

Our Reference

Your Reference

16 March 2026

LDP Team
Ards and North Down Borough Council
2 Church Street
Newtownards
BT23 4AP

Dear Sir/Madam

Representation: Soundness of Ards and North Down draft Plan Strategy

Enabling Development and Related Policies

1. Introduction and summary position

This representation relates to the Draft Plan Strategy housing framework, in particular draft Policy HE 14 – Enabling Development for the Conservation of Significant Places, but also the Strategic Housing Allocation of 15,608 dwellings, SGS1; SGS4; SGS5; SGS6, and the associated operational housing policies set out in Policies HOU 1–17.

1.1 Summary position

It is our submission that the Draft Plan Strategy cannot be considered to be sound, particularly in regard to the HE 14, which is inconsistent with the SPPS, is incoherent in its definition and application of enabling development, as a result is inconsistent with established policy guidance and is irrational and Wednesbury unreasonable in that it is irreconcilable with the fundamental principle of enabling development which permits development contrary to planning policy.

In the continuing absence of funding for historic buildings and places from Government, a functioning enabling development policy is essential to ensure the stock of historic buildings is maintained and improved. In its absence historic buildings will inevitably be lost, which is contrary to the statutory framework that requires their preservation. The outworkings of a functioning enabling policy are permissions to develop land for purposes that would not otherwise be permitted, including developing housing in the countryside. The Draft Plan Strategy does not take account of this, and consequently fails the tests of Coherence and Effectiveness.

Additionally, the proposed rural housing policies, ensure that the assumed rural housing allocation will not be met, and fails the tests of Coherence and Effectiveness as a result.

1.2 Context

Historic buildings do not choose their locations; grant assistance from Government, when available, will not address the needs of the historic environment; other funding sources are not necessarily available, for example the Heritage Lottery Fund will not fund heritage in private ownership.

Consequently, heritage buildings are under sustained pressure from multiple aspects including climate change, sustainability and energy efficiency. General issues relating to maintenance and on-going up-keep are incurring substantially increased costs partly as a result of international supply chain disruption due to Covid-19 and ongoing conflicts and partly due to the continuing loss of skills from the industry.

Being a custodian of heritage imposes a significant statutory burden and successful historic places are supported by viable policy.

The Council's economic strategy (Blue:Green Creatively Connected – Integrated Strategy for Tourism, Regeneration and Economic Development) is conservation and tourism-led. The avoidance of employing established enabling development policy undermines the economic strategy and will directly lead to the devastation of the Borough's heritage the outworkings of which are dereliction, vacancy and the loss of important and valuable skills.

2. Policy HE 14 is Irrational and Wednesbury Unreasonable

There are two points where HE 14 is inconsistent with the SPPS; these are:

1. It fails to define enabling development in the policy headnote; and
2. It requires enabling development to comply with all of the other provisions of the LDP

2.1 Inconsistency with the SPPS

The SPPS defines enabling development in paragraph 6.25 as:

"Enabling development is a development proposal that is contrary to established planning policy and in its own right would not be permitted. Such a proposal may however be allowed where it will secure the long term future of a significant place and will not materially harm its heritage value or setting. Enabling development typically seeks to subsidise the cost of maintenance, major repair, conversion to the optimum viable use of a significant place where this is greater than its value to its owner or market value." (emphasis added)

By contrast, HE 14 does not contain a definition in its headnote and when enabling development is defined in the justification it states:

“Enabling Development is defined as development that conflicts with other policies in the LDP and would normally be considered unacceptable in its own right, but which may be supported if the Council is satisfied that the proposal will facilitate and secure the long-term future of a significant place by using the profit generated from the new development.” (emphasis added)

In the enabling development process set out in the SPPS and elaborated on by the Best Practice Guidance to PPS 23, the conservation of the significant place is achieved through the revenue generated by the enabling development not its profit, crucially within that context profit is permitted providing the incentive to restore. Further, enabling development may only be used to fund the difference between the value of the completed restoration and the cost of doing so, which means that the owner must also make a significant contribution to the restoration. The owner therefore has a financial interest in ensuring its success.

In HE 14 the dLDPS displaces all of this by replacing the use of value to determine the enabling with the use of profit. Under HE 14 the profit not the revenue generated provides the funds for restoration removing the incentive for owners to restore or commit their own funds to the project. This is a radical departure from the SPPS definition and the methodology deployed in the Best Practice Guidance, which the justification section notes is retained by the plan.

In effect this radically altered policy position renders the Best Practice Guidance unusable as it is set up for the revenue generating model adopted elsewhere in the UK.

The Council's definition therefore departs substantially from that of the SPPS and is inconsistent with it, failing soundness test C3. It leads to a situation in which investment in the historic environment by private investors will be substantially reduced with corresponding negative outcomes for important historic buildings.

Draft policy HE 14 has a further inconsistency with the SPPS. In its justification section the draft policy states at paragraph 15.94:

“The policy will not be implemented if the Council is uncertain that public benefit will be gained.”

The Council has not set out what it means by not implementing the policy or how it will assess certainty, and given that mechanisms for securing the enabling development to works of restoration already exist this sentence creates unnecessary vagueness and uncertainty within HE 14.

It is unnecessary because regional planning policy in the SPPS clearly sets out the public benefit of enabling development. While additionally, the Best Practice Guidance to PPS 23, which is retained by HE 14 clearly sets out at section 6.5 how the decision should be balanced. The SPPS at paragraph 6.26 clearly states that the public benefit that arises comes from the conservation of the significant place itself; in full it states:

"The justification for allowing the enabling development lies in the over-riding public benefit to the conservation of the significant place and its sustainable future use which would be derived from the implementation of the principal proposal which otherwise would have little prospect of being carried out."

Thus the planning judgement about what constitutes public benefit has already been made, to be consistent with the SPPS, the dLDPS needs to acknowledge that fact.

The draft text also creates uncertainty over the application of the policy. As noted above it is not clear what the Council means and in particular whether the draft text refers to the introduction of a new policy test of public benefit not contained in the policy headnote or whether the Council is contemplating not implementing the policy as a whole. If it is the former, the additional public benefit the Council is seeking is not consistent with the SPPS and the nature of the test is not made clear in HE 14. However, if it is the latter and the Council does not intend to operate the policy at all it is necessary to take account of the fact that enabling policy exists within the SPPS and that it still applies whether the Council chooses to implement its LDP policy or not.

While enabling development is not a statutory term, it was confirmed as a legitimate planning tool in 1988 by the Court of Appeal, in *R v. Westminster City Council ex parte Monahan*, which upheld the validity of a planning permission authorising office development, even though it was contrary to the development plan, on the basis that it would provide funds to improve the Royal Opera House, Covent Garden, that were unobtainable by other means.

It should be noted that a key part of any decision on an enabling proposal as set out in section 6.5 of the Best Practice Guidance is a realistic appraisal of the consequences of refusal, in the context where statutory designation imposes a presumption in favour of preservation. Enabling development is a clearly established mechanism available to local authorities and failure to properly implement the policy will result in harm being caused to heritage assets that are statutorily protected.

Accordingly HE 14 fails the test of consistency, C3 and, as set out above it also fails the tests of coherence and effectiveness.

2.2 Irrationality and Wednesbury Unreasonableness

The purpose of enabling development in both the SPPS and the Council's unsound definition is to permit development that is contrary to established planning policy where it will fund the restoration of historic buildings and places which is in the public interest.

The critical element of the policy is that it overrides other policies in the LDP.

However, the final paragraph of the HE 14 policy headnote states:

"All development proposals will also be required to comply with General Principles Policy GP 1 and accord with all other relevant policy provisions of the LDP."

The introduction of this paragraph creates a circular situation that is impossible to resolve; consequently, as currently drafted HE 14 is neither coherent nor effective.

To help substantiate this conclusion we have examined the enabling policy provisions of all currently adopted LDPs that have been tested for soundness.

- Fermanagh and Omagh Policy HE07 does not include this paragraph.
- Lisburn and Castlereagh Policy HE 14 does not include this paragraph.
- Antrim and Newtownabbey Policy DM 35 does not include this paragraph.
- Mid and East Antrim Policy HE 9 does not include this paragraph.
- Derry and Strabane Policy HE 9 does not include this paragraph.

As drafted HE 14 is not only incoherent and ineffective but it is irrational and Wednesbury unreasonable. Development relying on a policy whose purpose is to override other policies cannot then be expected to conform to those policies; the final paragraph leaves the policy in an unworkable state.

3. Countryside Policies do not take Enabling Development into Account

It is clear that enabling development as defined in the SPPS offers a potential rural housing windfall that needs to be factored into the allocation figures.

The allocation for rural housing is premised on the assumption that past trends will continue; however, draft operational policy is expressly framed to decrease the numbers of rural dwellings approved by introducing a stricter policy framework, in particular the combined effects of policies:

- HOU 10, which introduces a stricter test for non-listed vernacular dwellings;
- HOU 11, which introduces additional requirements to demonstrate the importance and suitability of the building and fails to permit conversion to more than one dwelling where the building is of sufficient size (as required under the bullet point on page 50 of the SPPS);

- HOU 15, which changes the policy test in two ways: firstly, to a gap sufficient to accommodate only one dwelling, as opposed to two dwellings in PPS 21 and the SPPS; and secondly, the definition of an otherwise substantial and closely built up frontage is changed to five buildings from three; and
- HOU 17, which strengthens the six-year test to six continuous years.

The justification summaries for the countryside policies on pages 52 to 54 of the Population and Housing Technical Supplement, clearly set out that the imposition of additional restrictions was fully considered during the plan-making process. It follows therefore that past trends will not continue and the assumption underlying the allocation is wrong as a new trend, producing a lower number of dwellings will be established post adoption. This can only mean that the rural housing allocation is ineffective as the proposed policy framework ensures it will not be met.

As proposed the rural housing allocation and rural housing policies are inconsistent with each other, are not coherent in that the policies do not logically flow from the allocation and is not effective because the operational policies actively prevent the allocation from being delivered.

An appropriately prepared windfall allowance taking account of enabling policy would address this inconsistency, incoherency and ineffectiveness.

4. Conclusion – The Draft Plan Strategy is not sound

We suggest that the Draft Plan Strategy cannot be considered to be sound in relation to HE 14 for the following reasons:

1. Consistency failure: HE 14 is inconsistent with the SPPS, in particular paragraphs 6.25 and 6.26 by failing to include the definition of enabling development established in regional policy within the headnote, by amending the definition to change the core policy test and by failing to align the definition of public benefit.
2. Coherence failure: Enabling policy involves accepting that the development proposal does not conform to LDP policies, to include a requirement for that development to conform to all the LDP's policies is incoherent.
3. Irrationality: Policies must conform to Wednesbury reasonableness; as drafted HE 14 creates an irreconcilable irrational situation in which development proposals must satisfy policies that enabling development requires be set aside in the public interest.

4. Effectiveness failure: As currently drafted HE 14 lacks clarity and is vague in relation to the public benefit, and the balance of decision making contained in regional policy accordingly, it will not deliver enabling development, will fail to safeguard heritage assets in accordance with their statutory designations and will placing the future of existing historic buildings and other aspects of the historic environment, including gardens, at risk.
5. Consistency failure: Operational policies HOU 9 to HOU 17 are inconsistent with the rural housing allocation.
6. Coherence failure: Operational policies HOU 9 to HOU 17 do not logically flow from the housing allocation.
7. Effectiveness failure: Operational policies HOU 9 to HOU 17 have been expressly drafted to reduce the number of rural dwellings, conflicting with the basis of the allocation, which is past trends under a more permissive policy framework.

4.1 Soundness Considerations – CE1, CE2, C2 and C4

The concerns outlined above also raise issues in relation to the wider soundness tests relating to coherence and effectiveness.

CE1 Coherent Strategy

The Draft Plan Strategy recognises the importance of the historic environment and seeks to protect and enhance heritage assets across the Borough. However Policy HE14 introduces an enabling development framework which is internally contradictory.

The policy acknowledges that enabling development involves permitting development which would otherwise conflict with planning policy. However the policy simultaneously requires such proposals to comply with all other provisions of the Local Development Plan.

This creates a circular and unworkable policy framework whereby development that must depart from policy in order to secure heritage conservation is simultaneously required to comply with that policy framework.

As a result the policy is internally incoherent and fails soundness test CE1

CE2 Effective Strategy

Soundness test CE2 requires that policies are capable of being implemented effectively.

As currently drafted Policy HE14 lacks clarity regarding how enabling development proposals would be assessed and introduces uncertainty regarding the interpretation of public benefit and policy compliance. This lack of clarity risks discouraging proposals which could otherwise secure the long-term conservation of significant heritage assets.

In the absence of a workable enabling development framework the policy is unlikely to achieve its stated objective of securing the conservation of heritage assets and therefore fails soundness test CE2.

C2 Alignment with the Community Plan

The Community Plan places significant emphasis on the conservation of the Borough's heritage assets and their role in supporting tourism, community identity and economic development.

If the enabling development policy framework is ineffective, the spatial strategy will not support the conservation and sustainable reuse of significant heritage assets.

Accordingly the Draft Plan Strategy raises concerns in respect of soundness test C2.

C4 Consistency with Other Relevant Strategies

Soundness test C4 requires that the Local Development Plan has had regard to other relevant plans, policies and strategies relating to the Council's district.

The Council's Integrated Tourism, Regeneration and Economic Development Strategy (2018–2030) sets out the long-term economic development vision for the Borough and expressly recognises that the Local Development Plan will play a key role in delivering that vision through spatial planning and land use decisions.

The Draft Plan Strategy acknowledges the Economic Strategy and adopts its projected "success scenario" of approximately 7,500 additional jobs as a key component of the Borough's growth strategy.

However, while the Draft Plan Strategy appears to adopt the headline employment growth ambitions of the Economic Strategy, it does not fully reflect the spatial and land-use implications of that strategy.

The Economic Strategy emphasises a number of key spatial principles including:

- The development of town and village centres as hubs for economic activity and regeneration;
- The promotion of mixed-use development and flexible workspace in centres;
- The importance of public transport corridors as locations for higher density residential and economic growth; and
- The need to avoid overly rigid zoning approaches which may inhibit mixed-use regeneration and new forms of economic activity.

By contrast, the Draft Plan Strategy introduces a policy framework which places strong emphasis on:

- Protection of existing employment land;
- Protection of open space; and
- Restrictive criteria affecting redevelopment, intensification and the reuse of existing buildings.

While these policies may each serve legitimate objectives, their cumulative effect may restrict the redevelopment and mixed-use regeneration opportunities which the Economic Strategy identifies as key drivers of economic growth and place-based regeneration.

In particular, the strong protection afforded to employment land through Policy ED3 may limit the redevelopment of older or under-utilised industrial sites for mixed-use regeneration, even though such sites historically have provided opportunities for town centre revitalisation and residential growth in sustainable locations.

Similarly, the strong presumption against the loss of open space contained in Policy OS1 may constrain redevelopment opportunities within settlements where land is already limited and where regeneration initiatives could otherwise support town centre vitality.

The Economic Strategy itself cautions against an *“unresponsive zoning approach that stymies the potential for mixed use development or pioneering developments in new locations.”*

Taken together, these policy tensions raise questions as to whether the Draft Plan Strategy has fully had regard to the spatial regeneration objectives of the Economic Strategy.

While the plan clearly acknowledges the Economic Strategy and adopts its employment growth projections, it does not demonstrate how the detailed policy framework will enable the flexible, centre-focused regeneration model advocated by that strategy.

This issue is particularly relevant given that the Draft Plan Strategy itself identifies a significant oversupply of employment land relative to projected demand. In such circumstances, a rigid policy approach to employment land retention may reduce the flexibility required to deliver the mixed-use regeneration and place-based economic development envisaged by the Economic Strategy.

Accordingly, there is a concern that the Draft Plan Strategy has adopted the economic growth aspirations of the Economic Strategy without fully reflecting the spatial development approach required to achieve them.

For these reasons the Draft Plan Strategy raises concerns in respect of soundness test C4, as it does not clearly demonstrate that it has had full regard to the spatial and regeneration implications of the Council's own Economic Development Strategy.

5. Proposed Modifications to Achieve Soundness

5.1 Necessary Modification of Policy HE 14

To address soundness, the Council should:

- Remove the last paragraph from the policy headnote.
- Include the SPPS definition of enabling development in the policy headnote or at the very least within the justification text.
- Commit to the implementation of the policy and remove the sentence relating to implementation from the justification of HE 14.

The proposed modification to the text of HE 14 is set out below, text proposed for removal is struck through that proposed to be added is underlined:

~~Planning permission will only be granted for enabling development relating to the conservation, refurbishment and re-use of a significant place, where it will not materially harm its heritage value or setting. It must be demonstrated through a 'Statement of Justification' that all of the following criteria are met:~~

Enabling development is a development proposal that is contrary to established planning policy and in its own right would not be permitted. Such a proposal may however be allowed where it will secure the long term future of a **significant place**¹ and will not materially harm its heritage value or setting. Enabling development typically seeks to subsidise the cost of maintenance, major repair, conversion to the optimum viable use of a significant place where this is greater than its value to its owner or market value. The justification for allowing the enabling development lies in the overriding public benefit to the conservation of the significant place and its sustainable future use which would be derived from the implementation of the principal proposal which otherwise would have little prospect of being carried out.

Proposals involving enabling development relating to the re-use, restoration or refurbishment of significant places will only be permitted where it can be demonstrated by the applicant in the submission of a Statement of Justification to accompany an application for planning permission that all of the following criteria are met:

¹ A significant place means any part of the historic environment that has heritage value including scheduled monuments, archaeological remains, historic buildings (both statutory listed or of more local significance) together with any historically related contents, industrial heritage, conservation areas, or a historic park, garden or demesne

- (a) The heritage asset to be subsidised by the proposed enabling development will bring significant long-term benefits according to its site and location;
- (b) The conservation of the heritage asset would otherwise be financially and operationally unviable;
- (c) The impact of the enabling development is precisely defined at the outset;
- (d) The scale of the proposed enabling development does not exceed what is necessary to support the conservation of the heritage asset;
- (e) Sufficient subsidy is not available from any other source;
- (f) The public benefit decisively outweighs the disbenefits of departing from other planning policies;
- (g) It will not materially harm the heritage values of the heritage asset or its setting;
- (h) It avoids detrimental fragmentation of the management of the asset; (i) It will secure the long-term future of the heritage asset and, where applicable, its long-term use for a sympathetic purpose; and
- (i) It is necessary to resolve problems arising from the inherent needs of the heritage asset, rather than the circumstances of the present owner, or the purchase price paid.

Sustaining significant places is a high priority, and statutory designation imposes a presumption in favour of their preservation. Accordingly decisions will be made in light of a realistic view of the consequences of refusal, particularly where the place is rapidly deteriorating and there is no other likely source of subsidy and subject to disbenefits being in proportion to the heritage and other public values of the asset.

The benefits to be derived from the conservation of the significant place will be secured either by conditional grant of planning permission or conditional grant of planning permission, accompanied by a planning agreement.

~~All development proposals will also be required to comply with General Principles Policy GP 1 and accord with all other relevant policy provisions of the LDP.~~

Justification and Amplification

~~15.93 Enabling Development is defined as development that conflicts with other policies in the LDP and would normally be considered unacceptable in its own right, but which may be supported if the Council is satisfied that the proposal will facilitate and secure the long term future of a significant place by using the profit generated from the new development. For~~

~~the purposes of this policy, a 'significant place' means any part of the historic environment that has heritage value, including Scheduled Monuments, archaeological remains and historic buildings (together with any historic contents), industrial heritage, Conservation Areas and Historic Parks, Gardens and Demesnes.~~ Enabling development is the use of the revenue generated by a limited amount of development, that would not normally be permitted, in order to fund the restoration of a significant place. It is only applicable where the cost of repairing and bringing the significant place into a viable long-term use exceeds its value once restored, creating what is known as a **conservation deficit**. Enabling development will be employed where a conservation deficit can be shown to exist through a financial appraisal and only where the public benefit of securing the long-term future of the significant place clearly outweighs the policy objection to the development. In those circumstances, the scale of enabling development will be strictly limited to what is necessary to bridge the conservation deficit.

- 15.94 It is intended that this policy will only be used as a last resort, where the long-term public benefit of securing an important heritage asset ~~decisively~~ clearly outweighs the disadvantages of departing from other LDP provisions. ~~The policy will not be implemented if the Council is uncertain that public benefit will be gained.~~ Enabling development decisions will be taken in the context of a robust evidence base that may require scrutiny from outside experts to the Council and, in the interests of transparency will need to be available in a public forum.
- 15.95 To permit the Council to make an informed and timely decision on an application involving enabling development, a Statement of Justification will be required, undertaken by a suitably qualified professional. This must include sufficient financial information to allow the Council to make an informed decision upon the application. This should also be accompanied by a conservation statement/plan that demonstrates a detailed understanding of the importance of the heritage asset and the forward plan for it. Enabling Development must always be justified by the inherent lack of viability of the significant place, not an owners inability to fund a commercially viable scheme. The onus will be upon the developer to demonstrate that all other sources of sufficient finance are not available to allow for the viable use of the heritage asset, ~~rather than an inability of the developer to fund a viable project.~~
- 15.96 The information supplied by the developer should cover all the financial aspects of the proposed enabling development, in a sufficient degree of detail to enable scrutiny and validation by the planning authority in consultation with its economists. This applies both to the assessment of need and the assessment of the scale of the enabling development

necessary to meet that need. The onus is on the developer to demonstrate that sufficient funds are not available from any other source, such as grant aid.

- 15.97 The scale and extent of Enabling Development must be proportionate to the funds needed ~~for the refurbishment/conservation works~~ to meet the conservation deficit. It should be the minimum necessary to generate the ~~income~~ necessary revenue for the restoration and re-use of the heritage asset. ~~As the profit generated will be used for the conservation works,~~ The cost of both elements must be clearly set out in a business plan and financial projection accompanying the application, in order that the viability of the scheme can be fully assessed.
- 15.98 Applicants should expect to have restrictive planning conditions and/ or a planning agreement attached to any permission and should therefore have access to their own legal services to facilitate this.
- 15.99 'Assessing Enabling Development' (published by Central Government DoE April 2014) is the relevant Best Practice Guide for Enabling Development and will be applied by Council when determining enabling development applications, relating to significant places. Pre-application discussions are also encouraged. Applicants should also note that a Statement of Significance may also be required for these types of applications. Please refer to Policy HE 1 for further clarification.

5.2 Necessary Modification of Rural Housing Allocation

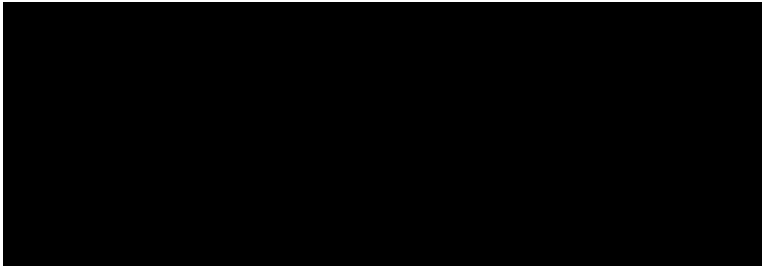
To make the plan sound the Council should:

- Revise the rural dwelling allocation to take into account its proposed policy framework.
- Introduce a rural windfall allocation to take into account enabling development.

Until these matters are addressed, the Draft Plan Strategy cannot be considered a clear, workable plan capable of delivering its objectives and is therefore not sound.

We trust that this representation will be afforded the Council's full attention in the formulation of the dLDPS and humbly suggest that it amends the dLDPS to align with established enabling policy and practice and make provision for the use of enabling development to restore and revitalise the historic built environment by taking account of the potential for rural housing windfalls.

Yours faithfully



David Worthington MRTPI
For Pragma Planning and Development Consultants Limited