

Enforcement Appeal Decision

Appeal Reference:	2023/E0006
Appeal by:	Marc George Louis Pedriel
Appeal against:	An Enforcement Notice dated 22 nd March 2023
Alleged Breach of Planning Control:	Alleged (1) Unauthorised formation of an access (including gate) and laneway; (2) Material change of use of agricultural field to an area of stone hard standing being used in conjunction with oyster farming; and (3) Unauthorised parking of vehicles, siting of storage container and equipment associated with the oyster farming use.
Location:	Land adjacent to entrance to private lane of 49, 51 & 53 Ringneill Road, Comber
Planning Authority:	Ards and North Down Borough Council
Authority's Reference:	LA06/2021/0273/CA
Procedure:	Informal Hearing on 8 th April 2024
Decision by:	Commissioner Carrie McDonagh, 22 nd May 2024

Grounds of Appeal

1. The appeal was brought on grounds (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).

Ground (a) and the Deemed Planning Application

2. The main issues are whether the appeal development:
 - is acceptable in principle in the countryside;
 - is acceptable within the undeveloped coast and an area of flood risk;
 - adversely impacts on the special character of the AONB;
 - would prejudice road safety; and
 - would detrimentally impact on the amenity of surrounding residents.
3. Section 45 (1) of the Planning Act (Northern Ireland) 2011 states that regard must be had to the local development plan (LDP), so far as material to the application, and to any other material considerations. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4. The notice site is in the Ards and North Down Borough Council area. As the Council has not adopted a plan for this area, the Ards and Down Area Plan 2015 (ADAP) acts as the LDP. Of relevance to the appeal development, the ADAP locates the notice site within the Strangford and Lecale Area of Outstanding Natural Beauty (AONB) and Countryside Policy Area (CPA) - Proposal COU 2. It refers to the AONB designation as “*necessary to protect valued landscapes of recognised national landscape quality from existing and future development pressures and to maintain their rural character*”. Since the publication of the ADAP, the CPA has been overtaken by more recent regional policy as discussed below. The Strangford Lough Ramsar, Special Protection Area (SPA), Special Area of Conservation (SAC), Marine Nature Reserve (MNR) and Area of Special Scientific Interest (ASSI) are located within Strangford Lough, which bounds the notice site’s southern boundary. The ADAP also identifies two unscheduled monuments in the vicinity of the notice site. The plan is silent in respect of these designations.
5. Regional planning policy is set out in the Strategic Planning Policy Statement for Northern Ireland ‘Planning for Sustainable Development’ (SPPS) and other retained policies set out in Planning Policy Statements (PPSs). The regional policy for development along the coast is set out in the SPPS. As there is no conflict between the provisions of the SPPS and retained policies on the other issues raised in the appeal, in accordance with the transitional arrangements set out in the SPPS, the appeal development should, in the main, be determined under the retained policies of the PPSs. These are Planning Policy Statement 21 ‘Sustainable Development in the Countryside’ (PPS 21), Planning Policy Statement 4 ‘Planning and Economic Development’ (PPS 4), Planning Policy Statement 2 ‘Natural Heritage’ (PPS 2), Planning Policy Statement 15 ‘Planning and Flood Risk’ (PPS 15) and Planning Policy Statement 3 ‘Access, Movement and Parking’ (PPS 3). Development Control Advice Note 15 ‘Vehicular Access Standards’ (DCAN 15) is also a material consideration in the appeal.
6. Policy CTY 1 of PPS 21 is titled ‘Development in the Countryside’. It sets out a range of types of development which, in principle, are considered to be acceptable in the countryside and will contribute to the aims of sustainable development. 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. Policy CTY1 indicates that planning permission will be granted for non-residential development in the countryside in accordance with PPS 4. Policy PED 2 thereof is titled ‘Economic Development in the Countryside’, and it sets out the circumstances when such uses in the countryside may be permitted.
7. The 0.3h notice site lies along the western foreshore of Strangford Lough. Its northern boundary, of approximately 85m, consists of a 2m high mature hedge which bounds Ringneill Road. A vehicular access, with double metal gates is located 25m from the western corner of the hedge. A field gate is positioned within the eastern section of this hedge. The notice site falls gradually towards an open tributary along the eastern boundary and tapers to a depth of 40m along the rear (southern boundary). It is open to the mudflats of Strangford Lough, with a raised earth bund in the western section of the southern boundary. The undefined western boundary bounds a private lane leading to business premises and dwellings at Nos. 49, 51 and 53 Ringneill Road. The surrounding land is agricultural.

8. An internal stone laneway runs from the vehicular access in the northwest towards an area of stone hardstanding in the eastern section of the notice site. Mature trees (approximately 15-20m high) are positioned either side of the internal laneway in the western section of the site.
9. The deemed planning application seeks to retain the vehicular access and laneway, the use of the stone hard standing for the parking of vehicles, the siting of a storage container and other equipment associated with the oyster farming business. My on-site observations are consistent with the site layout provided in evidence. This includes the siting of the storage container, with a wooden trailer and equipment such as black rubber matting and metal caging, two tractors with trailers and rows of stacked wooden pallets. A small rowing boat and tractor wheels were also on site. Other items were scattered throughout the site including 5-gallon water/fuel cans and containers, metal racks, tools, plastic storage bins, wooden planks, cabling, hoses, storage sacks and netting.
10. The appellant argues that the appeal development is the expansion of an established economic development use i.e. an aquaculture business thus engaging Policy PED 3 of PPS 4 which is titled 'The Expansion of an Established Economic Development Use'. This provides for such uses where the scale and nature of the enterprise does not harm the rural character or appearance of the local area and there is no major increase in the site area. Page 15 of PPS 4 indicates that Policy PED 9 titled 'General Criteria for Economic Development' sets out the general criteria that all economic development proposals will be expected to meet. The Council and third party do not consider that Policy PED 3 is applicable as the appellant's business is not located at the notice site. The Council further considers that the development does not represent exceptional circumstances. They consider that Policy CTY 1 of PPS 21 is the applicable policy context.
11. The appellant advises that their oyster farming business has operated in Strangford Lough for approximately 60 years. Their licence, granted by both the Crown Estate and the Department of Agriculture, Environment and Rural Affairs (DAERA) covers the 50-acre Lough. The business has oyster farms in three locations, Kilkeel, Ardglass and the third, described as Strangford. The latter relates to the notice site.
12. The oysters are grown in bags/nets which are placed under the water in the Lough, northwest of Ringneill Quay. Regular inspections are undertaken over the harvesting season (which runs between June and the end of September) to determine if the oysters have reached maturity. Working on/off in two-week intervals (as the oysters are only harvested once per season and do not mature at the same stage) up to three grow bags/nets containing mature oysters are loaded onto the appellant's boat and brought ashore broadly up to around eight times a day. A wide-wheeled tractor is driven onto the beach and the oyster grow bags/nets are placed into its trailer in metal cages to hold them in a safe position for onward transportation. The appellant advises that the oysters cannot be kept in the fresh air and require refrigeration.
13. Until 2021, the appellant used Ringneill Quay, some 150m away from the beach to load the cages from the tractors onto waiting refrigerated HGV type vehicles. However, DAERA, who own Ringneill Quay, subsequently advised the appellant

that any loading activity must cease due to structural issues with the Quay. The appellant also advised of a further change in circumstances in relation to the storage of equipment. A rented shed on a nearby farm, which had direct access from the beach, became unavailable due to retirement reasons. As a result, the appellant acquired the notice site from the same farmer in March 2020. I was not advised that the business's use of the Quay or the shed had planning permission or a Certificate of Lawfulness.

14. The Council and third party argue that the notice site is being used solely for the parking of vehicles and the storage of a container, equipment and machinery for the appellant's business. They consider that the cleaning, processing and packing of the oysters for onward distribution takes place at the business premises in Downpatrick. The Council advise that no HGV parking activity has been observed at the notice site and refer to an email from the appellant confirming that the site is not used for the production, processing and working of the oysters and is only to store equipment. Their concern is that the nature of the operational works and the storage use is unacceptable in this coastal location.
15. Despite the Council's observations, the appellant advised that the notice site is used as a loading site, given they had to move from Ringneill Quay. I was advised that once the cages are loaded on the trailer, they are towed by the tractor along the Lough foreshore to an access from Ringneill Road. The tractor and trailer then travels some 500m west along Ringneill Road to the notice site. On arrival the oyster cages are placed on pallets & loaded into a waiting refrigerated HGV type vehicle (capable of holding 25 cages filled with 1 tonne of oysters). The appellant refers to a 6-hour loading window to retain the refrigeration levels and that up to 5 vehicles can be loaded each day of the harvesting season. They advised that the Food Standards Agency (FSA) fortnightly inspection checks can also take place on the notice site during this time.
16. I find the appellant's evidence in respect of the loading of oyster cages into the waiting HGV vehicles to be convincing. I further note the width of the in-situ access gate correlates with HGV use. On this basis, in addition to its use for storage related to the business, I find that the notice site is used for the loading of harvested oysters in two-week intervals over the 4-month harvesting season.
17. Policy PED 3 requires that there is no major increase in the site area of the enterprise. Whether the site area of the business enterprise can be predicated on the replacement of the area previously used at Ringneill Quay and the 50-acre Strangford Lough (as argued by the appellant) or the appellant company's Downpatrick site (as argued by the Council and a third party) there is no dispute that the original loading operations involved parking HGV vehicles along Ringneill Quay and an adjacent parking area and that a former shed was used. Taking that combined area into account, I have no evidence to suggest that the size of the notice site (0.3h) represents a 'major increase' in the site area of the enterprise. However, as the former arrangements were not authorised as outlined in paragraph 12 above and the policy appears to be site specific meaning that the increase in site area should relate to the core business site, the appeal development offends this part of the first paragraph of Policy PED 3.

18. The appellant argues that the scale and nature of the appeal development is temporary in appearance, and they have retained the vegetation on site to assist with visual integration and to prevent harm to the rural character of the local area. I accept their argument that on approach from the west, the road alignment, the undulating landscape and height of tree cover generally screen long range views of the site. Accordingly, the rowing boat, nets and cages are mainly screened by the trees and hedgerow across the frontage of the site. However, while the height of the boundary hedging filters views of the surface hardcore, the open nature of the access gate and the orientation of the Ringneill Road, as one arrives at the site from the west, makes the grey coloured stone lane noticeable in the context of its surrounding vegetation. I acknowledge the appellant's caution in terms of the use of google earth images to show the open nature of the site, but even with the passage of time enabling the weathering of the hardcore it still visually jars with the colour of the coastal mudflats and is thus appreciable in the landscape.
19. The views from the adjacent private lane are open on approach from the southwest. While the trees provide some screening of the western section, the limited height of the earth bund along the southern boundary does little to integrate the appearance of or extent of hardcore surface. Whilst I accept that tractors and trailers are an everyday occurrence in a rural area such as this, I do not agree that the storage of the mechanical equipment, oyster grow bags, racks, tyres or pallets are commonplace, nor would be the parking of HGV type vehicles. Even though they are temporary, their appearance is ramshackle in nature and out of context with the wild unspoilt nature of the coastal seascape, which sits in the forefront from this viewpoint.
20. On approach from the direction of Ringneill Quay in the east, I agree with the appellant that there is other built development in the form of detached dwellings that distract the eye as one comes closer to the notice site. The trees in the western section and the rising land behind also provide a backdrop. However, the winding nature of the Ringneill Road necessitates slower traffic speeds. When combined with the roads elevated height (in part) and the lack of an eastern boundary within the notice site, there are open views across this section of the site meaning one can see the pallets and equipment, which are obvious and distracting. When combined with the scale and colour of the grey hardcore and the limited height of the earth bund, the scale and nature of the appeal development, when viewed in the distance alongside the coastal setting of the foreshore, is harmful to the appearance of the local area. The requirements of the first paragraph of Policy PED 3 are therefore not met.
21. The expansion of an established economic development use is not defined within Policy PED 3. Paragraphs 2 and 3 set out the envisaged types of expansion. As outlined above, the expansion should be site specific given the language used in the policy, although the word "normally" in the second paragraph provides a degree of flexibility. Nevertheless, these elements of the policy do not assist the appellant's case. I will now turn to consider the remaining elements of the policy.
22. The fourth paragraph of Policy PED 3 lists three exceptional circumstances where a proposal does not meet the policy provisions in the preceding paragraphs. These are set out as follows:
 - The relocation of the enterprise is not possible for particular operational or employment reasons,

- The proposal would make a significant contribution to the local economy, and
- The development would not undermine rural character.

23. In respect to the second policy clause, the appellant refers to £1m turnover. Whilst the third parties refer to this being generated by the business and combined from the other locations, I consider this is a significant contribution to the local economy.
24. I accept that the oysters are attached to nets, which float under water hence they cannot be located on a land-based site. The oyster beds are in a portion of the Lough that is accessed from the foreshore and runs along the opposite side of Ringneill Road, beyond intervening fields. Policy PED 3 refers to “the site area”, “the site” and measures to aid integration into the landscape being a requirement for both the extension and the existing site. Oysters are not farmed or brought ashore from the Lough foreshore along the southern boundary of the notice site. Rather than the expansion of an established use on one site, the appeal development involves the development and use of an area of land, with no established relationship to that part of the Lough foreshore where the oysters are grown or brought ashore.
25. I accept the need to maintain oyster freshness, however, the circumstances behind the displacement from Ringneill Quay does not direct the loading activity to the notice site. Other than a farmer making this site available, I was provided with no persuasive evidence as to why it is the only suitable site to relocate to for loading or storage. While the appellant argues that the notice site represents the closest available site to pack the oysters, I have no detail of why closer locations were ruled out or why the oysters cannot be brought ashore elsewhere along the beach as an alternative landing/loading site.
26. There was also evidence from the third parties that the oyster cages have been taken directly from the foreshore by means other than the tractor and trailer referred to previously. The appellant accepted that a cherry picker/teleporter has also previously been hired for the purpose of lifting and transporting the oyster cages from the beach and that the third party had witnessed HGV vehicles reversed onto the beach, facilitated by the hardcore, which has been added to keep them steady. The appellant advised however, that their use is on a temporary basis, as the wide wheelbase tractors and trailers which are stored on the notice site are designed for this purpose. Notwithstanding, I consider that the prior use of different methods for cage transfer/transportation places doubt on the appellant’s case that the notice site is the only site that can be used for operational reasons.
27. Furthermore, whilst the business offers employment for 60 people, the appellant accepted the third-party evidence that it is mainly temporary and seasonal in nature to coincide with the harvesting season. Given the mobile nature of seasonal workers it has not been demonstrated that relocation of the enterprise is not possible for particular operational or employment reasons.
28. Regardless of any conclusions I may reach on whether the development undermines rural character, the provision for exceptional circumstances requires that all three tests are met. In any event, I have found that the appeal development is not satisfactorily integrated into the countryside so for this

discrete reason it harms the appearance of the local area. Accordingly, for the reasons set out above the appeal development does not find support within Policy PED 3 and does not represent an expansion of an established economic development use in the countryside.

29. Notwithstanding, the Council's position that Policy PED 2 does not apply and the appellant's confirmation at the hearing that they were not arguing under any other policies within PPS 4, its final sentence states '*All other proposals for economic development in the countryside will only be permitted in exceptional circumstances*'. Paragraph 5.10 recognises that some small-scale economic development projects may be permissible outside villages or smaller rural settlements. I will consider this in the interests of completeness and to be fair to the appellant.
30. The collection from the oyster beds is the initial stage of an existing business operation. Whilst the appellant's case is that this location is required for convenience and continuity of the previous arrangements to maintain the product freshness for onward distribution to market, I have insufficient persuasive evidence to demonstrate that the need for product freshness cannot be delivered by loading by another means including the use of a smaller refrigerated vehicle or an alternative landing/loading location. In addition, the harvesting takes place on a seasonal basis only for four months of the year on a two-weekly cycle, the use for the majority of the year is for storage. While the appellant advised the storage container was needed to store knives, hand tools, life jackets etc and it would be stressful and operationally difficult to store them in Downpatrick, these items could be brought to the beach as required. The requirements for routine checking of cages and maintenance of equipment, such as oyster nets, or a desire for the convenient storage of vehicles and equipment near the Lough are not sufficiently persuasive to represent exceptional circumstances.
31. I do not accept the appellant's argument that the appeal development is akin to the storage needs of a farming business. The latter involves tending of animals and usually requires access to equipment throughout the year, unlike the storage on the notice site, which is primarily used during the harvesting season. My conclusions in this regard are further reinforced by the third parties' argument, with which I concur, that some of the equipment on the notice site appears in disrepair and may not be capable of use throughout the year. For the reasons set out above, I do not consider the case would constitute exceptional circumstances for economic development in the countryside under Policy PED 2.
32. The Council also consider the principle of development is not established in this undeveloped coastal location. The SPPS at Paragraph 6.31 refers to how Northern Ireland is valued for its beautiful and relatively unspoilt coast, including well known features such as Strangford Lough. It includes a wide variety of landscapes and is of great importance in terms of its scientific interest, nature conservation value and its wildlife habitats. Strangford Lough's mudflats abound the southern boundary of the notice site. The notice site is also within the AONB.
33. Paragraph 6.37 of the SPPS outlines that there are few types of development that require a coastal location and the undeveloped coast will rarely be an appropriate location for new development. Where new development requires a coastal location, it must normally be directed into coastal settlements and other

parts of the developed coast. Paragraph 6.38 further requires that planning authorities should assess the need for such development, its benefits for the local and regional economy and potential impacts on the environment. Development should only be permitted on the undeveloped coast where the proposal is of such national or regional importance as to outweigh any potential detrimental impact on the coastal environment and where it is demonstrated there is no feasible alternative site within an existing urban area in the locality.

34. PPS 2 Policy NH1 'European and Ramsar Sites – International' states that planning permission will only be granted for development that, either individually or in combination with existing and/or proposed plans or proposals, is not likely to have a significant effect on designated nature conservation sites. The adjacent ASSI and Strangford Lough Marine Conservation Zone are considered in the context of PPS 2 policies, namely Policy NH2 'Species Protected by Law' and Policy NH 3 'Sites of National Conservation Importance – National'. For sites protected by the Conservation Natural Habitats, etc Regulations (Northern Ireland) 1995 (as amended), the onus is on the Commission, as a competent authority to agree to the development only after having ascertained that it would not adversely effect the integrity of the designated site.
35. The third parties argue the construction works have been detrimental to the coastal environment, referring to photographs to demonstrate that, in their opinion, the laid hardcore contains waste material, including building rubble, ceramics, bricks and heavy plastics. They also argue it has had a negative impact on the local wildlife including the Irish Hare, bats, owls and species of breeding and wintering birds however no detail was provided including how their habitats have been affected.
36. The Council confirmed that DAERA, NIEA, Natural Heritage, Conservation Designations and Protection unit (CDP) manage the designated nature conservation sites. The CDP compliance team investigate breaches of the Environment Order, with cross over with the Marine Licensing Team when there is a Marine Licence in place. After two site inspections, the NIEA CDP environmental crime unit had no evidence of harm to local wildlife or pollutants being stored on the site and advised that the only way to be sure that there were no pollutants would be to order an intrusive land survey. However, based on their observations on site there was insufficient evidence to justify this. The Council advised that they had no reason to question that the stone laid on top of installed drainage is clean quarry stone.
37. The appellant accepts that a stabilising membrane was laid across the site, above the replacement drainage channels, which discharge directly into Strangford Lough. In combination with the tributary close to the eastern boundary of the notice site, there is a hydrological connection into the designated site. A third-party refers to the storage of fuel, held in jerry cans, for the fuelling of equipment, including the boat and vehicles and the potential for leaks, including hydraulic fluids from the stored machinery. The Council suggest a condition, in the event of an approval, restricting fuelling within 10m of the protected site would provide a sufficient means of control.
38. In the absence of persuasive detail on the constituent under surface materials, or technical assessment of the risks from the storage and leakage of fuel or the

clearance of natural vegetation, I do not dispute the advice of the statutory nature conservation authority that PPS 2 policies are not offended. Given the limited scale and nature of the appeal development, appropriate mitigation or compensatory measures could be considered. On that basis, I do not find there is persuasive evidence of detrimental impact on the coast's natural environment.

39. To my mind, the coastal environment includes its landscape setting. I have previously considered that the scale and nature of the appeal development is harmful to the appearance of the local area in this coastal setting when viewed across the access, from the private lane and in the long-range view on approach from Ringneill Quay. Notwithstanding, the SPPS test at Paragraph 6.38 requires that where proposals require a coastal location, authorities should assess its need and provide for such development when it is of such national or regional importance as to outweigh that impact on the coastal environment.
40. The oyster farming business operates under a marine licence for Strangford Lough. The economic information provided indicates that they collect 22,000 bags of oysters per season but there is no limit on the amount of oysters that can be grown. I accept the appellant company's oysters are prized for their purity and categorised as premium and that the business is regionally important. However, policy requires that the appeal development is regionally important not the business. While the loading process for the distribution of the oysters for onward transit to other locations may require access to the Lough, that access does not occur from the appeal site. The notice site is mainly in use for storage in association with that business and I do not find the appellant's argument that it is a convenient relocation to represent a need for the appeal development at this sensitive location given other locations in less sensitive areas may be available.
41. Paragraph 6.38 states that it must be demonstrated there is no feasible alternative site within an existing urban area in the locality. Whilst the notice site, at 500m from the beach access, is convenient for the loading of oysters and related storage, it is also only a short travel distance to the settlements of Ballydrain and Comber. The appellant did not dispute the Council's evidence that some of the business' premises are in an urban area; that the site is 4 km southeast of Comber (less than a ten minute drive) or that the premises in Downpatrick are a light industrial unit inside the towns settlement limit, within 10 miles of the notice site. I was provided with no evidence that these nearby urban areas could not provide feasible alternatives for the storage aspect in particular. For the reasons set out above, the third parties' concern and Council's second deemed refusal reason in respect of the non-compliance with the coastal policy in the SPPS is sustained.
42. PPS 2 Policy NH6 'Areas of Outstanding Natural Beauty', requires that the appeal development is of an appropriate design, size, and scale for the locality within the Strangford and Lecale AONB. The Council's concern relates to the first of three criteria which requires that the siting and scale is sympathetic to the special character of the AONB in general and of the particular locality.
43. The appellant disputes that the context of coastal views are intrinsic to the special character of the AONB. They describe the notice site as sandwiched between a road and a mudflat, within a mix of undulating rural farmland and

shrubland, similar to other views in the vicinity. They argue that the area is unremarkable, other than the fact that it has a coastline.

44. Paragraph 5.15 of Policy NH6 states that the quality, character and heritage value of the landscape in an AONB lies in its tranquillity, cultural associations, distinctiveness, conservation interest, visual appeal and amenity value. The nature of the storage of containers, pallets, oysters bags, cages etc is obvious and distracting and when this is combined with the scale and colour of the grey hardcore and the limited height of the earth bund to provide separation to the Lough, the siting and scale of the appeal development is unsympathetic negatively impacting on the visual appeal of the coastal landscape and the character in this AONB location. The Council accept that their deemed refusal reason in respect of the AONB erroneously refers to paragraph 6.73 of the SPPS and exceptional circumstances. Notwithstanding, their third deemed refusal reason in respect of the AONB is sustained, as modified, by these exclusions.
45. The Department for Infrastructure, (DFI) Rivers confirm that the entirety of the notice site is within the 1 in 200-year coastal flood plain. The Council and the third party argue that, as the use of the appeal development is mainly for storage, it cannot be considered under PPS 15 Policy FLD 1 'Development in Fluvial (River) and Coastal Food Plains' as an exception. The exception relates to (e) water compatible development such as that for boat mooring, navigation and water based recreational use, which has to be located within the flood plain.
46. Paragraph 6.106 of the SPPS states that "Development in floodplains should be avoided where possible". The appellant considers that "should" and "where possible" does not provide a complete prohibition of development in the coastal floodplain. Both paragraph 6.107 of the SPPS and Policy FLD 1 provide for that flexibility within the exceptions set out. I accept that the list of permissible water compatible development is not exhaustive and that a use for oyster harvesting is a water compatible development. However, the notice site is only used in that manner for 4 months of the year and on an intermittent basis. For most of the year the use is for storage of vehicles, a container and equipment. I do not consider such storage to be a water compatible development.
47. The supplied Flood Risk Assessment (FRA) shows the sources of flood risk to and from the development describing the addition of 0.3m-0.5m of infilled stone, the consequential loss of 560m² of coastal floodplain and categorises the hazard posed by coastal flooding as high. Policy FLD 1 also requires that the FRA must demonstrate that there are adequate measures to manage and mitigate any increase in flood risk. The Flood Management Plan (FMP) concludes there is a low risk to human health and infrastructure on the basis that:
 - It is not the principal place of business. The nature of the activity means personnel are on the site infrequently and have skills to monitor the weather to ensure they are not on site during adverse weather conditions.
 - There are no members of the public on the site or elderly/vulnerable persons.
 - Equipment stored on site is saltwater compatible.
 - Where potential exists for pallets and other materials to be washed off site, the presence of the hedgerow along the northern boundary prevents any equipment from being washed onto Ringneill Road.
 - Site area is small and does not redirect the conveyance of flood waters.

48. In response to the third-party argument that open air storage of lightweight products like polystyrene and mesh netting are degrading and being blown into Strangford Lough, the appellant accepts that the FMP measures are not yet implemented. Discussions at the hearing, on the fixing of loosely stored items in the higher northwestern section of the notice site to reduce the likelihood of inundation by flood waters or the removal of the storage aspects outside of the harvesting period did not provide me with the necessary assurance that such a condition would satisfactorily meet the required legal tests. For the reasons set out above, the appeal development does not comply with Policy FLD 1. The third-party concern and the Council's first deemed refusal reason is sustained.
49. As the appeal development relates to a change of use in excess of 1000m², the Council raised a concern in respect of 'Policy FLD 3 'Development and Surface Water'. In the evidential context of this appeal, I do not consider the non-receipt of a drainage assessment to be determining given the nature of the development and the extent of detail available within the Flood Risk Assessment, which provides the possibility of submission of said information through a negative condition. The appeal development does not offend Policy FLD 3 of PPS 15.
50. Policy AMP2 of PPS 3 'Access to Public Roads' indicates that planning permission will only be granted for a development proposal involving direct access onto a public road where such access will not prejudice road safety or significantly inconvenience the free flow of traffic. The appellant argued Ringneill Road is not heavily trafficked, with a road speed of around 30mph, and that the appeal development avails of long distance visibility in both directions. The third parties highlighted how the nature of slow moving vehicles including tractors, trailers and suspending apparatus using the notice site and the position of the access and gate opening arrangements creates a safety hazard.
51. Post hearing advice from DFI Roads is that the in-situ access does not comply with the standards set out in DCAN 15. They require sight splays of 4.5m x 45m, with a 6m wide access and a 10.0m radii. DFI Roads further advise the road network is narrow for use by HGV type vehicles. Their evidence was not rebutted. Based on this and my on-site observations, I accept that the access from the notice site onto Ringneill Road does not meet the required standards and prejudices road safety and significantly inconveniences the flow of traffic. The road safety concerns of the Council and third parties are therefore sustained.
52. The third parties raise noise disturbance which, due to how oyster farming is dependent on the tide, is not limited to daytime hours. Lighting and litter generation is also alleged to have a significant detrimental impact on the peaceful enjoyment of their properties. No detail was provided on the local impact from smell or fumes.
53. The Council raised no concerns in respect of residential amenity and in the absence of any technical information or advice from their Environmental Health Department, I must rely on my own judgment and the evidence before me to adjudicate on these matters. I am mindful that whilst I did not experience any noise or disturbance at the time of my visit, its timing was outside of the harvest period, which, all parties acknowledge, is when the opportunity for noise arises. Whilst the oysters bags arrive at the notice site in metal cages, I have no reason to believe their use is a significant source of noise generation given a forklift

should hook onto the base pallet for loading onto the HGV. I consider that there are two main sources of noise: employees gathering on site and use of vehicles and equipment, including reversing beepers and a generator. The latter is also a source of light, as no lighting is installed on the site.

54. Given the distances involved to the closest receptor properties, I do not consider that noise from employee conversations is likely to be audible to the extent that it could be considered harmful to amenity. Movement of tractors and use of machinery generates noise of a type which would be commonplace in the early mornings in a rural location. I do not consider their noise or any glare from the appeal developments vehicles could be discerned from general road noise and activity. Furthermore, the trees in the western section of the notice site, while sparse, would assist in creating a filter effect to the private lane and residential properties beyond, mitigating for both noise and light.
55. The appellant advises that the appeal development does not generate commercial waste as the oyster bags, cages, nets, fishing lines and ropes are repaired and reused. I have no credible reason to dispute this or that food related waste generated by employees is not appropriately disposed of. Given the limited scale and seasonal nature of the loading operations and the intervening distance and boundary vegetation, I do not find the third-party evidence sufficiently persuasive as regards detrimental impact on residential amenity. Building control and health and safety at work regulations relate to a different legislative regime.
56. Rights under the European Convention on Human Rights are qualified, and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. Planning policy is written in the public interest and as I have found that the appeal development does not comply, it does cause demonstrable harm to interests of acknowledged importance.
57. Whilst the appellant wishes to avail of an additional business location for storage and loading of HGVs close to their existing operations on the Lough foreshore, the evidence presented does not demonstrate that the appeal development complies with planning policy. Accordingly, and as no overriding reasons were provided to demonstrate how or why the development is essential, it does not constitute an acceptable form of development in the countryside in accordance with Policy CTY 1 of PPS 21. The Council's fourth reason for refusal, and third parties' objections have been sustained insofar as specified above.
58. For the reasons given above, ground (a) of the appeal fails.

Ground (f) That the steps required by the notice, or the activities required to cease, exceed what is necessary to remedy the breach of planning control.

59. The appellant's argument under this ground is restricted to the necessity of the removal of the access laneway and gate and permanent stopping up of the unauthorised access and restoration of the land to its condition before the breach took place. They consider that compliance would render the notice site inaccessible and that the continued use of the in-situ access is the safest option for agricultural vehicles.

60. The Council argue that no action other than stopping up of the access would remove the breach of planning control. At the hearing, they argued that the previously used field gate onto Ringneill Road (located at the eastern section of the roadside hedge) had become overgrown, and its reinstatement would involve a planning application. In response to questions posed by the Council in post hearing evidence, DFI Roads advised that they would require the field gate to be reinstated as per the previous historical arrangement rather than the access, which could be made to meet the standards of DCAN 15, at the current location. The Council did not provide further evidence in this respect, and I must therefore conclude that they agree with DFI, and the previously used field gate access can be reused on road safety grounds in preference to the in-situ access.
61. The remedies in the EN seek to restore the land to its condition before the breach took place. Prior to the breach, access was via the field gate, and it can be reused for agricultural purposes after the unauthorised activities cease. The removal of the laneway and gate and stopping up of the access therefore does not exceed what is necessary to remedy the breach of planning control. Consequently, the ground (f) appeal fails.

Ground (g) - that any period for compliance specified in the notice falls short of what should reasonably be allowed.

62. The consideration under this ground of appeal is to assess whether the specified timeframe of 70 days (10 weeks) to comply with the EN is reasonable. At the hearing, the appellant accepted that the removal of the stones, hardstanding, storage equipment and vehicles were achievable within the period provided. However, they argue that the compliance period should encompass this year's full harvest season as the business is focused on the harvesting of the oysters over the narrow time window.
63. An extension to six months would not be in the public interest because of the continuation of the breach of planning control and resulting harm to the coastal landscape and road safety. Notwithstanding, it is acknowledged that this is an operational business, and it is reasonable that sufficient time should be provided to relocate the storage and maintain continuity for employment purposes. Without amendment, the timing of this decision will result in the compliance period ending during the harvesting season. I find it is reasonable to extend the period from 70 days to four months from the date of this decision to enable the continued use of the site during this upcoming harvesting season only. The ground (g) appeal therefore succeeds to the extent specified.

Decision

The decision is as follows: -

- The appeal on Ground (a) fails and the deemed application is refused.
- The appeal on Ground (f) fails.
- The appeal on Ground (g) succeeds and the period of compliance is extended to four months.

Part 4 of the EN is varied to read "Within 4 months from the date this notice takes effect: -

The Enforcement Notice (as varied) is upheld.

COMMISSIONER CARRIE MCDONAGH

List of Appearances

Planning Authority: - Mr Kirk McDowell, Ards and North Down Borough Council (remote)

Appellant: - Mr Hadley Jess, HR Jess Ltd

Third Party: - Mr Gary Jamison (for part of hearing)

List of Documents

Planning Authority: - "C1" Statement of Case Ards and North Down Borough Council
"C2" Rebuttal Statement Ards and North Down Borough Council
"C3" Department of Infrastructure, Rivers response and Council's EIA screening
"C4" Post hearing evidence dated 11th April 2024 from Council enclosing response from Department of Infrastructure, Roads and Department for Agriculture, Environment and Rural Affairs

Appellant: - "A1" Statement of Case, HR Jess
"A2" Rebuttal Statement, HR Jess

Third Parties: - "B1" Statement of Case from Mr Jamison
"B2" Rebuttal from Mr Jamison
"B3" Post hearing evidence from Mr Jamison dated 15th April 2024
"B4" Statement of Case from Ms Blair