

# Agenda

## Agenda

📄 *Agenda PC.05.09.23.pdf*

Page 1

### 1. Apologies

### 2. Declarations of interest

### 3. Matters arising from minutes of Planning Committee 01 August 2023

📄 *Minutes PC01.08.2023 AMcC LM.pdf*

*Not included*

📄 *Minutes PC01.08.2023 PM.pdf*

*Not included*

### 4. Planning Applications

#### 4.1. LA06/2022/1296/RM - 19 Seaview Terrace, Holywood

Domestic garage and domestic building

**Speaking in opposition to the application - Eamon Burns**

**Speaking in support of the application - Mr David Addis (applicant) and Mr David Donaldson (Agent)**

📄 *Item 4.1 Exec Summary LA06 2022 1296 RM.pdf*

*Not included*

📄 *Item 4.1a LA06 2022 1296 RM.pdf*

*Not included*

#### 4.2. LA06/2020/1220/F -102 Comber Road, Killinchy

Erection of agricultural shed (proposed) and creation of laneway (retrospective)

**Speaking in support of the application - Conor Cochrane (agent)**

📄 *Item 4.2 Exec Summ LA06 2020 1220.pdf*

*Not included*

📄 *Item 4.2a LA06 2020 1220.pdf*

*Not included*

#### 4.3. LA06/2022/0904/F - Sir Samuel Kelly Lifeboat Shelter, Copelands Marina Car Park, Donaghadee

Retention of temporary curved box steel frame shelter/canopy over a vessel for restoration purposes for a further 5 years. Extension to site area including ancillary mobile unit/exhibition space, disabled access ramp and 2.4m high perimeter fencing

[Item 4.3 Exec Summary LA06 2022 0904 F.pdf](#) *Not included*

[Item 4.3a LA06 2022 0904 F.pdf](#) *Not included*

## **5. Update on Planning Appeals (Report attached)**

[Item 5- Update on Planning Appeals.pdf](#) *Page 3*

[Item 5a - 2022 A0075.pdf](#) *Page 8*

[Item 5b - 2021 E0076.pdf](#) *Page 22*

[Item 5c - Commissioner Cost Decision.pdf](#) *Page 27*

## **6. NIW Fence at Seacourt Pumping Station – update (Report attached)**

[Item 6 - Update on Correspondence re NIW fence.pdf](#) *Page 32*

[Item 6a - Letter to DFI re NIW fence & GPDO 20-07-23.pdf](#) *Page 34*

[Item 6b - DFI Response 02.08.23.pdf](#) *Page 40*

[Item 6c - Letter to NIW Chief Executive re NIW fence 20-07-23.pdf](#) *Page 42*

## **7. Update on Planning Statistics (Report attached)**

[Item 7 - Planning Statistics.pdf](#) *Not included*

[Item 7a - Annual Statistical Bulletin.pdf](#) *Not included*

## **8. Review of Council Decisions (Report attached)**

[Item 8 - Review of Council decisions.pdf](#) *Not included*

[Item 8b - Review of Council decisions.pdf](#) *Not included*

**9. DAERA Call for evidence on impacts of air pollution on the natural environment (Report attached)**

📎 *Item 9 - DAERA Call for Evidence.pdf*

*Not included*

📎 *Item 9a - Response to DAERA.pdf*

*Not included*

**10. Quarterly update on Trees (Report attached)**

📎 *Item 10 - Tree preservation order and works.pdf*

*Not included*

**11. Quarter 1 Budgetary Control Report – June 2023 (Report attached)**

📎 *Item 11 - Budgetary Control Report.pdf*

*Not included*

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

**12. Quarterly update on Enforcement**

Report attached

📎 *Item 12 - Update on Enforcement Matters.pdf*

*Not included*

📎 *Item 12a - EN Table update.pdf*

*Not included*

## ARDS AND NORTH DOWN BOROUGH COUNCIL

29 August 2023

Dear Sir/Madam

You are hereby invited to attend a hybrid meeting (in person and via Zoom) of the Planning Committee of the Ards and North Down Borough Council which will be held in the Council Chamber, 2 Church Street, Newtownards on **Tuesday, 5 September 2023**, commencing at **7.00pm**.

Yours faithfully

Stephen Reid  
Chief Executive  
Ards and North Down Borough Council

### A G E N D A

1. Apologies
2. Declarations of Interest
3. Matters arising from minutes of Planning Committee 01 August 2023 (Copy attached)
4. Planning Applications (Reports attached)

4.1	LA06/2022/1296/RM	<p>Domestic garage and domestic building</p> <p>19 Seaview Terrace, Holywood</p> <p><b>Speaking in opposition to the application - Eamon Burns</b></p> <p><b>Speaking in support of the application - Mr David Addis (applicant) and Mr David Donaldson (Agent)</b></p>
4.2	LA06/2020/1220/F	<p>Erection of agricultural shed (proposed) and creation of laneway (retrospective)</p> <p>102 Comber Road, Killinchy</p> <p><b>Speaking in support of the application - Conor Cochrane (agent)</b></p>

4.3	LA06/2022/0904/F	Retention of temporary curved box steel frame shelter/canopy over a vessel for restoration purposes for a further 5 years. Extension to site area including ancillary mobile unit/exhibition space, disabled access ramp and 2.4m high perimeter fencing  Sir Samuel Kelly Lifeboat Shelter, Copelands Marina Car Park, Donaghadee
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5. Update on Planning Appeals (Report attached)
  6. NIW Fence at Seacourt Pumping Station – update (Report attached)
  7. Update on Planning Statistics (Report attached)
  8. Review of Council Decisions (Report attached)
  9. DAERA Call for evidence on impacts of air pollution on the natural environment (Report attached)
  10. Quarterly update on Trees (Report attached)
  11. Quarter 1 Budgetary Control Report – June 2023 (Report attached)
- \*\*\*IN CONFIDENCE\*\*\***
12. Quarterly update on Enforcement (Report attached)

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

Councillor Cathcart	Alderman McIlveen (Chair)
Councillor Creighton	Councillor McKee
Alderman Graham	Councillor McLaren
Councillor Kerr	Councillor McRandal
Councillor Martin	Councillor Morgan
Councillor McCracken	Alderman Smith
Councillor McCollum	Councillor Woods
Alderman McDowell (Vice Chair)	Councillor Wray

Unclassified

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**ITEM 5****Ards and North Down Borough Council**

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	05 September 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	21 August 2023
File Reference	
Legislation	Planning Act (NI) 2011
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input checked="" type="checkbox"/> If other, please add comment below: Not applicable
Subject	Update on Planning Appeals
Attachments	Item 5a- 2022/A0075 Item 5b - 2021/E0076 Item 5c - Commission Cost Decision

**Appeal Decisions**

1. The following appeal was dismissed on 09 August 2023

PAC Ref	2022/A0075
Application ref	LA06/2021/1481/O
Appellant	Mr. Ivan Robinson
Subject of Appeal	Erection of an off-site replacement dwelling with new access to Ravara Road
Location	Approx 185m SW of 25 Ravara Road, Ballygowan

The Council refused planning permission on the 21 June for the following reasons:

## Not Applicable

- i. The proposal is contrary to 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.
- ii. The proposal is contrary to Policy CTY 13 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal will be a prominent feature in the landscape and will rely primarily on the use of new landscaping for integration.
- iii. The proposal is contrary to paragraph 6.73 of SPPS and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal has an adverse impact on rural character and result in suburban style build-up of development when viewed with existing and approved buildings and creates a ribbon development.

The Commissioner first advised as a preliminary matter that Policies CTY 3 and CTY 8 of PPS 21 should also form part of the appeal consideration. These inadvertently had been omitted by the Council in its refusal reasons on the decision notice. The Commissioner was of the opinion that no prejudice had been caused following the period of time provided for the appellant to comment.

The Commissioner did not dispute the position held by all parties that the building to be replaced exhibited all the essential characteristics of a dwelling and that an off-site location would be appropriate due to the restricted curtilage of the original dwelling. However, the Commissioner agreed with the Council's view that the proposed off-site location of the replacement dwelling would have a significantly greater visual impact than the dwelling to be replaced.

The Commissioner stated that due to the lack of boundary definition the proposal would be a prominent feature in the landscape when approaching the site from the west, which also fails to meet criterion (a) of CTY 14. As such the Commissioner found that the proposal would not integrate into the landscape and was contrary to Policy CTY 3.

In terms of the second reason for refusal under CTY 13, given that the proposal would require significant new landscaping to achieve a suitable degree of enclosure, it was found that the proposal would fail to adequately integrate into the landscape.

The Commissioner found that the proposal failed to comply with criterion (b) of CTY 14. The appeal site provides some visual relief in the rural area and the proposal would contribute to the existing development in general when viewed with the buildings to the south of Ravara Road and would add to the suburban style build-up in the area.

In terms of criterion (d) of CTY 14, this is cross-referenced with policy CTY 8. It was found that the proposal would not be visually linked with the existing

## Not Applicable

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commercial-type buildings and farm complex beyond (No.25). The Commission also considered that the siting of the proposed off-site replacement dwelling would not share common frontage to Ravara Road as the plot on which the proposal would stand does not abutt the road. The Commissioner considered that the proposal would not create or add to ribbon development and therefore policies CTY 8 and criterion (d) of CTY 14 are not offended.

Finally, the Commissioner was not provided with any persuasive arguments that the proposal was essential in this location and could not be located in a settlement.

2. The following appeal was allowed and Enforcement Notice quashed on 3 August 2023

PAC Ref	2021/E0076
Application ref	LA06/2016/0326/CA
Appellant	Mr. Robert Busby
Subject of Appeal	The alleged unauthorised change of use from farm building identified as Building A on the Enforcement Notice map to commercial butchers unit; the alleged unauthorised change of use from farm building identified as Building C on the Enforcement Notice map to a retail farm shop; and the alleged unauthorised use of an area of hardstanding hatched green on the Enforcement Notice map as a car park.
Location	Land at 40 Comber Road, Balloo, Killinchy

The appeal was brought on Grounds (c), (d), (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). There is a deemed planning application by virtue of Section 145(5). At the hearing, the appellant withdrew Ground (c), and (f) of appeal. The appellant also withdrew concerns in respect of the Enforcement Notice (the Notice) being a nullity. The appeal on grounds (d), (a) and (g) remained.

At the hearing, the Council stated that planning permission had been granted on 9 March 2023 for the Car Park and the change of use of Building C by application LA06/2022/0137/F. In accordance with Section 148(1) of the Act, the Notice shall cease to have effect so far as inconsistent with that permission. Accordingly, Part 3 (1) and (2) and Part 4 (1) and (2) of the Notice cease to have effect.

Appeal ground (d) is set out to consider immunity – it requires - that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.

Section 132 of the Planning Act sets out time limits for taking enforcement action. In accordance with Section 132 (3), in the case of any other breach of

## Not Applicable

planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach.

As part of the appeal the appellant submitted significant information, that had not been previously provided. The Commissioner was satisfied that the submitted evidence demonstrated that the retail use of Building A is immune from enforcement action and that the use had at no time been abandoned.

As such the Commission found it unnecessary to consider the remaining grounds of appeal or the deemed planning application. The Enforcement Notice is therefore quashed and the Council is moving to close its enforcement case.

**New Appeals Lodged**

3. No appeals have been lodged since the date of the last report.

**Appeals Withdrawn**

4. The following appeal was withdrawn on 10 August 2023:

PAC Ref	2021/E0070
Application ref	LA06/2020/1115/F
Appellant	Mr & Mrs Howard Hastings
Subject of Appeal	1) Alleged unauthorised infilling and raising of the land without the benefit of planning permission. 2) Alleged unauthorised construction of a timber retaining structure
Location	Land at 27 Station Road, Craigavad, Holywood

The above appeal was withdrawn following the determination of the planning application LA06/2020/1115/F, which was granted full planning permission on 11 May 2023 for –

*“Retention of dwelling approved under W/2014/0177/F, including alterations to fenestration of approved dwelling, revisions to patio/terrace area, landscaping and associated ground retention to include existing timber retaining structure. Also proposed amendment to existing development to include new 'Macwall' block wall to facilitate culverting of existing small watercourse which runs adjacent to boundary with No. 29 Station Road.”*

As is outlined above this approval retrospectively granted the changes to the landscaping and associated ground retention and included the existing timber retaining structure.

Section 148 of the Planning Act (Northern Ireland) 2011 deals with this matter to which the Enforcement Notice breaches relate. It states –

**“148—** (1) *Where, after the service of—*

Not Applicable

- (a) a copy of an enforcement notice; or
- (b) a breach of condition notice,

*planning permission is granted for any development carried out before the grant of that permission, the notice shall cease to have effect so far as inconsistent with that permission.* (Emphasis added).

This statutory provision is not discretionary but rather mandatory. As such, given the inconsistency between the EN and the retrospective planning permission that the EN ceases to have effect against the unauthorised development the subject of the EN as particularised in paragraph 3 of the EN itself. In so granting the Appellant permission the EN effectiveness fell away by the operation of Section 148(1) of the 2011 Act.

The continued pursuit of planning enforcement against unauthorised development now granted planning permission is considered nugatory.

Given the outcome of the above planning application to grant permission under LA06/2021/1115/F on 11 May 2023 the Council had no option but to withdraw the Enforcement Notice as per section 148 of the Act.

The appellant submitted a Costs Claim to the PAC on 20 June 2023. The Council submitted its response to the claims on 19 July 2023. The PAC issued its decision to deny costs to the appellant on 10 August 2023 and as such the Council has withdrawn its notice and moved to close the enforcement case.

Details of decisions are attached to this report.

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

## RECOMMENDATION

It is recommended that Council notes the report and attachments.

**PLANNING APPEALS COMMISSION**

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

**Appeal by Ivan Robinson  
against the refusal of outline planning permission for the erection of an offsite  
replacement dwelling with new access  
at  
approximately 185m SW of 25 Ravara Road, Ballygowan**

**Report  
by**

**Commissioner Cathy McKeary**

**Planning Authority Reference: LA06/2021/1481/O**

**Procedure: Written Representations**

**Commissioner's Site Visit on 24<sup>th</sup> July 2023**

**Report Date: 9<sup>th</sup> August 2023**



## 1.0 BACKGROUND

- 1.1. Ards and North Down Borough Council received the application on 22<sup>nd</sup> December 2021. By notice dated 21<sup>st</sup> June 2022 the Council refused planning permission giving the following reasons.
1. **The proposal is contrary to 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 Policy CTY 13 of Planning Policy Statement 21: Sustainable Development in the Countryside, in that the proposal will be a prominent feature in the landscape and will rely primarily on the use of new landscaping for integration.**
  3. **The proposal is contrary to paragraph 6.73 of SPPS and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal has an adverse impact on rural character and result in suburban style build-up of development when viewed with existing and approved buildings and creates a ribbon development.**
- 1.2. The Commission received the appeal on 1<sup>st</sup> July 2022 and advertised it in the local press on 21<sup>st</sup> July 2022. There were no representations received at either application or appeal stage.

## 2.0 SITE AND SURROUNDINGS

- 2.1 The irregular shaped appeal site is cut out of a larger agricultural field approximately 370 metres southwest of the settlement of Ballygowan and extends to include the dwelling to be replaced. The eastern boundary of the site for the proposed dwelling is defined by hedging and trees of at least 2 metres in height. The northern boundary is partially defined with hedges and trees approximately 2 metres high. The western and southern site boundaries are undefined. The northern, eastern and western boundaries of the much larger host field comprise of trees and hedges of around 2 metres in height. The southern boundary of the host field abuts the road and has intermittent hedging of around 1.5 metres in height in front of post and wire fencing. The host field is mildly undulating but relatively flat adjacent to the road.
- 2.2 Immediately to the east of the site there is a grouping of commercial type buildings. Beyond them to the northeast there is a farm complex at 25 Ravara Road which includes the dwelling to be replaced. The wider area, although rural, is quite developed with dwellings and other buildings located at various intervals along the Ravara Road.

## 3.0 PLANNING AUTHORITY'S CASE

- 3.1 Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the Development Plan, so far as material to the application and to any other material considerations. Section 6 (4) of the Planning Act (NI) 2011 requires that the

determination of proposals must be in accordance with the Local Development Plan unless material considerations indicate otherwise.

- 3.2 The Ards and Down Area Plan 2015 (ADAP) operates as the relevant Development Plan. The appeal site is located in the countryside outside any settlement designated in the plan. The ADAP contains no specific policies relating to dwellings in the countryside at this location. Therefore, the relevant policy context is provided by Planning Policy Statement 21 – ‘Sustainable Development in the Countryside’ (PPS21), which, as made clear in the Strategic Planning Policy Statement (SPPS) is a retained policy document.
- 3.3 The appeal site is located on the northern side of Ravara Road to the south-west of Ballygowan. The total appeal site area is approximately 0.35ha and comprises a section of an agricultural field on lands approximately 185 metres south-west of 25 Ravara Road. This includes the dwelling to the east which is adjacent to and south of a group of agricultural buildings at 25 Ravara Road. The site sits on a lower ground level than the public road and is covered almost entirely by a fluvial flood zone. There are no other relevant hazards or constraints on the site.
- 3.4 The boundaries of the off-site location are open to the wider field except where they are bounded to the east and partially to the north by mature vegetation. The southern boundary of the wider field is adjacent to the road and is defined by a post and wire fence and includes mature vegetation and two mature trees. The south-east corner of the site has mature vegetation and trees. Beyond the site to the north there are hills. The new access is to be taken from the southeast corner of the host field onto Ravara Road.
- 3.5 Policy CTY1 – Development in the Countryside (CTY1), of Planning Policy Statement 21- Sustainable Development in the Countryside (PPS21) states that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Outline planning permission is sought under Policy CTY3 – ‘Replacement Dwellings’ of PPS21 for an off-site replacement dwelling which will include the construction of a new access. Failure to comply with Policy CTY3 was erroneously omitted from the original refusal reasons and therefore it is respectfully requested that the Planning Appeals Commission (the Commission) takes this policy consideration into account as part of the appeal determination.
- 3.6 Policy CTY3 states that planning permission will be granted for a replacement dwelling where the building exhibits the essential characteristics of a dwelling provided that all replacement cases meet additional criteria in relation to siting, size, design, services and access. The first step in determining whether a development opportunity exists is to identify whether the building exhibits the essential characteristics of a dwelling. The subject building to be replaced exhibits the essential characteristics of a dwelling and all external structural walls are substantially intact. There is a front door and chimney breasts to both gables. The building has no amenity space and access is via a shared laneway for the farmyard associated with No. 25 Ravara Road. Therefore, it is accepted that an off-site replacement would provide access and amenity benefits in this case. However, where the acceptability of the dwelling to be replaced is not disputed, it does not

mean that the proposal should necessarily be approved without due regard to the remainder of Policy CTY3 and other relevant policies.

- 3.7 Policy CTY3 states that the overall size of the new dwelling should allow it to integrate into the surrounding landscape and ensure that it would not have a visual impact significantly greater than the existing building to be replaced. The existing building to be replaced is very modest in scale and wider public views of this building are restricted given its scale, location set back from the road and its proximity to adjacent built development.
- 3.8 It is noted that the overall footprint shown on the submitted block plan is much greater than that of the existing building and that a stand-alone access is proposed which will result in the removal of substantial roadside vegetation. No details regarding the proposed scale and height of the replacement off-site dwelling have been provided. The appellant states that the appeal site is the closest portion of land to the existing building which can be accessed onto Ravara Road and that a single storey dwelling with low elevation could be accommodated within it. The new building would be sited approximately 50 metres set back from Ravara Road on an area raised above flood level. DfI Rivers highlighted that low lying lands within the appeal site are subject to fluvial flooding and recommended that the proposal is located on elevated parts of the site and consideration be given to provision of an adequate freeboard of 0.6 metres.
- 3.9 There are potential wide-ranging views of the proposed dwelling, given its proposed roadside location and the removal of existing landscaping to form a new access. Even with a modest ridge height restriction, the appellant has not demonstrated that the overall size of the new dwelling would allow it to integrate into the surrounding landscape and that the visual impact of the proposed replacement building would not be significantly greater than the building to be replaced. Furthermore, for an off-site replacement there must be a clear demonstration of betterment in terms of landscape and visual integration.
- 3.10 Policy CTY3 states that all replacement cases will only be permitted when the relevant criteria are met including criteria in regard to siting. There are reasons for the off-site location, but it has not been demonstrated that all the remaining elements of Policy CTY3 have been satisfied.
- 3.11 Policy CTY8 – Ribbon Development (CTY8) states that planning permission will be refused for a building which creates or adds to ribbon development. Whilst Policy CTY8 was also erroneously omitted from the original refusal reasons, it is respectfully requested that the Commission take into account these policy considerations as part of the appeal determination.
- 3.12 The appeal site represents ribbon development because the buildings have a common frontage and would be visually linked, particularly from the east where No. 23 and the roofs of Nos. 29-31 Ravara Road are readily visible. Even though the building would be sited back from the road, both the dwelling on raised land and its large access, would be clearly intervisible with the existing adjacent buildings, would add to the build up at this location and would add to the existing ribbon of development. Extending an existing ribbon of development along the road, the proposed replacement will also require new boundaries to the south and west to

provide enclosure and for integration. When viewed with existing development, the proposal would result in a suburban style build-up of development. This is contrary to Policy CTY8 and Policy CTY14.

- 3.13 In addition, PPS21 requires that additional criteria included in Policy CTY13 - Integration (CTY13) and Policy CTY14 – Rural Character (CTY14) are also met and determining weight should be given to them. In this case, given the landscape, one building can still have a significant effect on the area if it is poorly sited. The proposed siting does not represent betterment and it conflicts with policies CTY13 and CTY14.
- 3.14 Policy CTY13 of PPS21 states that a new building will be unacceptable in the countryside where it is a prominent feature in the landscape, or it relies primarily on the use of new landscaping for integration. It is accepted that whether a new building integrates is not a test of invisibility but rather an assessment of how the development of the proposed site will blend unobtrusively with its immediate and wider surroundings. The eastern boundary provides a backdrop, however, the proposal will be a prominent feature in the landscape because the new building will appear isolated on raised land. The critical view from the west shows that the appeal site is open, exposed and prominent because it has no natural screenings to the south and west. The impact of a dwelling and ancillary works on this open agricultural field would be visible over a sustained distance when travelling from the west from as far away as the entrance to No. 40 Ravara Road. Consequently, the appeal site will have to rely on new boundaries to the south and west to provide enclosure for integration. The appeal site has a roadside boundary of mature trees and mature vegetation to its south-east corner at the location of the proposed access which have to be removed to facilitate the new access. This provision of visibility splays will also result in the removal of a significant amount of mature roadside hedgerow, which will further open up views into the site along the frontage.
- 3.15 Policy CTY14 of PSS21 states that, *“permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area”*. The justification and amplification of Policy CTY14 says that one building by itself could have a significant effect on an area if it is poorly sited or designed and would be unduly prominent, particularly in more open and exposed landscapes.
- 3.16 Despite the built development in the area, the appeal site provides an important setting for the amenity and character of this rural area. The undeveloped off-site location contributes positively to the rural character in this area and helps maintain rural character on approach to the development limit of Ballygowan from the west. The proposal would have a negative cumulative impact on rural character given its relationship with existing buildings along the northern side of Ravara Road. This includes Nos. 23, 23A, 25 (and its associated agricultural buildings), and the buildings associated with Nos. 20-31 which are immediately adjacent to the appeal site and all have defined plots and access points. The proposal would not be integrated into the landscape without causing an unacceptable impact on the visual amenity and character of the surrounding rural area. The proposal would also appear isolated given its location beyond the mature vegetation but adjacent to the established buildings at No. 29C Ravara Road. The existing development is located

beyond the established natural eastern boundaries of the appeal site and the proposal would be prominent and damage the rural character of the area.

- 3.17 The policy states that a new building will be unacceptable where it results in a suburban style build-up of development when viewed with existing buildings. The extent of existing built development on both the northern and southern side of the road is acknowledged. There are approximately 22 existing buildings on the northern side of the public road in this area (3 dwellings and 19 outbuildings). While the development on the southern side of the road is visible on approach into Ballygowan, the existing development beyond the appeal site on the northern side of the road is not readily visible and therefore does not contribute to a built-up appearance from this rural approach into the village. The dwelling to be replaced is not visible from the public road and is not read with the other buildings which are visible from the road and therefore does not contribute to the built up appearance of the area. To allow the proposed dwelling on the appeal site will extend the built development to across the road when viewed from the approach into Ballygowan.
- 3.18 When viewed cumulatively with existing development, the proposal would have an adverse impact on rural character and result in suburban style build-up of development by creating a ribbon of development. An additional replacement dwelling at the off-site location, which would require a new access opening, would result in a suburban style build-up of development when viewed with existing buildings. Therefore, the proposed dwelling and new access onto Ravara Road would cause a detrimental change to and further erode the rural character of this area of the countryside.
- 3.19 The appeal proposal is contrary to Policy CTY3 and does not represent any other type of development listed in Policy CTY1 considered to be acceptable in principle in the countryside. No overriding reasons have been provided to demonstrate why this development is essential in this rural location and could not be located within a settlement. Therefore, the appeal development is also contrary to Policy CTY1.
- 3.20 The proposal is contrary to policies CTY1, CTY3, CTY8, CTY13 and CTY14 of PPS21 for the reasons set out above.
- 3.21 The appellant has indicated that attempts were made to contact the Council with a view to negotiating a solution to the proposed siting issue given that the principle of replacement had not been disputed. Given that the decision had already been issued and the case was then under the jurisdiction of the Planning Appeals Commission, the request for the site meeting was declined by the Council. Furthermore, prior to this, the developer was invited to submit a new application for a revised siting and offered to avail of a pre-application discussion in advance of any new submission.
- 3.22 In the event that the Commission determines that planning permission be granted, the following conditions are recommended:
- Reserved matters application submitted within 3 years;
  - Time limits;

- Approval of siting, design and external appearance of the buildings, the means of access and the landscaping of the site by the Council before any development is commenced;
- Requirement for a plan indicating floor levels of the proposed dwelling in relation to existing and proposed ground levels;
- Maximum ridge height of 5.8m above finished floor level and depth of underbuilding between finished floor level and existing ground level shall not exceed 0.45 metres at any point;
- Access details to be provided showing splays of 2.4m x 90m in each direction along the Ravara Road to be constructed prior to the commencement of development;
- Requirement for a detailed landscaping scheme;
- New boundaries to be defined by a post and wire fence with a 2m native species hedge planted on the inside during the first available planting season after the occupation of the dwelling;
- Retention of vegetation to the south east, along the southern and eastern boundaries at a height of 2m and
- Replacement of trees if removed, uprooted or destroyed within 5 years of the approval.

#### 4.0 APPELLANT'S CASE

- 4.1 The first reason for refusal relates to the principle of development, yet the proposal is for a replacement dwelling. The principle of a replacement dwelling has already been accepted by the case officer. The dwelling to be replaced is sited in the busy working farmyard with animals and heavy machinery traversing around the building daily. It is accessed by a private lane which is not in the ownership of the appellant. The site of the dwelling to be replaced is also within a flood plain as designated on the Rivers Agency Flood Maps, with no opportunity to include any mitigating development. However, the proposed site affords the opportunity to provide flood defence systems ensuring the safety of any occupants. The site chosen is the portion of land closest to the existing dwelling that is outside the flood plain and can be safely accessed onto the adjacent road. All these matters are material considerations. As a replacement the proposal is site specific and could not be sited in a settlement.
- 4.2 The Council's second refusal reason is that the proposal would be a prominent feature in the landscape. The Council considers that the footprint of the proposal is much greater than that of the existing dwelling, however, the application is for outline permission so the footprint is only indicative and no specific design was submitted. The detail of any proposed dwelling would be the subject of any reserved matters or full planning application. However, a single storey dwelling with low elevation could be accommodated.
- 4.3 The site is bounded to the east by existing mature hedging and commercial buildings forming a backdrop which obscure any view from the east. The view from the south is limited by high mature hedging. Approaching the site from an eastward direction any building thereon would not be visible at all. The rising ground to the north-east and double hedging to the north mean that the site could hardly be described as prominent. The view of the site from a westwardly direction would show the

proposed dwelling sited against the backdrop of the mature hedge and existing commercial buildings. The proposal would be in a secluded and lowered location with mature existing screening to the south. The site could easily be reduced in level to match the floor level of the adjacent commercial building or the adjacent road level thus increasing the backdrop and integrating a dwelling well into the landscape with little or no prominence at all. This is not a test of invisibility.

- 4.4 In respect of the third reason for refusal, when one considers the pattern and the extent of development on the southern side of the Ravara Road, the suggestion that suburban style build up would be the result of an additional replacement dwelling is unfounded. There are at least six existing dwellings some 206 metres beyond the eastern boundary of the subject site.
- 4.5 Considering the retention of the existing vegetation and the fact that the proposed dwelling will have a backdrop of existing buildings, this helps with integration. The purpose of setting the proposed dwelling back from the road and only having the access drive parallel to the road is to ensure that there is no frontage as such to the Ravara Road. This would alleviate the effect of a ribbon of development and would allow the agricultural field to buffer the proposal from the roadside. The proposed access arrangement to the proposed site ensures that the suggestion of a common frontage is also alleviated and therefore will not result in a suburban style build up.
- 4.6 The suggestion that there will be a negative impact on the surrounding area is unfounded in that development on the southern side of the Ravara Road extends to circa 200 metres westward beyond the application site and contains numerous recent planning applications and approvals. This and the integration with adjacent buildings would ensure the proposal would not appear isolated. Retention of all the existing boundary vegetation along with supplementary planting will ensure integration. The intention to have the access at the location of the existing field gate ensures that given the wide grass verge, there will be no need to remove any existing vegetation. This is contrary to the Council's opinion that the vegetation will need to be removed to provide the visibility splays and these can comfortably be contained within the grass verge.
- 4.7 The Council declined to meet the appellant to discuss alternative siting despite a number of attempts to secure such a meeting. This is contrary to the preamble of the SPPS which encourages parties to work together to secure a favourable conclusion. Given that the principle of a replacement has not been disputed and the siting appears to be the only obstacle it makes sense with negotiation to resolve the siting issue. If this could have been done promptly and a new application lodged then the appeal could have been withdrawn thus bringing a time and expense saving resolution that is satisfactory to all involved. The Council advised that in considering submitting a new application for the revised siting, a pre-application discussion could be arranged.

## 5.0 CONSIDERATION

### Preliminary Matter

- 5.1 In the decision notice policies CTY3 and CTY8 were not specifically referenced and this is poor practice. However, Policy CTY1, which is the overarching policy for dwellings in the countryside was included and it is from this policy that both policies

CTY3 and CTY8 cascade. In addition, Policy CTY8 is cross referenced with Policy CTY14 insofar as both relate to ribboning of development. The latter policy is included within the decision notice. Accordingly, and given that parties to the appeal are aware of the updated position of the Council's objections and have had the opportunity to comment, no prejudice arises. Policies CTY3 and CTY8 will therefore form part of the consideration below.

### Reasoning

- 5.2 The main issues in this appeal are whether the proposal would be acceptable in principle in the countryside, visually integrate into the landscape and impact on rural character.
- 5.3 Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
- 5.4 The Ards and Down Area Plan 2015 (ADAP) operates as the relevant LDP where the appeal site is located. In that plan, the site is located in the countryside and outside any designations. There are no policies in the plan that are pertinent to this proposal.
- 5.5 The Strategic Planning Policy Statement (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for the Council area is adopted. In this Council area, no Plan Strategy has been adopted. Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements (PPSs) and it sets out the arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements, namely PPS21, must be resolved in favour of the provisions of the SPPS. As no conflict arises between the policy provisions of the SPPS and retained policy in so far as it relates to the appeal proposal, the latter provides the relevant policy context for the appeal proposal.
- 5.6 Policy CTY1 of PPS21 identifies a range of types of development which, in principle, are considered to be acceptable in the countryside. One of these is the replacement of an existing dwelling subject to the requirements of Policy CTY3. The Council accepts that the dwelling to be replaced exhibits the essential characteristics of a dwelling and that an offsite location would be appropriate due to the restricted curtilage of the original dwelling. Therefore, given the policy wording, there is no need to also show that the new location would result in demonstrable landscape, heritage, access or amenity benefits.
- 5.7 Pursuant to the above locational requirements which are set out within the policy section titled "All Replacement Cases", there are additional bullet points or criteria to be met within Policy CTY3. The Council argues that the second criterion cannot be met because the proposed dwelling would have a significantly greater visual impact than the dwelling to be replaced.
- 5.8 The visual impact of the existing dwelling is negligible from public view. This is due to it being located up a laneway some 60 metres north of Ravara Road. It is also set

within a farm complex which is behind double close boarded gates that are approximately 2 metres in height. There are no views of the existing dwelling when travelling in either direction along Ravara Road due to the above and the strong bands of mature intervening vegetation. In line with the policy, any proposed dwelling should not have a visual impact significantly greater than the existing dwelling. In the given circumstances of this case, this is a high hurdle to overcome.

- 5.9 The proposed siting of the dwelling would be limited to an area in the south of the appeal site outside the flood zone. Given the southern location nearer the road, even a modest sized single storey dwelling of low elevation would have a visual impact significantly greater than that of the dwelling to be replaced when viewed from along the road front. Whilst I accept that due to the dense vegetation on the eastern boundary of the appeal site, there would be very limited views of the proposal when approaching from the east, this would not be the case when approaching from the west, even with the backdrop of vegetation and roofscape of the commercial type buildings. Also, due to the lack of boundary definition, the proposal would be a prominent feature in the landscape from this approach. Even if the ridge height and footprint were limited and the site levels were reduced as suggested by the appellant, the proposal would still be an unduly prominent feature on this side and stretch of the Ravara Road. For the reasons given, I find that the proposal would not integrate into the surrounding landscape, and it would have a visual impact significantly greater than the existing building contrary to Policy CTY3.
- 5.10 The Council and appellant dispute the amount of hedging to be removed to provide the visibility splays. Given the road alignment and the speed of vehicles, I am satisfied that visibility splays of 2.4 metres x 90 metres would be required. Visibility splays of such dimensions would be achievable within land that the appellant controls. In my judgment, the reasonably wide grass verge means that only limited hedge removal would be required to provide the splays. There was limited evidence provided by the Council to sustain their objection regarding the ancillary works associated with the access. However, these findings do not overcome my objections to the proposal as outlined above.
- 5.11 Policy CTY1 requires that all proposals should integrate sympathetically with their surroundings, and they should meet other planning and environmental considerations. The second refusal reason relates to Policy CTY13 which deals with integration. The Council argues that the proposal would be a prominent feature in the landscape relying primarily on the use of new landscaping for integration purposes. Notwithstanding the appellant's suggested mitigation measures, a dwelling would still appear prominent on approach from the west due to there being no established natural boundaries on the south and west of the site. The impact of a dwelling would be unduly prominent over approximately 130 metres when travelling from the west from around the conjoined entrance to 34/36/38 Ravara Road. Even without the removal of roadside vegetation, the proposal would still require significant new landscaping on the other boundaries to achieve a suitable degree of enclosure. The proposal therefore would fail to adequately integrate into the landscape contrary to Policy CTY13. Accordingly, the Council's second refusal reason is sustained.
- 5.12 I have already determined that the proposal would be unduly prominent in the landscape. Therefore, it would not meet criterion (a) of Policy CTY14. The Council's refusal reason also considers that there would be an adverse impact on rural

character which would result in suburban style build-up of development when viewed with existing and approved buildings. Based on my own observations, the proposal would not unacceptably contribute to build-up on the northern side of the road as it would not visually link with any of the other buildings. However, the proposal would contribute to the existing development in general when viewed with the buildings to the south of Ravara Road. This would add to the suburban style build up in the area. In my judgment the appeal site provides some visual relief in a rural area where the character has already been eroded to an extent by the aforementioned build up. For these reasons the proposal would not comply with criterion (b) of Policy CTY14.

- 5.13 As outlined previously, criterion (d) of Policy CTY14 is cross referenced with Policy CTY8. Based on my observations on site the proposal would appear isolated, sitting beyond the existing commercial type buildings and the farm, and would not be visually linked with them. It also would not share common frontage to Ravara Road because the plot on which the proposal would stand does not abut the road. Consequently, the proposal would not create or add to a ribbon of development. Accordingly, Policy CTY8 and Criterion (d) of Policy CTY14 are not offended. The Council's third refusal reason in relation to Policy CTY14 is therefore sustained to the extent stated.
- 5.14 I note that the appellant owns other land in the area. My findings do not preclude the appellant from reapplying for a replacement dwelling in another location which may overcome the sustained objections. In addition the appellant contends that the appeal proposal would be an opportunity to provide flood defence systems unlike the dwelling to be replaced, however, this potential benefit would not outweigh the above concerns that are determining in this appeal.
- 5.15 Policy CTY1 of PPS21 goes on to say that "*other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement*". There is no persuasive argument that the proposal is essential to overcome this policy requirement. Overall, the proposal is contrary to policies CTY1, CTY3, CTY13 and CTY14 of PPS21 insofar as stated.
- 5.16 The matter of the Council declining to meet or negotiate with the appellant during the processing of the application is outside the remit of this appeal and is between the parties.

## 6.0 RECOMMENDATION

- 6.1 I recommend to the Commission that the appeal be dismissed, and that outline planning permission be refused.
- 6.2 This recommendation relates to the following drawings:-

Drawing No.	Title	Scale	Date
2170-01	Location Map	1:2500 @A3	Received by Ards and North Down Borough Council dated 22 <sup>nd</sup> December 2021
2170/05	Location Map	1:250@A4	Received by Ards and North Down Borough Council dated

			12 <sup>th</sup> January 2022
2170/04	Feasibility	1:500@A4	Received by Ards and North Down Borough Council dated 12 <sup>th</sup> January 2022

**List of Documents**

Planning Authority:- "A" – Statement of case by Ards and North Down Borough Council  
"A1" – Rebuttal by Ards and North Down Borough Council

Appellant:- "B" – Statement of case by G.T. Design  
"B1" – Rebuttal by G.T. Design





# Enforcement Appeal Decision

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<b>Appeal Reference:</b>	2021/E0067
<b>Appeal by:</b>	Mr Robert Busby
<b>Appeal against:</b>	An enforcement notice dated 2 <sup>nd</sup> September 2021.
<b>Alleged Breach of Planning Control:</b>	The alleged unauthorised change of use from farm building identified as Building A on the attached map to commercial butchers unit; the alleged unauthorised change of use from farm building identified as Building C on the attached map to a retail farm shop; and the alleged unauthorised use of an area of hardstanding hatched green on the attached map as a car park.
<b>Location:</b>	Land at 40 Comber Road, Ballyministragh, Balloo, Killinchy, Co. Down.
<b>Planning Authority:</b>	Ards and North Down Borough Council.
<b>Authority's Reference:</b>	LA06/2016/0326/CA & EN/2021/0228
<b>Procedure:</b>	Hearing on 21 <sup>st</sup> April 2023
<b>Decision by:</b>	Commissioner Jacqueline McParland, dated 3 <sup>rd</sup> August 2023

## Grounds of Appeal

1. The appeal was brought on Grounds (c), (d), (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011 (the Act). There is a deemed planning application by virtue of Section 145(5). At the hearing, the appellant withdrew Ground (c), and (f) of appeal. The appellant also withdrew concerns in respect of the Enforcement Notice (the Notice) being a nullity. The appeal on grounds (d), (a) and (g) remain.

## The Notice

2. At the hearing, the Council stated that planning permission had been granted on 9<sup>th</sup> March 2023 for the Car Park and the change of use of Building C by application LA06/2022/0137/F. In accordance with Section 148(1) of the Act, the Notice shall cease to have effect so far as inconsistent with that permission. Accordingly, Part 3 (1) and (2) and Part 4 (1) and (2) of the Notice cease to have effect.
3. The remaining alleged breach to be considered in this appeal relates to the alleged unauthorised change of use of Building A to a commercial butcher's unit at Part 3

(3) of the Notice and the associated step to remedy this alleged breach at Part 4 (3) of the Notice.

**Ground (d) - that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters.**

4. The appellant's ground (d) of appeal considers that the use of Building A for retail use is immune from enforcement action. At the hearing, all parties were agreed that the description of a commercial butcher's unit comprises an A1 use class in accordance with The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO).
5. Section 132 of the Planning Act sets out time limits for taking enforcement action. In accordance with Section 132 (3), in the case of any other breach of planning control, no enforcement action may be taken after the end of the period of 5 years beginning with the date of the breach. The Notice was issued on 14<sup>th</sup> December 2020. Therefore, in order to be immune from enforcement action, the appellant must demonstrate that a continuous retail use was established for 5 years within Building A prior to the Notice being issued.
6. In support of his case, the appellant submitted the following evidence:
  - A screenshot image from Finlay's Place Facebook page, showing the address as 40 Comber Road, Killinchy and that the Facebook page was created on 16<sup>th</sup> December 2013.
  - Two screenshot images from Finlay's Place Facebook page dated 1<sup>st</sup> Jan 2014, showing potatoes, various vegetables, eggs, and jams and chutneys displayed for sale in a building.
  - Two screenshot images from Finlay's Place Facebook page dated 11<sup>th</sup> April 2015 illustrating chopped wood, potted plants, various vegetables, eggs, and jams and chutneys displayed for sale both inside and outside a building. The outside image also shows a sliding barn door which has Finlay's Place and opening times of Tuesday to Friday 11am to 6pm and Saturday 10am to 6pm painted on it.
  - Two further screenshot images from Finlay's Place Facebook page dated 27<sup>th</sup> May 2015, show a large arrangement of potted plants for sale to the rear and to the front of Building A.
  - A screenshot image from Finlay's Place Facebook page dated 17<sup>th</sup> July 2015 shows potted plants, coal and wood displayed for sale to the outside of Building A. A sign also indicates that pick your own soft fruit is available.
  - A screenshot image from Finlay's Place Facebook page dated 30<sup>th</sup> July 2015, showing a new signage board for Finlay's Place.
  - A screenshot image from Finlay's Place Facebook page dated 28<sup>th</sup> January 2016, showing coal, and bagged wood stored in a building.
  - Two screenshot images from Finlay's Place Facebook page dated 5<sup>th</sup> March 2016, showing toasted artisan muesli displayed for sale and for sampling in a building.
  - A screenshot image from Finlay's Place Facebook page dated 9<sup>th</sup> April 2016 illustrating bags of bark, and wood is displayed for sale.
  - A screenshot image from Finlay's Place Facebook page dated 11<sup>th</sup> June 2016, demonstrates that potted plants are displayed for sale to the rear of Building A.

- A screenshot image from Finlay's Place Facebook page dated 30<sup>th</sup> June 2016 shows signage to the front of Building A indicating that soft fruit is for sale and that pick your own fruit is available.
  - A google street view image dated December 2021 showing Building A. The sliding barn style door, and Finlay's Place signage and opening times is evident on it.
  - Google reviews for Finlay's Place were submitted which has reviews dated 7 years ago, 6 years ago, 5 years ago and 4 years ago.
  - A feature article on Finlay's Place dated July 2021 which shows the farmhouse and shop at Building C.
  - Unaudited accounts for Mr James Finlay Orr for the year ending 5<sup>th</sup> April 2016 illustrating that his business address is 40 Comber Road, Killinchy.
7. The appellant stated that Building A was used for a retail use from December 2013. In support of this he referred to the Facebook page which was created in December 2013. However, the first image which demonstrates items for sale was published on 1<sup>st</sup> January 2014.
  8. In the screenshot images of 11<sup>th</sup> April 2015 there are decorative flowers which can be seen hanging from the ceiling in the internal image. These flowers can also be seen on the interior of the building in the external image of Building A which is taken on the same date. The internal layout and features of the building in the image of 11<sup>th</sup> April 2015 is the same interior shown in the other images up to and including 9<sup>th</sup> April 2016. Given this I am persuaded that on the balance of probabilities that the internal images submitted are the interior of Building A.
  9. The screenshots taken on 1<sup>st</sup> January 2014, 11<sup>th</sup> April 2015, 28<sup>th</sup> January 2016, 5<sup>th</sup> March 2016, and 9<sup>th</sup> April 2016 also indicate that Building A was used to display various items including fruit, vegetables, and other foods such as eggs and muesli, coal, wood etc. for sale. The signage and opening times painted on the barn style door of Building A in the images dated 11<sup>th</sup> April 2015 and December 2021 also indicates that Building A was open to the public 5 days a week.
  10. Unaudited accounts for Mr James Finlay Orr were also submitted for the year ending 5<sup>th</sup> April 2016 illustrating that his business address is 40 Comber Road, Killinchy. These accounts, for the previous tax year demonstrate that Finlay's Place was registered from April 2015 at this location. Furthermore, google reviews which were posted online seven and six years prior to the date the statements of case were submitted for Finlay's Place located at 40 Comber Road, were included within the Appellant's evidence. These reviews would have been submitted in 2015 and 2016. No evidence was presented by either party to demonstrate that any other use occupied Building A or that the retail use was incidental to an agricultural use. Accordingly, given the evidence submitted including the Facebook screenshots, unaudited accounts and reviews, I am satisfied on the balance of probabilities that a Class A1 retail unit (Finlay's Place) occupied Building A from at least January 2014.
  11. The Council submitted photographs dated 2<sup>nd</sup> December 2016, which demonstrate that Building A was being renovated at that time. At the hearing the appellant stated that this was to allow the building to be fitted out for occupation as a butcher's unit. The Council further stated that their Environmental Health Department advised that the butcher's unit was registered with them at Building A

on 16<sup>th</sup> March 2017. All parties were agreed that Finlay's Place then moved into Building C at that time. All parties are agreed that the butcher's unit has been operating from Building A since March 2017 and I have no reason to dispute the agreed upon stance by the parties.

12. The appellant referred to *Panton and Farmer v SESTR (1998) JPL46*, which established that in determining if an existing use is lawful, it would be incorrect to focus in this case on the five years prior to the date the Notice was issued. This case law established that the correct approach is to identify when the material change of use occurred and, in this appeal case, determine if a period of five years had since lapsed. It also established that while a use may decline, become inactive and lie dormant it can still exist in the sense that it had not been abandoned. Whilst Building A underwent a short period of renovation between December 2016 and March 2017, there is no suggestion that the retail use had been abandoned. Rather, the building was being renovated to allow Building A to continue to be occupied by a retail use. Accordingly, I am satisfied on the balance of probabilities that Building A was used continuously for retail use from January 2014 for a period of more than 5 years prior to the taking of enforcement action.
13. The building identified as Building A on the map which accompanied the Notice, was used for retail purposes for five years prior to the Notice being issued. Consequently, I am satisfied that the use of Building A for a retail use is immune from enforcement action in accordance with the Section 132 (3) of the Act. The appeal on ground (d) succeeds.

#### **Ground (a) and the Deemed Planning Application, and Ground (g).**

14. In view of the conclusion reached on the ground (d) appeal, it is unnecessary to consider the remaining grounds of appeal or the deemed planning application.

#### **Decision**

The decision is as follows: -

- The appeal on Ground (d) succeeds.
- The enforcement notice is quashed.

**COMMISSIONER JACQUELINE MCPARLAND**

**List of Appearances**

Planning Authority: - Mr Chris Blair (North Down and Ards Borough Council)  
Ms Wendy Murray (North Down and Ards Borough Council)

Appellant: - Mr Andy Stephens (Matrix Planning)  
Mr Robert Busby

**List of Documents**

Planning Authority: - "A1" Statement of Case

Appellant: - "B1" Statement of Case



# Costs Decision

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<b>Appeal Reference:</b>	2021E0070
<b>Appeal against:</b>	An enforcement notice relating to 1) the infilling and raising of the land without the benefit of planning permission; and 2) the construction of a timber retaining structure
<b>Location:</b>	Land at 27 Station Road, Craigavad, Holywood, Co Down, BT18 0BP
<b>Claim by:</b>	Mr and Mrs Howard Hastings
<b>Claim against:</b>	Ards and North Down Borough Council
<b>Decision by:</b>	Commissioner Rosemary Daly, dated 10 <sup>th</sup> August 2023

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## Decision

1. The claim for an award of cost is denied.

## Reasons

2. In accordance with the Commission's publication 'Costs Awards Guidance' costs will normally only be awarded where all four of the following conditions are met:
  - the claim relates to a relevant type of appeal;
  - the claim is timely;
  - the party against whom the award is sought has acted unreasonably; and
  - the unreasonable behaviour has caused the party claiming costs to incur unnecessary or wasted expense.

### ***Eligibility***

3. The appeal to which the cost claim relates was issued under the Planning Act (Northern Ireland) 2011. An appeal was made in accordance with Section 143 of the Planning Act relating to an appeal against an enforcement notice. The Commission therefore has the power to make an order as to the costs of parties in accordance with Section 205 of the Planning Act.

### ***Timeliness***

4. Paragraph 20 of 'Guidance on Costs Awards in Planning Related Appeals' states that in the case of when an appeal is withdrawn any costs claim must be submitted in writing to reach the Commission no later than 10 working days after the date on which the Commission sent notification to the claiming party that the appeal had been withdrawn.
5. On the 26<sup>th</sup> May 2023 the Council informed the Commission that planning permission (LA06/2020/1115/F) had been granted in respect of development at the appeal site. On the 9<sup>th</sup> June 2023 the Council informed the Commission that they do not intend to pursue the enforcement notice, subject of subject of appeal

2020/E0070, as the planning permission has retrospectively approved “landscaping and associated ground retention to include existing timber retaining structures”. A claim for costs was submitted by the appellant on the 20<sup>th</sup> June 2023. This was within 10 working days of the enforcement notice subject of the appeal being withdrawn. The claim for cost is timely.

### ***Unreasonable Behaviour***

6. The appellant considers the Council acted unreasonably as the enforcement notice was withdrawn some 3 months after the hearing was completed by the Commission and before the Commission issued the decision. The appellant provided a summary of the key timelines relating to the enforcement appeal. An application for planning permission (LA06/2018/0003/f) for *‘the proposed retention of dwelling (approved under planning application W/2014/0177/F) including alterations to fenestration of the dwelling as approved, retention of extended patio/terrace area, retaining wall, change in levels and associated ground works and landscaping’* was submitted to the Council in January 2018. The appellant stated this application was submitted and sought to regularise the current position in respect of development on the appeal site. The appellant stated that this application relates to precisely the alleged development that is described by the enforcement notice. The appellant also confirmed that this application remains undetermined.
7. A further application LA06/2020/1115/F was submitted to the Council in November 2020. This application related to the retention of dwelling approved under W/2014/0177/F, including *‘alterations to fenestration of the approved dwelling. revisions to the patio area, landscaping and associated ground retention to include existing timber retaining structure. Also proposed amendment and associated ground development to include new ‘Macwall’ block wall to facilitate culverting of existing small watercourse which runs adjacent to boundary with 29 Station Road’*. Planning permission was granted for this development on the 11<sup>th</sup> May 2023.
8. The enforcement notice, subject of the appeal, was served in September 2021 and related to the alleged infilling and raising of land; and the construction of a timber retaining structure. The remedy sought by the notice was to remove the infill material and bring the levels into line with the development approved in accordance with application W/2014/0177/F. The appellant referred to discussions at the appeal hearing relating to the matters to be addressed can only be those as stated by the alleged breach. Nonetheless, the appellant also made two separate retrospective applications as an attempt to regularise the breach of control at the appeal site.
9. The appellant argues that the planning permission which has been granted is also materially different from the enforcement notice in that a planning condition (No 2) requires the provision of the new retaining wall and culvert to be completed within 6 months of the decision. The reason for this condition is to ensure stability of the land. The appellant considers they had no realistic course of action but to contest an enforcement notice. The appellant considers there is no significant change and that the Council’s late abandonment of enforcement action and withdrawal of the enforcement notice at such a late stage in the process of the enforcement appeal to be unreasonable.
10. When deciding whether a party has acted unreasonable, as noted at paragraph 13 of the Commission’s Cost Awards Guidance, the Commission will apply the ordinary, every meaning to the word ‘unreasonable’. Paragraph 14 of the guidance

continues to provide some examples of behaviours which may be found to be unreasonable. One such example is the withdrawing or conceding an appeal resulting in the proceeding being abandoned unless it was prompted by a significant change in circumstances which was outside the control of the party concerned.

11. Section 148 of the Planning Act makes provision for the effect of planning permission. etc, on enforcement or breach of condition. Section 148(1) states where after the service of an enforcement notice planning permission granted for any development carried out before the grant of that permission, shall cease to have effect, so far as inconsistent with that permission.
12. On this basis the Council argued that in accordance with Section 148 of the Planning Act (Northern Ireland) 2011 the enforcement notice, subject of the appeal, ceases to have effect upon the approval of the 2020 planning application (LA06/2020/1115/F). It is this that has resulted in the Council's withdrawal of the enforcement notice subject of the appeal. It is therefore on this basis the Council consider that they have not acted unreasonably. The Council also referred to the Explanatory Notes of the Planning (Northern Ireland) Act 2011 for paragraph 148 which states that if planning permission is subsequently granted for development mentioned in an enforcement notice the notice ceases to have effect in relation to the part of the development which has permission.
13. Planning permission (LA06/2020/1115/F) granted in May 2020 relating to the revisions to the patio area, landscaping and associated ground retention to include existing timber retaining structure, I accept, relates to the same land and development on this land. This permission is effective to override the alleged breach of control as stated by the enforcement notice, subject of this appeal. Planning permission has now been subsequently granted for the development mentioned in the enforcement notice. The notice therefore ceases to have effect in relation to the development granted permission.
14. It is evident that prior to the appeal hearing the appellant attempted to resolve the concerns of the Council. This also included appealing the enforcement notice at the same time has as two current retrospective planning applications. I also note from the Council's evidence that the appellant continued follow up, after the appeal hearing, with the Council in relation to the determination of the 2020 (LA06/2020/1115/F) application. This effort resulted in the subsequent grant planning permission in May 2023. This means the enforcement notice, subject of the appeal, ceases to have effect and whereby the Commission has no further jurisdiction to consider the matters in respect of the enforcement notice. On this basis the Council did not act unreasonably withdrawing the enforcement notice that was the subject of the appeal.
15. Additionally, the matters raised by both parties relating to chronology of the development on the site from the period of the identification of the unauthorised works to now clearly gives rise to areas of disagreement. Much of this disagreement relates to matters outside the remit of the subject appeal. Such disagreement is an expected feature of the planning and appeal process. Having considered this evidence, I do not find these matters inherently gives rise to unacceptable behaviour on behalf of the Council.
16. All in all, the Council's action to withdraw the enforcement notice, subject of the appeal, does not give rise to unreasonable behaviour.

***Unnecessary Expense***

17. The appellant provides a list of expenses incurred because of the enforcement appeal. The appellant claims these costs were incurred as they had no option but to robustly challenge the issue of the enforcement notice at an appeal. At the time of the appeal hearing and following the hearing until the planning permission was granted (May 2023) the expenses listed by the appellant are consistent with those set out at paragraph 17 of the Cost Award Guidance. As I have found that the withdrawal of the enforcement notice, subject of this appeal, does not give rise to unreasonable behaviour I am not persuaded that the expenses listed by the appellant were unnecessary.
18. Given the above reasoning the claim for costs is therefore denied.

**COMMISSIONER ROSEMARY DALY**

**List of Documents**

Appellant:- 'C1a' Costs Claim (David Donaldson Planning)  
'C1b' Rebuttal (David Donaldson Planning)

Council:- 'C2' Response to Claim for Costs, Ards and North Down Borough Council

Unclassified

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## ITEM 6

## Ards and North Down Borough Council

Report Classification	Unclassified
Exemption Reason	Not Applicable
Council/Committee	Planning Committee
Date of Meeting	05 September 2023
Responsible Director	Director of Prosperity
Responsible Head of Service	Head of Planning
Date of Report	04 August 2023
File Reference	
Legislation	
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Other <input type="checkbox"/> If other, please add comment below:
Subject	Update on correspondence regarding NIW coastal fence
Attachments	Item 6a - Letter to DFI Item 6b - Response from DFI Item 6c - Letter to NIW

The purpose of this report is to update Members on the responses received to correspondence sent to both the Department for Infrastructure (DFI) and Northern Ireland Water (NIW) in relation to the fence erected around Seacourt Pumping Station, Bangor.

The Council at its meeting of 5 July 2023 resolved the following proposal:

**RESOLVED, on the proposal of Councillor Cathcart, seconded by Councillor McRandal, that the Council and the general public remain dismayed at the erection of the fencing around Seacourt Pumping Station, regardless of its lawfulness under permitted development rights. The Council continues to consider that the fencing is detrimental to the coastal environment, and fails to maintain or enhance the quality of this coastal landscape, and urges NI Water**

Not Applicable

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**to remove it. If NI Water consider that there is a need for health and safety risk mitigation infrastructure at the site then we ask that NI Water engage with Council with a view to identifying and agreeing solutions that are sympathetic to the area and the natural environment and capable of enjoying the support of the general public and elected representatives.**

**Furthermore Council notes with concern that the permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 effectively mean that there are no constraints on the size and type of fence structure that NI Water could erect at Seacourt pumping station. Council will therefore write to Department for Infrastructure to highlight this legal loophole and to request urgent review of the law in order to nullify detrimental impacts that developments such as this fence could have on coastal landscapes and other protected landscapes.”**

Attached are the letters written to each DFI and NIW, and the response received to date from DFI. Officers are following up the request to NIW and will report back as appropriate.

#### **RECOMMENDATION**

It is recommended that Council notes the content of this report and attachments.

Our Ref: COR 2023-156

Your Ref:



**Ards and  
North Down**  
Borough Council

Signal  
2 Innotec Drive  
Balloo Road  
Bangor  
BT19 7PD

Dr Kathryn McFerran  
(Acting) Director  
Regional Planning Governance & Legislation  
Department for Infrastructure  
Clarence Court  
10-18 Adelaide Street  
Belfast  
BT2 8GB

Contact:  
[ann.mccullough@ardsandnorthdown.gov.uk](mailto:ann.mccullough@ardsandnorthdown.gov.uk)

**Via E-mail ONLY:**

**[Kathryn.mcferran@infrastructure-ni.gov.uk](mailto:Kathryn.mcferran@infrastructure-ni.gov.uk)**

20 July 2023

Dear Dr McFerran

**Ref: The Planning (General Permitted Development) Order (NI) 2015  
In relation to NI Water – Seacourt Pumping Station**

Further to a resolution by the Ards and North Down Borough Council at its meeting of 05 July 2023, I am writing to bring to your attention the concern that the permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 effectively mean that there are no constraints on the size and type of fence structure that NI Water could erect at Seacourt pumping station (or any of its installations).

## **Background**

NI Water first erected a fence around its Seacourt Pumping Station, at lands 20m North of no.1 Seacourt Lane, Bangor, in early 2019, and further to receipt of complaints, the Council's Planning Service opened an enforcement case to investigate. Photos of the fence in situ are attached to the end of this letter for your attention.

At the time of investigation of the fence, it was considered that the fence as erected fell under Part 3 (Minor Operations) Class A relating to '*The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure*'. It is a condition of that particular Class that development is not permitted if '*The height of any other gate, fence, wall or means of enclosure erected or constructed exceeds 2 metres above ground level*' and as such, the Planning Service considered that PD rights could not apply given the fence as erected exceeded 2m.

A planning application under reference LA06/2019/1007/F was submitted by NI Water in October 2019 ostensibly to remedy the breach of planning control.

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The Council's Planning Committee when reviewing the application sought representation from NIW in respect of why the fence was required, and officials from NI Water (its Wastewater Assets Area Manager and NI Water's lawyer) then attended a subsequent Committee meeting to advise that the fence had been erected to address anti-social behaviour, and a health and safety issue, and that NIW operated a zero-harm policy and when it became aware of such matters, it would take steps to reduce the risk of any accident occurring. In its view fences in its nature were practical solutions and were not deemed to be works of art.

The Council resolved to refuse the planning application and the decision notice issued on 20 July 2022 with the following refusal reasons:

- The proposal is contrary to Policy COU 4 'BMA Coastal Area' and Designation COU 3 – 'BMA Coastal Policy Area' of the draft Belfast Metropolitan Area Plan 2015 in that the development is not of national or regional importance as to outweigh the detrimental impact on the coastal environment, and it has not been determined that the development improves the quality of the coastal landscape.
- The proposal is contrary to Policy ENV 3 'Local Landscape Policy Areas' and Designation BR 31 – Wilson's Point Local Landscape Policy Area (LLPA) of the draft Belfast Metropolitan Area Plan 2015 in that the proposal has an adverse visual impact on the character of the LLPA in respect of the North Down Coastal path as an area of local amenity importance.
- The proposal is contrary to the SPPS in that it causes demonstrable harm to interests of acknowledged importance – namely the BMA Coastal Area and Wilson's Point Local Landscape Policy Area.

NI Water lodged an appeal against the refusal, however, during the course of awaiting a hearing before the Commission, it submitted two applications for Certificates of Lawfulness to the Council; one to establish that the current fence as erected did benefit from PD rights, and the other to establish that a proposed increase in the height of the fence would also meet PD criteria.

It was asserted at that time that the fence fell under Part 14 of the Schedule to the GPDO, 'Development by statutory and other undertakers', specifically Class H for Water and Sewerage Undertakings, subclass (h) as follows:

Class H      *'Development by water or sewerage undertakers consisting of - .*

(h)            *"any other development in, on, over or under operational land, other than the provision of a building but including the extension or alteration of a building'*

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The GPDO further states that 'Development is not permitted by Class H if –

- (c) *in the case of any Class H(h) development, it would consist of or include the extension or alteration of a building so that—*
  - i. *its design or external appearance would be materially affected;*
  - ii. *the height of the original building would be exceeded, or the cubic content of the original building would be exceeded by more than 25%; or*
  - iii. *the floor space of the original building would be exceeded by more than 1000 square metres;*
- (d) *in the case of any Class H(h) development, it would consist of the installation or erection of any plant or machinery exceeding 15 metres in height or the height of anything it replaces, whichever is the greater'*

Neither of the above limitations applies in this case.

Having considered the information submitted alongside legal advice from its Planning lawyers, the Council determined that both applications for Certificate of Lawfulness satisfied the requirements of the GPDO Part 14: Class H (h) and Regulations 55 and 56 of the Habitats Regulations, and both applications have been certified to that effect. The appeal against the refusal of planning permission was therefore withdrawn.

Officers brought submission of these applications to the attention of Planning Committee during processing, and after determination, and whilst accepting of such certification, Members expressed frustration, and indeed alarm, that such a structure by NI Water on the North Down Coastal Path (NDCP), considered to be a valuable tourism asset to the Borough, should be legislated for as permitted development. Indeed, since the construction of the fence by NI Water the structure has attracted a high level of public condemnation through social media and correspondence to the Council as it is considered to be visual blight on this coastal landscape.

At its Council meeting of 05 July 2023, Members raised extreme concern in respect of PD rights for statutory undertakers, such as NI Water, as currently worded there are no limitations placed on height, design, or materials of such a structure and, furthermore, there is no account taken of impact on sensitive landscapes, such as the NDCP/LLPAs or indeed designated sites such as the ASSI in which this particular site is located (as the GPDO only refers to development not being permitted within an ASSI in relation to Class H(j)) .

The Council therefore resolved the following proposal:

*“That the Council and the general public remain dismayed at the erection of the fencing around Seacourt Pumping Station, regardless of its lawfulness under permitted development rights. The Council continues to consider that the fencing is detrimental to the coastal environment, and fails to maintain or enhance the quality of this coastal*

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**Ards and  
North Down**  
Borough Council

*landscape, and urges NI Water to remove it. If NI Water consider that there is a need for health and safety risk mitigation infrastructure at the site then we ask that NI Water engage with Council with a view to identifying and agreeing solutions that are sympathetic to the area and the natural environment and capable of enjoying the support of the general public and elected representatives.*

*Furthermore Council notes with concern that the permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 effectively mean that there are no constraints on the size and type of fence structure that NI Water could erect at Seacourt pumping station. Council will therefore write to Department for Infrastructure to highlight this legal loophole and to request urgent review of the law in order to nullify detrimental impacts that developments such as this fence could have on coastal landscapes and other protected landscapes."*

I would be grateful for your review of this particular case in the context of the Planning (General Permitted Development) Order (NI) 2015, and the above resolution by this Council, and a response for Members at your earliest convenience.

Your sincerely

**AE McCullough MRTPI**  
**Director of Prosperity (interim)**

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**Ards and  
North Down**  
Borough Council

**Photographs of NI Water fence around Seacourt Pumping Station, Bangor**



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Your Ref:



**Ards and  
North Down**  
Borough Council



View from mouth of Bangor Harbour



**Regional Planning Governance & Legislation**Department for  
**Infrastructure**

An Roinn

**Bonneagair**

Deapartment fur

**Infrastructure**[www.infrastructure-ni.gov.uk](http://www.infrastructure-ni.gov.uk)

Ms Ann McCullough MRTPI  
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Your Ref: COR 2023-156

Our Ref: DFIPG 220/23

02 August 2023

Dear Ms McCullough

**The Planning (General Permitted Development) Order (NI) 2015  
NI Water – Seacourt Pumping Station**

Thank you for your letter of 20 July 2023 regarding Ards and North Down Borough Council's concern that permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (GPDO) result in no constraints on the size and type of fence that NI Water can erect at Seacourt Pumping Station.

Thank you for drawing the Department's attention to this case. As you know, the GPDO sets out types of development which can be undertaken without requiring a planning application. Part 14 of the Schedule to the GPDO provides for certain development by Statutory and Other Undertakers, and Part 3 of the Schedule provides for Minor Operations and relates to minor building works that have minimal impact to amenity and the environment.

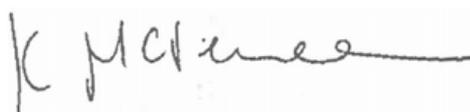
I have not been made aware that any similar issues have been raised previously regarding the operation of permitted development rights for statutory undertakers under Part 14 of the GPDO, and do not consider that there is a loophole in the legislation. Permitted development rights in Northern Ireland are very similar to those in other UK jurisdictions. The Department considers that the current permitted development rights provide a suitable

balance, allowing statutory undertakers to fulfil their statutory responsibilities without the requirement to apply for planning permission for each development they undertake.

While ultimately it would be a matter for a Minister to consider whether changes are required to permitted development rights, the Department has no current plans to bring forward amendments to Part 14 of the Schedule to the GPDO.

We note the Council's resolution and the suggestion that NI Water engage with it in an attempt to reach a way forward that is mutually agreeable.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K McFerran', written over a light grey rectangular background.

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**DR KATHRYN McFERRAN**  
**(Acting) Director**

Our Ref: COR 2023-156

Your Ref:



**Ards and  
North Down**  
Borough Council

Signal  
2 Innotec Drive  
Balloo Road  
Bangor  
BT19 7PD

Ms Sara Venning  
Chief Executive  
Northern Ireland Water

**Via E-mail ONLY: [sara.venning@niwater.com](mailto:sara.venning@niwater.com)**

20 July 2023

Dear Chief Executive

**Ref: Erection of fence by NI Water at Seacourt Pumping Station, Bangor**

Further to a resolution by the Ards and North Down Borough Council at its meeting of 05 July 2023, I am writing to bring to your attention the concern of this Council regarding the fence as erected in 2019 by NI Water in the above location.

## Background

I trust you may already be aware of the background to this case from your senior officials, however, I set out here for ease of reference.

NI Water first erected a fence around its Seacourt Pumping Station, at lands 20m North of no.1 Seacourt Lane, Bangor, in early 2019. Further to receipt of complaints, the Council's Planning Service opened an enforcement case to investigate. Photos of the fence in situ are attached to the end of this letter for your attention.

At the time of investigation of the fence, the Planning Service assessed the fence under the Schedule to the Planning (General Permitted Development) Order (NI) 2015 ("the GPDO"), Part 3 (Minor Operations) Class A relating to 'The erection, construction, maintenance, improvement or alteration of a gate, fence, wall or other means of enclosure'.

The GPDO provides authorisation for certain developments without the need for 'express' planning permission from the Council ("permitted development rights/PD rights"), subject to conditions or limitations. It was considered that 'deemed' consent for the fence provided under the above Part of the Schedule to the GPDO could not apply as the fence as erected exceeded 2m.

A planning application under reference LA06/2019/1007/F was submitted by NI Water in October 2019 ostensibly to remedy the breach of planning control.

The Council's Planning Committee when reviewing the application sought representation from NIW in respect of why the fence was required, and officials from NI Water (its Wastewater Assets Area Manager and NI Water's lawyer) then attended a subsequent Committee meeting to advise it was erected to address anti-social

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behaviour, and a health and safety issue, and that NIW operated a zero-harm policy and when it became aware of such matters, it would take steps to reduce the risk of any accident occurring.

Subsequently, regardless of the reasoning provided by NI Water officials, the Council resolved to refuse planning permission in retrospect for the fence for the following reasons in July 2022:

- The proposal is contrary to Policy COU 4 'BMA Coastal Area' and Designation COU 3 – 'BMA Coastal Policy Area' of the draft Belfast Metropolitan Area Plan 2015 in that the development of not of national or regional importance as to outweigh the detrimental impact on the coastal environment, and it has not been determined that the development improves the quality of the coastal landscape.
- The proposal is contrary to Policy ENV 3 'Local Landscape Policy Areas' and Designation BR 31 – Wilson's Point Local Landscape Policy Area (LLPA) of the draft Belfast Metropolitan Area Plan 2015 in that the proposal has an adverse visual; impact on the character of the LLPA in respect of the North Down Coastal path as an area of local amenity importance.
- The proposal is contrary to the SPPS in that it causes demonstrable harm to interests of acknowledged importance – namely the BMA Coastal Area and Wilson's Point Local Landscape Policy Area.

NI Water lodged an appeal against the refusal, however, during the course of awaiting a hearing before the Planning Appeals Commission, two applications for Certificates of Lawfulness were submitted to the Council; one to establish that the current fence as erected did in fact benefit from PD rights, and the other to establish that a proposed increase in the height of the fence would also meet permitted development criteria.

NI Water asserted that the fence fell under Part 14 of the Schedule to the GPDO, 'Development by statutory and other undertakers', specifically Class H for Water and Sewerage Undertakings, subclass (h) as follows:

Class H      *'Development by water or sewerage undertakers consisting of - .*

(h)            *"any other development in, on, over or under operational land, other than the provision of a building but including the extension or alteration of a building'*

Having considered the information submitted alongside legal advice from its Planning lawyers, the Planning Service determined that both applications for Certificate of Lawfulness satisfied the requirements of the GPDO Part 14: Class H (h) and Regulations 55 and 56 of the Habitats Regulations, and both applications were certified to that effect. The appeal against the refusal of planning permission was therefore withdrawn.

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Your Ref:



Officers brought submission of these applications to the attention of Planning Committee during processing, and after determination, and whilst accepting of such certification, Members expressed frustration, and indeed alarm, that such a structure by NI Water on the North Down Coastal Path (NDCP), considered to be a valuable tourism asset to the Borough, should be legislated for as permitted development. Indeed, since the construction of the fence by NI Water the structure has attracted a high level of public condemnation through social media and correspondence to the Council as it is considered to be visual blight on this coastal landscape.

At its Council meeting of 05 July 2023, Members reiterated concern in respect of PD rights for statutory undertakers, such as NI Water, as currently worded there are no limitations placed on height, design, or materials of such a structure and, furthermore, there is no account taken of impact on sensitive landscapes, such as the NDCP/LLPAs or indeed designated sites such as the ASSI in which this particular site is located.

The Council therefore resolved the following proposal:

*“That the Council and the general public remain dismayed at the erection of the fencing around Seacourt Pumping Station, regardless of its lawfulness under permitted development rights. The Council continues to consider that the fencing is detrimental to the coastal environment, and fails to maintain or enhance the quality of this coastal landscape, and urges NI Water to remove it. If NI Water consider that there is a need for health and safety risk mitigation infrastructure at the site then we ask that NI Water engage with Council with a view to identifying and agreeing solutions that are sympathetic to the area and the natural environment and capable of enjoying the support of the general public and elected representatives.*”

*Furthermore Council notes with concern that the permitted development rights afforded to NI Water under Part 14 of the Planning (General Permitted Development) Order (Northern Ireland) 2015 effectively mean that there are no constraints on the size and type of fence structure that NI Water could erect at Seacourt pumping station. Council will therefore write to Department for Infrastructure to highlight this legal loophole and to request urgent review of the law in order to nullify detrimental impacts that developments such as this fence could have on coastal landscapes and other protected landscapes.”*

I have today written to the Department for Infrastructure in respect of the second part of the above resolution. I would be grateful for your review of this particular case in the context of the first part of the above resolution by this Council, and a response for Members at your earliest convenience.

Your sincerely

A handwritten signature in black ink, appearing to read "Dr McCullough".

**AE McCullough MRTPI**  
**Director of Prosperity (interim)**

Our Ref: COR 2023-156  
Your Ref:



**Ards and  
North Down**  
Borough Council

**Photographs of NI Water fence around Seacourt Pumping Station, Bangor**



Our Ref: COR 2023-156  
Your Ref:



View from mouth of Bangor Harbour

