

PLANNING APPEALS COMMISSION

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

**Appeal by Ray Jackson
against the refusal of outline planning permission for two dwellings and garages
at lands between 59 Thornyhill Road and 44 Ballymacashen Road, Killinchy**

**Report
by**

Commissioner Cathy McKeary

Planning Authority Reference: LA06/2019/1176/O

Procedure: Written Representations

Commissioner's Site Visit: 2nd August 2022

Report Date: 4th November 2022

1.0 BACKGROUND

- 1.1. Ards and North Down Borough Council received the planning application on 22nd November 2019. By notice dated 8th November 2021, the Council refused outline planning permission giving the following reasons:
1. **The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY1 of Planning Policy Statement 21, Sustainable Development in the Countryside in that there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement.**
 2. **The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY8 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the proposal does not constitute a small gap sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage, and would, if permitted, add to the ribbon of development along the Ballymacashen Road.**
 3. **The proposal is contrary to The Strategic Planning Policy Statement for Northern Ireland and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the dwellings would, if permitted result in a suburban style build-up of development when viewed with existing and approved buildings and would add to a ribbon of development which would therefore result in a detrimental change to further erode the rural character of the countryside.**
- 1.2. The Commission received the appeal on 1st December 2021 and advertised it in the local press on 23rd December 2021. There were no representations received from third parties either at application or appeal stage.

2.0 SITE AND SURROUNDINGS

- 2.1 The site is located on the Ballymacashen Road 2.9km south-west of Killinchy. It is approximately 40 metres from the junction with Thornyhill Road and Ballymacashen Road and consists of two agricultural fields along the roadside. The roadside boundary is defined by a high verge and mature hedgerow some 2 metres in height. The western boundary is a mixed native species hedgerow and shrub boundary some 2 metres high while the eastern boundary is relatively undefined with a few immature trees along it. The north eastern boundary to the rear of the site is also undefined. An approximately 2 metre high hedgerow, interspersed with mature trees, divides the two fields. The land within the appeal site rises from the level of the road.
- 2.2 The area is rural with some sporadic residential development. A single storey detached dwelling and detached garage exists at 44 Ballymacashen Road. This dwelling is located to the appeal site's western boundary. A single storey dwelling is located opposite the appeal site at 47 Ballymacashen Road. A large detached single storey dwelling and detached garage are located at 59 Thornyhill Road. This dwelling and garage are located to the site's eastern boundary. A small building is

positioned to the rear of this dwelling and is sited to the far west of this dwelling's curtilage. This small building is positioned along the rear part of the eastern boundary of the appeal site.

- 2.3 The small building at 59 Thornyhill Road is set back by approximately 30 metres from the edge of the road. The building has a mono pitched roof and has a footprint of approximately 4 metres by 2.5 metres. The building is rendered with a corrugated roof and there are two small windows and a door on the elevation facing the dwelling at 59 Thornyhill Road.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The site consists of the roadside section of two agricultural fields. The fields have a frontage onto a minor country road located some 2.9km south-west of Killinchy. A mature hedge defines the road frontage, the rear of the site (the eastern boundary) remains undefined. There is an 'internal' hedgerow and some trees separating the two fields. There are three bungalows in the immediate area, two adjacent to the site, and the other is located opposite the site on the Ballymacashen Road.
- 3.2 The dwelling at 44 Ballymacashen Road has a detached garage to the east of its curtilage. There is a small shed to the rear of the dwelling at 59 Thornyhill Road, located to the rear of the curtilage and along the south-eastern boundary of the application site. The bungalow to the southeast of the site, at 59 Thornyhill Road, belongs to the appellant and occupies a corner location with frontage onto both the Ballymacashen Road and Thornyhill Road. The boundary between the appellant's property and the appeal site is defined by post and wire fencing. The appeal site is on a small hill. The land rises from the rear of the appellant's property and plateaus at the western side of the second field before gently falling again. The two dwellings are not intervisible. The Ballymacashen Road is the more minor of the two roads. While there are a number of roadside dwellings and larger farm holdings set back from the road, the area has maintained a strong degree of rural character.
- 3.3 Since the previous application (LA06/2017/1416/O) and the subsequent appeal (2018/A0166), a shed has been erected to the rear of the dwelling at 59 Thornyhill Road. This appeal must therefore consider whether or not the erection of the shed has resulted in the creation of an additional building along the frontage which would reduce the size of the gap, rendering it sufficiently small in size to now accommodate no more than two dwellings.
- 3.4 Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had for 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 (LDP) unless material considerations indicate otherwise.
- 3.5 The Ards and Down Area Plan 2015 (ADAP) operates as the Local Development Plan. The appeal site is within the countryside outside any development limit designated in the plan. The Ards and Down Area Plan 2015 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.

- 3.6 Paragraph 6.73 of the SPPS and Policy CTY1 of PPS21 set out a range of types of development which in principle are acceptable in the countryside and that will contribute to the aims of sustainable development. Outline permission is sought under Policy CTY8 of PPS21 for two dwellings and garages. It is considered that the proposed dwellings on the appeal site would fail to meet the policy requirements for the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8.
- 3.7 Policy CTY8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. The policy has an exception which allows for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements.
- 3.8 The first step in determining whether an infill opportunity exists is to identify whether there is a substantial and continuously built up frontage present. The Commission's accepted position is that a building has a frontage to a road if the plot on which it stands abuts or shares a boundary with the road. The previous appeal on the site (2018/A0166) concluded that there is a substantial and continuously built up frontage, taking into account the dwellings at 44 Ballymacashen Road, its garage and the dwelling at 59 Thornyhill Road.
- 3.9 The three sided shed to the rear of the dwelling at 59 Thornyhill Road has an eaves height of 1.9 metres to the rear and 2.4 metres at the front elevation. It has a length of 4 metres and a width of 2.5 metres and has an area of 10 square metres. It has a corrugated tin roof and concrete block walls finished in smooth sand cement plaster. Given the shed is set-back 47 metres from Thornyhill Road, 34 metres behind the front elevation of the dwelling at 59 Thornyhill Road and its small scale, the shed is barely appreciable from the road. Due to the small scale and ancillary, subordinate nature of the shed, the Council would not consider it as a building along the road frontage which would result in the creation of a smaller gap for the purposes of an infill site under policy CTY8. This building does not benefit from planning permission under a Certificate of Lawfulness of Existing Use or Development (LDC) (LA06/2019/0993/LDE) which certified a three sided 'open' building, not a fully 'enclosed' building with a door and window. The gap is therefore considered to remain at 160 metres between the garage of 44 Ballymacashen Road and the dwelling at 59 Thornyhill Road. As concluded by the Commission and the previous appeal referenced, this is not considered to be a small gap as it could accommodate more than two dwellings.
- 3.10 The Commission has previously determined other appeals where ancillary sheds and garages within the curtilage of dwellings have not been considered to have a frontage to the road. One such example is appeal 2018/A0080. This proposal was for a dwelling and garage at lands between 34 and 38 Seafin Road, Killeavy. In that appeal, while the dwelling at 34 Seafin Road was considered to have a frontage to the road, the garage was not, given its subordinate spatial arrangement within the plot.

- 3.11 The Council argues that the Commission should apply this same policy interpretation and assessment to the current appeal under consideration. The shed in question to the rear of 59 Thornyhill Road is considerably smaller in size than the garage at 34 Seafin Road and is very clearly subordinate to the dwelling. Furthermore, there is no visual appreciation from the road of the shed as a separate building within the frontage. Therefore, the Council remains of the opinion that the proposed development does not meet the exception test contained within Policy CTY8 as the appeal site is not considered to be a small gap and creates or adds to a ribbon of development.
- 3.12 Policy CTY 8 allows for a maximum of two dwellings on a small gap site within a substantial and continuously built up frontage. It is considered that the gap between the buildings is sufficient to accommodate more than two dwellings. The shed is not considered to be a separate building with a frontage to the road, rather it is ancillary and subordinate to the dwelling at 59 Thornyhill Road, in line with the Commission's determination on a similar appeal as outlined above. The site is not considered to be a small gap site and if permitted it would have a detrimental impact on the rural character of the countryside. Furthermore, no persuasive evidence to demonstrate that the proposal is essential was submitted with the application. The proposed dwellings have not been determined as essential in this rural location and therefore, the proposal fails to meet Policy CTY1 of PPS21.
- 3.13 In addition it is considered that the proposal would create a suburban style build-up of development along Ballymacashen Road. The proposed dwellings and associated garages, if approved, would result in four detached dwellings in a row as well as a dwelling opposite. The Commission concluded that the previous appeal on the site should also fail on these grounds. The appeal site has a roadside boundary of a small hedgerow and the land itself contributes positively to the rural character in this area and represents an important visual break in the developed appearance of the locality by providing relief. This proposal would significantly erode the rural character of the area and cause a detrimental change to the surrounding rural area. The Council contends that there has been no change in circumstances at the appeal site which would warrant any change in opinion regarding the adverse impact of suburban style development which would be created if this appeal was allowed.
- 3.14 Even if it was to be considered that the proposal no longer offends policy CTY8 following the erection of the above mentioned shed, the proposal would still remain contrary to criterion (b) of Policy CTY14 in that the development would result in a suburban style of build up when viewed with the existing buildings. The Council considers the proposal is contrary to the provisions contained in the SPPS and Policies CTY1, CTY8, and CTY14 of PPS21.
- 3.15 However, should the Commission determine that planning permission be granted, the Council would recommend that the conditions set out below are added to the decision for each proposed dwelling:
- Time limit
 - Maximum ridge height of 5.8 metres above finished floor level
 - Underbuild not exceeding 0.35 metres at any point
 - Reserved matters application showing design, levels and access details

- Requirement for a landscaping plan for retention of, replacement of and proposed landscaping.

4.0 APPELLANT'S CASE

- 4.1 The proposal is for two dwellings and garages located between the dwellings at 59 Thornyhill Road and 44 Ballymacashen Road. The first and second refusal reasons relate to the principle of development and in essence all relate back to CTY8. If the proposal is considered to meet CTY8 then the concerns relating to CTY1 and the SPPS, insofar as the principle of development, will fall away. The second refusal reason also states that the proposal would, if permitted, result in ribbon development.
- 4.2 The third refusal reason relates to the SPPS and CTY14 and alleges that the proposal will result in a suburban style of build up when viewed with existing and approved buildings and will add to a ribbon of development and therefore result in a detrimental change to, and further erode the rural character. Policy CTY8 allows an exception to ribbon development where it results in the development of a small gap site in accordance with the provisions of Policy CTY8. Therefore, if the proposal demonstrates compliance with CTY8 then the third refusal reason should also fall away as this would be an acceptable form of ribbon development in a small gap site.
- 4.3 Planning permission was previously refused for the same development, on the same site, under planning reference LA06/2017/1416/0. This decision was appealed under appeal 2018/A0166 and was dismissed. In that appeal decision the Commissioner stated the following, *"...The appeal site comprises a rectangular plot with a frontage of some 125m onto Ballymacashen Road. It is bounded by (sic) to the west by the curtilage of 44 Ballymacashen Road and to the east by the curtilage of 59 Thornyhill Road. Both these dwellings are set in generous plots as is No. 47, which fronts the southern side of Ballymacashen Road opposite the appeal site.*
- 4.4 *The dwelling at 44 Ballymacashen Road, its detached garage and the dwelling at 59 Thornyhill Road comprise a line of 3 or more buildings along a road frontage without accompanying development to the rear and therefore constitute a substantial and built up frontage for the purpose of Policy CTY8. There is a 160m gap between buildings (appellant's emphasis) within these relevant curtilages. Notwithstanding the size, scale, siting and plot size within the relevant frontage, I conclude, having observed the area, that the relevant gap, of which the appeal site forms part, could accommodate more than two dwellings in a manner that would respect the existing development pattern along the frontage. Consequently, the appeal site does not constitute a small gap site, set out in Policy CTY 8 as acceptable in the countryside."*
- 4.5 Since that decision, the policy context has not changed, but there has been a change in circumstances on the ground that warrants a different decision. Ultimately the crux of this appeal is whether the site now represents a small gap. The aforementioned change involves the construction of a new block built garden shed in the curtilage of 59 Thornyhill Road, carried out under permitted development rights and which benefits from a LDC (LA06/2019/0993/LDE). As a result of this new building the gap between buildings is now 131 metres not 160 metres.
- 4.6 In the development management case officer's report, the case officer states, *"Given its set-back, small size and scale the shed is barely appreciable from the road.*

Therefore, it is concluded that given the scale and subordinate nature of the shed, it cannot be used as a 'building' to lessen the gap. The gap is considered to remain at 160m, which is not considered to be a 'small gap' as it could accommodate more than 2 dwellings."

- 4.7 However, this conclusion is irrational on several fronts. Paragraph 6.3 of appeal decision 2011/A0277 states that *"the policy does not state that the buildings should be prominent or that ancillary buildings which form part of a residential unit of curtilage are to be discounted"*. This confirms that any building is therefore a qualifying 'building' under this policy, even if little or none of it can be seen from the roadside. Appeal 2011/A0277 confirms that any building is therefore a qualifying building under this policy, regardless of its size and whether or not it is prominent from the roadside. There is no scale or visual test provided by Policy CTY8. In accordance with paragraph 5.34 in the Justification and Amplification of Policy CTY8, it is the gap between buildings that is relevant. This is a long settled position of the Commission. Therefore, if the new building meets the definition of a building, then the gap must be measured as laid out above.
- 4.8 The definition of a building provided by Section 250 of the Planning Act (NI) 2011 is relevant. This states that a building *"includes any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building"*. The subject building clearly meets this definition. In addition it is helpful to further consider whether the building is a building for the purposes of Policy CTY8, and in the absence of a definition in policy CTY8 the decision maker must look at the building on a fact and degree basis.
- 4.9 A mechanical digger excavated foundations for the building. The walls of the building have been built on a solid foundation of dry mix concrete. It is built with concrete blocks which are load bearing for the roof, and has a roof formed of rafters and corrugated tin. There is a front door and a front window. The building has power in the form of electrical sockets and a light and has a solid sand and cement screed floor. There is a hardstanding laid to the front which comprises of paving slabs. The building is permanently fixed to the ground and is clearly of permanent construction which has been painted. There is a clear entrance to the building with the provision of a window for natural light for use during daylight hours and an electrical light for use during hours of darkness. The building is an ancillary building associated with the dwelling at 59 Thornyhill Road. This building should be judged on its merits, and it is a matter of fact and degree that this building is clearly a permanent building for the purposes of interpreting Policy CTY8. Furthermore, a LDC (LA06/2019/0993/LDE) confirms that the building is lawful.
- 4.10 Appeal decision 2018/A0080 does not stand on all fours with this appeal for the following reasons. The Commission determined in case 2018/A0080 that the spatial arrangement of the shed to the side and rear of the dwelling resulted in the shed not having frontage to the road. The Commissioner did not even get past the first baseline test of CTY8 and determined that there was no substantial and continuously built up frontage at all, and as a result did not discuss the merits of the building being a building for the purposes of measuring the gap site. The current appeal site is distinguishable on several fronts.

- 4.11 The Commission and Council are already in agreement that this current gap site is situated in a substantial and continuously built up frontage as referred to in appeal decision 2018/A0166. The dwelling at 59 Thornyhill Road addresses two public roads those being the Thornyhill Road and Ballymacashen Road. It is apparent that the current shed in question has a clear and obvious relationship to Ballymacashen Road such that it is neither to the side or rear of the dwelling at 59 Thornyhill Road when viewed from Ballymacashen Road but is instead located clearly in the middle of a line of buildings with frontage to this road. Therefore, the current shed does not have a “*subordinate spatial relationship within the plot*” and is not comparable to the appeal case cited. The building has already been shown to be a building of permanent construction that should form part of the analysis of the gap site.
- 4.12 The Council has misunderstood the Commissioner’s reason for discounting that particular shed from the frontage assessment. The Commissioner considered that the garage did not have frontage given its “*subordinate spatial arrangement within the plot*” and not the fact that it was subordinate to the dwelling as alleged by the Council. This current appeal is wholly distinguishable from appeal decision 2018/A0080.
- 4.13 The change in circumstances has resulted in a gap site measuring 131 metres, measured between the garage at 44 Ballymacashen Road and the new outbuilding at 59 Thornyhill Road. In determining what is a small gap for the purposes of Policy CTY8, the gap must not be capable of accommodating more than two dwellings which would be respectful of the existing development pattern along the frontage in terms of size, scale, siting and plot size.
- 4.14 The figures below show the measurements used to explain the appellant’s case. The dwelling at 44 Ballymacashen Road measures 96 metres across its frontage while the dwelling at 59 Thornyhill Road measures 49 metres across its Ballymacashen Road frontage when measured to the edge of verge maintained by appellant. The gap between the buildings is 131 metres and the average existing plot width is 73 metres. The appeal site has a 125 metres frontage, if laid out for two plots each would measure 62.5 metres wide, a measurement lying neatly within the respective 96 metres and 49 metres frontage widths of Nos. 44 and 59.
- 4.15 At Page 71 of Building on Tradition it states, “*When a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots.*” If one uses the average plot width of 73 metres as a guide, it would not be possible to accommodate three plots within the 131 metres gap as three plots would require a 219 metre frontage i.e. three plots by 73 metres which equals 219 metres. If three plots were squeezed into the 131 metre gap, the plots would have a frontage measurement of 43 metres each, which is significantly less than the average plot width, and more significantly these plots would not be in keeping with the established development pattern in terms of siting or plot size.
- 4.16 When comparing the average site areas of the adjoining plots and proposed plots, it demonstrates how the proposal is respectful of plot sizes in the area. No. 44 Ballymacashen Road plot site area measures 2278 square metres and No. 59 Thornyhill road plot site area measures 4350 square metres therefore the average site area of existing sites is 3314 square metres. The area of each proposed site is 2718 square metres (total 5436 square meters) and if one were to squeeze three

plots into the gap site, the plot sizes would be significantly out of character at only 1812 square metres each.

- 4.17 The above consideration demonstrates that the proposed site is a 'small gap site' sufficient to accommodate up to a maximum of two houses. The provision of two plots within the subject site can meet all the tests within CTY8 i.e. they can be designed to be suitable in terms of size and scale, and they can also clearly meet the siting and plot size stipulation. In addition, they would meet the planning and environmental considerations given they would be sited correctly relative to the surrounding properties and not appear crammed in.
- 4.18 Policy CTY8 allows an exception to ribbon development where it results in the development of a small gap site in accordance with the provisions of Policy CTY8, therefore as the proposal demonstrates compliance with Policy CTY8 the proposal cannot be considered to be an unacceptable form of ribbon development, and this rebuts the last part of refusal reason 2.
- 4.19 The third refusal reason relates to Policy CTY14 and alleges that the proposal will result in a suburban style of build up when viewed with existing and approved buildings and create a ribbon of development and therefore result in a detrimental change to and further erode the rural character. To meet the infill policy it is necessary in the first instance to prove that there is a substantial and continuously built up frontage. The Council and the Commission have already acknowledged this exists. In essence, the rural character of this localised area is already eroded to such an extent that the policy allows for the gap in the 'build up' and 'ribbon' to be infilled, that is consolidated. By demonstrating that the proposal meets the exceptional requirements of CTY8, it follows that it cannot be unacceptable in terms of build up or ribboning as set out in paragraph 10 of appeal decision 2015/A0091 and paragraph 10 of appeal decision 2014/A0207.
- 4.20 With reference to the proposed condition limiting underbuild, part of the appeal site is sloping in nature and to ensure that the design of the dwelling is as sympathetic to the existing ground levels as possible, it is considered more advantageous to not stipulate a fixed underbuild depth but let it be assessed on its merits on receipt of the detailed plans. This will prevent unnecessary cut into the slope.

5.0 CONSIDERATION

- 5.1 The main issues in this appeal relate to whether the proposal would be acceptable in principle in the countryside; and its impact on visual amenity and rural character of the area.
- 5.2 Section 45(1) of the Planning Act (NI) 2011 requires that regard must be had to the local development plan (LDP) so far as material to the application and to any other material considerations. Section 6(4) of the Act requires that where in making any determination, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 5.3 The Ards and Down Area Plan 2015 (ADAP) operates as the relevant LDP where the appeal site is located. In ADAP, the site is located in the countryside and outside

any specific policy area. The plan provides no determining policy to consider single dwellings in the countryside and is not material.

- 5.4 The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) is material to all decisions on individual planning applications and appeals. The SPPS retains policies within existing planning policy documents until such times as a Plan Strategy for the whole of the Council area has been adopted. It sets out transitional 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 must be resolved in favour of the provisions of the SPPS. No conflict arises between the policy provisions of the SPPS and the retained policy contained in PPS21 in so far as they relate to this appeal. Supplementary planning guidance for buildings in the countryside is set out in the document "Building on Tradition" – A Sustainable Design Guide for Northern Ireland Countryside (BOT).
- 5.5 Policy CTY1 of 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. One of these is the development of a small gap site within an otherwise substantial and continuously built-up frontage, in accordance with Policy CTY8 Ribbon Development.
- 5.6 The appeal site was the subject of a previous appeal (2018/A0166) which was dismissed on 17th June 2019. In that appeal it was accepted that the site is within a substantial and continuously built-up frontage. However, it was considered that the gap could accommodate more than two dwellings in a manner that would respect the existing development pattern along the frontage. Consequently, in appeal decision 2018/A0166 it was considered the site was not a small gap site for the purposes of Policy CTY8 and the refusal reason was sustained.
- 5.7 The Council's concern is that in respect of this proposal the proposed two dwellings adds to the ribbon of development along the road. The Council does not accept that the site is a small gap site for the purposes of the policy. From the evidence in this appeal, I note that both the Council and the appellant accept that the appeal site is within a substantial and continuously built-up frontage. This is consistent with appeal decision 2018/A0166. In my assessment I note that the dwelling at 59 Thornyhill Road shares a frontage with Ballymacashen Road. Therefore, I accept irrespective of the small building to the rear of 59 Thornyhill Road, that there is a line of buildings along the Ballymacashen Road. This line of buildings includes the dwelling and detached garage at 44 Ballymacashen Road and the dwelling at 59 Thornyhill Road. I am satisfied that the appeal site is within an otherwise substantial and continuously built-up frontage. The first element of Policy CTY8 is met.
- 5.8 The second element of Policy CTY8 requires that a small gap site is sufficient only to accommodate up to a maximum of two houses. In accordance with paragraph 5.34 of the justification and amplification, it is the gap between the buildings rather than the appeal site that is considered. As noted above in appeal 2018/A0166, the Commissioner considered that the site was not a small gap. However, since that appeal decision the appellant has constructed a small building to the west side of the dwelling at 59 Thornyhill Road and within its curtilage.

- 5.9 There is no dispute that there is a small building on the site. The policy does not prevent small or ancillary buildings from being considered as part of the built-up frontage. Nor does the policy indicate any required size, scale or visual test for inclusion of these buildings. This is consistent with appeal decision 2011/A0277.
- 5.10 I note the appellant has a LDC for existing development (LA06/2019/0993/LDE) for a “garden shed/store”. However, I have considered the details of this LDC and the development in situ does not reflect the details of what has been certified. The drawings associated with the LDC show a building with only three sides, whereas on the site the small building has four sides, the fourth containing the door and windows. Clearly the LDC does not match the building that is constructed on site. Even if the constructed building were within the parameters allowed by The General (Permitted Development) Order (NI) 2015, there is no jurisdiction in this case to determine that the building is lawful for the purposes of considering this appeal. In the absence of a LDC to demonstrate that the building is lawful, it cannot be weighed into the consideration of the above policy requirement.
- 5.11 Based on these facts I consider that the size of the gap remains the same as previously considered within appeal 2018/A0166. Therefore, irrespective of the appellant’s evidence regarding the concept plan, measurements, and analysis which relate to the reduced gap, I concur with the previous Commissioner that the gap is not a small gap for the purposes of Policy CTY8. Therefore, the proposal does not satisfy the exception under Policy CTY8 and the Council’s second reason for refusal is sustained.
- 5.12 The Council’s third reason for refusal relates to Policy CTY14 in respect of the creation of a ribbon. Policy CTY14 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. In this instance the construction of two dwellings and garages on the site would offend criterion (d) by extending an existing ribbon of development between two buildings which due to topography and distance are currently set apart both physically and visually in the landscape. The buildings that are adjacent to the site, have no intervisibility when viewed from either road and have no relationship with each other due to the size of the gap between them. The appeal site is a significant physical and visual green break between the existing sporadic development and is important in retaining the rural character of the area. The proposal would result in four dwellings and garages in a row fronting onto Ballymacashen Road and would read as a suburban style build up detrimental to the character of the area which would offend criterion (b) of Policy CTY14 and subsequently Policy CTY8.
- 5.13 The proposal does not comply with Policy CTY8 and Policy CTY14 of PPS21. It is not one of the types of development which, in principle, are considered to be acceptable in the countryside. Policy CTY1 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*”. It has not been demonstrated that there are overriding reasons why the development is essential and could not be located in a settlement. The first, second and third reasons for refusal are therefore sustained.

6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be dismissed.

6.2 This recommendation relates to the following drawings:-

Drawing No.	Title	Scale	Date
01	Site location Plan	1:1250	Stamped received by Ards & North Down Borough Council on 22 nd November 2019
02	Design Concept Statement	N/A	Stamped received by Ards & North Down Borough Council on 22 nd November 2019

List of Documents

Planning Authority:-

“A” – Statement of case on behalf of Ards and North
Down Borough Council“A1” – Rebuttal statement on behalf of Ards and North
Down Borough Council

Appellant:-

“B” – Statement of case on behalf of Ray Jackson

“B1” – Rebuttal statement on behalf of Ray Jackson

