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<b>Appeal Reference:</b>	2019/A0234.
<b>Appeal by:</b>	J & W Wightman.
<b>Appeal against:</b>	The refusal of full planning permission.
<b>Proposed Development:</b>	Erection of farm shed as cattle house and general purpose shed with underground slurry tank and hardstanding area.
<b>Location:</b>	Agricultural fields 415m SW of No. 4 Drumhirk Way, Newtownards.
<b>Planning Authority:</b>	Ards & North Down Borough Council.
<b>Application Reference:</b>	LA06/2018/0417/F
<b>Procedure:</b>	Hearing on 11 November 2021.
<b>Decision by:</b>	Commissioner Mark Watson, dated 15 September 2022.

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## Decision

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

## Preliminary Matters

2. In their Statement of Case the Appellants submitted an amended drawing showing a reduced hardstanding area below 1000 sq. m in order to avoid the need for submission of a Drainage Assessment (DA). The Council witness considered this to be inadmissible. The reduced hardstanding area is a response to the matter of a potential requirement for a DA, itself one of the Council's reasons for refusal. Having regard to Section 59 of the Planning Act (NI) 2011 I do not accept that the drawing would represent a new matter that was not before the Council. Rather, it is a response to the particular reason for refusal. The reduced hardstanding area does not go to the heart of the appeal development or alter it in any material way that would prejudice any third party unaware of this amendment. As such I find the amended drawing with a reduced area of hardstanding to be admissible.
3. A further refined version of that drawing containing the reduced hardstanding area was submitted post-hearing. There were no alterations to the proposed development itself, but rather additional detail provided on drainage for the appeal development. Again, for the same reasoning as above I consider that it would not be at odds with Section 59 of the Act, or result in prejudice to any third party unaware of the amended drawing. I shall therefore consider it in place of the original submission. The issue pertaining to whether or not a DA is required shall be addressed within the consideration below.

## Reasons

4. The main issues in this appeal is whether or the development would:
  - be acceptable in principle in the countryside;
  - adversely impact on the rural character of the area;
  - require a Drainage Assessment to accompany it;
  - be at risk from land contamination, whilst also posing a contamination risk to the water environment; and
  - be likely to have a significant effect on several protected environmental designations.

### *Policy context*

5. The Ards and Down Area Plan 2015 (ADAP) operates as the statutory local development plan (LDP) for the proposal. In it, the site lies in the countryside and there are no LDP policies or designations relevant to the appeal development. The ADAP is not material to the appeal development.
6. In respect of the appeal development there is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21). The same is the case in respect to Planning Policy Statement 2 – Natural Heritage (PPS2). PPS21 and PPS2 remain the applicable policy context to consider the proposed development under.
7. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development, including agricultural development in accordance with Policy CTY12 of PPS21. Policy CTY12 states that planning permission will be granted for development on an active and established agricultural holding where it is demonstrated that it meets several criteria. It follows that if the development satisfies Policy CTY12 it will also satisfy Policy CTY1 of PPS21.

### *Proposed development*

8. The appeal site comprises a portion of land situated to the eastern side of the A21 Newtownards Road dual carriageway. The Drumhirk Way road, which affords access onto the Newtownards Road from the appeal site, lies adjacent and north of the host field the appeal site is part of. The appeal site itself is relatively flat in nature and covered in grass. The eastern site boundary is defined by a line of mature vegetation with a watercourse traversing its length, though it is culverted in parts. The other proposed boundaries are undefined. A mature hedge line bisects the appeal site approximately halfway through it, traversing the landscape in an west – east alignment. The proposed building is to be sited next to this hedge. An area of hardcore has been laid onto part of the site as a laneway.
9. The proposed building is a round-roofed structure, with an adjoining sloping, monoplane roofed section attached to its side. The overall building would measure approximately 30m by 19.4m, with the highest part of the round-roof being approximately 7.2m from ground level. The interior would be subdivided into a general purpose storage shed, with the remainder given to 4 animal pens and a passage area running from front to back. The pens are designed to accommodate

cattle or sheep according to particular requirements at any time. An underground slurry storage tank is to be placed under the two most 'rear' pens. The building is to be finished in concrete panel walls and green tin cladding, with the roof also finished in green tin. Two concrete areas totalling approximately 986 sq. m in area are proposed to the southern 'front' and northern 'rear' of the building. Landscaping in the form of a new hedgerow to the western site boundary is proposed to link into the existing hedge line that bisects the site just south-west of the appeal building's proposed location, along with a new hedge planted along the northern site boundary.

*Principle of development*

10. Paragraph 5.56 of PPS21 states that for the purposes of Policy CTY12 the determining criteria for an active and established business will be that set out in Policy CTY10, i.e. that the farm business is currently active and has been established for at least 6 years. Under Policy CTY10 applicants are expected to provide the farm's business ID number and other evidence to prove active farming over the required period. The Department of Agriculture, Environment & Rural Affairs (DAERA) consultation response confirmed that the Appellant's farm business (ID number 631964) had been established for 6 years or more. It also stated no claims for single farm payment had been made, but that Basic Payment Scheme claims had been submitted in 2017 and 2018.
11. Mr J Wightman and his son Mr W Wightman operate the farm business together. The farm business is comprised of a holding of 23.14 hectares split between several different parcels of land. The Appellants rent land, buildings and a yard area at Ballywoolley Lane, off the Crawfordsburn Road, Bangor. These have been rented for many years and the lease is renewed on an annual basis. The appeal building is proposed on a separate parcel of land approximately 4km away. The Appellants farm Limousin cattle as well as sheep. An elected representative submitted a letter in support of the Appellants' case. Numerous receipts and documentation pertaining to veterinary and fodder bills, as well as the sale and purchase of animals had been submitted to the Council at application stage. Further evidence in the form of farm maps and other supporting evidence relating to the location of the rented lands and buildings were submitted as part of the appeal submission. Whilst it would have been helpful for the Council to have had this information earlier, it nevertheless is before me now for consideration.
12. The three fields in the Appellants' ownership off Drumhirk Way, which include the appeal site, were purchased in late June 2016. The Appellants stated that it was impractical to buy an entire farm holding for cost reasons, but that when the subject lands at Drumhirk Way came up for sale, they viewed it as a logical step to grow their business. The Council considered that the business as a whole had not been established for more than 6 years, pointing to several appeal decisions relating to this issue, as well as quoting correspondence from the Appellants during the application process, where it stated that the appeal development was their chance to "start their very own farm holding". To my mind this comment pertained to actual ownership rather than utilising only rented land and buildings. In any event, although this particular portion of the overall farm holding is a more recent acquisition compared to the long-term rented lands, the farm business taken as a whole has, nevertheless, now been established for more than 6 years. From my onsite observations at the appeal site and the land and buildings at Ballywoolley

Lane, the farm business is active. The Appellants' farm business is active and established for the purposes of the policy.

13. The Council's objections related to the first four criteria of Policy CTY12 and two of the three additional criteria of that policy. Criterion (a) of Policy CTY12 is that the development is necessary for the efficient use of the agricultural holding. The matter of the necessary for the building shall be considered in due course below.
14. The first additional criterion of Policy CTY12 is that there are no suitable existing buildings on the holding that can be used. During my site inspection I visited the various parcels of land comprising the Appellants' holding, including the land and buildings at Ballywoolley Lane, off the Crawfordsburn Road. I observed cattle and sheep whilst there. The buildings were in varying states of repair though I accept they were not without need of improvement. The Appellants considered that it was illogical to pay to improve buildings not actually in their ownership. I also noted that the buildings used to house the animals were fully utilised and according to the Appellants have limited capacity, which provides no scope for isolating animals that might become sick. I did not see any buildings that were not already fully utilised, either for animal accommodation, fodder or equipment. Nor did I observe any other buildings on the other parts of the holding. From the submitted evidence and my own observations I would agree that there are no suitable buildings on the holding that can be used. The first additional criterion of Policy CTY12 is met.
15. The third additional criterion is that the proposal is sited beside existing farm buildings. There was no dispute that the appeal development would not be sited beside an existing building given it would be the first building on that part of the holding. This additional requirement of Policy CTY12 is not met and the exceptional test of that policy is therefore engaged. Policy CTY12 states that exceptionally, consideration may be given to an alternative site away from existing farm buildings, provided there are no other sites available at another group of buildings on the holding and where it is essential for the efficient functioning of the business, or there are demonstrable health and safety reasons. This element of the policy includes the matters pertaining to necessity of the building encompassed within criterion (a) of Policy CTY12.
16. I was told that the rented land at Crawfordsburn Road, Bangor has since been granted planning permission for residential development. The Appellants told me that the present owner and his adult children are more interested in its future development for housing than letting it remain agricultural. I accept the Appellants' proposition that this adds doubt to whether or not the same land and buildings will continue to be available and makes forward planning for their farm business more difficult and uncertain.
17. The Appellants stated that at present fodder and other items cannot be delivered directly to the rented buildings given the narrow width of the laneway and bends. The Appellants' deliveries are dropped at Mr Wightman Jr's work place at a nearby industrial estate. He then transports them to the buildings at Ballywoolley Lane. This is an inefficient means of delivery. I drove this myself and accept that large vehicles such as delivery lorries cannot readily traverse it, in contrast to what would be a more accessible location at the appeal site.

18. I was told that it is dangerous to transport sheep when pregnant and they require shelter when lambing. The appeal building would facilitate this without the need for transportation between the appeal site and rented buildings. The Appellants stated that tuberculosis (TB) is becoming an issue for cattle in the locality, with four adjoining farms recently having had reactors. DAERA requirements state that such animals require isolation from the rest of the herd until retesting takes place. In the summer such isolation can take place by dividing off a field, however, during winter when cattle are housed indoors, this cannot take place. There is a 60 day gap between retesting and the need for 2 clear tests before the cattle can return to the general herd. This therefore means that in instances where positive TB tests occur, there is a period up to 120 days when a portion of land or accommodation cannot be used for other animals. The Appellants consider that the new building would provide this facility for isolation whilst still providing accommodation for other animals when need be. The design of the building and its internal arrangement are such that I accept that it would afford such scope, in contrast to the less flexible arrangement of the older buildings at Ballywoolley Lane.
19. The Council considered the appeal building too large for the stated purpose and thus not necessary for, or essential to, the efficient functioning of the business. The building itself is sizeable, but not particularly large given its purpose for accommodation of animals, equipment and fodder. The design is very typical of more modern agricultural buildings. I do not agree that the appeal building is unnecessarily large, but rather, to my mind, has been specifically designed for the intended purpose of meeting the needs of the Appellants' farm business. In terms of general space it would provide, it broadly accords with the combined size of the existing animal accommodation at Ballywoolley Lane, but in a more modern, compact and readily managed form, whilst also allowing for on-site storage for fodder and equipment. Again, access for delivery of fodder and supplies would also be more convenient and efficient at the appeal site compared to the long, narrow and difficult to manoeuvre laneway to the rented lands and buildings.
20. Whilst the Appellants have managed to operate using the rented buildings and yard, along with the various parcels of land for some time, I accept that this is not the most efficient means of operation. From the evidence before me I agree that the appeal development would provide a fixed place of operation that would provide accommodation for the Appellant's cattle and sheep, whilst also affording storage space for equipment and fodder. It would not be subject to annual renewal of a lease nor be under potential threat of no longer being available due to redevelopment.
21. The appeal building would also facilitate isolation of potentially sick or infected animals whilst still allowing for space for other animals. Although animal welfare is a material consideration, I am not persuaded that the case presented would in itself meet the policy threshold for health and safety reasons contained within the exceptional test of Policy CTY12. However, for the reasons given above I accept that the appeal building would be essential for the efficient functioning of the business. Although the Appellants would still have to travel from their home in Bangor to the appeal development, that in itself does not persuade me that the proposed building would not be essential. The exceptional test under Policy CTY12 of PPS21 is therefore met.

*Visual impact and landscape character*

22. Criterion (b) of Policy CTY12 requires that the development in terms of character and scale be appropriate to its location. Criterion (c) of the same policy requires that it must visually integrate into the local landscape and additional landscaping is provided as necessary. The Council's issue in these respects pertained to the scale of the building and its visual impact. The fact there are presently no buildings in the vicinity of the appeal site does not in itself demonstrate its unsuitability for an agricultural building, with the exceptional test under Policy CTY12 accounting for instances where a new building would not be sited beside existing farm buildings. Nor does it follow that the introduction of a new agricultural building into the landscape where there are currently none would necessarily harm rural character.
23. Again, although the proposed shed is sizeable, it is of a typical agricultural design and the reduced area of hardstanding split between two sections to either end of the building, is not expansive when viewed in the context of the site and broader landscape it lies within. The appeal site lies below the level of the Newtownards Road and although the building would be evident in the landscape travelling either direction, it would have the benefit of backdrop from the line of vegetation to the east, along with sections of intervening vegetation along the roadside, obscuring a large proportion of the overall development, including much of the hardstanding. Some of these views would also be peripheral to the direction of travel along the A21, particular when traveling past southwards. Views from Drumhirk Way itself would be confined to views at the site access given the mature hedge along the roadside and northern boundary of the host field the site lies within. New planting along the northern and western boundaries is proposed. In the event of permission being granted a condition requiring its implementation, along with a requirement to replace any damaged or drying plants within the first five years of planting, would be necessary in order to preserve rural visual amenity. For the above reasoning I find that the appeal development satisfies criteria (b) and (c) of Policy CTY12.
24. Given my conclusions above, along with my later conclusions pertaining to natural heritage below, I find that the proposed development satisfies Policy CTY12 of PPS21 read as a whole. Accordingly it also meets Policy CTY1 of PPS21 and the related provisions of the SPPS. The Council's first, second and third reasons for refusal are not sustained.

*Drainage assessment*

25. Policy FLD3 of Revised Planning Policy Statement 15 – Planning and Flood Risk states that a DA will be required for all development proposals that exceed any of a number of thresholds, including a change of use involving new buildings and / or hardsurfacing exceeding 1000 sq. m in area. The Council considered that the appeal development required a DA for this reason given the expansive area of hardstanding accompanying the proposed building. However, as outlined earlier, the amended Site Layout entailed a reduced hardstanding area of approximately 986 sq. m, thus falling slightly below the threshold in the policy. As such Policy FLD3 is not engaged and the Council's fourth reason for refusal is not sustained.

*Potential contamination*

26. During processing of the planning application, the Council was advised that there was potential for contaminants in the land at the appeal site given the previous nearby industrial uses, constituted of several quarries and lands associated with an old railway line. The Council stated that there was insufficient information to assess

the extent of any contamination at the site, the nature and extent of unacceptable risks and whether they could be mitigated through a remediation strategy. Concerns were also raised at potential adverse impacts on the water environment.

27. The Appellants submitted a Preliminary Contamination Risk Assessment (PCRA) document with their Statement of Case. The PCRA identified that there were no private water supplies or groundwater abstraction licences in the vicinity of the appeal site. It also stated that no significant sources of contamination were present at the appeal site itself and that the environmental setting was deemed low risk given the lack of open watercourses within or near the site and the underlying bedrock did not represent a significant groundwater resource. The quarries were down gradient from the appeal site and the railway lands had been decommissioned some 60 years ago and ground conditions were of generally low permeability.
28. The PCRA concluded that no significant contamination sources were identified at the site and there was no likely risk of harm to human health or the water environment by the site itself. It also concluded that any potentially contaminating land uses in the surrounding area are not likely to pose any unacceptable risks to the site. The Northern Ireland Environment Agency (NIEA) Regulation Unit consultation response concurred with these conclusions. From my assessment of the evidence and on-site observations I have no reason to disagree with the analysis and conclusions of the PCRA. Subject to the imposition of conditions pertaining to discovery of any previously unknown contaminants and a suitable remediation strategy in such an instance, I find the development would satisfy the policy provisions of the SPPS in this respect. The Council's seventh reason for refusal is not sustained.

#### *Natural heritage*

29. Policy NH1 of PPS2 states that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects is not likely to have a significant effect on a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance). The policy goes on to state that where a development is likely to have a significant effect (either alone or in combination) or reasonable scientific doubt remains, the Department (or in the case of this appeal, the Commission) shall make an appropriate assessment of the implications for the site in view of the site's conservation objectives. This policy requirement derives from Article 6(3) of the Habitats Directive which establishes the requirement that any plan or project likely to have a significant effect on a SAC site shall be subject to an Appropriate Assessment (AA).
30. Policy NH5 of PPS2, also raised by the Council, states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known: priority habitats, priority species, active peatland, ancient and long-established woodland, features of earth science conservation importance, features of the landscape which are of major importance for wild flora and fauna, rare or threatened native species, wetlands (including river corridors), or other natural heritage features worthy of protection. Criterion (d) of Policy CTY12 of PPS21 also requires that the proposed development will not have an adverse impact on natural heritage.

31. The appeal site lies within 7.5km of several designations. These are listed below along with the key features potentially affected where applicable:
- Belfast Lough Special Protection Area (SPA) / Ramsar;
  - Belfast Lough Open Water SPA (*Sterna paradisaea* – Artic tern);
  - Outer Belfast Lough Area of Special Scientific Interest (ASSI) (Oakwood);
  - Blaeberry Island Bog ASSI;
  - Ballymacormick Point ASSI;
  - Craigantlet Woods ASSI (mixed Ashwoods);
  - Outer Ards ASSI / SPA / Ramsar (maritime cliff and slopes);
  - Strangford Lough Special Area of Conservation (SAC) / SPA / Ramsar / Part 1 ASSI (perennial vegetation of stony banks);
  - Scrabo ASSI; and
  - Whitespots ASSI (earth science features).
32. The NIEA Natural Environment Division (NED) and Shared Environmental Services (SES) considered there was insufficient information provided to undertake an assessment on any features of these designations against the appeal development. The concerns pertained to the potential impacts of ammonia emissions altering the vegetation community structure within those sites and degradation of the aquatic environment arising from contaminated run-off during construction and operation of the development, as well as nitrogen deposition.
33. The Council and its consultees considered that air dispersion modelling was required to assess any impact on priority habitat within 2km of the appeal development. This Air Quality Impact Assessment (AQIA) modelling was carried out and submitted along with the Appellants' Statement of Case. The subsequent NIEA NED consultation response was provided to the Commission and Appellant at the hearing. It identified several shortcomings in respect to the AQIA. The Appellant was afforded an opportunity to respond post hearing to this matter in the interests of fairness and in order to allow the Commission a satisfactory level of information in order to properly consider the nature conservation matters.
34. The revised AQIA identified that the Process Contribution loading of ammonia that would arise from the appeal development would be below the 1% Critical Level for each of the designated sites within 7.5km of the appeal site, in line with the present DAERA operational protocol. Given the analysis and conclusions of the revised AQIA I am satisfied that the appeal development, subject to conditions relating to a maximum number of cattle housed in the proposed building at any one time, along with implementation of the Nitrates Management Plan as submitted, would not be likely to have a significant effect on any of the identified designated areas. The NIEA NED stated that the Whitespots ASSI, designated for its earth science features, was unlikely to be affected by nitrogen emissions from the proposed development. Given the analysis and conclusions of the revised AQIA and the NIEA NED response, I need not proceed to undertake an AA, as I am satisfied no reasonable scientific doubt remains as to the potential effects of the appeal development on the aforementioned designations.
35. Notwithstanding the acceptance of the AQIA by NIEA NED, the Council considered there remained issues given the potentially contradictory recommendations sought by NIEA NED in its ultimate response. I note that these were framed as recommendations and not conditions. Nevertheless, the recommendations stated that the maximum number of beef cows within the building does not exceed that



contained in the AQIA, whilst also stating that 'no livestock' be housed within the building at any time. Notwithstanding this seeming contradiction, the NIEA NED overall conclusions that the ammonia PC loads were acceptable were predicated on the analysis within the revised AQIA (which explicitly envisaged livestock being accommodated within the building). I therefore consider the recommendation regarding 'no livestock' within the building to be an erroneous one. I am not persuaded a condition limiting the number of cattle to that stated in the revised AQIA would be unenforceable as it would be a factual matter as to the number of animals within the building at any given time.

36. The recommendation pertaining to implementation of a buffer along the eastern site boundary during construction to protect the watercourse would be necessary and can be secured by a condition in the event of permission being granted. I do not consider a specific drainage plan or condition specifically requiring all contaminated run-off to be directed to an appropriate collection tank necessary given the level of information provided on the amended Site Layout drawing. For the reasoning given above the appeal development satisfies Policies NH1 and NH5 of PPS2, as well as the related provisions of the SPPS. The Council's fifth and sixth reasons for refusal are not sustained.

#### *Conclusions*

37. For the reasoning given above the Council's reasons for refusal have not been sustained. The appeal shall succeed. I consider it necessary to condition that the building only be used for agricultural purposes in line with the statement at paragraph 5.55 of PPS21.

#### **Conditions**

- (1) The building shall be used solely for the purposes of agriculture and for no other purpose.
- (2) The maximum number of cattle housed within the approved building shall not at any time exceed 53, as detailed within the Irwin Carr Air Quality Impact Assessment document, dated 3 December 2001.
- (3) A suitable buffer of at least 10m shall be maintained between the location of all construction works including refuelling, storage of oil / fuel, concrete mixing and washing areas, storage of machinery / material / spoil and the watercourse along the eastern site boundary.
- (4) All manure from the approved building shall be utilised on the Appellants' land as detailed within the Irwin Carr Air Quality Impact Assessment document, dated 3 December 2001 and the Agrihand Nutrient Management Plan dated 2020.
- (5) In the event that previously unknown contamination or risks to the water environment are discovered, development on the site shall cease, the planning authority shall be advised and a full written risk assessment in line with Land Contamination: Risk Management Guidance, detailing the nature of the risks and any necessary mitigation measures, shall be submitted to the planning authority for approval.

- (6) After completion of all remediation works under condition 5 and prior to use of the building a verification report detailing all remediation and monitoring works undertaken and demonstration of the effectiveness of those works in accordance with LCRM guidance shall be submitted to the planning authority and agreed in writing.
- (7) All hard and soft landscaping works shall be carried out in accordance with the details shown on approved drawing No. PAC1, stamped received by the Commission on 23 December 2001. The landscaping works, including the scheme of planting, shall be carried out within the first available planting season after commencement of development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.
- (8) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

This decision relates to the following drawings submitted with the application and drawing PAC1, submitted to the Commission on 21 December 2021:

<b>DRAWING NUMBER</b>	<b>TITLE</b>	<b>SCALE</b>	<b>DATE</b>
01	Location Map	1:2500	24/04/2018
03	Proposed Floor Plan & Elevations	1:200	24/04/2018
PAC1	Proposed Site Layout & Site Section, Drainage Details	1:500	21/12/2021

**COMMISSIONER MARK WATSON**



### **List of Appearances at Remote Hearing**

Planning Authority:- Ms G Corbett (A & ND BC)

Appellant:- Mr D Donaldson (Donaldson Planning)  
Mr W Wightman (Appellant)  
Mr J Wightman (Appellant)

### **List of Documents**

Planning Authority:- 'A' Statement of Case & Appendix (A & ND BC)  
'C' NIEA Consultation Response  
'F' Regulation Unit Consultation Response (post-hearing)  
'G' Council & NIEA responses to Updated Air Quality Impact Assessment

Appellant:- 'B' Statement of Case & Appendices (Donaldson Planning)  
'D' Updated Air Quality Impact Assessment (Irwin Carr)  
'E' Updated Site Layout Plan showing drainage details (Donaldson Planning)