Councillor M Gregg highlighted a typographical error in Item 4.5

The information was noted.

5.3 Head of Planning and Capital Development Agendani NI Planning Conference

Members had been provided with information on a forthcoming NI Planning Conference at the Europa Hotel on Wednesday 2 March 2022 which was being organised by Agenda NI. The cost per delegate would be £195.00 plus vat and expenses.

It was agreed by the Committee that the Chair and Vice-Chair or their nominees attend the event if they so desired.

5.4 Confidential Other Business

It was proposed by Councillor M Gregg, seconded by Alderman O Gawith and agreed that the following matters be considered "in committee", in the absence of members of the press and public being present.

Reasons for confidentiality were that the business to be discussed included:

- (i) Information relating to the financial or business affairs of any particular person (including the Council holding that information); and

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- (ii) Information in relation to which a claim to legal professional privilege could be maintained in legal proceedings.

Councillor M Gregg
Update on applications in Dundonald

At the request of Councillor M Gregg, the Head of Planning and Capital Development and the Principal Planning Officer provided a verbal update on three applications in the Dundonald area.

It was agreed that the information be noted.

Resumption of Normal Business

It was proposed by Alderman D Drysdale seconded by Councillor U Mackin and agreed to come out of committee and normal business was resumed.

(During the above discussion, Alderman J Dillon left the meeting at 3.55 pm returning at 4.05 pm)

There being no further business, the meeting concluded at 4.05 pm.

CHAIRMAN / MAYOR



Planning Committee

07 March 2022

Report from:

Head of Planning and Capital Development

Item for Decision

TITLE: Item 1 - Schedule of Planning Applications to be determined

Background and Key Issues:

Background

1. The following applications have been made to the Council as the Local Planning Authority for determination.
2. In arriving at a decision (for each application) the Committee should have regard to the guiding principle in the SPPS (paragraph 3.8) that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
3. Members are also reminded about Part 9 of the Northern Ireland Local Government Code of Conduct and the advice contained therein in respect of the development management process with particular reference to conflicts of interest, lobbying and expressing views for or against proposals in advance of the meeting.

Key Issues

1. The applications are presented in accordance with the current scheme of delegation. There are nine applications in total. Nine are local applications, eight of which have been Called In and one is mandatory.
2. The following applications will be decided having regard to paragraphs 42 to 53 of the Protocol of the Operation of the Planning Committee.
 - (a) LA05/2020/1056/F - Extension of burial plot spaces at three locations within existing cemetery, Blaris Road, Lisburn.
Recommendation - Approval
 - (b) LA05/2020/0617/F - Proposed two infill dwellings and garages (Amended Application Form) Between 184 and 188 Hillhall Road, Lisburn
Recommendation – Refusal
 - (c) LA05/2021/0928/O - Site for a dwelling, garage including ancillary site works, 30m north of 39 Garlandstown Road Glenavy
Recommendation – Refusal
 - (d) LA05/2019/0782/F - Proposed alterations to existing residential home to include two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at 2 & 4 Ashley Park (Amended plans) at Residential Home, 19 Church Road Carryduff.
Recommendation – Approval
 - (e) LA05/2017/0021/F – Demolition of existing buildings and erection of care home (Class 3(b) of the schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing (amended information) at 531 Saintfield Road Belfast BT8 8ES.
Recommendation - Approval
 - (f) LA05/2021/1178/F – Erection of dwelling house north and adjacent to 32 Killynure Road West, Killynure, Carryduff.
Recommendation - Refusal
 - (g) LA05/2020/0011/O - Proposed replacement of existing stone dwelling 275m south west of 15 Fort Road, Crumlin, Antrim
Recommendation – Refusal
 - (h) LA05/2021/0423/O - Proposed new dwelling and 320m NW of 8 Clontariff Road, Upper Ballinderry, Lisburn, BT28 2JD
Recommendation – Refusal

- (i) LA05/2018/0862/F - Proposed Infill site for 2 dwellings between 26 & 30 Magheraconluce Road, Hillsborough.
Recommendation – Approval

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

Finance and Resource Implications:

Decisions may be subject to:

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

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

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

Screening:

Equality and Good Relations

Not Applicable

Environmental Impact Assessment

Not Applicable

Rural Impact Assessment

Not Applicable

SUBJECT TO PLANNING APPROVAL:

As per Schedule

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 1(a) - LA05/2020/1056/F
APPENDIX 1(b)(i) - LA05/2020/0617/F
APPENDIX 1(b)(ii) - LA05/2020/0617/F (officer report 7/2/22)
APPENDIX 1(c)(i) - LA05/2021/0928/O
APPENDIX 1(c)(ii) - LA05/2021/0928/O (officer report 7/2/22)
APPENDIX 1(d)(i) - LA05/2019/0782/F
APPENDIX 1(d)(ii) - LA05/2019/0782/F (officer report 7/2/22)
APPENDIX 1(e)(i) - LA05/2017/0021/F
APPENDIX 1(e)(ii) - LA05/2017/0021/F (site visit report)
APPENDIX 1(e)(iii) - LA05/2017/0021/F (officer report 1/11/21)
APPENDIX 1(e)(iv) - LA05/2017/0021/F (officer report 4/10/21)
APPENDIX 1(f) - LA05/2021/1178/F
APPENDIX 1(g) - LA05/2020/0011/O
APPENDIX 1(h) - LA05/2021/0423/O
APPENDIX 1(i) - LA05/2018/0862/F

Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Mandatory) |
| Application Reference | LA05/2020/1056/F |
| Date of Application | 11 December 2020 |
| District Electoral Area | Downshire West |
| Proposal Description | Extension of burial plot spaces at 3 locations within existing cemetery boundary |
| Location | Blaris Road, Lisburn, BT27 |
| Representations | Two |
| Case Officer | Mark Burns |
| Recommendation | APPROVAL |

Summary of Recommendation

1. This application is categorised as a local application. It is presented to the Committee for determination in accordance with the Scheme of Delegation as a mandatory application as Lisburn & Castlereagh City Council is the applicant.
2. This application is presented to the Planning Committee with a recommendation to approve in that the areas identified for extension to provide for additional plots lies within an existing Council owned cemetery and when assessed against the requirements of policy OS 1 of PPS8 the proposal does not result in the loss of open space.
3. The proposal complies with the SPPS and Policy AMP 2 of PPS 3 – Access, Movement and Parking in that the proposed development involves the use of an existing unaltered access to the public road and as such, the development is not considered to prejudice road safety nor is it likely to significantly inconvenience the flow of traffic.
4. Furthermore, it also meets the requirements of policy AMP 7 of PPS 3 in that adequate parking is available within the existing cemetery to cater for the modest increase in visitors and vehicles to the site daily.

5. The proposal is considered to comply with the SPPS and Policy PPS 2 in that the evidence submitted demonstrates that the proposal will not have a significant effect on a European and Ramsar site is not likely to result in the unacceptable adverse impact on habitats, species or features of natural heritage importance.
6. The proposed development is considered to comply with paragraphs 4.11 and 4.12 of the SPPS in that the mitigation proposed to address potential amenity impacts in the form of compensatory planning to include a 5 metre buffer of hedging interspersed with trees in Sub Area C will separate the cemetery from the neighbouring residential properties on the other side of the boundary fence at Rivergate Lane.
7. The proposal also complies with paragraph 3.6 of the SPPS in that the applicant has demonstrated that the proposed development will not have a proposed development in the currently hydrogeological setting poses not risk to the water environment.

Description of Site and Surroundings

8. The 0.94 hectare site lies within the existing boundary of New Blaris Cemetery.
9. Sub Area A is located to the western side of the existing cemetery. It bounds Blaris Road. Sub Area B, is in close proximity to Sub Area A adjacent to an internal path. Sub Area C is adjacent to the eastern side of the existing cemetery.
10. Lands to the east of Sub Area C has a common boundary with existing residential properties at Rivergate Lane. Areas A and C are characterised by dense tree planting and vegetation. Area B is grassed.
11. Land to the south comprises the main Blaris cemetery and a new residential development mainly completed and known as Blaris Meadows. Lands to the north and west are predominantly rural in character and mainly in agricultural use.

Proposed Development

12. The application is for full planning permission for an extension of burial plot spaces at 3 locations within existing cemetery boundary of Blaris Cemetery in Lisburn.
13. The following reports are submitted in support of the application:
 - Design & Access Statement
 - Biodiversity Checklist
 - Preliminary Ecological Appraisal of the three parcels
 - Archaeological Assessment

- Hydrological Risk Assessment [Tier 1 and 2]
 - Preliminary Risk Assessment
14. The P1 form indicates that the access arrangements for this development involve the use of an unaltered access to the public road for both vehicular and pedestrian use.
15. Surface water will be disposed of via existing storm drains and foul sewage will be disposed of via mains connections.

Relevant Planning History

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

| Application Reference | Description of Proposal | Decision |
|-----------------------|-------------------------|---------------------|
| S/1990/0638 | Cemetery | Granted 20/03/91 |
| S/1992/1109 | Cemetery | Granted 01/12/93 |
| S/1994/0409 | Cemetery | Granted 21/07/94 |

Consultations

17. The following consultations were carried out:

| Consultee | Response |
|------------------------------------|--------------|
| DfI Roads | No Objection |
| DfI Rivers Agency | No Objection |
| LCCC Environmental Health | No Objection |
| NI Water | No Objection |
| DAERA Water Management Unit | No Objection |
| DAERA Natural Environment Division | No Objection |
| DAERA Regulation Unit | No Objection |

Representations

18. Two letters of representation in opposition to the development have been submitted in respect of the proposal. A summary of the issues raised are set out below:
- Noise
 - Antisocial Behaviour
 - Visual Impact
 - Position of Graves
 - Cars driving within the cemetery
 - Boundary treatments

Consideration and Assessment

Local Development Plan

19. Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
20. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
21. As a consequence of this decision, the Lisburn Area Plan is the statutory development plan however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
22. Under the Lisburn Area Plan, the application site forms part of the Greenbelt and was not yet developed. Within subsequent versions of Belfast Metropolitan Area Plan [draft and adopted], the developed part of Blaris Cemetery is identified as undesignated white land within the settlement limit. The application site falls outside lands identified for Open Space in draft BMAP.
23. In considering the weight to be afforded to draft BMAP, the draft plan advises at page 164 that the responsibility for the provision and maintenance of cemeteries and burial grounds within their individual Council areas is the responsibility of District Councils.
24. It also acknowledges that some churches manage and maintain associated cemeteries and burial grounds.

Regional Planning Considerations

25. The Strategic Planning Policy Statement (SPPS) published in September 2015 states that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.

26. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
27. Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
28. For the purposes of the SPPS, open space is taken to mean all open space of public value, including not just land, but also inland bodies of water such as rivers, canals, lakes and reservoirs which offer important opportunities for sport and outdoor recreation and can also act as a visual amenity.
29. The general thrust of the SPPS in relation to open space is that it should be safeguarded from inappropriate development.

Open Space, Sport and Outdoor Recreation

30. PPS 8 - Open Space, Sport and Outdoor Recreation sets out the planning policies for the protection of open space, the provision of new areas of open space in association with residential development and the use of land for sport and outdoor recreation, and advises on the treatment of these issues in development plans.
31. It embodies the Government's commitment to sustainable development, to the promotion of a more active and healthy lifestyle and to the conservation of biodiversity.
32. Paragraph 1.3 states that open space, for the purposes of this statement, is defined as all open space of public value.
33. It explains that the definition includes not just outdoor sports facilities, parks and gardens, amenity green space and children's play areas, but also natural and semi-natural urban green spaces, allotments, **cemeteries**, green corridors and civic spaces.
34. It includes not just land, but also inland bodies of water that offer important opportunities for sport and outdoor recreation and which can also act as a visual amenity. Further information on the range of open space of public value is set out in Annex A.
35. Policy OS 1 – Protection of Open Space states that authorities will not permit development 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.

36. 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.
37. An 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 the following circumstances occur:
 - (i) in the case of an area of open space of 2 hectares or less, alternative provision is made by the developer which is at least as accessible to current users and at least equivalent in terms of size, usefulness, attractiveness, safety and quality; or
 - (ii) 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. This exception will be exercised only once.
38. The application is for an extension of burial plot spaces at three separate locations within existing cemetery boundary to provide for 133 additional spaces in line with the Councils draft cemeteries strategy to provide for the provision and maintenance of cemeteries and burial grounds within its own area.
39. The site area reflected on the P1 form is 0.94 hectares. Excluding the connecting internal roads, the overall areas to be developed for additional burial plots is much smaller.
40. The removal of trees in Sub Areas A and C to provide for the additional burial space will not result in the loss of open space. The land use remains as a cemetery and its value as a public open space is not diminished as a result of the proposed development.

Access, Movement and Parking

41. PPS 3 – Access, Movement and Parking sets out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking.
42. AMP 2 - Access to Public Roads 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:
 - a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.

43. Policy AMP 7 – Car Parking and Servicing Arrangements states that proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements.
44. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to the Department's published standards [Parking Standards] or any reduction provided for in an area of parking restraint designated in a development plan. Proposals should not prejudice road safety or significantly inconvenience the flow of traffic.
45. The P1 form provides details of the anticipated average number of vehicles and people attending the premises daily. Responses provided to question 25 of the form indicates that the average number of vehicles at the premises daily from visitors is expected to increase by 5 and that the average person's attending the cemetery daily is expected to increase by 10.
46. The design and assess statement provides detail of traffic and parking at section 7.0. It explains that peak traffic flows to the site are regulated by the limited number of burials taking place on a daily basis – approximately three every two days. The statement advises that outside of funeral services, traffic is drawn to the site by ground staff [approximately 4 daily] and occasional visits from the public.
47. Based on this trend, it is considered that the additional of 133 burial plots proposed can be catered for by the existing access and parking arrangement provided within the existing cemetery.
48. The statement explains that Blaris has existing parking provision at the three internal roundabouts and along the 100 metre carriageway connecting the central and western roundabouts. There is parking capacity for 57 vehicles within the cemetery and this is considered to be more than adequate to cater for the estimated 30 vehicles currently drawn to the site for each funeral service. It is not envisaged that arrangements need to be altered.
49. DfI Roads has considered the detail of the application and a response received in February 2021 advises that they have no objection to the proposal.
50. Based on a review of the detail and advice from DfI Roads, it is considered that the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic and that adequate parking provision remains within the existing cemetery to cater for the modest increase in visitors and vehicles to the site daily.

Natural Heritage

51. PPS 2 – Natural Heritage, sets out the planning policies for the conservation, protection and enhancement of our natural heritage.
52. Whilst the site is not the subject of any specific designations, a number of trees are required to be removed in two of the three areas to facilitate the

development. The impact of any development proposal upon flora and fauna (including protected species) will be assessed as part of any planning application process.

53. Policy NH1 – European and Ramsar Sites – International states that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on:
- a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
 - a listed or proposed Ramsar Site
54. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:
- priority habitats;
 - priority species;
 - active peatland;
 - ancient and long-established woodland;
 - features of earth science conservation importance;
 - features of the landscape which are of major importance for wild flora and fauna;
 - rare or threatened native species;
 - wetlands (includes river corridors); or
 - other natural heritage features worthy of protection.
55. The policy directs that a development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.
56. The Design and Access statement provides details of trees and ecology considerations at section 6.0. explains that a Tree Survey Report and a Preliminary Ecological Appraisal (PEA) have been prepared in support of the application. Key findings are summarised as follows:

Trees

57. The reports acknowledge that the removal of a considerable number of trees from Sub Areas A and C are required to maximise capacity within the existing cemetery and that no trees are affected by proposed works in Sub Area B.
58. It is estimated that approximately 170-180 trees will have to be removed to provide the much needed burial plot space. The Tree Report states that most trees are Ash and early mature in age and that other tree types include Alder, Elder, Willow, Yew and Oak of medium to high amenity value.

59. The Design and Access Statement explains that in an effort to mitigate the unavoidable impact of tree loss, the following measures will apply:
- Trees are tagged for identification in order to assist in their retention where possible in Sub Areas A and C;
 - A five-metre wide landscape buffer zone will be retained at the eastern and western boundaries of Sub Areas A and C, in the interest of both visual and residential amenity.
 - A two-metre buffer with Blaris Road will be retained in Sub Area A. In this regard, the proposal to expand burial plot numbers will not adversely affect perimeter planting; and
 - A landscaping plan will be prepared to infill and strengthen remaining planting around Sub Areas A and C.

Ecology

60. A Preliminary Ecological Appraisal carried out by Allen and Mellon Environmental concluded that there were no major ecological constraints on the site. Key findings are summarised as follows:
- There are no signs of badger, otter or smooth newt;
 - No invasive alien plant species are recorded;
 - No trees with Potential Roost Features (PRF) for bats will be removed.
61. The appraisal did recommend that four large ash trees with PRF should be retained next to Sub Area C. These four trees are situated within the five metre landscape buffer to be retained under the application next to housing at Rivergate Lane.
62. The appraisal also stated that work in Sub Areas A and B can be undertaken at any time of the year following an inspection by a competent ornithologist and that no work should be undertaken in Sub Area C during the bird breeding season (1 April – 31 August).
63. In a letter dated 22 October 2021, the Agent advised that it have become necessary to amend the layout for one of the three locations identified for the extension of burial plots within the existing cemetery. The letter explained that the changes were necessary in light of the detailed findings of a topographical survey.
64. As a consequence, the provision of 85 additional burial plots in Sub Area C [previously 74] will now require the removal of the group of mainly ash trees in that part of the cemetery.
65. The letter advises that their removal will be mitigated by compensatory tree planting proposed under a landscape plan and that his plan proposes a five-metre wide planted buffer separating the cemetery from the neighbouring residential properties on the other side of the boundary fence at Rivergate Lane. This planting will consider of hedging interspersed with trees.

66. In addition, a bat survey report is provided which confirms that there are no bat roosts in the four trees in Sub Area C that were initially identified as having bat root potential in the earlier PEA.
67. A response from NED dated 6 December 2021 acknowledges receipt of the PEA relative to the three parcels of land to be extended, the Tree Survey Report, the Bat Survey report and the Soft Landscape Plan.
68. Based on a review of the information provided, NED confirmed that the impacts of the proposal on natural heritage interests have been considered and that no concern is raised.
69. It is therefore contended that the proposed development complies with the key policy test associated with PPS 2.

Flooding and Drainage

70. Paragraph 6.100 of the SPPS acknowledges that the effects of flooding on human activity are wide ranging and that floods have the potential to cause fatalities and injury, displacement of people, pollution and health risk, damage to buildings, adverse environmental impacts and to severely compromise economic and social activities.
71. Paragraph 6.103 states that the aim of the SPPS in relation to flood risk is to prevent future development that may be at risk from flooding or that may increase the risk of flooding elsewhere.
72. PPS 15 – Planning and Flood Risk sets out policy to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications.
73. Policy FLD 1 – Development in Fluvial (River) and Coastal Floodplains states that within flood plains the Department will not permit development unless it falls within one of the exceptions set out in policy or it is demonstrated that the proposal is of regional significance.
74. Advice from DfI Rivers dated 5 February 2021 confirms that the development does not lie within the 1 in 100 year fluvial or 1 in 200 year coastal flood plain.
75. Policy FLD 2 – Protection of Flood Defences and Drainage Infrastructure states that a planning authority will not permit development that would impede the operational effectiveness of flood defence and drainage infrastructure or hinder access to enable their maintenance.
76. Advice from DfI Rivers dated 5 February 2021 confirms that there are no watercourses which are designated under the terms of the Drainage (Northern Ireland) Order 1973 within the site. The advice does however indicate that the site may be affected by undesignated watercourses which DfI Rivers have not record. In the event that an undesignated watercourse is discovered, the tests associated with FLD 2 would apply.

77. Policy FLD 3 - Development and Surface Water (Pluvial) Flood Risk Outside Flood Plains states that a Drainage Assessment will be required for all development proposals that exceed certain thresholds stipulated in policy.
78. Advice from DfI Rivers dated 5 February 2021 confirms that a drainage assessment is required if an additional hardstanding areas of 1000 metres squared or greater is proposed.
79. The application proposes to extend three areas within the existing cemetery grounds to provide additional and much needed burial plots. With the exception of small lengths of asphalt/tarmac pathways to allow easy access to plots no areas of hard standing are proposed that warrant the submission of a Drainage Assessment
80. Policy FLD 4 - Artificial Modification of Watercourses states that a planning authority will only permit the artificial modification of a watercourse, including culverting or canalisation operations, in either of the following exceptional circumstances.
81. Based on the information provided, the policy tests associated with Policy FLD 4 and FLD 5 are not applicable to the proposal.

Other Material Considerations

Need for Proposal

82. Cemetery provision is addressed in the context of the draft cemeteries strategy as necessary infrastructure for residents of the Council Area.
83. The general principles of the SPSS set out at paragraph 4.11 apply to ensure that the proposal will have no detrimental impact on visual or residential amenity of those living in close proximity to the site, the landscape character of the area; and the nature of conservation value, built heritage or archaeological interest of the area would occur.
84. The Design and Access Statement provides detail of Need at section 3. It explains that in March 2020, a review of capacity at the cemetery indicated that, based on an average update of 144 plots per year, the cemetery would be at full capacity by the year 2024.
85. Detail associated with the design and access statement demonstrates that in total 133 new plots are to be provided across three areas as follows
 - Sub Area A – 37 new plots
 - Sub Area B – 22 new plots
 - Sub Area C – 74 new plots [amended to 85 plots]

86. The provision of 133 additional plots represents a modest increase on existing plot numbers within the cemetery. It will also increase capacity by approximately one year.

Land Contamination

87. Paragraph 3.6 of the SPPS states that when place-making, planning authorities should make efficient use of existing capacities of land, buildings and infrastructure, including support for town centre and regeneration priorities in order to achieve sustainable communities where people want to live, work and play now and into the future. Identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.
88. Advice received from DAERA – Regulation Unit in February 2021 advised that the development has the potential to impact on water quality, especially ground water and that additional information was required to assess this risk including a site investigation, the annual anticipated burial rate and total number of burials.
89. DAERA – Water Management Unit also advised that they were unable to determine from the information provided if the development whether the development had the potential to adversely affect the surface water environment.
90. In response to concerns raised, a Hydrogeological Risk Assessment [Tier 1 and 2] and a Preliminary Risk Assessment were provided by McCloy Consulting in December 2021.
91. The objective of the Preliminary Risk Assessment (PRA) was to provide an assessment of the contamination status of the site and to identify any potential pollutant linkages and risks that these may pose to sensitive receptors; both human health and environmental.
92. At paragraph 2.3 of this PRA, the projected burial rate is estimated at 180 per year. Based on the total number of plots identified for each site the assessment conservatively assumes that each plot will allow triple burials per plot, indicates that this allows for a maximum number of burials of 432. The combined lifespan for the Phase 1 extension is approximately 1 year.
93. The assessment provides information on Site Details, Site Setting including ground conditions, hydrogeology, hydrology, designated sites, pollution information, waste management sites, historic land use and historical mapping.
94. A summary of findings is provided for in section 5 of the assessment whereby the view is expressed that the sites identified are currently undeveloped land comprising soft landscaping and partial dense vegetation. Based on findings of

the initial conceptual site model, no unacceptable environmental risks have been identified to human health or the water environment.

95. The objective of the Hydrogeological Risk Assessment [Tier 1 and 2] was to assess the suitability of the site for its proposed development and to determine the potential impact of the proposal on controlled waters [groundwater and surface water].
96. Akin to the Preliminary Risk Assessment, this assessment provides information on Site Details, Site Setting, Site Investigations, Conceptual Site Modelling, Site Vulnerability Assessment and a Tier 2 Risk Assessment.
97. A summary of findings is provided for at section 8 of the assessment report.
98. The preliminary Tier 1 risk screening concluded that the development poses a High Risk to the wider water environment and for this reason, a Tier 2 assessment was carried out.
99. The Tier 2 assessment identified the nearest water receptor as being the River Lagan approximately 100 metres down gradient of the site at its closest point. The assessment indicates at paragraph 8.2.1 that the conclusions of a Tier 2 pollutant flux model and assimilative capacity calculations have conservatively demonstrated that the proposed development poses not risk to the surface water environment.
100. In terms of risks to the wider ground water environment, the assessment also concludes that the development is not regarded as posing significant risk to the wider water environment.
101. Commentary is provided in the conclusion section of the assessment report in relation to constraints to the development with advice provided that groundwater is not a constraint to the development at Phase 1 extension areas and triple burials per plot could be accommodated.
102. In terms of geological constraints, the view is expressed that whilst the geology is not ideal [according to NIEA guidance] it has been demonstrated that the proposed development in the currently hydrogeological setting poses not risk to the water environment.
103. Both assessment reports were made available to DAERA for further comment. In a response received on 22 December 2021, the Land and Ground Water Team – Regulation Team confirmed that it had considered the impacts of the proposal on the groundwater environment and on the basis of the information available, no objection was officered. Water Management Unit provided no further comment.

Amenity Considerations

104. Paragraph 4.11 of the SPPS outlines 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. For example, 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.

105. The planning system can also positively contribute to improving air quality and minimising its harmful impacts. Additional strategic guidance on noise and air quality as material considerations in the planning process is set out at Annex A.
106. Paragraph 4.12 of the SPPS outlines 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. Adverse environmental impacts associated with development can also include sewerage, drainage, waste management and water quality.
107. However, the above mentioned considerations are not exhaustive and planning authorities will be best placed to identify and consider, in consultation with stakeholders, all relevant environment and amenity considerations for their areas.
108. The lands associated with Sub Area C are adjacent to residential properties at Rivergate to the east. Detail associated with the proposed site layout plan [sheet 3 of 3] indicates that a five-metre buffer is to be retained between the cemetery and the adjacent residential area.
109. The related Landscape Plan demonstrates that the planting in this area will comprise hedge planting mix to a height of 1.25 metres with trees interspersed to provide additional screening to adjacent residential properties. The existing trees adjacent to Blaris Road boundary are shown to be retained.
110. Advice from the Council's Environmental Health Unit received on 27 January 2021 acknowledges that the proposed extension in this area brings the development to approximately five-metres of the boundary to a number of adjacent dwellings. Advice is provided that construction and site clearance works have the potential to impact on amenity with respect to noise and dust.
111. Whilst advice is provided in relation to compliance with British Standards in relation to restricting noise at source, employing quiet plant and equipment, restricting hours of working and ensuring emissions are within the noise thresholds contained in the respective standards, no objection is raised.

Visual Impact

112. SPPS Section 4.12 requires consideration of amenity impacts associated with development proposals. As explained above, mitigation associated with Sub Area C in the form of compensatory planting is proposed and detail demonstrates that existing trees adjacent to the Blaris Road are to be retained and as such, the visual impact of the proposed development is not likely to be

significant nor is there likely to be an adverse impact on the amenity of adjacent residential properties.

113. Other areas identified for extension, namely Sub Area A also requires existing tree vegetation adjacent to the Blaris Road to be removed including embankment works and regrading to existing levels. That said, tree planting is proposed to fill gaps existing boundary vegetation resulting from the development works.
114. Sub Area B is effectively a continuation of an existing burial plot adjacent to an internal pathway. The extension of this part of the cemetery is not likely to result in an adverse visual impact.
115. Soft landscaping is proposed in each of the areas identified to enhance the open space mitigate any visual impact.

Consideration of Representations

116. The issues raised by way of third party representation are considered below:

Noise

117. An objection has been raised in relation to noise that comes from the cemetery. Environmental Health have been consulted in relation to the proposal and have no objection subjects to conditions.

Anti-social behaviour

118. An objection has been raised with regards to an increase in anti-social behaviour should the development be approved.
119. Whilst anti-social behaviour is a material consideration it is not given determining weight and is an issue for the PSNI to address should it arise.

Visual impact of looking at graves

120. An issue has been raised in relation to the potential design of some of the head stones and the view people will have of these from the adjacent residents in Rivergate Lane. The design of headstone is governed by the rules of the cemetery and how they look is not a planning consideration.

Position of graves / other locations in cemetery

121. An objection has been raised in relation to the location of the additional plots. The objector states there are other areas within the cemetery that could be utilised.

122. The proposal under consideration involves additional plots in three areas of the cemetery. Officers can only consider the application that has been submitted including the location of the additional plots.

People outside Lisburn borough buying graves

123. An objection has been raised in relation to people from outside the LCCC council area purchasing graves plots. This is not a material consideration that can be give weight in this assessment. The guidance around the sale of graves would be a matter for the relevant department within the Council.

Car Driving within the Cemetery

124. An objection has been raised in relation to driving around the cemetery. The proposal is to extend the existing gravel /asphalt path to the new areas of the cemetery. Whilst it is the preferred option for people to park and walk to a specific grave there are instances whereby people may have to drive for a number of reasons including mobility issues.

Boundary treatment with exiting residents.

125. An objection has been raised in relation to there being no note of privacy/ boundary treatments specifically between the existing residents in Rivergate Lane and the cemetery.
126. Drawing reference "Landscaping" indicates there will be a 5 metre buffer between the graves plots and the houses, the vegetation within this area will consist of semi mature trees with a height of 4.5 metres. On the common boundary with the residential properties a 1.8 fence with native hedge planting in front of it is proposed.

Conclusions

127. This application is presented to the Planning Committee with a recommendation to approve in that the areas identified for extension to provide for additional plots lies within an existing Council owned cemetery and when assessed against the requirements of policy OS 1 of PPS8 the proposal does not result in the loss pf open space.
128. The proposal complies with the SPPS and Policy AMP 2 of PPS 3 – Access, Movement and Parking in that the proposed development involves the use of an existing unaltered access to the public road and as such, the development is not considered to prejudice road safety nor is it likely to significantly inconvenience the flow of traffic.
129. Furthermore, it also meets the requirements of policy AMP 7 of PPS 3 in that adequate parking is available within the existing cemetery to cater for the modest increase in visitors and vehicles to the site daily.

130. The proposal is considered to comply with the SPPS and Policy PPS 2 in that the evidence submitted demonstrates that the proposal will not have a significant effect on a European and Ramsar site is not likely to result in the unacceptable adverse impact on habitats, species or features of natural heritage importance.
131. The proposed development is considered to comply with paragraphs 4.11 and 4.12 of the SPPS in that the mitigation proposed to address potential amenity impacts in the form of compensatory planting to include a 5 metre buffer of hedging interspersed with trees in Sub Area C will separate the cemetery from the neighbouring residential properties on the other side of the boundary fence at Rivergate Lane.
132. The proposal also complies with paragraph 3.6 of the SPPS in that the applicant has demonstrated that the proposed development will not have a proposed development in the currently hydrogeological setting poses not risk to the water environment.

Recommendation

133. It is recommended that planning permission is approved.

Condition(s)

134. The following conditions are recommended:
1. The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.
 2. No tree or vegetation clearance, shall take place between the 1st of March and 31st of August inclusive, unless a competent ecologist has undertaken a detailed check for active bird's nests in the trees/vegetation, immediately before works commence and provided written confirmation that no nests are present/birds will be harmed and there are appropriate measures in place to protect nesting birds.
Reason: To protect breeding birds.
 3. Construction hours should not exceed 0700 to 1700 Monday to Friday, 0700 to 1300 Saturday with no activity on Sundays or bank holidays
Reason: To protect the amenity of neighbouring dwellings with respect to noise

4. During construction the applicant shall have due regard for BS5228: 2009+A1:2014

Reason: To protect the amenity of neighbouring dwellings with respect to noise

5. During site clearance and construction the Rating Level (L_{Ar}) of sound from the combined operation of plant associated with the development shall not exceed 65dB.

Reason: To protect the amenity of neighbouring dwellings with respect to noise

Site Location Plan – LA05/2020/1056/F



Lisburn & Castlereagh City Council

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| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Called In) - Addendum |
| Application Reference | LA05/2020/0617/F |
| Date of Application | 12 August 2020 |
| District Electoral Area | Downshire East |
| Proposal Description | Two Infill Dwellings and Garages |
| Location | Between 184 and 188 Hillhall Road, Lisburn |
| Representations | Two |
| Case Officer | Cara Breen |
| Recommendation | REFUSAL |

Summary of Recommendation

1. A recommendation to refuse planning permission was presented to the Committee at its meeting in February 2022 as it was considered that there were no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. It was also considered that the application site was an important visual break and that it was not located within a small gap in an otherwise substantial and continuously built up frontage which respects the existing development pattern along the frontage and which meets other planning and environmental requirements.
3. The ancillary works would not integrate with their surroundings and the design of the buildings is inappropriate for the site and locality and the proposal would result in a suburban style build-up of development when viewed with existing buildings, that does not respect the traditional pattern of settlement exhibited in the area, would add to a ribbon of development along Hillhall Road and damage rural character.
4. Furthermore, it was advised that the development would mar the distinction between the settlement of Hillhall and the surrounding countryside and would result in urban sprawl and that it was not of an appropriate design, and the size and scale of the buildings are not appropriate to the locality and do not respect local architectural styles and layout pattern in this rural setting.

5. At the request of Members, it was agreed that consideration of the application should be deferred for a period of one month to allow the applicant team to provide additional information specific to the design of the layout and design of the proposed buildings.

Further Consideration

6. In an email dated 15 February 2022 the applicant's consultant team expressed the view that the council had not provided any consideration of the plot sizes and depths.
7. An analysis of the plots was contained within the initial planning officer's report at paragraphs 71-83. It was this assessment that informed the second refusal reason whereby advice was provided that the application site was an important visual break and that it was not located within a small gap in an otherwise substantial and continuously built up frontage which respects the existing development pattern along the frontage and which meets other planning and environmental requirements.
8. The applicant's consultant team also raise issues of administrative fairness with the view expressed that the application should not need to be presented back to the Committee in the event that additional information when assessed resulted in a different recommendation to be reached.
9. It is normal practice where an application is deferred and additional information allows an officer to form a different recommendation that the application is not presented back to the Committee for determination but rather, a noting report is provided to demonstrate the rationale for a change in opinion.
10. That said, there is an in principle objection to the proposed development and the advice offered is not changed in this respect the submission of an amended design only deals with one of the refusal reasons detailed in the main report.
11. In support of the administrative fairness argument, the applicant's consultant team also submitted a number of other appeal examples which in their opinion are material to the current application.
12. No analysis is provided by the applicant team to demonstrate how and why the examples cited are comparable or relevant. To assist the members in their consideration of this application these appeal examples are assessed.

Appeal decision 2020/A127

13. In this case the Commissioner at paragraph 17 of the decision confirms that:

'...the road layout at the end of the cul-de-sac, a standard hammer head arrangement, also extends beyond the SDL. Consequently the appeal site, particularly the area immediately adjacent to the hammer head, does not appear unambiguously agricultural or rural in character. It appears as a

remnant site within Kilmore Drive as it does an agricultural field within the countryside. These are relevant material considerations that must be taken into account.'

14. Having considered this PAC decision, it is considered that this appeal site formed an obvious gap in a cul-de-sac and that it did not appear to be part of an agricultural field and was not distinguishable from the suburban housing development adjacent.
15. This example is not considered to be comparable with the current application site which is an undeveloped field along a road frontage, is an important visual break between development inside the settlement and a ribbon of development extending along the road beyond in the open countryside.

S/2013/0380/F

16. The applicant's consultant team makes reference to planning application S/2013/0380/F whereby planning permission was granted by the Council on 18 May 2015 for two dwellings. Whilst no detail is provided of the significance of this permission to this application, a view expressed that the circumstances with this application was approved are identical to current application.
17. In the case of the S/2013/0380 planning application the officer took into account the PAC's consideration of Objection 442 at the BMAP public inquiry.
18. This objection related to the expansion of the settlement of Hillhall [to include the application site]. In its consideration the PAC acknowledged that the expansion of settlements should be resisted.
19. Objection 442 is of particular relevance to the view held in this regard as it related to the expansion of seven hectares. In their findings the Commission stated that they cannot endorse a submission that goes beyond small scale rounding off or infill.
20. The Commission did however concede that smaller scale augmentation of the limit at **this location** [my emphasis] may be justifiable. It was considered that the development of this site amounted to small scale rounding off and that it would not result in urban sprawl.
21. In effect it was a cut out of the settlement limit with buildings on both sides. It is considered that this exception was reached based on a site specific set of circumstances pertaining to that site and justified as rounding off.
22. The circumstances in this case are not directly comparable. This is to extend a ribbon of development along the Hillhall Road to meet existing development in the countryside. It is not rounding-off.

LA05/2017/1014/F

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23. The applicant's consultant team then refers to planning application LA05/2017/1014/F for two dwellings but again make little or no reference to the significance of this permission to this planning application.
24. In this case, the principle of development had been previously accepted in 2013 and pre-dates more recent advice from the PAC whereby only buildings outside of the settlement limit can be counted as part of the continuously built up frontage.
25. In this case, the applicant's consultant team expressed the view that the layout for two houses was identical to the layout submitted with the current application which is considered unacceptable.
26. In considering the detail of the planning history, it is advised that the layout in terms of access arrangements were has agreed in the earlier S/2010/1028/F application.
27. The subsequent LA05/2017/1014/F application was for a change of house type using the same access arrangements. Whilst the house types were more modern and contemporary smaller footprints it is not only the design which is not agreed to. It is the plot width, layout, size, general curtilage and integration in the open countryside that are all challenged. This example is not directly comparable to this site. .

Gable End to Road

28. The applicant's consultant team in the recent submission makes reference to other buildings which are gable ended towards the road. The view is expressed that officers have ignored this existing pattern of development in their assessment.
29. This assertion is not correct. Paragraph 53 and 54 of the initial officer report that the development needs to respect the existing development pattern **along the frontage** in terms of size, scale, siting and plot size and meets other planning and environmental requirements.
30. The report also advises that 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.
31. The assessment of the pattern of development insofar as it relates to infill opportunity is based upon the pattern along the frontage.
32. In any event whilst the proposal present gable elevations to the Hillhall Road, this was not the only consideration in respect of the design and the officer's assessment should be read in the context of plot sizes and how these dwellings fit into the site.

LA05/2016/0507/O

33. The applicant's consultant team draws parallels with planning application LA05/2016/0507/O. This application was for two infill dwellings in Ballyskeagh, a site which straddled the urban/rural settlement.
34. The applicant team advances an argument that the officer report did not draw this application to the Planning Committees attention in the current report and that this was a material consideration which was not before members.
35. Each application is considered on its own merits having regard to the local context within which the application is made. The example offered is in another small settlement and the site had a different context and character. There was no requirement to alert the committee.
36. The query is whether the Council is consistent in its assessment of these types of applications where rounding-off is approved. This history of approval cannot be directly compared as this proposal extends a ribbon of development along a protected route. This site provides a visual break between the edge of the settlement and housing in the open countryside beyond. This was not the case in Ballyskeagh and the context is different.

2013/A0133

37. The applicant team draws parallels with planning appeal 2013/A0133 whereby consideration was given to development outside of the settlement limits as rounding off. Again no detail is provided in terms of the significance of these two cases to this planning application.
38. A brief synopsis of the appeal examples cited is provided below:

2013/A0133

39. This appeal decision allowed planning permission for a dwelling as rounding-off for the reasons outlined below:
 - The access and primary dwelling were within the development limit, the curtilage of that dwelling was partially outside the settlement limit; the element outside the limit was enclosed on three sides by the settlement limit and bounded by a substantive hedgerow which in the opinion of the commissioner would make for a more compact and logical edge to the limit.
40. This example related to a single dwelling and consideration was given to the illogical form of the settlement limit and the fact that the garden area associated with the main dwelling was bisected by that limit with no distinguishing features on the grounds.
41. This is not comparable to the current case for the following reasons.

42. Firstly in the current case, the development limit has been drawn for **two separate clusters of development** at Hillhall to ensure that a compact form of development is provided and to restrict further spread along Hillhall Road and Orr's Lane.
43. This current application site is not within the curtilage of a property and existing agricultural land. The context is different as there is not development on three sides that make for a logical rounding-off.
44. The applicant's consultant team then advance an argument that it is irrelevant as to whether the decision that they have cited can be distinguished from the current case as they now form the existing pattern of development and that any future assessments must have regard to this. Most of the other planning permissions are not commenced and the Council can only have regard to the buildings that are constructed. It is stated in policy CTY 8 that:

'... ... For the purpose of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.'
45. The policy makes no reference to the Council counting planning permissions in its assessment of the pattern of development. Indeed it is considered that each one of the yet to be developed sites can be distinguished from this application site and that the fundamental drawing of the settlement limits for Hillhall was to keep the two clusters of development separate.
46. The view expressed in the initial officer's report is that the development if permitted would mar this distinction joining up the whole development contrary to the intention and ambitions of the settlement development limit as drawn in the Plan.
47. In this case, the limit also follow a logical limit on the ground going around the entire field unlike other examples where an arbitrary line has not taken cognisance of what's on the ground.
48. In a further email received from the applicant team on the 21 February 2022, a set of design amendments for the proposed dwelling at site two were provided.
49. Various other designs of dwellings approved elsewhere in the area were also included to support the amended design. The applicant's consultant team despite providing the information make comment that they do not expect a distinction to be drawn against each one.
50. The amended design does not address the reasons for refusal presented in the initial report and the assessment of why the reasons stand are outlined earlier in this report.
51. Also with regards to policy CTY 13 - Integration and Design of Buildings in the Countryside states that; planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.

52. The policy lists advises that a new building will be unacceptable where
- (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or
 - (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.
53. Even with the revisions, the application site still incorporates two dwellings.
54. The dwelling proposed at site one is still composed of 4 different blocks with the front angled roadside block having been straightened and made more perpendicular to the rest of the dwelling. The curved roof has been replaced for a pitched roof so the four blocks have three pitched roofs and one flat roof.
55. It is reduced in size and scale and the windows now predominantly have a vertical emphasis. The chimney has been internalised. The proposed schedule of external finishes includes; sand/cement render and natural stonework for the external walls, aluminium window units, natural slate, Trocal and aluminium for the roof coverings and aluminium rainwater goods.
56. The proposed changes do not address the initial concerns as the two buildings are still too large for the site and add to the visual clutter along the edge of the Hillhall Road.

Conclusions

57. The advice previously provided is not altered and the recommendation to refuse planning permission as outlined in the initial report is not changed following an assessment of the additional information provided. The last refusal reason is however removed for the reasons outline above.
58. The detail of this addendum should be read in conjunction with the main officers report previously presented to the Committee on 07 February 2022 which is provided as part of the papers for this meeting.

Recommendation

59. It is recommended that planning permission is refused.

Refusal Reasons

51

60. The reasons for refusal are not amended.

Lisburn & Castlereagh City Council

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|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 February 2022 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2020/0617/F |
| Date of Application | 12 August 2020 |
| District Electoral Area | Downshire East |
| Proposal Description | Two Infill Dwellings and Garages |
| Location | Between 184 and 188 Hillhall Road, Lisburn |
| Representations | Two |
| Case Officer | Cara Breen |
| Recommendation | REFUSAL |

Summary of Recommendation

1. This application is categorised as a local application. It is presented to the Committee for determination in accordance with the Scheme of Delegation, in that it has been Called In.
2. The application is presented with a recommendation to refuse as it is contended that it is contrary to the Strategic Planning Policy Statement and Policy CTY 1 of Planning Policy Statement 21, in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
3. It is also considered that the proposal is contrary to the Strategic Planning Policy Statement and Policy CTY 8 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the application site is an important visual break and is not located within a small gap in an otherwise substantial and continuously built up frontage which respects the existing development pattern along the frontage and which meets other planning and environmental requirements.
4. The proposal is also contrary to the Strategic Planning Policy Statement and Policy CTY 13 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the ancillary works do not integrate with their surroundings and the design of the buildings is inappropriate for the site and locality.

5. The proposal is also considered to be contrary to the Strategic Planning Policy Statement and Policy CTY 14 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal would result in a suburban style build up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area, would add to a ribbon of development along Hillhall Road and the impact of ancillary works would damage rural character.
6. Furthermore, the proposal is considered to be contrary to the Strategic Planning Policy Statement and Policy CTY 15 of Planning Policy Statement 21: Sustainable Development in the Countryside in that the development would mar the distinction between the settlement of Hillhall and the surrounding countryside and would result in urban sprawl.
7. The proposal is contrary to the Strategic Planning Policy Statement and Policy NH 6 of Planning Policy Statement 2: Natural Heritage in that, the proposal is not an appropriate design, and the size and scale of the buildings are not appropriate to the locality and do not respect local architectural styles and layout pattern in this rural setting.

Description of Site and Surroundings

8. The application site is located between 184 and 188 Hillhall Road, Lisburn.
9. The application site, is a 0.3 hectare parcel of agricultural land to the edge of the Hillhall Road.
10. Access to the land is from an existing a galvanised field gate within the site associated with 188.
11. The front (roadside) boundary is defined by a concrete post and wire fence with mature mixed species hedgerow, set behind a grass verge. The north eastern facing boundary is demarcated by mature mixed species hedgerow also. The south western boundary is defined by a mature mixed species hedgerow with mature trees. The rear boundary of the application site is undefined as the site forms part of a larger field.
12. In relation to topography, the application site is largely undulating throughout.
13. In terms of the surrounding context, the application site falls within a rural context. The settlement limit of Hillhall is located immediately to the north east of the site.

Proposed Development

14. Full Planning permission is sought for proposed 2 infill dwellings and garages.

Relevant Planning History

15. The following planning history on neighbouring lands is relevant to the consideration of this proposal:

| Application Reference | Description of Proposal/Address | Decision |
|-----------------------|---|--------------------|
| LA05/2017/1014/F | Proposed erection of 2 no. infill dwellings & garages (change of house types)/ Between 188 & 196 Hillhall Road, Lisburn | Permission Granted |

16. It is acknowledged that planning permission was first granted on 15 January 2013 under S/2010/1028/F at land between 188 and 196 Hillhall Road, Ballymullan, Lisburn for two new dwellings and integral garages .
17. It is understood that the former Department for the Environment accepted that the site which is cut out of the defined settlement limit for Hillhall was wedged between existing buildings and this could be treated as an exception to the policy. It appeared to have been perceived that the infilling of this gap would round off the settlement of Hillhall and not create urban sprawl as the site was bound on two sides by existing development.
18. However, it is noted that this decision was made prior to PAC ruling 2012/A0219. Whilst PAC ruling 2012/A0219 related to Policy CTY 2A, it essentially clarifies that buildings within settlement limits cannot be counted in the assessment of proposals for development in the countryside as they occupy a different policy context.
19. The 2017 application (LA05/2017/1014/F) was for change of house type and the S/2010/1028/F remained extant at the time of submission of that application. Significant weight was afforded to the planning history and the new information linked to the appeal decision was not considered of sufficient determining weight to justify a refusal of permission.
20. The 2017 is also relevant to this application as it is proposed to use the same access to serve the two dwellings proposed in this application. This gives rise to the question of whether the consequential amendment to PPS21 in terms of the intensification of the access applies. This is discussed in more detail later in the report.
21. It is further noted that planning permission was granted on 18 May 2015 under S/2013/0380/F at site between 202 and 208 Hillhall Road, Lisburn for two detached dwellings, associated garages and landscaping.
22. This site fell just outside the defined settlement limit of Hillhall (bookend to the south west - No. 202 in settlement limits) under Belfast Metropolitan Area Plan (Draft) 2004. In this case the Department took into account the PAC's consideration of Objection 442 at the BMAP public inquiry.

23. This objection related to the expansion of the settlement of Hillhall and which encompassed the application site (S/2013/0380/F). In its consideration the PAC acknowledged that the expansion of settlements should be resisted. Objection 442 related to the expansion of 7 hectares. In their findings the Commission stated that they cannot endorse a submission that goes beyond small scale rounding off or infill.
24. The Department at the time attached significant weight to the view expressed by the Commission that smaller scale augmentation of the settlement limit at **this location** (my emphasis) may be justifiable. It was considered that the development of this site amounted to small scale rounding off and would not result in urban sprawl.

Planning Policy Context

25. The relevant planning policy context which relates to the application is as follows:
 - Regional Development Strategy (2035)
 - Lisburn Area Plan (2001)
 - Draft Belfast Metropolitan Area Plan (dBMAP) 2004
 - Strategic Planning Policy Statement for Northern Ireland (SPPS): Planning for Sustainable Development (2015)
 - Planning Policy Statement 2 (PPS 2): Natural Heritage
 - Planning Policy Statement 3 (PPS 3): Access, Movement and Parking
 - Planning Policy Statement 3 (PPS 3) (Clarification) Access, Movement and Parking
 - Planning Policy Statement 21 (PPS 21): Sustainable Development in the Countryside
 - Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside
 - DCAN 15: Vehicular Access Standards

Consultations

26. The following consultations were carried out:

| Consultee | Response |
|-------------------------------------|--------------------------------------|
| DfI Roads | No objection subject to conditions |
| LCCC Environmental Health | No objection |
| NI Water | No objection |
| DAERA: Drainage and Water | No objection |
| DAERA: Natural Environment Division | No objection, subject to a condition |

Representations

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27. Two representations in opposition to the proposal were received. In summary, the following issues were raised:
- Plot Sizes and Road Frontages
 - Road Safety
 - Impact on Bats
 - P2 Challenge

Consideration and Assessment

28. The main issues to consider in the determination of this planning application are:
- Local Development Plan
 - Principle of Development
 - Development in the Countryside
 - Ribbon Development
 - Integration and Design
 - Rural Character
 - The Setting of Settlements
 - Development relying on Non-mains sewerage
 - Natural Heritage
 - Species Protected by Law
 - Areas of Outstanding Natural Beauty
 - Access, Movement and Parking
 - Access to Public Roads
 - Access to Protected Routes

Local Development Plan

29. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on Planning applications regard must be had to the requirements of the local development plan and that the determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
30. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
31. As a consequence of this decision, the Lisburn Area Plan is the statutory development plan however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
32. Aside from the laneway, which it is proposed would provide vehicular access to the dwellings, the application site is located outside of defined settlement limits of Hillhall in both plans.
33. Within the Lisburn Area Plan 2001, the application site is located within a clear break in the defined settlement limit of Hillhall and is located within the open

countryside. The building associated with 188 Hillhall Road and 184 Hillhall Road fall within the settlement limits of Hillhall in the Lisburn Area Plan (2001).

34. Within the Belfast Metropolitan Area Plan (Draft) 2004, the application site (aside from the proposed access) is located to the south west of the defined settlement limit of Hillhall, which terminates at the south western boundary of 188 Hillhall Road.
35. The site is clearly located within the open countryside. Number 188 is located within defined settlement limits, however unlike the Lisburn Area Plan (2001), 184 Hillhall Road does not fall within the settlement limit of Hillhall in the Belfast Metropolitan Area Plan (Draft) 2004. The remaining section of Hillhall settlement limit is located further to the north west of 184.
36. Within the Belfast Metropolitan Area Plan (Draft) 2004, the application site also falls within a designated Area of Outstanding Natural Beauty (Lagan Valley AONB) and a designated Area of High Scenic Value (AoHSV).
37. The reason given for the two separate clusters of development at Hillhall, as outlined in Belfast Metropolitan Area Plan (Draft) 2004, is to ensure a compact form and restrict further spread along Hillhall Road and Orr's Lane.
38. The Settlement Development Limit is drawn to protect the landscape and the visual amenity of the Lagan Valley Regional Park, the Lagan Valley Area of Outstanding Natural Beauty, and the Castlereagh Slopes Area of High Scenic Value.
39. Both a Design and Access Statement (as per Article 6 of the Planning (General Development Procedure) Order (N.I) 2015) and a Landscape Analysis (as per Policy COU 7 of dBMAP 2004) have now been provided in support of the application and are considered later in the report.
40. The application site also falls within the open countryside (aside from the proposed access laneway), with 188 falling within the settlement limit of Hillhall and 184 falling out with the settlement limit of Hillhall in the latest published revision to the Belfast Metropolitan Area Plan (2015).

Principle of Development

41. The Strategic Planning Policy Statement (SPPS) published in September 2015, indicates that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.
42. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
43. Paragraph 3.8 of the SPPS indicates that the guiding principle for Planning authorities in determining Planning applications is that sustainable development should be permitted, having regard to the development plan and

all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.

44. Paragraph 6.65 states that that the aim of the SPPS with regards to the countryside is to manage development in a manner which strikes a balance between protection of the environment from inappropriate development, while supporting and sustaining rural communities consistent with the RDS.
45. Paragraph 6.70 states that all development in the countryside must integrate into its setting, respect rural character, and be appropriately designed.
46. The SPPS directs that supplementary planning guidance contained within Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside must be taken into account in assessing all development proposals in the countryside.
47. In terms of Ribbon Development the SPPS states that provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage and that planning permission will be refused for a building which creates or adds to a ribbon of development.
48. No conflict arises between the provisions of the Strategic Planning Policy Statement (2015) and the retained Planning policy – Planning Policy Statement 21: Sustainable Development in the Countryside insofar as they relate to this application. Consequently, PPS 21 provides the relevant Planning policy context in this instance.

Sustainable Development in the Countryside

49. PPS 21 – Sustainable Development in the Countryside sets out the planning policies for development in the countryside.
50. Policy CTY 1 - Development in the Countryside makes provision for a range of different types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
51. Policy CTY 1 also states that; all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations, including those for drainage, access and road safety.

Ribbon Development

52. Policy CTY 8 - Ribbon Development states that Planning permission will be refused for a building which creates or adds to a ribbon of development.
53. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size,

- scale, siting and plot size and meets other planning and environmental requirements.
54. 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.
 55. A building is defined in statute to include a structure or erection, and any part of a building as so defined.
 46. The justification and amplification to the policy explains that ribbon development is detrimental to the character, appearance and amenity of the countryside. It creates and reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. Ribbon development has consistently been opposed and will continue to be unacceptable.
 56. Paragraph 5.33 advises that for the purposes of this policy a road frontage includes a footpath or private lane. A ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.
 57. Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. In considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated.
 58. It is clear that applicants must take full account of the existing pattern of development and can produce a design solution to integrate the new buildings.
 59. Paragraph 4.4.1 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside outlines that policy CTY 8 Ribbon development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses, within an otherwise substantial and continuous built up frontage.
 60. The guidance recommends the following:
 - a. It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
 - b. Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
 - c. When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.

- d. A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.
61. The initial step in determining whether an infill opportunity exists is to identify a line of three or more buildings in an otherwise substantial and continuously built up frontage.
 62. A building has a frontage to a road/laneway if the plot on which it occupies abuts or shares a boundary with the road/laneway.
 63. In this case, the applicant is relying on the dwelling and outbuilding at 188 Hillhall Road and the dwelling and the outbuilding 184 Hillhall Road.
 64. The site location plan submitted with the application includes an approval for 2 dwellings has been granted previously at the site immediately to the north east of 188 Hillhall Road. These building were not constructed at the time of site inspection and are not weighed in the decision making process.
 65. As explained above, the buildings associated with 188 Hillhall Road and 184 Hillhall Road fall within the defined settlement limits of Hillhall in the Lisburn Area Plan (2001).
 66. Within the Belfast Metropolitan Area Plan (Draft) 2004 (which is awarded greater material weight given its advanced nature) and akin to the Lisburn Area Plan (2001), No 188 falls within the defined settlement limits of Hillhall, however No. 184 does not.
 67. Whilst the buildings at 184 and 188 have a frontage to Hillhall Road, the buildings at 188 do not occupy a rural context in policy terms and therefore subsequently cannot be included in the consideration of development proposals in respect to Policy CTY 8. This is consistent with the PAC decision 2012/A0219 and 2016/A0145 and distinguishable from the planning history for 2012/A0219 which was for the rounding off of a gap between buildings in two parts of the settlement.
 68. This means that the application is essentially relying solely upon the building associated with 184. No 'bookend' building exists to the north east of the site and as such, there is no substantial and continuously built up frontage within the meaning of Policy CTY 8.
 69. That said and for completeness in the assessment, consideration is given as to whether there is a small gap site sufficient only to accommodate up to a maximum of two houses.
 70. Consideration is also give as to whether the development would respect the existing development pattern along the frontage must be respected in terms of; size, scale, siting and plot size.
 71. With regards to two dwellings, paragraph 5.34 of the justification and amplification to Policy CTY 8 states that in considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated. Applicants must take full account of the existing pattern of development and can produce a design solution to integrate the new buildings.

72. The gap is measured between the two closest buildings. In this instance, this the gap is between the dwelling at 188 Hillhall Road (noted that the other building shown on the Site Location Plan which appears closer to the application site was not in situ at 188 at the time of site inspection) and the outbuilding at 184 Hillhall Road.
73. The distance measured between the two buildings is approximately 100 metres.
74. The frontage width of 188 measures approximately 56 metres and the frontage width of 184 measures approximately 49 metres. This equates to an average frontage width of approximately 52.5 metres.
75. The frontage width of the application site measures approximately 53 metres which site one shown to have a frontage width of 25.5 metres and site two a frontage width of 27.5 metres.
76. These frontage widths therefore be at odds with the larger frontage widths at 184 and 188.
77. Drawing No. 09/3, bearing the Lisburn and Castlereagh City Council date stamp 6th September 2021, shows the configuration of the two proposed dwellings on the application site.
78. It is noted that size and scale are synonyms and both referring to the dimensions of the proposed building(s). With footprints of 229.19m² (Site 1) and 223.8m² (Site 2) it is contended that the proposed dwellings are much larger than those at 184 and 188 Hillhall Road.
79. It is also noted that unlike 188 and 184, the proposed dwellings are shown to present a gable frontage to the road.
80. It is noted that in terms of infill principles, Building on Tradition advises that buildings should be designed in scale and form with surrounding buildings.
81. Whilst it is acknowledged that the proposed siting does largely follow that of the building lines of 188 and 184, it is contended that the proposed plot sizes (particularly Site 2) of Site 1 (0.16 hectares approx.) and Site 2 (0.13 hectares approx.) would be at odds with the larger plot sizes exhibited at the properties to either side.
82. It is noted that 188 has a plot size of approximately 0.19 hectares and 184 (composed of dwelling and associated agricultural buildings) has a plot size of approximately 0.65 hectares.
83. Based on a review of the detail, it is considered that the proposal would not respect the existing development pattern exhibited along the 'frontage.'
13. Policy CTY 8 also requires that a proposal must meet other planning and environmental requirements. Consideration of the proposal against the policy tests associated with Policy CTY 13 and 14 is set out in the paragraphs below.

84. Paragraph 5.34 of the Justification and Amplification text of Policy CTY 8 refers to gaps that provide relief and visual breaks in the developed appearance of the locality.
85. Paragraph 4.5.1 of Building on Tradition; A Sustainable Design Guide for the Northern Ireland Countryside states that as a general rule of thumb, gap sites within a continuous built up frontage exceeding the local average plot width may be considered to constitute an important visual break. It goes on to state that sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.
86. It is considered that the application site provides a visual buffer (important visual break) between the development inside the settlement limit of Hillhall and the rural dwelling and outbuildings beyond.
87. To grant approval would result in a row of three independent roadside properties (and outbuildings) stretching from the edge of the settlement. This would add to a ribbon of development along Hillhall Road and not comply with Policy CTY 8.

Integration and Design

88. Policy CTY 13 - Integration and Design of Buildings in the Countryside states that; planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The policy lists several instances where a new building in the countryside will be deemed to be unacceptable.
89. The application incorporates two separate dwelling types.
90. The dwelling proposed at Site One is complex in design, composed of 4 different blocks (to include curved roof, dual pitch and flat roof). It encompasses a footprint which stretches 31.5m (approx.) back into the site and has a footprint of 229.19m² (approx.).
91. At its maximum, it would have a height of 7.5m (approx.) above FFL (barn style section). It is noted that it includes horizontal emphasis window openings and an external chimney. The proposed schedule of external finishes includes; sand/cement render, corrugated cladding and natural stonework for the external walls, aluminium window units, natural slate, Trocal and aluminium for the roof coverings and aluminium rainwater goods.
92. Site one also includes an associated detached single storey domestic garage. It would measure approximately 5.9 metres x 7.5 metres with a ridge height of 5 metres above FFL. The proposed external finishes would be akin to the proposed dwelling to which it is ancillary.
93. The dwelling proposed at Site Two is more simple in design. It is largely linear in form with a split ridge height. It would have a footprint of approximately 223.8m² and a ridge height of 8.1m (approx.) above FFL.

94. The windows are primarily of vertical emphasis and the proposed chimney would be integral with the chimney stack positioned to the ridgeline. Although, it is noted that it includes a two-storey entrance porch which is considered to be contrary to the guidance provided in Building on Tradition. The proposed schedule of external finishes is akin to that at Site One. No detached garage is proposed as an integral one has been included.
95. Taking into account the rising topography to the south of the application site, the existing vegetation to the south western boundary (to be retained) and the heights of the neighbouring buildings on each side (see Proposed Streetscape), it is not contended that the proposal would be a prominent feature in the landscape.
96. It is noted that a mature boundary composed of trees/hedgerow is positioned to the south west and this is to be retained.
97. A mature mixed species hedgerow is also located to the front (roadside) boundary of the application site. However, it is noted that new native species planting is proposed behind existing roadside boundary fencing. A mature hedgerow is also in situ to the north eastern boundary of the site, however this too would require removal to accommodate the access lane and required visibility splays.
98. This essentially means that contrary to the advice provided in Building on Tradition only one natural boundary (south western) would be retained. That said and taking the buildings either side into account, it is perceived that sufficient enclosure could be provided to allow the proposed dwellings to integrate.
99. Whilst it is acknowledged that new landscaping would be required (as indicated on the Proposed Site Plan), taking the above into account, it is not contended that the proposal would rely primarily on it for the purposes of integration.
100. In terms of proposed ancillary works, it is noted that the proposed vehicular accesses would be taken via a laneway which was previously granted approval to be altered via LA05/2017/1014/F.
101. It is however noted that due to the topography of the application site and the design of the proposed dwellings, excavation of approximately 2.4 metres is required at Site One to accommodate the proposed dwelling.
102. As noted in Paragraph 5.64 of the Justification and Amplification text of Policy CTY 13, a new building that relies on significant earthworks, such as mounding or cut and fill for integration will be unacceptable. Although not mentioned in the proposal description in Q5 of the submitted P1 Form, this would essentially also involve the construction of retaining walls, with the largest amounting to 1.7 metres in height. The scale of these ancillary works are considered to be unacceptable.

103. The design of the two proposed dwellings are detailed above. Unlike 184 and 188, the dwellings have been designed in a manner which essentially involves the gable ends facing Hillhall Road.
104. It is considered that they have been designed in this manner to allow two dwellings to be accommodated on the application site. However, given the topography of the site, this subsequently involves excavation of 2.4 metres (approx.) at Site One which is considered unacceptable.
105. Furthermore, whilst the proposed dwelling at Site Two is largely simple in form and acceptable (aside from the proposed 2 storey entrance porch), the proposed dwelling at Site One is complex in design and includes features such as horizontal emphasis window openings and external chimney breasts which are not contended to be compliant with the Building on Tradition design guidance.
106. It is contended that the proposal would blend with the rising topography/landscape to the rear which provides a back drop.
107. With regard to criteria (g), the application does not relate to a farm dwelling and no P1C form has been submitted for consideration. It is therefore contended that criterion (g) is not applicable in this instance.

Rural Character

108. Policy CTY 14 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.
109. The policy advises that a new building will be unacceptable where:
 - (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
 - (c) it does not respect the traditional pattern of settlement exhibited in that area; or
 - (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
 - (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.
110. Paragraph 5.80 of the Justification and Amplification text of Policy CTY 14 states that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside.
111. Taking into account the rising topography to the south of the application site, the existing vegetation to the south western boundary (to be retained) and the heights of the neighbouring buildings on each side (see Proposed Streetscape), it is not contended that the proposal would be unduly prominent in the landscape.

112. As the exceptions test of Policy CTY 8 are not met the proposal is considered to result in the addition of ribbon development along Hillhall Road which in turn would if approved, result in a suburban style build-up of development when viewed with existing buildings and would not respect the traditional pattern of settlement exhibited in the area.
113. In terms of proposed ancillary works and as explained above, the proposed vehicular accesses would be taken via a laneway which was previously granted approval to be altered via LA05/2017/1014/F.
114. It is however noted that due to the topography of the application site and the design of the proposed dwellings, excavation of approximately 2.4 metres is required at Site One to accommodate the proposed dwelling. Although not mentioned in the proposal description in Q5 of the submitted P1 Form, this would essentially also involve the construction of retaining walls, with the largest amounting to 1.7 metres in height.
115. The scale of these ancillary works are considered to be unacceptable and it is contended that they would damage rural character.

The Setting of Settlements

116. Policy CTY 15 - The Setting of Settlements states that Planning permission will be refused for development that mars the distinction between a settlement and the surrounding countryside or that otherwise results in urban sprawl.
117. Paragraph 5.83 of the justification and amplification text of Policy CTY 15 states that landscapes around settlements have a special role to play in maintaining the distinction between town and country, in preventing coalescence between adjacent built-up areas and in providing a rural setting to the built up area.
118. Paragraph 5.84 states that the principle of drawing a settlement limit is partly to promote and partly to contain new development within that limit and so maintain a clear distinction between the built-up area and surrounding countryside.
119. Paragraph 5.85 states proposals that would mar this distinction or create urban sprawl will therefore be unacceptable.
120. As outlined in Belfast Metropolitan Area Plan (Draft) 2004, the reasoning for the two separate clusters of development at Hillhall is to ensure a compact form and restrict further spread along Hillhall Road and Orr's Lane.
121. The Settlement Development Limit is drawn to protect the landscape and the visual amenity of the Lagan Valley Regional Park, the Lagan Valley AONB and the Castlereagh Slopes Area of High Scenic Value.
122. It is noted that the settlement development boundary of Hillhall exists to the south western boundary of No. 188.

123. For the reasons outlined above, to allow two dwellings and associated garages on the application site would subsequently result in urban sprawl along Hillhall Road.

Development Relying on Non-Mains Sewerage

124. Policy CTY 16 Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.
125. The P1 Form confirms that it is proposed that foul sewage would be disposed of via mains.
126. The Council's Environmental Health Unit offers no objection to the proposal subject to condition that foul sewage shall be connected to the main sewer with Northern Ireland Water approval so as to protect the amenity of neighbouring dwellings with respect to odour.
127. Based on the advice received it is considered that the provision of a septic tank will not create or add to a pollution problem.

Natural Heritage

128. PPS 2 - Natural Heritage, makes provision to further sustainable development by ensuring that biological and geological diversity are conserved and enhanced as an integral part of social, economic and environmental development.
129. Policy NH 2 relates to protected species. It notes that development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.
130. Following concerns regarding potential impact on Bats etc. a NI Biodiversity Checklist and Preliminary Ecological Appraisal were submitted during the processing of the application and DAERA Natural Environment Division were subsequently consulted.
131. In their consultation response of 29th March 2021, DAERA NED acknowledge receipt of the above information and advised that the proposed site is comprised of an existing agricultural crop field that is bounded by mature hedgerows and trees. The PEA indicates that there are no other habitats of interest on site.
132. NED confirmed that it was in agreement with the ecologist's assessment of the site in that the development is unlikely to have a significant impact on any natural heritage features within the locality.

133. While the advice did acknowledge that there would be some loss of hedgerow required to facilitate access, the majority of the hedgerows and mature trees will be retained, as per Drawing 09/1, date stamped 10/11/21 by the planning authority.
134. As per the ecologist's recommendation, NED advise that any vegetation clearance take place outside the breeding bird season (1 March and 31 August inclusive) unless checked suitable qualified ecologist immediately prior to ensure no nesting birds are present. This will ensure compliance with the Wildlife (Northern Ireland) Order 1985 (as amended).
135. NED is content that no other protected species or habitats have been identified on site.
136. Policy NH 6 - Areas of Outstanding Natural Beauty states that planning permission for new development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and lists a number of other criteria which must be met.
137. As noted previously, it is contended that the proposal is not of an appropriate design or size/scale for the locality.
138. The scale of the proposal is considered to be large and therefore would be unsympathetic to the special character of the AONB and of the particular locality.
139. It is not contended that it would have a detrimental impact on any features (buildings/man-made) of importance to the character, appearance or heritage of the landscape.
140. However, for reasons outlined previously, it is not considered that the proposal would respect local architectural styles and patterns or traditional boundary details (removal of hedgerows) or design.
141. It is therefore contended that the proposal is also contrary to Policy NH 6 of Planning Policy Statement 2.

Access, Movement and Parking

142. PPS 3 - Access, Movement and Parking and PPS 3 (Clarification), set out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
143. Policy AMP 3 – Access to Protected Routes (Consequential Amendment as set out in Annex 1 of PPS 21, states that planning permission will only be granted for a development proposal involving access onto a protected route outside settlement limits in specific cases, one of which is referred to as Other Categories of Development which would meet the criteria for development in the countryside and were access cannot reasonably be obtained from an adjacent minor road.

144. The Hillhall Road is a protected route. The proposed access to both dwellings would be via an already approved vehicular access from Hillhall Road approved under LA05/2017/1014/F. Each dwelling would have its own driveway/garage which would accommodate in-curtilage parking and manoeuvring of private vehicles allowing them to exit the site in forward gear.
145. Visibility splays of 2.4m x 79m in each direction have been shown.
146. DfI Roads were consulted during the processing of the application. Following the submission of numerous amendments, they are now content (subject to conditions) with the access/parking/road arrangements, as per their consultation response dated 23 April 2021.
147. The four conditions which are stipulated within their consultation response are standard conditions for dwellings in the countryside.

Consideration of Representations

148. Two letters of representation in opposition to the proposed development were received. Consideration of the issues raised are set out below.

Plot Sizes and Road Frontages

149. As per the assessment under Policy CTY 8, it is not contended that the proposal respects the existing pattern of development exhibited along the 'frontage' in terms of plot size or frontage. It is acknowledged that the buildings to either side of the application site are set within relatively large plots with large frontages of 49m+ and therefore the proposal for two dwellings within the application site would be at odds with those.

Road Safety

150. DfI Roads were consulted as part of the processing of the application. Following the submission of a number of amendments, they subsequently offer no concerns with regards to the proposed access arrangements, subject to the inclusion of stipulated conditions, as outlined in their most recent consultation response, within any approval.

Impact on Bats

151. A N.I Biodiversity Checklist and a Preliminary Ecological Appraisal were submitted for consideration during the processing of the application. DAERA Natural Environment Division were consulted upon receipt of these and subsequently offer no concern to the proposal, subject to the inclusion of a stipulated condition/informatives with any approval.

P2 Challenge

152. A P2 (Land Ownership) challenge was raised with the agent regarding lands required for visibility splays. The agent subsequently amended the P1 Form to complete Certificate C and notice was served upon the relevant third party. Upon receipt of the amended P1 Form the application was re-advertised and neighbour re-notification took place. No further representations were received. It is acknowledged that planning permission does not confer title.

Recommendation

153. It is recommended that planning permission is refused.

Refusal Reasons

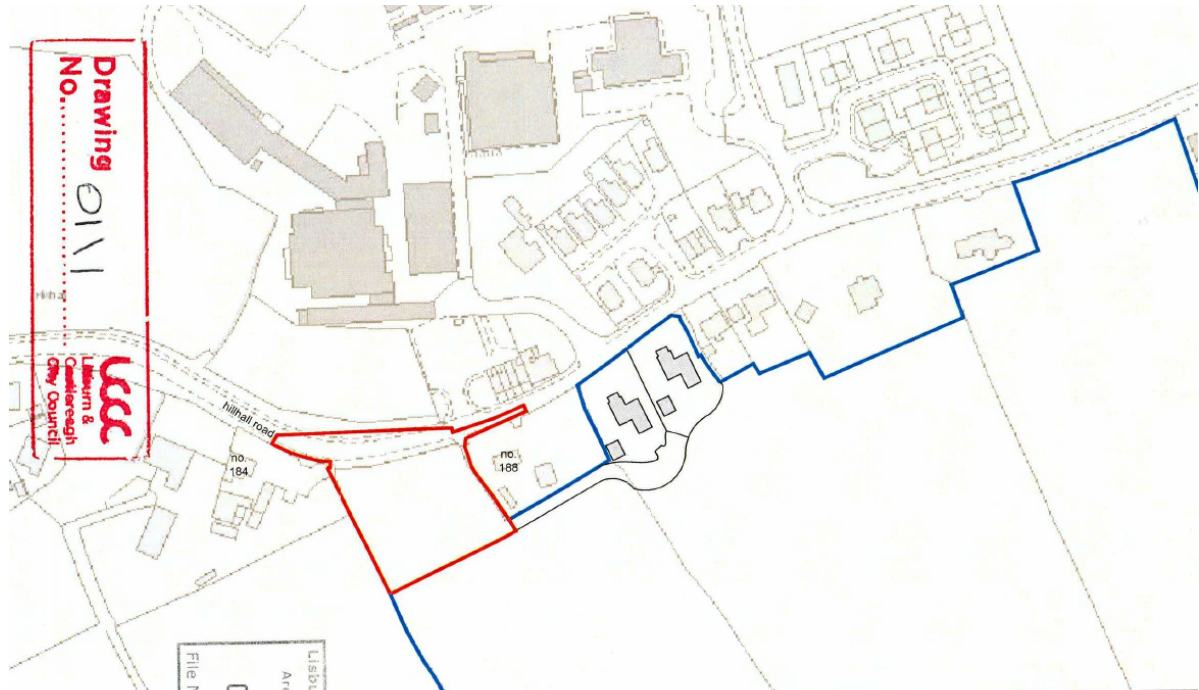
154. The following refusal reasons are recommended:

- The proposal is contrary to the Strategic Planning Policy Statement (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.
- The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 8 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the application site is an important visual break and is not located within a small gap in an otherwise substantial and continuously built up frontage which respects the existing development pattern along the frontage and which meets other planning and environmental requirements and would add to a ribbon of development along Hillhall Road.
- The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 13 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that ancillary works do not integrate with their surroundings and the design of the buildings is inappropriate for the site and locality.
- The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 14 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal would result in a suburban style build up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area, would add to a ribbon of development along Hillhall Road and the impact of ancillary works would damage rural character.

- The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 15 of Planning Policy Statement 21: Sustainable Development in the Countryside in that the development would mar the distinction between the settlement of Hillhall and the surrounding countryside and would result in urban sprawl.

- The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy NH 6 of Planning Policy Statement 2: Natural Heritage in that, the proposal is not an appropriate design, size and scale for the locality and it does not respect local architectural styles and patterns and traditional boundary details.

Site Location Plan - LA05/2020/0617/F



Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Called in) |
| Application Reference | LA05/2021/0928/O |
| Date of Application | 24 February 2021 |
| District Electoral Area | Killtulagh |
| Proposal Description | Site for a dwelling, garage including ancillary siteworks |
| Location | 30 metres north of 39 Garlandstown Road Glenavy ,BT29 4HJ |
| Representations | None |
| Case Officer | Margaret Manley |
| Recommendation | Refusal |

Summary of Recommendation

1. A recommendation to refuse planning permission was presented to the Committee at its meeting in February 2022 as it was considered that there were no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
2. It was also considered that the proposal would not respect the existing development pattern along the frontage in terms of plot size and frontage resulting the addition of ribbon development along Garlandstown Road and that it would result in the loss of an important visual break.
3. It was also considered that the proposal would if permitted result in a suburban style build-up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area and it would add to a ribbon of development along Garlandstown Road.
4. At the request of Members, it was agreed that consideration of the application should be deferred for a period of one month to allow officers to carry out an assessment of the application against the policy tests associated with Policy CTY 2a – Dwelling in Cluster.

Further Consideration

5. Paragraph 6.73 of the SPPS states that provision should be made for a dwelling at an existing cluster of development which lies outside a farm provided it appears as a visual entity in the landscape; is associated with a focal point; the development can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside.
6. Policy CTY 2a – New Dwellings in Existing Clusters states that planning permission will be granted for a dwelling at an existing cluster of development provided all [my emphasis] the following criteria are met:
 - the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings;
 - the cluster appears as a visual entity in the local landscape;
 - the cluster is associated with a focal point such as a social/community building/facility, or is located at a crossroads;
 - the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster;
 - development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside; and
 - development would not adversely impact on residential amenity.
7. There is no justification or amplification text associated with Policy CTY2a to further explain what constitutes a cluster of development.
8. That said, the first three criteria give an indication of its true meaning of what a cluster is and in a PAC decision (2014/A148) it is stated at paragraph 4 that although not defined by the policy, a cluster is by definition a close grouping of buildings. This is reflected in a number of criteria in the policy headnote.
9. The first criterion requires that the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings.
10. This suggests that an existing cluster of development is to be formed by buildings. This is reinforced by the first clause in criterion three, whereby a cluster must be associated with a focal point such as a social/community building/facility if not located at a cross-roads.
11. The second criterion requires that a cluster appears as a visual entity in the local landscape.

12. The site is located immediately west of a junction with Garlandstown Road, Fort Road and Tullyrusk Road. In this case, it is advised that there are not four or more buildings consistent with the first criteria. There are only two dwellings at 39 and 41 Garlandstown Road. The minimum requirement is three.
13. The dwelling at 43 Garlandstown Road, it is not visible with the application site when approaching from Garlandstown Road in a southerly direction and does not form part of the cluster.
14. Whilst there is a building located centrally within the application site to the north [which may have been a former dwelling], there is no evidence of recent occupation, it is partially collapsed, it contains hay suggesting it is an outbuilding.
15. The second part of the policy requires the cluster to appear as a visual entity in the local landscape. It is considered that this development does not appear as a visual entity. There is a clear linear ribbon of development along the western side of the Garlandstown Road which is not clustered with a focal point..
16. Paragraph 6 of 2014/A148 PAC decision provides a helpful assessment in this regard. It states that:

'these buildings extend over a 350m stretch of road frontage from the dwelling furthest east at No 44 to No 70 to the west. Whilst the appellant argued that a cluster is not defined in policy and that there is no requirement to be physically close, only to be intervisible, I disagree with his assessment. I consider that this criterion is dependent upon physical proximity as well as visual linkages. However due to the spaces and distance between them, undulating topography, intervening boundary treatment and curvature of Carr Road, these buildings do not read as one discrete cluster but rather as a dispersed collection of individual buildings in the countryside. Based on my assessment of the disposition and visual relationship of these buildings in the area identified by the appellant, I do not consider that there is a cluster of development which appears as a visual entity in the landscape. Consequently the second criterion is not therefore met.'

17. Taking this into account and as explained above, the ribbon of development as outlined extends down Garlandstown Road. These buildings are not considered to be indivisible.
18. On approach to the site in a southerly direction down Garlandstown Road you can only read the application site with the community hall due to the land rising to a crest at the application site.
19. Beyond this is a linear dispersed row of dwellings along Garlandstown Road. As explained, the dwelling at 43 Garlandstown Road, does not read with existing buildings [in this linear form 39 and 41] as it is set back behind the dwelling and outbuildings associated with 41 Garlandstown Road with a mature boundary of vegetation between them.

20. On approach from Tullyrusk Road the back of the orange hall reads with the application site and on approach from the Garlandstown Road in a northerly direction there is little perception of the application site being read as a discrete cluster with the buildings at 41 and 39 Garlandstown Road.
21. It is considered that these buildings do not read as a discrete cluster but as a dispersed collection of buildings in the countryside and do not therefore appear as a visual entity. The proposal fails the second criteria.
22. With regard to the third criterion and in the normal meaning of the policy, the Orange Hall located to the east of the application site would be the focal point but for the reasons outlined above, there is no cluster of development as the buildings at 39 and 41 Garlandstown Road are too dispersed from this focal point.
23. The dwelling at 36 Fort Road is also set back from the Garlandstown Road by approximately 73 metres and does not provide a cluster on this edge.
24. In relation to the fifth criteria, it is considered that no cluster exists and as such, the proposed development cannot be absorbed into an existing cluster through rounding off and consolidation or will not visually intrude into the open countryside.
25. Having considered the proposed development against the requirement of policy CTY2a it is considered that it fails on criterion 1, 2, 3 and 5 in that the cluster of development does not appear as a visual entity in the landscape.

Conclusions

26. The advice previously provided is not altered and the recommendation to refuse planning permission as outlined in the initial report is not changed following an assessment of the proposal against the policy tests associated with Policy CTY 2a. An additional refusal reason is also recommended.
27. The detail of this addendum should be read in conjunction with the main officers report previously presented to the Committee on 07 January 2022 which is provided as part of the papers for this meeting.

Recommendations

28. It is recommended that planning permission is refused.

Refusal Reasons

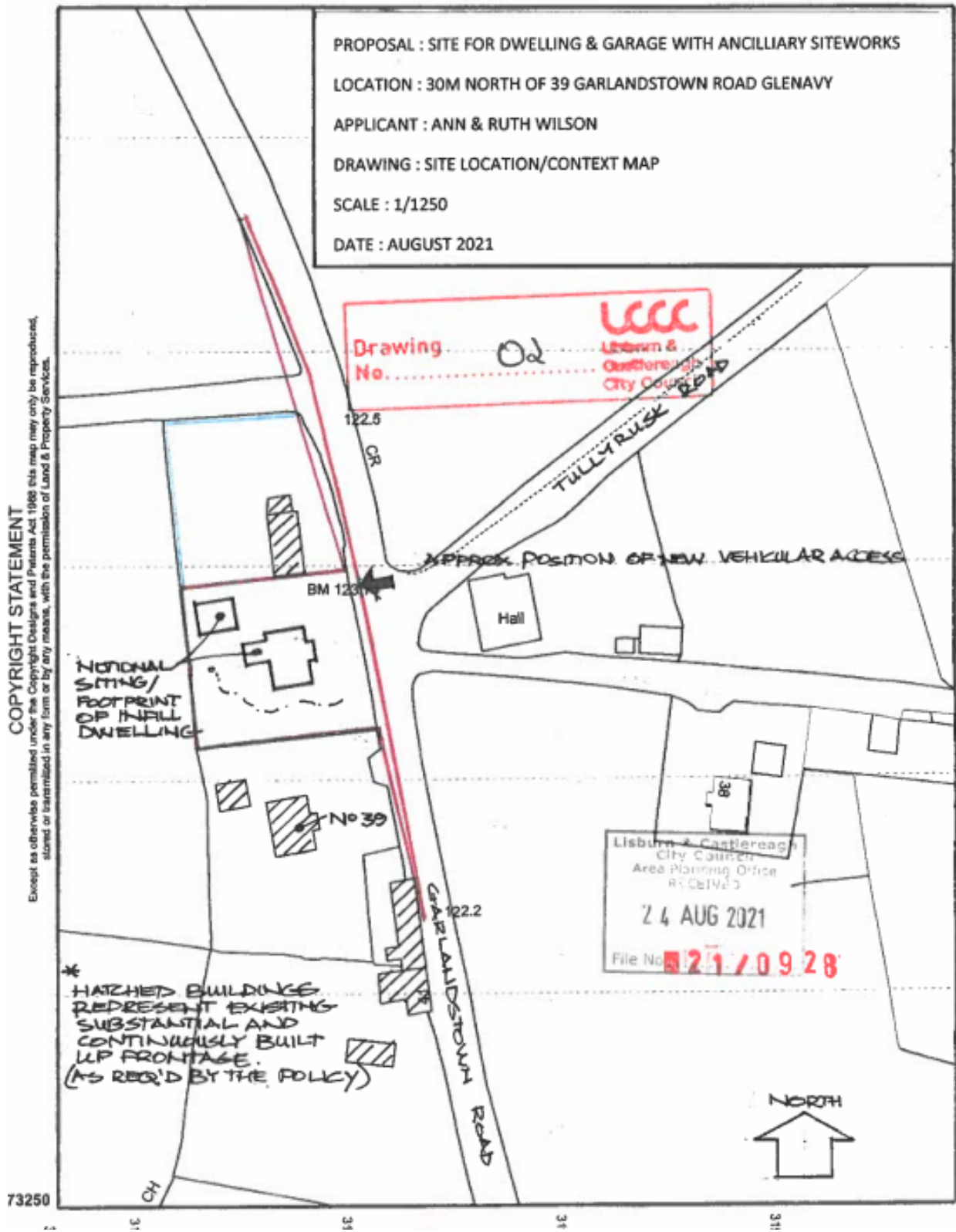
29. The following additional reason for refusal is recommended:

- The proposal is contrary to the SPPS and Policy CTY2a of Planning Policy Statement 21, New Dwellings in Existing Clusters in that:
 - the proposed dwelling is not located within an existing cluster of development consisting of 4 or more buildings of which at least three are dwelling;
 - the cluster does not appear as a visual entity in the local landscape;
 - the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads
 - the dwelling would if permitted significantly alter the existing character of the area

Site Location Plan – LA05/2021/0928/O

39 GARLANDSTOWN ROAD, TULLYNEWBANE, GLENNAVY, BT29 4HJ, 185282521

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Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 February 2022 |
| Committee Interest | Local Application (Called in) |
| Application Reference | LA05/2021/0928/O |
| Date of Application | 24 February 2021 |
| District Electoral Area | Killtulagh |
| Proposal Description | Site for a dwelling, garage including ancillary siteworks |
| Location | 30 metres north of 39 Garlandstown Road Glenavy ,BT29 4HJ |
| Representations | None |
| Case Officer | Margaret Manley |
| Recommendation | Refusal |

Summary of Recommendation

1. This application is categorised as a local planning application in accordance with the Development Management Regulations 2015.
2. This application is presented to the Planning Committee with a recommendation to refuse as it is considered to be contrary to the SPPS and policy CTY 1 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.
3. It is also considered to be contrary to the SPPS and policy CTY 8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would not respect the existing development pattern along the frontage in terms of plot size and frontage resulting the addition of ribbon development along Garlandstown Road and the loss of an important visual break.
4. In addition the proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 14 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal would if permitted result in

a suburban style build-up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area and it would add to a ribbon of development along Garlandstown Road.

Description of Site and Surroundings

5. The application site located along Garlandstown Road is rectangular in shape and comprised of part of the curtilage of a derelict building. This building and the remainder of its curtilage are located immediately adjacent and north of the site.
6. The eastern boundary of the site adjoins the Garlandstown Road and is defined by a small grass verge and mature trees. The southern boundary is defined by mature trees. These trees separate the site from the curtilage of 39 Garlandstown Road which is located adjacent and south of the site. The rear/west boundary is likewise defined by mature trees whilst its north boundary is undefined.
7. A community hall is located across the road and a short distance east of the site. As previously mentioned other development within close proximity of the site includes the derelict building immediately adjacent and north of the site and 39 Garlandstown Road, a one-and-a-half storey dwelling with a detached garage located adjacent and south of the site.
8. Development located south of 39 Garlandstown Road includes the modest single storey dwelling no. 39 replaced which has been retained as a store and 41 Garlandstown Road, a two-storey dwelling with associated outhouse and polytunnels. The building at 43 Garlandstown Road to the south of number 41 is a modest bungalow with a detached garage.
9. The site is located in the open countryside approximately 3.3 kilometres east of Glenavy. The area surrounding is mainly rural in character and the land predominantly in agricultural use.

Proposed Development

10. This application seeks outline planning permission for a dwelling and garage including ancillary site works.

Relevant Planning History

11. There is no relevant planning history pertaining to the site.

Planning Policy & Guidance Context

12. The relevant planning policy context which relates to the application is as follows:

- Regional Development Strategy (RDS) 2035
- Lisburn Area Plan 2001
- Draft Belfast Metropolitan Area Plan (dBMAP) 2015;
- Strategic Planning Policy Statement for Northern Ireland (SPPS) - Planning for Sustainable Development
- Planning Policy Statement (PPS) 3 - Access, Movement and Parking
- Planning Policy Statement (PPS) – Planning, Archaeology and the Built Heritage
- Planning Policy Statement (PPS) 21-Sustainable Development in the Countryside.
- Building on Tradition-A sustainable design guide for the Northern Ireland Countryside.

Consultations

13. The following consultations were carried out:

| Consultee | Response |
|-------------------------------|-----------------|
| NI Water | No objection |
| DfI Roads | No objection |
| LCCC Environmental Health | No objection |
| Historic Environment Division | No objection |

Representations

14. All relevant neighbours were notified and no third party representations in opposition to the proposal have been received.

Consideration and Assessment

15. The main issues to consider in the determination of this planning application are:

- Local Development Plan Context
- Principle of Development
- Sustainable Development in the Countryside
 - Ribbon Development
 - Integration and Design of Buildings in the Countryside
 - Rural Character
 - Non mains Sewerage
- Access, Movement and Parking
- Archaeology and the Built Heritage

Local Development Plan Context

16. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.
17. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
18. As a consequence of this decision, the Lisburn Area Plan is the statutory development plan however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
19. In both plans, the application site is identified in the open countryside beyond any defined settlement limit and as there is no distinguishable difference in the local plan context, significant weight is attached to draft BMAP and its draft policies which direct the assessment to be carried out in accordance with prevailing regional policy.

Principle of Development

20. The Strategic Planning Policy Statement (SPPS), published in September 2015, indicates that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.
21. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.

22. Paragraph 3.8 of the SPPS indicates that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
23. In practice this means that development which accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.
24. Paragraph 6.73 of the SPPS indicates that provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.
25. Paragraph 6.78 of the SPPS outlines that supplementary planning guidance contained within Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside must be taken into account in assessing all development proposals in the countryside.
26. This application seeks to establish the principle of one infill dwelling within a small gap along a substantially and continuously built up frontage in accordance with Policy CTY8 of PPS 21.
27. No conflict arises between the provisions of the Strategic Planning Policy Statement (2015) and the retained policy in Planning Policy Statement 21: Sustainable Development in the Countryside.
28. Consequently, the relevant paragraphs in the SPPS and policies in PPS 21 provides the relevant planning policy context in this instance.

Sustainable Development in the Countryside

29. PPS 21 – Sustainable Development in the Countryside sets out planning policies for development in the countryside and lists the range of development which in principle is considered to be acceptable and contribute to the aims of sustainable development.
30. Policy CTY 1 – Development in the Countryside makes reference to a number of circumstances when planning permission will be granted for residential development in the countryside.

Ribbon Development

31. Policy CTY 8 – Ribbon Development outlines that planning permission will be refused for a building which creates or adds to a ribbon of development.

32. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. For the purpose of this policy the definition of a substantial and built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.
33. The justification and amplification to the policy explains that ribbon development is detrimental to the character, appearance and amenity of the countryside. It creates and reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. Ribbon development has consistently been opposed and will continue to be unacceptable.
34. Paragraph 5.33 advises that for the purposes of this policy a road frontage includes a footpath or private lane. A ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.
35. Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. In considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated.
36. It is clear that applicants must take full account of the existing pattern of development and can produce a design solution to integrate the new buildings.
37. Paragraph 4.4.1 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside outlines that policy CTY 8 Ribbon development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses, within an otherwise substantial and continuous built up frontage.
38. The guidance recommends the following:
 - a. It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
 - b. Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.

- c. When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
 - d. A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.
39. To assist with the assessment of the proposal against the first part of the policy test, it is necessary, determining whether there is an otherwise substantial and continuously built up frontage present comprising a line of three or more buildings along a road frontage without accompanying development to the rear.
 40. A building has a frontage to a road if the plot on which it stands abuts or shares a boundary with the road. A building is defined in statute to include a structure or erection, and any part of a building as so defined.
 41. In this instance there are more than three buildings with a road frontage onto Garlandstown Road. These buildings include the derelict building immediately adjacent and north of the site and 39 Garlandstown Road and its substantial double detached garage located adjacent and south of the application site.
 42. It also includes the single storey building south of number 39 (which has been retained as a store following its replacement by 39), number 41 Garlandstown Road and its associated outhouse and number 43 Garlandstown Road and its detached garage.
 43. Based on a review of the existing built form, it is accepted that there is a substantial and continuously built-up frontage along this part of Garlandstown Road.
 44. The second step is to determine if there is a small gap site sufficient only to accommodate up to a maximum of two-houses within the otherwise substantial and continuously built-up frontage.
 45. As explained, the application site is located between the derelict building to the north and 39 Garlandstown Road and its associated garage, former 39 and 41 and its outhouse and the building at 43 Garlandstown Road and its garage to the south.
 46. This site is considered for the reasons explained above to constitute a small gap site within the otherwise substantial and continuously built up frontage of sufficient size to accommodate one dwelling. The building to building measurement from the derelict building to the detached double garage is 48 metres.
 47. The third step is to determine if the proposal respects the existing development pattern along the frontage in terms of size, scale, siting and plot size.
 48. The site associated with the derelict building has a plot size measuring approximately 0.3 hectares and a frontage along Garlandstown Road measuring 78 metres.

49. The building associated with number 39 Garlandstown Road has a plot size measuring approximately 0.24 hectares and a frontage of 56 metres.
50. The site at 41 Garlandstown Road has a plot size measuring approximately 0.35 hectares and a frontage of 62 metres. The site at 43 has a plot size measuring 0.18 hectares and a frontage of approximately 35 metres.
51. The average plot size along this otherwise substantial and continuously built up frontage equates to an average plot size of approximately 0.27 hectares and an average frontage of approximately 58 metres.
52. This application proposes to sub divide the plot associated with the derelict building resulting in a plot size of 0.14 hectares and a frontage of 39 metres for the derelict building and a plot size of 0.16 hectares and a frontage of 39 metres for the proposed dwelling.
53. These plot sizes and frontages are below the average of the established plots along this frontage and are therefore not considered to reflect the existing development pattern along the frontage.
54. Guidance contained within Building on Tradition A Sustainable Design Guide for the Northern Ireland Countryside' advises that another type of visual break can be an existing stand of mature trees occurring between properties that appear to be ribbon development on plan.
55. Within this context, it is considered that the trees contribute positively to the rural character in this area and are an important visual break in the development.
56. In this case, it is considered that the mature trees located on site provide an important visual break in the otherwise substantial and built-up frontage and that development of the application site should be resisted to maintain this visual break.
57. As explained above, Policy CTY8 states planning permission will be refused for a building which creates or adds to a ribbon of development. The proposed site does not constitute an infill opportunity for the reasons discussed.
58. A dwelling established on the application site will read with the mentioned development to the north and south to extend the ribbon of development along this stretch of Garlandstown Road. A dwelling in this site would not reflect the existing pattern of development along this stretch of road.
59. As the site constitutes a visual break the proposal to erect a dwelling on site would be contrary to Policy CTY8.
Integration and Design of Buildings in the Countryside

60. Policy CTY 13 – Integration and Design of Buildings in the Countryside states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.
61. The policy directs that a new building will be unacceptable where:
 - (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or
 - (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.
62. Paragraph 4.1.0 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside states that a core requirement of much of the development covered by PPS 21 is that it is integrated within (and in particular instances Visually linked to) the countryside and/or other established buildings.
63. In terms of criteria (a), given the low lying nature of the site and surrounding topography and the screening offered by the site a dwelling would not appear unduly prominent in the landscape.
64. The existing site boundaries are defined by mature trees and would provide a suitable degree of enclosure to facilitate the integration of a dwelling on this site fulfilling requirements under criteria (b) and (c).
65. As this is an outline application full details of the proposed house type have not been submitted at this stage. In the event planning permission is approved a dwelling of suitable design for the site and locality could be agreed at reserved matters stage.
66. In terms of criteria (d), it is considered that ancillary works in the form of an access would be visually acceptable. In the event that the principle of development was considered to be acceptable, relevant conditions in respect of existing and proposed ground levels and the proposed finished floor levels (FFL's) of the proposed buildings should be applied to any decision.
67. No detailed design details (dwelling plans or elevations) have been submitted for consideration as this application seeks outline approval only therefore criteria (e) would only be considered at subsequent design stage.

68. With regards criteria (f) the dense vegetation to the rear and side of the site would provide a suitable backdrop to an appropriately designed dwelling should the principle of development be acceptable. Criteria (g) is not applicable.
69. Taking all criterial into account it is considered that the application complies with the policy tests associated with Policy CTY 13.

Rural Character

70. Policy CTY 14 – Rural Character states that planning permission will be granted for a building(s) in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area.
71. Given the low lying nature of the site and surrounding topography and the screening offered by the site a dwelling would not appear unduly prominent in the landscape.
72. The development is considered to be unacceptable in principle as it, would result in a sub-urban style build-up of development when viewed with existing and approved buildings within the local landscape.
73. For the reasons outlined above, the development as presented is considered not to respect the traditional pattern of development found within the area, as it would add to a ribbon of development noted in situ, running along this section of the Garlandstown Road.

Development Relying on Non-Mains Sewerage

74. Policy CTY 16 - Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.
75. The development seeks to utilise a septic tank for the disposal of foul sewerage.
76. Environmental Health, and NI Water have been consulted and offer no objections to the proposal subject to at the subsequent planning stage the applicant provides a detailed site plan which includes the location of the proposed dwelling, the septic tank/biodisc and the area of subsoil irrigation for the disposal of effluent. The drawing should also include the position of the septic tank and soakaway for any other relevant adjacent dwelling
77. It is therefore considered that the development meets the policy test associated with Policy CTY 16 and that no issues of concern with respect to potential pollution will arise.

Access, Movement and Parking

78. PPS 3 - Access, Movement and Parking and PPS 3 (Clarification), set out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
79. Policy AMP 2 – Access to Public Roads 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:
 - a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
80. The development seeks to construct a new access to the public road [Garlandstown Road] to provide access to the proposed site. The Garlandstown Road is not a Protected Route.
81. DfI Roads have been consulted and offer no objections. Standard conditions recommended in respect of car parking, street furniture are considered to be acceptable.
82. Based on the detail submitted and advice received, it is therefore considered that the development meets the policy test associated with policy AMP2 Access to Public Roads.

Archaeology and the Built Heritage

83. The Councils Paragraph 6.9 of the SPPS states that development proposals which would adversely affect archaeological remains of local importance or their settings should only be permitted where the planning authority considers that the need for the proposed development or other material considerations outweigh the value of the remains and/or their settings.'
84. Policy BH 2 - The Protection of Archaeological Remains of Local Importance and their Settings states development proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings will only be permitted where the Department considers the importance of the proposed development or other material considerations outweigh the value of the remains in question.
85. The application site is located within the consultation zone of a scheduled monument (SMR ANT: 059:128).

86. Historic Environment Division (Historic Monuments) were consulted in relation to this proposal. They are content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.

Conclusions

87. All relevant policy and material considerations have been assessed and proposal is considered to be 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.
88. It is also considered to be contrary to the SPPS and policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal would not respect the existing development pattern along the frontage in terms of plot size and frontage resulting the addition of ribbon development along Garlandstown Road and the loss of an important visual break.
89. In addition the proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 14 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal would if permitted result in a suburban style build-up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area and it would add to a ribbon of development along Garlandstown Road.

Recommendations

90. It is recommended that planning permission is refused.

Refusal Reasons

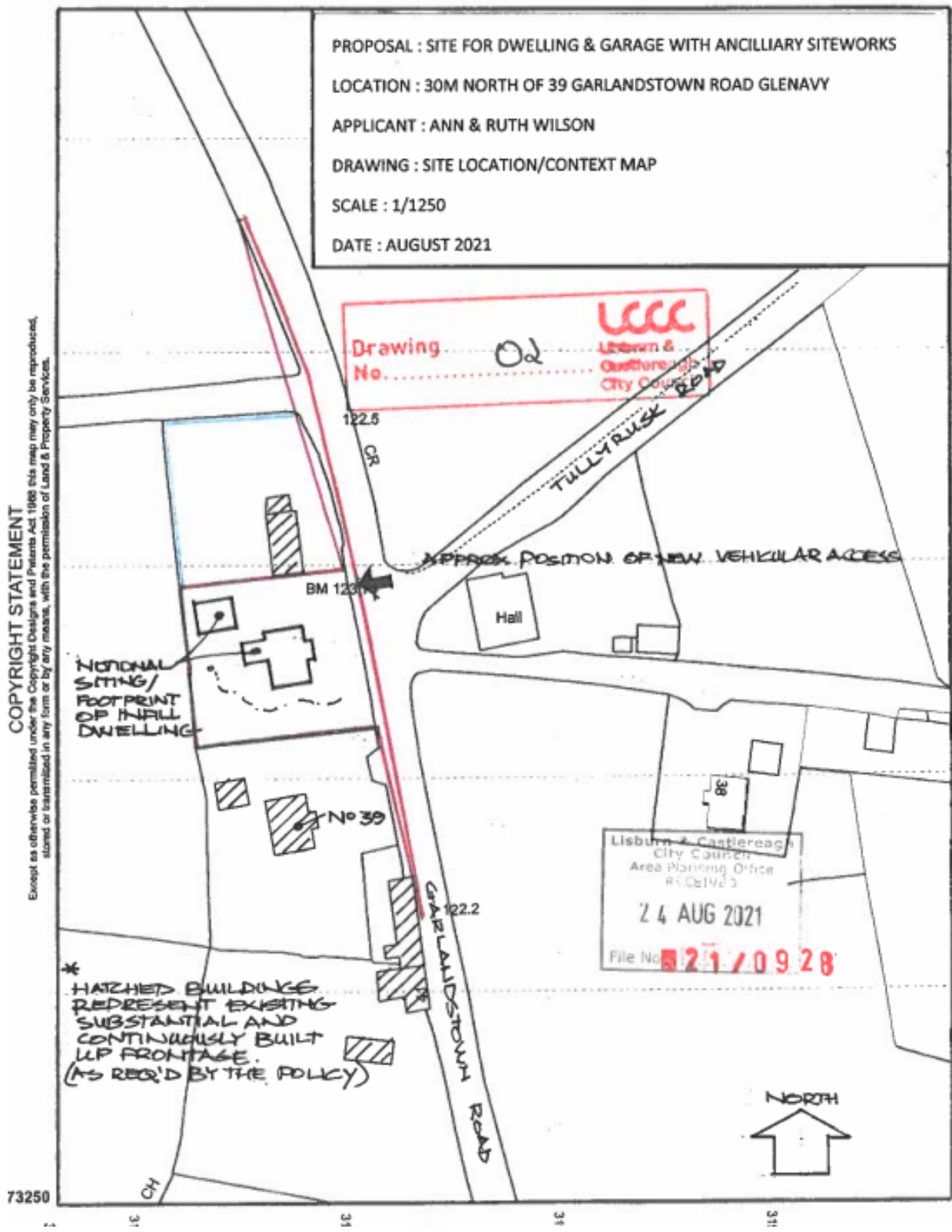
91. The following refusal reasons are recommended:
- The proposal is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
 - The proposal is contrary to the SPPS and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in the proposal would not respect the existing development pattern along the frontage in terms of plot size and frontage resulting the addition of ribbon development along Garlandstown Road and the loss of an important visual break.
 - The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY 14 of Planning Policy Statement 21: Sustainable Development in the

Countryside, in that the proposal would if permitted result in a suburban style build-up of development when viewed with existing buildings, does not respect the traditional pattern of settlement exhibited in the area and it would add to a ribbon of development along Garlandstown Road.

Site Location Plan – LA05/2021/0928/O

39 GARLANDSTOWN ROAD, TULLYNEWBANE, GLENNAVY, BT29 4HJ, 185282521

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Lisburn & Castlereagh City Council

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| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2019/0782/F |
| Date of Application | 30 July 2019 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Proposed alterations to existing residential home to include: two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at 2 & 4 Ashley Park. |
| Location | Residential Home, 19 Church Road, Carryduff |
| Representations | Fifty |
| Case Officer | Catherine Gray |
| Recommendation | APPROVAL |

Summary of Recommendation

1. A recommendation to approve planning permission was presented to the Committee at its meeting in February 2022. Members were advised that the proposed development would create a sensitively designed extension to an existing nursing home that will not impact adversely on the character of the area and that it would not have a detrimental impact on the residential amenity of existing residents by reason of overlooking or dominance.
2. The proposal was also considered to meet the policy requirement of the SPPS and associated guidance set out in Development Control Advice Note 9 Residential Development and Nursing Homes in so far as the proposal is in accordance with the siting, locality, traffic, amenity, design and layout, and landscaping criteria set out in the guidance.
3. It was also advised that the proposal complies with the SPPS and policies AMP 2 and AMP 7 of PPS 3 in that the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic. The parking provision is also in accordance with the guidance set out in Parking Standards document.

4. At the request of Members, it was agreed that consideration of the application should be deferred to allow for additional information to be provided in relation to the following matters:
 - Clarification of the parking requirements for all staff including ancillary staff;
 - Consideration of the need for a Transport Assessment;
 - Consideration of the need for parking survey; and
 - Clarification of the impact of moving the proposed access to Ashley Park on the residential amenity of residents living in this street.

Further Assessment

Clarification on staffing and parking requirements

5. In correspondence received on 17 February 2022, the applicant team provided clarification and a breakdown of the current staff numbers consistent with the requirement set out in form P1D submitted in support of the application.
6. In a further letter dated 23 February 2022 it was confirmed that the staff requirements for the day shift (8am to 8pm) are as follows:

Existing (8 staff)

- Nursing Staff: Full-time – 2
Part-time – 3
- Ancillary Staff: Full-Time – 1
Part-Time – 2 (1 Kitchen & 1 Domestic)

Proposed (12 staff)

- Nursing Staff: Full-time – 3
Part-time – 5
- Ancillary Staff: Full-Time – 1
Part-Time – 3 (1 Kitchen & 2 Domestic)

7. It is also clarified that the numbers and frequency of deliveries are not changed. Instead larger orders will be placed.

Development Control Advice Note 9 (DCAN9)

8. DCAN 9 – Residential and Nursing Homes provides advice on the parking requirements for this type of development and is set out that parking should be provided as follows:

- (i) Staff parking – One space per full time member of staff. One space per two part time members of staff.
 - (ii) Visitor parking – one space per 3 beds.
9. The advice note also recommends that service vehicles, particularly doctors and ambulances should be able to manoeuvre unimpeded within the site.
 10. Based on the advice contained within this DCAN 9, 20 spaces comprised of 12 spaces for visitors (based on 36 beds), 4 spaces for four full time staff and 4 spaces for eight part time members of staff.

Parking Standards

11. Policy AMP 7 – Car Parking and Servicing Arrangements states that proposals will be required to provide adequate provision for car parking and appropriate servicing arrangements.
12. The precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to the Department's published standards [Parking Standards] or any reduction provided for in an area of parking restraint designated in a development plan. Proposals should not prejudice road safety or significantly inconvenience the flow of traffic.
13. Parking Standards is a guidance document published by the Department and is to be read in conjunction with the latest expression of policy found in PPS3.
14. The principle objective of the parking standards is to ensure that, in assessing development proposals, appropriate consideration is given to the accommodation of vehicles attracted to the site within the context of wider government policy aimed at promoting modal shift to more sustainable forms of transport.
15. It is stated that the precise amount of car parking will be determined according to the specific characteristics of the development and its location having regard to these standards or any reduction provided for in an area of parking restraint designated in a development plan.
16. It is further stated that developers will be required to demonstrate there is adequate provision of space within the site, for parking, manoeuvring, loading and unloading to fulfil the operational requirements of the proposed development.
17. For a nursing home the parking standards are set out under the heading Class C3: Residential Institutions as follows:
 - 1 space per Doctor or Consultant
 - 1 space per 3 Nursing and ancillary staff
 - 1 space per 3 beds
 - 4 spaces per outpatient consulting room

18. Based on the advice contained in the parking standards document, 18 spaces are required comprised of 12 visitor spaces (for 36 beds), 1 space for a doctor/consultant and 4 spaces for 12 nursing and ancillary staff. .
19. Paragraph 6.304 of the SPPS states that in assessing the appropriate amount of car parking, account should be taken of the specific characteristics of the development and its location, having regard to the Department's published standards and any reduction in standards provided for through a LDP or Transport Assessment.
20. A total of 17 parking spaces are proposed within the curtilage of the site. This is one less than the parking standard and three less than the DCAN. There are more than three parking spaces on the streets adjacent to the site for visitors. The DCAN indicates at paragraph 3(c) that on street parking can be counted in the assessment of whether the parking requirement is met.
21. There presently are 7 spaces for 18 bedrooms and eight staff. The parking requirement based on the DCAN is 10.5 spaces and 9.5 spaces based the parking standards document. The proposed parking arrangement provides a parking standard more closely aligned with the guidance.
22. The proposal is considered against the requirements of policy AMP 7 of PPS 3. This is not an area of parking restraint and the full parking requirement are not provided within the curtilage of the site. It is indicated in the policy that a reduced standard of parking may be acceptable in a number of specific circumstances.
23. In this case the site is:
 - in a highly accessible location well served by public transport with a bus stop opposite the site on Church Road and approximately 500 metres distant on both the Ballynahinch Road and Saintfield Road;
 - benefits from spare capacity available in nearby adjacent on street car parking on Church Road and killynure Road; and
 - where shared car parking is a viable option in the context of shift working.

Need for a Transport Assessment

24. Paragraph 2.1 of the Department's Transport Assessment Guidelines for Development Proposals in Northern Ireland explains that purpose of a Transport Assessment is to provide enough information for the Department to understand how the proposed development is likely to function in transport terms.
25. It also explains that assessing the transport impacts in a systematic manner contributes towards understanding how more sustainable travel patterns might be achieved through changing travel behaviour. Transport Assessment also subsumes the former process of Traffic Impact Assessment.

26. Paragraph 2.2 explains that the preparation and detail of a Transport Assessment will vary depending on the location, scale and nature of the proposed development and that an Assessment should, where appropriate, propose a package of measures designed to promote access to the site by walking, cycling and public transport, while reducing the role of car access as much as possible.
27. Further clarification was sought from DfI Roads in relation to the need for a Transport Assessment. Advice received on 25 February 2022 advised that a 38 Bed Residential Home, is not covered by the 'Transport Assessment Guidelines for Development Proposals in Northern Ireland', a document used by DfI Roads to determine whether a Transport Assessment (TA) is required or not.
28. Whilst DfI Roads retain the discretion to request that a TA is carried out, in this particular case, they advise that the likely number of trips generated by the proposed development involving an average vehicle movements less than 25 vehicles a day would not justify an assessment being carried out.
29. Based on the advice received, it is accepted that DfI Roads had sufficient information available to understand whether the proposed development would prejudice road safety or significantly inconvenience the flow of traffic in the context of policies AMP 2 and AMP 7. No reason for refusal was offered on either ground. There is no reason to disagree with the assessment of the roads official.

Need for Parking Survey

30. Based on the staff numbers and taking into account the requirement associated with parking standards, 17 spaces would be required to service this development.
31. DfI Road also confirmed on 25 February 2022 based on a review of the information provided by the applicant, in correspondence (clarification letter to the Council from the planning applicant dated 15 January 2020), the P1 Form and using the parking standards document that they Roads (the most recent and up to date standard) were content that the 17 in-curtilage parking spaces proposed were adequate to provide the necessary parking. The shortfall was only one space and no parking survey was required.

Impact on residential amenity as result of access being relocated to Ashley Park

32. In this case, the dwellings at 2 and 4 Ashley Park are proposed to be demolished to provide for the extension and the construction of a new access. The proposed access is immediately adjacent to the boundary with 6 Ashley Park.
33. A fence extending for 5.7 metres will be connected with the existing 5.5 metres of fence and that a wedge of new screen planting will be provided along this

boundary for 11 metres to a depth of 1 to 2 metres. Beyond this area of planting, a 2.0 metre high wall is proposed for a length of 17 metres.

34. It is considered that the planting along with the closed boarded fence and the wall will reduce the noise of traffic using the new access and mitigate any impact on the existing amenity of the residential property at 6 Ashley Park.
35. There is a general amenity consideration in relation to the frequency of traffic using a nursing home. DfI Roads clarify the number of anticipated number of vehicle movements to be less than 25 per day. The shift changes are not late at night and the deliveries are all during the day.
36. There may on exception be late night movements if a doctor and/or relative needs to visit a sick resident. This is not likely to give rise to a significant and enduring impact on the amenity of the property adjacent of the two opposite. This would not be sufficient to sustain a refusal of permission on the grounds of loss of amenity.
37. Further advice was also sought from the Council's Environmental Health Unit in relation to potential impact on residential amenity associated with the access being relocated from Church Road to Ashley Park.
38. Comment received on 21 February 2022 confirmed that the supporting information provided by the applicant team including the amended drawings and the letters of objection from neighbouring residents were taken into consideration.
39. Given the proximity of the site and the existing dwellings to Church Road, the noise generated from traffic to the existing dwellings and the high background noise levels associated with the existing road traffic noise, Environmental Health advised that the proposal would not have a significant detrimental impact on residential amenity with respect to noise.

Conclusions

40. The advice previously provided is not altered and the recommendation to approve planning permission as outlined in the initial report is not changed.
41. The detail of this addendum should be read in conjunction with the main officers report previously presented to the Committee on 07 February 2022 which is provided as part of the papers for this meeting.

Recommendation

42. It is recommended that planning permission is approved.

Condition(s)

43. No further planning conditions are recommended beyond those set out in the main report.

Site Location Plan – LA05/2019/0782/F



Lisburn & Castlereagh City Council

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|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 February 2022 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2019/0782/F |
| Date of Application | 30 July 2019 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Proposed alterations to existing residential home to include: two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at 2 & 4 Ashley Park. |
| Location | Residential Home, 19 Church Road, Carryduff |
| Representations | Fifty |
| Case Officer | Catherine Gray |
| Recommendation | APPROVAL |

Summary of Recommendation

1. This application is categorised as a local application. It is presented to the Committee for determination in accordance with the Scheme of Delegation in that it has been Called In.
2. This application is presented to the Planning Committee with a recommendation to approve as it is considered that the proposed development would create a sensitively designed extension to an existing nursing home that will not impact adversely on the character of the area, has adequate provision for parking and a layout that would not have a detrimental impact on the residential amenity of existing residents by reason of overlooking or dominance.
3. The proposed development is considered to comply with the SPPS and guidance set out in Development Control Advice Note 9 on Residential Development and Nursing Homes in so far as it relates to the siting, locality, traffic, amenity, design and layout, and landscaping.

4. The proposal complies with the SPPS and PPS 2 in that the detail submitted with the application shows that the proposal would not harm any natural heritage.
5. It is considered that the proposal complies with the SPPS and Policies AMP 2 and AMP 7 of PPS 3 in that the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic. The parking provision also complies with guidance set out in Parking Standards.
6. The proposal complies with the SPPS and PPS 15 in that detail submitted with the application demonstrates that the development would not cause or exacerbate flooding. There is no watercourses within or adjacent the site and it does not meet the threshold for a drainage assessment.

Description of Site and Surroundings

7. The site is located to the northern side of Church Road, Carryduff and comprises part of the established curtilage of the existing nursing home and two semi-detached dwellings which are proposed to be demolished to accommodate the proposed extension.
8. The nursing home is a two storey building with a rear extension. It is an L shaped building, with amenity space for residents and parking to the side/rear. The building is finished in dashed render and has white upvc windows and hardwood doors. The access to the nursing home is from Church Road.
9. The two semi-detached properties to be demolished are one and half storey dwellings with roof dormers and upper floor gable end windows. They are set in medium sized plots with a garden/amenity area to the rear/side and with a tarmacked parking area for two cars to the front. The dwellings are finished in red brick, stone and wooden cladding and has white upvc windows and doors. These properties are accessed from Ashley Park.
10. The site is adjoined by existing residential properties, across the road there is an existing school, and in the surrounding area there are commercial/retail properties and religious buildings in the near vicinity. There is a mix of uses within the centre of Carryduff.

Proposed Development

11. The application is for full planning permission for proposed alterations to existing residential home to include a two storey front and rear extensions with associated site works, new access and rear parking. Works are to incorporate the grounds of adjacent dwellings at 2 & 4 Ashley Park.

Relevant Planning History

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

| Application Reference | Proposal | Decision |
|-----------------------|--|----------------------------------|
| LA05/2019/0606/F | Retention of existing 99KW biomass boiler enclosure and associated biomass fuel stores | Permission Granted 12/10/2020 |
| Y/1989/0280 | Extension of nursing home | Permission Granted |
| Y/1987/0037 | Erection of olds peoples residential home | Permission Granted |

Planning Policy Context

13. The relevant planning policy context which relates to the application is as follows:

- Regional Development Strategy 2035
- Carryduff Local Area Plan
- Draft Belfast Metropolitan Area Plan 2015
- Strategic Planning Policy for Northern Ireland (SPPS): Planning for Sustainable Development
- Planning Policy Statement 2 (PPS 2) : Natural Heritage
- Planning Policy Statement 3 (PPS 3): Access, Movement and Parking
- Planning Policy Statement 15 (PPS 15): Planning and Flood Risk
- Development Control Advice Note 9: Residential and Nursing Homes

Consultations

14. The following consultations were carried out:

| Consultee | Response |
|-----------------------------|-----------------------------------|
| Dfl Roads | No objection subject to condition |
| Dfl Rivers Agency | No Objection. |
| LCCC Environmental Health | No Objection |
| NI Water | No Objection |
| DAERA Water Management Unit | No objection |

| | |
|------------------------------------|--------------|
| DAERA Natural Environment Division | No objection |
|------------------------------------|--------------|

Representations

15. Fifty letters of objection have been submitted in respect of the proposal. The following issues have been raised (summarised):

- Size, height, scale and massing of the property, adverse visual impact and non-adherence to front building line
- Overlooking/privacy/impact on residential amenity
- Noise
- Lighting
- Demolition and construction plans
- Integrity of the boundary wall
- Access, parking and traffic
- Inaccuracy in the drawings
- Safety of children playing in the street
- Quality of life and property value of 6 Ashley Park
- Character of the area
- Unsatisfactory landscaping and amenity space
- Pollution and health
- Nursing home in the area
- RQIA regulations for nursing homes

Consideration and Assessment

13. The main issues to consider in the determination of this planning application are:

- Local Development Plan
- Principle of Development
- Residential Development and Nursing Homes
 - Siting
 - Locality
 - Traffic
 - Amenity
 - Design and Layout
 - Landscaping
- Access, Movement and Parking
- Natural Heritage
- Flooding and Drainage

Local Development Plan

14. Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
15. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
16. As a consequence of this decision, the Carryduff Local Area Plan is the statutory development plan however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
17. Under the Carryduff Local Area Plan (1988-1993), the application site falls within the designated Settlement Limit of Carryduff. Within the draft Belfast Metropolitan Area Plan 2015 the application site is also within the Settlement Development Limit of Carryduff and is on land that is not designated or zoned.
18. While residential care facilities falls under C3 (Residential Institutions) of Part C of the Planning (Uses Classes) Order (Northern Ireland) 2015 it still falls within the general meaning of a residential use.

Principle of Development

19. The Strategic Planning Policy Statement (SPPS) published in September 2015 states that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.
20. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
21. Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
22. Having considered the content of the SPPS against the retained policies PPS3 Access, Movement and Parking; and PPS 2 Natural Heritage, PPS 15 Planning and Flood Risk, no distinguishable differences are found that should be reconciled in favour of the SPPS.
23. The application therefore falls to be assessed against prevailing policy tests taking into account the established use, planning history and planning guidance associated Development Control Advice Note 9 in so far as it relates to Nursing Homes.

Residential Development and Nursing Homes

24. There is no specific planning policy for residential care facilities. That said, the guidance in Development Control Advice Note 9 Residential and Nursing Homes (DCAN 9) is an important material consideration.
25. The guidance indicates that it is to be expected that, other than in exceptional circumstances that residential and nursing homes will be located in cities, towns and villages where services are readily conveniently available.
26. In this case and consistent with guidance, the site associated with the current application is located within an established residential area. The application is for an extension to an established nursing home which is of its self, a building of significant bulk, scale and mass.
27. Guidance in relation to Nursing and Residential homes states that regard should also be had to the following matters:

Siting

28. As explained, the site is currently occupied by a nursing home and two residential dwellings. The existing nursing home is accessed from the Church Road and the two dwelling houses (semi-detached) area is accessed off Ashley Park.
29. The physical site constraints, size of the buildings and the impact on neighbouring residents are considered.
30. The existing nursing home consists of a large building which is two story in height with a two storey rear projection. The front of the building faces towards Church Road.
31. The application proposes a new two storey extension to the existing building onto the site of two former dwellings. The site is large enough to accommodate the size of extension proposed and there are no other site constraints that restrict the siting.
32. The two storey extension would provide additional accommodation for the home in the form of 36 bedrooms all with en-suite facilities and assisted bathrooms and storage areas.

Locality

33. There is a mixture of different types of development within the surrounding area, including residential use, commercial/retail units and a school across the road. The proposed development is appropriate to the context. Ashley Park is not distinguishable from the context and the building as extended would not harm the established residential character of this street.

Traffic

34. A new access is proposed from Ashley Park as detailed on the site layout plan. Provision is also made within the application site for 17 parking spaces which is in compliance with parking standards. Provision is also made for an ambulance to park adjacent to the entrance.
35. DfI Roads have been consulted and have no objections to the proposal. It is considered that the proposal complies with PPS 3. Access, movement and parking are considered later in the report.

Amenity

36. Visual amenity along with potential noise, nuisance and general disturbance has been considered. Visually the proposal is considered to be acceptable for the site and its location. Environmental Health have raised no objections or concerns with regards to noise, nuisance or general disturbance.
37. The use of a residential home and domestic residential properties co-exists currently without conflict and the proposed extension to the existing nursing home is considered that it would do the same.

Design and Layout

38. The layout has been designed to allow for an appropriate extension to the existing nursing home while making provision for parking and amenity.
39. A two storey extension measuring approximately 9.2 metres in height is proposed to the existing two storey building consistent with the ridge height of the existing building. The footprint of the building is set back slightly from Church Road and the rest of the building on the western elevation.
40. The proposal has similar scale and massing of other buildings found in the area. The design is considered to be in keeping with the existing nursing home and would not detract from the appearance of the existing building or the surrounding area.
41. The materials to be used in the construction of the building include rough dashed render walls, concrete roof tiles, black UPVC rainwater goods and white UPVC windows and doors.
42. The finishes proposed to the building are considered to be acceptable and in keeping with the established character of this area
43. The extension to the property has been assessed in terms of its impact on adjoining properties.
44. Given that the properties and number 2 and 4 are to be demolished to accommodate the extension the closest residential dwelling to the proposed extension will be number 6 Ashley Park

45. The relationship between the nursing home and number 6 Ashley Park is back to side and the proposed extension is located approximately 16.5m away from the common boundary with this property
46. Building to building the proposal is 18.2 metres away from the property at 6 Ashley Park.
47. It is considered that the layout of the building, the position of the windows and separation distance ensures that there is no overlooking into the private amenity space of neighbouring properties. The building will not be dominant or overbearing and no loss of light would be caused.
48. The design incorporates provision of a communal amenity area for the residents of the nursing home. There is an existing area located to the west of the site behind the existing nursing home which is approximately 142 square metres.
49. This proposal makes provision for an additional 173 square metres of usable garden/amenity space creating a total area of approximately of 315 square metres associated with the residential home. The new amenity area is to be located on the eastern side of the site, between the proposed extension and the eastern boundary.
50. This size and location of the amenity area proposed is considered to be acceptable for this type and scale of proposal.

Landscaping

51. New boundary treatment on the rear common boundary between the site and property 6 Ashley Park will consist primarily of a 2 metre high red brick wall. A small section of fencing is also proposed along this boundary and this will be augmented with screen planting.
52. The existing boundary treatment to the front of the site adjacent to Church Road consists of a 1.5 metre metal fence. The proposal intends to extend this fence along the length of the new extension on Church Road and also along the Western side of the site adjacent to Ashley Park.
53. Additional screen planting is to be located behind the fence on Ashley Park which is considered to be acceptable.

Access, Movement and Parking

54. PPS 3 – Access, Movement and Parking sets out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking.
55. AMP 2 - Access to Public Roads 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:

- a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
56. AMP 7 - Car Parking and Servicing Arrangements states that development proposals will be require to provide adequate provision for car parking and appropriate servicing arrangements. Proposals should not prejudice road safety or significantly inconvenience the flow of traffic.
 57. As explained above, the proposal involves the creation of a new access from Ashley Park as detailed in the site plan. Provision is also made within the site for 17 parking spaces.
 58. The detail submitted with the application states that the number of patients would be 36 and that there would be 9 full time and 3 part time staff per shift.
 59. The 36 patients equates to 12 spaces, the staff numbers are 12 per shift which equates to 4 spaces, therefore 16 spaces are required and 1 space for an ambulance.
 60. In addition to the 17 parking spaces a cycle stand and rack is also provided. This complies with the guidance in the Parking Standards document.
 61. DfI Roads have been consulted and offers no objection to the proposal with a standard conditions provided.
 62. Based on the information provided and advice from the statutory consultee, it is considered that that the proposal complies with PPS 3 Access, Movement and Parking.

Natural Heritage

63. PPS 2 – Natural Heritage, sets out the planning polices for the conservation, protection and enhancement of our natural heritage.
64. The application site is not within or adjacent to any designated areas such as ASSI's etc. and there are no watercourses or streams within or adjacent to the site. There are however 2 existing semi-detached dwellings that are proposed to be demolished to accommodate the proposal.
65. A biodiversity checklist was submitted for consideration.
66. DAERA Natural Environment Division (NED) have been consulted on the proposal and refer to standing advice.
67. Having reviewed and considered the submitted biodiversity checklist, carried out a site inspection and taken on board the standing advice from NED it is considered that no further surveys were required.

68. It is considered that the proposal would not have negative impact on any protected species or habitat and that it complies with the policy tests associated with PPS 2 Natural Heritage.

Flooding and Drainage

69. PPS 15 – Planning and Flood Risk sets out policy to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications.
70. There are no watercourses within or adjacent to the application site and the rivers agency flood maps detail that the site is not located within a flood plain.
71. A drainage assessment is not required for this application and it is considered that the proposal would not cause or exacerbate flooding.
72. DfI Rivers Agency have been consulted and have raised no objections to the proposal. NIEA Water Management Unit have also been consulted on the proposal and refers to standing advice.
73. It is considered that the proposal complies with PPS 15.

Consideration of Representations

74. The issues raised by way of third party representation are considered below:

Size, height, scale and massing of the property, adverse visual impact and non-adherence to front building line

75. The view is expressed that the height of the proposal along with its size, scale and massing is large and will have a detrimental impact on surrounding properties. Also that it would have an adverse visual impact. It is considered that the proposal does not adhere to the front building line of Ashley Park. The view is expressed that the proposal would be dominant.
76. Through the processing of the application the size of the proposed extension has been reduced. The height of the extension is no higher than the existing building. The extension is a continuation of the same height for a portion and then the building is set and staggered back from the front elevation.
77. The front elevation does not break the existing building line provided by the existing building on the site and the proposal does not break the established building line of Ashley Park.
78. The main views of the proposal would be on approach from both sides along the Church Road, when approaching from Ashley Park and on approach from the Killynure Road. It would also be partially viewed on approach when coming

from the Hillsborough Road.

79. It is considered that the design of the proposal is in keeping with the existing building and would not detract from the appearance and character of the existing building or surrounding area.
80. There is a mixture of different types of buildings in the immediate areas including the school building across the road with varying types of structures.
81. Taking on board the existing and proposed levels and its relationship with the surrounding land and development it is considered that the proposal would not be a dominant feature in the streetscape.

Overlooking/privacy/impact on residential amenity

82. Concerns is expressed that the proposal would cause overlooking into the rear garden of 6 Ashley Park causing loss of privacy. And would make 6 Ashley Park feel claustrophobic. Concern is also expressed about the privacy of the bedrooms and private gardens of 1, 3 and 6 Ashley Park and that the development would affect the amenity of number 7 Hollygate Avenue.
83. The proposed extension is 19 metres away at the narrowest point with the boundary of 7 Hollygate Avenue. The boundary between the proposal and 7 Hollygate Avenue is a 2 metre high wall. The 2 metre high wall extends along the boundary of the site and the proposed extension is 16.5 metre away from the boundary wall of 6 Ashley Park where the proposal aligns with its rear amenity space.
84. Building to building the proposal is 18.2 metres distant from 6 Ashley Park. The relationship between property 7 Hollygate Avenue and the proposal is back to back and the relationship between the proposal and 6 Ashley Park is back to side.
85. It is considered that the separation distances of the proposal from the neighbouring dwellings is sufficient to ensure that there would be no unacceptable overlooking into private amenity space.
86. The existing situation currently on site shows a relationship where properties at 2 and 4 Ashley Park backs onto the side boundary of the residential home where it faces an elevation with upper floor windows.
87. The current relationship between the two storey nursing home building and properties at 2 and 4 Ashley Park is that the building to building relationship measures 18 metres at the narrowest point with a wall between the two, with the parking for the residential home running alongside the boundary wall.
88. The proposal is for an extension to the existing property with the parking in between the extension and the boundary with the nearest properties, with increased separation distances than there is in the current situation on the ground.

89. The private amenity space of properties at 1 and 3 Ashley Park is to the rear of their dwellings and the proposal would not cause any overlooking into their private amenity space.
90. It is considered that there is sufficient separation distances from the proposal to the surrounding development that no unacceptable loss of privacy would be caused.

Noise

91. Concerns are raised about the additional noise from additional building services such as heating and ventilation. Also the impact of the carrying of traffic such as staff, visitor etc. not to mention ambulances and hearses at all hours of the day and night.
92. The use of a residential home and domestic residential properties co-exists currently without conflict and the proposed extension to the existing nursing home is considered that it would do the same. Environmental Health have been consulted and have no objections.

Lighting

93. Concerns have been raised with regards that there would be additional security lighting that would shine into neighbours' properties.
94. The use of a residential home and domestic residential properties co-exists currently without conflict and the proposed extension to the existing nursing home is considered that it would do the same. The Environmental Health Unit of the Council has been consulted and no objections are raised on the grounds of lighting.

Demolition and construction plans

95. Concerns have been raised that there is no detail of how the demolition and construction would be managed in terms of noise, dust, working hours, road traffic disruption and nuisance to the neighbouring residents.
96. Details of a demolition and construction plan is not a requirement of a planning application. The onus is on the applicant/developer to ensure that the proposal if approved is built without having a negative impact on surrounding properties/developments.
97. Construction works of any development is of a temporary nature and Environmental Health have raised no objections to the proposal.

Integrity of the boundary wall

98. The view is expressed that the boundary wall is owned by the nursing home but has suffered structural damage in the past causing large cracks. Concerns are raised that any additional demolition in the vicinity or general construction would have a further impact.

99. Construction works of any development is of a temporary nature and the onus is on the owner/developer to ensure that any existing structures are not negatively impacted.

Access, parking and traffic

100. The view is expressed that the impact of the traffic would totally change the residential nature of the Ashley Park for residents. There are concerns that there would be parking overflow into Ashley Park and greatly increase the usage of the turning head and the number of vehicles entering Ashley Park and have a negative impact on the current residents.
101. The view is expressed that it is completely crazy to create an entrance for the nursing home through Ashley Park. It is believed that the area is already completely congested and that an extension to the nursing home will further increase the problems.
102. The view is also expressed that the proposal will have a negative impact on the traffic at the Church Road / Killynure Road / Ashley Park junction. The proposed parking provision of 17 car park spaces to meet the need of 38 bedrooms is considered to be inadequate.
103. The view is expressed that there is no confidence in the Roads consultation response and requests a proper traffic survey is undertaken by the Council to fully understand the problems and that there should be a proper study into the traffic and parking requirements.
104. Also the view is expressed that they do not believe the figures for people and vehicles as provided on the application. Concern is raised that the site does not have capacity for overflow parking and that parking on Ashley Park is inevitable.
105. While residential care facilities falls under Class C3 (Residential Institutions) of Part C of the Planning (Uses Classes) Order (Northern Ireland) 2015 it still falls within the general meaning of a residential use.
106. It is acknowledged that the site being situated within the centre of Carryduff is an area that is busy for traffic at peak times of the day, however the proposal makes provision for parking within the site and the proposed access complies with PPS 3 Access, Movement and Parking.
107. DfI Roads have been consulted on the proposal and have raised no objections. And the proposed parking provision is in keeping with Parking Standards. Additional surveys are not required, the proposal is assessed based on the information submitted along with consultation with DfI Roads who are the competent authority on road issues.

Inaccuracy in the drawings

108. Concern has been raise that the drawings name Ashley Park as Ashley Road and the site plan does not identify the two residential driveways which will face

onto the proposal car park entrance.

109. Through the processing of the application the agent has amended plans with the annotation of Ashley Road to Ashley Park.
110. There is no requirement for the site layout plan to show the two residential driveway entrances opposite the proposed entrance. These are not altered and DfI Roads have indicated that the proposed access arrangements are safe. No traffic conflict is identified.

Safety of children playing in the street

111. Concerns have been expressed about the health and safety of children playing in Ashley Park.
112. There is no designated children's play area within Ashley Park that would be impacted by the proposal.

Quality of life and property value of 6 Ashley Park

113. The view is expressed that the proposal would be detrimental to the quality of life of residents in Ashley Park and would also devalue the neighbouring property.
114. Environmental Health have been consulted on the proposal and have raised no objections. The value of property is not a material consideration that can be given determining weight in the assessment.

Character of the area

115. The view is expressed that the extension may fit with the streetscape of Church Road but is inappropriate in the context of Ashley Park and is out of character with the area. Ashley Park is entirely residential and quiet and the proposed building would dominate the whole landscape.
116. There is an established residential home on the site of which is proposed to be extended, and there is a mixture of different types of development within the surrounding area, including residential use, commercial units and a school across the road. It is considered that the proposal would not have a negative impact on the character of the area.

Unsatisfactory landscaping and amenity space

117. The view is expressed that there is insufficient landscaping and amenity space proposed. The owner of 6 Ashley Park expects that on the boundary between numbers 4 and 6 there would be a buffer zone.
118. There is an existing amenity space area to the west of the site consisting of 142 square metres. This proposal makes provision for a new additional 173 square metres of usable garden/amenity space creating a total amenity space of 315 square metres associated with the residential home. This is considered to be

acceptable for the site and its location.

119. It is considered that the proposed new screen boundary planting is acceptable in terms of landscaping. The boundary between the site and 4 and 6 Ashley Park is a 2 metre high wall and a fence to the front/side of the property at 6 Ashley Park. These are considered to provide adequate boundary treatments.

Pollution and health

120. The view is expressed that pollution and health needs to be considered and that the proposal will inevitably cause pollution and block the wind in certain directions causing additional drift of this pollution.
121. Environmental Health have been consulted on the proposal and have raised no objections.

Nursing home in the area

122. The view is expressed that a nursing home is not appropriate in the area let alone an enlarged nursing home.
123. There is an established nursing home on the site which is an established use. Extension of this use within the area which is a mix of housing and commercial businesses is considered to be acceptable.

RQIA regulations for nursing homes

124. The view is expressed by an objector that he has been looking at the RQIA regulations for nursing homes and asks if the Council have checked that these plans do conform to the requirements.
125. The onus is on the applicant/agent to ensure that the proposal complies with RQIA standards. The supporting statement submitted with the application by the agent advises that the proposal complies with RQIA standards.

Conclusions

126. This application is presented to the Planning Committee with a recommendation to approve in that the proposed development would create a sensitively designed extension to an existing nursing home that will not impact adversely on the character of the area, has adequate provision for parking and a layout that would not have a detrimental impact on the residential amenity of existing residents by reason of overlooking or dominance.
127. The proposed development is considered to comply with the SPPS and guidance set out in Development Control Advice Note 9 on Residential Development and Nursing Homes in so far as it relates to the siting, locality, traffic, amenity, design and layout, and landscaping.

128. The proposal complies with the SPPS and PPS 2 in that the detail submitted with the application shows that the proposal would not harm any natural heritage.
129. It is considered that the proposal complies with the SPPS and Policies AMP 2 and AMP 7 of PPS 3 in that the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic. The parking provision also complies with guidance set out in Parking Standards.
130. The proposal complies with the SPPS and PPS 15 in that detail submitted with the application demonstrates that the development would not cause or exacerbate flooding. There is no watercourses within or adjacent the site and it does not meet the threshold for a drainage assessment.

Recommendation

131. It is recommended that planning permission is approved.

Condition(s)

132. The following conditions are recommended:
- The development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
Reason: As required by Section 61 of the Planning Act (Northern Ireland) 2011.
 - The development shall be carried out in accordance with drawing no. 02E bearing the date stamp 05 August 2021.
Reason: To ensure the development is carried out in accordance with the approved plans.
 - All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out prior to the occupation of any part of the development.
Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.

Site Location Plan – LA05/2019/0782/F



Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2021 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2017/0021/F |
| Date of Application | 10 January 2017 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Demolition of existing buildings and erection of a Care Home Class 3(b) of the Schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing. |
| Location | 531 Saintfield Road, Belfast, BT8 8ES |
| Representations | Sixteen |
| Case Officer | Mark Burns |
| Recommendation | Approval |

Summary of Recommendation

- Members will be aware that this application had been withdrawn from the schedule of applications as presented to the Committee on the following occasions:
 - 07 December 2020 – Initial DM Officer Report
 - 02 August 2021 – First Addendum Report
 - 06 September 2021 – Second Addendum Report
 - 04 October 2021 – Composite Report
- The composite report brought together the chronology of assessments as outlined in the other reports referred to above.

3. A recommendation to approve planning permission was presented to the Committee on 04 October 2021 for the reasons outlined in a composite report.
4. At the request of members, it was agreed that consideration of the application should be deferred to allow for a site meeting to be arranged to enable Members to view the site within its surrounding context.
5. A site visit was facilitated on Friday 15 October 2021. A minute of the meeting was taken which informs the detail of an addendum report along with the minute of the site visit are provided.
6. At the November 2021 meeting, members agreed that consideration of the application should be deferred for a second time to allow for additional information in relation to the use of the existing access in terms of traffic impacts, modelling and for further comment to be provided..

Further Consideration

7. In December 2021, the applicant's consultant team provided additional information in relation to roads/traffic generation and access arrangements as requested. Clarification is provided in relation to the following matters:

Direct Access from A24 Saintfield Road

8. The submission [dated 3 December 2021] acknowledges that the A24 Saintfield Road forms part of the Protected Route network within the settlement development limit.
9. As advised previously, policy AMP 2 of PPS 3 – Access, Movement and Parking 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:
 - a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
10. Policy AMP 3 provides direction in relation to Protected Routes within Settlement limits. It 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:
 - (a) where access cannot reasonably be taken from an adjacent minor road; or
 - (b) in the case of proposals involving residential development, it is demonstrated to the Department's satisfaction that the nature and level of

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

11. In this case and as previously advised, there are no minor roads bounding the site which would permit an alternative access route and as such, access via an existing access to the Saintfield Road is the only feasible access option to the site consistent with the requirements of policy AMP 3.
12. Advice received from DfI Roads dated 25 January 2022 also acknowledge that there is no minor road giving access to the site Furthermore, the advice provided notes that the proposal is for the use of an existing access and that it has not been demonstrated by the third party objectors that intensification of the use of the access would result from the proposed development. As such they do not consider the proposal to be contrary to Policy AMP 2.
13. This latest advice from DfI Roads also takes account of the operation of the right turn pocket serving the Brackenvale complex opposite together with the access service an existing premises on the same side along with the relatively high volume and speed of traffic using the Saintfield Road.

Development Proposals increase in traffic generation

14. In response to concerns raised by Members about traffic generation associated with the existing and proposed use of the site, the applicant's consultant team has advised that with transport analysis, there is an accepted methodology for carrying out traffic calculations and it is the land use that is compared against other land uses because businesses can come and go within the approved land use with different levels of traffic.
15. The submission advises that the methodology for deriving the proposed development daily vehicle trips is supported through the use of the TRICS database – an assessment tool which utilises surveyed vehicle generations of existing sites throughout the UK and Ireland to provide an anticipated vehicle generation for proposed sites yet to be constructed and represent recorded flows of existing sites.
16. This is assessed on the basis of the **proposed land use rather than a particular occupier** or operator since planning permission is granted for the land use and not an individual user.
17. The submission from the applicant notes that the representation in opposition to the application provides evidence based on the existing vehicle trips associated with the operation of the current site occupier and the associated daily vehicle movements of this specific business, rather than the existing site land use.
18. The submission explains that that the proposed development anticipates 207 two-way vehicle trips to the site per day which equates to an average of 17 two-way trips per hour.

19. That said, the submission also notes that it is widely accepted that the peak hours of operation at development sites equates to 10% of the total daily traffic flow and that taking this into consideration, that proposed development is anticipated to generate approximately 21 tow-way trips during the busiest hours of operation [one arrival and 1 departure every three minutes during peak operating times].
20. The applicant provides TRICs data in relation to a retail/warehouse land uses and proposed land uses. For convenience and ease of reference, the tables provided for in the applicants submission of 03 December 2021 are set out below.

Table 1 - Existing Site Layout 1st %ile TRICS Database Vehicle Trip Generations

| Land Use | GFA | Trip Rate | | Generated Trips | | |
|---|-------|-----------|------|-----------------|-----------|-----------|
| | | Arr | Dep | Arr | De p | Tota l |
| 01/G Retail - Other Individual Non-Food Superstore | 557 | 6.59 | 6.20 | 37 | 35 | 71 |
| 02/C Employment - Industrial Unit | 814.5 | 0.27 | 0.35 | 2 | 3 | 6 |
| Existing Site Layout 1st %ile TRICS Trip Generations | | | | 39 | 37 | 77 |

Table 2 - Proposed Site Layout 1st %ile TRICS Database Vehicle Trip Generations

| Land Use | No. of Beds | Trip Rate | | Generated Trips | | |
|-------------------------|-------------|-----------|------|-----------------|-----|-------|
| | | Arr | Dep | Arr | Dep | Total |
| 05/F Health - Care Home | 86 | 0.39 | 0.35 | 33 | 30 | 63 |

Table 3 - Existing and Proposed Site Layouts 1st %ile TRICS Comparison

| Land Use | Generated Trips | | |
|-------------------------------|-----------------|-----|-------|
| | Arr | Dep | Total |
| Existing – Retail/ Industrial | 39 | 37 | 77 |
| Proposed – Care Home | 33 | 30 | 63 |

21. The tables demonstrate that when comparable trip generation methodologies are used, the daily vehicle generations of the existing and proposed sites are broadly similar.

22. DfI Roads in correspondence dated 25 February 2022 provided clarification in relation to their consideration of the TRICS information provided by the applicant team in January 2022.
23. The advice explains that the TRICS database is the leading industry wide recognised tool used to analyse trip generation for a wide range of development types.
24. In this particular application it was used to provide trip figures firstly for the proposed development; and also secondly for the existing development, to enable a comparison.
25. To make the figures more robust, in the case of the proposed development the category considered was of a higher standard than that required; and for the existing development a lower threshold (retail, not including the warehousing) was used to generate trip numbers.
26. When compared it was noted that the number of trips associated with the application proposal were less than the figures associated with the existing development and therefore intensification of the existing access was not considered an issue.
27. It is DfI Roads' understanding that there was a previous history for retail development on this site. Whilst the Council clarify to DfI Roads that this decision is not an extant permission the policy circumstances are not changed in the intervening period and the TRICS analysis is therefore a material consideration to be weighed in the decision making process.

Traffic Safety

28. In response to concerns raised in relation to traffic safety, the applicant makes reference to proposed amendments to the existing access junction arrangement to include:
 - Existing right turning vehicles into the development site currently have no provision to wait clear of A24 southbound traffic and are forced to cross the segregation hatching between the northbound and southbound right turn lanes.
 - By implementing the changes proposed at the site access to accommodate a right refuge for turning vehicles into the site, this access arrangement will provide a betterment over existing provision.
 - The provision of a refuge will mean that traffic waiting to turn right will be off the mainline flow and will minimise vehicular conflict and accident risk over the existing situation.
29. A late representation from Merit Retail Ltd dated 1 November 2021 representing the owners of Brackenvale complex expresses concern that the Right turning pocket (RTP) was not shown accurately on the drawings.

30. Advice from DfI Roads dated 25 January 2022 confirms that this matter has been further considered by an internal design consultancy and traffic section and that taking cognisance of the speed and volume of traffic on the A24 Saintfield Road and its downward gradient approaching Brackenvale from the south, it is not deemed acceptable to compromise the safety of the access to Brackenvale by making a reduction [of 8 metres] to the RTP.
31. DfI Roads has advised that no alterations to the RTP are required and no issues in relation to the operation of the existing access are raised.
32. The Agent on behalf of the applicant team provided a set of revised plans on 24 February 2022 comprising the following:
 - Proposed Site Plan
 - Proposed Block Plan
 - Proposed Section
33. Related correspondence advises that the plans have been amended to address the direction from DfI Roads that there should be no alterations to the existing Right Turn Lane on Saintfield Road.
34. The drawings now reflect the existing situation on the ground along Saintfield Road, proposing no changes to the existing arrangement. Confirmation is provided that no further amendments have been made to the plans.
35. A further letter is provided from the applicant's roads consultant, Kevin McShane Ltd. This letter provides a review of and response to the latest DfI Roads consultation response and Matrix Planning Consultancy correspondence.
36. The letter acknowledges the planning policy context against which DfI Roads assessed the application and that the view that has been expressed is that the application is not contrary to planning policy for the reasons outlined in their response dated 25 January 2022.
37. The letter also acknowledges that the response from DfI Roads takes into account a recent representation from a neighbouring landowner [Merit Retail Ltd dated 01 November 2021].
38. The letter recognises that DfI Roads are the overseeing authority responsible for determining the traffic and transport implications of prospective applications on the road network and that the advice provided by the Department should be considered as an independent assessment of the application.

Accident History

39. The applicant's submission makes reference concern expressed by Members in relation to a historic level of road traffic collisions along A24 Saintfield Road. The following comments are made:
- None of the fatal collisions were at the proposed site access;
 - While the 3 serious collisions along the Brackenvale frontage between 1 June 2011 and 31 May 2021 are unfortunate, this must be viewed in the context of the 11,000, 000 traffic movements which occur on this stretch of road every year [source Dfl Traffic and Travel Information report 2014].
 - Police enforcement efforts continue to be focused on reducing speed in the area and improving driver behaviour;
 - Traffic flows at the proposed land use will be consistent with the established land use.
 - Accordingly, the development proposals are highly unlikely to contribute to a deterioration of road traffic collision statistics;
 - The development proposals include amendments to the existing site access design which will reduce the likelihood of road traffic collisions.
40. Advice from Dfl Roads dated 25 January 2022 confirms that road traffic collision data was discussed further with the PSNI Traffic Management Branch and that the Traffic Branch has confirmed that records held by Dfl Roads and the branch are the same.
41. Dfl Roads in correspondence dated 25 February 2022 provided further comment in relation to a further representation from a third party in relation to traffic accident information.
42. Dfl Roads confirm that they have no reason to doubt the veracity of the information provided by an Agent acting on behalf of third parties about Road Traffic Collisions occurring on the Saintfield Road on 29th September 2021 and the 31st January 2022.
43. The third party objectors provide no contrary evidence of a history of traffic accidents associated with the operation of the existing access.
44. However, they advise that DFI Road collision history information only goes up to the end of March 2021, with annual details being provided to DFI by PSNI Traffic Branch every September.
45. That said and having spoken to PSNI Traffic Branch about these particular incidents, they would not comment, as they have a requirement to verify Road Traffic Collisions and complete legal action where necessary, before releasing details into the public domain. For this reason, the location and causation of these two incidents are unable to be determined.

Proposed access impact on existing junctions

46. In response to concern expressed about the impact of the proposed development access improvements on adjacent junctions along A24 Saintfield Road, the submission from the applicant team makes reference to proposed alterations to road markings to accommodate a right turn refuge into the site.
47. These proposed amendments were based on traffic flow surveys carried out by the applicant team the results of which when analysed demonstrated that the reduction in queuing capacity into the Brackenvale site to accommodate a right turn provision into the site could be delivered without detrimentally impacting the existing right turn lane provision.
48. DfI Roads were initially content with this proposal based on a review of the evidence provided. That said and in light of concerns expressed by Members, the matter was further considered by an internal design and consultancy and traffic sections and taking cognisance of the speed and volume of traffic on the A24 Saintfield Road and its downward gradient approaching Brackenvale from the south advice received indicated that it is not deemed acceptable to compromise the safety of the access to Brackenvale by reducing the Right Turn Provision.
49. With regard to concerns expressed in third party representations, about the impact of the proposed development on the delivery of access arrangements to an approved Hotel to the north, the submission from the applicant advises that it is there understanding that the site access to the future hotel site was constructed in 2015. This access is onto the Knockbracken Road and that this includes the provision of a right turn lane ghost island into Knockbracken Road south to the immediate north of the Brackenvale junction.
50. The proposed development does not propose any changes that would impact on the future hotel access junction.

Capacity Model of Proposed Access

51. The applicant's submission provides further information based on a junction capacity model of the proposed site access layout. For convenience and ease of reference, the results of the assessment is set out in the tables below.

Table 4 - Proposed Site Access Future Operation 2022

| Junction Arm | 2022 B+D | | | |
|-------------------------------------|--------------|-----------|--------------|-----------|
| | AM Peak Hour | | PM Peak Hour | |
| | Max RFC | Max Queue | Max RFC | Max Queue |
| B-C - Left Turn Out of Site Access | 0.01 | 0.0 | 0.01 | 0.0 |
| B-A - Right Turn out of Site access | 0.11 | 0.1 | 0.10 | 0.1 |
| C-AB - Right Turn into Site | 0.02 | 0.0 | 0.01 | 0.0 |

| | | | | |
|--------|--|--|--|--|
| Access | | | | |
|--------|--|--|--|--|

Table 5 - Proposed Site Access Future Operation 2022

| Junction Arm | 2032 B+D | | | |
|-------------------------------------|--------------|-----------|--------------|-----------|
| | AM Peak Hour | | PM Peak Hour | |
| | Max RFC | Max Queue | Max RFC | Max Queue |
| B-C - Left Turn Out of Site Access | 0.01 | 0.0 | 0.01 | 0.0 |
| B-A - Right Turn out of Site access | 0.17 | 0.2 | 0.12 | 0.1 |
| C-AB - Right Turn into Site Access | 0.02 | 0.0 | 0.01 | 0.0 |

36. The applicant advises that the assessment demonstrates that the proposed site access junction is anticipated to operate well within capacity to the future design year 2032.
37. Whilst the submission expresses the view that the queuing at the proposed right turn lane is anticipated to be accommodated within the junction layout with no knock-on impact/ blocking back onto A24 Saintfield Road.
38. As explained above, recent advice from DfI Roads indicates that alterations to the Right Turn Provision are not required and not additional adjustments are recommended.
39. This direction is acknowledged by the Agent in correspondence received on 24 February 2022 along with amended drawings.

Further Representations

40. A further representation from an Agent acting on behalf of third party objectors was received on 01 February 2022. The correspondence to the position of DfI Roads being undermined as a result of the latest advice.
41. The advice now received from DfI Roads is based on a review of additional information provided late in the application process and following discussion with both their internal design consultancy and traffic sections, revised advice was provided. Whilst it is changed in part the general thrust of the advice is not and the recommendation of DfI Roads is still to approve.
42. The advice from DfI Roads throughout the application process and indeed in relation to an earlier application has been that intensification of the existing access has not been demonstrated to their satisfaction and that in their opinion,

- the access arrangements as proposed provide for a safe access that will not prejudice road safety or significantly inconvenience the flow of traffic.
43. In the absence of any more robust evidence to the contrary being provided, officers have no reason to disagree with both the conclusions reached by the applicant team and advice provided by DfI Roads in relation to intensification.
 44. The representation is critical of traffic survey information provided by the applicant team having been taken during a period of 'lockdown'.
 45. The applicant's consultant team provide clarification in this regard. The letter dated 24 February 2022 explains that the survey information referred to was used to support the provision of an amendment to the right turn lane access into the Brackenvale development to then accommodate a right turn provision into the proposed site.
 46. Now that the amendments to the Brackenvale right turn lane are no longer requested, the survey information is not required to be used as an evidence base.
 47. The applicant's consultant team does however point out that the previous submission on behalf of third party representatives [20 January 2021] relied upon camera survey data for vehicle trips associated with the current occupier to argue an intensification point. This survey information was recorded in November 2022 during the 'lockdown' period.
 48. The view is expressed that a Transport Assessment is required to support the application.
 49. Paragraph 2.1 of the Department's Transport Assessment Guidelines for Development Proposals in Northern Ireland explains that purpose of a Transport Assessment is to provide enough information for the Department to understand how the proposed development is likely to function in transport terms.
 50. It also explains that assessing the transport impacts in a systematic manner contributes towards understanding how more sustainable travel patterns might be achieved through changing travel behaviour. Transport Assessment also subsumes the former process of Traffic Impact Assessment.
 51. Paragraph 2.2 explains that the preparation and detail of a Transport Assessment will vary depending on the location, scale and nature of the proposed development and that an Assessment should, where appropriate, propose a package of measures designed to promote access to the site by walking, cycling and public transport, while reducing the role of car access as much as possible.
 52. Advice received from DfI Roads on 25 January 2022 advised that a full transport assessment and safety audit would be superfluous in assessing this

- application in terms of planning policy as it would only address the non-intensified site access and the road layout as exist.
53. In the absence of any further robust evidence being provided, officers have no reasons to question the advice provided by Dfl Roads in this regard.
 54. In relation to additional traffic collision information, the matter has been considered by Dfl Roads and no further comment is provided.
 55. The representation makes reference to history appeal [2005/A885] whereby the view is expressed that the approach taken by officers was contrary to the PAC consideration and that the Committee had not been advised of this fact.
 56. The committee are advised of the appeal decision but it does not change the fact that this proposal was assessed on its merits taking into account the current situation, evidence provided by the applicant team and scrutiny and advice provided by Dfl Roads officials, the internal consultant and traffic sections.
 57. The representation fails to explain that the application to which these decision related was for the erection of a new build food store which by its very nature would attract higher numbers of visitors, result in intensification of the existing access and necessitate the need for a right turning lane. It also fails to highlight that the current approved business involve some direct sales to the public.
 58. The advice received from Dfl Roads in this case is that a Transport Assessment is not required and that the proposal will not result in the intensification of the existing access. In the absence of further evidence being provided to the contrary, officers have no reason to disagree with the position held in this regard.
 59. The additional representation received does not raise any new information and the application has provided amendments in response to direction from Dfl Roads that alterations to right turning lane into Brackenvale are not required.

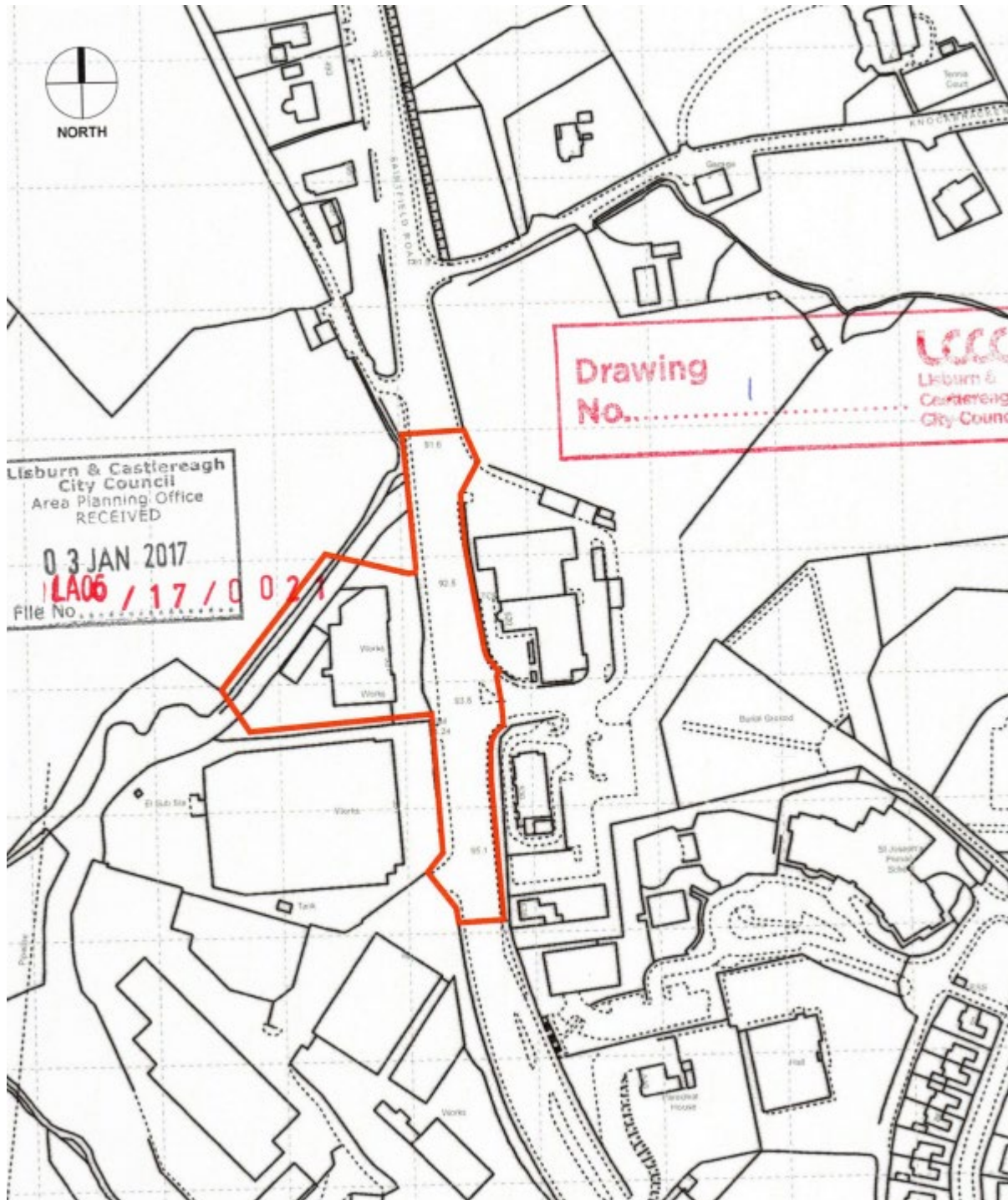
Conclusions

60. No new substantive evidence is provided that would change the recommendation set out in the composite report and the advice previously offered that planning permission be approved for the reasons indicated in the main officers report is not changed.
61. The detail of this second addendum report should be read in conjunction with the composite officers report previously presented to the Committee on 04 October 2021 and the addendum report presented on 1 November 2021.

Recommendations

62. It is recommended that planning permission is approved.

Site Location Plan – LA05/2017/0021/F



LISBURN & CASTLEREAGH CITY COUNCIL**Minute of a site visit by the Planning Committee held at 2.30pm on Friday 15th October 2021****PRESENT:**

Councillor A Swan (Chairman)

Aldermen J Dillon, and O Gawith

Councillors DJ Craig, U Mackin and John Palmer

IN ATTENDANCE:

Principal Planning Officer (RH)

Planning Officer (MB)

Member Services Officer (BF)

ALSO ATTENDED:

Mr S Cash (Roads Service)

Apologies for non-attendance at the meeting were recorded on behalf of Aldermen A Grehan and J Tinsley.

The site visit was held in order to consider the following application:

- LA05/2017/0021/F – Demolition of existing buildings and erection of care home (Class 3(b) of the schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing at 531 Saintfield Road, Belfast, Belfast, BT8 8ES.

The application had been presented for determination at the meeting of the Planning Committee on 04 October 2021. The Committee had agreed to defer the application to allow for a site visit to take place to enable Members to view the site context and access arrangements to and from the Saintfield Road.

Members and Officers met at the site and, in accordance with the Protocol for the Operation of the Planning Committee, the Principal Planning Officer with the aid of site location and site layout plans, provided Members with overview of the application.

Members were reminded that the site was within the settlement limit for the Carryduff Local Plan zoned and zoned as an area of existing employment. The existing retail use was observed.

The Committee observed the site from the rear and noted its proximity to the Carryduff River and to an adjacent car workshop.

Members observed the current access arrangements to the site from the Saintfield Road. Reference was made to proposed enhancements to the existing right turning lanes and road markings.

Traffic turning right onto the Saintfield Road from the Knockbracken Road junction opposite was observed.

Members requested that details of proposed road enhancements associated with the proposed development, acoustic measures on the boundary with the car workshop and amenity provision be made available when the application was presented back to the Committee for determination.

There being no further business, the site visit was terminated at 3.10pm.

Lisburn & Castlereagh City Council

| | |
|---------------------------|---|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 01 November 2021 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2017/0021/F |
| Date of Application | 10 January 2017 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Demolition of existing buildings and erection of a Care Home Class 3(b) of the Schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing |
| Location | 531 Saintfield Road, Belfast, BT8 8ES |
| Representations | Thirteen |
| Case Officer | Mark Burns |
| Recommendation | Approval |

Summary of Recommendation

- Members will note that this application has been withdrawn from the schedule of applications as presented to the Committee on the following occasions:
 - 07 December 2020 – Initial DM Officer Report
 - 02 August 2021 – First Addendum Report
 - 06 September 2021 – Second Addendum Report
 - 04 October 2021 – Composite Report
- This composite report brings together the chronology of assessments as outlined in the other reports referred to above.
- A recommendation to approve planning permission was presented to the Committee on 04 October 2021 for the reasons outlined in a composite report.

4. At the request of members, it was agreed that consideration of the application should be deferred to allow for a site meeting to be arranged to enable Members to view the site within its surrounding context.
5. A site visit was facilitated on Friday 15 October 2021. A minute of the meeting was taken which informs the detail of this report. This is provided at **Appendix 1.2(b)**.

Further Consideration

6. Members were reminded at the site visit of the background to the application. The extent of the application site and its boundaries were outlined using a site location and site layout plan and had the opportunity to view the proposed development in the context of the existing buildings.

Road Enhancements/Modelling

7. Members having observed the current access arrangements to the site from the Saintfield Road sought clarification on the proposed enhancements to the existing right turning lanes and road markings.
8. Clarification on roads related concerns is provided in a supporting statement from Karen McShane Ltd on behalf of the applicant team dated 15 April 2021.
9. The document advises that implementing the changes proposed at the site access to accommodate a right refuge for turning vehicles into the site, will provide a betterment over existing access arrangements that will mean that traffic waiting to turn right will be off the main flow and will minimise vehicular conflict and accident risk over the existing situation.
10. Evidence in support of this conclusion advises that a review of existing right turning vehicles into both Brackenvale and the adjacent accident repair centre has been carried out to assist with our understanding of the potential impact on the introduction of the proposed site access arrangements on existing conditions.
11. A right hand turning pocket is not required for this or the neighbouring development as the scale of development in either site does not generate more than 500 vehicle movements.
12. That said advice is offered indicating that the existing right turn lane provision into Brackenvale is approximately 78 metres in length and can accommodate approximately 12 Passenger Carrying Unit (PCU) queuing before exceeding its capacity (PCU – Passenger Carrying Unit length 5.75m or approximately a car length). The existing right turn provision into the adjacent Accident Repair

Centre is 18 metres in length (excluding direct taper distance) and can accommodate approximately 3 PCU queuing before exceeding capacity. There is some capacity to alter the white lines on the road to allow for betterment in the access arrangements to this site.

13. The proposed site access arrangement aims to reduce the existing right turn lane capacity into Brackenvale by approximately one vehicle length to accommodate a right turn refuge into the development site. This leaves capacity for approximately 11 PCUs in the right turn lane to Brackenvale.
14. The right turn provision into the adjacent Accident Repair Centre will remain unaltered.
15. This evidence demonstrated that the proposed care home site access arrangement could be delivered without detrimentally impacting the existing right turn provision.
16. Advice received from DfI Roads remains as previously advised in that the proposed access arrangements are in accordance with prevailing guidance and that the proposal will not prejudice road safety or significantly inconvenience the flow of traffic.

Acoustic Barriers

17. Paragraph 222 of the composite officer report advises that triple glazing, acoustic ventilation and an acoustic barrier have been incorporated into the proposal to mitigate any potential impact from adjacent land uses.
18. The building is set back into the site from the Saintfield Road in order to minimise the impact on the residents from any traffic noise from the Saintfield Road. The proposed buffer planting along the site frontage will help to screen the development from the Saintfield Road.
19. The proposed acoustic barrier is shown to extend along the boundary of the site with the adjacent car repair business. A barrier is also shown to enclose the access into the underground parking area.
20. Whilst no specific details are provided of the materials to be used in the construction of the barrier, advice from the Councils Environmental Health Unit recommends that a 1.8 metre high acoustic barrier is erected along the sites boundary as presented on the site plan drawing prior to the commencement of any works and that this barrier should be constructed of suitable material (with no gaps), should have a minimum self-weight of 6 kg/m² and so retained thereafter.
21. The Council's Environmental Health Unit raise no objections to the proposal on the grounds of noise or nuisance associated with the operation of the vehicle repairs workshop.

Amenity Provision

22. Paragraph 121 of the composite officer report explains that amenity space for the development is proposed to the south and east of the building in the form of communal grassed courtyards. The provision is considered sufficient to meet the requirements of the future residents and will serve as a visual amenity more so than functional amenity space.
23. The DCAN does not specify a quantum of amenity space for this type of development It does however advise that it is important to ensure that the design and layout of buildings on site are satisfactory in themselves and in relation to adjoining properties and regard is have to the provision of garden amenity space for use by residents
24. The new landscaping proposed throughout the site in the form of new planting, green areas and a landscaped communal area to the front of the building is considered to be acceptable.

Residential and Nursing Home Use

25. Within the Use Classes Order 2015, Class C3: Residential institutions Use allows for
 - (a) for the provision of residential accommodation and care to people in need of care (other than a use within Class C1 (Dwellinghouses));
 - (b) as a hospital or nursing home; or
 - (c) as a residential school, college or training centre.
26. The Use Classes Order allows for a change of use to take place within the same class without the need for planning permission. That said, the certificate of lawful development process provides the mechanism for providing such formal confirmation.

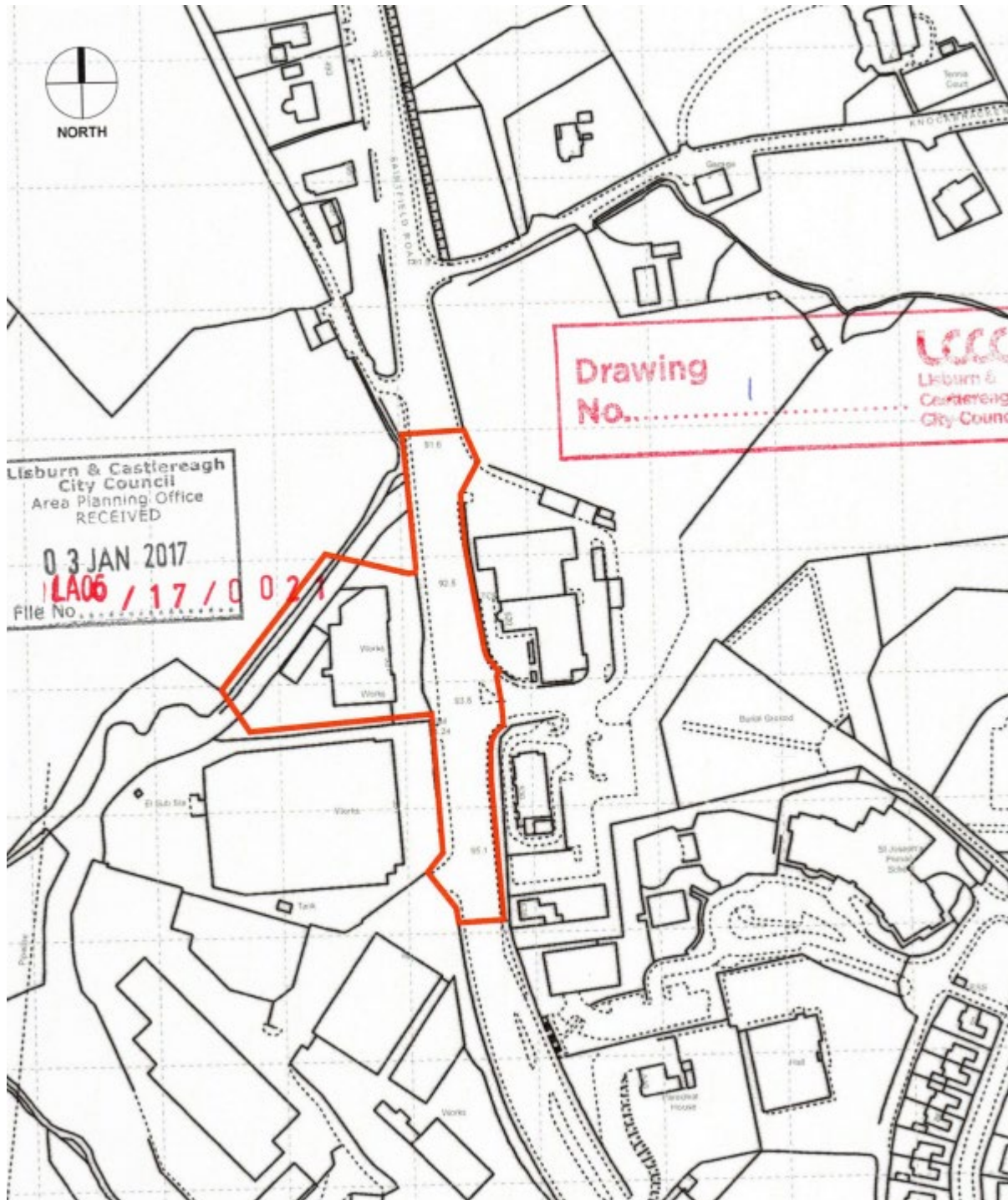
Conclusions

27. No new substantive evidence is available that would change the recommendation set out in the composite report and the advice previously offered that planning permission be refused for the reasons main indicated is not changed.
28. The detail of this addendum report should be read in conjunction with the composite officers report previously presented to the Committee on 04 October 2021.

Recommendations

29. It is recommended that planning permission is approved.

Site Location Plan – LA05/2017/0021/F



Lisburn & Castlereagh City Council

| | |
|---------------------------|---|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 04 October 2021 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2017/0021/F |
| Date of Application | 10 January 2017 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Demolition of existing buildings and erection of a Care Home Class 3(b) of the Schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing |
| Location | 531 Saintfield Road, Belfast, BT8 8ES |
| Representations | Thirteen |
| Case Officer | Mark Burns |
| Recommendation | Approval |

Summary of Recommendation

1. This application is categorised as a local planning application. It is presented to the Committee in accordance with the Protocol for the Operation of the Committee in that it has been Called In.
2. This application is presented to the Planning Committee with a recommendation of approve as it is considered that greater material weight should be attached to the fact that this portion of the individual employment zoning has changed to retail use and that it is unlikely for the reasons set out in the report to revert back to employment uses as currently defined in Part B – Industrial and Business Use of the Planning (Use Classes Order) Northern Ireland 2015.

3. Members will note that this application has been withdrawn from the schedule of applications as presented to the Committee on the following occasions:
 - 07 December 2020 – Initial DM Officer Report
 - 02 August 2021 – First Addendum Report
 - 06 September 2021 – Second Addendum Report
4. This composite report brings together the chronology of assessments as outlined in the reports referred to above.
5. Addressing the substance of the submission whilst the proposal will result in the loss of a small portion of land zoned for economic development use the planning history carries weight in the assessment in that it demonstrates that the land use classification of this part of the site has through previous permissions allowed for A1 retailing uses.
6. The special circumstances of this case as demonstrated in the report are considered to outweigh the preferred policy option of retaining the land for economic development use.
7. Significant weight is also attached to other material considerations in respect of the current site and buildings not being fit for modern employment use; the associated economic benefits in terms of job creation; a commitment to employ skilled people; generate income locally and create additional expenditure in the supply chain.
8. The proposed development is considered to comply with the SPPS and Policy PED 8 of PPS 4 in that its location at the edge of the northern most edge of the employment zoning and the edge of the settlement limit along with the proposed mitigation demonstrate that the development is not likely to impact on the continued operation of adjacent businesses including those more distant from the site.
9. The proposed development complies with the SPPS and Policy NH2 of PPS 2 in that the detail submitted demonstrates that the proposed development is not likely to harm a European Protected Species.
10. The proposal complies with the SPPS and policies AMP 2 and AMP 3 of PPS 3 in that the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic for the reasons detailed in the report.
11. The proposal complies with the SPPS and PPS 15 in that detail submitted with the application demonstrates that surface run off associated with the development when compared with existing run-off is considered to be negligible and mitigation measures outlined in the drainage assessment which include the provision of porous pavements, further drains and source control measures to allow rain water and run off to infiltrate into permeable material below ground and provide storage are acceptable.

Description of Site and Surroundings

12. The site is comprised of single storey buildings constructed of rendered block and corrugated metal cladding with hard standings to the east, west and south.
13. Ground levels within the site fall gradually from south to north and more markedly from east to west.
14. The eastern boundary is adjacent to the Saintfield Road and defined by a low wall.
15. The access is at the south eastern corner and car parking to the front of the buildings behind the wall.
16. The southern boundary is defined by a 2.5 metre brick wall and fence.
17. The western site boundary is defined by a small watercourse, its eastern bank, within the existing site is undefined but for scrub vegetation and deciduous trees over its northern half.
18. The northern site boundary is defined by a 2 metre chain link fence.
19. Industrial buildings are located adjacent and extend approximately 200 metres south of the site. The western extent of these buildings, and that of the application site demarks the settlement limit, with rural lands beyond. East of the site is Brackenvale Service Station and a fast food restaurant.

Proposed Development

20. The application is for the demolition of existing buildings and erection of care home Class 3(b) of the Schedule of the Planning (Use Class) order (NI) 2015, comprising 86 bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation (on three floors of accommodation), modification of an existing access to Saintfield Road and provision of car parking (in the basement), visitor parking and servicing.
21. The following documents were submitted in support of the application:
 - Planning Statement dated December 2016
 - Planning Statement – Amended Proposal – dated September 2018
 - Additional Supporting Statement – dated September 2019
 - Clarification Statement on Local Development Plan – October 2020
 - Design and Access Statement
 - Transport Assessment Form
 - Phase 1 – Site Investigation Report
 - Preliminary Ecological Appraisal and Assessment
 - Noise and Odour Impact Assessment

22. Inconsistencies in drawings whereby the footprint of the proposed nursing home had not been updated to match the drawing which provided details of visibility splays has been addressed with the submission of an amended plan.

Relevant Planning History

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

| Application Reference | Proposal | Decision |
|-----------------------|--|-----------------------------------|
| Y/1990/0273/F | Extension to existing workshop and provision of additional storage facilities. | Approved 30/01/1991 |
| Y/1992/0057/F | Extension to existing joinery and shop fitting premises | Approved 21/03/1992 |
| Y/2002/0210/F | Change of use from existing workshop, stores, display showroom, and offices to provide furniture display/showroom, ancillary offices and storage | Approved 13/11/2002 |
| Y/2003/0520/F | Variation of Conditions 2 and 3, removal of Condition 4 of approval Y/2002/0210/F. | Appeal Allowed 16/03/2004 |
| Y/2004/0428/F | Alterations to Conditions 1 and 3 of Y/2003/0520/F. | Approved 05/07/2005 |
| Y/2005/0429/O | Construction of food store and related works. | Appeal Dismissed 26/02/2007 |
| LA05/2015/0726/F | Demolition of existing retail buildings and erection of building providing care to the elderly within Class 3(b) of the schedule to the planning (Use classes) Order (NI) 2015 comprising bedrooms, day rooms, kitchens, offices, stores and ancillary accommodation, modification of an existing access to a public road and provision of area for car parking and servicing. | Refused 04/04/2020 |

Planning Policy Context

24. The relevant planning policy context which relates to the application is as follows:

- Regional Development Strategy (RDS) 2035
- Carryduff Local Plan
- Draft Belfast Metropolitan Area Plan (dBMAP) 2015

- Strategic Planning Policy Statement for Northern Ireland (SPPS) - Planning for Sustainable Development
- Planning Policy Statement (PPS) 2 – Natural Heritage
- Planning Policy Statement (PPS) 3 - Access, Movement and Parking
- Planning Policy Statement 4 (PPS 4) – Planning and Economic Development
- Planning Policy Statement 15 (PPS 15) – Planning and Flood Risk
- Planning Guidance –
 - Development Control advice Note 9 – Residential and Nursing Homes
 - Development Control advice Note 15 - Vehicular Access Standards

Consultations

25. The following consultations were carried out:

| Consultee | Response |
|-------------------------------|--------------|
| DfI Roads | No Objection |
| NI Water | No objection |
| Environmental Health | No Objection |
| DAERA – Water Management Unit | No objection |
| DAERA – Natural Heritage Unit | No Objection |
| DfI Rivers Agency | No objection |

Representations

26. Twelve letters of representation have been received in opposition to this proposal. The following issues are raised:

- Not Compatible with existing land use
- Repeat Application
- Traffic
- Noise Nuisance and Disturbance
- Design and Integration
- Natural Heritage
- Inconsistency/Incompatible drawings
- Neighbour Notification/Advertising
- Intensification and Road Safety

27. One letter of support was received from Killynure Community Association in recognition of the need for a nursing home in Carryduff and the economic benefits associated with the development in terms of job creation for the local community.

Consideration and Assessment

28. The main issues to consider in the determination of this planning application are:
- Environmental Impact Assessment
 - Regional Development Strategy
 - Local Development Plan
 - Principle of Development
 - Planning History
 - Economic Development
 - Other Material Considerations
 - Planning Guidance
 - Natural Heritage Considerations
 - Access, Movement and Parking
 - Flood Risk and Drainage
 - Contaminated Land

Environmental Impact Assessment

29. The application was considered to fall within Category 10 (b) of Schedule 2 of the Planning (Environmental Impact Assessment) Regulations (NI) 2015 in that it was considered that the application provided for an urban development project whereby the site area exceeded 0.5 hectares.
30. A determination carried out in April 2017 indicated that the likely environmental effects of the project were likely to relate to visual impact and impact on flora and fauna.
31. The view expressed in the determination was that the environmental effects were not likely to be significant and that an environmental statement was not required.

Regional Development Strategy

32. The Revised Regional Development Strategy (RDS) 2035 was published in 2010. It is the spatial strategy of the Stormont Executive and it seeks to deliver the spatial aspects of the Programme for Government (PfG).
33. Policy RG1 of the RDS requires there to be an adequate and available supply of employment lands to ensure sustainable economic growth. This policy

requires the protection of land zoned for economic use as it provides a valuable resource for local and external investment.

34. Regional policy directs that the protection of such zonings should ensure that a variety of suitable sites exists across Northern Ireland to facilitate economic growth.

Local Development Plan Context

35. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.
36. The adopted BMAP 2015 was quashed by a judgement of the Courts on the 18th May 2017, as a consequence the Lisburn Area Plan 2001 is now the statutory up to date LDP. Draft BMAP remains a material consideration.
37. Within the Carryduff Local Plan the site is inside the settlement limit of Carryduff.
38. Within the draft BMAP 2015 the site is within the settlement limit of Carryduff on land zoned as existing employment land.
39. In November 2019 the Chief Planner for Northern Ireland issued a publication which advised that for those planning authorities subject to draft BMAP, that the draft plan along with representations received to the draft plan and the PAC inquiry report remains as material considerations to be weighed by the decision-maker.
40. In October 2020, the Agent submitted a statement in response to the direction provided by the Chief Planner.
41. It acknowledged at paragraph 3.7 that the site contained buildings that were currently in use for retail, that was located on unzoned land in the Carryduff Local Plan and that there are no local policies contained with the Carryduff Plan that would prohibit the redevelopment of the site as a nursing home subject to meeting all other planning and environmental considerations.
42. It was also acknowledged however that draft BMAP remains a material consideration in the assessment of the application. In this context, the statement recognised that the site lies within an area identified in draft BMAP as a major area of existing employment/industrial land and that draft BMAP does not identify any specific policy as to how to address the redevelopment of a site of non- employment use on zoned land to an alternate use.
43. It is stated in the 2015 revision to the draft BMAP that the developed portions of zonings from previous Area Plans and other lands currently in employment use are zoned in order to retain them for employment purposes.

44. This is not policy however and the weight to be attached to this statement in a draft Plan is limited and must be reconciled against prevailing and retained regional policy as directed in the relevant policy sections of the Plan.
45. Taking into account the Local Development Plan context, material weight is afforded to the draft plan and the PAC inquiry report and the principle of the development of this land is weighed primarily against those policies associated within the zoning in draft BMAP.
46. Whilst residential care facility falls under Class C3 (Residential Institutions) of Part C of the Planning (Use Classes) Order (Northern Ireland) 2015 it still falls within the general meaning of a residential. This is a use not normally found on zoned industrial land and the compatibility of the proposed development at this location is examined in detail in the following sections.

Principle of Development

47. The Strategic Planning Policy Statement (SPPS) published in September 2015 states that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.
48. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
49. Under the SPPS, the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
50. Having considered the content of the SPPS against the retained policies set out in PPS 4 Economic Development; PPS3 Access, Movement and Parking; and PPS 2 Natural Heritage no distinguishable differences are found that should be reconciled in favour of the SPPS.
51. The application therefore falls to be assessed against prevailing policy tests taking into account the planning history and planning guidance associated Development Control Advice Note 9 in so far as it relates to Nursing Homes.
52. Acknowledging that a general policy presumption against the loss of this employment land in the SPPS and the retained policies in PPS4 the appropriateness of the development of a small proportion of the lands zoned for employment use for a residential development is considered in the next sections.

Planning History

53. The planning history is an important material consideration to be weighed in this assessment.
54. Planning permission was granted on this site in 2002 for a change of use from existing workshop, stores, display showroom, and offices plus alterations to provide furniture display/showroom plus ancillary offices and storage and alterations to the existing car park layout (Y/2002/0210/F).
55. Permission was subsequently granted on appeal to vary/remove conditions associated with this permission to effectively allow for the sale of goods from the site (Y/2003/0520/F - PAC Ref 2003/A281).
56. A subsequent appeal 2005/A885 sought permission for an open class retail food store on the site. Whilst this application was unsuccessful on appeal the report of the PAC noted that '...the Department has already approved retail development on the appeal site and although now zoned as employment/industrial land, the retail use has already been conceded on this particular plot which represents only a small portion of the overall land included within zoning CF11. On this basis, I do not consider that rejection of the appeal proposal on the basis of conflict with the proposed zoning would be justified.'
57. It is therefore concluded that the use of the land as employment/industry has been conceded to a use other than 'businesses' as defined in PPS4. Furthermore, the site remains in retail use today as a showroom for sale of kitchens to the general public.
58. The land use zoning does not logically follow the history of the site. However, for the purpose of consistency the proposal is considered within the same broad parameters as outlined in the PAC decision.

Economic Development

59. Paragraph 4.18 of the SPPS recognises that a modern, efficient and effective planning system is essential to supporting wider government policy, in its efforts to promote long term economic growth.
60. Strategic policy directs that planning authorities should take a positive approach to appropriate economic development proposals, and proactively support and enable growth generating activities.
61. PPS 4 Planning and Economic Development sets out the planning policies for economic development uses and indicates how growth associated with such uses can be accommodated and promoted in development plans.

Retention of Zoned Land and Economic Development Uses

62. Policy PED 7 Retention of Zoned Land and Economic Development Uses states that development that would result in the loss of land or buildings zoned for economic development uses in a development plan (either existing areas or new allocations) to other uses will not be permitted, unless zoned land has been substantially developed for alternative uses.
63. The application insofar as it comprises a residential Nursing Home, is contrary to both the SPPS and policy PED7 of PPS4 in that it will result in the loss of a small portion of land zoned for economic development uses.
64. That said, and as the planning history demonstrates that the land use classification of this part of the site has through previous permissions allowed for A1 retailing uses and that retail is the current use.
65. With regard to the planning advice note on the Implementation of Planning Policy for the Retention of Zoned Land and Economic Development Uses paragraph 16 requires that in the case of applications involving a departure from a development plan zoning (such as this application), planning officers should be satisfied that it has been clearly demonstrated how the special circumstances of a particular case outweigh the preferred option of retaining the land for economic development use.
66. At paragraph 21, the Planning Advice Note lists a number of other planning considerations which may be pertinent when making balanced judgements on the merits of a particular case of the potential loss of economic development including the views expressed by all other interested parties, accessibility to the regional transportation network, potential to regenerate existing urban areas, accessibility to every member of the community, consideration of why the site is no longer required or suitable, evidence of the availability of alternative sites for economic development use, compatibility with neighbouring land uses, views of statutory consultees and availability of adequate services and infrastructure. Further consideration of these issues are set out next sections.

Development incompatible with Economic Development Uses

67. PED 8 – Development incompatible with Economic Development Uses states that a proposal for development in the vicinity of an existing or approved economic development use that would be incompatible with this use or that would prejudice future operation will be refused.
68. Paragraph 5.33 of the justification and amplification to PED 8 states that such cases can arise where the particular processes being carried out have a tendency to cause adverse effects of some kind on adjacent land, even when all reasonable remedial measures have been taken by the operator.

69. The application site is located at the northern most edge of the employment zoning (CF09) just on the edge of the settlement limit of Carryduff as designated in draft BMAP.
70. It is acknowledged that a vehicle repair business operates on adjacent site to the immediate south. Whilst the characteristics of such a business are such that noise, particularly from the body repair workshop and emissions from the process of vehicle spray painting and testing may give rise to adverse effects upon the operation of a nursing home at this location.
71. That said, mitigations measures proposed as part of the application include:
- The repositioning of the proposed building away from the southern boundary of the site;
 - the closest residential room is sited 17 metres away from this boundary;
 - Addition of a 2.25 metre wide buffer of structured tree and shrub planting on the southern and eastern boundaries;
 - A 1.8 metre high acoustic fence along the entire southern boundary;
 - A 1.8 metre high acoustic fence around the basement access ramp;
 - A 1.8 metre high rendered wall along the eastern boundary with the Saintfield Road; and
 - A comprehensive landscape plan for the entire site along with a maintenance and management plan.
72. An amended noise assessment outlines the acoustic benefits of the amendments outlined above and the landscape plan serves to define the site and provide a distinction between it and the most immediate adjoining land use.
73. In light of the above, it is considered that the operation of a nursing home at this location is not likely to prejudice the use of the adjacent lands including those more distant from the application site for economic purposes.

Other Material Considerations

74. As indicated above, Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications, regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
75. In this case, the agent has requested that a number of other material considerations be weighed in the assessment of this application including
- the current retail use;
 - the current site/ building not fit for purpose;
 - economic benefits; and
 - the need for the facility

Current Retail Use

76. As demonstrated above, the planning history and comments by the PAC in relation to Y/2003/0520/F (2003/A281) and Y/2005/0429/F (2005/A885) have removed the protection afforded by the employment zoning and has allowed for the lands to operate as a retail use.
77. The agent has confirmed in their statement that it is unlikely to ever revert back to employment use and no evidence is submitted to prove otherwise.

Current site/ building not fit for purpose

78. An argument is advanced supported with evidence set out in a report by Colliers International to demonstrate why the site is no longer fit for employment related purposes. A summary of the main points are outlined below:
 - The current site and building is second or third generation warehousing and is reaching the end of its economic lifecycle and needs investment.
 - The ability to service the site is difficult given its current configuration. There is no access to the rear of the existing building and no turning circle. It is impossible for 40 foot lorries to service the site.
 - The site is not large enough to create a footprint to make a new development economically viable.
 - The current building is not in an area where there are any inquiries for employment lands. Enquires are mainly for the existing industrial lands on the Comber Road in Carryduff.
 - New businesses are attracted towards sites in more established industrial areas to cluster and satisfy their key occupational requirements something which the subject site clearly cannot do.
79. Taking into account the existing use, the argument advanced in this regard is not unreasonable and robust evidence is provided to support a case that the existing building/land is unlikely to be developed in the future for an acceptable employment use particularly given the fact that the current use of the site is retail.

Economic Benefits

80. With regard to Economic Benefits to the immediate area, supporting information provided by the Agent identified the following benefits:
 - Job Creation
 - Commitment to People
 - Local Incomes and Expenditure
 - Wider Community Benefits

81. In terms of Job Creation, supporting documentation advises that
- 40/45 direct construction jobs based on a build cost of approximately £5.5 million will be created by the development.
 - Operational staff when nursing home is up and running will include 2 teams of 32 members based on a 12 hour shift pattern which equals 64 full time jobs.
 - At night time two carers and one nurse is required per unit which equates to 12 staff. Over a 7 days period 2 shifts are required to service when fully operational this equates to 24 full time equivalent jobs.
 - Over a 7 day period a total 88 full time jobs will be created with each job averaging 42 hours.

Commitment to People

82. In relation to commitment to people, supporting information indicates that the Macklin Group recognises the importance of cherishing and developing staff and that they have an award winning recruitment, training and staff development program. Evidence also demonstrates that the Group has a high proportion of long serving team members with over 55% of members having between 5 and 30 years of service.
83. Tenure and quality of employment are identified as critical elements of staff retention and business sustainability which is important in securing and sustaining such an important service within a local community.

Local Incomes and Expenditure

84. Supporting information includes details of salaries and total staff costs equating to direct salary payments of over £2 million per annum.
85. The view is expressed that it is expected that the majority of staff will be drawn from the local area and as such, a significant proportion of the spending power associated with salaries will be retained locally, supporting local shops and services.
86. In addition, the development will have supply chain benefits in the region of £1 million with all of the group supplies being based in Northern Ireland.

Wider Community Benefits

87. The statement provided indicates that high quality care home services is recognised as having a positive impact on NHS Services and the proposed development will assist directly in freeing up valuable local NHS resources and services.
88. Based on the evidence submitted in relation to the economic benefits, it is accepted that the proposed development in securing the delivery of 64 direct jobs at the site alone with potential gross total of 110 full time equivalent jobs in the local and wider economy once direct jobs and indirect employment in the supply chain of the business is taken into account contributes significantly to the local job targets for the Council area and carries significant weight in the assessment of the application.
89. It is also considered that the value that such an established Group will bring to the Council Area will in itself bring added benefits in terms of development and nurturing of people within the Council area.
90. The potential incomes offered and anticipated expenditure will without doubt bring benefits in terms of money being spent in the local economy.
91. Whilst the net benefit to the wider community is not quantified in financial terms, the benefits socially of a high quality nursing home are widely accepted.

Need for Nursing Home

92. Additional information provide in support of the application demonstrates the nursing home provision in the immediate area currently.
93. In summary, Carryduff has two nursing homes, Carryduff Nursing Home and Hollygate which between them have 37 single rooms and 7 shared.
94. Saintfield Lodge Care Home provides 51 single rooms and is on the road to Belfast.
95. The ageing population in the council area continues to rise and as such, the need in the future to meet demand of the area is recognised.
96. The nursing home proposed would provide an additional 86 rooms which would go towards meeting future demand for care home places in the area and relief some of the pressures faced by NHS staff and services.

Planning Guidance

97. Turning to the detail of the application itself and whilst there is no specific planning policy for residential care facilities the guidance contained in Development Control advice Note 9 – Residential and Nursing Homes (DCAN 9) is relevant to this assessment.
98. As explained above, this application is for full permission for a nursing home,
99. The guidance contained in DCAN 9 indicates that it is to be expected that, other than in exceptional circumstances that residential and nursing homes will be located in cities, towns and villages where services are readily and conveniently available.
100. Within this context, and as demonstrated above, the application site is within the settlement limit of Carryduff where it is envisaged that a building of the scale and massing proposed is acceptable as the buildings adjacent and opposite to the site are off large bulky proportions.
101. It is further indicated in the guidance that the Council will have regard to the following matters.

Siting

102. The Design and Access Statement submitted in support of the application demonstrates within a contextual analysis, how the proposed development sits within its immediate and surrounding context.
103. A kitchen business currently operates from the site and although the site is zoned for existing employment use planning approvals and PAC rulings over the years have allowed for A1 retail uses to operate from the site.
104. The buildings associated with the retail business are single storey in height and constructed in render block with corrugated metal cladding about with both conventional pitched and flat roofs.
105. Surrounding land uses are identified as mixed use in character with a Petrol Filling Station and Drive through restaurant to the east of the site and a further hot food takeaway bar beyond the site to the north.
106. To the south of the site is Brackenvale Business Park which comprises a number of industrial ware house building and offices for an accident repair centre, an upholsterers an engineering firm and St. Johns Ambulance Headquarters.
107. The constraints of the site are the access onto a protected access and the neighbouring businesses and uses.

108. The extent of the site is capable of absorbing the size of the development stated which includes underground car parking and a landscaped area to the front and rear.
109. The plans submitted allow for a full and proper assessment of the capacity of the land to accommodate and absorb a building of three storey in height with a large footprint.
110. The drawings shows a three storey building with an open landscaped courtyard to the front and a landscaped area to the rear of the site.
111. Sections have been provided to establish the scale of the building within the site and this indicates that the proposal is relative in size as the Brackenvale complex which is directly opposite the site.
112. On this basis it is considered that the land does have the capacity to absorb a building of the bulk, scale and massing envisaged. It would not look out of place with the adjacent building or the Brackenvale complex on the opposite side of the road.

Locality

113. It is not considered that the development of a residential care facility which is sensitively designed would have a detrimental impact on the character of the area for the reasons already stated above.

Traffic

114. DfI Roads has no objection to the proposal. The existing access to the kitchen shop has been built to an acceptable standard and has more than sufficient capacity to absorb the number of trips generated by this type and scale of development.
115. Thirty seven car parking spaces are to be provided at basement level and will not be visible and two number disabled space have been proved adjacent to the entrance of the nursing home.
116. Two disabled parking space are provided adjacent to the front entrance of the building at ground floor level along with twelve cycle spaces.

Amenity

117. The Design and Access Statement submitted in support of the application demonstrates that due regard has been given to the effect of the proposed residential care facility on neighbouring land uses and the amenity of the wider area in general. It is not considered that the use as a nursing home would have a detrimental impact on the amenity of the adjacent buildings.

118. The main issue is in relation to the impact of adjacent land uses on the amenity of the proposed residential care facility with concern expressed in representations in relation to the impact of adjacent land uses in terms of noise nuisance and disturbance.
119. A noise impact assessment was submitted which demonstrated that there would be no detrimental impact to residents of the proposed development in terms of the loss of residential amenity by way of noise nuisance or disturbance.
120. Triple glazing, acoustic ventilation and an acoustic barrier have been incorporated into the proposal to mitigate any potential impact from adjacent land uses.
121. The amenity space for the development is proposed to the south and east of the building in the form of communal grassed courtyards. The provision is considered sufficient to meet the requirements of the future residents and will serve as a visual amenity more so than functional amenity space.
122. The arrangements of the building within the site also maximised views from the site to the open countryside which less mobile residents will be able to enjoy.

Design and Layout

123. The Design and Access Statement submitted in support of the application seeks to demonstrate how the proposed development responds to its surrounding context and how local development plan policies have been taken into consideration as part of the evolution of the detail of the design.
124. The building is to be three storeys in height with parking provided in the basement. The proposed building will have a main central section with a barrel shaped roof and wings either side of the central portion which will accommodate the bedrooms.
125. The materials to be used in the construction of the building will include white render walls, with grey timber cladding, grey window and a standing seam metal roof. These materials have an industrial style feel to them and will blend in with the other buildings in the area.

Landscaping

126. The Design and Access Statement explains that the site layout is arranged to create a significant buffer between the proposed building and the adjacent industrial unit through the siting of amenity space, the entrance ramp to the basement level car park and denser buffer planting towards the southern boundary of the site.

127. The new landscaping proposed throughout the site in the form of new planting, green areas and a landscaped communal area to the front of the building is considered to be acceptable.

Natural Heritage

128. PPS 2 – Natural Heritage, sets out the planning policies for the conservation, protection and enhancement of our natural heritage.
129. Policy NH 2 – Species Protected by Law covers both European Protected Species and nationally protected species. Policy states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species.
130. A Preliminary Ecological Appraisal and Assessment is submitted by Ayre Environmental Consulting in May 2017 in support of the application. The following protected species surveys were undertaken to establish the presence or likely absences of such within the confines of the site area:
- Bat Roost Potential
 - Otter Assessment
 - Badger Survey
131. In relation to bats, results confirmed that the existing built structures on site had been assessed as having negligible roosting suitability due to the fact that their construction from corrugated metal sheets and metal frames means they are subject to large and rapid temperature fluctuations which are entirely unsuitable for roosting bats as they require environments with more stable temperature ranges.
132. The existing commercial building was likewise assessed as having negligible roosting suitability due to the presence of flat roof on rear portion whilst southern portion is formed by asbestos roof tiles with no roof void making it unsuitable.
133. Trees were also assessed as having negligible bat roost potential.
134. With regard to otters, the water course was subject to extensive examination for the presence of field evidence such as slides, holts, lays and prey remains. No evidence was identified.
135. With regard to badger surveys, the assessment confirms that no setts were recorded in any aspect of the site boundary or up to 25 metres outwith.
136. Natural Heritage Division having considered the detail of this Assessment along with amended drawings received in July 2017 which indicated a landscape buffer adjacent to the watercourse confirmed that they had no objections to the proposal subject to conditions in relation to lighting.

137. Information received late in the planning process made reference to a Preliminary Ecological Appraisal and Assessment being out of date.
138. A letter from the Agent received on 5 February 2021 enclosed further information which confirms that the situation on the site remains unchanged from the PEA previously submitted in support of the application and that this is informed by a site walkover undertaken on 14 January 2021.
139. The information from Ayre Environmental explains that the purpose of the return visit was to establish if there had been any material changes in the baseline ecological information as recorded in 2017.
140. It advised that the most recent return visit and updated ecological inspection noted that the site has partially deteriorated as a direct result of lack of site maintenance. Areas of scrub and all rural habitat have colonised the south and western extents of the site.
141. The existing building structures (Dutch-style barn; offices and workshops/warehouses) remain in the same condition as previously documented in 2017.
142. No field evidence is recorded during the return site visit to suggest any changes have occurred to the baseline ecology other than extant vegetation maturing with natural vegetation succession. Photographs dated 14 January 2021 are provided in support of this statement.
143. The information from Ayre Environmental concludes that the recommendations provided within the 2017 PEA report remain pertinent to the proposed development with particular emphasis on the retention of the existing tress located adjacent to the watercourse on the northwest boundary.
144. Natural Environment Division (NED) has considered this information and in advice provided on the 25 February 2021. It confirms that NED has considered the impacts of the proposal on designated sites and other natural heritage interests and, on the basis of the information provided, has no concerns subject to conditions recommended to minimise the impact of the proposal on the nature conservation value of the river corridor.
145. The response also confirmed that no material changes have occurred and refers to our previous response in relation to advised conditions.
146. Based on the information provided by the Agent and advice from NED, it is considered that the proposed development will not have an adverse impact on natural heritage features and that the proposed development complies with Policy NH2 in that is not likely to harm a European protected species.

Access, Movement and Parking

147. PPS 3 – Access, Movement and Parking sets out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking.
148. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
149. The P1 form indicates that the access arrangements for this development involve the alteration of an existing access to a public road for both vehicular and pedestrian use.
150. Whilst the Saintfield Road is a protected route this access is to lands within the settlement limit of Carryduff. The following policies considerations apply.

Access to Public Roads

151. Policy AMP 2 – Access to Public Roads states that planning permission will only be granted for a development proposal involving direct access, or the intensification of an existing access, onto a public road where;
 - (a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - (b) The proposal does not conflict with Policy AMP 3 – Access to protected routes.
152. Details submitted with the application indicate that it is intended to use an existing access to the public road.
153. DfI Roads were consulted in relation to this proposal and are satisfied that the proposed access arrangements are in accordance with prevailing guidance.
154. Based on the information submitted and advice from DfI Roads it is considered that the proposal will not prejudice road safety or significantly inconvenience the flow of traffic.
155. Furthermore and as demonstrated below the proposal does not conflict with Policy AMP 3 – Access to Protected Routes.

Access to Protected Route

156. AMP 3 – Access to Protected Route states that planning authorities will restrict the number of new access and control the level of use of existing access onto Protected Routes.

157. With regard to Protected Routes within settlement limits, the policy directs Planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access:
- (a) where access cannot reasonably be taken from an adjacent minor road; or
 - (b) in the case of proposals involving residential development, it is demonstrated to the Department's satisfaction that the nature and level of access onto the Protected Route will significantly assist in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points.
158. Third party objections raise issues of intensification of the use of the access onto a Protected Route.
159. Paragraph 1.2 of DCAN 15 - Vehicular Access Standards advises that intensification is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more.
160. The Design and Access Statement submitted in support of the application indicates that the A24 Saintfeild Road is a Protected Route connecting Carryduff with Belfast. It acknowledges that the carriageway is four lanes wide and a right turn pocket to the petrol filling station is provided. Reference is made to the road being classified as an A Class Road where a 50 miles per hour speed limit applies.
161. The P1 Form provides details of the average number of existing vehicles at the premises daily along with details of the expected increase (change). It advises that there are 448 Visitors/Customers and four goods vehicles daily. The expected increase (changes) is shown to be a significant reduction to 147 and 1 respectively.
162. In terms of the number of persons attending the premises daily, the P1 form indicates figures of 485 compared with a figure of 234 associated with the proposed development (reduction of 251) persons attending daily.
163. A Transport Assessment form submitted with the application advises that the care home will have a compliment of 4 full time staff and 12 part time staff per shift and that an analysis of the proposed development indicates that this will generate 66% less traffic than the existing retail premises currently operating on the site.
164. The view is expressed that traffic generation will fall below the threshold for intensification as outlined in Development Control Advice Note (DCAN) 15.
165. The Design and Access Statement submitted in support of the application demonstrates that the site benefits from access to bus services which operate in both directions and a regular basis during the working day. Whilst there are

currently no dedicated cycle paths located on the Saintfield Road, pedestrian footways are located on both sides of the Saintfield Road.

166. Alterations proposed include the provision of 4.5 x 124 metre sightlines and a 6 metre access. This will result in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points by virtue of there being an access in situ.
167. Based on the information submitted and in the absence of any evidence to the contrary, it is considered that the proposed development is acceptable and meets the criteria of policy AMP 3 in that access cannot reasonably be taken from an adjacent minor road (criteria (a)) and that the alterations proposed will significantly assist in the creation of a quality environment without compromising standards of road safety (criteria (b)).
168. Intensification is not a matter to be weighed as significant as both criteria (a) and (b) are met which is more than required to meet the policy test.

Flooding and Drainage

169. PPS 15 – Planning and Flood Risk sets out policy to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications.
170. A water course flows in a south western direction adjacent to the sites northern boundary.
171. As part of the planning application process, DfI Rivers Agency were consulted. In a response dated 3 February 2017 they stated that their comments of 7 March 2016 associated with the previous application (LA05/2015/0726/F) remained valid.
172. This response relied on an earlier Drainage Assessment for a similar proposal which indicated at paragraph 4.1.2 that discharge was proposed into watercourse where nearby surface water flooding is evident.
173. The view expressed was that the increase in surface water runoff associated with the proposed development is considered to be negligible and as such, there was no requirement to limit to pre-development conditions.
174. The earlier assessment advised that any storm water on site will primarily be infiltrated where possible, through grassland and landscaped areas. The Drainage Assessment provides the following conclusions:
 - The proposal include the demolition of existing retail buildings and erection of building providing care to the elderly.

- Infiltration will be used primarily for drainage and soft landscaped areas will be included in the design where possible in order to maximise infiltration rates;
 - The site will undergo adequate levelling and drainage designs to ensure no build-up of surface water remains on site; elevations and underground drainage will drop towards the discharge gathering points;
 - Increase in surface water discharge is considered negligible (0.031/s), and as such, it should be considered acceptable to discharge post development run-off rates of 12.91//s.
175. Mitigating measures identified include the provision of porous pavements, filter drains and source control measures to allow rainwater and run-off to infiltrate into permeable material below ground and provide storage if needed.
176. DfI Rivers advised that their earlier advice of 7 March 2016 remained valid and that the submitted Drainage Details only lacked a letter from Rivers Agency local area office for consent to discharge into the adjacent undesignated watercourse.
177. Late information from a third party in December 2020 expressed the view that there was a lack of drainage information submitted with the proposal. No further detail was provided in this regard.
178. A letter from the Agent received on 5 February 2021 advised that the Drainage Assessment submitted previously remained valid and that DFI Rivers provided a response offering no objection with the only matter to be resolved being securing Schedule 6 consent.
179. The letter advises that MCL Consulting have engaged with DfI Rivers directly in respect to Schedule 6 consent to an adjacent watercourse and that initial discussions indicate that the proposed method of discharge is agreeable in principle and that a further Schedule 6 consent application had been formally submitted in December 2020.
180. This information was considered by DfI Rivers and in a response received on 9 May 2021 advised that the following information was required to demonstrate the viability of your proposals by means of providing the following:
- Schedule 6 consent for discharge to the watercourse; and
 - Attenuation calculations that demonstrate that storm water discharge from the site does not exceed the consented discharge rate for all events up to and including a 100 year design rainfall event and climate change.
181. In an email dated 23 June 2021, the Agent makes reference to advice from DfI Rivers [first bullet point] which indicates that greenfield run-off rate could be consented and in doing so, expressed the view that discharging to the watercourse is acceptable in principle.

182. In response to this exchange, Rivers Agency explained that there would appear to be some confusion as the Schedule 6 response from our Area Office reads “unable to consent”. In this case, the consent application was to discharge 22.6l/s which is over twice that proposed in the Drainage Assessment.
183. The advice provided explained that the applicant was required to obtain an approved discharge rate and based on the approved rate provide calculations and attenuation layout as part of a revised Drainage Assessment. This requirement was also discussed with the applicant’s drainage consultant [MCL Consulting] at the time.
184. The Agent was advised on the 24 June 2021 that the Drainage Assessment associated with the planning application needed to be updated to take account of the agreed discharge rate.
185. It was also explained that it was this information along with the Schedule 6 consent confirmation from Rivers Agency that is required to allow the application process to be concluded.
186. An electronic copy of a revised Drainage Assessment prepared by MCL Consulting was provided on 9 July 2021.
187. The Drainage Assessment advises by way of conclusion that the infiltration will be used primarily for drainage and soft landscaped areas will be included in the design where possible in order to maximise infiltration rates.
188. It advises that a Schedule 6 Consent application has been submitted to Rivers Agency requesting discharge into the open watercourse flowing close to the sites northern boundary with the view expressed that this will replicate existing regimes at a lesser rate. Whilst reference is made to this detail following the drainage assessment as an addendum, no additional information has been provided to the Council in this regard.
189. An explanation is also provided that the site will undergo adequate levelling and drainage designs to ensure no build – up of surface water remains on site and that elevations and underground drainage will drop towards the discharge gathering points.
190. Finally, the view is expressed that there is a betterment in regard to surface runoff as peak runoff during Q100 (1hr) has been reduced from 28.35 l/s under existing conditions to 22.66 l/s.
191. Rivers Agency in a response received on 21 July 2021 confirmed that its response in relation to Policies FLD1, FLD 2, FLD 4 and FLD 5 remained as per advice provided on 9 January 2021.

192. In relation to Policy FLD 3, the response confirmed that the revised Drainage Assessment had been reviewed and that the information previously requested had not been provided.
193. The response advised that in order for Rivers Agency to fully assess this Drainage Assessment further information was required to demonstrate the viability of the proposals by means of providing the following:
- Schedule 6 consent for discharge to the watercourse.
 - Attenuation calculations that demonstrate that storm water discharge from the site does not exceed the consented discharge rate for all events up to and including a 100 year design rainfall event + climate change.
194. Rivers Agency also provided confirmation that area office records showed that no further Schedule 6 application had been submitted with the required information and as of 21 July 2021.
195. A further revision of the Drainage Assessment was submitted to the Council on 27 July 2021 before the planning committee meeting in August 2021.
196. The assessment indicated at Appendix 1 that areas of hardstanding would be reduced and that the geology of the site underlain by boulder clay would generally have high rates of run off.
197. It was further indicated that the site was not at risk from fluvial flooding and that based on an area of 3378 metres squared and a 1:100 year event, the equivalent greenfield run off is equal to 5.15 l/s.
198. That said, the assessment also advised at section 2.1 that it is Rivers Agency's policy to accept a guideline figure of 10l/sec/ha which for this site, provides a greenfield runoff rate equal to 3.378l/s.
199. The Drainage Assessment provides calculation details of runoff assessments with reference made to pre-development runoff associated with rooftop and impermeable surfacing accounting for 2873 metres squared of impermeable surfacing and 465 metres squared of grass.
200. Post development runoffs are predicted to reduce with the development proposal reducing the hard standing on site to 2220 metres square, with 1118 metres squared of grass area provided.
201. Section 4 of the assessment provides details of how surface runoff will be managed. It advises that in terms of surface runoff management, any storm water on site will primarily be infiltrated where possible through grassland and landscaped areas with all remaining run off being adequately managed and discharged at the agreed rate into the adjacent water course.

202. Dfl Rivers in a response dated 6 August 2021 has confirmed that the revised Drainage Assessment has been considered and its logic accepted. No objection is offered.
203. A standard condition is however recommended requiring the submission of a detailed drainage network design prior to commencement of any approved development.
204. Based on the information submitted and the advice received from Dfl Rivers, it is considered that the applicant has now demonstrated that the proposed development will not cause present or exacerbate flood risk and that an acceptable drainage solution to agreed discharge rates can be provided and that the requirements of policy FLD 3 have been met in full.

Contaminated Land

205. Paragraph 3.6 of the SPSS emphasises that identifying previously developed land within settlements including sites which may have environmental constraints (e.g. land contamination), can assist with the return to productive use of vacant or underused land. This can help deliver more attractive environments, assist with economic regeneration and renewal, and reduce the need for green field development.
206. It continues at 6.321 to state when decision-taking important considerations will include: the types of waste to be deposited or treated and the proposed method of disposal; impacts on human health and the environment (including environmental pollution).
207. A phase 1 site investigation survey was submitted by Practical Waste Solutions in May 2017. The survey was undertaken to determine the likelihood of asbestos containing material contamination of the site.
208. The report concludes that the level of asbestos concentration in soil samples analyses demonstrated that there was no significant asbestos contained within the soil being less than the detection limit of the testing equipment.
209. The survey analysis also confirmed an unacceptable hydrocarbon level present in the soil at specified depths. A number of recommendations including further survey investigations, mapping and provision of cost effect remediation strategy are recommended.
210. NIEA – Land, Soil and Air Unit having considered the detail of the report have indicated that further information was required to enable them to provide a definitive comment.
211. That said, a condition that all contamination surveys are completed agreed and accepted by NIEA before works commence on site is recommended.

Consideration of Representations

212. Eight letters of objection had been received when the application was first presented to Committee in December 2020. A further two representations have been received from the same individual post December 2020. Consideration of the issues raised is set out below.

Not Compatible

213. An objection has been raised with regards the proposed use and conflict with the uses on other sites.

214. Other adjacent uses comprise a vehicle repair business, Jenkins auto paint and Carryduff upholstery. As demonstrated in the main body of the report, the proposed use is compatible and that there will be no detrimental impact on the proposed or existing uses.

Repeat Application.

215. Concern is expressed that the application was similar to a previous refusal on the site (LA05/2015/0726/F) and under section 46 of the Planning Act (NI) 2011 the Council could have declined to accept it as a repeat application.

216. Whilst it is accepted that the application is similar the differences including an amended red line, design changes and additional information are such that it is not considered to be a repeat application.

Traffic

217. An objection has been raised in relation to traffic issues both currently and how this will be intensified should the proposal be approved.

218. A transport assessment form accompanied the application. It demonstrated that the proposed use would generate 66% less vehicle trips compared to the existing retail use.

219. DfI Roads were consulted with the proposal and had no objection subject to conditions.

Noise /Nuisance /Disturbance.

220. Objections were raised that the use of adjacent lands would cause noise nuisance and disturbance to the residents of the proposed nursing home should it be approved.

221. A noise impact assessment was submitted which demonstrated that there would be no detrimental impact to residents of the proposed development in terms of the loss of residential amenity by way of noise nuisance or disturbance.

222. Triple glazing, acoustic ventilation and an acoustic barrier have been incorporated into the proposal to mitigate any potential impact from adjacent land uses.
223. Environmental Health were consulted with the proposal and had no objection subject to conditions.

Design and Integration of the proposal on edge of settlement.

224. Objections were raised that the proposal would fail to integrate into the surroundings at this location at the edge of the settlement.
225. The building is to be three story in height with a barrel shaped roof design. It is considered that this design along with the existing and proposed landscaping will allow the proposal to integrate into the surrounding and will not be detrimental to the character of the area.

Natural Heritage issues.

226. Objections were raised that the proposal would have an impact on natural heritage in the area.
227. NIEA Natural Heritage Division (NED) were content with amended drawings that were submitted and commented that an adequate buffer had been provided to the watercourse adjacent to the site.
228. Furthermore they advised that should the application be approved a condition should be attached to any decision notice to ensure that there is no lighting directed toward the watercourse.
229. A late representation made reference to ecology surveys being out of date. This is addressed in the main body of the report whereby updated information from an ecologist is provided to confirm that the situation on the ground is largely unchanged.

Inconsistency/Incompatible drawings

230. A representation made reference to the inconsistency and/or incompatible of the submitted drawings. Whilst no specific detail was provided, the Agent provided clarification in amendments and these were received on 06 September 2021 and the details are described at paragraph 21 of this report.

Neighbour Notification/Advertising

231. A representation later in the application process expressed the view that the application should have been re-advertised due to the passage of time. Amendments received in relation to the proposal have at intervals been neighbour notified to those individuals that have during the processing of the

application, expressed an interest. The Council is satisfied that adequate notification has been provided to neighbours and third parties.

Intensification and Road Safety

232. A representation received later in the application continues to express concern about intensification to a protected route. As demonstrated in the main body of the report, the proposed development involves the alteration of an existing access within the settlement limit.
233. There is no opportunity in this instance to access the site from an adjacent minor road. That said, detail submitted with the application demonstrates that the alterations include the provision of 4.5 x 124 metre sightlines and a 6 metre access.
234. DfI Roads are content that this will result in the creation of a quality environment without compromising standards of road safety or resulting in an unacceptable proliferation of access points by virtue of there being an access in situ.

Conclusions

235. The application is presented with a recommendation to approve as it is considered that greater material weight should be attached to the fact that this portion of the individual employment zoning has changed to retail use and that it is unlikely for the reasons set out in the report to revert back to employment uses as currently defined in Part B – Industrial and Business Use of the Planning (Use Classes Order) Northern Ireland 2015.
236. Whilst the proposal will result in the loss of a small portion of land zoned for economic development use the planning history carries weight in the assessment in that it demonstrates that the land use classification of this part of the site has through previous permissions allowed for A1 retailing uses.
237. The special circumstances of this case as demonstrated in the report are considered to outweigh the preferred policy option of retaining the land for economic development use.
238. Significant weight is also attached to other material considerations in respect of the current site and buildings not being fit for modern employment use; the associated economic benefits in terms of job creation; a commitment to employ skilled people; generate income locally and create additional expenditure in the supply chain.
239. The proposed development is considered to comply with the SPPS and Policy PED 8 of PPS 4 in that its location at the edge of the northern most edge of the employment zoning and the edge of the settlement limit along with the proposed mitigation demonstrate that the development is not likely to impact

on the continued operation of adjacent businesses including those more distant from the site.

240. The proposed development complies with the SPPS and Policy NH2 of PPS 2 in that the detail submitted demonstrates that the proposed development is not likely to harm a European Protected Species.
241. The proposal complies with the SPPS and Policies AMP 2 and AMP 3 of PPS 3 the proposed development will not prejudice road safety or significantly inconvenience the flow of traffic. Access cannot be taken from a minor road and the requirements for access onto a protected route within a settlement are met in full.
242. The proposal complies with the SPPS and PPS 15 in that detail submitted with the application demonstrates that surface run off associated with the development when compared with existing run-off is considered to be negligible and mitigation measures outlined in the drainage assessment which include the provision of porous pavements, further drains and source control measures to allow rain water and run off to infiltrate into permeable material below ground and provide storage are acceptable.

Recommendations

243. It is recommended that planning permission is approved.

Conditions

244. The following conditions are recommended:
- As required by section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
Reason: Time limit
 - The vehicular access, including visibility splays and any forward sight distance, shall be provided in accordance with Drawing no. 12 bearing the Lisburn and Castlereagh Council date stamp [insert date] prior to the commencement of any other development hereby permitted. The area within the visibility splays and any forward sightline shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway and such splays should be retained and kept clear thereafter.
Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

- The development hereby permitted shall not become operational until hard surfaced areas have been constructed and permanently marked in accordance with the approved Drawing No .13 bearing the Planning Office date stamp [insert date] to provide for parking and servicing within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.
Reason: To ensure that adequate provision has been made for parking, servicing and traffic circulation within the site.
- The gradient of the access road shall not exceed 4% (1 in 25) over the first 10m outside the road boundary. Where the vehicular access crosses a footway, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.
Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road user
- All hard and soft landscape works shall be carried out in accordance with the approved details as indicated on drawing no 10 date stamped by Lisburn and Castlereagh City Council 17 July 2018 and the appropriate British Standard or other recognised Codes of Practise. The works shall be carried out prior to the occupation of the building development.
Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.
- If within a period of 5 years from the date of the planting of any tree, shrub or hedge, that tree, shrub or hedge is removed, uprooted or destroyed or dies, or becomes, in the opinion of the Council, seriously damaged or defective, another tree, shrub or hedge of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.
Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.
- If any retained tree is removed, uprooted or destroyed or dies within 3 years from the date of the occupation of the building for its permitted use another tree or trees shall be planted at the same place and that / those tree(s) shall be of such size and species and shall be planted at such time as may be specified by the Council.
Reason: To ensure the continuity of amenity afforded by existing trees.
- The proposal is in close proximity to a busy road and commercial unit and the applicant should ensure there is sufficient sound insulation, including acoustic glazing and ventilation, to ensure compliance with 'BS8233:2014 - Sound insulation and noise reduction for buildings'. Internal ambient noise level should not exceed $L_{Aeq(16hr)}$ 35dB(A) daytime in habitable rooms (including bedrooms) and $L_{Aeq(8hr)}$ 30dB(A) night time in bedrooms. Therefore, within 3 months of completion of the development an acoustic verification report shall be submitted to the Council to demonstrate compliance with BS8233:2014.

Reason: To ensure compliance with BS8233: 2014

- A 1.8m high acoustic barrier shall be erected along the site's boundary as presented on approved drawing A1 Site Plan date stamped 17 August 2018 prior to the occupation of the building. The barrier should be constructed of a suitable material (with no gaps), should have a minimum self-weight of 6 kg/m² and so retained thereafter.

Reason: To protect the amenity of neighbouring dwellings with respect to noise

- Following demolition and prior to any construction work the ground conditions on the site shall be subject to a detailed site investigation to establish the suitability of the development for the proposed end use. A site investigation shall be undertaken in sufficient detail to establish the previous uses of the land under consideration or land nearby or adjacent to it, and to identify potential sources of contamination. The above information should be used to produce a risk assessment addressing each potential source, pathway and receptor in turn and should indicate if any, what the risk of contamination is. The risk assessment shall be submitted to the Council for approval.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

- Further to condition a detailed remediation scheme shall be submitted to the Council for approval to bring the site to a condition suitable for the intended use by removing unacceptable risks to human health. The scheme must include all works to be undertaken, proposed remediation objectives and remediation criteria, timetable of works and site management procedures.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

- Prior to occupancy of the development, the remediation scheme shall be validated in order to ensure and verify that the remediation scheme has been implemented in accordance with the scheme and the objectives have been met. Substantiating information shall be submitted to the Council in the form of a written validation report for approval.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

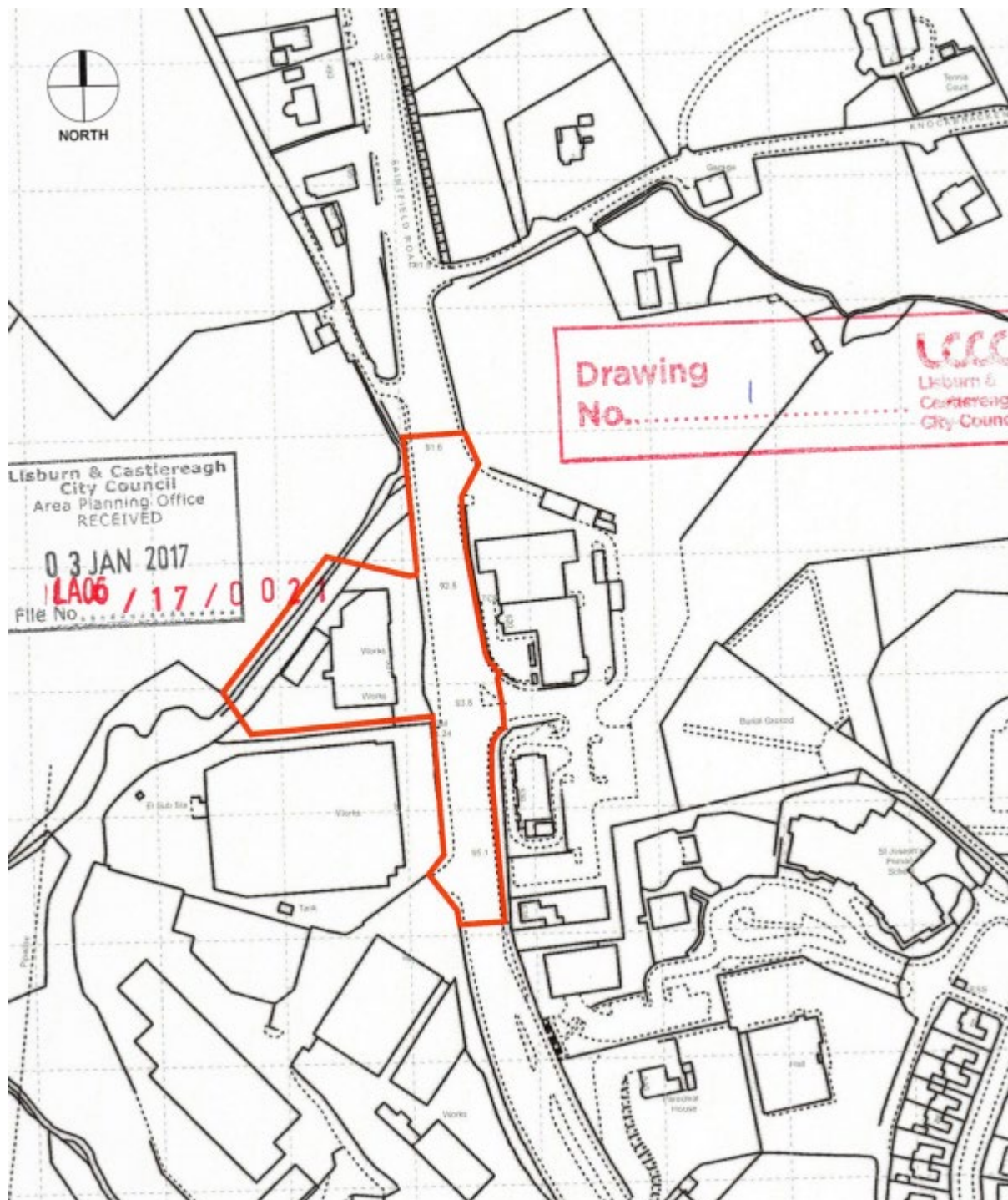
- The applicant shall have full regard to all relevant and current guidance and standards during the sampling, remediation and validation processes and shall incorporate such detail within any report submissions.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

- All fuel storage tanks (and associated infra-structure) must be fully decommissioned and removed in accordance with the Northern Ireland's Environment Agency Documents entitled; "Installation, Decommissioning and Removal of Underground Storage Tanks: PPG27" & "Above Ground Oil Storage Tanks PPG2". Any impacted soil in the vicinity of the storage tanks and associated infrastructure should be excavated and the quality of the surrounding soils verified. This process should be supervised by a suitably qualified Environmental Engineer.

Reason: To ensure that risks from land contamination to the future users of the land and neighbouring land are minimised, and to ensure that the development can be carried out safely without unacceptable risks to workers, neighbours and other offsite receptors

Site Location Plan – LA05/2017/0021/F



Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local application (Called in) |
| Application Reference | LA05/2021/1178/F |
| Date of Application | 25 October 2021 |
| District Electoral Area | Castlereagh South |
| Proposal Description | Erection of a dwelling house |
| Location | North and adjacent to 32 Killynure Road West, Killynure, Carryduff, BT8 8EA. |
| Representations | None |
| Case Officer | Richard McMullan |
| Recommendation | Refusal |

Summary of Recommendation

1. This application is categorised as a local application. It is presented to the Committee for determination in accordance with the Protocol for the Operation in that it has been Called In.
2. The application is presented to the Planning Committee with a recommendation to refuse as the proposal is considered to fail to comply with paragraph 6.78 of the SPPS, Policy CTY 1 and Policy CTY 13 of PPS 21 in that the design of the proposed building is inappropriate in this rural location and is not capable of being visually integrated into the surrounding landscape.
3. In addition the proposal is contrary to Section 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 in that insufficient information has been submitted to enable the full assessment of the proposed development in respect of proposed site works. Details of the existing and proposed ground levels are not submitted, as requested to be submitted by the Council.

Description of Site and Surroundings

4. This site is located upon the northern side of the Killynure Road, West Carryduff. Access is from an existing tarmac driveway which serves the two adjacent dwellings to the south, at 30 & 32 Killynure Road West.
5. The site is the side garden to the adjacent dwelling and is roughly rectangular in shape. The land within falls in a northerly direction, away from 32.
6. The driveway which serves 30 and 32 is adjacent to the western and northern boundaries of the site and terminates at the north eastern corner of the site, providing access to a number of outbuildings and an area of hardstanding.
7. The northern boundary is defined by post and wire fencing whereas the eastern boundary is defined by hedging interspersed with mature trees. The southern boundary is undefined and the western boundary is defined by hedging and trees.
8. The area surrounding the site is rural in character with the land mainly in agricultural use.

Proposed Development

9. This is a full application for the erection of a dwelling house.

Relevant Planning History

10. The relevant planning history associated with the application is set out in the table below:

| Application Reference | Site Address | Proposal | Decision |
|-----------------------|---------------------------------------|------------------------|---------------------|
| LA05/2020/0692/O | North of 31 Killynure Road West | Erection of a dwelling | Approval 25/1/21 |

Consultations

11. The following consultations were carried out;

| Consultee | Response |
|-----------------------------|-----------------|
| NI Water | No objection |
| DAERA Water Management Unit | No objection |
| DfI Roads | No objection |
| LCCC Environmental Health | No objection |

Representations

12. No letters of representation in opposition to the proposal have been received.

Consideration and Assessment

Local Development Plan Context

- 13. Section 6(4) of the Planning Act (Northern Ireland) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination must be in accordance with the plan unless material considerations indicate otherwise.
- 14. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
- 15. As a consequence of this decision, the Belfast Urban Area Plan 2001 is the statutory up to date LDP however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
- 16. Within both the BUAP 2001 and Draft BMAP 2015 the site is within a countryside area beyond any settlement development limits.

Regional Policy Considerations

- 17. The Strategic Planning Policy Statement (SPPS), published in September 2015, indicates that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.

18. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
19. Paragraph 3.8 of the SPPS indicates that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
20. In practice this means that development which accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.
21. Paragraph 6.73 of the SPPS indicates that provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage. Planning permission will be refused for a building which creates or adds to a ribbon of development.
22. Paragraph 6.78 of the SPPS outlines that supplementary planning guidance contained within 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' must be taken into account in assessing all development proposals in the countryside.
23. This application seeks to provide 1 no. infill dwellings within a gap along a substantially built up frontage as per planning policy CTY8 of PPS 21.
24. No conflict arises between the provisions of the Strategic Planning Policy Statement (2015) and the retained Planning policy – Planning Policy Statement 21: Sustainable Development in the Countryside insofar as they relate to this application. Consequently, PPS 21 provides the relevant planning policy context.

Sustainable Development in the Countryside

25. PPS 21 – Sustainable Development in the Countryside sets out planning policies for development in the countryside and lists the range of development which in principle is considered to be acceptable and contribute to the aims of sustainable development.
26. Policy CTY 1 - Development in the Countryside makes provision for a range of different types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.

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

Ribbon Development

28. Policy CTY 8 – Ribbon Development states that planning permission will be refused for a building which creates or adds to a ribbon of development.
29. An exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.
30. For the purpose of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
31. A building is defined in statute to include a structure or erection, and any part of a building as so defined.
32. The justification and amplification to the policy explains that Ribbon Development is detrimental to the character, appearance and amenity of the countryside. It creates and reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. Ribbon development has consistently been opposed and will continue to be unacceptable.
33. Paragraph 5.33 advises that for the purposes of this policy a road frontage includes a footpath or private lane. A ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.
34. Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. In considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated.
35. It is clear that applicants must take full account of the existing pattern of development and can produce a design solution to integrate the new buildings.

36. Paragraph 4.4.1 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside outlines that policy CTY 8 Ribbon development sets out the circumstances under which a small gap site can, in certain circumstances, be developed to accommodate a maximum of two houses, within an otherwise substantial and continuous built up frontage.
37. The guidance recommends the following:
 - a. It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
 - b. Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
 - c. When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
 - d. A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.
38. The initial step in determining whether an infill opportunity exists is to identify a line of three or more buildings in an otherwise substantial and continuously built up frontage.
39. The application site is located on the eastern side of an internal private driveway/lane which serves 30 and 32 Killynure Road West, Carryduff.
40. The laneway also serves a number of outbuildings to the north east of 32. An internet search indicates that a kitchen manufacturing businesses 'Alconn Kitchens' operates from these buildings.
41. As is outlined above, for the purposes of this policy a road frontage includes a footpath or private lane.
42. In respect of the laneway the dwellings at 30 and 32 Killynure Road West present a frontage to this laneway. Both of these dwellings are to the south of the site. At the end of the laneway there are a number of outbuildings which also present a frontage to the lane.
43. The dwelling associated with number 32 Killynure Road, West and the outbuildings at the end of the lane are considered to provide a gap.
44. Based on this assessment, it is considered that there is an otherwise substantial and continuously built-up frontage of development comprised of a line of 3 or more buildings along a road frontage without accompanying development to the rear.
45. The second step is to determine if there is a small gap site sufficient only to accommodate up to a maximum of two-houses within the otherwise substantial and continuously built-up frontage.
46. Distances taken from building to building from the dwelling at 32 to the outbuilding at the end of the lane measures 29 metres. This is considered to

- be a small gap within the otherwise substantial and continuously built-up frontage.
47. The third step is to determine if the proposal respects the existing development pattern along the frontage in terms of size, scale, siting and plot size.
 48. Number 30 has a frontage to the lane measuring approximately 25.3 metres and a plot size of 0.2ha. Number 32 has a frontage of approximately 118.1 metres and a plot size of 0.4ha. The outbuildings have a frontage of 28.8 metres and a plot of 0.2ha.
 49. The average frontage would therefore be 57.4 metres and average plot size would be 0.26ha in size.
 50. The frontage associated with the application site will have a frontage of approximately 81 metres as it turns the corner. It is somewhat larger than the average frontage [57.4 metres]. This 22m - 23m difference is due to the fact that the site follows the bend in the lane.
 51. The plot size is identified on the application for is 0.3 hectares which is larger than the average plot size of 0.26 hectares.
 52. Whilst it could be argued that the principle of development was unacceptable as the proposed site failed to respect the established pattern of development along the frontage by virtue of the frontage and plot size being larger than the average the overall size of the plot is not significant bigger there is no reason to disagree with the assessment of the previous officer and the planning history weight is given significant material weight as the principle of development is previously conceded and it remains extant.
 53. The applicant does not explain why an application for approval of reserved matters is not submitted but insufficient information is submitted with this application which would have been required to make an application for approval of reserved matters valid.

Integration and Design of Buildings in the Countryside

54. Policy CTY 13 – Integration and Design of Buildings in the Countryside states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design.
55. The policy directs that a new building will be unacceptable where:
 - (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or

- (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.
56. Paragraph 4.1.0 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside states that a core requirement of much of the development covered by PPS 21 is that it is integrated within (and in particular instances Visually linked to) the countryside and/or other established buildings.
57. Paragraph 7.5.4 of Building on Tradition makes reference to the impact on critical and combined views and local distinctiveness and that regard for the rural setting and character are important issues with respect to the proposed design of a new dwelling and to these being addressed as part of a statement in support of an application. No such statement is provided with this application.
58. In terms of criteria (a) it is considered that no issues with respect to prominence would arise given the nature of the site and its location along the laneway behind number 32.
59. When viewed from the Killynure Road from the south of the site and from the Killynure Road to the north east of the site, the development would not be seen as a prominent feature within the local landscape.
60. In terms of criteria (b) and (c), two of the four boundaries of the site are defined by hedging with mature trees. Additional landscaping identified on the site layout drawing.
61. It is considered that the development would not rely upon new landscaping for the purposes of integration and as such, the requirements of these criteria are considered to be met.
62. With regard to criteria (d), the topography of the application site falls in a northern direction, away from number 32. The agent was requested to provide a site layout drawing with existing and proposed levels indicated, with cross sections.
63. A drawing was provided with one cross section only and the layout drawing was not altered to illustrate existing and proposed levels, as was requested.
64. As a consequence, it is considered that insufficient information has been provided to enable a full and proper assessment to be made as to whether the required ancillary works can integrate into the landscape without harm.

65. In terms of criteria (e), the design of the proposed dwelling incorporates a footprint which has three rectangular elements. On the southern side there are two rectangular blocks side-by-side. These are annotated to provide for a garage/gym/sitting room.
66. To the north a narrow rectangular element is shown from which there four returns are proposed. The layout as shown provides for an 'X' shaped footprint.
67. Elevational drawings illustrate the different elements having pitched roofs with different ridge heights.
68. A flat roofed element is noted with a balcony above the proposed garage.
69. A central element provides an 'X' shaped footprint with radiating sub-ordinate returns. This element is 1.5 storey.
70. Fenestrations proposed are mixed, with windows having vertical and horizontal elements. Large areas of glazing are also noted in respect of the dining/hall area which appears to propose a vaulted ceiling. One of the gable returns also proposes a fully glazed end.
71. The dwelling has a frontage of 29.3 metres, a width of 22.2 metres and ridge height of 4.6to 6.5 metres (different blocks).
72. The proposed dwelling is considered to be unacceptable in terms of its scale, massing and design. These concerns were conveyed to the agent by email on 26 November 2021.
73. In a response received on 26 November 2021 and letter dated 7 December 2021 reference was made to an adjacent site whereby the view was expressed that development had commenced in accordance with the approval [LA05/2016/0896/F]. The view was expressed that the current application should be reassessed in light of this decision.
74. Planning application LA05/2016/0896/F was for a replacement dwelling at 30 Killynure Road West, Carryduff. The officer report expressed a view that the design of the replacement dwelling should be of a high quality appropriate to the rural setting having regard to the local distinctiveness. Reference was also make to the design being similar to those dwellings shown on pages 42 – 43 of Building on traditions in that it comprised three distinct sections designed to appear as typical rural barns.
75. Consideration of an isometric view drawing provided by the agent provided clarity on the relationship between the individual sections and how they would appear linked together to form the replacement dwelling.

76. The example provided by the Agent does not sit on all fours with the design presented for this application. The form and layout of the building is not good rural design consistent with the guidance in the building on tradition document.
77. In a letter dated 7 December 2021 the Agent expressed the view that that the proposed dwelling would some 85 metres distant from the road and that it has a gable width of 6.0 metres and a maximum ridge height of 6.5 metres with a vertical emphasises on windows and in their opinion it concurred with any guidance documentation.
78. Building on Tradition states at paragraph 4.4.0 that introducing a new building to an existing cluster (CTY2a) or ribbon (CTY8) will require care in terms of how well it fits in with its neighbouring buildings in terms of scale, form, proportions and overall character.
79. A number of gap site and infill principles are outlined which are as follows;
 - Follow the established grain of the neighbouring buildings.
 - Allow for clear definition of front and back, public and private sides to the plot which will help to address overlooking issues.
 - Design in scale and form with surrounding buildings.
 - Retain existing boundaries where possible and construct new boundaries using native hedgerows and natural stone walls to assist integration and local biodiversity.
80. With this in mind, an assessment of the established layout, scale, form and massing of the neighbouring buildings at 30 and 32 Killynure Road West would indicate that 30 has a footprint of 115.2 metres squared and a front elevation of 10 metres. Number 32 has a footprint of 303.5 metres squared and a front elevation of 23.2 metres and the proposed dwelling will have a footprint of 390.4 metres squared and a front elevation of 29.3 metres.
81. The proposal will have a footprint 86.94m larger than 32 and a front elevation approximately. 6.1 metres longer than number 32.
82. These measurements illustrates that the scale, massing and design as proposed are unacceptable and that they do not follow the established grain of neighbouring buildings.
83. The scale, massing, design and detailing of the proposal is considered to be inappropriate for the site and surrounding area and the development is not in keeping with the existing dwellings or the character of buildings found adjacent to the site and in the surrounding countryside for the reasons outlined above..
84. The design of the dwelling would not be considered be appropriate to the rural area into which it is to be sited. For the above outlined reasons, the application is considered contrary to policy CTY13.

85. In terms of criteria (f), it is considered that the site could provide a backdrop for the development of a dwelling of appropriate design, scale and massing.
86. When viewed from the Killynure Road existing boundaries and adjacent buildings provide a backdrop for appropriate form of development.
87. As the design of the development is considered to be unacceptable by virtue of its scale, massing, design and detailing it is considered that it would not blend into the site utilising the existing trees, adjacent buildings etc.
88. At page 100, Building on Tradition provides examples that illustrate a number of commonly occurring elements that can result in poor or unacceptable design, the first of which is dominant and complex roof shapes, complex house shapes, large scale awkward form and excessively small scale outshots/ extensions relative to the main house form varying lengths of roof planes.
89. It is considered that the complex design with its outshot and fussy roof form are contrary to the guidance set out in Building on Tradition.
90. Based on careful review of the detail submitted and associated guidance, the proposal is considered to be contrary to paragraph 6.78 of the SPPS and policy CTY13 of PPS21 in that the design of the proposed development is inappropriate for the site and its locality.

Rural Character

91. Policy CTY 14 – Rural Character states that planning permission will be granted for a building(s) in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area.
92. A new building will be unacceptable where:
 - (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
 - (c) it does not respect the traditional pattern of settlement exhibited in that area; or
 - (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
 - (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character
93. As weight is being attached to LA05/2020/0692/O which established the principle of development of an infill dwelling at this location, it is not considered that a dwelling would result in a suburban style build-up of development when viewed with existing and approved buildings, nor would it create or add to ribbon development and it would respect the traditional pattern of development in the area.

Development Relying on Non-Mains Sewerage

94. Policy CTY 16 - Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.
95. Detail submitted with the application indicates that surface water will be disposed of via soakaways and that foul sewage will be disposed of via septic tank both of which are located to the north of the site.
96. Both Environmental Health, DAERA WMU and NI Water have considered the detail of the application and offer no objections.
97. Based on the detail and the advice received, it is considered that the applicant has demonstrated that the proposal will not create or add to a pollution problem.

Access, Movement and Parking

98. PPS 3 - Access, Movement and Parking and PPS 3 (Clarification), set out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
99. Policy AMP 2 – Access to Public Roads 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:
 - a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
100. The Killynure Road West from which the application site seeks to gain access, is not a Protected Route and detail associated with the application indicates that access arrangements for the development will involve the use of an existing unaltered access to a public road. Certificate A on the P1 Form is completed indicating that the applicant has a fee simple ownership of the application site.
101. DfI Roads has considered the detail of the application and no objection is offered.
102. Based on the information provided and advice from DfI Roads, it is considered that no issues arise with respect to road safety, the movement of vehicles and/or the parking of vehicles. Adequate space is also available within the

proposed site for car parking as illustrated and as such the policy tests associated with PPS 3 are satisfied.

Natural Heritage

103. PPS 2 - Natural Heritage makes provision for ensuring that development does not harm or have a negative impact on any natural heritage or conservation.
104. Policy NH 2 relates to protected species. It notes that development proposals are required to be sensitive to all protected species, and sited and designed to protect them, their habitats and prevent deterioration and destruction of their breeding sites or resting places. Seasonal factors will also be taken into account.
105. There are no works on site that would lead to concerns over the impact of the proposal on any natural heritage.
106. To accommodate the proposal a small amount of vegetation need to be removed to accommodate an access point however additional planting is proposed to all undefined boundaries.
107. It is considered that the development will not have an adverse impact upon any protected species. Existing trees and hedging, could be conditioned to be retained so as to ensure that no issues arise.
108. Based on a review of the information available, it is considered that the development is in keeping with the requirements of PPS 2 Natural Heritage. Specifically, it is seen to be in keeping with Policies NH2 and NH5.

Conclusions

109. All relevant policy and material considerations have been assessed and it is considered that the development is unacceptable following a full and detailed assessment against prevailing planning policy & guidance.
110. The application is presented to the Planning Committee with a recommendation to refuse as the proposal is considered to fail to comply with paragraph 6.78 of the SPPS, Policy CTY 1 and Policy CTY 13 of PPS 21 in that the design of the proposed building is inappropriate in this rural location and is not capable of being visually integrated into the surrounding landscape.

In addition the proposal is contrary to Section 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 in that insufficient information has been submitted to enable the full assessment of the proposed development in respect of proposed site works. Details of the existing and proposed ground levels are not submitted, as requested to be submitted by the Council.

Recommendations

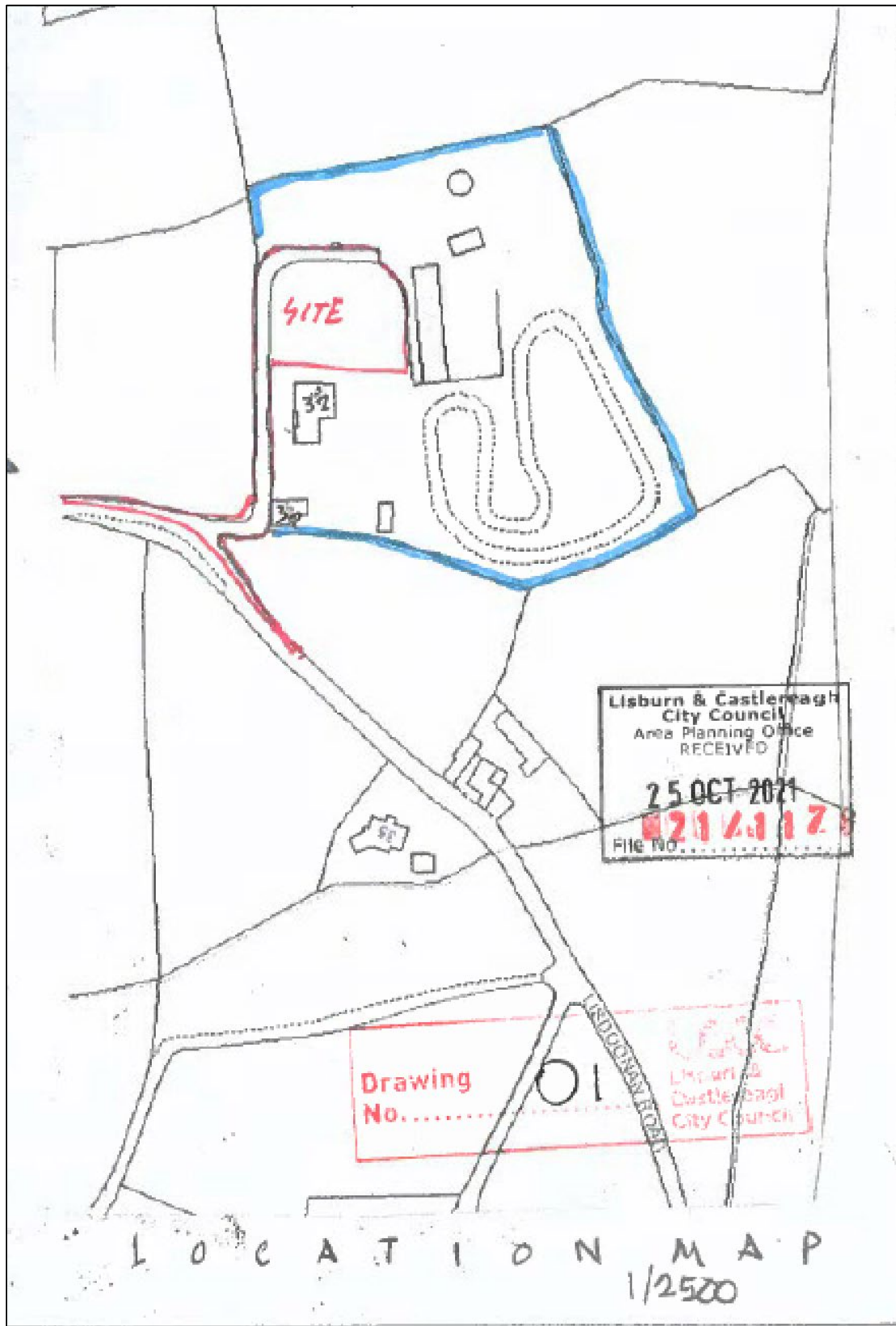
111. It is recommended that planning permission is refused.

Refusal Reasons

112. The following refusal reasons are recommended.

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 CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the design of the proposed development is inappropriate for the site and its locality and therefore would not visually integrate into the surrounding landscape.
3. The proposal is contrary to Section 3 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 in that insufficient information has been submitted to enable the full assessment of the proposed development in respect of proposed ground works. Details in respect of existing and proposed ground levels throughout the site, as requested to be submitted by the Council has not been made available for consideration.

Site Location Plan – LA05/2021/1178/F



Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application – Called in |
| Application Reference | LA05/2020/0011/O |
| Date of Application | 07 January 2020 |
| District Electoral Area | Killultagh |
| Proposal Description | Proposed replacement dwelling |
| Location | 275 metres south west of 15 Fort Road, Crumlin, Antrim |
| Representations | None |
| Case Officer | Joseph Billham |
| Recommendation | Refusal |

Summary of Recommendation

1. This application is categorised as a local planning application. The application is presented to the Committee in accordance with the Protocol for the Operation of the Planning Committee in that it has been called in.
2. The application is presented with a recommendation to refuse in that the proposal is contrary to the SPPS and Policy CTY 1 of PPS 21 in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
3. In addition the proposal is considered to be contrary to SPPS and Policy CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure within the site that exhibits the essential characteristics of a dwelling.
4. Furthermore the proposal would, if permitted be contrary to the Policy CTY 3 of Planning Policy Statement 21: Sustainable Development in the Countryside in

that it has not been demonstrated that the redevelopment proposed would bring significant environmental benefits.

5. Finally, the proposal is considered to be contrary to the SPPS and Policies NH2 and NH5 of Planning Policy Statement 2 Natural Heritage as it has not been demonstrated that the proposed development will not have an adverse impact on protected species and natural heritage features within the site.

Description of Site and Surroundings

6. The proposed site is located and north of and adjacent to 11 Fort Road which is a detached bungalow.
7. The site 0.23 hectares in size and there are two buildings both of which are set back from the roadside by approximately 15 to 20 metres. Access is through an agricultural gate along the roadside boundary of the site.
8. The buildings are single storey and a storey and a half in height with matching pitched roof profile. The finishes comprise of natural stone walls and slate roof tiles.
9. The inside of the building is one room. It is not subdivided and is currently used for storage purposes. Whilst it has a partial low level first floor there is no evidence of a staircase to enable easy access to this level.
10. There is no evidence of a fireplace or chimney on the gable, there are no internal partition walls and no domestic fixtures or fittings.
11. The exterior elevation includes a doorway and window above, a second window in the front elevation and a blocked up opening in the gable elevation.
12. The boundary treatments of the site to the south consists of a post wire fence. The northern and southern boundary is defined by mature tree and hedging. The topography of the site is relatively flat land.
13. The site is in the open countryside and the land surrounding is mainly in agricultural use.

Proposed Development

14. Outline permission is sought for the replacement of an existing stone building for a dwelling.

Relevant Planning History

15. There is no relevant planning history associated with this site

Consultations

16. The following consultations were carried out:

| Consultee | Response |
|----------------------------|---|
| DfI Roads | No Objection |
| NI Water | No Objection |
| Environmental Health | No Objection |
| NIEA Water Management Unit | No Objection |
| NIEA NED | Additional Information Requested and not received |

Consideration and Assessment

Local Development Plan Context

17. Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
18. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Area Plan 2015 had in its entirety, not been lawfully adopted.
19. As a consequence of this decision, the Lisburn Area Plan 2001 (LAP) is now the statutory development plan for the area with draft BMAP remaining a material consideration.
20. The site lies within the open countryside within the Lisburn Area Plan 2001 and draft BMAP 2015.

Regional Policy Considerations

21. The SPPS directs that the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
22. In practice this means that development that accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.
23. Under the transitional arrangements any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in the favour of the provisions of the SPPS.
24. Paragraph 3.8 states that planning authorities should be guided by the principle that sustainable development should be permitted, having regard to the local development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
25. Paragraph 6.65 states that the aim of the SPPS with regard to the countryside is to manage development in a manner which strikes a balance between protection of the environment from inappropriate development, while supporting and sustaining rural communities consistent with the RDS.
26. Paragraph 6.70 also states that all development in the countryside must integrate into its setting, respect the character, and be appropriately designed.
27. Paragraph 6.73 deals with replacement dwellings. It states provision should be made for the replacement of existing dwellings where the building to be replaced exhibits the essential characteristics of a dwelling and, as a minimum all external structural walls are substantially intact. Replacement dwellings must be located within the curtilage of the original dwelling where practicable, or at an alternative position nearby where there are demonstrable benefits in doing so. Replacement dwellings must not have a visual impact significantly greater than the existing building. In cases where the original building is retained, it will not be eligible for replacement again. Planning permission will not be granted for the replacement of a listed dwelling unless there are exceptional circumstances.
28. Paragraph 6.78 states that Supplementary planning guidance contained within Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside must be taken into account in assessing all development proposals in the countryside.

29. Paragraph 5.1.0 of Building on Tradition acknowledges that as part of the general approach to sustainability running through PPS 21 a strong emphasis is placed on the opportunities to re-use and develop the existing rural settlement pattern through a sensitive policy for replacement dwellings.
30. Paragraph 5.1.3 of Building on Tradition acknowledges that sites for replacement projects can prove an attractive option for building in the countryside as they will generally have key services in place in terms of access, water and power etc. but will also have well established mature boundaries that will already have achieved a strong visual linkage with the landscape. Renewing development on these sites reinforces the historic rural settlement pattern.
31. Paragraph 5.1.4 sets outlines the design priorities for replacement dwellings as follows:
 - Establish the right scale of the replacement building and make sure it fits comfortably on the original site and integrates well with retained outbuildings and well established mature landscape features.
 - Retain key established site character features particularly at access points, lanes and driveways.
 - Retain all mature trees, hedgerows, wall and boundaries where possible.
 - Make best use of architectural salvage and derelict building materials
32. This application seeks permission for a replacement dwelling in compliance with Policy CTY 3 of PPS21. As there are no distinguishable differences between the SPPS and PPS 21, the application falls to be assessed against prevailing planning policy.

Sustainable Development in the Countryside

33. PPS 21 – Sustainable Development in the Countryside sets out the planning policies for development in the countryside.
34. Policy CTY 1 - Development in the Countryside makes provision for a range of different types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
35. Policy CTY 1 also states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations, including those for drainage, access and road safety.

Replacement Dwellings

36. Policy CTY3 – Replacement Dwellings states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact.
37. For the purposes of this policy all references to ‘dwellings’ will include buildings previously used as dwellings. Buildings designed and used for agricultural purposes, such as sheds or stores, and buildings of a temporary construction will not however be eligible for replacement under this policy.
38. Policy directs that favourable consideration will however be given to the replacement of a redundant non-residential building with a single dwelling, where the redevelopment proposed would bring significant environmental benefits and provided the building is not listed or otherwise makes an important contribution to the heritage, appearance or character of the locality.
39. In cases where a dwelling has recently been destroyed, for example, through an accident or a fire, planning permission may be granted for a replacement dwelling. Evidence about the status and previous condition of the building and the cause and extent of the damage must be provided.
40. There are currently two stone buildings within the application site - one positioned in front of another. The building particular to this application is sited more central within the site. It is storey and a half in height.
41. A Griffiths report and statement was submitted in support of the application detailing the history of occupation of the building.
42. The record details that the site incorporates sites 29A & 29B with Thomas Wheeler and Francis Colburn as tenement occupiers and the buildings described as a house (29A) and herd’s house (29B).
43. A further supporting statement was provided on behalf of the agent. The statement details the history of the building, ownership, relevant planning policy and OS maps. The statement concluded the building to be replaced on site is a herd’s house.
44. Within the book titled ‘Richard Griffith and His Valuation of Ireland by James R. Reilly a herd house is defined as a building which is unlikely to be resided in often and used intermittently when required.
45. Within the Irish Genealogy Toolkit website a herd’s house is described as a shed or hut. It is also stated that that a herdsman house was not used as a full time dwelling but for the efficient running of a farm if and when required.
46. An analysis of the Council’s OS information and historical maps allows for the following timeline to be mapped.

- OSNI 6" County Series Edition 1 (1832 – 1846) - showing one single long rectangle building
 - OSNI 6" County Series Edition 4 (1905 – 1957) – shows the two outbuildings and the building in particular to this application is attached to a longer building outlined in white.
 - OSNI Irish Grid (1965 – 1996) – show the two outbuildings in situ.
47. Based on this analysis, it is considered that the building was connected to the main dwelling at one stage, and that the main dwelling was subsequently demolished.
48. This would appear to be confirmed on the maps as from 1957 onwards it is not present on the Irish Grid Map limited planning history on site (1965 – 1996).
49. Planning appeal decision 2019/A0254 considered the replacement of a building within the Newry Mourne and Down Area for a dwelling. In its report the Commissioner offers assistance in describing the features to look for to establish if the building has the essential characteristics of a dwelling: :
- Although there is no question that all of the external walls of the structure and its roof are substantially intact, the policy also requires buildings to exhibit the essential characteristics of a dwelling. The essential characteristics of a dwelling are not prescribed by the policy, however, it would not be unreasonable to expect to see a chimney, domestic scaled window and door openings, a chimney breast and some internal room divisions all of which would give a building the appearance of a dwelling.*
50. Whilst it is accepted that the building may have been used as a herds house in associated with a main dwelling house, looking in more detail at the building within the context of policy CTY 3, it is considered that it does not exhibit the essential characteristics of a dwelling.
51. The inside of the building is one room. It is not subdivided and is currently used for storage purposes. Whilst it has a partial low level first floor there is no evidence of a staircase to enable easy access to this level.
52. There is no evidence of a fireplace or chimney on the gable, there are no internal partition walls and no domestic fixtures or fittings.
53. The exterior elevation includes a doorway and window above, a second window in the front elevation and a blocked up opening in the gable elevation.
54. The size, and position of the openings, the general layout arrangement and layout of floors and the absence of any essential characteristics of a dwelling would indicate as per the Griffith Evaluation that this is not a dwelling that meets the requirement of policy CTY 3 for replacement. .

55. Policy CTY 3 also allows for favourable consideration be given to the replacement of a redundant non-residential building with a single dwelling, where the redevelopment proposed would bring significant environmental benefits and provided the building is not listed or otherwise makes an important contribution to the heritage, appearance or character of the locality.
56. Whilst it is considered the building is a non-residential building no evidence is provided to demonstrate how such a proposal would bring significant environmental benefits if it were to be replaced.
57. The building is not a significant feature in the landscape. There are no other amenity of other benefits that arise as a consequence of replacing this building

All Replacement Cases

58. Policy CTY 3 also states that proposals for a replacement dwelling will only be permitted where all [my emphasis] the following criteria are met:
 - The proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits;
59. In this case, the proposed building is to be replaced in situ. There are natural boundaries that enclose the site but no curtilage. This criteria is met. .
 - The overall size of the new dwelling should allow it to integrate into the surrounding landscape and would not have a visual impact significantly greater than the existing building
60. This is an application for outline planning permission and the size of the dwelling could be controlled by a condition and subject to further consideration in an application for approval of reserved matters. .
61. A modest sized dwelling could be designed and sited so as to integrate into the surrounding landscape without having a visual impact significantly greater than the existing building.
 - The design of the replacement dwelling should be of a high quality appropriate to its rural setting and have regard to local distinctiveness;
62. The applicant seeks outline permission and no design details are provided. The detailed design of the replacement dwelling would have to be in accordance with 'Building on Tradition' that is appropriate to the sites rural setting.
 - necessary services are available or can be provided without significant adverse impact on the environment or character of the locality; and

63. Detail submitted with the application demonstrates that all necessary services can be provided without significant adverse impact on the environment or character of the locality.
 - Access to the public road will not prejudice road safety or significantly inconvenience the flow of traffic.
64. DfI Roads have been consulted and a new access would be required to the site and offer no objections in principle subject to condition.
65. These criteria of the policy can be met but as the building does not exhibit the characteristics of a dwelling the policy test is not met.

Integration and Design of Buildings in the Countryside

Policy CTY 13 - Integration and Design of Buildings in the Countryside states that planning permission will be granted for a building in the countryside where it can be visual integrated into the surrounding landscape.

66. This policy states that a new building will be unacceptable where:
 - (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or
 - (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.
67. A replacement building will not be a prominent feature in the landscape as the site consists of long established natural boundaries including mature treeline and hedging and the development will not rely primarily on the use of new landscaping.
68. Ancillary works will integrate into the surrounding and can be accommodated the existing access will be utilized here.

Rural Character

69. Policy CTY 14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of the area.

70. Policy CTY14 states that a new building will be unacceptable where:
- (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
 - (c) it does not respect the traditional pattern of settlement exhibited in that area; or
 - (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
 - (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.
71. The proposal would not be considered to be a prominent feature in the landscape and would not result in a sub-urban style of build-up for the reasons outlined above. A dwelling could be designed and sited to respect the traditional settlement pattern in the area and any ancillary works should not have a negative impact on rural character.
72. The proposal would not add to or create a ribbon of development. The proposal would not have a negative impact on the rural character and complies with policy CTY 14.

Development relying on non-mains sewerage

73. Policy CTY 16 - Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.
74. Applicants will be required to submit sufficient information on the means of sewerage to allow a proper assessment of such proposals to be made at full or reserved matters stage. Both Environmental Health and NIEA - Water Management Unit have been consulted and they have raised no objections to the proposal.

Access, Movement and Parking

75. Planning Policy Statement 3 – Access, Movement and Parking sets out the policies for vehicular and pedestrian access. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
76. Policy AMP1 – Creating an Accessible Environment aims to create an accessible environment for everyone.

77. Policy AMP 2 – Access to Public Roads 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:
 - (a) Such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - (b) The proposal does not conflict with Policy AMP 3 – Access to Protected Routes.
78. Policy AMP 7 – Car Parking and Servicing Arrangements requires proposals to provide adequate provision for car parking and appropriate servicing arrangements.
79. The proposed access is through an existing laneway and there is ample space within the site for in curtilage parking.
80. DFI Roads have indicated they are content and it is therefore considered that the policy requirements associated with PPS 3 can be satisfied.

Planning and Flood Risk

81. PPS 15 – Planning and Flood Risk sets out policy to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications.
82. The site is not located within a flood plain or near a water course and there are no concerns with regards to potential flooding. The requirements of policies FLD 1 and 3 are met,
83. Water Management Unit has considered the impacts of the proposal on the surface water environment and in their response advised that they were content with the proposal subject condition.

Natural Heritage

84. PPS 2 - Natural Heritage makes provision for ensuring that development does not harm or have a negative impact on any natural heritage or conservation.
85. Policy NH 2 – Species Protected by Law covers both European Protected Species and nationally protected species. Policy states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species
86. Policy NH 5 – Habitats, Species of Features of Natural Heritage Importance states that a development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features, may only be permitted where the benefits of the proposed development outweigh the value

of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.

87. During the processing of the application the agent submitted a Bat Roost Potential Report June 2021 and a Biodiversity checklist in August 2021.
88. NED considered the contents of the report and commented that:

The application site is approximately 0.23 hectares and comprises a derelict stone building and a stone and sheet metal shed located centrally in an overgrown amenity garden which is bounded by hedgerows. The site includes a number of mature trees.

NED has concerns with the Bat Roost Potential Report submitted. Section 1.2 states that the proposal involves demolition, however elsewhere in the document the text contradicts this and states that the existing dwelling is to be retained. NED considers that retention of a derelict, two storey, stone building is unlikely to be feasible and may give rise to safety issues.

Therefore, NED considers that an appropriate bat survey should be carried out.

Section 2.4.2 states that all trees are to be retained, however, NED notes that vegetation along the roadside may require removal to facilitate construction of visibility splays; or to facilitate the alterations to the existing access referenced in the P1 form; or in the interest of safety considerations.

The precise location of the mature ash tree mentioned in the report has not been made clear other than that it is within this roadside boundary. As this tree has significant bat roost potential and arboricultural works and/or removal may be necessary to facilitate the proposal, an appropriate bat survey should be carried out.

89. In summary NED sought further clarification on the proposal and asked for a further bat survey to be completed. To date no further information has been submitted relating to bats.
90. As a result, the potential impacts (if any) of the development upon natural heritage features within the site cannot be fully assessed.
91. In the absence of this information in relation to protected species being provided, a precautionary approach is taken. It is considered that it has not been demonstrated that the proposed development will not have an adverse impact on protected species and natural heritage features and that the tests of policy NH 2 and NH 5 are not complied with for the reasons outlined above.

Planning, Archaeology and the Built Heritage

92. Paragraph 6.12 of the SPPS states that Listed Buildings of special architectural or historic interest are key elements of our built heritage and are often important for their intrinsic value and for their contribution to the character and quality of settlements and the countryside. It is important therefore that development proposals impacting upon such buildings and their settings are assessed, paying due regard to these considerations, as well as the rarity of the type of structure and any features of special architectural or historic interest which it possesses.
93. Paragraph 6.3 of the SPPS notes that the Planning system has a key role in the stewardship of our archaeological and built heritage. The aim of the SPPS in relation to Archaeology and the Built Heritage is to manage change in positive ways so as to safeguard that which society regards as significant whilst facilitating development that will contribute to the ongoing preservation, conservation and enhancement of these assets.
94. Planning Policy Statement 6 – Planning, Archaeology and the Built Heritage sets out the Department’s planning policies for the protection and conservation of archaeological remains and features of the built heritage.
95. Policy BH 2 - The Protection of Archaeological Remains of Local Importance states that proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings will only be permitted where it is considered that the importance of the proposed development or other material considerations outweigh the value of the remains in question.
96. The site is located with an archaeological site and monument buffer zone and Historic Environment Division were consulted in respect the proposal.
97. HED (Historic Monuments) replied stating they had assessed the application and on the basis of the information provided is content that the proposal is satisfactory to SPPS and PPS 6 archaeological policy requirements.
98. The proposal is considered to comply with policies set out in PPS 6.

Conclusions

99. The application is presented with a recommendation to refuse in that the proposal is contrary to the SPPS and Policy CTY 1 of PPS 21 in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
100. In addition the proposal is considered to be contrary to SPPS and Policy CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside,

in that there is no structure within the site that exhibits the essential characteristics of a dwelling.

101. Furthermore the proposal would, if permitted be contrary to the Policy CTY 3 of Planning Policy Statement 21: Sustainable Development in the Countryside in that it has not been demonstrated that the redevelopment proposed would bring significant environmental benefits.
102. Finally, the proposal is considered to be contrary to the SPPS and Policies NH2 and NH5 of Planning Policy Statement 2 - Natural Heritage as it has not been demonstrated that the proposed development will not have an adverse impact on protected species and natural heritage features.

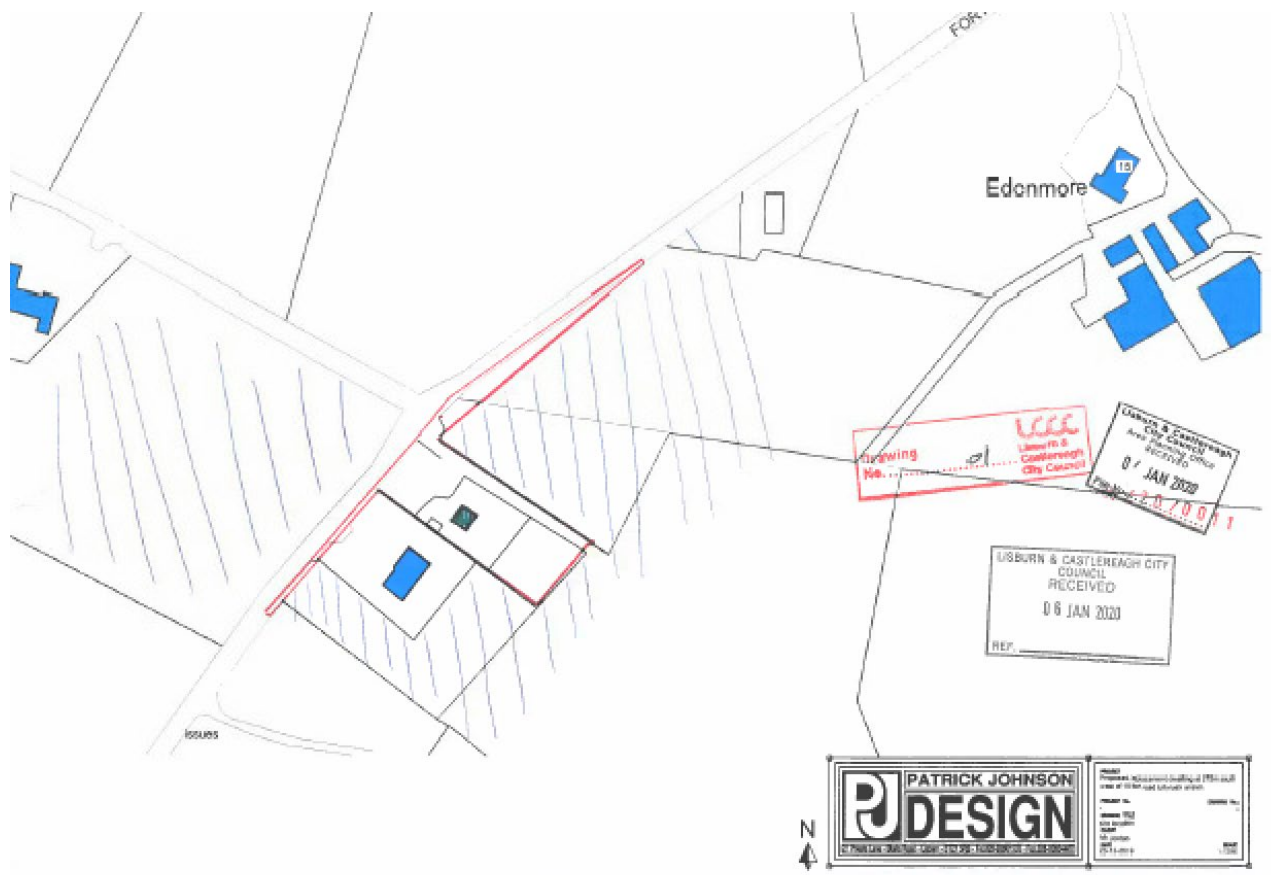
Recommendation

103. It is recommended that planning permission is refused.

Reasons

104. The following refusal reasons are recommended:
 1. The proposal is contrary to the Strategic Planning Policy Statement (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 Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that there is no structure within the site that exhibits the essential characteristics of a dwelling.
 3. The proposal is contrary to Policy CTY 3 of Planning Policy Statement 21: Sustainable Development in the Countryside in that it has not been demonstrated that the redevelopment proposed would bring significant environmental benefits.
 4. The development is contrary to the SPPS and Policies NH2 and NH5 of Planning Policy Statement 2 - Natural Heritage as it has not been demonstrated that the proposed development will not have an adverse impact on protected species and natural heritage features.

Site Location Plan – LA05/2020/0011/O



Lisburn & Castlereagh City Council

| | |
|---------------------------|---|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2021/0423/O |
| Date of Application | 18 April 2021 |
| District Electoral Area | Killultagh |
| Proposal Description | Proposed new dwelling and garage under Policy PPS 21 CTY10 |
| Location | Site 320 metres NW of 8 Clontarrif Road, Upper Ballinderry, Lisburn |
| Representations | None |
| Case Officer | Margaret Manley |
| Recommendation | Refusal |

Summary of Recommendation

1. This is a local application. The application is presented to the Planning Committee in accordance with the Protocol for the Operation of the Planning Committee as it has been Called In.
2. The above application is presented to the Planning Committee with a recommendation to refuse as it is considered the proposal is contrary to the SPPS and Policy CTY 1 of PPS 21 in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.
3. The proposal is also considered to be contrary to the SPPS and Policy CTY10 (a) of Planning Policy Statement 21, Sustainable Development in the Countryside in that it has not been demonstrated that the farm business is currently active.
4. The proposal is contrary to the SPPS and Policy CTY10 (c) of Planning Policy Statement 21, Sustainable Development in the Countryside in that the

proposed new building is not visually linked or sited to cluster with an established group of buildings on the farm access to the dwelling is not obtained from an existing lane and it does not merit being considered as an exceptional case.

Description of Site and Surroundings

- 5. The application site is approximately 1.8 hectares in size and is a rectangular L shaped plot cut out of a roadside field.
- 6. . A watercourse runs along the north boundary of site and the land adjacent to this is in agricultural use. The balance of the land and the southern section of the site is comprised of an area of broadleaf woodland (approximately 0.93Ha). The site boundaries include several mature trees and hedgerow.
- 7. The application site is located in the countryside approximately 0.7 Km west south west of the settlement of Upper Ballinderry. A dwelling at 1 Clontarriff Road is the closest occupied property.
- 8. The area surrounding is mainly rural in character and the land is mainly in agricultural use. .

Proposed Development

- 9. This application seeks outline planning permission for a dwelling and garage on a farm.

Relevant Planning History

- 10. There is no previous planning history associated with this site.

Consultations

- 11. The following consultations were carried out:

| Consultee | Response |
|------------------------------|---------------|
| Dfl Roads | No objections |
| NI Water | No objections |
| Environmental Health | No objections |
| NIEA - Water Management Unit | No objections |

| Consultee | Response |
|--------------------------------------|---|
| NIEA – Historic Environment Division | No objections |
| Rivers Agency | No objections |
| DAERA | The farm business ID identified on the Form P1C has been in existence for more than 6 years. However the business has not claimed Single Farm Payment (SFP), Less Favoured Area Compensatory Allowances (LFACA) or Agri Environment schemes since 2018. The application site is also not on land for which payments are currently being claimed by the farm business. |

Representations

12. No representations in opposition to the application have been received.

Consideration and Assessment

Local Development Plan

13. Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
14. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Area Plan (BMAP) 2015 had in its entirety not been lawfully adopted.
15. As a consequence of this decision, the Lisburn Area Plan (LAP) 2001 is now the statutory up to date LDP. Draft BMAP remains a material consideration.
16. The site lies within the open countryside within the Lisburn Area Plan 2001 and draft BMAP.

Regional Policy Considerations

17. The Strategic Planning Policy Statement (SPPS) published in September 2015 states that until the Council adopts the Plan Strategy for its new Local Development Plan there will be a transitional period in operation.
18. During this period, planning policy within existing retained documents and guidance will apply. Any conflict between the SPPS and policy retained under

transitional arrangements must be resolved in favour of the provisions of the SPPS.

19. Paragraph 3.8 of the SPPS states that planning authorities in determining planning applications should be guided by the principle that sustainable development should be permitted, having regard to the development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
20. In practice this means that development that accords with an up-to-date development plan should be approved and proposed development that conflicts with an up-to-date development plan should be refused, unless other material considerations indicate otherwise.
21. Paragraph 6.78 of the SPPS states that supplementary planning guidance contained within Building on Tradition a Sustainable Design Guide for the Northern Ireland Countryside must be taken into account in assessing all development proposals in the countryside.
22. Having considered the content of the SPPS against the retained policies as set out in Planning Policy Statement 21 Sustainable Development, no distinguishable differences are found that should be reconciled in favour of the SPPS.

Sustainable Development in the Countryside

23. PPS 21 – Sustainable Development in the Countryside sets out the planning policies for development in the countryside.
24. Policy CTY1 – Development in the Countryside sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
25. One of these types of development is a dwelling on a farm in accordance with Policy CTY10.

Dwelling on a Farm

26. Policy CTY 10 - Dwellings on farms states that planning permission will be granted for a dwelling on a farm where all of the following criteria can be met:
 - (a) the farm business is currently active and has been established for at least 6 years;
 - (b) no dwellings or development opportunities out-with settlement limits have been sold off from the farm holding within 10 years of the date of the application. This provision will only apply from 25 November 2008; and
 - (c) the new building is visually linked or sited to cluster with an established group of buildings on the farm and where practicable, access to the dwelling should be obtained from an existing lane

27. The policy also states that exceptionally, consideration may be given to an alternative site elsewhere on the farm, provided there are no other sites available at another group of buildings on the farm or out-farm, and where there are either:
 - demonstrable health and safety reasons; or
 - verifiable plans to expand the farm business at the existing building group(s)
28. The guidance at page 85 of the Building on Tradition document suggests that new dwellings on farms should be:
 - Sited as close as possible to the existing cluster;
 - Located so that it relates to existing established field boundaries;
 - Designed to respect and reinterpret traditional patterns of siting, scale, massing and form;
 - Link where possible to existing mature hedges and/or stands of mature trees.
29. The P1C form submitted with the planning application states the owner of the active farm business lives at 1 Clontarrif Road, Upper Ballinderry, Lisburn.
30. DAERA confirmed that the farm business ID identified on the P1c form was allocated on 19 January 1992 and the farm business ID falls under Category 1.
31. The farm business last claimed payments through the Basic Payment Scheme/Agri Environment Scheme in 2018. This was the only year the payments were made out of the last 6 year requisite period as stipulated in policy.
32. Furthermore, DAERA have confirmed that the application site is not located on lands for which payments are currently being claimed by the farm business.
33. The applicant was requested to provide additional information to prove active farming from 2018 to present. In email correspondence dated 21 August 2021, the applicant advised that since 2018 local farmers from Aghalee Road have been renting the land.
34. The correspondence states 'as they have been upgrading fences and hedges they have been claiming the business payment as each year we have transferred the entitlement as per DAERA protocol'.
35. Given that a third party has been renting the land, maintaining it in good agricultural condition and claiming the business payment since 2018 and DAERA have confirmed the farm business under which this application has been made has not claimed Single Farm payments since 2018 there is not enough evidence to prove active farming over the required period of 6 years.

36. As previously mentioned DAERA have also confirmed that the application site is not located on land for which payments are currently being claimed under the applicant's farm business identification number.
37. No other supplementary evidence is provided to demonstrate at least six years current activity on the farm and the applicant cannot rely on the land being taken in con-acre as evidence of activity. No business accounts are provided.
38. The proposal is therefore considered contrary to criteria (a) in that the applicant has failed to provide sufficient evidence to demonstrate the farm business is currently active and has been established for at least 6 years. This part of the policy test is not met.
39. With regard to criterion (b), a farm ownership map was submitted with the planning application to demonstrate the extent of the farm holding and the extent of the application site. A DAERA business map is not available as farm payments are not claimed.
40. That said, a planning history search against the farm ownership map provided demonstrates that no dwellings or development opportunities out-with settlement limits have been sold off from the farm within 10 years of the date of the application. The proposal is considered to comply with criteria (b).
41. In terms of criterion (c) the applicant has provided an indicative layout showing the proposed dwelling located in the northern section of the application site. The address of the applicant/owner of the active farm business is noted as 1 Clontarriff Road, Upper Ballinderry.
42. This dwelling and its associated outbuildings are located approximately 290 metres south of the proposed dwelling. The agent was given the opportunity to demonstrate what established group of buildings on the farm the proposed dwelling would be visually linked or sited to cluster with and no information was provided.
43. Given this separation distance it is considered that the proposed dwelling is not visually linked or sited to cluster with this group of buildings on the farm and that it is contrary to criteria (c).
44. Policy also directs that where practicable, access to the dwelling should be obtained from an existing lane.
45. There is no evidence of an established access apart from an agricultural access to the site. Instead the proposal seeks to create a new vehicular access to serve the dwelling at the proposed site.
46. No statement is provided to explain why it is not practicable to use an existing lane or to justify it being treated as an exception to the policy.
47. For the reasons outlined above, it is considered that the proposal fails to satisfy the policy tests associated with criteria (a) and (c).

Integration and Design

48. Policy CTY 13 - Integration and Design of Buildings in the Countryside states that planning permission will be granted for a building in the countryside where it can be visual integrated into the surrounding landscape.
49. Policy CTY 13 also states that a new building will be unacceptable where
 - (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or
 - (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or
 - (g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm
50. Paragraph 4.1.0 of Building on Tradition states that policies are structured to direct development to locate within existing small communities, at the edge of small settlements, within existing built clusters, adjacent to established farm groups or if a case can be made to depart from these, to fully integrate with the surrounding landscape.
51. With regard to criteria (a) – (d), the indicative site layout plan submitted in support of the application shows an indicative siting for a new dwelling and garage in the north section of the application site set back from the road by some 480 metres.
52. Given the set back from the road and the level of existing mature vegetation in the southern section of the site it is considered that a dwelling would not be a prominent feature in the landscape. Furthermore, it is considered that a significant amount of new landscaping is not required for integration.
53. In relation to criterion (e) this is an outline application and detailed drawings of the proposed house type are not required to be submitted. That said, a dwelling of appropriate design consistent with the broad design principles set out in Building on Tradition could be submitted at Reserved Matters stage.
54. With regard to criteria (g) and as demonstrated above with the context of policy CTY 10 (c), the applicant has not demonstrated how the proposed dwelling is visually linked or sited to cluster with an established group of buildings on a farm.

Rural Character

55. Policy CTY 14 – 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 the area.
56. The policy states that a new building will be unacceptable where
 - (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
 - (c) it does not respect the traditional pattern of settlement exhibited in that area; or
 - (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
 - (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.
57. Given the distance of set back from the road and the nature of the surrounding topography the proposed dwelling will not appear prominent in the local landscape.
58. Taking account of the separation distance from the nearest buildings the proposal will not read with other buildings to create a suburban style build-up of development or create a ribbon of development.
59. Within this context, it is considered the proposal will not have a detrimental impact on the character of this rural area and a refusal under this particular policy requirement could not be sustained.

Non Mains Sewerage

60. Policy CTY 16 - Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.
61. The P1 form indicates that foul sewage will be disposed of by way of septic tank.
62. Whilst NED recommend a change from a standard septic tank to installation of a package treatment plant, both Environmental Health, Water Management Unit and NI Water have considered the detail of the application and offer no object in relation to the potential for a pollution problem to arise.
63. Details of septic tank/biodisc and the area of subsoil irrigation must however be provided at reserved matters stage.

64. Based on the advice received, it is considered that the applicant has demonstrated that the proposal will not create or add to a pollution problem and therefore complies with policy CTY 16.

Access, Movement and Parking

65. PPS 3 – Access, Movement and Parking sets out policies to ensure that any new development does not create a traffic hazard.
66. Policy AMP 2 – Access to Public Roads 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:
- a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with Policy AMP 3 Access to Protected Routes.
67. The proposed dwelling involves the creation of a new access. The visibility splays required for this access are 2.4 metres x 45 metres in both directions and forward sight distance of 45 metres.
68. DfI Roads have considered the detail submitted with the application and no objections are offered.
69. Based on a review of the detail and advice from DfI Roads, it is considered that an access can be provided in accordance with policy AMP 2 without prejudice to road safety or inconveniencing the flow of traffic.

Planning and Flood Risk

70. Planning Policy Statement 15 – Planning and Flood Risk sets out planning policies to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications
71. Rivers Agency in a response received on 8 June 2021 requested a site location and layout map for the proposed dwelling and garage to ensure they could provide an accurate appraisal of this application in relation to flood risk and drainage.
72. A site layout plan showing an indicative location of the proposed dwelling and garage was submitted on 16 July 2021. In a response received on 04 October 2021, Rivers Agency advised that the development does not lie within the 1 in 100 year fluvial floodplain and as such, they would have no specific reason to object to the proposed development from a flood risk perspective.

73. In relation to Policy FLD2 - Protection of Flood Defence and Drainage Infrastructure Rivers Agency advised that in accordance with paragraph 6.32 of the Revised Policy PPS 15 FLD 2, it is essential that an adjacent working strip is retained to facilitate future maintenance by Dfl Rivers, other statutory undertaker or the riparian landowners.
74. Advice received is that a working strip should have a minimum width of 5 metres, but up to 10 metres where considered necessary, and be provided with clear access and egress at all times.
75. In relation to Policy FLD3 - Development and Surface Water Rivers Agency advise that a drainage assessment maybe required if the following thresholds have been exceeded:
 - It is a development comprising of 10 or more dwelling units
 - It is a development site in excess of 1 hectare
 - It is a change of use involving new buildings and or hard surfacing exceeding 1000 square metres
76. Rivers Agency advised that if the site exceeded any of the above thresholds as part of the proposed works then Dfl Rivers would require a Drainage Assessment to be submitted as part of a new consultation for our consideration.
77. An indicative layout showing the proposed level of hard surfacing was submitted by the Agent. Based on this submission, it is considered that the level of hard surfacing will not exceed 1000m². That said, it is recommended that a condition is associated with the outline permission to advise that a Drainage Assessment shall be submitted at reserved matters stage in the event hard surfacing greater than 1000m².
78. Rivers Agency have advised Policy FLD4 - Artificial Modification of watercourses is not applicable in this case.
79. In relation to Policy FLD5 - Development in Proximity to Reservoirs- Dfl Rivers reservoir inundation maps indicate that this site is not in a potential area of inundation emanating from a reservoir.
80. Based on a review of the information and advice from Rivers Agency, it is contended that the proposed development complies with the policies FLD 1 and 3 of PSS 15.

Archaeology and the Built Heritage

81. Paragraph 6.12 of the SPPS states that Listed Buildings of special architectural or historic interest are key elements of our built heritage and are often important for their intrinsic value and for their contribution to the character and quality of settlements and the countryside. It is important therefore that development proposals impacting upon such buildings and their settings are assessed,

- paying due regard to these considerations, as well as the rarity of the type of structure and any features of special architectural or historic interest which it possesses.
82. Paragraph 6.3 of the SPPS notes that the Planning system has a key role in the stewardship of our archaeological and built heritage. The aim of the SPPS in relation to Archaeology and the Built Heritage is to manage change in positive ways so as to safeguard that which society regards as significant whilst facilitating development that will contribute to the ongoing preservation, conservation and enhancement of these assets.
 83. Planning Policy Statement (PPS) 6 - Planning, Archaeology and the Built Heritage sets out planning policies for the protection and conservation of archaeological remains and features of the built heritage and advises on the treatment of these issues in development plans.
 84. As stated previously, the site lies in close proximity to 1 Clontarriff Road (Clontarriff House) which is a Grade B1 listed building which is of architectural and historic importance and is protected by Section 80 of the Planning Act (NI) 2011.
 85. Policy BH11 of PPS6 - Development affecting the Setting of a Listed Building states that the Department will not normally permit development which would adversely affect the setting of a listed building. Development proposals will normally only be considered appropriate where all the following criteria are met:
 - (a) the detailed design respects the listed building in terms of scale, height, massing and alignment;
 - (b) the works proposed make use of traditional or sympathetic building materials and techniques which respect those found on the building; and
 - (c) the nature of the use proposed respects the character of the setting of the building.
 86. Historic Environment Division in a response received on 8 July 2021 advised that they were content that the proposal satisfies the policy requirements of SPPS 6.12 and BH11 PPS6, subject to conditions in relation to the ridge height of any proposed building and retention of existing vegetation.
 87. The reason for this condition was to ensure that proposal would not impact on the character and setting of the listed building, ensuring the proposal does not become prominent and a competing focus and to respect the traditional building materials and techniques found on these buildings.
 88. Based on the information provided and the advice received, it is accepted that a building could be designed so as not to adversely affect the setting of the adjacent listed building. It is therefore evident that the proposal complies with the requirements of policy BH11 of PPS 6.

Natural Heritage

89. Paragraph 6.169 of the SPPS states that the diversity of Northern Ireland's habitats, species, landscapes and earth science features (i.e natural heritage) is an important and highly valued asset of our society. Our natural heritage provides a wide range of opportunities for enjoyment, recreation and sustainable economic activity. The conservation, enhancement and restoration of the abundance, quality, diversity, and distinctiveness of the region's natural heritage are also fundamental to the overall health and well-being of our society.
90. Planning Policy Statement 2 – Natural Heritage, sets out the 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.
91. Policy NH 1 – European and Ramsar Sites states that Planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on:
 - a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
 - a listed or proposed Ramsar Site.
92. The policy directs that where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the planning authority shall make an appropriate assessment of the implications for the site in view of the site's conservation objectives.
93. Appropriate mitigation measures in the form of planning conditions may be imposed. In light of the conclusions of the assessment, the Department shall agree to the development only after having ascertained that it will not adversely affect the integrity of the site.
94. In exceptional circumstances, a development proposal which could adversely affect the integrity of a European or Ramsar Site may only be permitted where:
 - there are no alternative solutions; and
 - the proposed development is required for imperative reasons of overriding public interest; and
 - compensatory measures are agreed and fully secured.
95. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:
 - priority habitats;

- priority species;
 - active peatland;
 - ancient and long-established woodland;
 - features of earth science conservation importance;
 - features of the landscape which are of major importance for wild flora and fauna;
 - rare or threatened native species;
 - wetlands (includes river corridors); or
 - other natural heritage features worthy of protection.
47. The policy directs that a development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.
96. A biodiversity checklist and Preliminary Ecological Appraisal [PEA] was submitted in support of the application on 13 September 2021.
97. The PEA provides an assessment of the site and habitats, protected species, designated sites and potential impacts of the development and mitigation.
98. The Assessment concludes that it is highly unlikely that the development would have a negative impact on badgers, bats, priority habitats, or on designated sites as long as suitable mitigation is put in place.
99. Within this context, the assessment notes that the footprint of the dwelling and garage will be entirely within the improved and species poor pasture field and that the arrangement and ultimate location of the proposed buildings, and controls of sewage and foul water from the property must be designed in such a way as to meet sufficient standards to eliminate risk of pollution of the river from the site.
100. The assessment also recommends that a construction management plan is drawn up to ensure that construction techniques and methods do not give rise to pollution of the river through spillages of sediment, toxic materials, cement and fuels during construction.
101. In relation to the active badger setts on the boundary of the development site, the PEA recommends that a buffer zone of 25 metres be put in place using high visibility fencing for the duration of building work, with no personnel, equipment or materials be permitted. The footprint of the dwelling and garage must be outside his zone and any fencing around the property should be designed to allow badgers to pass unimpeded.
102. The PEA noted that the site was likely to have high potential for foraging bats due to the presence of the river, extensive areas of broadleaved plantation woodland and scattered mature trees and field boundaries. That said, the absence of trees within the site for roosting bats meant that the development

would have no impact. Mature trees along the site access were considered to have low potential for roosting bats during summer months and as such, it was recommended that trimming or felling of such trees must be carried out during the period October – March inclusive to avoid any disturbance to bats.

103. Natural Environment Division were consulted as part of the processing of the application. A response received on 01 October 2021 advised the proposal is subject to the Conservation (Natural Habitats, etc) Regulations (Northern Ireland) 1995 (as amended) (known as the Habitats Regulations). The application site is hydrologically connected to Lough Neagh Area of Special Scientific Interest (ASSI) and Lough Neagh and Lough Beg Special Protection Area (SPA) and Ramsar areas.
104. It also advised that the application site may contain badgers and nesting birds, protected by the Wildlife (Northern Ireland) Order 1985 (as amended) (known as the Wildlife Order).
105. The response advised that NED had considered the impacts of the proposal on designated sites and other natural heritage interests. In summary, the advice received provided the following comment by way of recommendations:
 - The access lane proposed is shown to be constructed through the plantation woodland, necessitating the removal of a number of trees. As these are part of an established woodland, appropriate compensatory planting would be required to mitigate against this habitat loss;
 - The indicative dwelling and garage is shown to be approximately 10 metres from the watercourse. NED welcomes a change in the proposal from a standard septic tank to the installation of a Package Treatment Plant as these produce a higher quality effluent;
 - Accept that the development is unlikely to have a significant effect on downstream designated sites providing an appropriate buffer of at least 10 metres is maintained between all construction works and/or contamination sources and the watercourse.
Site vegetation clearance works should not be undertaken during the bird breeding season unless an appropriate survey has been carried out.
106. Based on a review of the detail and advice received, it is contended that with appropriate mitigation as outlined, proposal would comply with key policy tests associated with PPS 2.

Conclusions

107. The application is presented with a recommendation to refuse as it is considered the proposal is contrary to the SPPS and Policy CTY 1 of PPS 21 in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.

108. The proposal is also considered to be contrary to the SPPS and Policy CTY10 (a) of Planning Policy Statement 21, Sustainable Development in the Countryside in that it has not been demonstrated that the farm business is currently active.
109. The proposal is contrary to the SPPS and Policy CTY10 (c) of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposed new building is not visually linked or sited to cluster with an established group of buildings on the farm access to the dwelling is not obtained from an existing lane and it does not merit being considered as an exceptional case

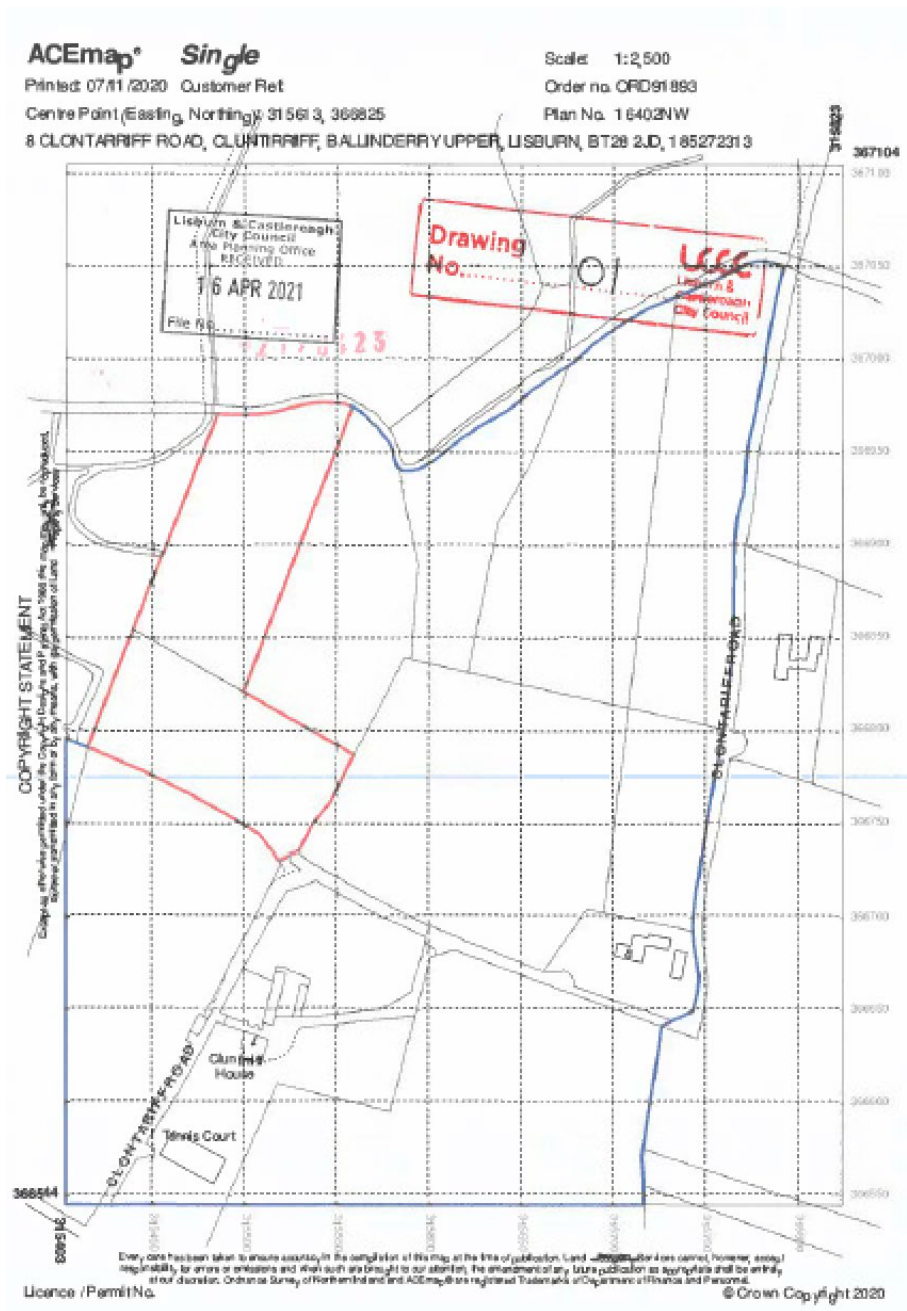
Recommendation

100. It is recommended that planning permission is refused.

Reasons

101. The following refusal reasons are recommended:
- 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.
 - The proposal is contrary to the SPPS and Policy CTY10 (a) of Planning Policy Statement 21, Sustainable Development in the Countryside in that it has not been demonstrated that the farm business is currently active. The proposed site is located on land associated with another farm business.
 - The proposal is contrary to the SPPS and Policy CTY10 (c) of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposed new building is not visually linked or sited to cluster with an established group of buildings on the farm access to the dwelling is not obtained from an existing lane and it does not merit being considered as an exceptional case

Site Location Plan – LA05/2021/0423/O



Lisburn & Castlereagh City Council

| | |
|---------------------------|--|
| Council/Committee | Planning Committee |
| Date of Committee Meeting | 07 March 2022 |
| Committee Interest | Local Application (Called In) |
| Application Reference | LA05/2018/0862/F |
| Date of Application | 15 August 2018 |
| District Electoral Area | Downshire East |
| Proposal Description | Proposed infill site for 2 dwellings with detached garages |
| Location | Between 26 & 30 Magheraconluce Road, Hillsborough |
| Representations | Eleven |
| Recommendation | APPROVAL |

Summary of Recommendation

1. This application is categorised as a local application. It is presented to the Committee for determination in accordance with the Protocol for the Operation in that it has been Called In.
2. The application is presented to the Planning Committee with a recommendation to approve as the proposal is considered to comply with the SPPS, Policy CTY 1 and Policy CTY 8 of PPS 21 in that there is a gap within an otherwise substantial and continuously built up frontage that can accommodate two dwellings with associated garages.
3. In addition, it is considered that the proposal will also comply with the SPPS and Policy CTY 13 and 14 of PPS 21 in that the development can be visually integrated into the surrounding landscape and it will not cause detrimental change to or further erode the rural character of the area.

Description of Site and Surroundings

4. The site is located to the western side of the Magheraconluce Road, Hillsborough and is a rectangular plot cut out of a larger agricultural field.

5. The land rises quite steeply towards the west and is bound by hedging to the north and east, post and wire fencing to the south. The remaining boundary to the west is undefined.
6. The site is situated between 26 and 30 Magheraconluce Road. The property at 26 is a single storey dwelling with a detached garage and 30 is a single storey dwelling with integral garage.
7. The surrounding area is rural in character and the lands mainly in agricultural use. There is evidence of a build-up of residential development along the road frontage with the majority of the surrounding dwellings either side of the site and in the immediate surrounding area all being single storey.

Proposed Development

8. This is a full application for proposed infill site for two dwellings with detached garages.

Relevant Planning History

9. The planning history associated with this site is set out in the table below:

| Application Reference | Site Address | Proposal | Decision |
|-----------------------|---------------------------------------|--|----------------------------------|
| S/1987/1178 | Adjacent to 30 Magheraconluce Road | Dwelling | Application Withdrawn |
| S/1988/1456 | Adjacent to 30 Magheraconluce Road | Dwelling and garage | Application Withdrawn |
| LA05/2016/1080/O | Between 26 and 30 Magheraconluce Road | Proposed site for 2 infill dwelling under PPS 21 | Permission Granted 08/03/2017 |

Consultations

10. The following consultations were carried out:

| Consultee | Response |
|----------------------|--------------|
| DfI Roads | No Objection |
| Environmental Health | No Objection |

| Consultee | Response |
|-------------------------------|----------------------------|
| Water Management Unit | Refers to standing advice. |
| NI Water | No Objection |
| Historic Environment Division | No Objection |

Representations

11. Letters of objection have been submitted in respect of the proposal. The following issues have been raised (summarised):
- Planning permission was refused previously
 - The proposal is not an infill
 - Precedence
 - Previous ridge height restriction
 - Prominence
 - Traffic impact and road safety
 - Consultation on the application
 - Accuracy of the plans
 - Land ownership issues and implementation

Consideration and Assessment

Environmental Impact Assessment

12. The application is for two residential dwellings in the countryside. Whilst the site area exceeds 0.5 hectares [0.53], an application of this nature does not fall within any of the descriptions of development set out in Schedule 2 of the EIA regulations 2017 and as such, a determination is not required.

Planning History

13. As demonstrated above, the principle of an infill dwelling at this location was conceded with the granting of planning permission within the context of planning application LA05/2016/1080/O.
14. This decision is not the subject to any judicial review proceedings and the time for challenge is expired.
15. Whilst the period for submission of an application for approval of reserved matters is time expired if a full application was submitted complying with all the

planning conditions before March 2022 the Council would attach significant weight to the outline permission.

16. The only condition not complied with in this application (when first submitted) was the ridge height restriction. As the principle for two dwellings is previously conceded and there is an extant planning permission significant weight is attached to the planning history. Policy in relation to ribbon development is not changed in the intervening period and this is discussed in the next section of the report.

Local Development Plan

17. Section 6(4) of the Planning Act (NI) 2011 requires that in making a determination on planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
18. On 18 May 2017, the Court of Appeal ruled that the purportedly adopted Belfast Metropolitan Plan 2015 had in its entirety, not been lawfully adopted.
19. As a consequence of this decision, the Lisburn Area Plan is the statutory development plan however the draft Belfast Metropolitan Plan 2015 remains a material consideration.
20. In both plans, the application site is identified in the open countryside beyond any defined settlement limit and as there is no distinguishable difference in the local plan context, significant weight is attached to draft BMAP and its draft policies which direct the assessment to be carried out in accordance with prevailing regional policy.

Regional Policy Considerations

21. The Strategic Planning Policy Statement (SPPS) published in September 2017 states that until the Council adopts the plan strategy for its new Local Development Plan there will be a transition period in operation. During this period, planning policy within existing and retained documents and guidance will apply. Any conflict between the SPPS and policy retained under transitional arrangements must be resolved in favour of the provisions of the SPPS.
22. The SPPS states that planning authorities should be guided by the principle that sustainable development should be permitted, having regard to the local development plan and all other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance.
23. Paragraph 6.65 states that 'the aim of the SPPS with regard to the countryside is to manage development in a manner which strikes a balance between

protection of the environment from inappropriate development, while supporting and sustaining rural communities consistent with the RDS’.

24. Paragraph 6.70 also states that ‘all development in the countryside must integrate into its setting, respect the character, and be appropriately designed.
25. Paragraph 6.78 of the SPPS states that “Supplementary planning guidance contained within ‘Building on Tradition’: A Sustainable Design Guide for the Northern Ireland Countryside’ must be taken into account in assessing all development proposals in the countryside.”
26. In terms of infill/ribbon development the SPPS states that; provision should be made for the development of a small gap site in an otherwise substantial and continuously built up frontage and that Planning permission will be refused for a building which creates or adds to a ribbon of development.
27. The SPPS notes that supplementary planning guidance contained within Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside must be taken into account in assessing all development proposals in the countryside.
28. No conflict arises between the provisions of the Strategic Planning Policy Statement (2015) and the retained policy – Planning Policy Statement 21: Sustainable Development in the Countryside. Consequently, PPS 21 provides the relevant Planning policy context in this instance.

Sustainable Development in the Countryside

29. PPS 21 – Sustainable Development in the Countryside sets out the planning policies for development in the countryside.
30. Policy CTY 1 - Development in the Countryside makes provision for a range of different types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
31. Policy CTY 1 also states that all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations, including those for drainage, access and road safety.
32. The application is for an infill dwelling and as such, it falls to be assessed against Policy CTY 8.

Ribbon Development

33. Policy CTY 8 - Ribbon Development states that planning permission will be refused for a building which creates or adds to a ribbon of development.
34. The policy also advise that an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.
35. For the purposes of this policy the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
36. A building is defined in statute to include a structure or erection, and any part of a building as so defined.
37. The justification and amplification to the policy explains that ribbon development is detrimental to the character, appearance and amenity of the countryside. It creates and reinforces a built-up appearance to roads, footpaths and private laneways and can sterilise back-land, often hampering the planned expansion of settlements. It can also make access to farmland difficult and cause road safety problems. Ribbon development has consistently been opposed and will continue to be unacceptable.
38. Paragraph 5.33 advises that for the purposes of this policy a road frontage includes a footpath or private lane. A ribbon does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or they are visually linked.
39. Many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. In considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated.
40. It is clear that applicants must take full account of the existing pattern of development and can produce a design solution to integrate the new buildings.
41. Paragraph 4.4.1 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside outlines that policy CTY 8 Ribbon development sets out the circumstances under which a small gap site can, in certain

circumstances, be developed to accommodate a maximum of two houses, within an otherwise substantial and continuous built up frontage.

42. The guidance recommends the following:
 - a. It is not acceptable to extend the extremities of a ribbon by creating new sites at each end.
 - b. Where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill.
 - c. When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.
 - d. A gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon.
43. Paragraph 4.5.1 of Building on Tradition; A Sustainable Design Guide for the Northern Ireland Countryside states that gap sites within a continuous built up frontage exceeding the local average plot width may be considered to constitute an important visual break. It goes on to state that sites may also be considered to constitute an important visual break depending on local circumstances. For example, if the gap frames a viewpoint or provides an important setting for the amenity and character of the established dwellings.
44. The initial step in determining whether an infill opportunity exists is to identify a line of three or more buildings in an otherwise substantial and continuously built up frontage.
45. A building has a frontage to a road/laneway if the plot on which it occupies abuts or shares a boundary with the road/laneway.
46. The application site lies between properties 26 and 30 Magheraconluce Road. As explained above, number 26 consists of a single storey dwelling and garage and the property at 30 Magheraconluce Road consists of a single storey dwelling with integral garage. The line of three buildings are comprised of the two dwellings and the detached garage all which have a frontage to the Magheraconluce Road.
47. This is consistent with assessment in the earlier outline application, in which the site was considered to lie within an otherwise substantial and continuously built up frontage comprised of the same three buildings with a frontage to the road without any accompanying development to the rear.
48. In terms of the second part of the policy test, there is a need to demonstrate that the proposed development respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements
49. In this case, the application site frontage is approximately 90 metres wide. The adjoining plot widths either side are measured as approximately 48 metres and 65 metres with 29 and 31 opposite [whilst not part of the substantial and

continuously built up frontage] measuring 44 metres and 50 metres respectively.

50. The proposed plot widths would be similar to those opposite the site and it is therefore considered that the gap is small enough to accommodate up to a maximum of two dwellings.
51. As the size of the gap/frontage does not exceed the average plot size and given the fact that the gap is not considered to frame a viewpoint or provide an important setting for the amenity and character of the established dwellings and the site is not considered to be an important visual break.
52. In terms of plot sizes, an amended site layout plan demonstrates a layout consistent with an earlier outline approval [LA05/2016/1080/F] whereby the plot sizes are broadly comparable with adjacent sites.
53. The plot sizes associated with number 26 Magherconluce Road and 30 Magherconluce Road are approximately 3264 metres squared and 2762 metres squared respectively. The application site is approximately 4888 metres squared which indicates an average plot size of 2444 metres squared per plot. Whilst slightly smaller in size they are not significantly different in terms of frontage width and depth and the general layout and arrangement of the buildings is broadly consistent with the established patter of development.
54. Based on the assessment of frontages and plot sizes, it is considered that the proposal meets the policy tests in that it is the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale and siting. .

Integration and Design

55. Policy CTY 13 - Integration and Design states that planning permission will be granted for a building in the countryside where is can be visually integrated into the surrounding landscape.
56. The policy directs that a new building will be unacceptable where:
 - (a) it is a prominent feature in the landscape; or
 - (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or
 - (c) it relies primarily on the use of new landscaping for integration; or
 - (d) ancillary works do not integrate with their surroundings; or
 - (e) the design of the building is inappropriate for the site and its locality; or
 - (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop; or

(g) in the case of a proposed dwelling on a farm (see Policy CTY 10) it is not visually linked or sited to cluster with an established group of buildings on a farm.

57. Paragraph 4.1.0 of Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside states that a core requirement of much of the development covered by PPS 21 is that it is integrated within (and in particular instances Visually linked to) the countryside and/or other established buildings.

It is recognised that the site levels rise steeply from the road to the rear of the site and that there is a difference in height from the road level to the rear of the site of approximately 12 metres.

58. Amended plans received during the processing of the application demonstrate better how the proposed development makes the best use of the site and how it minimises the amount of cut and fill to allow the proposed dwellings to respect the existing contours and pattern of development along this section of the Magheraconluce Road consistent with guidance outlined at paragraph 4.2.1 of Building on Tradition.
59. The single storey dwellings are positioned to be in line with the adjacent dwellings and should blend unobtrusively into the landscape. The rising land to the rear provides enclosure and a backdrop.
60. The design is considered to be simple in nature with small front and rear porch element and a side projection. The windows are vertical in emphasis and the chimneys are on the ridge. There is an appropriate solid to void ratio.
61. The proposed external material finishes are as follows: Roof to be blue/black flat profile concrete tiles/natural slate; the walls are to be grey render and dark grey natural stone to the front porch and side projection; windows to be white upvc double glazed; fascia and bargeboard to be white upvc and rainwater goods to be black aluminium.
62. These finishes are considered to be acceptable for the site and location and will not impact on the overall character of the area.
63. A two metre high retaining wall comprised of buff interlocking block will extend along the back of each site with the bank sloped beyond at a gradient 1:2.
64. A double garage is also proposed to each site positioned to the rear corner. It measures 8.1 metres by 6.6 metres and has a proposed ridge height of 5.5 metres above the finished floor level. The material finishes are to match that of the dwelling houses and are considered acceptable.
65. It is considered that the design of the proposed dwellings and their orientation within the site adhere to the principles outlined in Building on Tradition and that they are acceptable for the site and its location.

66. Retaining existing vegetation as shown and the proposed landscaping will also help aid with the proposals integration without reliance on new landscaping for integration purposes.
67. It is considered that the proposal complies with the requirements of policy CTY 13.

Rural Character

68. Policy CTY14 - Rural Character states planning permission will be granted for a building in the countryside where it does not cause detrimental change to or further erode the rural character of the area.
69. The policy advises that a new building will be unacceptable where:
 - (a) it is unduly prominent in the landscape; or
 - (b) it results in a suburban style build-up of development when viewed with existing and approved buildings; or
 - (c) it does not respect the traditional pattern of settlement exhibited in that area; or
 - (d) it creates or adds to a ribbon of development (see Policy CTY 8); or
 - (e) the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character.
70. Paragraph 5.80 of the Justification and Amplification text of Policy CTY 14 states that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside.
71. The proposed development is considered to meets the exception test set out in policy CTY 8 for the reasons outlined above and as such it is considered that it would not create or add to a ribbon of development or create a sub-urban style of build-up.
72. Given the single storey nature of the buildings and the existing vegetation the proposal would not be prominent in the landscape and that the ancillary works associated with the access arrangements would not damage rural character.
73. It is considered that the proposal meets the requirements of policy CTY 14 and would not have a detrimental impact on the rural character of the area.

Development Relying on Non-Mains Sewerage

74. Policy CTY 16 - Development Relying on Non-Mains Sewerage states that Planning Permission will only be granted for development relying on non-mains sewerage, where the applicant can demonstrate that this will not create or add to a pollution problem.

75. Detail submitted with the application indicates that surface water will be disposed of via soakaways and that foul sewage will be disposed of via septic tank both of which are located to the front of the site.
76. Both Environmental Health and NI Water have considered the detail of the application and offer no objections.
77. Based on the detail and the advice received, it is considered that the applicant has demonstrated that the proposal will not create or add to a pollution problem.

Access, Movement and Parking

78. PPS 3 - Access, Movement and Parking and PPS 3 (Clarification), set out the policies for vehicular access and pedestrian access, transport assessments, the protection of transport routes and parking. It forms an important element in the integration of transport and land use planning and it embodies the Government's commitment to the provision of a modern, safe, sustainable transport system.
79. Policy AMP 2 - Access to Public Roads 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:
 - a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and
 - b) the proposal does not conflict with policy AMP 3 Access to Protected Routes.
80. Detail associated with the application indicates that access arrangements for the development will involve construction of a double access point from the Magheraconluce Road positioned towards the northern end of the frontage of the site. Entrance pillars are simple in design with a render finish to match the proposed dwellings.
81. DfI Roads had initially raised concerns that forward sight distances had not been indicated on the plan and that a proper ordnance survey of the road specifically in the vertical plane was required to demonstrate that all visibility lines could be achieved. A clear fully dimensioned engineering drawing showing the access, driveways and parking details along with access width dimensions was also required.
82. A number of amendments were submitted during the processing of the application. Plans received in April 2021 included the relocation of the access points and provision of visibility splays of 2.4 metres by 87 metres to the southern side and 3.4 metres by 90 metres to the northern side are now proposed.

83. DfI Roads having assessed the detail of the most recent amendments confirmed in a response dated 14 June 2021 that they have no objection to the amended proposal or plans subject to standard conditions aimed at ensuring that there is a satisfactory means of access in the interest of road safety and the convenience of road users.
84. Based on a review of the detail and advice from DfI Roads, it is considered that the application is in accordance with the requirements of policy AMP 2 of PPS3 and that the proposed access will not prejudice road safety or significantly inconvenience the flow of traffic.

Natural Heritage

85. PPS 2 Natural Heritage makes provision for ensuring that development does not harm or have a negative impact on any natural heritage or conservation.
86. Policy NH 1 – European and Ramsar Sites states that Planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on:
 - a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance); or
 - a listed or proposed Ramsar Site.
87. The policy directs that where a development proposal is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the planning authority shall make an appropriate assessment of the implications for the site in view of the site's conservation objectives.
88. Appropriate mitigation measures in the form of planning conditions may be imposed. In light of the conclusions of the assessment, the Department shall agree to the development only after having ascertained that it will not adversely affect the integrity of the site.
89. In exceptional circumstances, a development proposal which could adversely affect the integrity of a European or Ramsar Site may only be permitted where:
 - there are no alternative solutions; and
 - the proposed development is required for imperative reasons of overriding public interest; and
 - compensatory measures are agreed and fully secured.
90. Policy NH5 - Habitats, Species or Features of Natural Heritage Importance states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known:
 - priority habitats;
 - priority species;

- active peatland;
 - ancient and long-established woodland;
 - features of earth science conservation importance;
 - features of the landscape which are of major importance for wild flora and fauna;
 - rare or threatened native species;
 - wetlands (includes river corridors); or
 - other natural heritage features worthy of protection.
47. The policy directs that a development proposal which is likely to result in an unacceptable adverse impact on, or damage to, habitats, species or features may only be permitted where the benefits of the proposed development outweigh the value of the habitat, species or feature. In such cases, appropriate mitigation and/or compensatory measures will be required.
91. There are no works on site that would lead to concerns over the impact of the proposal on any natural heritage and a biodiversity check list was not considered necessary.
92. To accommodate the proposal a small amount of vegetation needs to be removed to provide for a safe access and visibility to the northern side of the site. The existing verge planting to the southern side of the site is to be reduced in level as necessary to provide sight line and forward distance sightline as shown on related drawing.
93. Additional planting is also proposed to all undefined boundaries to include structure planting, shrub planting, new hedgerows, grass seeding in accordance with the landscape specification notes.
94. It is considered that the proposal would not have a negative impact on any natural heritage and complies with policy NH 5 of PPS 2.

Archaeology and Built Heritage

95. PPS 6 – Planning, Archaeology and the Built Heritage makes provision for the protection of our archaeology and built heritage.
96. Policy BH 2 - The Protection of Archaeological Remains of Local Importance and their Setting states that development proposals which would adversely affect archaeological sites or monuments which are of local importance or their settings will only be permitted where the Department considers the importance of the proposed development or other material considerations outweigh the value of the remains in question.
97. The application site is within a buffer zone surrounding an archaeological site and monument – DOW021:025 (Enclosure).

98. Historic Environment Division have been consulted and advice received confirms that on the basis of the information provided is content that the proposal does not impact on an archaeological remains in or adjacent to the site and the requirements of the SPPS and PPS 6 are met.
99. It is considered that the proposal would not have a negative impact on any archaeology or built heritage. No conditions were recommended.

Planning and Flood Risk

100. PPS 15 - Planning and Flood Risk sets out policy to minimise and manage flood risk to people, property and the environment. The susceptibility of all land to flooding is a material consideration in the determination of planning applications.
101. From the site inspection it can be seen that there are no watercourse within or adjacent to the application site. A review of the Rivers Agency flood maps also confirms that the application site is not located within a flood plain or near a watercourse.
102. The submission of a drainage assessment is not required for this proposal.
103. It is therefore considered that the proposal would not cause any concerns with regards to flooding and it is considered that it complies with policies FLD1 and 4 of PPS 15.

Consideration of Representations

104. The issues raised by way of third party representation are considered below:

Planning permission was refused previously

105. The view is expressed that the planning permission was previously refused in 1987/88.
106. The planning history is an important material consideration in the assessment of this application. An outline approval issued in 2017 accepted the principle of two infill dwellings at this location.

The proposal is not infill

107. The view is expressed that the proposal is not an infill. As explained above, the proposal has been assessed against Planning Policy Statement 21 Sustainable Development in the Countryside.

108. Taking into account the planning history and assessment as referred to above, it is considered that the proposal complies with the exception as set out in policy CTY 8 Ribbon Development and is considered to be an infill site.

Precedence

109. Concern is expressed that the proposal could set a precedent for more development under policy CTY 8. Each application submitted to the Council for consideration is assessed on its own merits.

Previous ridge height restriction

110. The view is expressed that the surrounding dwellings are all single storey and the applicant is proposing a split level dwelling. The outline permission approved has a ridge height restriction of 6.0m above the finished floor level.
111. As explained above, the design of the proposed dwellings have been amended. The proposed dwellings are single storey and have a proposed ridge height of 6.4 metres above the finished floor level. The design of the proposal is considered to be acceptable for the site and its location.

Prominence

112. Concern has been raised about prominence. Through the processing of the application the design of the proposal has been amended. Given that the proposal will have a ridge height of 6.4 metres, and the existing and proposed vegetation, it is considered that the amended scheme would not be prominent in the landscape.

Traffic impact and road safety

113. Concerns are expressed about traffic impact and road safety. The view is expressed that the required visibility splays cannot be achieved and a fully dimensioned engineering drawing clearly showing visibility splays and forward sight lines properly dimensioned and accurate as required by DfI Roads has not been provided, as it is clearly obvious that these are unattainable.
114. Concerns are expressed that two more dwellings would be added to a very dangerous stretch of road and about the possible accident potential. Through the processing of the application amended plans have been received to address concerns raised by DfI Roads and they now have no objection to the latest plans.

Consultation on the application

115. The view is expressed that the consultation dates are excessively short. Representation can be made to a planning application up until a decision is has been issued by the Council.

Accuracy of the plans

116. The view is expressed that the site location plan outlined in red (13.6.19) varies greatly from that originally submitted to council (16.8.18) and appears to include land not currently owned by the applicant.
117. The red line of an application can be extended for access purposes as was the case in this instance. Planning permission does not confer title and land ownership is a legal matter.

Land ownership issues and implementation

118. The view is expressed that where the applicant proposed to remove hedging and erect post and wire fencing on the field site is not owned by the applicant and asks if it can be ascertained that
1. Permission will be granted for these changes to take place.
 2. That these changes will actually be carried out.
 3. That these changes of carried out will improve the safety or reduce potential for traffic accidents.
119. The onus is on the applicant/developer to ensure that he has ownership/control of all lands necessary to implement a planning approval. If a planning approval is not implemented in accordance with the approved plans, the Councils enforcement team can take action if/when required.

Conclusions

120. The application is presented to the Planning Committee with a recommendation to approve as the proposal is considered to comply with the SPPS, and policies CTY 1 and CTY 8 of PPS 21 in that there is a gap within an otherwise substantial and continuously built up frontage that can accommodate two dwellings with associated garages.
121. In addition, it is considered that the proposal will also comply with the SPPS and policies CTY 13 and 14 of PPS 21 in that the development can be visually integrated into the surrounding landscape and it will not cause detrimental change to or further erode the rural character of the area.

Recommendation

122. It is recommended that planning permission is approved.

Reasons

123. The following conditions are recommended:

1. As required by Section 61 of the Planning Act (Northern Ireland) 2011, the development hereby permitted shall be begun before the expiration of 5 years from the date of this permission.
Reason: Time Limit.
2. The vehicular access, including any visibility splays and any forward sight distance, shall be provided in accordance with Drawing No 05 bearing the date stamp 19 April 2021, prior to the commencement of any other works or other development hereby permitted. The area within the visibility splays and any forward sight line shall be cleared to provide a level surface no higher than 250 mm above the level of the adjoining carriageway and such splays shall be retained and kept clear thereafter.
Reason: To ensure there is a satisfactory means of access in the interest of road safety and the convenience of road users.
3. The access gradient to the dwellings hereby permitted shall not exceed 8% (1 in 12.5) over the first 5 m outside the road boundary. Where the vehicular access crosses footway or verge, the access gradient shall be between 4% (1 in 25) maximum and 2.5% (1 in 40) minimum and shall be formed so that there is no abrupt change of slope along the footway.
Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.
4. No dwelling shall be occupied until hard surfaced areas have been constructed in accordance with approved Drawing no. 05 bearing date stamp 19 April 2021 to provide adequate facilities for parking and circulating within the sites. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.
Reason: To ensure that adequate provision has been made for parking.
5. Any existing street furniture or landscaping obscuring or located within the proposed carriageway, sight visibility splays, forward sight lines or access shall, after obtaining permission from the appropriate authority, be removed, relocated or adjusted at the applicant's expense.
Reason: In the interest of road safety and the convenience of road users.
6. All hard and soft landscape works shall be carried out in accordance with the approved details and the appropriate British Standard or other recognised Codes of Practice. The works shall be carried out prior to the occupation of any part of the development.
Reason: To ensure the provision, establishment and maintenance of a high standard of landscape.



Planning Committee

07 March 2022

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 2 - Statutory Performance Indicators – January 2022

Background and Key Issues:

Background

1. The Planning Act (Northern Ireland) 2011 sets out the legislative framework for development management in NI and provides that, from 1 April 2015, Councils now largely have responsibility for this planning functions.
2. The Department continues to have responsibility for the provision and publication of official statistics relating to the overall development management function, including enforcement. The quarterly and annual reports provide the Northern Ireland headline results split by District Council. This data provides Councils with information on their own performance in order to meet their own reporting obligations under the Local Government Act (Northern Ireland) 2014.

Key Issues

1. The Department for Infrastructure has provided the Council with monthly monitoring information against the three statutory indicators. A sheet summarising the monthly position for each indicator for the month of January 2022.
2. This data is invalidated management information. The data has been provided for internal monitoring purposes only. They are not Official Statistics and should not be publically quoted as such.

- 3. Members will note that the performance against the statutory target for local applications for January 2022 was 13.8 weeks. A slight backlog in the number of applications being issued this month is evident. This is as a consequence of ongoing issues with the operation of the Planning Portal which has experienced software failures repeatedly over a three week period in January.
- 4. In year performance to date is 16.4 weeks which is a significant improvement in the timeliness of decision making for this category of application when compared to the previous year.
- 5. Performance in relation to major applications for January 2022 was 106.8 weeks [decision in relation to Mealough Road application]. In year performance year to date in relation to majors is 106.8 weeks.
- 6. As explained previously, there has been no real opportunity to perform against the statutory target for major applications as a number of proposals brought forward in previous months are subject to Section 76 planning agreements.
- 7. Processing major applications remains a priority for the planning unit. With the exception of this month at least one major application is brought to the Planning Committee in the preceding nine months of the 2021-22 financial year.

Recommendation:

It is recommended that the Committee notes the information.

Finance and Resource Implications:

There are no finance or resource implications.

Screening:

| | | | | | |
|-----------------------------|----------------|---------------------------------|----------------|-------------------------|----------------|
| Equality and Good Relations | Not Applicable | Environmental Impact Assessment | Not Applicable | Rural Impact Assessment | Not Applicable |
|-----------------------------|----------------|---------------------------------|----------------|-------------------------|----------------|

SUBJECT TO PLANNING APPROVAL:

Not Applicable

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 – Statutory Performance Indicators – January 2022

Statutory targets monthly update - January 2022 (unvalidated management information)

Lisburn and Castlereagh

| | Major applications (target of 30 weeks) | | | | Local applications (target of 15 weeks) | | | | Cases concluded (target of 39 weeks) | | | |
|---------------------|---|--|--------------------------------------|--------------------------------------|---|--|--------------------------------------|--------------------------------------|--------------------------------------|---|------------------------------------|--------------------------------------|
| | Number received | Number decided/ withdrawn ¹ | Average processing time ² | % of cases processed within 30 weeks | Number received | Number decided/ withdrawn ¹ | Average processing time ² | % of cases processed within 15 weeks | Number opened | Number brought to conclusion ³ | "70%" conclusion time ³ | % of cases concluded within 39 weeks |
| April | 0 | - | 0.0 | 0.0% | 103 | 71 | 14.4 | 50.7% | 36 | 19 | 25.4 | 84.2% |
| May | 3 | 1 | 66.8 | 0.0% | 95 | 74 | 15.1 | 50.0% | 40 | 34 | 13.5 | 88.2% |
| June | 1 | - | 0.0 | 0.0% | 96 | 108 | 16.1 | 47.2% | 41 | 36 | 20.5 | 83.3% |
| July | 0 | - | 0.0 | 0.0% | 83 | 63 | 19.4 | 38.1% | 22 | 10 | 22.0 | 100.0% |
| August | 0 | 1 | 106.8 | 0.0% | 80 | 76 | 16.1 | 47.4% | 18 | 42 | 16.2 | 90.5% |
| September | 1 | 1 | 89.2 | 0.0% | 80 | 93 | 15.4 | 47.3% | 23 | 33 | 28.1 | 81.8% |
| October | 0 | 2 | 116.5 | 0.0% | 86 | 87 | 16.6 | 43.7% | 31 | 29 | 34.0 | 75.9% |
| November | 0 | 1 | 164.2 | 0.0% | 95 | 87 | 18.4 | 43.7% | 22 | 27 | 26.0 | 81.5% |
| December | 0 | - | 0.0 | 0.0% | 65 | 58 | 16.6 | 46.6% | 12 | 23 | 27.9 | 87.0% |
| January | 0 | 1 | 106.8 | 0.0% | 76 | 54 | 13.8 | 53.7% | 22 | 12 | 29.5 | 83.3% |
| February | 0 | - | 0.0 | 0.0% | 0 | - | 0.0 | 0.0% | 0 | - | 0.0 | 0.0% |
| March | 0 | - | 0.0 | 0.0% | 0 | - | 0.0 | 0.0% | 0 | - | 0.0 | 0.0% |
| Year to date | 5 | 7 | 106.8 | 0.0% | 859 | 771 | 16.4 | 46.7% | 267 | 265 | 25.2 | 84.9% |

Source: NI Planning Portal

Notes:

1. DCs, CLUDS, TPOS, NMCS and PADS/PANs have been excluded from all applications figures

2. The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn. The median is used for the average processing time as any extreme values have the potential to inflate the mean, leading to a result that may not be considered as "typical".

3. The time taken to conclude an enforcement case is calculated from the date on which the complaint is received to the earliest date of the following: a notice is issued; proceedings commence; a planning application is received; or a case is closed. The value at 70% is determined by sorting data from its lowest to highest values and then taking the data point at the 70th percentile of the sequence.



Planning Committee

07 March 2022

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 3 – Northern Ireland Audit Office (NIAO) Report - Planning in Northern Ireland

Background and Key Issues:

Background

1. The NIAO published a report on Planning in Northern Ireland on 01 February 2022. The study undertook a high level review of how effective the planning system was operating, and how effectively it was being governed.
2. The Audit office undertook a detailed analysis of available data covering the performance of the planning system in a variety of areas. It also engaged with a broad range of stakeholders both inside and outside the system.
3. The report is prepared under Article 8 of the Audit (Northern Ireland) Order 1987 (for presentation to the Northern Ireland Assembly in accordance with Article 11 of the Order) and Article 26 (10 of the Local Government (Northern Ireland) Order 2005.
4. The report also considered:
 - How the planning system has performed since 2015 in respect of its three main functions;
 - Concerns about how decision are made within councils;
 - How the Department exercises the functions assigned to it within the Planning Act;

- Some of the wider strategic issues that are having a significant impact upon the effectiveness of the planning system.

Key Issues

1. The high level issues identified by the NIAO in the report are summarised as follows:
 - Northern Ireland's planning system is not working efficiently and, in many respects, is failing to deliver for the economy, communities or the environment.
 - The report notes that there is significant silo working in the planning system, and that the most important planning applications are still taking too long to process.
 - The time taken to process major applications varies substantially between councils, with the median processing time for the slowest more than three times that of the fastest council.
 - Notable variances between councils in their decision making processes including the extent to which planning decisions are delegated from elected representatives to professional planning officials, and how councils resolve enforcement cases where there are potential breaches of policies and/or planning conditions.
 - Recognises the significant pressures that the planning system faces and that planning decisions have become increasingly complex, requiring more interaction with those who have specialist knowledge or skills, particularly in regards to assessing and managing environmental impacts.
 - Planning fees, the main source of income for the planning system has not been adjusted year on year to keep pace with inflation and as a result, the system is increasingly financially unsustainable and the gap between the income generated from planning activities by councils and the cost of those activities has increased significantly.
 - Pressures have also contributed to slow progress in the creation of Local Development Plans by Councils.
2. A full copy of the report and press release is available to view at the following link:
<https://www.niauditoffice.gov.uk/publications/planning-northern-ireland-0>
3. The report highlights the need for better co-operation between key stakeholders in the two tier system. The challenge in effecting change to increase public confidence in the system is primarily linked to a review of funding and increasing the capacity for local planning authorities to make quality and timely decisions on the basis of up to local development plans.
4. This requires action by the Department of Infrastructure in terms of examining:
 - how fees are structured
 - the process of making local development plans and how it can be further streamlined
5. The learning for this specific council area is being disseminated and any recommendations for change to the way in which the planning function is delivered will be addressed in a paper in to come in front of members at the earliest available committee meeting.

Recommendation:

It is recommended that Members note the report by the comptroller and auditor general of the Northern Ireland Audit Office.

Finance and Resource Implications:

There are no finance and resource implications identified at this stage.

Screening:

Equality and Good Relations

Not Applicable

Environmental Impact Assessment

Not Applicable

Rural Impact Assessment

Not Applicable

SUBJECT TO PLANNING APPROVAL:

Not Applicable

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(a) – NIAO - Report by Comptroller and Auditor general in relation to Planning in Northern Ireland

Appendix 3(b) – NIAO – Media Release - Planning in Northern Ireland



Northern Ireland Audit Office

Planning in Northern Ireland





Northern Ireland Audit Office

Planning in Northern Ireland

This report has been prepared under Article 8 of the Audit (Northern Ireland) Order 1987 (for presentation to the Northern Ireland Assembly in accordance with Article 11 of the Order), and Article 26 (1) of the Local Government (Northern Ireland) Order 2005.

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Comptroller and Auditor General
1 February 2022

Colette Kane
Local Government Auditor
1 February 2022

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The Local Government Auditor has statutory authority to undertake comparative and other studies designed to enable her to make recommendations for improving economy, efficiency and effectiveness in the provision of services by local government bodies and to publish her results and recommendations.

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Abbreviations

| | |
|--------------|---|
| BCC | Belfast City Council |
| DAERA | Department of Agriculture Environment and Rural Affairs |
| DfC | Department for Communities |
| DfI | Department for Infrastructure |
| EIA | Environmental Impact Assessment |
| EU | European Union |
| FTE | Full-time equivalent |
| IE | Independent Examination |
| LDP | Local Development Plan |
| LPP | Local Policies Plan |
| NI | Northern Ireland |
| NICS | Northern Ireland Civil Service |
| NIEA | Northern Ireland Environment Agency |
| PAC | Planning Appeals Commission |
| PAD | Pre-application discussion |
| PAN | Planning Advice Note |
| PPS | Planning Policy Statement |
| PS | Plan Strategy |
| RDS | Regional Development Strategy |
| RTPI | Royal Town Planning Institute |
| SES | Shared Environmental Service |
| SPPS | Strategic Planning Policy Statement |

Executive Summary

Executive Summary

The planning system should positively and proactively facilitate development that contributes to a more socially, economically and environmentally sustainable Northern Ireland

1. The planning system has the potential to make an important contribution to much needed development in Northern Ireland. When it works effectively, it can have a key role in encouraging investment and supporting the Northern Ireland economy, creating places that people want to work, live and invest in. The system also has the potential to act as a key enabler for the delivery of a number of draft Programme for Government outcomes.
2. Delivering an effective system provides potential investors with the confidence they need to propose development in Northern Ireland and ensure that it is sustainable and meets the needs of the community.
3. Despite the importance of the planning system to Northern Ireland, our review found that it is not operating effectively, not always providing the certainty that those involved wanted, and in many aspects not delivering for the economy, communities or the environment.

The way in which planning functions are delivered fundamentally changed in 2015

4. The Planning Act (NI) 2011 (the Act) established the two-tier system for the delivery of planning functions in Northern Ireland. Under the Act, responsibility for delivering the main planning functions passed from a central government department to local councils in April 2015.
5. The Department for Infrastructure (the Department) has responsibility for preparing regional planning policy and legislation, monitoring and reporting on the performance of councils' delivery of planning functions and making planning decisions in respect of a small number of applications.

The planning system has not met many of its main performance targets

6. Since the transfer of functions to local government, on a number of key metrics, the planning system in Northern Ireland has not delivered against many of its main targets. Around 12,500 planning applications have been processed each year in Northern Ireland since 2015. Despite their importance, processing the most important planning applications still takes too long.
7. Major planning applications can relate to development that has important economic, social or environmental implications. Despite a statutory target for each council to process major development planning applications within an average of 30 weeks¹, the vast majority of Major planning applications take significantly longer. Around one-fifth of these applications take more than three years to process.

1 The time taken to process a decision/withdrawal is calculated from the date on which an application is deemed valid to the date on which the decision is issued or the application is withdrawn

8. The Department told us that the period following the transfer of planning powers to local government in 2015 was dominated by a lack of a local Assembly and ministers for three years to January 2020, the implications of the Buick judgment² in 2018 for decision-making, followed by the significant impact of the Covid-19 pandemic and, as a consequence, there was an impact on the performance of the system.
9. Performance on Local applications is better. The target, that Local development planning applications will be processed within an average of 15 weeks, was achieved for Northern Ireland as a whole in both 2018-19 and 2019-20. Performance dipped in 2020-21, but this was likely caused by the impact of Covid-19.
10. Our analysis shows that the time taken to process Major applications varies substantially between councils. For Major planning applications processed between 2017-18 and 2019-20, the median processing time for the slowest council was more than three times that of the fastest council.

Despite the importance of planning, the system is increasingly financially unsustainable

11. When planning responsibilities transferred to councils, it was on the basis that delivery of services should be cost neutral to local ratepayers at the point of transfer. However, the income generated from planning does not cover the full cost of service delivery. The fees councils charge for planning applications are decided by the Minister for Infrastructure and were initially set by the Department in 2015, with individual rates for different types of planning application. In the absence of a Minister from January 2017 to January 2020, the Department was able to raise fees once (by around 2 per cent, in line with inflation in 2019) following the enactment of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which allowed the Department to take certain decisions normally reserved to the Minister.
12. As a result, there has been a need to supplement income with other public funding to deliver planning services. Our review of financial information provided by councils showed that the gap between income generated by planning activities and the cost of those activities increased significantly between 2015-16 and 2019-20. This is not sustainable in the longer term.

The system is inefficient and often hampered by poor quality applications

13. There is a low bar for the quality of planning applications that are allowed to enter the system. Stakeholders consistently told us that the criteria set out in the 2011 Planning Act are too narrow, and do not require applicants to provide key supporting documentation. This means the Department and councils are often obligated to attempt to process poor quality and incomplete applications.

2 In re Buick [2018] NICA 26, the Northern Ireland Court of Appeal held that the Department did not have the power to make the decision to grant planning permission for a major waste incinerator in the absence of a minister.

Executive Summary

14. Whilst some councils have taken steps to improve application quality, such as the creation of application checklists, these have not been rolled out across the system. We highlighted the issue of poor quality applications in our previous report on Planning in 2009. The Department told us that it is proposing to take forward legislative changes to better manage the quality of applications and it has encouraged councils to roll out an administrative checklist in advance of any legislative change.

There is an urgent need for improved joined-up working between organisations delivering the planning system

15. Our review has identified significant silo working within the planning system. We saw a number of instances where individual bodies – councils, the Department or statutory consultees – have prioritised their own role, budgets or resources, rather than the successful delivery of the planning service. Each organisation is accountable for its own performance, and whilst the Department monitors the performance of individual organisations against statutory targets, there is little accountability for the overall performance of the planning system. Whilst individual organisations stressed the challenges they faced, ultimately the frustration from service users was the poor performance of the system, not issues in individual bodies.
16. In our view, the ‘planning system’ in Northern Ireland is not currently operating as a single, joined-up system. Rather, there is a series of organisations that do not interact well, and therefore often aren’t delivering an effective service. This has the potential to create economic damage to Northern Ireland. Ultimately, as it currently operates, the system doesn’t deliver for customers, communities or the environment.
17. In our view, this silo mentality presents both a cultural and a practical challenge. The focus for all of those involved in the system must be the successful delivery of planning functions in Northern Ireland, not the impact on their own organisations. This will require strong, consistent leadership – in our view the Department is well placed to provide this and should continue to build on its work to date. It is crucial that all statutory bodies involved in the planning system play their part and fully commit to a shared and collaborative approach going forward.

Many statutory consultees are struggling to provide information in a timely manner

18. Processing an individual planning application often requires technical or specialist knowledge that doesn’t exist within individual council planning teams. In these cases, statutory consultees provide officials with information they need to inform their decision. Whilst councils ultimately decide on planning applications, the fact that the majority of consultees sit outside local government adds another layer of complexity to an already fragmented system.
-

19. Statutory consultees are required to make a substantive response to planning authorities within 21 days or any other period as agreed in writing with a council. Performance is consistently poor, particularly in respect of Major planning applications. The poorest performance is by DfI Rivers, part of the Department for Infrastructure, which only responds in time to around forty per cent of all consultations. The Department told us that there has been a major increase in consultations received by statutory consultees. This, coupled with the increasing complexities of cases received and finite resources, has had significant implications in relation to performance. Nonetheless, there is room for improvement in the timeliness of responses from most statutory consultees.

The system isn't meeting its plan-making objectives

20. Northern Ireland's planning system is intended to be "plan-led" and each council is preparing a Local Development Plan (LDP). The Department's expectation was that all councils would have a fully completed LDP within three and a half years of beginning the process. However, six years later, no council has managed to complete an LDP, with many still in the early stages of the process. The Department told us that this was an indicative timetable, which sought to provide an estimate under a new and as yet untested system. The legislation provides for amended timetables to be submitted.
21. Despite the slow progress, estimates provided to us on the total spend to date on development of LDPs ranged from £1.7 million to £2.8 million per council, figures that would be equivalent to the total annual cost of delivering planning functions within most councils.

The planning system faces challenges in effectively managing applications which have the potential to have a significant impact on the environment

22. Preserving and improving the environment is one of the core principles of the planning system. However, a number of stakeholders highlighted the increasing challenges of assessing and managing the environmental impact of proposed development. Environmental assessments required for individual applications are often complex and time-consuming.
 23. We heard concerns that the planning system is struggling to progress some complex planning applications which can include environmental impact assessments. In particular, there is a lack of certainty around how the system deals with applications for development that will produce ammonia emissions. The lack of clear environmental guidance in this area creates significant uncertainty for planning authorities, applicants and statutory consultees. The system urgently needs updated policy guidance from the Department of Agriculture, Environment and Rural Affairs.
-

Executive Summary

Value for money statement

In our view, the planning system is not operating efficiently. Crucially, in many aspects, the system doesn't deliver for the economy, communities or the environment. NIAO regularly receives concerns about planning decisions, implying a lack of confidence in the way the system operates. In addition, costs consistently exceed income, and the system itself is being subsidised by both central and local government. It is simply unsustainable to continue in this way.

Part One:

Introduction

Part One: Introduction

- 1.1 The objective of the planning system is to secure the orderly and consistent development of land whilst furthering sustainable development and improving wellbeing. By directing and controlling the type and volume of development that occurs, the system can support the sustainable creation of successful places in which people want to live, work and invest. As the planning system can be a key enabler for achieving many of the economic and social outcomes targeted within the draft Programme for Government outcome framework, it is vital it operates effectively.

There are a large number of public bodies involved in delivering the planning system in Northern Ireland

- 1.2 The Planning Act (NI) 2011 (the Act) established a two-tier structure for the delivery of planning functions in Northern Ireland. The Department for Infrastructure (the Department) has a central role in the planning system in Northern Ireland. Alongside this, it has responsibility for preparing planning regional policy and legislation, and monitoring and reporting on the performance of councils' delivery of planning functions. In addition, the Department makes planning decisions in respect of a small number of Regionally Significant and called-in applications.
- 1.3 Under the Act, responsibility for delivering the majority of operational planning functions passed from a central government department to local councils in April 2015. This includes:
- development planning – creating a plan that sets out a vision of how the council area should look in the future, by deciding what type and scale of development should be encouraged and where it should be located;
 - development management – determining whether planning applications for particular development proposals should be approved or refused; and
 - planning enforcement – investigating alleged breaches of planning control and determining what action should be taken.
- 1.4 The ability of councils to deliver these functions often depends upon expert advice provided by a number of statutory consultee organisations. These are mainly central government organisations that provide specialist expertise to council planning officials on technical matters relating to individual planning applications, or on issues relating to development plans. The main organisations that councils consult with are Department for Infrastructure (DfI) Roads, Department for Agriculture Environment and Rural Affairs (DAERA), DfI Rivers, NI Water and the Historic Environment Division within the Department for Communities, but there are a number of others³.
- 1.5 In most cases, consultations are required to meet a statutory obligation. These consultations are referred to as statutory consultations. In addition, there are a large number of non-statutory consultations, which have increased in recent years.

3 Other consultees used by councils include Health and Safety Executive NI, the Department for the Economy, Belfast International Airport, City of Derry Airport and the Housing Executive.

The planning system has not met many of its main performance targets in recent years

- 1.6 Two of the main functions of the planning system are to establish plans that should control the volume and type of development that will occur, and then to efficiently process development applications, approving or refusing these. Since 2015, the planning system has not met many of its main performance targets.
 - 1.7 Under the Act, each council was required to develop a Local Development Plan that would direct and control development in their area. The Department estimated that all councils would have such plans in place by 2019. The Department told us that this was an indicative timeframe that sought to provide an estimate for the preparation of a plan under the new, and as yet untested, system.
 - 1.8 However, no council has been able to complete a plan. As a result, planning decisions made by planning authorities often refer to plans and policies that are old and do not reflect the current needs and priorities of the area. The Department told us that in such cases the weight to be afforded to an out-of-date plan is likely to be reduced and greater weight given in decision-making to other material considerations such as the contents of more recent national policies or guidance.
 - 1.9 The planning system has also struggled to achieve efficient and timely processing of the Major development applications it receives. In particular, there has been a consistent failure to process the most important development applications in line with the timeliness targets set for these applications, with little evidence of improvement in performance forthcoming.
 - 1.10 The Department told us that the period following the transfer to local government in 2015 was dominated by a lack of a local Assembly and ministers for three years to January 2020, the implications of the *Buick* judgement in 2018 for decision-making, followed by the significant impact of the Covid-19 pandemic and, as a consequence, there was an impact on the performance of the system.
 - 1.11 An effective and efficient planning system can facilitate significant investment into Northern Ireland, which can have wider effects on the economy, including the creation of jobs and economic growth. A poorly performing planning system, however, can bring delays, costs and uncertainty which either postpone economic benefits or, in the worst circumstances, undermine proposed investment. The Department told us that timeliness is only one aspect of performance as it is important that the right decisions are made, supported by sufficient evidence and appropriate consultation.
-

Part One: Introduction

Variances in decision-making processes across different council areas represent a risk to efficiency and effectiveness

- 1.12 The transfer of responsibilities under the Act granted councils a certain degree of flexibility in how they design their own arrangements for delivering planning functions. This flexibility was intended to give councils the power to design their processes in a way that best suited local needs, and to empower councils to shape how development occurred within their area, in line with the aspirations of the local community.
- 1.13 Prior to the transfer of planning to councils in 2015, the Department developed a best practice protocol for the operation of planning committees setting out a framework of principles and good practice that planning committees should adhere to. The Department told us that this protocol was not mandatory, but it recognised that there should be a degree of consistency across the eleven councils.
- 1.14 Our review of available data and engagement with various stakeholders has suggested that there are risks that all councils are not complying with best practice standards in respect of decision-making, and that approaches are characterised by a high level of variance, with no strong evidence that this variance is delivering additional value.

Councils' ability to perform effectively can be constrained by issues beyond their direct control

- 1.15 Whilst councils have primary responsibility for the operational delivery of most planning functions, there are a number of external constraints, often beyond the control of councils that have had a negative impact on their ability to deliver effectively. These include:
- that adequate resources were not provided to allow councils to deliver all the functions for which they are responsible;
 - that statutory consultees are able to provide timely responses to councils when requested to provide advice on issues relating to a particular application; and
 - that there are effective arrangements in place to monitor the overall performance of the planning system and to support the effective management of issues that are affecting the quality of the service delivered.
- 1.16 We found deficiencies within each of these areas that affect the quality of the service currently being delivered which, if not addressed, pose significant risks to the future delivery of services.
-

Scope and structure

- 1.17 In this study we undertook a high level review of how effectively the planning system was operating, and how effectively it was being governed. We undertook a detailed analysis of available data covering the performance of the planning system in a variety of areas, and engaged with a broad range of stakeholders both inside and outside the system.
- 1.18 The remainder of this report considers:
- a summary of how the planning system has performed since 2015 in respect of its three main functions (**Part Two**);
 - concerns about how decisions are made within councils (**Part Three**);
 - how the Department exercises the functions assigned to it within the Planning Act (**Part Four**); and
 - some of the wider strategic issues that are having a significant impact upon the effectiveness of the planning system (**Part Five**).
-

Part Two:

Performance of the planning system

Part Two:

Performance of the planning system

- 2.1 Northern Ireland's planning system is intended to be a "plan-led" system. Policies and priorities should be clearly set out in a framework of development plans that establish the volume and type of development that will be allowed. These plans will allow developers to assess the type of development proposals that will be accepted or refused, and provide a basis for transparent decision-making by planning authorities. The integrity of this system is protected by an enforcement system that ensures that all development is within the terms of the planning permission granted by planning authorities.

Plan-making

Each council is responsible for the creation of a Local Development Plan

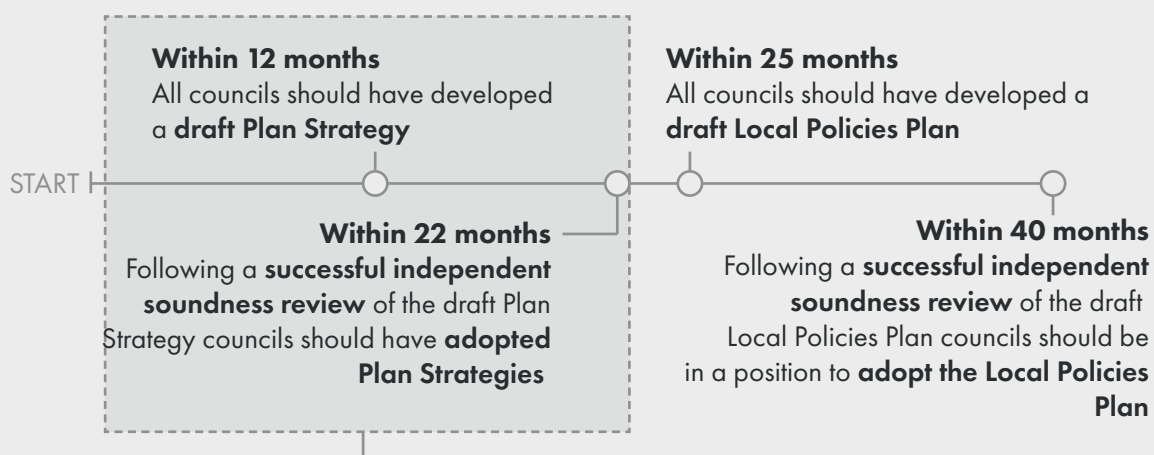
- 2.2 Under the 2011 Act, each council was made responsible for the preparation of a Local Development Plan (LDP) – a 15 year framework document that would direct and control the scale and type of development that would be undertaken within the council area. The vision and objectives of the LDP should reflect the spatial aspirations of the council's Community Plan. Each LDP should consist of two main documents:
- A **Plan Strategy (PS)** is the first stage of an LDP. It provides the strategic framework for key development decisions that will be made in the council area. The legislation provides that any determination made under the 2011 Act must be made in accordance with the plan, unless material considerations indicate otherwise. In preparing the LDP a council must take account of the Regional Development Strategy (RDS) and any policy or advice such as the Strategic Planning Policy Statement (SPPS).
 - The PS will be supplemented by a **Local Policies Plan (LPP)** setting out local policies and site specific proposals for development, designation and land use zonings to deliver the council's vision, objectives and strategic policies. The LPP is required by the legislation to be consistent with the Plan Strategy.
- 2.3 The process by which each document is prepared is prescribed by legislation. Under the Local Development Plan process, the Department has an oversight and scrutiny role. As part of this, a council is required to submit its LDP document to the Department to ensure that it is satisfactory. The Department will then cause an Independent Examination (IE) to be carried out by an independent examiner, usually the Planning Appeals Commission (PAC). Following the IE, the examiner will issue a non-binding report of its findings to the Department which will in turn consider this and issue a binding direction to a council. A council must incorporate any changes outlined in the direction and subsequently adopt the Plan Strategy.
-

Six years into the process, no council has an approved Plan Strategy

- 2.4 The expectation was that all councils would have a fully completed LDP within three and a half years of beginning the process. However, six years later no council has managed to complete an LDP, with most still only having a draft Plan Strategy in place. The most recent projections provided by councils suggest that it will be 2028 before there is an LDP in place in each council area (see **Figure 1**). Some councils currently project that they will complete the LDP process over the next two to three years. However, a number of them are still in the early stages of the process, so these projections may be overly ambitious.
- 2.5 The Department told us that the indicative timeframe of three and a half years sought to provide an estimate for the preparation of a plan under a new, and as yet untested, system. The legislation, however, provides for amended timetables to be submitted and agreed by the Department and this reflects and acknowledges the reality that timetables could be subject to further change.

Figure 1. It was originally anticipated that all councils would have adopted final Plan Strategies and Local Policy Plans within three and a half years

INDICATIVE TIMETABLE:



Despite the expectation that all councils would have adopted final Plan Strategies within 2 years, it is currently the case that **no council has been able to complete this process some 6 years later.**

Current expectations are that instead of around 3 and a half years for all councils to complete the entire process it will take until 2024 for at least half of councils to have completed Plan Strategies and Local Policies Plans and 2028 before all councils complete the process.

Source: Overview of Local Development Plan process summarises approach as outlined within the Strategic Planning Policy Statement for Northern Ireland.

Part Two: Performance of the planning system

- 2.6 Our discussions with councils highlighted a number of issues with the LDP process:
- The Department's indicative timetable set for completion was too ambitious, given the scale and complexity of the work required by councils.
 - A number of council planning teams did not have staff members with experience of plan development or expertise in the specialist areas required to develop their plan.
 - Resource pressures in many councils mean that staff are often removed temporarily from LDP development work to manage short term pressures in application processing.

These issues are all discussed in more detail in **Part Three** of the report.

The lack of LDPs means planning decisions are not guided by up-to-date plans

- 2.7 Planning decisions must be made in accordance with the LDP unless material considerations indicate otherwise. In the absence of newly developed LDPs, councils must make planning decisions with reference to the existing local policies that are in place and all other material planning considerations. In some cases, the plans covering particular parts of a council area are over 30 years old, and do not reflect the current needs and priorities of the area.
- 2.8 The Department told us that in such cases the weight to be afforded to an out-of-date plan is likely to be reduced and greater weight given in decision-making to other material considerations such as the contents of more recent national policies or guidance. The weight to attach to material considerations in such circumstances is however a matter for the decision taker. Some stakeholders told us that older plans were potentially more open to interpretation than newer plans, increasing the risk that decision making is not consistent within or between councils, or that the rationale for the decisions is not clear to the public.
- 2.9 Where the existing plans do not provide adequate guidance, decision-makers must refer to other material planning considerations such as national policy set out in the Strategic Planning Policy Statement (SPPS) or Planning Policy Statements (PPSs). These PPSs were retained as a temporary measure as part of transitional arrangements to ensure continuity of policy for taking decisions until the adoption by councils of a Plan Strategy for their area. PPSs were initially developed by the former Department of the Environment and set out regional Northern Ireland-wide policy on particular aspects of land use and development. However, we have been told they are complex, disparate and, because they were never intended to be specific to local areas, it can be challenging to make specific local decisions based upon them, although all of this was also the case under the unitary system.
-

- 2.10 One of the objectives of developing LDPs was to translate this framework of regional policy into a more operational local policy framework tailored to local circumstances and based on local evidence. The Department told us that it prepared the SPPS which consolidates and retains relevant strategic policy within PPSs. In preparing LDPs councils must take account of the SPPS, the Regional Development Strategy and any other guidance issued by the Department. Councils told us that it was only after the introduction of the SPPS in September 2015 that councils became aware of the need to review and incorporate 23 regional policy documents at the draft plan strategy stage. Councils told us this required significant additional time and resources.

Despite the lack of progress, councils report having invested significant time and resources on developing plans

- 2.11 During our engagement with council planning teams, there was a unanimous view that the amount of work required to prepare LDPs had been significantly underestimated by the Department's indicative timeframe of 40 months. The Department told us that this provided an estimate for the preparation of a plan under the new and as yet untested system. Developing a full plan requires each council to follow four key stages set out by the Department:

- initial Plan preparation, including producing a preferred options paper;
- preparation and adoption of plan strategy;
- preparation and adoption of local policies plan; and
- monitoring and review.

During this process councils are required to consult a variety of stakeholders and provide commentary on plans developed by neighbouring councils.

- 2.12 Estimates of the total spend to date incurred on the development of LDPs ranged from £1.7 million to £2.8 million per council – figures that would be equivalent to the total annual cost of delivering planning functions within most councils. Given the scale of the investment required to develop LDPs, it is critical that they are accepted by all stakeholders as providing value.
- 2.13 In our view, there is an opportunity for the Department to review the LDP process, learning from the challenges experienced to date, and consider whether the process is proportionate and will provide value for all stakeholders. Councils told us that the current LDP process is too slow to respond to rapidly evolving issues such as climate change, energy and public health and needs to be more agile to respond to these challenges.
-

Part Two:

Performance of the planning system

Recommendation

We recommend that the Department and councils work in partnership to review the current LDP timetables to ensure they are realistic and achievable, and identify what support councils need to meet them.

The Department may wish to consider whether the remaining steps of the LDP process could be further streamlined to ensure plans are in place as soon as possible.

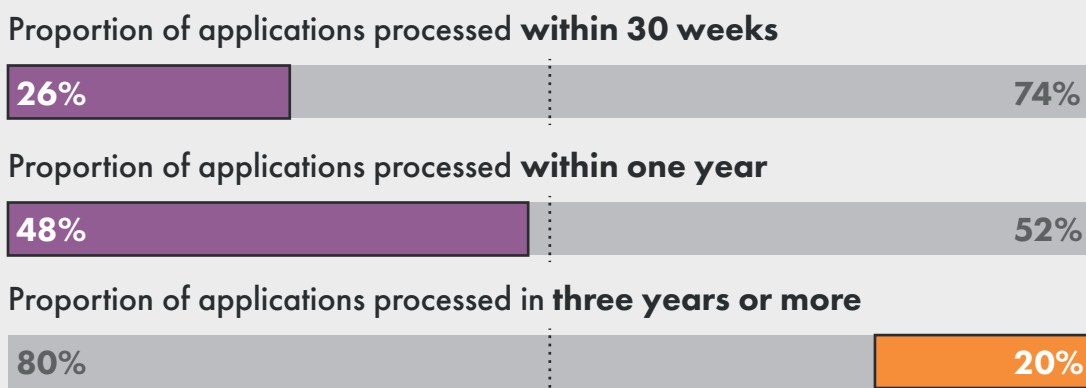
Decision-making

Almost one-fifth of the most important planning applications aren't processed within three years

- 2.14 Around 12,500 planning applications have been decided or withdrawn each year in Northern Ireland since 2015. These applications are classified according to the scale of the development proposed, and its impact on society. The most important applications, in terms of their ability to enhance the overall wellbeing in Northern Ireland, are 'Regionally Significant' and 'Major' planning applications. Regionally Significant applications are those applications which are considered to have a critical contribution to make to the economic and social success of Northern Ireland as a whole, or a substantial part of the region. These applications are submitted to, and processed by, the Department.
- 2.15 Major developments are those developments which have the potential to be of significance and interest to communities. They are likely to be developments that have important economic, social and environmental implications for a council area. Major developments which are considered Regionally Significant have the potential to make a significant contribution to the economic, societal and environmental success of Northern Ireland. They may also include developments which potentially have significant effects beyond Northern Ireland or involve a substantial departure from a LDP. In certain circumstances the Department may call-in a particular Major planning application, meaning that it assumes responsibility for making a decision on the application. There is a statutory target for councils to process Major development decisions within an average of 30 weeks of a valid application being received. Despite this, the vast majority of Regionally Significant and Major planning applications take significantly longer than 30 weeks to process, and there is a substantial subset of applications that take excessively long to process (see **Figure 2**). We found a similar trend in respect of the ages of outstanding Regionally Significant and Major applications at 31 March 2021. Over half (56 per cent) had been being processed for more than one year, with 19 per cent more than three years old. Factors impacting on the performance of the system are considered further in **Part Five**.

2.16 The Department told us that the absence of an Executive and a functioning Assembly has had an impact on its ability to make key changes and decisions. The 2018 Court ruling in *Buick* prevented planning decisions being made by the Department until legislation was enacted which allowed senior civil servants to take certain decisions. With the return of the Executive, the Department told us that the ruling has continued to have impacts on planning. In addition, whilst performance could be improved, poor quality planning applications entering the system and increased requirements under environmental regulations have also impacted the timeliness for processing Major and Regionally Significant applications.

Figure 2. Just over one quarter of Regionally Significant and Major planning applications processed¹ between 2017-18 and 2019-20 were completed within 30 weeks



NOTE

¹ This illustrates the processing timeliness of 481 Regionally Significant and Major planning applications submitted to the Department and councils that were either decided by the relevant authority or withdrawn by the applicant between 2017-18 and 2019-20.

Source: NIAO analysis of Planning Activity Statistics Open Data tables

2.17 Applications that are not classified as Regionally Significant or Major are classified as Local. These are the vast majority of applications decided in a given year – typically 99 per cent. They are submitted to and determined by councils, with a statutory target to be processed within an average of 15 weeks from the date of a valid application.

2.18 Whilst councils hadn't achieved this standard in the first two years after powers were transferred, performance has been much stronger over the last three years and the target was achieved for Northern Ireland as a whole in both 2018-19 and 2019-20. Over the three year period 2017-18 to 2019-20, 52 per cent of local applications were processed within the 15 week target (see **Figure 3**). Performance dipped in 2020-21, but this may have been due to Covid-19 disruption.

Part Two:

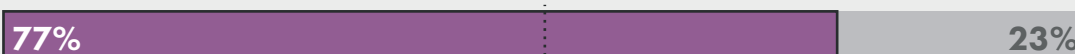
Performance of the planning system

Figure 3. Just over half of all Local planning applications processed¹ between 2017-18 and 2019-20 were completed within 15 weeks

Proportion of applications processed within 15 weeks



Proportion of applications processed within 30 weeks



Proportion of applications processed in more than one year



NOTE

¹ This illustrates the processing timeliness of 37,544 Local planning applications that were either decided upon by the Department or councils, or withdrawn by the applicant, between 2017-18 and 2019-20.

Source: NIAO analysis of Planning Activity Statistics Open Data tables

Whilst comparison of planning performance across the UK is challenging, it appears that the planning system in Northern Ireland is slower than in other jurisdictions

2.19 A direct comparison of performance data between planning systems in different countries is challenging because of the differences in the way different countries measure and report performance. However, the comparisons we were able to make highlighted that the planning system appears to be slower in dealing with Local applications in Northern Ireland than in other jurisdictions. For example:

- In England, over 60 per cent of non-major planning applications were processed within 8 weeks in 2018-19 and 2019-20, compared to less than 30 per cent of local applications in Northern Ireland over the same period.
- In Scotland, the average processing time for local planning applications was 10 weeks during 2018-19 and 2019-20, compared to 18 weeks in Northern Ireland over the same period.
- In Wales, 89 per cent of local planning applications were processed within 8 weeks, compared to 18 per cent in Northern Ireland in the same year.

2.20 The Department told us that there are significant differences in how each planning system works, how performance is measured and the political and administrative contexts in which they operate. It is, therefore, difficult to assess the functionality and performance of the planning

system in Northern Ireland against that of other jurisdictions. All jurisdictions have definitions of types of development that are permitted without the need for a planning application; an appeal system to review decisions on applications; and a system in place to enforce breaches of planning consent. Although the basic structures of the planning system in each jurisdiction are similar there are differences in the detail and in how each system works. For example; in terms of performance; KPIs are measured differently in jurisdictions. In some jurisdictions time extensions can be given to planning applications which in effect 'stops the clock'. This does not occur here. In England in the event minimum standards are not met, a local authority may be designated as underperforming with special measures applied that allow applicants for major development to apply for permission direct from the Planning Inspectorate, bypassing local decision-making. This does not occur here.

There is substantial variation in timeliness performance within Northern Ireland

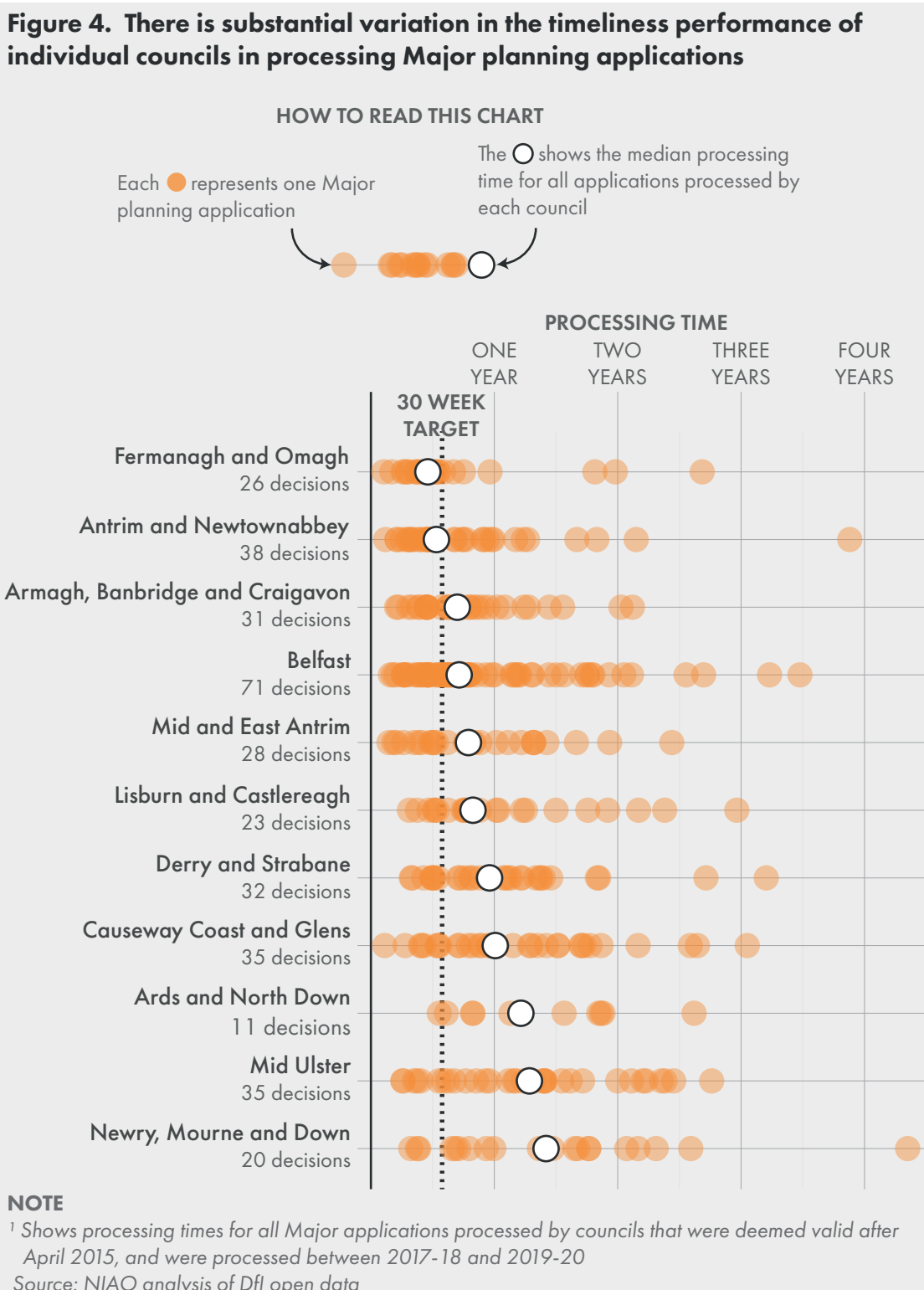
- 2.21 There is substantial variation in the performance of individual councils in processing applications. As service users must submit planning applications to the council responsible for the area in which the proposed development is located, there may be a risk that this leads to different qualities of service being offered.
- 2.22 However, a number of councils we spoke to highlighted their concerns that straightforward comparisons of processing times were unfair, and did not provide useful insight about relative performance levels. They stressed that differences in the mix of applications that each council receives has a material impact on processing times but is outside the control of councils. Major agricultural and residential development applications were typically highlighted as being particularly complex and requiring significant time to effectively assess. A further issue related to the impact of pre-2015 applications inherited by councils on transfer of functions. The Department told us that legacy cases had reduced significantly after the first two years post-transfer.
- 2.23 However, service users we spoke to stated that whilst they accepted there were factors beyond the control of councils, it was still the case that differences in processing time performance did to some degree reflect differences in process and approach between councils.
- 2.24 As part of our analysis, we applied a number of adjustments to the underlying data in an attempt to make timeliness comparisons between councils fairer⁴. Whilst we agree that there is evidence that major residential and agricultural proposals typically take longer than other types of planning application, we did not find that these were concentrated within certain council areas to the extent they would have a significant impact on median processing times.
- 2.25 Even after the adjustments we applied to the data, we found that there was substantial variation in respect of the time taken to process major applications between councils. For Major planning applications processed between 2017-18 and 2019-20, the median processing time

4 Full details of our methodology can be found at Appendix One.

Part Two:

Performance of the planning system

for the slowest council is more than three times the median processing time for the fastest council (see **Figure 4**).



- 2.26 Whilst the Department regularly reports on the performance of each council, we did not find evidence that this information is used in any meaningful way to improve performance or hold bodies accountable for poor performance. The lack of general buy-in to the current performance monitoring process amongst councils is also concerning and undermines the accountability that such information should provide. This is part of a wider issue in terms of performance measurement and reporting that is discussed in more detail at **paragraphs 4.23 to 4.35**.
- 2.27 The Department told us that it has worked with councils through various groups over the years, such as the Strategic Planning Group, Continuous Improvement Working Group and Planning Forum in order to improve performance.

Recommendation

We recommend that the Department and councils continue to put an enhanced focus on improving the performance of the most important planning applications. This should include a fundamental analysis of the factors contributing to delays.

There is significant variation in how enforcement cases are resolved

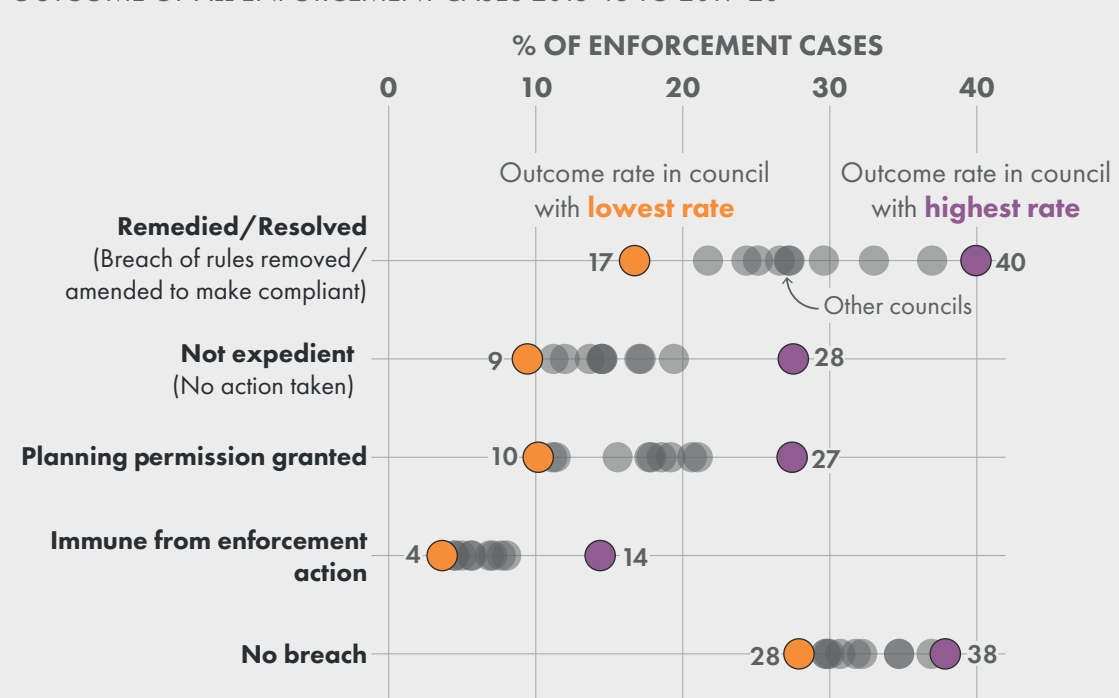
- 2.28 Enforcement is the means by which planning authorities ensure that the development that occurs is in line with policies and within the terms of the planning application approved in respect of the project. Effective enforcement is critical for both ensuring that the planning system is able to control development, and that the credibility and integrity of the system are not undermined by unauthorised development.
- 2.29 Responsibility for undertaking enforcement activity rests primarily with councils. Each council is responsible for undertaking enforcement activity in its area, and there is a statutory target that 70 per cent of enforcement cases are taken to target conclusion within 39 weeks of the initial receipt of a complaint.
- 2.30 Despite a substantial increase in the volume of enforcement cases being opened, performance against the statutory target by councils has been good. The volume of cases increased by almost 50 per cent between 2015-16 and 2019-20 – from 2,900 to 4,300. Over this period, most councils have been able to meet the target in each year, with only a small number failing in a single year and one council consistently unable to meet the target.
- 2.31 However, during our engagement with council planning teams, a number told us that staffing resources were often diverted from enforcement to meet short-term pressures in processing planning applications or progressing LDPs. We also note that the Royal Town Planning Institute (RTPI) has referred to concerns about the severe underfunding of planning enforcement departments, and the potential for this to contribute to an inability to investigate all the cases that should be investigated or a lack of rigour in those investigations that do occur.
-

Part Two: Performance of the planning system

2.32 As part of our analysis, we reviewed trends in enforcement case outcomes, and found substantial variation in respect of outcome types across councils. In some cases, a particular outcome type could be around three times more common in one council than another (see **Figure 5**). For example, in one council, around one in four enforcement cases (28 per cent) were deemed not expedient to pursue, compared to a rate of 9 per cent in another council.

Figure 5. There is substantial variation in the outcome of enforcement cases dealt with by council planning teams

OUTCOME OF ALL ENFORCEMENT CASES 2015-16 TO 2019-20



Source: NIAO analysis of Department for Infrastructure Planning Activity Statistics

2.33 Given this context, there is a risk that significant variations in outcome types may indicate that certain outcomes are prioritised for their operational efficiency rather than being the most appropriate outcome. This risk seems relevant to the significant differences in the proportion of enforcement cases where councils have deemed it not expedient to take further action, have granted planning permission or where it is determined the issue has been remedied or resolved, (i.e. the breach of planning rules has been removed or amended to make compliant with rules). This may result in uneven enforcement of planning rules, meaning unauthorised development may be allowed to occur.

2.34 Councils told us that the enforcement system in Northern Ireland is a discretionary power of the planning authority, and what may be considered as not expedient in one council, possibly due

to the volume of work or lack of resource, may be pursued by another council. Actions taken are also often based on case law, PAC decisions and likelihood of success.

- 2.35 We did not find evidence of any substantive review of these trends to determine whether the significant variations that were evident were reasonable or natural. In our view, there is a risk of inconsistency in enforcement which may have a negative impact on how fairly the system is operating.

Recommendation

To ensure credibility within the system, we recommend that the Department and councils investigate differences in enforcement case outcomes, to ensure cases are being processed consistently across Northern Ireland.

Part Three:

Variance in decision-making processes

Part Three:

Variance in decision-making processes

- 3.1 Councils are responsible for processing the vast majority of planning applications submitted in Northern Ireland. While decision-making responsibilities within each council are split between the planning committee – a body made up of between 12 and 16 elected representatives - and professional planning officials employed by the council, it is ultimately the council who is responsible for the planning function.

Delegation arrangements are an essential part of an effective development management process

- 3.2 Given that councillors are not typically professional planners, the sharing of decision-making roles and responsibilities between planning committee members and officials can make a critical contribution to the efficiency and effectiveness of decision-making processes within an individual council.
- 3.3 There are a small number of application types that must be decided by the planning committee in all councils:
- all Major planning applications;
 - applications made by the council or an elected member; and
 - applications that relate to land in which the council has an estate.
- 3.4 For all other Local application types, each council must operate a Scheme of Delegation. A Scheme delegates planning decision making authority from a planning committee to planning officials in a council for chosen classes of local development applications and any application for consent, agreement or approval required by a condition imposed on a grant of planning permission for a local development. These aspects of a Scheme are subject to the approval of the Department. However, there are many other types of applications that are not local developments that can form part of a Scheme which are not subject to the Department's approval such as listed building consent, conservation area consent applications and tree preservation orders.
- 3.5 Whilst councils have been granted some flexibility in tailoring their specific arrangements to best meet local needs, Schemes of Delegation should ensure that decisions are taken at an appropriate level – only the most significant or controversial applications should be considered by committee. Furthermore, councils should ensure that their delegation processes are clear, transparent and efficient. The Department also intended that, despite local variation, there is at least some degree of consistency, to ensure that applicants across Northern Ireland are not confronted by a variety of different processes across different council areas.
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Not all Schemes of Delegation ensure that decisions are taken at an appropriate level

- 3.6 Departmental guidance, published in 2015, recommended that over time councils should aim to have between 90 and 95 per cent of applications dealt with under a scheme of delegation, however this is not a statutory target⁵. At the time we carried out our fieldwork, data was available showing delegation rates for each council for the 2018-19 and 2019-20 years. During these two years, the overall delegation rate across all councils was 91 per cent. In eight councils, delegation rates fell within the 90 to 95 per cent range in both years, but in three councils, rates fell below the range in both years⁶.
- 3.7 The Scheme of Delegation in all three councils which fell below the target range required all applications refused by officials to be referred to the planning committee, regardless of nature or scale. This inevitably resulted in a higher proportion of applications being considered at committee level.
- 3.8 It is not clear that limiting delegation in this way contributes to better quality decision-making. Departmental guidance is clear that regardless of local arrangements, and allowing for individual applications to be referred to committee upon the request of planning committee members, councils should ensure that applications are not unnecessarily referred to the planning committee, as this will contribute to inefficiency and delay. Councils told us that whilst they acknowledge that this may impact timeliness, it is the prerogative of committee members to use this mechanism.
- 3.9 The current processes in the councils referred to in **paragraph 3.7** appear contrary to Departmental guidance and the policy objectives that committees should invest their time and energy only in the most significant or controversial applications. Such processes are likely to contribute to additional costs within these council areas. A benchmarking exercise carried out in England in 2012 highlighted that there are significantly higher administrative demands and costs associated with applications heard by committee as opposed to those decided by officials⁷.

Recommendation

We recommend that in instances where delegation rates fall below 90 per cent, councils should review their processes to ensure that they represent the best use of council resources.

5 *Best practice protocol for the operation of planning committees*, Department of the Environment, January 2015.

6 Antrim and Newtownabbey, Mid Ulster and Derry and Strabane.

7 *Benchmarking of planning services in 65 England local authorities*, PAS/CIPFA, November 2012.

Part Three:

Variance in decision-making processes

The type of applications being considered by committees are not always appropriate

- 3.10 Our analysis of available data and information from stakeholders suggests that there are widespread concerns that the specific applications coming to committee, either under the normal Scheme of Delegation arrangements or by referral, are not always the most significant and complex applications. In particular, some council planning committees appear to be excessively involved in decisions around the development of new single homes in the countryside.
- 3.11 We analysed planning applications processed in 2018-19 and 2019-20. During this period, across Northern Ireland, planning applications for single rural dwellings accounted for around 16 per cent of all applications processed. Despite often being relatively straightforward applications, they accounted for 18 per cent of all planning committee decisions in the same period. Within these overall figures, there are wide divergences at council level (see **Figure 6**).

Figure 6. There appears to be a wide range of approaches adopted by councils to process applications for new single homes in the country

| COUNCIL | NEW SINGLE RURAL DWELLINGS AS % OF.. | | DIFFERENCE |
|---------------------------------|--------------------------------------|---------------------|------------|
| | ALL DECISIONS | COMMITTEE DECISIONS | |
| Fermanagh and Omagh | 16 | 29 | +13 |
| Lisburn and Castlereagh | 17 | 27 | +10 |
| Newry, Mourne and Down | 20 | 27 | +7 |
| Antrim and Newtownabbey | 16 | 19 | +3 |
| Causeway Coast and Glens | 15 | 18 | +3 |
| Mid Ulster | 31 | 31 | - |
| Belfast | 1 | 0 | -1 |
| Derry and Strabane | 13 | 10 | -3 |
| Ards and North Down | 9 | 5 | -4 |
| Armagh, Banbridge and Craigavon | 21 | 11 | -10 |
| Mid and East Antrim | 15 | 1 | -14 |

Source: NIAO analysis of Planning Activity Statistics Open Data tables and Department for Infrastructure management information

- 3.12 Given that planning applications for single rural dwellings are rarely the most complex, we would expect them to account for a lower proportion of committee decisions than of overall decisions. This is not always the case, highlighting a disproportionate use of committee time and focus on these applications.
- 3.13 In August 2021, the Department issued a 'Planning Advice Note' (PAN) on development in the countryside to local councils. The Department told us that the purpose of this PAN was to re-emphasise fundamental aspects of existing strategic planning policy on development in the countryside, as contained in the SPPS; and, clarify certain extant provisions of it. The Department told us that it is clear that the PAN did not add to or change existing planning policy. Councils told us that they were confident the PAN did introduce new policy.
- 3.14 Following concerns from councils and other stakeholders, the Department advised that "rather than bringing certainty and clarity, as was its intention, the PAN...seems to have created confusion and uncertainty" and this guidance was withdrawn. The Department has advised that it will now take stock of the concerns raised and undertake further engagement and analysis on strategic planning policy on development in the countryside which will include consideration of current and emerging issues, such as climate change legislation and our green recovery from this pandemic.

One in eight decisions made by planning committees in Northern Ireland goes against the recommendation of planning officials












- 3.15 Departmental guidance for planning committees makes it clear that committees are not always expected to agree with decisions recommended by planning officials. Divergences of opinion between committees and officials are to be expected where planning issues are finely balanced, and a committee may place a different interpretation on, or give a different weight to, particular arguments or planning considerations. However, decisions against officer recommendations must always be supported by clear planning reasons.
- 3.16 Our review of data covering 2018-19 and 2019-20 shows that just under one in eight applications decided by committee was made contrary to official advice. Whilst the rate varies between councils, in the council with the highest rate, almost one in three decisions taken by the planning committee overturned the recommendation of professional planners (see **Figure 7**).
-

Part Three:

Variance in decision-making processes

Figure 7. There are significant differences in the rates of council planning committees making decisions contrary to official advice

Total number of decisions made by planning committee and number of decisions made against official's recommendation (2018-19 and 2019-20)

| COUNCIL | TOTAL DECISIONS | AGAINST OFFICIALS ADVICE | OVERTURN RATE (%) |
|---------------------------------|-----------------|--------------------------|---|
| Fermanagh and Omagh | 147 | 45 | 31  |
| Newry, Mourne and Down | 260 | 65 | 25  |
| Causeway Coast and Glens | 183 | 42 | 23  |
| Derry and Strabane | 222 | 37 | 17  |
| Lisburn and Castlereagh | 143 | 15 | 10  |
| Antrim and Newtownabbey | 188 | 17 | 9  |
| Armagh, Banbridge and Craigavon | 101 | 7 | 7  |
| Mid and East Antrim | 78 | 5 | 6  |
| Ards and North Down | 120 | 5 | 4  |
| Belfast | 257 | 6 | 2  |
| Mid Ulster | 445 | 8 | 2  |

Source: NIAO analysis of Department for Infrastructure management information

- 3.17 In the two year period, planning committees overturned 252 decisions recommended by officials. Of these 228, (90 per cent) were cases where the committee granted planning permission against official advice, thus favouring the applicant and unlikely to be challenged.
- 3.18 Almost 40 per cent of the decisions made against officer advice related to single houses in the countryside. In all of these instances, the officer recommendation to refuse planning permission was overturned and approved by planning committee, contrary to advice.
- 3.19 In Northern Ireland, if a planning committee refuses a planning application, then the applicant has a right of appeal. In cases where the planning committee grants an application contrary to official advice, there is no third party right of appeal. The variance in overturn rate across councils, the scale of the overturn rate and the fact that 90 per cent of these overturns were approvals which are unlikely to be challenged, raises considerable risks for the system. These include regional planning policy not being adhered to, a risk of irregularity and possible fraudulent activity. We have concerns that this is an area which has limited transparency.

- 3.20 In making planning decisions it is recognised that planning committees can come to a different decision than its planning officers, however, in doing so they are required to maintain adequate, coherent and intelligible reasons for decisions made. The Department told us that it has previously written through its Chief Planner's letters to highlight this to councils.

Recommendation

We consider that some of the overturn rates are so high, that they require immediate action both from councils and the Department to ensure that the system is operating fairly and appropriately.

Decision-making processes are not always transparent

- 3.21 Given the flexibilities that are allowed under current arrangements, and the potential inconsistencies that can arise, it is critical that the process is as transparent as possible. A recent survey by Queen's University found that the public has low levels of trust in the planning system, and there is a perception that it is not transparent.⁸ This survey, for example, noted that only three per cent of citizens felt their views on planning are always or generally considered.
- 3.22 We found similar concerns in two main areas: in respect of the process by which applications are referred to the committee by elected members, and in respect of those occasions where planning committees make decisions that are contrary to the advice provided by officials.
- 3.23 A variety of mechanisms is in place to document referrals to planning committees, such as assessment panels or dedicated email addresses. However, not all councils have such mechanisms, they are not available to the public and they do not effectively support greater transparency.
- 3.24 As part of our fieldwork we reviewed a sample of planning committee minutes. These did not provide a rationale for particular applications being referred to the committee. Some minutes did not distinguish between applications that were being considered under regular Scheme of Delegation operation, and those being considered as a result of a referral.
- 3.25 The lack of transparency around the overruling of officials' advice by committees was a key issue identified within the research carried out by Queen's University. Our review of planning committee minutes showed that reasons for deciding contrary to the recommendation made by officials were not consistently recorded, and minutes often did not contain explicit reference to the applicable planning policy. It was therefore difficult to understand the policy issues underlying the disagreement and committee's decision. We found no evidence that there was any system in place to monitor such decisions, and ensure that the decisions being made were compliant with overall planning policy.

8 This survey was based on 1,050 responses, 444 of which were from Northern Ireland.

Part Three:

Variance in decision-making processes

Recommendation

There is a need for full transparency around decision-making. We recommend that planning committees should ensure that minutes of meetings include details of the applications that are brought to committee as a result of a referral, who brought it to committee and outline the planning reasons why the application has been referred.

We recommend that where a planning committee makes a decision contrary to planning officials' advice, the official minutes of the meeting should contain details of the planning considerations that have driven the decision.

Planning committees do not regularly assess the outcomes of their previous decisions

- 3.26 The Department's guidance for planning committees indicates that they should undertake an annual monitoring exercise to review the impact of planning decisions they have made in the past. It suggests that a committee could inspect a sample of previously determined applications to allow them to reflect on the real-world outcomes. This would enable committees to highlight good and bad decision-making and inform future decisions. We did not find any evidence of a formal review of decisions at any council we spoke to. In our view, this is an important aspect of the quality assurance process which is being overlooked.

Recommendation

Planning committees should ensure that they regularly review a sample of their previously determined applications, to allow them to understand the real-world outcomes, impacts and quality of the completed project. Councils should ensure that they review a range of applications, to ensure that it is not only focused on those applications that tell a good news story about how the system is working. Lessons learned from this process should be shared across all councils.

Training for planning committee members is inconsistent

- 3.27 Councillors who sit on planning committees have a demanding role. Planning can be a complex policy area, and planning committee members are elected officials who have decision-making powers over planning matters, rather than experts in planning policy and legislation. Consistent and ongoing training on planning matters is therefore an essential feature of a well-functioning planning committee. Whilst the exact level of training necessary can vary, a report by the Royal Town Planners Institute (RTPI) in Wales⁹ suggested a minimum level of continuing professional development for all committee members of 10 hours per year.

9 Study into the Operation of Planning Committees in Wales, RTPI Cymru, July 2013.

- 3.28 From September 2014 to January 2015, the then Department of the Environment held capacity building and training events for elected representatives in preparation for the transfer of planning functions to the councils. This included a full day session on propriety, ethics and outcomes. Whilst there was a focus on providing core training when planning functions transferred in 2015, subsequent training requirements for planning committee members have varied from council to council, and appear to have been completed on a more ad hoc basis. Whilst most councils have mandatory induction training and training for committee Chairs, ongoing training is not always compulsory for elected members. The Department has liaised with the Northern Ireland Local Government Association since 2015 to assist in their development of training programmes for elected members.
- 3.29 In our view, there is the potential to centralise training for committee members, which would also reduce the administrative burden on planning services which are already under resourced and struggling with workload. This would also ensure that those making decisions have all had the same training, making the process fairer for people submitting planning applications.

Recommendation

Councils should consider the introduction of compulsory training for members of planning committees, including procedures where training requirements have not been met.

The Department should ensure that training provided to planning committee members is consistent across all councils and sufficient to allow elected members to fulfil their duties.

Part Four:

Departmental oversight

Part Four:

Departmental oversight

- 4.1 The Department has a number of responsibilities in relation to planning. These include:
- oversight of the planning system in Northern Ireland;
 - preparing planning policy and legislation;
 - monitoring and reporting on the performance of councils' delivery of planning functions; and
 - making planning decisions in respect of a small number of Regionally Significant and called-in applications.

Regionally Significant applications are the most complex applications and often take years to decide on

- 4.2 Regionally Significant development applications are those considered to have the potential to make a critical contribution to the economic and social success of Northern Ireland as a whole, or a substantial part of the region. They may have significant effects beyond Northern Ireland, or involve a substantial departure from a Local Development Plan.
- 4.3 These applications are submitted to, and processed by, the Department. There are typically very few of these applications decided in a given year, with only seven processed between 2016-17 and 2020-21. Whilst there is no statutory processing time target, there is a Departmental target to process regionally significant planning applications from date valid to a Ministerial recommendation or withdrawal within an average of 30 weeks. Only one of the seven applications processed between 2016-17 and 2020-21 was decided within 30 weeks, with four taking more than three years to process. Of the three Regionally Significant applications pending at 31 March 2021, two had been in the system for more than three years. Given the economic significance of these projects, any delay is likely to have a negative impact on potential investment.
- 4.4 The Department told us that the absence of the Assembly from January 2017 to January 2020 impacted on its ability to take planning decisions and in particular, the 2018 Court ruling in *Buick* prevented planning decisions being made by the Department until legislation was enacted which allowed senior civil servants to take certain decisions. With the return of the Executive, the ruling has continued to have impacts on planning. In addition, whilst performance can be improved, poor quality planning applications entering the system and increased requirements under environmental regulations have also impacted the timeliness for processing major and regionally significant applications.
- 4.5 The Department is also responsible for determining a number of Major and Local applications each year. These also typically take a long time to process. Of the 28 Major applications
-

processed by the Department between 2016-17 and 2020-21 only three were processed within 30 weeks, and 19 took more than three years. Of the twenty five Major applications being determined at 31 March 2021, 18 were more than one year old with nine of those being more than three years old.

- 4.6 Of the 29 Local applications processed by the Department between 2016-17 and 2020-21, 17 took longer than 30 weeks – twice the 15 week target – and 14 of those took more than one year to process. All of the ten Local applications being processed by the Department at 31 March 2021 were more than one year old.

The Department is currently undertaking a review of the implementation of the Planning Act

- 4.7 The Planning Act contains a provision that requires the Department to review and report on the implementation of the Act. The review will:
- consider the objectives intended to be achieved by the Planning Act;
 - assess the extent to which those objectives have been achieved; and
 - assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.
- 4.8 The review will also provide an opportunity to consider any improvements or ‘fixes’ which may be required to the way in which the Planning Act was commenced and implemented in subordinate legislation.
- 4.9 The Department has stated that the review is not envisaged as a fundamental root and branch review of the overall two-tier planning system or the principles behind the provisions as, in its view, it is still relatively early days in the delivery of the new system. In our view, this is an important opportunity to make improvements across the whole system.

The Department should provide leadership for the planning system

- 4.10 Our review has identified significant silo working in the planning system. We have seen a number of instances where individual bodies – either councils, the Department or consultees – have prioritised their own role, budgets or resources rather than the successful delivery of the planning service. The Department told us that these and other diseconomies of scale caused by decentralising the planning system were recognised at the time of transfer but were considered to be offset by the advantages of bringing local planning functions closer to local politicians and communities.
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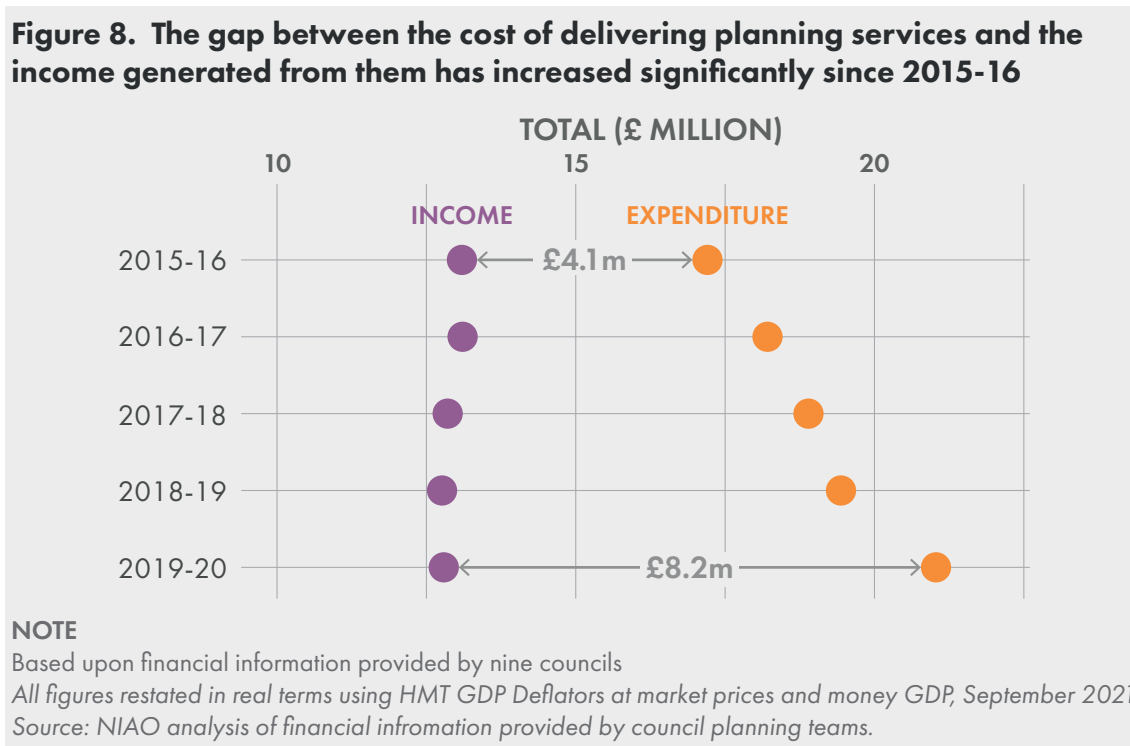
Part Four:

Departmental oversight

- 4.11 Each organisation is accountable for its own performance, and whilst the Department monitors the performance of individual organisations against statutory targets, there is little accountability for the overall performance of the planning system. Whilst individual organisations within the system stressed the challenges they faced; ultimately the frustration from service users was the poor performance of the system, not issues in individual bodies.
- 4.12 In our view, the 'planning system' in Northern Ireland is not currently operating as a single, joined-up system. Rather, there is a series of organisations that do not interact well, and therefore often aren't delivering an effective service. This has the potential to create economic damage to Northern Ireland. Ultimately, as it currently operates, the system isn't delivering for customers, communities or the environment.
- 4.13 In our view, this silo mentality presents both a cultural and a practical challenge. The focus for all of those involved in the system must be the successful delivery of planning functions in Northern Ireland, not the impact on their own organisations. This will require significant leadership of the system – in our view the Department is well placed to provide this leadership. However, it is crucial that all statutory bodies involved in the planning system play their part in this and fully commit to a shared and collaborative approach going forward.
- 4.14 The Department has made initial steps, but more will have to be done. Leadership of the system must encompass a number of areas:
- the long term sustainability of the system;
 - ensuring those involved have access to the necessary skills and experience;
 - enhancing transparency and ethical standards;
 - encouraging positive performance across the system; and
 - the promotion of the value and importance of planning across government as a whole.
- 4.15 The Department told us that it has committed significant energy and resources to leading and fostering a collaborative and shared approach to improving the planning system here. Since March 2015 the Department has led and interacted with councils and other stakeholders across a wide range of meetings, such as the Strategic Planning Group, the Planning Forum, the Environmental Working Group, the Continuous Planning Improvement working group, and the Development Management Working group. However, the Department told us that it is committed to ensuring transparency and ethical standards, but that lead responsibility for these lies with both the councils and the Department for Communities, through the Code of Conduct for Councillors.
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The planning system is increasingly financially unsustainable

4.16 When planning responsibilities transferred to councils, it was on the basis that the delivery of services should be cost neutral to local ratepayers at the point of transfer. However, as was the case in the years preceding transfer, the income generated from planning does not cover the full cost of service delivery. This has meant that historically there has been a need to supplement income with other public funding to deliver planning services. Our review of financial information provided by councils has shown that the overall gap between the income generated from planning activities by councils and the cost of those activities increased significantly between 2015-16 and 2019-20 (see **Figure 8**).



4.17 It was intended that the gap between income and expenditure at individual council level would be met by a grant paid by central government to councils. This grant was intended to provide funding for a number of service areas, of which planning is one. Whilst there have been requests from councils for the Department for Communities to review the level of funding, no review has been undertaken.

4.18 In our view, the Department appears to have given little consideration to the long-term sustainability of the planning system, despite the increasing gap between income and expenditure. The Department told us that it is responsible for setting planning fees (once agreed by the Minister), but not for the long-term funding of councils.

Part Four:

Departmental oversight

Planning fees have not contributed to the financial sustainability of the system

- 4.19 Planning decisions increasingly are more complex and require more interaction with those who have specialist knowledge or skills. This requires more work for many applications. In contrast to these increasing demands, planning fees, the main source of income for the planning system, have not been adjusted year on year to keep pace with inflation and the increasing complexity being asked of decision-makers. The result is that less income is being generated in real terms year on year, despite increasing amounts of work being undertaken by planning teams.
- 4.20 The fees that councils charge for planning applications were initially set in 2015, with individual rates set for different types of development application. Since then, these have been increased on one occasion. Changes to planning fees require legislation to be brought through the Assembly. The absence of a functioning Assembly and Minister placed constraints on the Department's ability to bring forward fee increases. However the Department told us that it was able to raise fees once (by around 2 per cent, in line with inflation in 2019) following the enactment of the Northern Ireland (Executive Formation and Exercise of Functions) Act 2018, which allowed the Department to take certain decisions normally reserved to the Minister. The Department told us that further increases have been placed on hold due to the pandemic. Fees are currently around 12 per cent lower than they would be had the prices set in 2015-16 been increased in line with inflation each year¹⁰. This is unsustainable in the longer term.
- 4.21 During our discussions with stakeholders, we were told on a number of occasions that small increases in fees were unlikely to have a significant impact on the number of development proposals being made. Typically, the planning fee cost is a very small element of the total cost of a development, and a small increase is not likely to be material to the overall financial appraisal underlying a proposal. However, developers we spoke to asserted that if fees were to increase, they would expect service levels to improve.
- 4.22 A number of councils also told us that due to the increasing complexity of cases, many fees no longer reflect the costs incurred. Whilst determining the true costs of providing planning services will be challenging, fees that more accurately reflect the true cost will ultimately ensure a more sustainable system. The Department recognises that this is ultimately a policy decision for the Minister.

Recommendation

We recommend that the Department and councils work in partnership to ensure that the planning system is financially sustainable in the longer term.

10 Calculated using GDP deflators at market prices and money GDP September 2021, HMT.

The way performance is monitored and measured does not provide a comprehensive overview of performance

- 4.23 The Department has taken a number of steps in oversight of the performance of the system. Its ability to perform this function is dependent upon adequate performance measurement and reporting arrangements. Ensuring that these are in place is a key tool in maintaining accountability for performance within the system – between the various organisations spanning local and central government involved in delivering the system – and wider accountability to the Assembly and public for overall performance of the system as whole.
- 4.24 There have been efforts to improve the quality of performance information that is available about the planning system. Since 2018-19, the Department has supplemented its reporting on performance against the three time-based targets with a set of measures reporting various trends in council decision-making processes – the Planning Monitoring Framework. This represented an effort by the Department and councils to develop a more comprehensive approach to reporting on planning system performance than that provided by measuring performance against the statutory time-based targets. However, not all proposed indicators were agreed by councils at the time.
- 4.25 The Department has also been gathering, reporting and more recently publishing in more detail the performance of statutory consultees. This is a welcome development, given the critical role that statutory consultees play within the process and the performance issues within this part of the planning system.
- 4.26 However, in our view more work is required to establish an effective system of performance measurement and reporting which goes beyond volume of activities, proportions and timeliness. Oversight requires measures that are accepted by all stakeholders as providing meaningful information about performance and identifying issues that need to be addressed. Being able to compare performance between councils and consultees, over time, and against established standards or targets, is what makes information meaningful and can drive accountability and action.
- 4.27 One of the key deficiencies is the lack of information about the input cost of the various activities being undertaken and reported on. Such information is critical for understanding the full cost of the planning system, measuring the efficiency of the system, identifying areas where there may be inefficiency, and for developing an appreciation of the financial pressures that planning authorities face and the impact these have on performance.
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Part Four: Departmental oversight

Performance management information has not been used to drive improvement

- 4.28 The Department told us that since 2019 it has been working with statutory consultees and local government through the Planning Forum to improve performance of the planning system. This work is particularly focused on improving the performance of major planning applications. Prior to that the Department established and led the Continuous Improvement Working Group. We have not seen any evidence of self-review within councils or learning from experience, for example, reviewing the results of past decisions made in terms of built development, job creation or contribution to the local economy.
- 4.29 In the short term, it is important that the Department and other organisations put appropriate measurement and reporting systems in place. Over the medium and longer term, they must consider how performance measurement can provide the basis for improving performance and delivering quality outcomes.

Performance monitoring is currently more concerned with the speed and number of applications processed, than the quality of development delivered

- 4.30 Since 2016, the Executive has been committed to delivering an outcomes-based Programme for Government across the public sector, placing wellbeing at the core of public policy and decision-making. Organisations are required to ask themselves three key questions: "How much did we do?", "How well did we do it?", and "Is anyone better off?"
- 4.31 Despite the Executive's commitment to outcomes-based accountability, performance measurement within the planning system is predominantly concerned with the speed and quantity of decisions, rather than quality of outcomes. Whilst the Department sought to introduce more qualitative indicators through the Planning Monitoring Framework, there is no publically available information demonstrating how planning decisions have translated into built development, improved or enhanced the built or natural environment, benefitted communities or contributed to the economy.
- 4.32 The lack of outcomes-based accountability measures within the planning system has a number of potential consequences:
- Broader, long-term impacts are not routinely captured and demonstrated, and so the value of the planning system is underestimated.
 - The cumulative effect of planning on communities, towns and regions is not being measured.
 - Negative outcomes which may have a subsequent impact on the public purse, for example poorer health outcomes leading to higher healthcare costs, crime, and unemployment, are allowed to continue unchecked.
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A more holistic approach, which considers the long-term impact of planning decisions, is required. We acknowledge this will be challenging and will require collaboration and effective partnership working across all of government.

Guidance from professional planning bodies highlights the importance of measuring outcomes

- 4.33 The Royal Town Planning Institute (RTPI) conducted research in 2020¹¹ on measuring the outcomes of planning. Their research identified the need to go beyond simple metrics such as the speed of processing applications and number of housing units delivered, and towards assessing planning in terms of place-making aspirations and social, economic and environmental value, in order to track and improve the impact of planning. The research team developed a series of toolkits which it suggested could be adapted by local planning authorities across the UK and Ireland to improve their outcomes measurement.
- 4.34 Whilst the RTPI research discussed the potential of planning as a facilitator of health, social, economic and environmental outcomes by providing open spaces, active travel routes and quality housing, it also recognised the difficulties of attributing specific outcomes to any one public sector organisation.
- 4.35 As part of our review, we examined planning monitoring and performance frameworks in other jurisdictions. We note that both Wales and Scotland have made initial steps in producing a more holistic set of indicators which include some assessment of outcomes. The Department also sought in 2016-17 to work with councils to introduce a more holistic suite of indicators, but this was not agreed by all councils at that time. Whilst we accept that attributing outcomes to specific organisations or decisions is difficult, it will be an important step in demonstrating the planning system's importance to Northern Ireland.

Recommendation

The Department has a key role to play in the improvement of the planning system in Northern Ireland. We are concerned that the Department has been too slow to respond to the challenges facing the planning system and to provide leadership and support for the system as a whole. In our view, all those involved in the planning system need to act now to engender trust.

11 *Measuring What Matters: Planning Outcomes Research*, Royal Town Planning Institute, November 2020.

Part Five:

Issues affecting performance

Part Five:

Issues affecting performance

- 5.1 The delivery of the planning system in Northern Ireland involves a large number of organisations. Whilst councils are the decision-makers for the majority of planning applications, their ability to do so is affected by a number of issues, some of which are outside of their direct control, which can have a significant impact upon how effectively the overall planning system performs for service users.

Many councils have increased staff numbers to manage demand, contributing to increased costs

- 5.2 The transfer of planning responsibilities from central to local government meant that planning officials were also transferred from central to local government. This transfer process assessed how many staff would need to remain within the Department to deliver its retained functions and how many posts would be required in each council planning team to manage their projected workloads.
- 5.3 As discussed at **paragraph 2.4**, councils are unanimous that there was a significant underestimation of the level of resources and staff time that would be required to complete Local Development Plans. We have noted above how councils have often found it necessary to cut back work on LDPs and enforcement, and move staff to other areas where short-term pressures have emerged.
- 5.4 The staffing pressures many councils have experienced have led to a significant increase in the total number of planning officials working within councils. The total number of full-time equivalents (FTEs) employed across all councils has increased by 20 per cent since the transfer of functions (from 331 to 407 FTEs). Given that salary costs are the main expense within the system, this has been a key driver of increased expenditure levels across the planning system since 2015-16.

There are skill shortages within some council planning teams

- 5.5 When the planning function transferred to local government in 2015, it was expected that each council would be capable of delivering on all of its responsibilities. However, we understand that both councils' and the Department's planning teams have often lacked particular skills in specialist areas. A number of stakeholders have told us that they are concerned about specific skills gaps across the system.
- 5.6 The transfer of planning staff and responsibilities in 2015 coincided with the Voluntary Exit Scheme which saw many experienced staff leave the system. The allocation of remaining staff to councils was done on the basis of personal preference, not according to the skills of staff and likely development profile that new councils would have.
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- 5.7 The skills gaps experienced by councils have had an impact on the processing of certain types of complex development applications, and have also impacted the development of LDPs. We have been told that under previous arrangements, the Department was able to maintain specialist teams who could manage particular types of application that proved to be highly complex and challenging – for example, applications related to large retail developments or mineral extraction. The ability to establish such specialist teams is not feasible for individual councils, despite their need to access these skills.

Attempts at shared services have been constrained by a lack of funding

- 5.8 To date, only one shared service has been established to address a specific skills gap. The Shared Environmental Service (SES) is a shared service between all 11 councils, set up in 2015 to support councils in carrying out Habitats Regulations Assessments required for certain planning applications. The service is hosted by Mid and East Antrim Borough Council, and was initially staffed from the Northern Ireland Environment Agency (NIEA) and funded by the Department for Communities (DfC). SES does not have decision-making powers, but rather provides support and guidance to councils on specific environmental assessments. SES is not a statutory consultee.
- 5.9 In recent years, SES has experienced significant resourcing challenges, which have had an impact on its ability to provide timely support to councils. Initially, staff were allocated to SES on the basis of a caseload of 750 consultations per year. By 2020, around 2,000 consultations per year were being received.¹² As a result, SES did not have sufficient resources to meet this threefold increase in demand, and backlogs began to build. SES requested an increase in the grant from DfC, however this was rejected. It then approached the Department with a case for more funding; this was also turned down. The Department told us that in line with normal shared service models, an increase in funding was a matter for those that used the service, in this case councils. Finally, SES appealed directly to each council, asking for an additional £8,500 per year for two years, which was approved. This has allowed SES to employ two additional temporary members of staff and increase their capacity.
- 5.10 However, as the additional funding is time limited, it is unclear what the long-term solution to SES's resourcing issues is. As councils' demand for SES's services has increased, more funding has been required. This is an additional financial burden on already over stretched councils, who were told that planning functions would be cost neutral at the point of transfer.

12 SES evidence to Committee for Agriculture, Environment and Rural Affairs, 22 April 2021.

Part Five:

Issues affecting performance

Recommendation

We recommend that the Department should coordinate an assessment of the key skills and experience gaps across the planning system.

Where a common skills gap across multiple councils is identified, a plan should be developed to ensure that all councils have access to the skills they need to operate effectively. This plan should include assessments of different provision options.

The system does not always allow for the efficient delivery of services

- 5.11 During our audit work, we encountered a strong consensus that the way that the planning application process is set up does not support efficient processing. In particular, stakeholders consistently spoke about the “low bar” set for the information required to make a legally valid planning application in Northern Ireland.
- 5.12 There is a view that the criteria set out in the 2011 Planning Act are too narrowly prescribed and do not require that key supporting documentation – such as flood risk assessments, environmental statements and transport assessments, are provided with applications. This means that incomplete applications must be accepted – and the clock starts ticking in respect of the statutory processing time target, despite the fact that councils do not receive all the information they need to begin determining the application. The Department told us that it recognises this issue and has already commenced work to address this through the Review of the implementation of the Planning Act (NI) 2011 and the Planning Forum.
- 5.13 This contributes to inefficiency and poor processing times in a number of ways:
- Statutory consultees told us that they are often expected to provide a substantive response to a planning application where essential supporting information is missing, and that this leads to significant delays in their responses.
 - Consultees are spending time on poor quality or incomplete applications, and often have to be consulted multiple times on the same application as information is fed through. This can create an additional burden on consultees who are already struggling to meet their targets.
 - Applications which arrive at the planning committee for a decision often have to be deferred to allow supporting information to be provided.
 - If the system continues to accept poor quality applications, this creates a culture of speculative application, whereby the planning system is being used to effectively “MOT” projects and determine the assessments required. This is not an effective use of planning officers’ time.
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Front-loading the application process was consistently identified as a key means of improving performance

- 5.14 Councils told us that a key means of improving application quality and speeding up the planning process was to front-load the process. There are two main means of doing this:
- ensuring that all applications are submitted with the necessary supporting documentation; and
 - providing pre-application discussions (PADs).

Application checklists can speed up processing

- 5.15 In November 2018, Belfast City Council (BCC) introduced an Application Checklist setting out the information required with each type of planning application. When supporting information is missing, the applicant is given 14 days to provide it, otherwise the application and fee are returned and the applicant is advised to resubmit once they are able to provide a complete set of information. In these cases, the decision-making timeframe does not start until the new application is submitted.
- 5.16 When the application checklist was used for Major applications, BCC's own review showed that it contributed to improved performance against statutory targets. BCC's internal data showed that more than two-thirds of Major applications were incomplete at the point of submission in 2019-20. After requesting additional information in line with the checklist process, this improved to over one-third within 14 days of receipt. Performance against the statutory target for Major applications improved by almost ten per cent from 2018-19 to 2019-20, the council's best ever performance.
- 5.17 We highlighted the issue of poor quality applications in our previous report on Planning in 2009. The Department told us that it intends to take forward legislative changes to better manage application validation through the Planning Forum and the Review of the Implementation of the Planning Act. In the meantime, the Department has written to councils encouraging them to follow BCC's example in advance of any legislative changes. We understand that to date not all councils have introduced this approach. In the absence of legislative provision, there is no way of compelling applicants to use this checklist.

Pre-application discussions are used inconsistently

- 5.18 Pre-application discussions (PADs) are one element of front-loading. They provide an opportunity for council officials and developers to meet and consider the important issues that may affect an application's likelihood of success. They should provide developers with a sound understanding of all the documentation required, and highlight any issues with the proposal that may need to be rethought prior to the submission of a full application.
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Part Five:

Issues affecting performance

- 5.19 Whilst there is a system in place in Northern Ireland for PADs to occur, their use across councils varies, with some using them for most Major projects and charging a fee, while others rarely use them. Most stakeholders we spoke to highlighted that the process was not working as effectively as it should.
- 5.20 A significant deficiency in the current approach is the inconsistent involvement of statutory consultees within these discussions. Even where it is clear that a particular consultee will be required to provide information on an application during its processing, statutory consultees are not obliged to attend PADs. Stakeholders told us this means that developers do not get the information they need to ensure that their applications provide all the information that will be needed, nor do they get a good sense of potentially significant issues that may arise and result in the application being refused. The Department told us that it recognises the importance of the PAD process for the efficiency of the planning system and is currently undertaking a review of the process through the Planning Forum. It should however, be recognised that statutory consultees have a finite resource to carry out all of their legislative functions required in the planning process.
- 5.21 This issue is a further example of the difficulties arising from the fragmentation of the planning system in Northern Ireland – councils are offering these discussions as a means to improve the quality of applications, but cannot compel other bodies, who are vital to the decision-making process, to attend.
- 5.22 More consistent use of PADs, with better involvement from statutory consultees, has the potential to address some of the issues around quality and completeness of planning applications, which in turn could improve the speed of the decision-making process and improve the quality of the final scheme.







Many statutory consultees are not providing timely responses

- 5.23 Processing an individual planning application often requires technical or specialist knowledge that is not possessed by individual council planning teams, or the planning officials within the Department processing Regionally Significant and called-in applications. In such instances, statutory consultees provide officials with the information they need to make a decision on whether to approve an application or not. Whilst councils ultimately decide on planning applications, the majority of consultees sit outside local government.
- 5.24 In order to support efficient decision-making by planning authorities, there is a statutory requirement for statutory consultees to make a substantive response to planning authorities within 21 calendar days or any other such period as agreed in writing between the consultee and the council. However, performance has been consistently poor, particularly in respect of Major planning applications (see **Figure 9**). The consultees receiving the largest volume of consultations, DfI Roads and DAERA, respond within 21 days to around half of Major
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applications and three-quarters of Local applications on which they are consulted. The poorest performance is by DfI Rivers, a part of the Department for Infrastructure, who only respond in time to around forty per cent of consultations, across both Major and Local applications, on which they are engaged.

Figure 9. All consultees struggle to provide responses within 21 days to all applications

CONSULTATIONS RELATING TO MAJOR APPLICATIONS

| STATUTORY CONSULTEE | NUMBER OF STATUTORY CONSULTATIONS RECEIVED ¹ | % RESPONDED TO WITHIN 21 DAYS |
|-----------------------------------|---|--|
| DfI Roads | 1,440 | 55  |
| DAERA | 1,112 | 60  |
| DfI Rivers | 809 | 44  |
| NI Water | 509 | 51  |
| DfC Historic Environment Division | 417 | 74  |
| Other Consultees ² | 148 | 66  |

CONSULTATIONS RELATING TO LOCAL APPLICATIONS

| STATUTORY CONSULTEE | NUMBER OF STATUTORY CONSULTATIONS RECEIVED ¹ | % RESPONDED TO WITHIN 21 DAYS |
|-----------------------------------|---|--|
| DfI Roads | 33,148 | 74  |
| DAERA | 12,533 | 78  |
| NI Water | 9,439 | 85  |
| DfC Historic Environment Division | 8,499 | 76  |
| DfI Rivers | 5,736 | 40  |
| Other Consultees ² | 926 | 80  |

NOTES

¹ Performance measured against the response times for all statutory consultations issued to consultees by planning authorities between 1 April 2017 and 31 March 2020

² Other consultees includes Health and Safety Executive Northern Ireland, Department for the Economy, Belfast International Airport, Belfast City Airport, City of Derry Airport and Northern Ireland Housing Executive.

Source: NIAO analysis of Department for Infrastructure management information

Part Five: Issues affecting performance

- 5.25 The Department told us that that there has been a major increase in consultations received by statutory consultees. This, coupled with the increasing complexities of cases received and finite resources, has had significant implications in relation to performance. In addition, the Rivers staff structure has been significantly compromised by vacant posts that have not yet been filled, mainly due to the impact of the pandemic on recruitment processes. Nonetheless there is room for improvement in the timeliness of responses for most statutory consultees.
- 5.26 Analysis by the Department of all live applications it was processing at August 2020 found that consultation delays and the revision of plans were common issues affecting the vast majority of applications (see **Figure 10**).

Figure 10. Main causes of delay in planning applications being processed by Strategic Planning Division

In August 2020 the Department prepared a paper analysing the issues contributing to delay in 44 ongoing planning applications being processed by Strategic Planning Division at that time.

| CAUSE OF DELAY | NUMBER OF CASES AFFECTED | |
|--|--------------------------|--|
| Consultation delays | 42 | |
| Amended plans | 40 | |
| Further environmental information required | 16 | |
| Environmental Statement submitted | 16 | |
| Legal issues | 14 | |
| PAC hearing or public inquiry | 13 | |
| Significant/Complex issues arising from consultation | 9 | |

Source: Department for Infrastructure

- 5.27 A number of the issues that contribute to poor statutory consultee performance are similar to the general issues affecting council planning teams – they have experienced significant pressures in terms of resources, staffing headcount and skills and are often constrained by the incomplete information submitted with an application. These pressures have had to be managed at a time when the total number of statutory consultations they are required to respond to has been increasing, from 20,000 in 2015-16 to 26,000 in 2018-19. In addition to these statutory consultations, consultees have had to respond to around 7,000 non-statutory consultations each year.
- 5.28 The impact of slow consultation responses can be compounded by the fact that an individual application can be subject to multiple consultations across multiple consultees during its processing. We reviewed a sample of Major planning applications that had taken longer than 30 weeks to process, testing the number of consultations issued within each. We found that, on average, these cases were subject to a total of 12 statutory consultations, issued across five different statutory consultees. This highlights the extent to which consultation is a key part

of processing applications, and the extent to which timeliness depends on the consultation system working well. The Department told us that it also indicates the volume of work required by statutory consultees within the planning process and is an area of work which the Planning Forum has attempted to address.

- 5.29 In recent years, the Department and other planning authorities have been working to try and address the problems affecting the consultation process. In April 2019, the Department commissioned a discussion paper examining the role of statutory consultees in the planning process. The report contained four key conclusions and identified thirteen areas for further consideration:
- The establishment of a cross-departmental Planning Forum to build capacity and capability in the system and deliver and oversee continuous improvement in the development management aspects of the planning system.
 - The need to recognise the value of planning at the highest level within NICS, in particular in the Outcomes Delivery Plan and any future Programme for Government.
 - Departments should review resourcing requirements associated with the statutory consultee role and identify need for additional resources.
 - Consideration of proportionate legislative change to address poor quality applications and enhance responsiveness by planning authorities.
- 5.30 Since that report, the Department has established a Planning Forum which brings together key statutory consultees and representatives from local government. A number of initiatives have emerged from this Forum, which are at varying stages of implementation. We have provided a sample list of some of the initiatives at **Figure 11**.
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Part Five:

Issues affecting performance

Figure 11. List of key actions initiated by the Planning Forum

- The development of quarterly and annual monitoring reports to measure statutory consultee performance.
- The development of a best practice document, including Principles of the Management of Statutory Consultation.
- All key consultees have commenced a review of their resource requirements.
- A review of the existing PAD process to identify and implement improvements in practice
- Increasing capacity and capability within the planning system through targeted training, and also rolling out Dfl training on environmental compliance to the wider stakeholder community.
- The proposed introduction, subject to Ministerial approval, of legislation to introduce statutory local validation checklists for planning applications.

Source: Department for Infrastructure

The planning system faces increasing challenges in managing applications that have the potential to have a significant environmental impact

- 5.31 The planning system has a key role to play in preserving and improving the built and natural environment. However, a number of stakeholders highlighted the increasing challenges associated with assessing and managing the environmental impacts of proposed developments. Environmental assessments related to individual applications are typically complex and time consuming. Applications involving an Environmental Impact Assessment (EIA) typically take much longer than other types of application: 125 weeks compared to 45.8 weeks where an EIA was not required¹³.
- 5.32 Responsibility for environmental assessments lies with a range of public sector bodies. Councils, as planning authorities, are deemed to be competent authorities under the Environmental Impact Assessment (EIA) Regulations, and should therefore have the capacity and capability to screen and manage complex environmental issues within the planning process. SES, referred to above at **paragraph 5.8**, was established in 2015 to ensure councils could manage their environmental responsibilities. Its core function is to carry out Habitats Regulation Assessments associated with planning applications, on behalf of councils. Councils must also consult with DAERA, a statutory consultee, on both Environmental Impact Assessments and Habitats Regulation Assessments.

13 Discussion Paper Examining the Role of Statutory Consultees in the Planning Process in Northern Ireland, Department for Infrastructure, September 2019.

- 5.33 The complexity of environmental regulations, the number and fragmentation of organisations involved, the issues noted with resourcing, the growing volume of consultation requests and rising legal challenges increases the potential for delays and the risk of getting the planning decision wrong. It is crucial that the standard of environmental assessment is robust and that staff have sufficient experience and expertise to deal with complex planning applications. The Department told us that it has implemented a programme to build EIA capacity within councils and departmental planning staff and that the programme has now been expanded to deliver EIA training to key statutory consultees in order to enhance capacity and support their important consultative role in the EIA process. Feedback from councils has been positive, however, without a long-term commitment to resourcing, it is not clear how much of an impact this will have on processing times.

The absence of up to date ammonia guidance from DAERA is causing considerable uncertainty for planners and applicants

- 5.34 Concerns have been raised that the planning system is struggling to progress some complex planning applications which can include environmental impact assessments. There is a lack of certainty on how the planning system deals with applications for developments that will produce ammonia emissions when the site is operational (see **Figure 12**). Under the EU Habitats Directive, as a statutory consultee, DAERA is legally obliged to consider the impact that ammonia emissions from a proposed development would have on the environment. Planning applications within the vicinity of a protected site are subject to screening assessments to confirm if there is likely to be an adverse impact on that site.

Figure 12. Ammonia

Ammonia is an air pollutant largely emitted from agriculture and has a damaging impact on biodiversity, including sensitive habitats, as well as human health. It is produced by many common farming activities, such as the housing of livestock, the storage and spreading of manure and slurries, and the application of fertiliser. Ammonia emitted into the air is deposited as nitrogen on land and water surfaces.

Most areas of Northern Ireland, including designated sites and other priority habitats, are affected by high levels of nitrogen being deposited on land and into water surfaces. The levels in most areas are significantly above what is considered their "critical load", the concentration of nitrogen at which significant ecological damage occurs.

Northern Ireland is responsible for 12 per cent of UK ammonia emissions, despite only having three per cent of its population and six per cent of its land area, and Northern Ireland is the only region of the UK where ammonia levels have not been decreasing.

Failure to address the increasing level of ammonia emissions also has the potential to contribute to serious, long-term harm to the environment and human health.

Part Five:

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- 5.35 DAERA's current policy is to consider ammonia emissions from any potential development to be insignificant if they are less than one per cent of the site's critical load, and to screen them out of the full assessment process. This policy was developed from guidelines for other UK environment agencies. However, as ammonia levels are generally lower in the rest of the UK than in Northern Ireland, it is not clear if applying the same threshold will prevent development that has the potential to cause environmental damage. The Department told us that this places planning authorities in a difficult position, given their statutory obligation to make sound and legally robust planning decisions.
- 5.36 In response to these concerns SES, which carries out Habits Regulations Assessments on behalf of councils, implemented new internal guidance in July 2019, reducing the level at which it deemed ammonia emissions insignificant to 0.1 per cent, meaning that more applications would be subject to environmental assessment. Following a legal challenge in October 2019, SES's internal guidance was withdrawn in March 2020 however it was stated that cases with emissions under 1 per cent would continue to be assessed on a case by case basis.
- 5.37 Environmental groups have submitted evidence to the Assembly stating that the current one per cent screening threshold is inappropriate, does not take into account the cumulative effect of development and is not based on objective scientific evidence. Departmental officials have also stated that the decisions made using the current policy are potentially vulnerable to legal challenge and EU infringement procedures.
- 5.38 The lack of clear environmental and ammonia guidance from DAERA creates significant uncertainty for planning authorities, applicants and other stakeholders in the planning system. Pending an updated ammonia policy from DAERA, SES is progressing assessments on a case by case basis. Where it concludes, contrary to the DAERA advice, that development is unacceptable SES recommends councils consult NIEA Natural Environment Division. Over 20 such consultations have been issued to NIEA by councils since April 2020, however it has not responded to any. The majority of these applications remain undetermined.
- 5.39 DAERA is currently reviewing its ammonia policy in light of case law, legal advice and expert opinion. We understand that an ammonia reduction strategy has been in draft since July 2020.

Recommendation

We recommend that the Department and councils seek urgent clarification from DAERA on the appropriateness of ammonia thresholds in making planning decisions.

A new planning IT system has been procured but one council is not involved

- 5.40 The current Planning Portal is an integrated suite of applications which aids planning authorities in the delivery of their planning functions. This includes Public Access, an online service that allows the public to view information on planning applications and to track and submit comments on live applications. It does not, however, allow for applications to be submitted electronically, a significant weakness in the system that imposes administrative costs and contributes to more inefficient application processing.
- 5.41 The Department and councils have been in the process of procuring a new Planning IT system for a number of years. There were difficulties in getting all 11 councils to agree a preferred replacement system, including how it was to be funded. An Outline Business Case was agreed by the 11 councils and the Department in June 2019 for a new regional solution. The preferred option was an off-the shelf solution for all 12 planning authorities. Following an open procurement process a Final Business Case was agreed in June 2020 and a contract awarded for a new Regional Solution for 10 councils and the Department. The new system will cost £30.5 million over 20 years and is planned to be operational in summer 2022.
- 5.42 It is also concerning that one council, Mid Ulster, has decided not to continue with the joint collaborative exercise and instead procure their own system. Mid Ulster told us that their supplier offered best value in relation to cost and customer service and that is satisfied it will meet the council's needs. This means that there will be two separate Planning IT Systems in Northern Ireland. It is unclear how Mid Ulster's separate IT system will interface with the system used by all other councils and the Department, which will be critical given the need to improve performance measurement and reporting.
-

Appendices:

Appendix One

Our audit approach

This report examined the effectiveness of the planning system in Northern Ireland. It identified a range of issues affecting the performance of the system, and the service delivered to users. We have looked at both performance information and issues within councils, who have primary responsibility for the operational delivery of most planning functions, as well as issues beyond the control of council planning teams that impact on performance.

We assessed:

- The issues that have contributed to the failure of councils to deliver Local Development Plans that are integral to ensuring the planning system is a 'plan led system'.
- The performance of the system against the three statutory performance targets.
- Significant regional variation in performance and processes between councils.
- Wider structural issues that impact upon the ability of councils to deliver an effective service.

Our evidence base

We performed in-depth analysis of performance data covering a number of different aspects of the planning system. This included:

- We reviewed the published Planning Activity Statistics covering from 2015-16 to 2020-21, including detailed analysis of the supporting Open Data tables.
- We reviewed the published Planning Monitoring Framework statistics covering the 2019-20 to 2020-21 period.
- We reviewed internal management information compiled by the Department relating to decisions made by council planning committees and statutory consultee performance.
- We reviewed a sample of publicly available planning committee minutes.
- We reviewed planning system performance information available for other regions of the UK.
- We met with officials from each council planning team, and reviewed internal management information provided by each council.
- We consulted with a range of stakeholders and interested parties.
- We engaged a reference partner who had expertise in planning systems across the UK.

The Department told us that, in instances where NIAO has performed further analysis of planning statistics, it had been unable to check the accuracy of related figures within the report. Relevant figures are Figures 2 to 8.

NIAO Reports 2020 and 2021

| Title | Date Published |
|--|-------------------|
| 2020 | |
| Reducing costs in the PSNI | 28 April 2020 |
| The National Fraud Initiative: Northern Ireland | 11 June 2020 |
| The LandWeb Project: An Update | 16 June 2020 |
| Raising Concerns: A Good Practice Guide for the Northern Ireland Public Sector | 25 June 2020 |
| Addiction Services in Northern Ireland | 30 June 2020 |
| Workforce planning for nurses and midwives | 31 July 2020 |
| Overview of the Northern Ireland Executive's Response to the COVID-19 Pandemic | 02 September 2020 |
| Impact Review of Special Educational Needs | 29 September 2020 |
| Generating electricity from renewable energy | 13 October 2020 |
| Capacity and Capability in the Northern Ireland Civil Service | 17 November 2020 |
| Managing Attendance in Central and Local Government | 23 November 2020 |
| Managing Children who Offend: Follow-up Review | 01 December 2020 |
| 2021 | |
| Management and Delivery of the Personal Independence Payment Contract in Northern Ireland | 23 March 2021 |
| Closing the Gap - Social Deprivation and links to Educational Attainment | 05 May 2021 |
| Second Report – Overview of the Northern Ireland Executive's Response to the COVID-19 Pandemic | 08 June 2021 |
| Broadband Investment in Northern Ireland | 17 June 2021 |
| Sports Sustainability Fund | 22 June 2021 |
| The NI Budget Process | 29 June 2021 |
| Continuous improvement arrangements in policing | 12 October 2021 |
| A Strategic Approach to the Use of Public Sector Assets | 21 October 2021 |
| Grant Fraud Risks | 28 October 2021 |
| Design and Administration of the Northern Ireland Small Business Support Grant Scheme | 08 December 2021 |
| Contract award and management of Project Stratum | 14 December 2021 |



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Planning in Northern Ireland

Northern Ireland's planning system is not working efficiently and, in many aspects, is failing to deliver for the economy, communities or the environment. That is the conclusion of a joint report published today (Tuesday 1st February) by the Comptroller and Auditor General, Mr Kieran Donnelly CB, and the Local Government Auditor, Mrs Colette Kane.

The report on 'Planning in Northern Ireland' considers how the system has operated since April 2015, when responsibility for delivering the majority of operational planning functions passed from central government to local councils. However, the Department for Infrastructure retains a central role, with responsibility for preparing planning policy and legislation, as well as monitoring and reporting on the performance of councils in delivering planning functions.

Today's report notes that there is significant silo working in the planning system, and that the most important planning applications are still taking too long to process. Almost three quarters of Regionally Significant and Major planning applications processed between 2017-18 and 2019-20 weren't completed within the statutory target of 30 weeks. Over half (56 per cent) had taken more than one year to process, and 19 per cent more than three years.

The time taken to process Major applications varies substantially between councils, with the median processing time for the slowest council more than three times that of the fastest council. The report highlights other notable variances between councils in their decision-making processes. These include the extent to which planning decisions are delegated from elected representatives to professional planning officials, and how councils resolve enforcement cases where there are potential breaches of policies or planning conditions.

The report recognises the significant pressures that the planning system faces with around 12,500 planning applications being processed each year since 2015. Planning decisions have become increasingly complex, requiring more interaction with those who have specialist knowledge or skills, particularly in regards to assessing and managing environmental impacts. While this requires more work for many applications, planning fees, the main source of income for the planning system, have not been adjusted year on year to keep pace with inflation. As a result, the planning system is increasingly financially unsustainable and the gap between the income generated from planning activities by councils and the cost of those activities has increased significantly.

These pressures have also contributed to slow progress in the creation of Local Development Plans (LDPs) by councils. LDPs are intended to provide a 15-year framework to direct and control the scale and type of development in each council area. However, seven years since the transfer of planning powers to local councils, none are complete and some LDPs remain at the early stages of development. The lack of LDPs means planning decisions are not guided by long-term, up-to-date plans

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Commenting on the report's conclusions, Mr Donnelly and Mrs Kane said:

"The planning system can be a key enabler for the economic and social development of Northern Ireland, as well as playing an important role in protecting the environment, and the focus of all those involved should be on ensuring it delivers its functions in an efficient, effective and financially sustainable way."

"The 'planning system' in Northern Ireland is not currently operating as one system. Rather, there is a series of organisations that are not interacting well and not delivering an effective service. Addressing the issues identified in this report will be both a cultural and a practical challenge, demanding strong leadership."

Among its other findings, the report also highlights concerns over how the planning system is dealing with applications for developments that will produce ammonia emissions. Failure to address the increasing level of ammonia emissions has the potential to contribute to serious, long term harm to the environment and human health. A lack of clear environmental guidance in regards to levels of ammonia emissions has resulted in significant uncertainty for planning authorities and applicants.

ENDS

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Notes for Editors

1. The Comptroller and Auditor General, Mr Kieran Donnelly CB, is Head of the Northern Ireland Audit Office (the Audit Office). He, and the NIAO, are totally independent of Government. He certifies the accounts of Government Departments and a range of other public sector bodies. He has statutory authority to report to the Assembly on the economy, efficiency and effectiveness with which departments and public bodies use their resources. His reports are published as Assembly papers.
2. As Local Government Auditor, Ms Colette Kane is responsible for leading all local government audits across Northern Ireland. The scope of external audit in Local Government covers not only the audit of the financial statements, but also the audited bodies arrangements for securing economy, efficiency and effectiveness in its use of resources, as well as councils' performance improvement responsibilities. The Local Government Auditor has statutory authority to undertake comparative and other studies designed to enable her to make recommendations for improving economy, efficiency and effectiveness in the provision of services by local government bodies and to publish her results and recommendations.
3. The report is available on the [Audit Office website](#). The report is embargoed until 00.01 hrs on 1 February 2022.
4. The Planning Act (NI) 2011 established the two-tier structure for the delivery of planning functions in Northern Ireland. Under the Act, responsibility for delivering the main planning functions passed from a central government department to local councils in April 2015.
5. The Department for Infrastructure (the Department) has a central role in the Planning system in Northern Ireland. Alongside this, it has responsibility for preparing planning regional policy and legislation, and monitoring and reporting on the performance of councils' delivery of planning functions. In addition, the Department makes planning decisions in respect of a small number of regionally significant and called-in applications.
6. Under the Planning Act (NI) 2011, responsibility for delivering the majority of operational planning functions passed from a central government department to local councils in April 2015. These include development planning, development management, and planning enforcement.
7. Planning applications are classified according to the scale of the development proposed, and its impact on society. The most important applications, in terms of their ability to enhance the overall wellbeing in Northern Ireland, are 'Regionally Significant' and 'Major' planning applications.
 - Regionally Significant applications are those applications which are considered to have a critical contribution to make to the economic and social success of Northern Ireland as a whole, or a substantial part of the region. These applications are submitted to, and decided by, the Department.
 - Major developments are those developments which have the potential to be of significance and interest to communities. They are likely to be developments that have important economic, social and environmental implications for a council area. These applications are usually submitted to, and decided by, local councils. However, in certain circumstances the Department may call-in a particular major planning application, meaning that it assumes responsibility for making a decision on the application.

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8. The Department is currently undertaking a review of the implementation of the Planning Act. This review will consider the extent to which the original objectives of the Act have been achieved, and whether there is a need to retain, amend or repeal any provisions of the Act.
9. Background briefing can be obtained from the Audit Office by contacting Colette Kane (028 9025 1064) or Roger McCance (028 9025 4312).



Planning Committee

07 March 2022

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 4 – Update on Planning Advice Note (PAN) on Implementation of Strategic Planning Policy for Development in the Countryside

Background and Key Issues:

Background

1. Members will be aware of the background associated with issuing of the planning advice note on the implementation of strategic policy for development in the countryside on 02 August 2021.
2. A letter from the Department Assembly Liaison Officer dated 15 October 2021 advises that the Minister has carefully listened to and reflected on all of the concerns that have been expressed, including those matters raised by Committee Members, and has now agreed to withdraw the PAN to swiftly restore clarity to the situation.
3. A letter from the Chief Planner to Chief Executives of all Councils dated 15 October 2021 advises that the Department has been somewhat taken back by the reaction to the PAN and that it had not expected such a significant response to what it considers to be an advice note to support the efficient and effective workings of the two-tier planning system.
4. Members will also be aware that following consideration of legal advice a pre-action protocol (PAP) letter was to be issued alerting the Department of Infrastructure to the reasons why this Council considered the PAN to be unlawful and seeking the remedy that it be withdrawn. This was considered to be good practice and it would not bind the Council to take legal action.

5. The withdrawal of the PAN meant that it was no longer a material consideration in the assessment of planning applications pending with the Council. Issuing a PAPL was not considered prudent.
6. The Planning Unit has continued to review and take action based on legal advice on a significant number of individual Pre-Action Protocol letters received challenging planning decisions made by this Council.

Key Issues

1. In light of the disruption and cost being incurred by this Council, the Director of Service Transformation wrote to the Chief Planner on 22 January 2022 inviting the Department to:
 - (i) Deal more fully with the issue of the withdrawal by addressing the period during which the PAN was in existence; and
 - (ii) Ensure that all stakeholders including this Council were properly consulted with in relation to any further proposed changes to planning policy in future as ought to be the case.
2. A response was received from the Chief Planner dated 14 February 2022. He maintains that the PAN was published by the Department for the purpose of giving guidance to planning authorities and to assist in achieving a consistent interpretation and application of existing regional planning policy.
3. The Department does not accept the assertion that the PAN was unlawful for any of the reasons specified by the Council. He remains of the view that no consultation was undertaken prior to the publication of the PAN because the Department did not consider that it changed its existing policy or established new policy.
4. With regard to concerns expressed in relation to the financial consequences and the reputational risks that have been created as a consequence of the publication and subsequent withdrawal of the PAN, the Department advised that it will not accept responsibility for any cost which might be encountered by the Council as a result of any current or potential legal challenge to planning decisions taken.

Recommendation:

It is recommended that the Members note the response from the Department of Infrastructure

Finance and Resource Implications:

Ongoing costs associated with current judicial review challenges

| | | | | | |
|-----------------------------|----------------|---------------------------------|----------------|-------------------------|----------------|
| Screening: | | | | | |
| Equality and Good Relations | Not Applicable | Environmental Impact Assessment | Not Applicable | Rural Impact Assessment | Not Applicable |

SUBJECT TO PLANNING APPROVAL: Not Applicable

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 4(a)** – Letter from Director to Dfl Planning dated 11 January 2022.
 - Appendix 4(b)** – Response from Dfl Planning dated 14 February 2022



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11 January 2022

Mr Angus Kerr
Chief Planner & Director of Regional Planning
Department for Infrastructure
Clarence Court
10-18 Adelaide Street
Belfast
BT2 8GB

Dear Angus

PLANNING ADVICE NOTE RE STRATEGIC PLANNING POLICY ON DEVELOPMENT IN THE COUNTRYSIDE

We refer to the letter dated 15 October 2021 withdrawing the Planning Advice Note entitled Implementation of Strategic Planning Policy on Development in the Countryside (the “PAN”).

In the letter the Department notes how it “*was not expecting such a significant response*” to the publication of the PAN. We respectfully submit that the Department might have been able to more properly gauge the response if it had first consulted with and spoken to the relevant stakeholders impacted by its publication including this Council and others. Such was the level of concern raised within this Council at the publication of the PAN that it had instructed Senior Counsel to draft proceedings seeking leave to apply for judicial review of the decision to publish, and was in a position where it was ready to issue those proceedings on Monday, 18 October. Any proceedings issued on that date would have become somewhat academic following the Department’s letter of 15 October; however, we attach a copy of the Order 53 Statement which had been prepared to demonstrate the grounds upon which the Council was prepared to commence the proceedings.

Unfortunately, the withdrawal letter has not meant the end of the matter for the Councils. Given the existence of the PAN which continued in existence for a period of over two months, and as a direct consequence of that position, this Council has now received and is at risk of receiving multiple judicial review challenges which raise the PAN as a distinct issue. This has caused enormous upheaval in the Council’s planning system and continues to give rise to a significant cost to deal with the legal challenges being presented.

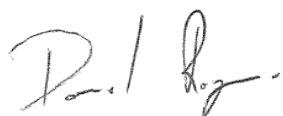
/2

In light of disruption and cost being incurred, we would respectfully invite the Department to:

1. deal more fully with the issue of the withdrawal by addressing the period during which the PAN was in existence; and
2. ensure that all stakeholders including this and all Councils are properly consulted with in relation to any further proposed changes to planning policy in future as ought to be the case.

The Council will continue to keep this matter under review given the financial consequences and the reputational risks that have been created as a consequence of the publication and subsequent withdrawal of the PAN. I am sure you will appreciate that the Council must protect its role in good decision making within the planning system in Northern Ireland going forward.

Yours sincerely



Donal Rogan
Director of Service Transformation

CC: Ms Katrina Godfrey, Permanent Secretary

Regional Planning Directorate

Department for

Infrastructure

An Roinn

Bonneagairwww.infrastructure-ni.gov.uk

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julie.maroadi@infrastructure-ni.gov.uk

Your reference:

Our reference: DfIPG 011/22

14 February 2022

Dear Donal

Planning Advice Note re. Strategic Planning Policy on Development in the Countryside

Thank you for your correspondence dated 11 January 2022 regarding the Planning Advice Note (PAN), published by the Department on 2 August 2021 entitled 'Implementation of Strategic Planning Policy on Development in the Countryside'. As you noted in your letter, the PAN was subsequently withdrawn by the Department on 15 October 2021.

As you will be aware, the PAN was published by the Department for the purpose of giving guidance to planning authorities and to assist in achieving a consistent interpretation and application of existing regional planning policy. It did so by re-emphasising and clarifying certain fundamental aspects of existing policy to assist in ensuring a region wide positive impact on our rural communities and the planning system overall. As planning authorities, Councils and the Planning Appeals Commission (PAC) have responsibility for interpreting planning policy correctly, attributing weight to policy and exercising planning judgment when determining planning applications. When publishing the PAN, the Department did not amend or change existing regional policy. It provided guidance on its interpretation and application, with a view to assisting planning authorities to discharge their functions, within the two-tier planning system.

As you are also aware, the PAN attracted significant attention and interest across many sectors. The Department received many representations and questions about its content, much of which was unexpected. The Department considered these representations and

reflected upon them carefully. Regrettably it came to the conclusion that the intention of achieving clarity was unlikely to be fulfilled. On the contrary, the PAN appeared to have given rise to uncertainty and confusion among planning authorities and stakeholders. In those circumstances, the Minister concluded that the PAN should be withdrawn, which the Department did on 15 October 2021.

I note the points you have made about the PAN in your correspondence, including the fact that the Council was preparing to make an application for a judicial review, to challenge the legality of the PAN. I note that no pre-action correspondence was sent to the Department and clearly, those proceedings were unnecessary in light of the decision to withdraw. However, the Department does not accept the Council's assertion that the PAN was unlawful for any of the reasons it was intending to raise. As Minister Mallon made clear, the intention of the advice note was to assist with ensuring a consistent interpretation and application of existing regional policy. The PAN did not add to or change existing planning policy. The Department's decision to withdraw the PAN was founded upon its own assessment of the public response, in light of the PAN's intended objectives.

In your letter you have requested the Department to deal more fully with its decision by addressing the period during which the PAN was in existence. You have not identified any particular action which you consider ought to be taken. The Department is unaware of any specific actions which have been taken by the Council. However, during the period in which the PAN was in existence, there was no change to the structure of the two tier planning system. As planning authorities, councils remained responsible for processing and determining planning applications. Councils are responsible for interpreting and having regard to the local development plan, any material regional planning policy (including the Strategic Planning Policy Statement (SPPS) and Planning Policy Statement 21: Sustainable Development in the Countryside), local circumstances and all other material considerations. The weight accorded to any of these factors is a matter for the planning judgment of the Council, as the statutory planning authority. The publication and subsequent withdrawal of the PAN, did not change these features of the two tier system in any way.

In relation to any financial consequences or reputational risks, to which you refer in your letter, the Department must advise that it will not accept responsibility for any costs which might be encountered by the Council as a result of any current or potential legal challenges to planning decisions or other actions taken by local planning authorities, including Lisburn and Castlereagh City Council.

You have also requested that the Department consult with councils and stakeholders on any future changes to regional planning policy. The Department acknowledges that consultation on any new regional policy is part of the policy formation process and it is committed to continuing that practice in the future. In the case of the PAN, consultation was not undertaken prior to its publication because the Department did not consider that it changed existing policy or established new policy.

I hope you will find this information to be of assistance.

Yours sincerely



ANGUS KERR
Chief Planner
& Director of Regional Planning



Planning Committee

07 March 2022

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 a telecommunication operator of their intention to utilise permitted development rights at a total of seven locations within the Council area to install electronic communications apparatus 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. A list of the recent notification(s) is provided.
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.

Recommendation:

It is recommended that Members note the detail of the notifications specific to the seven sites and that hard copies are available to view at the Council Offices at Lagan Valley Island.

Finance and Resource Implications:

There are no finance and resource implications

Screening:

Equality and Good Relations

Not Applicable

Environmental Impact Assessment

Not Applicable

Rural Impact Assessment

Not Applicable

SUBJECT TO PLANNING APPROVAL:

Not Applicable

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

List of Notifications from Telecommunication Operators in relation to intentions to utilise Permitted Development Rights

| | Applicant/Agents | Operator | Location | Summary of details | Date received |
|---|-------------------------|-----------------|--|-------------------------------------|----------------------|
| 1 | Fibrus | Fibrus | Ballycairn Road, Aghalee, BT67 0DR, after the junction to Beechfield Lodge | Proposed tele-communication cabinet | 09/02/2022 |
| 2 | | | | | |
| 3 | | | | | |



Planning Committee

07 March 2022

Report from:

Head of Planning and Capital Development

Item for Noting

TITLE: Item 6 – Review of the Implementation of the Planning Act (NI) 2011

Background and Key Issues:

Background

1. The Department for Infrastructure (the Department) has an oversight role in respect of the operation of the Planning System in Northern Ireland. As part of this role it is required under Section 228 of the Planning (Northern Ireland) Act 2011 to review the implementation of the Planning Act.
2. Whilst this was meant to be carried out within three years of the legislation coming into effect the Regulations required to set out the terms of the review only came into effect on 2 November 2020 with an extended detail provided until 16 April 2021.
3. The Department through the Call for Evidence invited comments on the review from key stakeholders in the process with opportunity afforded to the Council to provide comment on those aspects of legislation that are not working well and that need amendment or repeal. A template was provided with comment sought on the five topic areas:
 - a) Local Development Plans
 - b) Development Control
 - c) Enforcement;
 - d) COVID19
 - e) Other parts of the 2001 Planning Act

4. A detailed response outlining the key issues in each of the five topic areas was returned to the Department within the extended timeline.

Key Issues

1. In January 2022, the Department published a report into its review of the Implementation of the Planning Act. Following an analysis of the response received, the following broad themes emerge:
 - For the planning system as a whole, to take account of other strategies on for example: climate, environment, renewable energy;
 - To streamline, and address perceived obstacles/inefficiencies in local development plan making;
 - For greater clarity of the role of the Department in plan-making, development management/decision taking, and planning enforcement;
 - For quicker and more streamlined decision taking on planning applications and to address perceived obstacles at various stages including, pre-application consultation, and pre-determination hearings;
 - To better utilise digitisation across the planning system, including a review of planning application and advertising requirements;
 - To uplift and broaden the scope of planning fees to better match costs;
 - For greater and more regular use of powers to assess a councils performance;
 - To future proof planning against potential emergencies, for example extending extant planning permissions and suspending in-person engagement;
 - For greater powers to council in relation to conservation areas and trees;
 - To commence the Review of mineral planning permissions;
 - To prioritise 'green infrastructure' projects in post COVID 19 recovery.
2. The following actions are identified in the report:

Local Development Plan (LDP)

3. The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.
4. The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant/appropriate to local planning authorities.
5. The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online/digital means of communication in plan making, development management and the planning system generally to improve accessibility for citizens

Planning Control

6. The Department will review existing thresholds and categories of development for major applications to determine the need for revisions.

7. The Department will bring forward proposals for both in-person and on-line/electric Pre-Application Community Consultation (PACC) public engagement. This will include consideration of any recommendations to emerge from the working of the Planning Engagement Partnership. They further indicate that clarity on the PAN process could be provided in expanded guidance if appropriate.
8. The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.
9. The Department will bring forward proposals to introduce statutory 'validation checklists' and will seek to advance policy development at the earliest opportunity.
10. The Department will explore further and give consideration to the legislative requirements around statutory consultation including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.
11. The Department will bring forward proposals to make Pre-Determination Hearings (PDH) discretionary for councils in exercise of their functions.
12. The Department will bring forward proposals to supplement existing section 59 provisions which would disallow the variation of a development proposal at appeal.
13. The Department will undertake a general review of current departmental directions.
14. The Department will review this provision to establish if any technical amendments are appropriate.

Additional Planning Control

15. The Department will review current requirements around Tree Preservation Orders (TPOs) with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.
16. The Minister is to consider options on the way forward with regards to Review of Old Minerals permissions (ROMPs) early in 2022.

Planning Enforcement

17. The Department will explore the possibility of applying Fixed Penalty Notices to advertisement control.

Financial Provisions

18. The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.

19. A copy of the report is available to view at the following link:

<https://www.infrastructure-ni.gov.uk/sites/default/files/publications/infrastructure/review-planning-act-report-jan2022.pdf>

Recommendation:

It is recommended that the Members note the report published by the Department for Infrastructure on the Review of the Implementation of the Planning Act (NI) 2011.

Finance and Resource Implications:

There are no financial or other resource implications identified at this stage.

Screening:

Equality and
Good Relations

Not
Applicable

Environmental
Impact
Assessment

Not
Applicable

Rural
Impact
Assessment

Not
Applicable

SUBJECT TO PLANNING APPROVAL:

Not
Applicable

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 6 – Review of the Implementation of the Planning Act (NI) 2011 dated January 2022.

Review of the Implementation of the Planning Act (NI) 2011

Report
January 2022

This review of the implementation of the Planning Act (Northern Ireland) 2011 (the Planning Act) has been carried out in accordance with section 228 of the Act.

It deals with the implementation of the Act and is not a detailed examination of the operation or performance of the overall new two-tier planning system. A separate Planning Monitoring Framework has been developed in conjunction with councils which includes a series of indicators to provide a more comprehensive assessment of the planning system.

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EXECUTIVE SUMMARY

The enactment of the Planning Act (NI) 2011 provided the legislative basis for the most significant reforms of the Northern Ireland planning system in a generation. These reforms impacted on every aspect of planning, including how development plans are drawn up, how development proposals and applications are managed and the way in which these functions are delivered. The key reforms set out to deliver the complete overhaul and redesign of the development plan and development management systems with the aim of improving efficiency and effectiveness. Significant changes were also made in relation to planning appeals and enforcement.

Overall, the aim of the Act is to create a planning system which is quicker, clearer and more accessible, with resources better matched to priorities. The Act also gives effect to local government reform changes which transferred the majority of planning functions and decision making responsibilities for local development plans, development management plus planning enforcement to locally accountable councils. This provides a framework for locally elected politicians to shape the areas within which they are elected based on an enhanced understanding of the needs and aspirations of local communities.

The majority of the Act came into operation for departments and councils in April 2015 and it was supported by a significant and comprehensive programme of subordinate legislation and guidance.

Section 228 of the Act requires the Department to review and issue a report on its implementation 3 years after the commencement of Part 3 and once in every five years thereafter. The requirement to review and publish a report on its implementation is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented, and in a timely fashion.

The Terms of Reference for the review are set out in The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020¹ which specify that it must consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021, which ran for over an 8 week period. The CfE was part of the process of gathering additional information to help inform the preparation of the review report and the evidence submitted aided the Department's understanding of the outworking of the Act and associated subordinate legislation.

The review found that the vast majority of provisions within the Planning Act have been implemented and that the transfer of responsibility for the majority of

¹ <https://www.legislation.gov.uk/nisr/2020/218/made>

planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. A small number of provisions have yet to be commenced including the Review of Mineral Planning Permissions, the Correction of Errors, and section 63(1)(d) with regard to permission deemed to be granted under the Electricity (NI) Order 1992.

Councils are preparing local development plans for their areas, have published statements of community involvement and now determine the vast majority of planning applications. Changes to the decision making process including pre-application community consultation and pre-determination hearings have further enhanced community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also exercising their planning enforcement duties, investigating alleged breaches of planning control and taking action as appropriate.

The Department is determining applications for 'regionally significant development' under section 26, or applications 'called-in' under section 29 of the Planning Act. Since the commencement of the Act, the Department has also published the Strategic Planning Policy Statement for Northern Ireland setting out the Department's regional planning policies in a shorter more focused document, and has published extensive guidance by way of Practice Notes on the reformed planning system.

The review also found that 162 sections of the Act, or just under two-thirds of its provisions had not been remarked upon in the CfE and the Department has, therefore, drawn the conclusion that these should largely be retained as structured. Key issues emerging from the responses to the CfE included the timeliness of councils bringing forward their local development plans and delays in processing times for some planning applications, particularly major applications. Many respondents pointed to potential legislative changes which might address perceived obstacles in the system.

In seeking to address the findings from the review the Department has made 16 recommendations / actions covering aspects of the Planning Act governing, development planning, development management, planning enforcement and additional planning control. These include recommendations, on reviewing the consultation requirements in plan-making, on improving the quality of planning applications submitted, increasing the use of digital technology in the planning system, reviewing: categories of development; Departmental Directions and the Department's approach to call in notifications; and aspects of the appeals system around restricting new material at appeal and the variation of proposals at appeal. A summary list of the actions/recommendations is provided at paragraphs 12.12 of this report.

Background

1. In 2007 the then Minister of the Environment, Arlene Foster MLA, announced a programme to reform the Northern Ireland planning system. Following extensive stakeholder engagement, the Department of the Environment consulted in 2009 on a wide range of proposals to ensure a modern, efficient and effective planning system to support the Northern Ireland Executive in delivering on its key priorities. The consultation also outlined the changes required to implement the decisions taken under local government reform which would see responsibility for the majority of planning functions returning to local government. Taken together the proposals would represent the most fundamental change to the planning system in Northern Ireland in over 30 years.
 - 1.1. The Planning Act paved the way for implementing the reforms. In parallel with local government reform, many of the provisions of the Act came into operation on 1 April 2015 when responsibilities for the majority of planning functions transferred to the newly formed councils.
 - 1.2. In addition, in May 2016 The Departments Act (Northern Ireland) 2016, reduced the number of government departments from 12 to 9. This was the culmination of discussion going back a number of years on the shape and size of the Northern Ireland Executive.
 - 1.3. As part of this restructuring, the majority of departmental planning functions of the former Department of the Environment were transferred to the Department for Infrastructure, while responsibility for the Planning Appeals Commission under Part 9 of the 2011 Act was transferred from the Office of the First and deputy First Ministers to the Department of Justice. In addition a number of historical built environment functions of the 2011 Act were transferred to the Department for Communities. These included the:
 - power to list buildings under sections 80 to 84;
 - power to designate conservation areas under section 104; and
 - listed building enforcement powers under sections 158 to 161.
 - 1.4. While the Planning Act received Royal Assent in May 2011, the operation of the vast majority its provisions did not commence until 2015, in parallel with the reform of local government and transfer of planning functions. This occurred via the following orders:
 - The Planning (2011 Act) (Commencement No.1) Order (NI) 2011;
 - The Planning (2011 Act) (Commencement No.2) Order (NI) 2015; and
 - The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) Order (NI) 2015 (as amended).

The aim / objectives underpinning the Planning Act

2. The key aims of the reform of the planning system were to:-

- deliver Northern Ireland Executive decisions to transfer the majority of planning functions to the newly formed councils thus creating a two tier planning system; and
- bring forward short, medium and long term process improvements to modernise the system.

2.1. The main objectives were:-

- the continued formulation and co-ordination of planning policy by the Department;
- councils preparing local development plans;
- councils determining the majority of planning applications for development and additional planning related consents; and
- councils taking appropriate enforcement action where a breach of planning control may have taken place.

2.2. The main reform objectives were further underpinned by actions to:-

- further sustainable development;
- enhance community involvement in the planning process;
- make more timely decisions in ways which are transparent and demonstrably fair;
- allow higher fines for planning offences; and
- bring forward reforms to the planning appeals system.

Introduction

Review of the Implementation of the Planning Act

3. Section 228 of the Planning Act (Northern Ireland) 2011 (the Planning Act) requires the Department to review and issue a report on the implementation of the Act 3 years after the commencement of Part 3 of the Act, and at least once in every 5 years after that. Part 3 commenced on the date of transfer of planning functions to district councils on 1 April 2015. The Department is required to make regulations setting out the terms of the review.
 - 3.1. The delay in meeting the initial timeframe set out in the Act for making the regulations and publication of the associated report, stems from decisions (not to proceed) made under the NI (Executive Formation & Exercise of Functions) Act 2018. These decisions determined that in the absence of a Minister or functioning Assembly, it would not be appropriate to make the regulations, and to publish the subsequent report on the implementation of the Planning Act. The Regulations were, however, subsequently made in October 2020.

The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020

- 3.2. The Planning Act 2011 (Review) Regulations (Northern Ireland) 2020² specify that the review must:-
 - consider the objectives intended to be achieved by the Planning Act;
 - assess the extent to which those objectives have been achieved; and
 - assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.

Purpose and Scope

- 3.3. The requirement to review and publish a report on the implementation of the Act is to ensure the Department monitors and reports on the coming into operation of the provisions within the Act, to provide a level of assurance that the legislative framework for the delivery of a reformed two-tier planning system has been implemented and in a timely fashion.
- 3.4. The focus of the review is, therefore, on the implementation of the legislative provisions of the Act itself and the extent to which the original objectives of the Act have been achieved. This will then inform whether there is a need to **retain, amend or repeal** any provisions of the Act. The review also provides an opportunity to consider any improvements or 'fixes' which may be required to the way in which the Planning Act has been commenced and implemented in subordinate legislation. Issues with the planning system that have surfaced as a result of the Coronavirus pandemic will also be examined as part of this review.

² <https://www.legislation.gov.uk/nisr/2020/218/made>

- 3.5. It is important, however, to highlight that the review is not envisaged as a fundamental root and branch review of the overall two-tier planning system or the principles behind the provisions. It is still relatively early days in the delivery of the new system, compared with other jurisdictions. The review will look at how the provisions of the Act are working in practice and whether there are any changes that could be implemented to further improve the system for all stakeholders – including councils, developers, and the wider public. The focus is not just on planning decisions, but also on the delivery of new local development plans which will provide certainty for the longer term. Changes and ‘fixes’ may not always require legislative change.
- 3.6. The Review Report is structured in two parts:
- **Part I** deals with the technical and legislative implementation of the Planning Act, and its supporting subordinate legislation and directions against the stated aim / objectives to determine if what was intended to be achieved, has indeed been accomplished; and
 - **Part II** examines and assesses the outworking of the Act, and its supporting subordinate legislation and directions, to determine whether, in considering the objectives, it is appropriate **to retain, amend or repeal** any of the provisions of the Act to better achieve those objectives. This includes examination of potential amendments or ‘fixes’ to various elements of the planning system.

Call for Evidence

- 3.7. To assist the review and to better understand stakeholders views on how the Act has been implemented, the Department issued a Call for Evidence (CfE) in February 2021. The CfE formed part of the process of gathering additional information which helped to inform the preparation of the review report, particularly the assessment under **Part II**. The evidence submitted improved the Department’s understanding of where there may be a need to retain, amend or repeal particular parts or sections of the Act, or associated subordinate legislation. The questions in the CfE were structured within the context of the terms of the review set out in the associated Review Regulations.
- 3.8. The CfE sought to target and engage with key stakeholders in the planning system including, councils, statutory consultees, professional bodies, community, business and environmental interests, however, it was open to anyone to respond. It was undertaken over an 8 week period ending 16 April 2021 and attracted 55 responses. While comments were principally sought on those parts of the Act covering local development plans, development management and enforcement, the Department was happy to receive comments on any element of the Act, or associated subordinate legislation.

3.9. In summary, almost two-thirds of the Act (162 sections) were not remarked upon. As had been anticipated, the vast majority of comments focused on sections with regard to Local Development Plans (LDPs), development management and planning enforcement. Comments were also received with regard to the functioning of the planning system within the context of the COVID 19 pandemic and post pandemic recovery. Following analysis of responses, the broad themes to emerge included calls:

- for the planning system as a whole, to take account of other strategies on for example: climate, environment, renewable energy;
- to streamline, and address perceived obstacles / inefficiencies in local development plan-making;
- for greater clarity in the role of the Department in plan-making, development management / decision-taking, and planning enforcement;
- for quicker and more streamlined decision-taking on planning applications and to address perceived obstacles at various stages including, pre-application consultation, and pre-determination hearings;
- to better utilize digitization across the planning system, including a review of planning application and advertising requirements;
- to uplift and broaden the scope of planning fees to better match costs;
- for greater and more regular use of powers to assess a council's performance;
- to future-proof planning against potential emergencies, for example: extending extant planning permissions, and suspending in-person engagement;
- for greater powers to councils in relation to conservation areas and trees;
- to commence the Review of mineral planning permissions;
- to prioritise 'green infrastructure' projects in post-COVID 19 recovery.

3.10. While the above comments provide a broad summary of the responses received to the individual CfE consultation questions, a more detailed consideration of individual proposals, from respondents is set out at Part II of this report. It aims to address the primary issues raised and proposed actions where appropriate, while recognising more detailed consideration of the issues raised will be necessary as policy responses are considered and developed. While we have made every effort to reflect the broad range of opinion, the analysis of evidence gathered from the CfE is not intended to be a comprehensive examination on every single comment received; rather it aims to provide a broad indication of the level and diversity of representations made.

- 3.11. In some instances contributors in their responses to the CfE made comparisons between the planning systems here with those in other jurisdictions. While there are similarities across the various jurisdictions, there are also significant differences in how each planning system works, how performance is measured, and the political and administrative contexts. It is, therefore, difficult to assess the functionality and performance of the planning system in the North against that of other parts of this island or in GB.
- 3.12. It is important to mention however that the performance of the system has been impacted by the COVID 19 pandemic. Nevertheless, the Department has continued to bring forward a number of work streams to address process improvements. A Planning Forum has been established, the key focus of which is to oversee the implementation of recommendations made in an independent report on the role of statutory consultees in the planning process. This work has a particular focus on improving processes and timeframes for major and economically significant planning applications. Statutory consultees have a legislative requirement to respond to planning consultation requests within 21 calendar days and the latest annual statistics show that they responded to 76% of all planning application requests in 2020-21 within 21 days, which was an improvement of 7% over the previous year, despite the impacts of the pandemic.
- 3.13. Furthermore, the Minister convened a Planning Engagement Partnership (PEP) whose purpose is to look at enhancing the quality and depth of community engagement in the planning process at both regional and local planning authority levels. The Partnership is currently preparing its report with recommendations for improvement, which is due to be published early in 2022.
- 3.14. Officials also regularly meet council heads of planning to discuss matters of policy and practice which may be affecting performance in various areas of the planning system. In addition, the Department and 10 councils are working together to take forward a new regional Planning IT system to provide a more modern planning service to the public, consultees and staff, including the ability for the public to submit planning applications on-line. This is expected to be operational in late summer 2022.

PART I

The Legislative Implementation of the Planning Act

4. The Planning Act, which received Royal Assent on 4 May 2011, is the primary legislative vehicle for the modernisation and reform of the planning system. It made the necessary provision for the transfer of responsibility for the majority of planning functions from central government to the newly formed district councils on 1 April 2015. The Act and the Explanatory Notes are available on the government's legislation website (www.legislation.gov.uk).

Commencement of the Planning Act

- 4.1. The Act consists of 15 Parts, 255 sections and seven schedules. Amendments to timeframes for taking enforcement action and also a number of increased penalties were introduced from 1 December 2011, however, as previously indicated, the majority of provisions came into operation on 1 April 2015. The provisions of the Act which have been implemented are:
- Part 1 Functions of the Department for Infrastructure with respect to the development of land
 - Part 2 Local development plans
 - Part 3 Planning control
 - Part 4 Additional planning control (except Chapter 4)
 - Part 5 Enforcement
 - Part 6 Compensation
 - Part 7 Purchase of estates in certain land affected by planning decisions
 - Part 8 Further provisions as to historic buildings
 - Part 9 The Planning Appeals Commission
 - Part 10 Assessment of council's performance or decision making
 - Part 11 Application of Act to crown land
 - Part 13 Financial provisions
 - Part 14 Miscellaneous and general provisions
 - Part 15 Supplementary
 - Schedule 1 Simplified planning zones
 - Schedule 4 Amendments to the Land Development Values (Compensation Act (Northern Ireland)
 - Schedule 5 The Historic Buildings Council
 - Schedule 6 Minor and consequential amendments
 - Schedule 7 Repeals

- 4.2. A small number of the provisions of the 2011 Act have not yet been commenced, these are:
- Part 4 – Chapter 4 Review of Mineral Planning Permissions;
 - Schedule 2 – Review of old mineral planning permission;
 - Schedule 3 – Periodic review of mineral planning permissions;
 - Part 12 – Correction of Errors; and
 - Section 63(1)(d) – permission deemed to be granted under paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992³.

Review of Old Minerals Permissions

- 4.3. Whilst the introduction of the legislation relating to the Review of Minerals Permissions (ROMPs) in Northern Ireland has not been commenced, no decision has been taken not to implement ROMPs. Officials are continuing to examine a number of options in relation to the commencement of ROMPs legislation. The Minister intends to consider options on the way forward early in 2022. In the meantime, councils have a broad range of enforcement powers available under the Planning Act where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so. The planning system together with other environmental and pollution control legislation will continue to facilitate improvements in the operational requirements of mineral facilities as well as limiting potential adverse environmental effects.

Correction of Errors

- 4.4. Part 12 of the Planning Act is intended to allow a council to correct minor miscellaneous and typographical errors in certain planning decision documents that it has issued. For example, where the name of the applicant has been misspelt. Correctable errors are errors which do not form part of any reason given for the decision and cannot change the decision. The Department did not commence Part 12 because of an anomaly at section 221, where the effect of a correctable error would change the original date of the decision document to the date of the correction. If commenced in its current form, this would be problematic in that it would affect the date on which planning permission was granted or refused and would have an effect on the duration of the planning permission or the time within which an appeal may be made to the Planning Appeals Commission. The Department proposes to make a minor technical amendment at an appropriate legislative opportunity to remove this anomaly and subsequently commence Part 12.

³ <https://www.legislation.gov.uk/nisr/2015/25/article/3/made>

- 4.5. However, in the meantime as in other jurisdictions, a council can correct minor errors administratively providing there is a clear and recorded audit trail of that correction.

Deemed Permission under the Electricity (NI) Order 1992

- 4.6. Section 63(1)(d) of the Planning Act has not yet been commenced because the provision to which it relates, namely, paragraph 3(1) of Schedule 8 to the Electricity (NI) Order 1992 has itself not yet been commenced.
- 4.7. Paragraph 3(1) of Schedule 8 to the 1992 Order was inserted by Article 2 of the Electricity Consents (Planning) (NI) Order 2006. This Order amends the Electricity (Northern Ireland) Order 1992 to enable the Department for the Economy (DfE) to grant deemed planning permission and deemed hazardous substances consent on an application for its consent under Schedule 8 to that Order. Article 2 of the 2006 Order is to be commenced on such day as is appointed by DfE. No such day has been appointed by DfE, and as such the Department does not consider it appropriate to commence a provision that does not have any effect.
- 4.8. Once a policy decision is taken by DfE to commence the relevant provisions of the 2006 Order this Department will make a further order under the Planning Act to commence this section.

Subordinate Legislation

- 4.9. The Department initially made 22 statutory rules and four directions under the Planning Act to facilitate the transfer of planning powers and the introduction of the two-tier planning system in 2015. This subordinate legislation was the subject of two public consultations during 2014 and may be viewed on the [Planning Portal](#). It underpins the Planning Act and sets out the detailed statutory requirements for key processes such as the preparation of local development plans and the submission of planning applications. These ensure certain statutory functions are carried out and provide a level of conformity throughout the NI planning system. There are currently almost 40 statutory rules in place.

Legislative Directions

- 4.10. The Department currently has six [Legislative Directions](#) in place which are a means of modifying the detailed application of the legislation. For example The Planning (Notification of Applications) Direction 2017 requires councils to notify the Department of certain applications which allows the Department to consider if the application should be called-in for the Department's determination.

Other Legislation

4.11. The planning system is also supported by a substantial amount of extant legislation relating to matters such as planning blight, compensation, etc.

Legislative Implementation

4.12. The vast majority of provisions within the Planning Act have been commenced and are being implemented, resulting in the successful introduction and operation of the reformed two-tier planning system, in parallel with local government reform.

4.13. The following sections of this review, will report on how the transfer and reform objectives are being delivered in the key areas of formulating policy, preparation of local development plans and in the exercise of development management.

Functions of the Department for Infrastructure

Planning Policy

5. Part 1 of the Planning Act sets out the Department's functions with respect to the development of land. In anticipation of the two-tier planning system the reforms proposed that Departmental planning policy should move away from providing detailed operational guidance and advice and concentrate on providing strategic direction and regional policy advice to be interpreted locally in the preparation, by councils, of local development plans and in decision-taking. The aim was to move to shorter, more focused documents prepared in a shorter timescale. Under section 1 of the Planning Act the Department must carry out its policy formulation functions with the objective of furthering sustainable development and promoting or improving well-being.

The Strategic Planning Policy Statement

- 5.1. In September 2015 the Department of the Environment published The Strategic Planning Policy Statement, prepared under section 1 of the Act. This sets out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland under the reformed two-tier planning system. The provisions of the SPPS apply to the whole of Northern Ireland. They must be taken into account in the preparation of local development plans and are material to all decisions on individual planning applications and appeals. The Department keeps the SPPS under review and brings forward updated policy as required. It is currently taking forward a review of strategic planning policy for renewable and low carbon energy and a separate review in relation to oil and gas development.

Departmental Guidance

- 5.2. As well as developing policy the Department provides additional advice and guidance to assist the effective and efficient operation of the planning system as appropriate. This includes DFI Rivers Guidance, DFI Roads Guidance, Chief Planner's letters as well as Planning Practice Notes (PPN) for councils and the public. The PPNs relate to advice and guidance post-April 2015. They are designed to guide planning officers and relevant users, including the community, through the drafting of a Local Development Plan, the legislation and procedures associated with development management and planning enforcement. To date a series of PPNs have been produced and published which can be added to or amended as and when required. The PPNs can be viewed at the links below.
 - local development plans;
 - development management; and
 - planning enforcement.

Department's Statement of Community involvement

- 5.3. The objective of enhancing community involvement in the planning system has seen significant gains since the transfer of planning powers. Section 2 of the Act required the Department to prepare and publish a Statement of Community Involvement (SCI) setting out its policy as to the involvement of the community in the Department's planning functions under Part 3: Planning Control. The Department first published its SCI on the [Planning Portal](#) in March 2016 with a revision in 2021.
- 5.4. The publication of Departmental and council SCIs fully enables the community to understand how they can become involved in the planning system. Commentary on council SCIs is included at paragraph's 6.2-6.3.

Department's oversight and intervention powers

- 5.5. As is the case in GB, the Department has a number of powers to oversee and intervene in the planning system if, for example, it believes a council is failing or omitting to carry out its planning functions. These include powers to intervene in the preparation of development plans, the determination of planning applications, exercising other planning controls and assessing council's performance or decision making. The Department has consistently indicated that it intends to use the powers only in exceptional circumstances and this has been the position to date.

Local Development Plans

6. Part 2 of the Act transferred development planning to councils and aims to provide an effective, up to date development plan system. The Planning Act sets the framework for a new development plan system with provisions to:
- speed up the development plan preparation process (programme management);
 - ensure more effective participation from the community and other key stakeholders early in plan preparation (statements of community involvement, Preferred Options Paper);
 - create a faster more effective approach to examining plans at independent examination moving away from objection based examination to testing the soundness of the plan; and
 - create a more flexible approach that is responsive to change and capable of faster review (sustainability appraisal, annual monitoring and review).
- 6.1. This is intended to provide more clarity and predictability for developers, the public and other stakeholders. In conjunction with community planning it will also assist the new 11 district councils to target action to tackle social need and promote social inclusion.

Councils Statements of Community Involvement

- 6.2. Under section 4 each council is required to prepare and publish a statement of community involvement (SCI). The council SCI is a statement of the council's policy for involving interested parties in matters relating to development in its district. The statement applies to both the preparation and revision of a development plan and to the exercise of a council's functions in relation to planning control. A council must prepare its local development plan in accordance with its SCI.
- 6.3. All 11 councils have published their SCIs in accordance with section 4 of the 2011 Act. The SCIs can be viewed on the council websites through the links below.
- [Antrim and Newtownabbey](#)
 - [Ards and North Down](#)
 - [Armagh, Banbridge and Craigavon](#)
 - [Belfast](#)
 - [Causeway Coast and Glens](#)
 - [Derry City and Strabane District](#)
 - [Fermanagh and Omagh](#)
 - [Lisburn and Castlereagh City Council](#)
 - [Mid and East Antrim](#)
 - [Mid Ulster](#)
 - [Newry, Mourne and Down](#)

Preparation of Local Development Plans

- 6.4. Each council is required to prepare and adopt a local development plan (LDP) for its district. The LDP is made up of two development plan documents (DPD), the Plan Strategy and the Local Policies Plan. When adopted these DPDs will replace the extant development plans adopted by the Department under the Planning (Northern Ireland) Order 1991.
- 6.5. The preparation of a LDP consists of three main processes:
- publication and public consultation of a Preferred Options Paper;
 - publication, public consultation, independent examination and adoption of the Plan Strategy; and
 - publication, public consultation, independent examination and adoption of the Local Policies Plan.
- 6.6. The Department's Development Plan Practice Notes for LDPs are available on the [Planning Portal](#).

Local development plan progress by the councils

- 6.7. Each council's progress with its LDP can be viewed on its website (web links are provided below). Each council must also publish the following documentation on its website:
- LDP timetable for the preparation and adoption of the LDP;
 - the Preferred Options Paper;
 - the DPDs;
 - copies of valid representations received during the public consultations;
 - details of the independent examination;
 - the report of the independent examiner; and
 - the Department's Direction to adopt the DPD.
- 6.8. All 11 councils are advancing new local development plans and the Department has oversight of the LDP programme. As of the date of this report, 7 councils have now published and consulted upon their draft Plan Strategies which is the first formal stage of the LDP preparation process. Draft Plan Strategies will be subject to Independent Examination (IE) before the PAC (or independent examiner) prior to being adopted.
- 6.9. The PAC forwarded the IE Report of Belfast City Council's Draft Plan Strategy to the Department on 29th September 2021. Officials are in the final stages of considering the recommendations. Fermanagh and Omagh District Council draft Plan Strategy is now with the PAC for IE, and hearing sessions commenced on 18th January 2022 for 2 weeks, with further sessions scheduled for February and March 2022. The Department has also caused the IE's for Antrim and Newtownabbey Borough Council, Mid and East Antrim Borough Council and Lisburn and Castlereagh City Council. It is anticipated hearing sessions for these three Councils will be conducted by the PAC during 2022, and Commissioners for all have now been appointed. The Department are currently in receipt of the Mid Ulster draft Plan Strategy submission, and it is anticipated Derry City and Strabane District Council will

submit a draft Plan Strategy for Independent Examination in line with the Council's agreed timetable in February 2022.

6.10. Current progress on each of the councils' LDPs can be viewed via their respective website provided at the following links:

- [Antrim and Newtownabbey](#)
- [Ards and North Down](#)
- [Armagh, Banbridge and Craigavon](#)
- [Belfast](#)
- [Causeway Coast and Glens](#)
- [Derry City and Strabane District](#)
- [Fermanagh and Omagh](#)
- [Lisburn and Castlereagh City Council](#)
- [Mid and East Antrim](#)
- [Mid Ulster](#)
- [Newry, Mourne and Down](#)

6.11. Part 2 of the Planning Act also contains a number of departmental oversight and scrutiny powers as well as powers for the Department to intervene in the plan making process, if necessary. The preparation of the new local development plans by all councils is progressing and the Department has established a team to liaise with councils at various stages to review and where appropriate agree key documents such as plan timetables and, progression of development plan documents. Discussions have also been ongoing with the PAC as preparations move towards independent examinations.

Planning Control

7. Parts 3, 4 and 5 of the Planning Act set out a range of powers from processing planning and other consent applications through to enforcement against potential breaches of planning control. They also include powers for the Department to intervene, if appropriate.

Determination of planning applications by councils

7.1. As was the intended objective, councils now determine local and major planning applications, which represent the vast majority of all planning applications, while the Department determines a small number of regionally significant development proposals (RSD) and other 'call-in' applications. The thresholds for the three categories of development are set out in [the Planning \(Development Management\) Regulations \(Northern Ireland\) 2015](#). Performance targets for the determination of planning applications are set out in [The Local Government \(Performance Indicators and Standards\) Order \(Northern Ireland\) 2015](#).

7.2. The following table sets out the number of all planning applications, local, major and regionally significant determined each year from April 2015.

(Web-links to all planning statistics are available at paragraph 7.4 of this report):

Planning Applications Received and Decided⁴

| 2015/16 | 12,220 | 11,034 | 10,341 | 93.7% |
|----------------|---------------|---------------|---------------|--------------|
| 2016/17 | 13,037 | 12,957 | 12,180 | 94.0% |
| 2017/18 | 12,933 | 12,314 | 11,548 | 93.8% |
| 2018/19 | 12,541 | 12,156 | 11,330 | 93.2% |
| 2019/20 | 12,207 | 11,747 | 11,044 | 94.0% |
| 2020/21 | 12,833 | 10,483 | 10,029 | 95.7% |
| Total | 75,771 | 70,691 | 66,472 | 94.0% |

Determination of planning consent applications by councils

7.3. In addition to the determination of applications for planning permission, councils are also responsible for determining applications for listed building consent, conservation area consent, hazardous substances consent, display of advertisement consent and applications for works to trees protected by tree preservation orders.

Access to Planning Statistics

7.4. The quarterly and annual planning statistics may be viewed on the Department's website at [Planning Statistics](#).

Department's Development Management Functions

Determination of regionally significant planning applications by the Department

7.5. Under [section 26](#) of the Planning Act the Department is responsible for determining regionally significant development (RSD) applications. RSD is development which if carried out would:

- (a) be of significance to the whole or a substantial part of Northern Ireland or have significant effects outside Northern Ireland, or
- (b) involve a substantial departure from the local development plan for the area to which it relates.

7.6. If a developer proposes to carry out development which may fall into the RSD category then the developer must, before submitting an application, enter into discussions with the Department to determine if that proposed development is RSD. If the Department considers that the proposed development is RSD the application must be submitted to the Department, but if the Department considers that the proposed development is not RSD then the application should be submitted to the relevant council.

⁴ <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>

Determination of called in applications by the Department

- 7.7. Under Section 29 of the Planning Act the Department may call in planning applications for its own determination. Councils are required to notify the Department of certain applications in accordance with the Department's three notification directions. Once notified the Department will consider whether or not to call in the application for its own determination or allow the council to continue and determine the application itself.
- 7.8. The notification directions⁵ apply to applications where a council is of the opinion to grant planning permission, in the following cases:
- a government department or statutory consultee has raised a significant objection to a major development application;
 - a major development application which would significantly prejudice the implementation of the local development plan's objectives and policies;
 - a major development application which would not be in accordance with any appropriate marine plan adopted under the Marine Act (Northern Ireland) 2013;
 - planning applications for both major and local development in which the council has an interest and the proposal would be significantly contrary to the development plan for its district; or
 - where a council proposes to grant planning permission for petroleum development.
- 7.9. The Department may also receive requests from other interested parties that an application is called in. A small number of planning applications relative to the total number of applications have been called in by the Department since April 2015. The following table sets out the number of call-in applications, together with those for regionally significant development received and decided by the Department each year, since April 2015. [These figures do not include legacy applications retained by the Department at the point of transfer, details of which are available at the web-link provided at paragraph 7.4].

Departmental Planning Applications Received and Decided⁶

| 2015/16 | 6 | 8 | 14 | 0 | 0 |
|----------------|-----------|-----------|-----------|-----------|-----------|
| 2016/17 | 2 | 13 | 15 | 11 | 11 |
| 2017/18 | 2 | 5 | 7 | 4 | 4 |
| 2018/19 | 0 | 4 | 4 | 2 | 2 |
| 2019/20 | 0 | 5 | 5 | 2 | 2 |
| 2020/21 | 1 | 2 | 3 | 5 | 4 |
| Total | 11 | 37 | 48 | 24 | 23 |

⁵ <https://www.infrastructure-ni.gov.uk/publications/planning-legislative-directions>

⁶ <https://www.infrastructure-ni.gov.uk/articles/planning-activity-statistics>

Enhanced Community Involvement

Pre-application community consultation

8. Section 27 of the Act places an obligation on the developer to consult the community in advance of submitting an application if the development falls within the major development category. This includes those major developments which the Department will determine because they are of regional significance.
 - 8.1. Where developers engage in meaningful pre-application consultation, local communities can be better informed about development proposals and have an opportunity to contribute their views before a formal planning application is submitted. In so doing, it is hoped this will subsequently improve the quality of planning applications received; mitigate negative impacts where possible; address community issues or misunderstandings; and provide for smoother and more effective decision making. The developer must submit a pre-application community consultation report with the application. The purpose of the report is to confirm that pre-application community consultation has taken place in line with the statutory minimum requirements. The report should contain details of the steps that have been taken to comply with the requirements for consultation. Developers are required to demonstrate how they have considered any representations made during the consultation and any steps they have taken to address any issues raised in the representations.
 - 8.2. Pre-application community consultation (where required) is now an established part of the planning process. The Department's guidance on pre-application community consultation is available on the [Planning Portal](#).

Pre-determination hearings

- 8.3. The introduction of pre-determination hearings (PDH) has also allowed the community the opportunity of appearing before and being heard by the council's planning committee before the committee makes its determination on the application. Section 30 of the Act and Regulation 7 of the Planning (Development Management) Regulations (Northern Ireland) 2015 requires councils to hold a PDH where the Department has decided not to call-in an application that was notified to it by the council. The council also has the discretion to carry out a PDH for any application that it determines.
- 8.4. The council must give the developer and those who submitted representations on the application an opportunity of appearing before and being heard by the planning committee. The format and attendance at the hearing is left to the council's discretion. The council also has discretion to consider if they require further representation from statutory consultees. Councils have published their own guidance on their policies for PDH which are now an established part of the planning system.

Planning Enforcement

9. Under Part 5 of the Planning Act councils have primary responsibility for planning enforcement in their administrative areas. It is the responsibility of a council to investigate all alleged breaches of planning control.
- 9.1. As well as transferring enforcement powers and amending time limits within which action may be taken in respect of planning control, the Act contains provisions for the imposition of potential fines which were increased from £20,000 to £100,000 on summary conviction for a range of offences:
 - the unauthorised works to a listed building;
 - the unauthorised demolition of a building in a conservation area;
 - the contravention of a hazardous substances consent; and
 - the breach of a stop notice.
- 9.2. Whilst the fines have been increased it is a matter for the courts to decide the amount of the fine levied on the offender in any particular case.
- 9.3. The performance targets for enforcement cases are set out in [The Local Government \(Performance Indicators and Standards\) Order \(Northern Ireland\) 2015](#).
- 9.4. The Department's enforcement powers are only intended to be exercised in exceptional circumstances. An overview of enforcement responsibilities is set out in the advice document ["Overview of Planning Enforcement Responsibilities"](#)

Planning Appeals

10. Planning appeals are determined by the Planning Appeals Commission (PAC). The PAC is an independent and appellant body, it is not part of any Government Department. It receives financial and administrative support from its sponsor body, the Northern Ireland Courts & Tribunals Service. Information on appeals and Inquiries/Hearings for RSD and called-in applications may be viewed by visiting [Digest | Planning Appeals Commission](#).
- 10.1. In relation to appeals, the Planning Act reduced the time limit for submitting appeals from six months to four months, extends the non-determination period for major development applications; aims to restrict the introduction of new material at appeal; and provides for the award of costs. The following tables set out figures for the number of appeals received and decided from 2016/17 (by appeal type).

Appeals received, by appeal type⁷

| Appeal Type | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|--|------------|------------|------------|------------|------------|
| Refusal or conditional grant of planning permission | 221 | 207 | 204 | 215 | 139 |
| Non determination of planning application | 4 | 4 | 9 | 9 | 7 |
| Enforcement Related | 53 | 53 | 67 | 69 | 56 |
| Other *advertisements, roads, listed buildings consent | 22 | 45 | 43 | 34 | 7 |
| Total | 300 | 309 | 323 | 327 | 209 |

Appeals decided, by appeal type⁸

| Appeal Type | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|--|------------|------------|------------|------------|------------|
| Refusal or conditional grant of planning permission | 221 | 198 | 179 | 175 | 126 |
| Non determination of planning application | 11 | 7 | 1 | 11 | 5 |
| Enforcement Related | 36 | 44 | 56 | 51 | 35 |
| Other *advertisements, roads, listed buildings consent | 28 | 27 | 42 | 40 | 17 |
| Total | 296 | 276 | 278 | 277 | 183 |

Award of Costs

10.2. The power to award costs was a significant reform aimed at improving the behaviour of all parties in the appeal process. The PAC now has the power to make an order requiring the costs of one party to be paid where another party's unreasonable behaviour has put it to unnecessary expense. The following table set out a brief overview of the number of costs awards from 2016/17. Further details as to the PAC's guidance on the award of costs is available on their website [Award of Costs](#).

Costs Awards⁹

| Type of Decision | 2016/17 | 2017/18 | 2018/19 | 2019/20 | 2020/21 |
|------------------|-----------|-----------|-----------|-----------|-----------|
| No Award | 40 | 29 | 20 | 34 | 11 |
| Partial Award | 4 | 2 | 7 | 6 | 1 |
| Full Award | 1 | 10 | 8 | 8 | 1 |
| Total | 45 | 41 | 35 | 48 | 13 |

⁷ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

⁸ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

⁹ https://www.pacni.gov.uk/sites/pacni/files/media-files/Annual%20Review%202020-21_2.pdf

Assessment of the extent to which the objectives of planning reform and the Planning Act have been achieved.

11. The Planning Act 2011 (Review) Regulations 2020 require the Department to: consider the objectives intended to be achieved by the Planning Act; and assess the extent to which those objectives have been achieved. Within this context the review is not a detailed examination of the operation, effectiveness or performance of the overall new two-tier planning system.
- 11.1. The main objectives to the introduction of the Act were: the continued formulation and co-ordination of planning policy by the Department; the preparation of local development plans, and determination of most planning applications by councils, together with responsibility for taking enforcement action where deemed appropriate.
- 11.2. As has been evidenced, the vast majority of provisions within the Planning Act have been commenced, resulting in its successful implementation. The transfer of responsibility for the majority of planning functions to locally accountable councils has been achieved, together with the establishment of the two-tier planning system. The Act has also been supported by around 40 pieces of subordinate legislation and 6 Directions which provide the detailed legislative framework for the overall operation of the planning system.
- 11.3. Significant progress has also been made in implementing certain reforms. In September 2015 the Department published the [Strategic Planning Policy Statement](#) setting out the Department's regional planning policies for securing the orderly and consistent development of land in Northern Ireland in a shorter more focused document. Extensive guidance including by way of Practice Notes on the new system has also been provided¹⁰.
- 11.4. Councils are preparing local development plans for their areas and have published statements setting out how they will involve the community in delivering their planning functions. Councils now determine the vast majority of planning applications with only a very small number determined by the Department including regionally significant development or those called-in by the Department. Changes to the decision making process including pre-application community consultation and pre-determination hearings further enhance community engagement and have allowed greater public involvement and transparency in the determination of planning applications. Councils are also investigating alleged breaches of planning control and taking action as appropriate. Throughout, the Department has maintained its position to only intervene in the system in exceptional circumstances.
- 11.5. Reforms have also been made to the planning appeals system and a Planning Monitoring Framework has been developed. This Framework and other evidence will be used to ascertain if the objectives of reform and

¹⁰ <https://www.infrastructure-ni.gov.uk/articles/planning-practice-notes>

transfer are being achieved and how the planning system is evolving over time.

Conclusion

- 11.6. Within the context set out above and overall, the Department is satisfied that the stated objectives of the implementation of the Planning Act have been achieved.

PART II

Assessment of whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act.

The Planning Act

12. The Planning Act 2011 (Review) Regulations 2020 further require the Department, in considering the objectives intended to be achieved under the Act, to assess whether it is appropriate **to retain, amend or repeal** any of the provisions of the Act or subordinate legislation made under it to achieve those objectives.

Amendments made or currently being made to Subordinate Legislation.

- 12.1. As with any legislative framework changes can be made to subordinate legislation to refine its detailed operation, or in response to changed circumstances. The Department has made a number of amendments to subordinate planning legislation since the transfer of planning functions. These include the:

- Planning (Hazardous Substances) Regulations (Northern Ireland) 2015;
- Planning (Hazardous Substances) (No. 2) Regulations (Northern Ireland) 2015;
- Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017 (which brought forward changes to reflect relevant EU Directives);
- The Planning (Fees) (Amendment) Regulations (Northern Ireland) 2019;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020;
- The Planning (General Permitted Development) (Amendment) Order (Northern Ireland) 2020;

- 12.2. Other minor technical amendments were made through the:

- The Planning (2011 Act) (Commencement No.3) and (Transitional Provisions) (Amendment) Order (Northern Ireland) 2016;
- The Planning (Listed Buildings) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Local Development Plan) (Amendment) Regulations (Northern Ireland) 2016;
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2020
- The Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment) Regulations (Northern Ireland) 2021
- Planning (Development Management) (Temporary Modifications) (Coronavirus) (Amendment No.2) Regulations (Northern Ireland) 2021;
- The Planning (Environmental Assessments and Miscellaneous Amendments) (EU Exit) (Northern Ireland) Regulations 2018; and

- The Planning (Environmental Assessments and Technical Miscellaneous Amendments) (EU Exit) Regulations (Northern Ireland) 2020.

Call for Evidence – Key Messages

12.3. The broad themes to emerge from the call for evidence are set out at paragraphs 3.7-3.9 of this report which form the basis of the Department's considerations of respondent's calls for legislative, or other change. Conversely, a resounding message to emerge was that almost two-thirds of the Act (162 sections) drew little or no comment and the Department considers these provisions should be retained as structured. In particular, no substantive comments were made in relation to the following:

- Part 7 – Purchase of Estates in Certain Land Affected by Planning Decisions;
- Part 8 – Further Provisions as to Historic Buildings;
- Part 9 – The Planning Appeals Commission; (Department of Justice)
- Part 11 – Application of Act to Crown Land; and
- Part 15 – Supplementary.

12.4. As had been anticipated, the vast majority of comments and suggested improvements focused on the following parts of the Act and associated subordinate legislation:

- Part 2 – Local Development Plans;
 - The Planning (Local Development Plan) Regulations (NI) 2015
- Part 3 – Planning Control;
 - The Planning (Development Management) Regulations (NI) 2015
 - The Planning (General Permitted Development) Order (NI) 2015
 - The Planning (General Development Procedure) Order (NI) 2015
 - The Planning (Fees) Regulations (NI) 2015
- Part 4 – Additional Planning Control; and
- Part 5 – Enforcement.

12.5. To a lesser degree, further additional comments and suggestions were made in relation to:

- Part 1 – Functions of the Department
- Part 6 – Compensation;
- Part 10 – Assessment of a Council's Performance or Decision Making;
- Part 12 – Correction of Errors;
- Part 13 – Financial Provisions; and
- Part 14 – Miscellaneous and General Provisions

12.6. The tables at **Annex A** to this report set out the Department's detailed consideration of proposals for changes to existing legislation and guidance which have been informed by the call for evidence. This includes a series of recommendations/actions which the Department believes could assist towards better achieving the objectives of the Planning Act.

Key recommendations

- 12.7. Under Part I of this report the Department concluded that the stated objectives of the implementation of the Planning Act have been achieved.
- 12.8. The Department recognises that the planning system, in some parts, hasn't achieved the level of performance envisaged. For instance, indicative timeframes for bringing forward LDPs have not been achieved and while targets have largely been met for processing local planning applications, targets for processing major planning applications have not. There are various factors which have contributed to this and the Department is seeking to address these through a range of measures, which are largely outside the scope of this review. Nevertheless, the Department has considered whether amendments to legislation have the potential to make the system more efficient and in turn, bring forward performance improvements.

Local Development Plans

- 12.9. While the Department estimated all councils would have LDPs in place by 2019 this was an indicative timeframe which sought to provide an estimate for the preparation of an untested system. Legislation does provide for amended timetables to be submitted and agreed by the Department reflecting and acknowledging that timeframes may be subject to change.
- 12.10. While there have been some calls for a fundamental review of the LDP system, the Department is of the view that any fundamental review of the current approach is best undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current approach remains appropriate, but considers some practical measures may assist the process. The Department intends to add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs. The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to reduce unnecessary consultation. In addition, the Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making to improve accessibility for citizens.

Development Management

- 12.11. In relation to development management, while the Department considers the existing framework of roles and responsibilities remains appropriate, there are a number of areas which merit further review and potential legislative change. This includes a review of existing thresholds and categories of development to determine if they remain fit for purpose. The Department will bring forward proposals to provide for both in-person and on-line/electronic pre-application community consultation (PACC) public engagement. This will include consideration of any recommendations to

emerge from the work of the Planning Engagement Partnership. The Department will also review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward. The Department also intends to bring forward proposals to improve the information requirements / quality of planning applications entering the system through statutory “validation check-lists”. Notwithstanding current work-streams aimed at improving statutory consultee response times, the Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes. The Department will also bring forward proposals to make pre-determination hearings discretionary for councils. In terms of appeals, the Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. In addition, the Department will undertake a general review of current Departmental Directions and will undertake a general review of planning fees including proposals for an automatic annual inflationary uplift, and multiple fees for retrospective applications. Further recommendations are made in relation to additional planning controls and enforcement (fixed penalty notices).

12.12. The following table summarises these key recommendations. (The issue references correlate with those in the Annex).

Table of Recommendations/Actions

| Part 2 - Local Development Plans | |
|---|---|
| Issue Ref | Action |
| PT2-2 | <p><u>Local Development Plan Guidance</u></p> <p>The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p> |
| PT2-4 | <p><u>Consultation Bodies in Plan-Making</u></p> <p>The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities.</p> |
| PT2-6 PT3-17 PT5-2 | <p><u>Digitization in the Planning System</u></p> <p>The Department will work with councils and other stakeholders to determine whether there are ways in which to enhance online / digital means of communication in plan-making, development management, and in the planning system generally to improve accessibility for citizens.</p> |

| Part 3 - Planning Control | |
|----------------------------------|--|
| Issue Ref | Action |
| PT3-1 | <p><u>Categories of Development</u></p> <p>The Department will review existing thresholds and categories of development to determine the need for revisions.</p> |
| PT3-3 | <p><u>Pre-Application Community Consultation (PACC) and Notice</u></p> <p>The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendations to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.</p> |
| PT3-4 | <p><u>Call-In Applications</u></p> <p>The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.</p> |
| PT3-5 | <p><u>Incomplete Applications and Validation Check-Lists</u></p> <p>The Department will bring forward proposals to introduce statutory 'validation check-lists' and will seek to advance policy development at the earliest opportunity.</p> |
| PT3-7 | <p><u>Time period for consultation responses</u></p> <p>The Department will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.</p> |
| PT3-10 | <p><u>Pre-Determination Hearings (PDH)</u></p> <p>The Department will bring forward proposals to make PDH discretionary for councils in the exercise of their functions.</p> |
| PT3-14 | <p><u>Matters Raised at Appeal</u></p> <p>The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal.</p> |
| PT3-19 | <p><u>DFI Directions</u></p> <p>The Department will undertake a general review of current departmental directions.</p> |

| | |
|---|--|
| PT3-20 | <u>Commencement of Development</u> The Department will review this provision to establish if any technical amendments are appropriate. |
| Part 4 – Additional Planning Control | |
| Issue Ref | Action |
| PT4-3 | <u>Tree Preservation Orders (TPO)</u> The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions. |
| PT4-4 | <u>Review of Old Mineral Permissions (ROMPs)</u> The Minister is to consider options on the way forward with regards to ROMPs early in 2022. |
| Part 5 – Planning Enforcement | |
| Issue Ref | Action |
| PT5-3 | <u>Fixed Penalty Notices (FPN)</u> The Department will explore the possibility of applying FPNs to advertisement control. |
| Part 13 – Financial Provisions | |
| Issue Ref | Action |
| PT13-1 | <u>Planning Fees</u> The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees. |

Any proposed change to legislation will require further policy development, public consultation on potential amendments to primary and/or subordinate legislation, Assembly scrutiny and preparation of associated guidance, as necessary. Amendments are likely to be proposed to:-

- The Planning Act (Northern Ireland) 2011
- The Planning (Local Development Plan) Regulations (Northern Ireland) 2015.
- The Planning (Development Management) Regulations (Northern Ireland) 2015
- The Planning (General Development Procedure) Order (Northern Ireland) 2015

- Planning (Fees) Regulations (Northern Ireland) 2015

Conclusions and Next Steps

- 12.13. As a reminder, the purpose and scope of the review is to consider: the objectives intended to be achieved by the Planning Act; assess the extent to which those objectives have been achieved; and assess whether it is appropriate to retain, amend or repeal any of the provisions of the Planning Act or subordinate legislation made under the 2011 Act, in order to achieve those objectives.
- 12.14. The Department would conclude that the vast majority of the Act is to be retained as currently structured and that there is no case, in this first review report, to recommend the repeal of any of its provisions in order to achieve the objectives of the Act.
- 12.15. The report has, however, identified certain provisions / areas of the Act and subordinate legislation which, if amended or supplemented, could assist in improving the planning system and, therefore, better achieve the objectives of the Act.
- 12.16. The Department will, therefore, seek to develop these policy proposals with a view to bringing forward proposals for public consultation at the earliest opportunity. Actions which require amendment to current primary legislation will be taken forward through the NI Assembly Bill Process.¹¹ Actions which require secondary / subordinate legislation will also be undertaken in accordance with best practise, in conjunction with the Committee for Infrastructure and Assembly where appropriate. Other actions may be addressed through new or revised guidance. Actions falling to the next mandate will be subject to the views of an incoming Minister.

¹¹

https://education.niassembly.gov.uk/post_16/the_work_of_the_assembly/making_legislation/bill_act

ANNEX A

Consideration of Proposals for Change

Table 1

| Part 1 Functions of the Department | Assessment |
|--|---|
| <p>(PT1-1) Matters for the Department to take account of in the exercise of its functions.</p> <p>You said: - A small number of respondents, principally NGOs and some individuals, proposed that Departmental functions under Part 1 should be updated to include specific reference to other strategies e.g. climate change, net zero emissions, ecological protection and ecological restoration.</p> | <p>Our response: The objective of the planning system, consistent with Part 1 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p> <p>Section 1(3)(b) of the Planning Act gives latitude to the Department, in the formulation and co-ordination of policy to secure the orderly and consistent development of land, to take account of, "any other matter which appears to it to be relevant". Such other strategies will normally be relevant in the exercise of these functions. In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy and climate etc, it would not be pragmatic, nor necessary to explicitly cite all such strategies in the Act, or planning legislation in general. To do so would involve continually amending the Planning Act as other strategies come forward.</p> |

| | |
|--|--|
| | <p>Proposed Action: The Department will, in the exercise of its functions, continue to keep under review other strategies/policy/guidance to determine their relevance in the formulation and co-ordination of planning policy and is not persuaded of the need to amend legislation.</p> |
|--|--|

Table 2

| Part 2 Local Development Plans (LDP) | Assessment |
|--|--|
| <p>(PT2-1) The two document approach to LDP preparation</p> <p>You said – A cross-section of respondents including local government, business, some individuals and political parties put forward various suggestions to reform the current approach to include: a single LDP document; greater number of smaller plan documents; parallel preparation of development plan documents, a review within the context of retained Planning Policy Statements set out in the Strategic Planning Policy Statement.</p> | <p>Our response - Calls for a change to the overarching framework for preparing LDPs are considered premature within the context of current LDPs under preparation by councils.</p> <p>A move away from the current two document approach would likely cause significant disruption and greater delay to current efforts in developing draft plans, and would represent a fundamental change requiring extensive policy development and public consultation. The Department is of the view that any fundamental review of the current approach is better undertaken following adoption of a number of LDPs to evaluate and better understand ‘perceived’ obstacles in plan-making. The Department is of the view that the current approach remains appropriate.</p> <p>Proposed Action: The Department will, in conjunction with councils and key stakeholders, monitor and review current processes following adoption of a number of LDPs.</p> |
| <p>(PT2-2) Local Development Plan Guidance</p> <p>You said – A small cross-section of respondents including some local government, business and NGOs suggested that</p> | <p>Our response – Existing guidance on local development plan making processes is set out in the SPPS and other Departmental Development Plan Practice Notes (DPPN), and includes</p> |

| | |
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| <p>the Department further clarifies in guidance its overall role in the plan-making process, including: the agreement of timetables, submission of documents for independent examination (IE), adoption and revision of an LDP etc. A small cross-section of councils, representative bodies and some business interests questioned the need for an LDP to be submitted to the Department for IE and suggested that councils should be permitted to submit plans directly to the examination body, saving time, cost and unnecessary burden.</p> | <p>clarification on the role of the Department at various stages. These are available on the DfI website: https://www.infrastructure-ni.gov.uk/publications/development-plan-practice-notes</p> <p>Extant practice notes will be reviewed as part of an overall review following adoption of a number of LDPs, to determine if guidance would benefit from further clarification. The Department is of the view that any review of the current approach to LDP preparation, including its own role in the overall process is better undertaken following adoption of a number of LDPs to evaluate and better understand 'perceived' obstacles in plan-making. The Department is of the view that the current legislative approach remains appropriate.</p> <p>Proposed Action: The Department will add/amend development plan guidance as required by the review of current processes following adoption of a number of LDPs.</p> |
| <p>(PT2-3) Matters to <u>take account of</u> in furthering sustainable development, and preparation of LDPs</p> <p>You said – A cross-section of respondents including renewables and business groups put forward the suggestion that the matters to take account of should be broadened to include the Programme for Government, and other NI Executive and Departmental strategies e.g. Environment, Energy / Renewables, Investment, Climate, Minerals, commitments to Net Zero emissions etc; and more robust connectivity with Local Community Plans; some also consider that the statutory requirement to 'take account of'</p> | <p>Our response - The objective of the planning system, consistent with Part 2 of the Act, is to secure the orderly and consistent development of land whilst furthering sustainable development and improving well-being. This means the planning system should positively and proactively facilitate development that contributes to a more socially economically and environmentally sustainable Northern Ireland. In furthering sustainable development and improving well-being, the planning system supports the Executive's Programme for Government commitments and priorities as well as the aims and objectives of the Regional Development Strategy 2035 (RDS) which is its overarching spatial strategy for Northern Ireland.</p> |

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| <p>such strategic guidance documents in legislation is too flexible, while a few considered it to be too rigid.</p> | <p>In light of this and given the current and ever increasing number of strategies aimed at assisting in improving the environment, economy, climate etc it would not be pragmatic to explicitly list in planning legislation those which must be taken into account by councils in the preparation of local development plans. The SPSS sets out additional policy/guidance on the matters to be taken into account of in the plan-making process. Also, the Local Government Act (NI) 2014 inserted into s.8 & 9 of the Planning Act, the requirement to also take account of a “council’s current community plan”. In furthering sustainable development, s.5(2)(b) of the Planning Act gives latitude to authorities exercising any function under Part 2, to take account of “any other matter which appears to that person to be relevant”, in addition to other policy and guidance issued by other Departments.</p> <p>Proposed Action: The Department is not persuaded of the need to amend legislation on matters to <u>take account of</u> in the preparation of LDPs.</p> |
| <p>(PT2-4) Consultation Bodies in plan-making</p> <p>You said – A majority of councils and other public bodies consider that the scope of consultation bodies is too wide ranging and laborious for a Council to consult at every stage. Those respondents were of the view that it may be better left to the discretion of a Council to filter / tailor the plan-making consultation lists, and to only maintain contact with those it considers, or those which have specifically asked to be consulted, to have a continuing interest in the Council’s plan preparations.</p> | <p>Our response - The consultation bodies for the purposes of preparing a LDP are set out at regulation 2 of the Planning (Local Development Plan) Regulations (NI) 2015. This is an established list of relevant consultees, taken forward from previous plan-making under the unitary planning system. The list of consultees includes all NI government departments, neighbouring councils, the Civil Aviation Authority, NIHE, water & sewerage undertakers, any person to whom the electronic communication code applies, and any person to whom a licence has been granted under either the Electricity (NI) Order 1992, or Gas (NI) Order 1996. The Department understands that this issue pertains principally with respect to those consultees listed at regulation 2(1)(f-h), which can</p> |

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| | <p>be quite numerous and include some which do not wholly operate within NI.</p> <p>Proposed Action: The Department will undertake to review the statutory list of consultees in plan-making to determine whether it remains relevant / appropriate to local planning authorities. Changes to the consultee list arising from this review will require amendment of the Development Plan Regulations.</p> |
| <p>(PT2-5) Approach to LDP Timetabling</p> <p>You said – A cross-section of a number of councils and businesses are of the view that the LDP process spans too long a period of time and the timetables require continual updating, and suggest separate timetables for each stage. A cross-section of other respondents including NGOs, Renewables and business sectors suggested potential fines for failure to adhere to LDP timetables, including possible introduction of a maximum time period for adoption of a plan.</p> | <p>Our response - While the requirement to prepare and keep under review a timetable for the preparation of an LDP is a statutory duty, the dates a council indicates are indicative and estimated on the basis of the information available at that time. The duty to keep the timetable under review is to afford councils the opportunity to amend / adjust the timetable in the face of unforeseen delays. It would not be practicable to hold councils to strict adherence to an LDP timetable particularly when unforeseen events beyond their control may cause programme slippage. The Department anticipates that as councils work through their LDP processes, that future plan preparations including plan adjustments, should become more focused and efficient.</p> <p>Proposed Action: The Department is not persuaded of the need to amend current LDP timetabling requirements at this time. The Department will however consider this issue as part of a wider review of LDP processes.</p> |
| <p>(PT2-6) Digitization in the Planning System -</p> | <p>Our response - Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for</p> |

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| <p>You said – Overall, a broad cross-section of respondents proposed the planning system should enhance the use of online / digital availability of documents for inspection and comment in plan-making. Generally, most councils suggested that the need for advertisements in the local press and Belfast Gazette which is viewed as costly and ineffective, should be removed.</p> | <p>evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p>Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with plan-making to determine whether there are ways to enhance online / digital means of communication in plan-making specifically to approve accessibility for citizens. This will include consideration of any recommendations which may emerge from the work of the Planning Engagement Partnership.</p> |
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Table 3

| <p>Part 3 Planning Control</p> | <p>Assessment</p> |
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| <p>(PT3-1) Categories of Development</p> <p>You said - Overall, a broad cross-section of respondents including most councils, business and renewables sectors called for a review of the current hierarchy of development, and thresholds for major and RSD development, to also include consideration of the introduction a third 'Intermediate / Minor' category of development mirroring that in GB (Major, Minor and Other).</p> | <p>Our response - Section 25 of the Planning Act classifies development into two categories: 'major' and 'local', with section 26 providing for major development of regional significance (RSD) which is to be dealt with by the Department. The associated thresholds for major and RSD development, are set out in the Planning (Development Management) Regulations (NI) 2015. Any development below the major category threshold is classed as 'local', which represent the vast majority of planning applications received and determined by councils.</p> |

Performance of a council's planning functions is principally measured against processing of major and local applications. The suggestion to introduce a third 'intermediate/minor' category is intended to sub-divide the current 'local' category which can currently range from, for example, a domestic porch to a large residential scheme comprising 49 units. Consequently, the processing requirements to determine these types of application can also vary within this category of development.

The thresholds for regionally significant applications are tailored to meet regional needs and circumstances and particular planning pressures in Northern Ireland in comparison to other jurisdictions. The thresholds in each jurisdiction are also specifically designed to suit the respective political, administrative and legislative context of each of the administrations. Even in the event of changes to the thresholds, the Department is required to make a determination as to whether a proposed development is considered to be one of regional significance. Where the thresholds are met or exceeded it does not automatically equate that the application is to be dealt with by the Department.

Equally, calls to review the major and RSD thresholds could examine the need to introduce new/revised categories of development including for example, energy storage and generation facilities. Such revisions could result in more or fewer applications categorised as major or RSD, also affecting the need for pre-application community consultation.

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| | <p>Proposed Action: The Department will review existing thresholds and categories of development to determine the need for revisions.</p> |
| <p>(PT3-2) Pre-Application Discussions (PADs)-</p> <p>You said - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that PADs should be moved to a legislative footing particularly for major and RSDs proposals, with statutory consultees enabled to charge their own PAD fees with the income ring-fenced to improve capacity. Some developers suggested they would be willing to pay statutory consultees for PAD advice if it would improve the quality of their applications and significantly improve processing time. Some suggested Councils can take different approaches to pre-application discussions and this may benefit from a more standardised, formalised approach in subordinate legislation.</p> | <p>Our response - The PAD process is not a statutory requirement and is therefore optional. PADs are a separate activity from statutory pre-application consultation with communities, although they can inform the planning process and scope of the statutory consultation activity. Such consultation may also support the applicant's preparation of the statutory design and access statement. DM Practice Note 10 sets out the current guidance on PACC and PADs, and indicates that the PADs process will take a different form in each instance, and should be proportionate to the nature, scale and benefits of the application. The suggestion to move PADs to a legislative fee-based footing for major and RSD applications (in addition to PACC), could serve to add another layer of bureaucracy, and potentially put further pressure on the limited resources of statutory consultees. It is considered more effective to retain the current discretion planning authorities have to undertake proportionate PADs as appropriate. The Planning Forum is currently reviewing the regional approach to PADs to improve their effectiveness and efficiency.</p> <p>Proposed Action: The Department is not persuaded of the case for, or benefits of moving PADs to a legislative footing. However, the Planning Forum will continue to review the regional approach to PADs to improve effectiveness and efficiency.</p> |

(PT3-3) Pre-Application Community Consultation (PACC) and Notice –

You said - A broad cross-section of respondents including some councils, NGOs, business and representative bodies suggested that provision should be made to allow for a 'blended' in person and online approach to PACC within the context of digital availability and COVID 19 restrictions. Meaningful engagement and a central register for PACC third parties to receive regular updates was also suggested as was a requirement for applicants to demonstrate how they have altered their proposals in light of issues raised during pre-application process. Some suggested reducing the 12 week period to 6 or 8 weeks. Others sought clarity on PAN process and timeframe for submission of a subsequent application.

Our response - Guidance on current PACC and PAN processes is set out in Development Management Practice Note 10.

In response to the COVID 19 emergency, The Planning (Development Management) (Temporary Modifications) (Coronavirus) Regulations (Northern Ireland) 2020 temporarily removed the requirement for a public event (and its associated advertising) as part of the pre-application community consultation process associated with planning applications for major development. This applied where a proposal of application notice (PAN), which triggers the pre-application community consultation process, is given to a council / the Department before, or during, the defined emergency period (1 May 2020 to 30 September 2020). The regulations were subsequently amended (on several occasions) to suspend the PACC requirement, firstly to 31 March 2021, then 30 September 2021, and again to 31 March 2022.

The Department will keep the latter date under review, taking account of any changes to the public health advice, to consider if an extension or reduction to the emergency period would be appropriate. It will also continue to encourage potential applicants to undertake alternative arrangements to engage with the community as set out in guidance which will be updated. It should also be noted that this does not prohibit developers, if they considered it appropriate and beneficial, to voluntarily hold a public event as part of the pre-application community consultation, provided they comply with the health regulations.

The PACC process helps to underpin the front loading of an application by seeking to identify and address local community concerns prior to submission of an application. Any proposed reduction to the current 12 week period could negatively impact on

pre-application community participation and may be viewed as an attempt to limit / curtail meaningful community engagement.

The associated PACC report (s.28), prepared by the applicant, can outline any amendment(s) to a proposal arising from community consultation. While the legislation does not specify a period within which a planning application must be submitted (following service of a PAN), further evidence would be required to quantify this matter before recommending amendment to both primary and subordinate legislation.

Calls to better utilise digital / online means of consultation and communication in plan-making, and development management featured strongly in the responses to the call for evidence. Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in the PACC process.

A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and 10 councils when it goes operational, which may help to address these issues. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational in summer 2022.

Proposed Action: The Department will bring forward proposals to provide for both in-person and on-line/electronic PACC public engagement. This will include consideration of any recommendation to emerge from the work of the Planning Engagement Partnership. Clarity on the PAN process could be provided in expanded guidance if appropriate.

(PT3-4) Call-In Applications

You said – A small cross-section of respondents suggested the Department clarify and simplify the call-in process and publish criteria and clarity on how this power will be exercised by the Department. Some are of the view that where a proposal which a council considers acceptable but is called-in, this only serves to elongate the time taken to determine the application.

Our response - Guidance on the call-in process is set out in Development Management Practice Note 13.

Section 29 (1) of the 2011 Act allows the Department to direct that an individual application or applications be referred to the Department instead of being dealt with by a council. This provision allows the Department to call in any planning application for determination. The Department's direction may be given under Section 29(2)(a) to an individual council or to councils in general and, under Section 29(2) (b), may relate to either a particular application or a specific use class. There are currently several Departmental Directions in this regard, including: The Planning (Notification Of Councils' Own Applications) Direction 2015; and The Planning (Notification Of Applications) Direction 2017. These are important checks and balances in the planning system.

Applications will be called in by **exception**, as the Department recognises the important role of councils in decision making on the future development of their areas.

Furthermore, there may be circumstances where a proposed development raises issues of such importance that they could be considered to have a significant regional impact, regardless of falling below the threshold for regionally significant development, or it may be considered the Department is a more appropriate authority to determine the application. As there have been calls for clarity around the call-in process and there have been some delays in the process, the Department considers there is merit in reviewing the process.

Proposed Action: The Department will review the policy approach in terms of clarifying call-in criteria and will seek to improve the efficiency of the process going forward.

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| <p>(PT3-5) Incomplete Applications and Validation Check-Lists</p> <p>You said – A broad cross-section of respondents including most councils, some in the business sector and several political parties proposed that the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved. Most councils suggested the Department make statutory provision to permit councils to issue application ‘check-lists’ setting out all the necessary information needed to accompany various types of planning application when they are submitted.</p> | <p>Our response - Guidance on the different types of planning applications, including other additional supporting information which may be required is set out in Development Management Practice Note 04.</p> <p>The format of an application for planning permission is provided for by section 40 of the 2011 Act. The form and content of a planning application is specified in Article 3 of the GDPO.</p> <p>Validation requirements set out what information or evidence must be submitted with a planning application before it can be considered by the planning authority, and therefore deemed to be ‘valid’. Whenever a planning application becomes ‘valid’ the timeframe for processing a planning application commences. It is against this timeframe that a council’s performance is measured, and also for the purposes for appeals against ‘non-determination’ of an application. However, many applications when submitted do not contain all the information needed to determine them. This can result in further requests to the applicant and delays in processing.</p> <p>The move to a ‘validation check-list’ would permit a council to prepare and publish, against various types of planning applications and development, the additional information which must accompany applications (over and above the minimum requirements) which it considers as necessary to properly determine the application. Such provision is available in England and Wales and some councils in NI have already put similar arrangements in place on an administrative basis.</p> |

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| | <p>In addition, a 2019 review into the efficiency and effectiveness of the planning system in NI with a particular focus on the role of statutory consultees concluded that “...<i>the efficiency and effectiveness of the planning system can be improved if the quality of applications coming into the system is improved.</i>” Evidence on the use of validation check lists on an administrative basis suggest there may be benefits on placing these on a statutory footing.</p> <p>Proposed Action: The Department will bring forward proposals to introduce ‘validation check-lists’ and will seek to advance policy development at the earliest opportunity.</p> |
| <p>(PT3-6) Advertisement / Notification of Applications</p> <p>You said - A small cross-section of respondents including several councils suggested that the requirement to publicise applications in the printed press should be removed in its entirety and substituted with a combination of electronic consultation, neighbour notification and site notices. Some respondents were of the view that a specified date for receipt of representations made in response to notifications should be imposed.</p> | <p>Our response - Guidance on publicity and neighbour notification requirements in planning is set out in Development Management Practice Note 14.</p> <p>Current advertisement, notification and inspection requirements for planning applications (and appeals) are set out at Article 8 of the GDPO 2015, (in exercise of powers conferred by s.41 & 42) which includes notice being placed in the printed press (locally), neighbour notification(s) and advertisement of a council’s website, date for receipt of representations, but not site notices. These requirements would need to be repeated where a proposed scheme has materially changed before a planning application can be determined.</p> <p>Planning applications are publicised in the local press in order to bring the details of development proposals to the attention of the public. The statutory requirements placed upon councils or the Department to advertise planning applications and certain types of consents within local newspapers, and to carry out neighbour notification of ‘identified occupiers’ provides interested parties with an opportunity to consider and comment on development</p> |

proposals. Publication of planning applications in the local press allows authorities to engage with a much broader range of interested parties or groups than simply through neighbour notification alone.

There is also a requirement for developers to undertake pre-application community consultation before submitting an application for a major development, and as part of this process a developer must publish in a local newspaper a notice containing details of the proposed development and the arrangements for a community consultation event.

Site notices are used in some other jurisdictions, in conjunction with (and not in substitution for) other on-line notification measures, and depending on the type of development may also require newspaper advertisement.

While the Department can appreciate the views of respondents, particularly councils with regards to the costs associated with advertisement in the printed press, it is not persuaded that it can adequately be substituted with the proposals suggested. Any proposal to remove the requirement to advertise in the local printed press would also need added scrutiny given the potential impacts on certain s.75 groups etc. In addition, while the date for submission of a representation is not to be earlier than 14 days after the date on which a notice is sent, the consideration of any representation will depend on its substance and materiality to planning considerations. However, there is scope to examine the potential to use online/digital methods to improve the process.

Proposed Action: The Department will undertake a review of the publicity and advertisement requirements associated with planning applications to determine whether there are ways to

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| | <p>enhance online / digital means of communication. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</p> |
| <p>(PT3-7) Time period for consultation responses</p> <p>You said - A broad cross-section of respondents including renewables, business, representative groups and some public interest bodies suggested that the statutory timeframes for consultations responses should be reviewed, with consideration given to introducing penalties for late responses. Some respondents also suggested that 'deemed consent' should apply were no consultation response is received within 21 days, and greater clarity given as to how councils can proceed if statutory consultees do not respond within the required timeframes.</p> | <p>Our response - Current requirements to consult and duty to respond are set out at s.229, and prescribed at Articles 13-16 of the GDPO 2015. These specify, amongst other things, that a consultee is to provide a substantive response within 21 days of it receiving notice, and that the application is not to be determined before 21 days (or 28 days for EIA development). A different (longer) period may be agreed in writing with the consultee.</p> <p>The 2019 review on the Role of Statutory Consultees in the Planning Process in NI, stated that: "Statutory consultees play an essential role in the planning process as planning authorities may not have the necessary expertise in-house to assess the technical and specialist issues of an application's merits. The consultation process is an important element of an open, transparent and democratic planning system where, ultimately, elected politicians oversee final decisions on planning applications."</p> <p>Where a consultee fails to respond within the timescale the planning authority is not obliged to await a response. However, it will wish to consider the potential impact of proceeding without the views of a consultee. Within this context the Department is not persuaded that 'deemed consent' would be appropriate in the absence of a substantive consultation reply, which may ultimately be critical to the proper determination of an application.</p> <p>It is recognised that there are many factors causing delays in the processing of planning applications, not just statutory consultees. These include the increased complexity of the system and regulatory requirements, risk of legal challenges, wider resourcing</p> |

issues, case management issues, the culture of working with applicants to 'fix' poor quality applications etc.

The issue of resources has also been raised by Minister Mallon with the Finance Minister. This was identified as one of the 'key conclusions' from the review on the role of consultees (see above) which states "...from a statutory consultee perspective, I have concluded that access to adequate resources is crucial to a more efficient and responsive system. I have, therefore, recommended that relevant departments review the resourcing requirements associated with their statutory consultee role against workloads and determine the need for any additional resource to ensure efficient and timely responses to planning consultations."

It has also long been recognised that poor quality planning applications impact not only the performance of statutory consultees but also the performance of the entire planning system. To this end, the potential introduction of statutory 'validation check-lists' setting out the detailed information requirements to accompany planning application for most types of development, will assist towards an enhanced front-loaded planning system.

The cross-government Planning Forum is also working on improving processes and timeframes for processing major and economically significant applications. The Forum is focusing on a number of areas including: statutory consultees reviewing existing practices, procedures and the resourcing requirements associated with their statutory consultee role against workloads, to ensure efficient and timely responses to planning consultations.

The Forum recently developed and issued an advice note (see link below) on the key operating principles for planning consultations.

The purpose of this is to encourage best practice around the consultation process to make it more efficient and effective for all.

<https://www.infrastructure-ni.gov.uk/publications/consultations-planning-application-process-operating-principles-planning-authorities-and-consultees>

The Department monitors and publishes quarterly and annual statistical reports on the performance of statutory consultees across the planning system (See link below to the latest annual report).

<https://www.infrastructure-ni.gov.uk/publications/ni-statutory-planning-consultations-annual-performance-report-202021>

Notwithstanding the context set out above, the Department considers there may be some merit in reviewing the legislative requirements around statutory consultations, including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.

Proposed Action: While the Department is not persuaded of the case for the introduction of ‘deemed consent’ where a statutory consultee fails to respond in time, it will explore further and give consideration to the legislative requirements around statutory consultations including timeframes for consultations responses, penalties for late responses and how councils can proceed if statutory consultees do not respond within the required timeframes.

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| <p>(PT3-8) Determination of applications</p> <p>You said – Some councils consider that additional information and/or amended plans (particularly at Committee stage) should only be accepted at their discretion, and that they should have the power to pause processing of applications / agree an extension of time to process. Some councils and the business sector are of the view that councils should also be able to decline representations which are made late in the planning process. <i>(See also PT3-9 below).</i></p> | <p>Our response - Guidance on the different types of planning applications, including the additional supporting information which may be required to determine an application, is set out in Development Management Practice Note 04.</p> <p>The suggested proposals, including the ‘pausing’ of processing (of an application when awaiting additional information), could be addressed in part with the front-loading of planning applications through the introduction of ‘validation check-lists’ (see PT3-5 above). Such a provision would negate time lost awaiting additional information from applicants, or the need to pause processing. In addition, while the time period for decisions (See PT3-9 below) is set out at regulations 20(2)(a) and (b) of the GDPO 2015 for major and local development respectively, regulation 20(2)(c) allows for an extension to the specified periods where this is agreed in writing between the council and the applicant.</p> <p>The ability of an applicant to seek to amend/alter a development proposal before an application is submitted (pre-application community consultation), or during processing to overcome potential objections and reason(s) for refusal is an established part of planning practice and procedure. A planning authority can however, refuse any application where it determines that a proposal, even if amended, would be contrary to planning policy / development plan or other material planning considerations. An applicant does retain a right to appeal such decisions. (The issue of new material and variation of applications at appeal is considered at PT3-14 below).</p> |

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| | <p>The issue of 'late representations' (which in the view of some respondents, are framed to frustrate the determination of a planning application) could be difficult to legislate against, and importantly, may interfere with a person's (third party) right to be heard. This is not a straightforward matter as the issue of whether a representation to an application raises issues which are material to its determination must be considered and not just the time in which it is submitted to the planning authority. Similar considerations apply to amended plans / additional information from applicants. We are not aware of a relevant legislative approach in other jurisdictions, however it may be the policy / practice of planning authorities elsewhere not to accept amended schemes immediately prior to a decision.</p> <p>Proposed Action: The Department is not persuaded of the need to disallow the introduction of new information or pause, or amend a development proposal during the processing of an application. These matters could be significantly addressed with the front-loading of information accompanying planning applications via the introduction of validation check-lists and the issue could be revisited after that (See PT3-5 above).</p> |
| <p>(PT3-9) Statutory timeframes for determining applications</p> <p>You said – A cross-section of respondents including businesses and industry called for the Department to set more ambitious targets that are comparable to GB for RSD and major applications. Other respondents suggested the inclusion of statutory time periods for other determinations</p> | <p>Our response - Currently Article 20 of the GDPO sets out the statutory time periods for decisions, for the purposes of making an appeal under Section 60 of the 2011 Planning Act (non-determination appeal). The periods are: 16 weeks for a major development; and 8 weeks for any other case (local development). However, there is no right of appeal under Section 58 or Section 60 for decisions on applications made to the Department under Section 26, or called-in by the Department under Section 29.</p> |

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| <p>including; s.54 applications, Discharge of Conditions; CLUDs; Non-Material Changes.</p> <p>At a technical level, some respondents considered there was currently ambiguity around the timeframes within which extensions to the decision making process on a planning application should be sought and agreed with a Council, and therefore, when a non-determination appeal could be sought.</p> | <p>There are currently 3 statutory planning indicators, one of which relates to major applications processed by councils – <i>‘to process major planning applications from the date valid to decision issued or withdrawal date within an average of 30 weeks’</i>. The Department monitors these indicators on a quarterly and annual basis. In addition to the 3 statutory planning indicators, the Department published the first planning monitoring framework in September 2019, which includes a number of non-statutory indicators. The second Planning Monitoring Framework was published in December 2020. It is envisaged that this framework will continue to evolve over time and will assist in ensuring we continuously improve the planning system going forward.</p> <p>The Department accepts that improvements to processing times must be made. However, it is also important that due process is followed when determining a planning application to avoid poor decisions being taken in order to meet mandatory targets. It is considered that focusing on the work of the Planning Forum, particularly in relation to the performance of statutory consultees is the most appropriate way of improving performance.</p> <p>With regard to non-determination appeals, the Department holds the view that the entitlement to appeal against non-determination arises "at once" upon the expiry of the determination period. In other words, if the applicant and planning authority do not agree to extend the determination period before it expires and then attempt to do so some time later the right of appeal against non-determination will expire at the end of the initial determination period. There must be no break in extending the determination period from the initial one if the right of appeal against non-determination is to be retained.</p> |
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| | <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</p> |
| <p>(PT3-10) Pre-Determination Hearings (PDH)</p> <p>You said – Most councils and some business and professional bodies suggested that PDHs should be a solely discretionary function for councils to decide where, in their view, they would add value to the decision making process. There were also calls for the Department to issue guidance and direct councils regarding PDHs for greater consistency across councils.</p> | <p>Our response - Guidance on PDH processes is already set out in Development Management Practice Note 17.</p> <p>Section 30 sets out the process for PDHs. Generally PDHs are at the discretion of Councils and Sections 30(2) and (3) allow a council to choose the appropriate method for the hearing and who, in addition to the applicant or specified persons can also participate.</p> <p>There is, however, a mandatory requirement for a PDH in certain limited circumstances where a major application has been subject to a call-in notification and returned to the council for processing. Often in these major application cases a PDH will already have taken place before it has been notified to the Department and, therefore, a second PDH may not be necessary or appropriate. Consequently, a mandatory PDH in these circumstances could potentially add some delay and uncertainty to the planning process, hindering a Council's performance against statutory targets, with increasing costs for both applicants and councils. On this basis the Department believes there is merit in amending this provision so that all pre-determination hearings are wholly at the discretion of councils.</p> <p>Proposed Action: The Department will bring forward proposals to make all PDH discretionary for councils in the exercise of their functions. This will require amendments to subordinate legislation.</p> |

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| <p>(PT3-11) Duration of Planning Permission</p> <p>You said – A small number in the renewables sector and other businesses interests suggested that extant planning permissions should be extended in emergency situations, for example, extending permissions for 10+ years for more complex approvals and regionally significant development.</p> | <p>Our response - Section 61 of the Act stipulates that every planning permission granted or deemed to be granted, will be subject to the condition that the development must begin within 5 years of the date on which permission is granted (<u>or such other period as considered appropriate</u> by the Department or council which granted the permission). In relation to outline permissions, section 62 states that unless provided otherwise reserved matters must be submitted for approval within 3 years of the grant of outline planning permission and development must be begun within 5 years of the grant of outline permission or 2 years from the final approval of reserved matters.</p> <p>Councils or the Department already have latitude under s.61 when granting permission, to allow for a period of more than 5 years within which development is to be commenced.</p> <p>The issue of extending permissions during emergency situations was raised several times to the Department, by various sectors during the current pandemic, and on foot of similar extensions provided in other jurisdictions. However, permissions in England and Scotland are granted to commence within 3 years, while those in NI and Wales are granted with a 5 year commencement condition, making the issue less acute in NI and Wales. Events such as the current COVID 19 emergency are very uncommon and the case for legislative change is not strong enough to proceed with such a proposal, especially given the various alternative options, including: commencement of development (See PT3-20); or making an application for renewal of permission, as was advised in Chief Planner’s Updates issued during the pandemic.</p> |
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| | <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will monitor and keep this issue under review.</p> |
| <p>(PT3-12) Notices of Opinion</p> <p>You said – Some within the business and industry sectors are of the view that there should be a presumption against the use of Notices of Opinion for regionally significant development applications (or applications to amend such schemes), and that the process could be streamlined with such applications sent directly to the Planning Appeals Commission (PAC) or other independent body for independent consideration / determination.</p> <p>Furthermore the Planning Appeals Commission would wish to see greater use of online arrangements for hearings or public local inquiries</p> | <p>Our response - Applications under Section 26 and Section 29 are dealt with and processed by the Department which is the relevant planning authority. Where a public local inquiry is not held, the Department must serve a notice of opinion (NOP) on the applicant and the Council indicating the decision it proposes to make. Upon receipt of the notice, the applicant or the Council can request a hearing before the PAC or other Examiner. The PAC is not bound by the NOP in preparing its report and the Department must take the PAC report into account in finally determining the application. Not every application requires a Public Local Inquiry (PLI) and equally not every NOP results in a hearing at the PAC. It should also be noted that going to PLI adds at least a year onto a timescale for processing more complex applications and, therefore, a planning application should only be taken to PLI when deemed necessary to consider particular matters. This should remain a matter for professional planning judgement. Where an applicant wishes to contest a NOP, they have a right to a hearing before the PAC. In terms of the PAC role, the recommendation to send all RSD and called-in applications directly to the PAC or other independent body would be a fundamental reordering of the Department's and PAC's roles. At present, under the Act the PAC is a statutory and independent appellate body set up and resourced to hear and determine appeals and conduct PLI/hearings, not to process and determine planning applications in the first instance. There is no clear evidence that moving this function from Dfl Planning to the PAC or other independent body would result in significant process efficiencies. Indeed, such a move may cause further delay and</p> |

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| | <p>confusion as arrangements would still need to be made to allow the Minister to determine such applications. It would also raise the question of how to facilitate the ability of councils or applicant to avail of a PL/hearing if they did not agree with the PAC decision. Finally, much work would be required to set up and resource the PAC as a first instance planning authority.</p> <p>The Department recognises the success throughout the pandemic in using online hearings and the associated efficiencies for the overall planning process.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions with regard to notices of opinion or making the Commission or other independent body responsible for RSD applications but will monitor and keep the issue under review. The Department will explore further options to facilitate online / virtual hearings or public local inquiries (See 3-17).</p> |
| <p>(PT3-13) Retrospective Permissions</p> <p>You said – A small number of individual respondents, political parties and community groups voiced their opposition to provisions which permit applications which seek permission for development already carried out (retrospective permission). This opposition included calls to introduce fines and increased planning fees for such applications.</p> | <p>Our response - Section 55 of the 2011 Act allows for retrospective planning applications to be made i.e. where development has already been carried out without permission, and for applications for planning permission to authorise development which has been carried out without complying with a planning condition(s) to which it was subject. Such applications must seek full planning permission only.</p> <p>Currently, the fee for an application which relates to development carried out without planning permission, is calculated in accordance with the provisions of Part 2 of the Fees regulations as if the application were one for permission to carry out that development. Section 223(2) does allow for the charge of a fee for</p> |

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| | <p>retrospective permission to be a multiple of the usual fee, however, this is not currently provided for in Part 2 of the Fees Regulations.</p> <p>Applications made to regularise permission for development already carried out is an established part of planning practice. Introducing fines or, increasing the planning fees for applications seeking retrospective permission, would need careful consideration and could be viewed as punitive as it often, but not always, relates to householder type development such as extensions.</p> <p>Councils do have discretionary powers to proceed with enforcement action against unauthorised development, which if not remedied, can result in the imposition of fines, or the alteration or removal of buildings as a remedy.</p> <p>Proposed Action: The Department will consider introducing multiple fees for retrospective applications as part of a wider review of planning fees (see PT13-1). The Department is not persuaded of the need to amend current provisions with regard to retrospective planning permission.</p> |
| <p>(PT3-14) Matters which may be raised at appeal</p> <p>You said - A majority of councils, and a small number of other respondents have sought clarity around section 59 of the Act to ensure that the legislative tests are fit for purpose. Respondents have further suggested that the wording of the legislation should be revisited and, if necessary, amended or guidance published to clarify the approach, for instance, section 59 should be amended to ensure that appeals can</p> | <p>Our response - Currently a party to the proceedings of a planning appeal will not be able to raise any matter that was not in front of a council or the Department when it made its original decision. The only exceptions will be if the party can demonstrate, to the satisfaction of the PAC, that the matter could not have been raised before that time or that it's not being raised was due to exceptional circumstances.</p> <p>While the NI approach is modelled on that in other jurisdiction, it does not go as far as in Scotland for example, where an appellant</p> |

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| <p>only be determined on the basis of the application as originally refused by the council.</p> | <p>cannot change the terms of the proposed development – it must be the same as the proposal that was considered previously by the council, using the same plans¹². Such a measure, if introduced here, may encourage applicants to alter their development proposals where a council is minded to refuse permission on the basis of the application as made, knowing that it cannot be varied thereafter via an appeal mechanism.</p> <p>Proposed Action: The Department will bring forward proposals to supplement existing s.59 provisions which would disallow the variation of a development proposal at appeal. This will require public consultation, and amendments to primary and/or subordinate legislation.</p> |
| <p>(PT3-15) Third Party Right of Appeal</p> <p>You said – Most individual respondents, together with a broad cross-section of community and political representatives, NGO and some councils suggested the Department introduce a new appeals mechanism or provide for third party planning appeals / challenges.</p> | <p>Our response: The legislative and structural changes to the planning system which came into effect with the new two-tier system in 2015 are designed to deliver an inclusive, front-loaded system with stronger third party engagement and local democratic accountability. Concerns with the introduction of third party rights of appeal at the end of the development management process could undermine an applicant’s commitment to community engagement at the start of a front-loaded system, and risks reducing certainty and the effectiveness and efficiency of the planning system at a time when it needs to be responsive to sustainable recovery from the pandemic.</p> <p>Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to planning</p> |

¹² <https://www.legislation.gov.uk/ukpga/1997/8/section/32A>

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| | <p>appeals but will continue to keep this matter under review. This will include consideration of recommendations to emerge from the work of the Planning Engagement Partnership.</p> |
| <p>(PT3-16) Non / Minor-material changes</p> <p>You said – A broad cross-section of respondents including some councils, professional bodies, business and renewables sectors suggested the Department consider introducing a proportionate approach to minor material changes, in addition to non-material changes, and that the Department should retain authority for such changes with regards to permissions it has granted.</p> | <p>Our response - Guidance on the non-material change mechanism and procedures as well as good practice is set out in Development Management Practice Note 25.</p> <p>The 2011 Act has introduced a mechanism by which a council will have a formal method of dealing with small changes ('non-material') to approved schemes (s.67 and Regulation 7 GDPO). The introduction of the non-material change procedure under the 2011 Act replaced the otherwise informal process previously used to respond to requests for minor amendments. In deciding whether a change is material, a council will have regard to the effect of the change, together with previous changes on the original permission. This provision allows a council to impose new conditions, or remove or alter existing conditions. Whether or not the proposed amendment(s) are considered to be 'non-material' (rather than 'material') will depend on the specific details of the existing planning permission. A change which may be considered 'non-material' in one case could be 'material' in another.</p> <p>There is no statutory definition of 'non-material', it is down to the Local Planning Authority to be satisfied that any amendment(s) sought are 'non-material' in order to be eligible for this type of application.</p> |

Some respondents are of the view that there is value in introducing a legislative provision allowing an applicant to make a **'minor-material'** modification to a current extant permission. The basis being that it would assist in cases where numerous acceptable changes are made to a core permission over time but resulting in multiple layers of individual permissions arising. In addition, minor amendments to planning permissions can require a new application, (possibly including full PACC and PAN), which in the view of some respondents, is rather onerous and has an impact on delivery.

There is no statutory definition of 'minor-material', however other jurisdictions suggest that **'minor material'** amendments are likely to include any amendment where its scale and/or nature results in a development which is not substantially different from the one which has been approved (and recommends that pre-application discussions should be used to determine whether an amendment is a 'minor material amendment' before an application is submitted).

Some amendments may, if appropriate, be taken forward under Section 54 of the Act, allowing conditions associated with the existing permission to be varied. A local planning authority can use its discretion to decide who should be consulted about such an application and the approach that should be taken to notification.

In relation to the point that the Department should retain authority for changes to permissions it has granted, the approach here mirrors that in other jurisdictions, where the local planning authority has principal responsibility for the vast majority of planning functions, including subsequent applications and changes to those previously granted by the Department.

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| | <p>Proposed Action: The Department is not persuaded of the need to amend current provisions with regard to non-material or, minor-material amendments, but will continue to keep these matters under review.</p> |
| <p>(PT3-17) Digitization in the Planning System</p> <p>You said – Overall, a broad cross-section of respondents proposed the planning system should allow for the electronic submission of planning applications, fees and inspection of other documents.</p> | <p>Our response - Calls to better utilise digital / online means of consultation and communication in plan-making, and development management and enforcement featured strongly in the responses to the call for evidence. Regulation 4 of the LDP regulations, and Regulation 29 of the GDPO provides for the use of electronic means of communication which could be amended to expand the use of digitization in plan-making and development management. Removing the requirement for advertisement in the printed press and Belfast Gazette would need careful consideration particularly around its potential effects on some s.75 groups.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will also deliver new services to the public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational next summer.</p> <p>Proposed Action: The Department will work with stakeholders to determine whether there are ways in which to better utilise online / digital means of communication in plan-making, and the planning system overall (See also PT2-6 and PT3-6). This may require public consultation, and amendments to primary and/or subordinate legislation</p> |
| <p>(PT3-18) Permitted Development</p> | <p>Our response - Certain elements of The Planning (General Permitted Development) Order (NI) 2015 have been reviewed and</p> |

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| <p>You said – A majority of councils and a cross-section of other NGOs, individuals and industry suggested that the department undertakes a review of current permitted development rights in a number of areas, particularly in relation to: minerals, utilities, agriculture, forestry, and householder development. Some councils also requested the introduction of permitted development rights specific to the use of land for COVID 19 related purposes such as test centres.</p> | <p>amended since its introduction. Changes include provisions in relation to minerals, telecommunications, electric vehicle charging points, and shops, financial and professional services. A more comprehensive review covering other matters raised by respondents such as agriculture, forestry, and householder development would be a significant and resource intensive undertaking, and not achievable in the short or medium term.</p> <p>Proposed Action: The Department will continue to keep permitted development rights under review and will bring forward amendments to extant PD provisions as and when appropriate in line with Ministerial priorities and Departmental resources.</p> |
| <p>(PT3-19) DFI Directions</p> <p>You said – A small cross-section of respondents including some councils and industry are of the view that existing Notification Directions should be amended or repealed, particularly The Planning (Notification Of Applications) Direction 2017. Some respondents also consider the Department consider the introduction of a new Direction to deal with applications for electricity transmission lines.</p> | <p>Our response – Councils are required to notify the Department, either through certain Notification Directions or requirements of the Planning Act, of certain specified matters with regard to major development, listed building consent, councils own planning applications, and control of demolition in Conservation Areas. A council cannot proceed to determine such applications or grant consent until such time as the Department has had opportunity to consider the application. The Department has 28 days to consider the matter, or may issue a holding direction pending a decision whether or not, to call-in the application.</p> <p>Given that departmental directions have been in place for several years now, the Department considers there is merit in undertaking a general review of their operation to determine if they remain appropriate going forward.</p> |

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| | <p>Proposed Action: The Department will undertake a general review of current departmental directions. This may require public consultation, and amendments to primary and/or subordinate legislation.</p> |
| <p>(PT3-20) Commencement of Development</p> <p>You said – A small cross-section of respondents including some councils, business and private sector suggested that further guidance is needed on what constitutes a lawful start to development, and that s.63(2) should make specific reference to ‘laying out or constructing a road’ & ‘demolition’ to avoid applicants losing their permissions.</p> | <p>Our response - Section 61 of the Act imposes a statutory condition on the grant of planning permission that development must be begun within 5 years of the date on which permission is granted or such other period as the council or the Department considers appropriate.</p> <p>Additionally, where outline planning permission is granted, development must be begun within 5 years of the date on which the permission is granted or within 2 years of the final approval of the reserved matters.</p> <p>Commencing development means undertaking some limited works on site to commence a planning permission and thus keep it alive.</p> <p>A material operation can include any works of construction, demolition, digging foundations, laying out or constructing a road and a material change in the use of the land. The works must be done within the time period expressed on the permission.</p> <p>In order to lawfully commence development it is necessary to satisfy the legal requirements in section 63(2) of the Act. This says that “<i>development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out.</i>” Section 63(2) specifies the operations which can constitute the start of development. The meaning of ‘development’ is set out at section 23 of the Act, as too is the meaning of ‘building operations’, and includes demolition, and rebuilding.</p> |

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| | <p>Proposed Action: The Department will review this provision to establish if any technical amendments are appropriate.</p> |
| <p>(PT3-21) Planning Agreements</p> <p>You said – A cross-section of respondents including some councils, business, NGOs and private sector interests suggested that further guidance / clarification could be provided on the circumstances in which section 76 planning agreements will be implemented including the use of conditions and covenants to secure developer contributions and other benefits. Some considered that legal fees associated with formulating planning agreements should be inclusive of the planning application fee, and that any variation to planning conditions should not result in the need for a Deed of Variation to a Section 76 agreement. Some also suggested that developers should be able to submit a 'Unilateral Undertaking' as a substitute to a Bi or Multi Party planning agreement under Section 76.</p> | <p>Our response – Section 76 of the Planning Act (NI) 2011 enables any person who has an estate in land to enter into a planning agreement with either a council or the Department (whichever is the relevant authority).</p> <p>A planning agreement may facilitate or restrict the development or use of the land in any specified way, require operations or activities to be carried out, or require the land to be used in any specified way. An agreement may also require a sum or sums to be paid to the relevant authority or to a Northern Ireland department on a specified date(s) or periodically.</p> <p>The relevant authority has the power to enforce a planning agreement by entering the land and carrying out the operations itself. Any expenses incurred in doing so are recoverable from the person or persons against whom the agreement is enforceable. A planning agreement may not be modified or discharged except by agreement between the relevant authority and the person or persons against whom the agreement is enforceable.</p> <p>A planning agreement can play a meaningful role in the development management process as a valuable mechanism for securing planning matters arising from a development proposal. An agreement may mean that development can be permitted whilst potentially negative impacts on land use, the environment and infrastructure could be reduced, eliminated or mitigated.</p> <p>Most of the comments and suggestions in relation to planning agreements revolve around their use and practice or seeking</p> |

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| | <p>clarification on technical aspects of them. The matter of recoverable costs associated with planning agreements under the Act, is similar to that in other jurisdictions, e.g. for planning obligations in Scotland, under section 75 of the Town and Country Planning (Scotland) Act 1997. These are matters that can and should be addressed by planning authorities adopting best practice approaches and do not require legislative change.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions but will continue to engage with Councils on practice through the normal mechanisms.</p> |
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Table 4

| Part 4 Additional Planning Control | |
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| <p>(PT4-1) Temporary Listing / Building Preservation Notice (BPN)</p> <p>You said – Some councils and professional bodies are of the view that the Department for Communities (DfC) should retain powers to enforce / issue a BPN and be liable for compensation (not a council). These respondents have also requested that consideration be given to providing DfC with a power to issue a BPN, including liability for compensation.</p> | <p>Our response - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016¹³. Councils however are responsible for the issuing of BPNs, (temporary listing where considered necessary), to be confirmed (or not) by DfC. Councils are currently liable for compensation (s.186) where a BPN ceases to have effect without the building having been listed by DfC.</p> <p>Proposed Action: As these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</p> |

¹³ <https://www.legislation.gov.uk/nisr/2016/76/contents/made>

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| <p>(PT4-2) Conservation Areas (CA)</p> <p>You said – A number of councils, together with other professional bodies and a political party, propose that councils be given the authority to vary / repeal a CA designated by the Department, and that The Planning (Northern Ireland) Act 2011 Planning (Control Of Demolition In Conservation Areas) Direction 2015 should be rescinded.</p> <p>Respondents also contend that the requirement for councils to refer an application for Conservation Area Consent to the Department, where it intends to grant permission, is completely heavy handed, disproportionate and an unnecessary administrative burden.</p> | <p>Our Response - Responsibility for certain functions under the Planning Act with respect to Listed Buildings and Conservation Areas transferred from the Department of Environment to the Department for Communities in 2016. Councils and DfC can designate CAs, however such designation can only be varied or cancelled by the authority which made the designation. In effect, councils are currently unable to vary or cancel a CA designated by the Department prior to the transfer of planning functions in 2015.</p> <p>Proposed Action: Given these functions are the responsibility of another department, DfI will continue to liaise with DfC on these matters.</p> <p>The Department intends to review the Conservation Area consent notification requirements (See also comments at PT3-19)</p> |
| <p>(PT4-3) Tree Preservation Orders (TPO)</p> <p>You said – A number of councils and political representatives have requested that the Department provides the power for councils to vary or revoke TPOs, including those made by the Department and its predecessors, and to also clarify the meaning of 'amenity' and 'abatement of a nuisance' within guidance. Some further contend that such protections should be extended in other designated areas such as ATCs.</p> | <p>Our response - Planning powers with respect to Trees are set out at sections 121-128, Chapter 3, Part 4 of the Planning Act (NI) 2011 and are primarily the responsibility of local councils. The Department has a power to make, amend or revoke a tree preservation order (TPO) under section 124, in consultation with the local council. In effect, should a council wish to amend or revoke a TPO, it currently must make a request that DfI do so on its behalf. In addition, while trees in a CA are offered protection under section 127 of the Act, those in other designated areas such as ATCs are not. ATC's are, however, identified and designated through the LDP process which does not currently provide statutory protection of trees.</p> |

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| | <p>Proposed Action: The Department will review current requirements around TPOs with a view to bringing forward proposals to permit councils to vary or revoke TPOs in their areas. The Department will also consider whether there is a need for guidance to clarify certain TPO terms or definitions.</p> |
| <p>(PT4-4) Review of Old Mineral Permissions (ROMPs)</p> <p>You said – A broad cross-section of respondents including councils, NGOs, individuals, political parties and some business interests requested that the Department commence legislation around ROMPs and that the Department provide the necessary resources to allow implementation.</p> | <p>Our response - Officials are continuing to examine a number of options in relation to the commencement of legislation for the review of old mineral permissions (ROMPs).</p> <p>Councils do, however, have a broad range of other enforcement powers available under the Planning Act (NI) 2011 where they believe a developer is operating outside the terms of a permission. Councils remain best placed to investigate such planning matters and have a responsibility to do so.</p> <p>Proposed Action: The Minister is to consider options on the way forward with regards to ROMPs early in 2022.</p> |

Table 5

| Part 5 Enforcement | Assessment |
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| <p>(PT5-1) Relevant authority for Enforcement</p> <p>You said – A cross-section of councils, business and academia are of the view that planning enforcement should rest with the authority which granted the relevant approval, while several individuals contend that enforcement should not be a discretionary function, nor where it is only expedient to do so. Some also believe that cost recovery</p> | <p>Our response – Guidance on planning enforcement is set out in Enforcement Practice Notes 1-4.</p> <p>The vast majority of planning functions, including that for planning enforcement rests with local councils. The Department has parallel powers with regards to certain functions, including issuing of enforcement notices (section 139). The Department’s parallel enforcement powers can be used where it is considered expedient</p> |

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| <p>could further incentivise appropriate action by planning authorities.</p> <p>Councils have suggested that the Department should take responsibility for enforcement action where necessary (extending to applications for Reserved Matters approval, and discharge of conditions) where it was the determining authority, and these should not rest with councils.</p> | <p>in circumstances where, for example, a council has failed to issue enforcement or stop notices (and not before consulting the appropriate council).</p> <p>The potential need for the enforcement of matters connected to decisions previously issued by the Department, is a discretionary function of councils, taking account of the merits of the case, and other relevant planning matters, and is only likely to extend to a small number of cases.</p> <p>The approach to planning enforcement here is modelled on that in other jurisdictions, where planning enforcement is exercised as a discretionary function. Planning authorities will, in deciding to take appropriate action, be guided by the key enforcement objectives, as set out in the SPPS¹⁴, and will do so having regard to the provisions of the Local Development Plan and any other material considerations.</p> <p>In its considerations, a council may include matters such as: whether the breach of planning control would be clearly contrary to planning policy or unacceptably affect public amenity (including road safety and nature conservation issues) or the existing use of land and buildings meriting protection in the public interest; the extent of the breach; the willingness of the offender(s) to remedy the breach of control voluntarily or through negotiations; and the statutory time limits for taking enforcement.</p> <p>Enforcement action against a breach of planning control may be taken when a council regards it as expedient to do so. Whilst not formally defined, expediency is taken as a test of whether an unauthorised development or activity is causing unacceptable harm</p> |
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¹⁴ These key objectives are as stated in paragraph 5.57 of the Strategic Planning Policy Statement for Northern Ireland (SPPS) September 2015

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| | <p>to the environment and / or public amenity, having regard to the provisions of the local development plan and to any other material considerations. It would be appropriate for councils, in determining what (if any) enforcement action is to be taken, to give priority to those breaches where in a council's opinion the greatest harm is being caused. It is considered good planning practice that any action taken against a breach of planning control shall be proportionate to the breach.¹¹</p> <p>Proposed Action: The Department is not persuaded of the need to change the approaches to planning enforcement but will keep these matters under review.</p> |
| <p>(PT5-2) Digitization in the Planning System</p> <p>You said – Some councils and academia suggested that legislation should permit the electronic service of enforcement and other similar notices.</p> | <p>Our response - Calls to better utilise digital / online means of consultation and communication in the planning system overall featured strongly in the responses to the call for evidence.</p> <p>Section 239 of the Act provides for the service of notices and documents by means of electronic communications however this currently excludes enforcement notices, stop notices, planning contravention notices etc (see section 239(3)).</p> <p>This matter could be considered within the context of a broader examination of enhanced digitization in the planning system. Such a proposal if taken forward would require policy development, public consultation and amendment to primary and/or subordinate legislation and guidance.</p> <p>A new Regional Planning IT System is currently being developed which will provide a modern system to the Department and the 10 councils when it goes operational. It will deliver new services to the</p> |

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| | <p>public who will be able to submit planning applications on-line as well as via the normal routes. The new system is due to be operational summer 2022.</p> <p>Proposed Action: The Department will work with stakeholders to determine the potential use of online / digital communication in planning enforcement. This can be undertaken within the context of a broader examination of enhanced digitization in the planning system.</p> |
| <p>(PT5-3) Fixed Penalty Notices (FPN)</p> <p>You said – A majority of councils and some individuals suggested that FPNs are punitive only, and would be better applied to unauthorised signage/advertisements.</p> | <p>Our response - Sections 153 and 154 enable a council to issue a fixed penalty notice for the offences of failure to comply with an Enforcement Notice or Breach of Condition Notice, offering the offender an opportunity to discharge any liability for the offence without having to go to court.</p> <p>FPNs are intended to provide planning authorities with an alternative process, in addition to the current option to seek a prosecution, to address situations where a person has failed to comply with the requirements of an enforcement notice (EN) or a breach of condition notice (BCN).The majority of ENs and BCNs issued by planning authorities are complied with; however there are occasions where they are not.</p> <p>By paying the penalty imposed by the FPN, the person will discharge any liability for prosecution for the offence. They will not however discharge the obligation to comply with the terms of the EN or BCN and the planning authority will retain the power to take direct action to remedy the breach and recover the costs of such work from that person.</p> |

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| | <p>This approach to FPN mirrors that in other jurisdictions and provides councils with an alternative means of remedy.</p> <p>Advertisements</p> <p>Section 175 of the 2011 Act allows a council to deal with enforcement of advertisement control. On conviction for display of an advertisement contravening regulations made under section 130 (i.e. control of advertisements), a person is liable to a fine not exceed level 4 of the standard scale (£2500). In the case of a continuing offence, the fine will not exceed one tenth of level 4 (£25) for each day during which the offence continues after conviction. Within this context, respondents are of the view that the application of FPN to advertisement controls would be a proportionate response to potentially better address the issue.</p> <p>Proposed Action: The Department will explore the possibility of applying FPNs to advertisement control. Any changes, if taken forward will require amendment to primary and/or subordinate legislation.</p> |
| <p>PT5-4 Unadopted Roads / Private Streets Determinations (PSD)</p> <p>You said – Some councils suggested the introduction of a mechanism so councils can take enforcement action to deal with un-adopted roads. Alternatively, the planning process should not be used to deal with matters that are for other regulatory regimes.</p> | <p>Our response: - The Department would not be in favour of removing the PSD from the planning process. The Private Streets (NI) Order 1980 is inter-linked to the Planning Act, and separating the two would create a two stage approval process. While doing so may shorten the process time for relevant planning applications, it would likely lengthen the overall time required by developers to subsequently obtain the requisite PSD approval and begin development. There is also a risk that some developers may not submit a Private Streets Determination post-planning, meaning an agreement and road bond cannot be put in place. On balance it is considered that maintaining the existing link between the planning and PSD process is best for the efficiency of the end to end</p> |

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| | <p>development process, and in terms of ensuring that road layouts are completed in a timely manner.</p> <p>Proposed Action: The Department is not persuaded of the need to amend existing provisions however, it will continue to explore ways of improving the PSD aspect of the process.</p> |
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Table 6

| Part 6 Compensation | Assessment |
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| <p>(PT6-1) Liability as to Compensation</p> <p>You said – A small number of councils consider that they should not be held liable for compensation for any actions or decisions taken by the Department e.g. if the Department decides to revoke or modify a planning permission then councils should not be liable for any costs.</p> | <p>Our response: The approaches to planning enforcement, including modification, revocation, and compensation here follow those in other jurisdictions, for example: In England, the local planning authority has the power to revoke planning permissions under section 97 of the 1990 Planning Act, but this has to be confirmed by the Secretary of State. In England and Wales the Secretary of State also has the power to revoke planning permission under section 100 of the 1990 Planning Act, and where this is done the liability to pay compensation still falls on the local planning authority, as though it had made the revocation order. Also, the revocation or modification of an unimplemented planning permission is not a routine or common exercise, and a planning authority can take into account the matter of compensation payable should it seek to proceed with such an order.¹⁵</p> <p>Proposed Action: The Department is not persuaded of the need to change the approaches to compensation.</p> |

¹⁵ Health and Safety Executive (Appellant) v Wolverhampton City Council (Respondent) [2012] UKSC 34, 18 July 2012

Table 7

| Part 7 Purchase of Estates in Certain Land Affected by Planning Decisions | Assessment |
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| You said – No comments. | |

Table 8

| Part 8 Further Provisions as to Historic Buildings | Assessment |
|---|-------------------|
| You said – No comments. | |

Table 9

| Part 9 The Planning Appeals Commission | Assessment |
|---|-------------------|
| You said – No comments. | |

Table 10

| Part 10 Assessment of a Council's Performance | Assessment |
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| <p>(PT10-1) Exercise of powers</p> <p>You said – A small cross-section of respondents including NGOs, business, housing, and other professional bodies requested the Department exercise greater and more regular use of its powers to undertake regular reviews of a council's performance, which in their view would allow shortcomings to be identified and recommendations for improvements to be made. Others, including some councils suggested that the way in which councils planning performance is measured should be reviewed with an emphasis on quality decisions rather than the speed at which an application can be moved through the process.</p> | <p>Our response: Part 10, sections 207- 209 of the Act enables the Department to conduct an assessment of a council's performance or decision making, including an assessment of how a council deals with applications for planning permission and the basis on which determinations have been made. Since the transfer of the Planning function to councils in 2015 the Department has not carried out any assessments under Sections 207-209, however it does monitor the performance of councils through a number of mechanisms including 3 statutory planning performance indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links).</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</p> <p>The Department continuously works in collaboration with Councils and other planning stakeholders across a range of planning issues to discuss and bring forward improvements to the efficiency and effectiveness of the planning system. The issue raised by respondents is about the exercise of these powers and not the structure of powers themselves. The use of powers available to the Department will however, be kept under review as a means to deliver improvements, if appropriate.</p> |

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| | <p>Proposed Action: The Department is not persuaded of the need to change the approaches to the assessment of a council’s performance, but will keep this matter under review in the exercise of its functions.</p> |
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Table 11

| Part 11 Application of Act to Crown Land | Assessment |
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| <p>You said – No comments.</p> | |

Table 12

| Part 12 Correction of Errors | Assessment |
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| <p>(PT12-1) Correction of Errors</p> <p>You said – Most councils together with a small cross-section of other respondents suggested that Part 12 should be commenced, to include additional provisions to correct errors in conditions.</p> | <p>Our response: See paragraphs 4.5 – 4.6 of this report.</p> <p>Proposed Action: The Department proposes to make a minor amendment at an appropriate legislatively opportunity to remove this anomaly and subsequently commence Part 12</p> |

Table 13

| Part 13 Financial Provisions | Assessment |
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| <p>(PT13-1) Planning Fees</p> | <p>Our response:</p> |

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| <p>You said – Councils were unanimous in their call for a review of existing fees structure, to include an automatic uplift of fees annually and that they should have the power to apply fees for the discharge of conditions, non-material changes, PADs and other similar consents/applications.</p> | <p>The Department considers there is merit in reviewing planning fee categories and the fees themselves to establish if they remain fit for purpose and cover the costs of processing applications in line with the requirements of Managing Public Money (NI). Such a review would consider the introduction of new fees with regard to applications to discharge conditions, PADs, non-material changes, retrospective permission etc and would require amendment to the Fees Regulations.</p> <p>Proposed Action: The Department will undertake a general review of planning fees including an automatic annual inflationary uplift, and multiple fees for retrospective applications as part of a wider review of planning fees.</p> |
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Table 14

| <p>Part 14 Miscellaneous and General Provisions</p> | |
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| <p>(PT14-1) Duty to respond to consultation</p> <p>You said – A small number of respondents consider that the consultation process continues to remain open ended and is impacting on the ability of councils to meet their statutory targets.</p> | <p>Our response: Refer to commentary at Table 3 (PT3-7) – ‘Time period for consultations’.</p> <p>Proposed Action: In conjunction with the recommendation at issue PT3-7 above, the Department will keep under review any consequential changes to this duty.</p> |
| <p>(PT14-2) Planning Register</p> | <p>Our response: Section 45 of the Planning Act (NI) 2011 (“the 2011 Act”) sets a requirement on the Department and councils to</p> |

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| <p>You said – A small number of respondents including some councils suggested the introduction of provisions similar to Article 40(13) (a) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 with regards to Finally Disposed of Applications which allows planning authorities to “Finally Dispose” of applications where it has not been determined and the statutory time limit for lodging an appeal has expired.</p> | <p>determine an application for planning permission. Article 20 of the Planning (General Development Procedure) Order (Northern Ireland) 2015 (“the GDPO”) sets out the periods for determination of council planning applications [16 weeks for ‘major’ applications and 8 weeks for ‘local’ applications]. If a determination has not been made within that period then under sections 58 and 60 (2011 Act) the applicant may appeal to the Planning Appeals Commission.</p> <p>Whilst a council or Department can issue a decision notice to refuse a development proposal on the basis of insufficient information to determine the development proposal, it does not have any legislative framework in place to dispose of ‘old’ applications where both the statutory timeframe and appeal timeframe have passed without a determination being made.</p> <p>As of September 2021, less than half of all councils are dealing with a small number of live, legacy planning applications which over time, will continue to diminish. On the basis of the evidence, the Department is not persuaded of the need for any change to existing legislative provisions.</p> <p>Proposed Action: The Department is not persuaded of the need to amend these provisions.</p> |
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Table 15

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| <p>Part 15 Supplementary</p> | <p>Assessment</p> |
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| You said – No comments. | |
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Table 16

| Other Matters | Assessment |
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| <p>(OM-01) Resources / Training</p> <p>You said – A broad cross-section of respondents including some councils, NGOs, business and renewables sectors have suggested that the Department ensures that adequate resources and training are made available for statutory consultees, PAC, councillors etc, to help in the exercise of their planning functions, to include resources for specialist and shared services with regard to minerals and waste, urban design, habitats assessments, EIA etc.</p> | <p>Our response: The issue of resources and training for consultees and others, is out-with the scope of this review. At the time of transfer of planning functions and the reform of local government necessary resources were made available together with appropriate training with regards to the exercise of planning functions by councils and associated committees. Councils are responsible for resourcing, training and operational performance. Furthermore, the PAC is resourced through the Department of Justice.</p> |
| <p>(OM-02) Biodiversity Net Gain principles, Net Zero, and Nature Recovery Networks</p> <p>You said – A small number of respondents including NGOs business and renewables sectors have suggested that the Department look to develop additional bespoke environmental legislation, such as is proposed within the Environment and Nature Restoration Private Members Bill including Biodiversity net gain.</p> | <p>Our response: While the Department is of the view that this matter is out-with the scope of this review, furthering sustainable development is at the heart of the planning system and regional planning policy. The Department is committed to ensuring that the planning system plays its part in responding to the climate crisis and that resources are actively focused on measures and actions to support a green recovery from the pandemic.</p> <p>The Planning Act (NI) 2011 and existing regional planning policy and guidance already provide councils with the flexibility to bring forward bespoke local policies for the development of their areas, where appropriate. The matter of additional bespoke environmental legislation is however out-with the scope of this review.</p> |

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| <p>(OM-03) Review extant planning policy</p> <p>You said – A small cross-section of councils, renewables, and professional bodies have suggested that the Department should review the Regional Development Strategy (RDS), Strategic Planning Policy Statement (SPPS) and address the ongoing review of existing planning policy statements (PPSs), on the countryside, minerals etc, as these may have an impact on future local policy development / LDP preparation. Consider allowing the retention of PPSs until such time as a Local Policy Plan is adopted.</p> | <p>Our response: The Department is of the view that this matter is out-with the scope of this review.</p> <p>The RDS is prepared under the Strategic Planning (Northern Ireland) Order 1999. Under that Order the Department is responsible for formulating “in consultation with other Northern Ireland departments, a regional development strategy for Northern Ireland, that is to say, a strategy for the long term development of Northern Ireland”. The RDS provides an overarching strategic planning framework to facilitate and guide the public and private sectors. It does not redefine other Departments’ strategies but complements them with a spatial perspective.</p> <p>The SPPS has a statutory basis under Part 1 of the Planning Act (Northern Ireland) 2011 which requires the Department to formulate and co-ordinate policy for securing the orderly and consistent development of land and the planning of that development. The existing suite of Planning Policy Statements and the remaining provisions of ‘A Planning Strategy for Rural Northern Ireland’ will be cancelled when all eleven councils have adopted a new Plan Strategy for the whole of their council area.</p> <p>Both the RDS and SPPS are subject to periodic reviews to ensure they remain appropriate over time and can respond to new and emerging issues or challenges.</p> <p>Proposed Action: The Department will, in the exercise of its functions, continue to keep extant planning policy under review.</p> |
| <p>(OM-04) Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015)</p> | <p>Our response: This issue is out-with the scope of this review.</p> <p>The Department monitors the performance of Councils through a number of mechanisms including 3 statutory planning performance</p> |

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| <p>You said – A small number of councils, together with some from the business and professional sectors consider that the way in which planning application performance is measured should be reviewed. Respondents suggested that the approach in GB of measuring the percentage of applications determined within the statutory target should be adopted, and that Statutory Performance Indicators should be reviewed to take account of quality decisions rather than the speed at which an application can be moved through the process.</p> | <p>indicators, which are reported upon quarterly and annually and also a number of non-statutory planning indicators, contained within the Planning Monitoring Framework, which is published annually. All information relating to these indicators is published on the DfI website (see attached links):</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-april-2019-march-2020</p> <p>https://www.infrastructure-ni.gov.uk/publications/northern-ireland-planning-statistics-october-december-2020</p> <p>Any changes to the way in which council's performance is measured would require amendment to the Measurement of Planning Performance (Local Government (Performance Indicators and Standards) Order (Northern Ireland) 2015).</p> <p>Proposed Action: The Department will keep this matter under review.</p> |
| <p>(OM-05) Infrastructure Commission / Independent Planning Body or Regulator</p> <p>You said – A small number of respondents from business, renewables and political spectrums suggested the establishment of an independent body to decide on regionally significant planning applications. Some individual respondents further contend that such a body should not pre-exist a commission with regards to climate and biodiversity, and that the Department should also establish a 'Planning Regulator' to operate an independent oversight role of the planning system.</p> | <p>Our response: While such matters are out-with the scope of this review, the Minister has for some time now, been engaging with Executive Colleagues on the need for a better, longer term approach to infrastructure planning and delivery here and is pleased that the recommendation of her own Ministerial Advisory Panel on Infrastructure, that an Infrastructure Commission should be established here and a key action in the Executive's Covid-19 Recovery Plan will now be progressed in a positive way via a cross-departmental working group, led by TEO (see link below). Minister Mallon continues to offer her support and that of her officials to this group and hopes that rapid progress can be made with this work.</p> |

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| | <p>https://www.infrastructure-ni.gov.uk/news/ministerial-advisory-panel-infrastructure-present-report-minister</p> <p>Part 9 of the 2011 Act provides for the continued governance arrangements of the Planning Appeals Commission including its senior structure, impartiality and administration. These provisions were transferred to the Department for Justice by the Departments (Transfer of Functions) Order (NI) 2016. With regards to the small number of planning applications deemed regionally significant and dealt with by the Department, the independent PAC may consider these, if requested, by way of either a public local inquiry, or notice of opinion called / served by the Department.</p> |
| <p>(OM-06) Belfast Metropolitan Area Plan (BMAP) Status</p> <p>You said – A small number of respondents including some councils and political representatives requested the department provide clarification on the status of the BMAP, (and Joint Ministerial Statement on prematurity) with clear guidance as to how competing area plans should be weighted by each local authority.</p> | <p>Our response: Such matters are out-with the scope of this review.</p> <p>Draft BMAP and all representations received to it, together with the Planning Appeals Commission inquiry reports, continue to be material considerations to be weighted by the decision maker in the determination of planning applications. Draft BMAP also provides a more up to date evidence base for the creation of local development plans by councils. The Minister is exploring with officials the most appropriate way forward with draft BMAP.</p> <p>The Joint Ministerial statement issued in 2005 by the then DOE and DRD Ministers on the importance of emerging development plans in deciding planning applications, has not been superseded or rescinded.</p> |
| <p>(OM-07) New Strategic Infrastructure Order – Some respondents within the renewables / electricity sectors requested the introduction of ‘Strategic Infrastructure Order’, to deliver energy projects which contribute to or</p> | <p>Our response: This matter is out-with the scope of this review. [Please see comments above in relation to an Infrastructure Commission].</p> |

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| <p>connected with the delivery of renewable energy or net zero carbon targets, via an accelerated / simplified planning process.</p> | |
| <p>(OM-08) Planning Judicial Reviews</p> <p>You said – A small cross-section of public representatives and business suggested the establishment of a dedicated Court to deal with planning related Judicial Reviews.</p> | <p>Our response: This matter is out-with the scope of this review.</p> <p>Consideration of the need for, and establishment of a new dedicated court for planning related judicial reviews would be for the NI Executive to determine in conjunction with the Department of Justice and Department for Infrastructure (as it would involve more than one NI department).</p> |
| <p>(OM-9) Planning Processing Agreements (PPA)</p> <p>You said – A cross-section of respondents including business, renewables and private practice suggested the introduction of PPAs into legislation. Respondents are of the opinion that an agreed PPA between Councils / the Department and applicants would set out the roles and responsibilities of all parties, possibly including penalties for failure to adhere to the pre-agreed schedule for determination of an application.</p> | <p>Our response - A planning processing agreement is a project management tool. It sets out the key processes involved in determining a planning application, identifying what information is required from all stakeholders' involved and setting timescales for the delivery of various stages of the process. Processing agreements set out a route to a decision on an application, not necessarily to an approval. These are available to planning authorities in Scotland in relation to major applications or for local developments that are complex, involve legal agreements, or are likely to be contentious or require amendments to be made to the proposals during their processing. The main purpose of the agreement is to provide clarity to all parties involved in the determination of the application of their responsibilities and to establish realistic timescales for processing the application. The Scottish Government has actively promoted the use of processing agreements as a project management tool for planning applications for a number of years</p> |

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| | <p>PPAs are linked with PADs and other forms of early engagement between applicants and the planning authority. As a management tool it would not require statutory provision, however introducing PPAs in NI would require significant engagement and consultation amongst all stakeholders, particularly agreement with statutory consultees. The introduction of processing agreements would involve additional administrative burdens to councils and the Department. Councils would therefore need to be consulted on this option. While they may be encouraged elsewhere they are not mandatory, and would likely only be particular to a relatively small number of applications in Northern Ireland. Furthermore, the Department does not consider the introduction of fines or penalties to be beneficial for what would be a non-statutory management process tool.</p> <p>Proposed Action: The Department will keep under review.</p> |
| <p>(OM-10) Consistency between terrestrial planning and Marine Planning regimes</p> <p>You said - The Planning Act should be amended to ensure consistency with marine legislation (Marine and Coastal Access Act 2009 and the Marine Act (Northern Ireland) 2013) with regard to decisions affected by marine plan/marine policy documents.</p> | <p>Our response – The UK Marine Policy Statement (MPS) acknowledges that in achieving integration in marine and land-use (terrestrial) planning systems, policy and development plan documents already include policies addressing coastal and estuarine planning. Marine policy guidance and plans seek to complement rather than replace these, recognising that both systems may adapt and evolve over time. It should be noted that in many cases the policies reflected in this MPS are already taken into account in the terrestrial planning system (including land-use planning decisions) and other consenting regimes which affect or might affect the marine area unless relevant considerations indicate otherwise¹⁶.</p> |

¹⁶ <https://www.legislation.gov.uk/nia/2013/10/section/8>

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| | <p>The draft Marine Plan for NI has been developed to support and complement other existing legislation, policies, plans and strategies, also taking account of Local Development Plans (LDPs). Equally, the Planning Act 2011 requires councils in preparing LDPs to take account of such other matters as the Department may prescribe or direct, and to have regard to such other information and considerations as appear to the council to be relevant which can include a Marine Plan affecting the particular area. In this respect, there exists a degree of integration between both regimes.</p> <p>Proposed Action: The Department is not persuaded of the need to amend the Planning Act in this way. (See also to PT2-3)</p> |
| <p>(OM-11) Retrofit / Reuse of existing buildings</p> <p>You said - Rather than demolishing and rebuilding new, the Department should consider promoting the reuse of existing buildings to assist towards a reduction in carbon emissions and to reduce the construction industry's consumption of resources.</p> | <p>Our response – The reuse and retrofitting of existing buildings as opposed to new builds, falls outside the scope of the this review.</p> <p>Existing policy (SPPS) makes provision for the re-use and adaptation (or 'retrofitting') of existing buildings and specifies that the planning system should help to mitigate and adapt to climate change by, among other things, <i>"promoting sustainable patterns of development, including the sustainable re-use of historic buildings where appropriate"</i>.</p> <p>It also makes specific provision for the conversion and re-use of existing buildings in the countryside for residential and a variety of other non-residential uses; and, for certain farm diversification</p> |

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| | <p>schemes where proposals involve the re-use or adaption of existing buildings.</p> <p>In addition, regional policy supports the re-use of existing buildings in a number of scenarios, including listed buildings, where redevelopment would “secure the ongoing viability and upkeep of the building”. Also, the Planning (Use Classes) Order (NI) 2015 can help by prescribing the circumstances where a change of use is not regarded as involving development, where the former use and new use are both within the same class specified in the Order.</p> |
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