

**PLANNING APPEALS COMMISSION**

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

**Appeal by Mr George Cunningham  
against the refusal of outline planning permission for a replacement dwelling  
to the rear of 144 Ballygowan Road, Dromore, BT26 6EG**

**Report  
by  
Commissioner Gareth McCallion**

**Planning Authority Reference: LA05/2021/0894/O**

**Procedure: Written Representations**

**Date of Site Visit: 12<sup>th</sup> March 2024**

**Report Date: 23<sup>rd</sup> May 2024**

## 1.0 BACKGROUND

- 1.1. Lisburn and Castlereagh City Council (the Council) received the planning application on 13<sup>th</sup> August 2021. By notice dated 21<sup>st</sup> June 2023 the Council refused permission giving the following reasons: -
1. **The proposal is contrary to the SPPS and Policies CTY1 and CTY3 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the structure (to be replaced) does not exhibit the essential characteristics of a dwelling and insufficient supporting information has been provided to establish otherwise.**
  2. **The Proposal is contrary to the SPPS and Policy CTY3 of PPS 21 in that it has not been demonstrated that either (a) the curtilage is so restricted that it could not reasonably accommodate a modest size dwelling, or (b) an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits to justify replacement off-site.**
  3. **The proposal is contrary to the SPPS and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development would, if permitted create a ribbon development along the Ballygowan Road and would therefore result in a detrimental change to the rural character of the countryside.**
  4. **The development is contrary to the SPPS (paragraph 6.179) and Policies NH2 and NH5 of PPS2 – Natural Heritage, in that it has not been demonstrated that there will be no adverse impact upon features of natural heritage importance.**
- 1.2. The Commission received the appeal on 4<sup>th</sup> July 2023 and advertised it in the local press on 21<sup>st</sup> July 2023. No representations were received from third parties.
- 1.3. In accordance with Section 12 of the Planning Act (Northern Ireland) 2011 and Regulation 24 of the Planning (Local Development Plan) Regulations (Northern Ireland) 2015, the Council adopted its Local Development Plan 2032, Plan Strategy (PS) on the 26<sup>th</sup> September 2023. Following this change in circumstances, the Council stated that their refusal reasons should be superseded with the following:
1. **The proposal is contrary to policy COU1 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that it is not a type of development which in principle is considered to be acceptable in the countryside.**
  2. **The proposal is contrary to policy COU 3 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the structure to be replaced does not exhibit the essential characteristics of a dwelling.**
  3. **The proposal is contrary to policy COU3(a) (i)(ii) of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that it has not been demonstrated that either (i) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (ii) an alternative**

**position nearby would result in demonstrable landscape, heritage, access or amenity benefits to justify replacement off-site.**

- 4. The proposal is contrary to policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that if approved, add to ribbon of development along the Ballygowan Road [sic].**
- 5. The proposal is contrary to Policy COU 16 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that it has not been demonstrated that the proposal would not have an adverse impact on the rural character of the area by virtue of ribbon development.**
- 6. The proposal is contrary Policies NH2 and NH5 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that not been demonstrated that there will be no adverse impact upon features of natural heritage importance [sic].**

- 1.4. The Appellant was provided with the opportunity to comment on the revised reasons for refusal.

## **2.0 SITE AND SURROUNDINGS**

- 2.1 The appeal site is in the countryside, off the Ballygowan Road, Dromore, County Down. The building to be replaced is an outbuilding located to the rear of No. 144 Ballygowan Road. The appeal site also comprises of an occupied dwelling, No. 144 Ballygowan Road, lands to the rear of the appeal building, a stone barn and a field to the southwest of the appeal building. Access, via a driveway, is taken from the Ballygowan Road. There is a north westerly verge off this driveway, which provides an approach road to lands beyond the appeal site.
- 2.2 The appeal building is of a vernacular form. Its external walls support a pitched corrugated tin roof. The front elevation, which has a rendered and white painted finish, contains two doors and four, single glazed windows. The single door is circumscribed by a stone doorstep and a small porch, whilst each of the windows are supported by sills. The set of double doors are situated southwest of the composite porch and door with a single glazed window in between. All these anterior doors, have an external finish of, red painted, corrugated metal. Metal rainwater goods, also painted red, are present on the front elevation. On the ground, directly beneath the front elevation, extending c 0.5 metres out from the building, there is a section of stone paving. This stonework runs the length of the façade.
- 2.3 The external finish of the northeastern gable of the appeal building, is that of natural stone and red brick. At the centre of the gable, is a broad external arched doorway containing a green painted, corrugated metal door. An additional enclosed storeroom adjoins the appeal building's southwestern gable. It is used as store for firewood, coal, and kindling.
- 2.4 The rear elevation of the appeal building is comprised of natural stone, interspersed with red brickwork around five, uneven and irregularly spaced, single glazed, windows. Red brick is also found under the eaves.

- 2.5 A two-storey stone barn sits perpendicular to the appeal building. The barn and the appeal building are adjoined via the storeroom which is sited in the gap between the two buildings. No. 144 Ballygowan Road, a single storey dwelling, is sited directly c.6.5 metres southeast of the appeal building. The external rear and gable walls of this building have been rendered and painted white. The front elevation is finished with stone cladding. This dwelling faces onto an area of hardstanding and a garden which extends, in length, to the Ballygowan Road.
- 2.6 Internally, the appeal building is made up of four similar sized rooms. Three of the rooms are internally connected. The fourth room, whilst still confined to the appeal building in terms of its external walls and the roof, is accessed through the double doors and contains outdoor equipment and tools.
- 2.7 The siting and orientation of the appeal building, the stone barn and the dwelling, forms a small courtyard area, the surface of which is comprised of paving stone and concrete. There are two water pumps of a traditional style, present in the yard. One is located close to the main entrance of the appeal building, whilst the other is sited near to the southwestern gable of No. 144 Ballygowan Road.
- 2.8 The land directly behind the appeal building is elevated grassland. The north easterly boundary of this area is defined by mature trees and scrub. The north westerly boundary of the appeal site is undefined. Beyond this there are several coops containing domestic fowl (pheasants). Further west of the coops is a site, under the control of NI Water. This site is enclosed by c. 2.5 metre-high security fencing and contains two large concrete and steel structures. The south-westerly boundary of the open grassland area is delineated by a lane leading to the NI Water structures.
- 2.9 The field, to the southwest of the appeal building is the preferred site of the proposed replacement dwelling. It comprises a mixture of grassland with several vegetable plots located in the southeast corner of the same. The field inclines from the Ballygowan Road to the northwest. The northeastern boundary, adjoining the approach to the NI Water structures, is raised by a minor, grass embankment with several mature trees interposed along it. The northwestern boundaries of the field are demarcated by large mature trees, intermittent hawthorn hedges and scrub. The northwestern and northeastern boundaries converged to form a point at the most northern part of the field. The southern and southeastern boundaries of the field are delimited by mature, well-maintained hawthorn hedgerows. Post and wire fencing has also been employed, in places, to secure the field's boundaries.
- 2.10 In the wider environs, lands surrounding the appeal site comprises of agricultural fields, bounded by mature hedgerows, trees and post and wire fencing. There are also several farms and dispersed dwellings in the locality.

### **3.0 PLANNING AUTHORITY'S CASE**

- 3.1 The proposal is contrary to Policies COU1, COU3, COU8 and COU16 along with NH2 and NH5 of the Council's Plan Strategy (PS). The site is located within the countryside. The surrounding area comprises of agricultural fields and dispersed single dwellings, specifically to the east of the appeal site. There is no relevant planning history associated with the appeal site.

- 3.2 Section 6(4) of the Planning Act (NI) 2011 requires that in determining planning applications regard must be had to the requirements of the local development plan and that determination of applications must be in accordance with the plan unless material considerations indicate otherwise.
- 3.3 In accordance with the transitional arrangements, the existing Local Development and draft BMAP remain material considerations. The Council's reasons for refusal in its decision notice were framed upon the policies contained within in the Department of Infrastructures Planning Policies Statements (PPSs). The suite of Planning Policy Statements retained by the Department for Infrastructure no longer apply in the Lisburn & Castlereagh City Council area. Therefore, having regard to the publication of the Plan Strategy, the refusal reasons have been updated to take account of the most up to date policy. Policies COU1, COU 3, COU8, COU16, NH2 and NH5 of the new PS are now the relevant policies in terms of assessment of the proposal.
- 3.4 The proposal is not considered to be a type of development which in principle is acceptable in the countryside. As such, it is contrary to Policy COU1 of the PS.
- 3.5 The issue of essential characteristics of a dwelling have been examined by the Commission within the Appeal 2019/A0254: *"Although there is no question that all of the external walls of the structure and its roof are substantially intact, the policy also requires buildings to exhibit the essential characteristics of a dwelling. The essential characteristics of a dwelling are not prescribed by the policy, however, it would not be unreasonable to expect to see a chimney, domestic scaled window and door openings, a chimney breast and some internal room divisions all of which would give a building the appearance of a dwelling"*. Furthermore, a description of the essential characteristics of a dwelling is provided within the justification and amplification of Policy COU 3 of the PS which states *"the essential characteristics of a dwelling includes original features such as doors/window openings of domestic scale, chimneys or internal evidence of chimneys or fireplaces, internal walls defining individual rooms"*. The building to be replaced is fully intact. However, it lacks the essential features typical of a dwelling house.
- 3.6 Externally, the roof is corrugated and appears to have been rebuilt more recently. There are no external chimneys and there is no evidence of external domestic style doors. The openings appear to be more typical of an outbuilding/stables. Although the windows to the front elevation are of a vertical emphasis, they do not appear to be domestic in style and again seem to have been more recently replaced.
- 3.7 No evidence has been presented to Council to suggest that the building would have internal features typical of a dwelling. From the information submitted the evidence does not point to the building having an internal chimney breast, fireplace, or internal partitioned walls.
- 3.8 Supporting evidence was submitted to suggest that this building was the original house in existence in 1920. It was also suggested that a new house was built to the front of this, known as No. 144 Ballygowan Road and that the widow lived in the original dwelling until 1962. The roof was said to be thatched originally suggesting it has been replaced.

- 3.9 Land registry information refers to folio details for 144 Ballygowan Road. There is no other known address for this site which suggests that at one point prior to 1962 this building was replaced already. The policy does not allow for the building to be replaced again if this was the case.
- 3.10 The evidence presented to Council is not sufficient in demonstrating the building to be replaced has the appearance of a dwelling and thus exhibits the essential characteristics of a dwelling house and/or that it was previously used as a dwelling house. The proposal is unacceptable in principle and contrary to COU3.
- 3.11 Policy COU3 criterion (a) states that the proposed replacement dwelling must be sited within the established curtilage of the existing building, unless either (i) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (ii) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits.
- 3.12 The appellant provided no evidence as to why the replacement dwelling cannot be located within the established curtilage. Following a site inspection, it is considered that there is sufficient space at the current location to construct a reasonable sized dwelling with adequate private amenity space to serve a new dwelling.
- 3.13 The Appellant has stated that locating the dwelling in the preferred location will provide for improved amenity provision for the existing dwelling at No. 144 Ballygowan Road. The Council have considered that a replacement dwelling within the existing curtilage can be provided without negatively impacting upon the residential amenity of No. 144 Ballygowan Road in terms of overlooking or loss of privacy without the requirement of an alternative site.
- 3.14 The preferred location of the dwelling is sited within an existing agricultural field located to the west of the site, which has established tree planting on two of its boundaries. The agent states that this will allow for the proposed dwelling to blend into the landscape. The information submitted in support of the application does not clarify to any extent what other landscape benefits this preferred location may offer.
- 3.15 The Appellant also indicates that the existing access will be utilised to serve the proposed dwelling but does not expand on how this will bring demonstrable benefits.
- 3.16 The limited case advanced by the agent that an alternative position for the dwelling nearby would result in demonstrable landscape, heritage, access or amenity benefits is not accepted for the reasons outlined in the previous paragraphs. Furthermore, rather than bring any demonstrable benefits, it is considered that the proposed location for the dwelling would have an adverse impact on the character in that it would add to an existing ribbon of development along the Ballygowan Road.
- 3.17 For reasons set out above it is deemed that the curtilage is not so restricted that it could not reasonably accommodate a modest sized dwelling. It has subsequently not been shown that an alternative position nearby would result in demonstrable landscape, access or amenity benefits therefore the proposed development is not in accordance with COU3 (a)(i) and (ii) and an alternative location is not acceptable in principle.

- 3.18 Policy COU8 states that planning permission will be refused for a building which creates or adds to a ribbon development.
- 3.19 The appeal site is a roadside site and is located adjacent to and west of an existing ribbon of development along the Ballygowan Road. The existing ribbon of development consists of the property at No. 144 Ballygowan Road, a barn style outbuilding and the building which is the subject of this appeal.
- 3.20 The application site is a roadside site adjacent to No. 144 Ballygowan Road and for this reason, the proposal would be contrary to Policy COU8 of the plan strategy in that it would add to an existing ribbon of development along the Ballygowan Road.
- 3.21 Policy COU16 Rural Character and other Criteria, states that in all circumstances proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings, must not have an adverse impact on the rural character of the area, and meet other planning and environmental considerations. It is considered that the location of the off-site replacement [dwelling] will add to an existing ribbon of development.
- 3.22 For the reasons outlined above, it is considered that proposed development, in this instance, would damage the rural character of the area contrary to policy COU16.
- 3.23 The statement submitted in support of the application indicates that the existing building is to be demolished and replaced off site. No biodiversity checklist or ecological statements were submitted with the application. Council requested a biodiversity checklist from the agent and were advised that one had been commissioned and that a report would be submitted within 6 weeks. At the time the application was refused some 6 months later the requested ecological information had not been submitted.
- 3.24 Given that the building is to be demolished and no ecological reports have been submitted it has not been demonstrated that there would be no adverse impact on natural heritage issues.
- 3.25 The Council is satisfied that the refusal reasons are warranted, and the Council's interpretation of policy has been applied correctly in this case. However, if the PAC are of the opinion to approve, draft conditions are provided on a without prejudice basis:
- Time Limits;
  - Details of siting, design and external appearance;
  - Finished floor levels and levels;
  - Access arrangements and visibility splays;
  - Parking arrangements;
  - Septic tank provisions;
  - Landscape and screening; and
  - Demolition of the appeal building.

#### 4.0 APPELLANT'S CASE

- 4.1 The planning application was issued and decided two months prior to the adoption of the Lisburn and Castlereagh Local Development Plan 2023 - Plan Strategy (PS). The planning application was submitted on 13<sup>th</sup> August 2021 and a decision taken 12<sup>th</sup> June 2023 under the previous planning policy, Planning Policy Statement 21 'Sustainable Development in the Countryside (PPS 21) Policies CTY1 and CTY3. The appeal should have regard to the planning policy in place at the time that the application was decided.
- 4.2 The Council did not submit a statement of case. The Commissions request for comments on the adoption of the PS should not be used as an opportunity for the Council to submit a statement of case. The wording of both policy documents [PPS 21 and Policies within the PS] remains essentially the same, there should be no necessity to consider any new evidence or a full statement of case from the Council.
- 4.3 The Council has assessed the application as a 'full' application and not one which seeks outline permission. The application was submitted to establish the principle of replacement. Applications seeking outline planning permission need not go into the house design etc at this stage. All the finer details within the planning policy can be dealt with at reserved matters stage if the appeal were to succeed.
- 4.4 The Council was supplied with a notional layout only and a red line application area for consideration. There are no objections from NI Water, Department of Agriculture, Environment and Rural Affairs (DAERA), Environmental Health, or Transport NI.
- 4.5 The main arguments relate to refusal reasons 1 through to 3. Refusal reason 4 requires the submission of information from a qualified ecologist, which has not been provided. However, the proposal is for outline planning permission. Typically, a reserved matters application will be required, within a short period, following the grant of outline permission. Any ecology report submitted at the outline stage will be required to be repeated as matters recorded on site will be required to be revised one year after the date of the initial report. Therefore, it would be sensible to provide the ecological report at the reserved matters stage of the process. Consequently, any forthcoming planning permission could be granted subject to a condition requiring the ecological works to be undertaken in advance of implementation of the proposal.
- 4.6 The existing structure is an historic vernacular building. Currently, demolition of the building is not being sought as it has not been established whether the building is required to be demolished. As the Council states in its [development management] report, it may be in everyone's interest to retain the building for use associated with the existing dwelling. This use, as a store or utility building could be conditioned.
- 4.7 Policy CTY 1 clearly states that planning permission will be granted for individual houses in the countryside in the following cases: A replacement dwelling in accordance with Policy CTY 3 'Replacement Dwellings'. Policy CTY 3 states that planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. For the purposes of this policy, all references to 'dwellings' includes buildings previously used as dwellings.



- 4.8 The details of the new planning policies COU1 and COU3 now in place do not differ from previous regional policy. The wording of the relevant part of policy is exactly the same. The policy COU3 for replacement dwellings states - planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external walls are substantially intact. For the purposes of this policy all references to 'dwellings' includes buildings previously used as dwellings.
- 4.9 The policy further states that in all replacement cases, proposal for a replacement dwelling will only be permitted where the following criteria are met: (i) the proposed replacement dwelling should be sited within the established curtilage of the existing building, unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits; (ii) the overall size of the new dwelling should allow it to integrate into the surrounding landscape and would not have a visual impact significantly greater than the existing building; (iii) the design of the replacement dwelling should be of a high quality appropriate to its rural setting and have regard to local distinctiveness; (iv) the necessary services are available or can be provided without significant adverse impact on the environment or character of the locality; and (v) access to the public road will not prejudice road safety or significantly inconvenience the flow of traffic. If it is accepted that the building to be replaced meets the criteria of CTY1 and CTY 3 then the additional requirements of criteria (i) through to (v) could be covered with conditions attached to the outline planning permission.
- 4.10 To address the main criteria of Policy CTY 3, information has been submitted which provides an historic account of the small holding. The information includes the original deeds, photographs for illustration purposes, the history map of the area from 1903 and information regarding the occupants of the original dwelling. The original deeds were first registered in 1910, the folio details Down – 5649. The Mercer family were registered owners of the lands until 1997, when the folio ownership was transferred to the Cunningham family. The deeds and associated map are still held under the same folio as can be seen from map attached to deeds.
- 4.11 The history map, surveyed sometime between 1903 and 1920, clearly shows the original buildings on site at that time. The additional history map surveyed between 1964 to 1971 shows the additional building No. 144 Ballygowan Road to the front of original dwelling. That map confirms a neighbour's narrative that a new dwelling was built on the holding around 1960 onwards. Both history maps show the original dwelling with a stone storage building running at right angles, this has been well maintained and can be seen on site. The original dwelling combined with attached storage, which is now a garage, and the detached farm building would have been enough for a small holding of between 8 and 9 acres.
- 4.12 The Appellant, through discussions with Winnifred Mercer the owner of the property in 1996, was able to confirm that the new house was built to the front of the existing dwelling and the widow of the owner of the holding at that time, Mrs Mercer, had lived on in the original dwelling until her death in 1962. Winnifred Mercer unfortunately could not provide any clear evidence or even a supporting letter due to recent health issues. It is difficult to give any additional evidence to justify that the

existing building on site, the subject of this appeal, was originally used as a dwelling house by the Mercer family.

- 4.13 The photographs of the appeal building denote the front and rear elevations and the eastern gable. These photographs show a vernacular style dwelling built per 1900. The gap from the top of the windows to the underside of the tin roof indicates that the building was originally built with a thatched roof. The photograph of the end gable denotes the wall having been possibly rebuilt when the original thatch roof was removed. The rear elevation has existing windows which are similar style to those at the front. The irregular windows and no rear door are consistent features of dwellings dating from pre-1900. An internal photograph shows the inner wall of the porch is rounded. This detail is not seen in outbuildings but is common in older stone houses.
- 4.14 The appeal building is well maintained, has been kept intact and used for storage. The original wooden front door was replaced due to issues with rodents and to secure the building. The intact original porch is an indicator of the building's use as dwelling. There are the remains of a dry toilet to the rear elevation. When you go through the characteristics of the existing building on site it meets almost all the requisite criteria. The building is long and narrow, it measures approximately 5.6 metres front to back. The walls are 500mm thick and mostly consist of stone, there is a small wind porch to the front and the window openings both on front and rear elevations lack symmetry and regularity.
- 4.15 The building cannot have been a barn originally as stated in the planner's report, barns did not have the window and door openings as can be seen and would not have had a porch. The small holding has an existing barn and small agricultural buildings attached to the barn and house. The outbuildings would have been adequate to farm this small holding of approximately 6 acres. This configuration of a long narrow dwelling with adjacent taller out houses would have been typical of a small holding in the period it was constructed. Two photographic examples of dwellings in rural Ireland which are of a similar style to the appeal building were provided.
- 4.16 It is considered that during the removal of the thatch and installation of the tin roof, quite often the chimney would have been removed. The flue is usually found within the wide external stone wall and the chimney. With the chimney and flue no longer in use, these elements could have caused structural problems. The fireplace would have been removed long ago, as that was quite often a target feature for uninvited collectors.
- 4.17 The preferred location for the new dwelling is to the southwest of the appeal building. The main reasons for the new location of the replacement dwelling are that trees to the rear of the existing would have to be removed to accommodate a reasonably sized dwelling. Furthermore, a house built and occupied to the rear of the appeal building would take away from the privacy of the family occupying No. 144 Ballygowan Road. No. 144 would be left with no amenity space and restricted movement, as both dwellings would be using the area between dwellings to park cars. The parking and access arrangements for both existing and replaced dwelling may cause a nuisance to either party especially at nighttime.

- 4.18 The policy wording for Policy CTY3 allows for re-siting. The proposed location for the dwelling is within 10-15 metres from the original dwelling. The preferred site benefits from mature landscaping of both mature hedging and tall trees providing an opportunity for the new dwelling to integrate into the surrounding landscape. Therefore, it would not have a visual impact significantly greater than the existing building. The policy does not allow for all the landscaping to be new as it would take several years to mature. However, it is accepted generally that a small amount of additional landscaping can be provided if the majority of the landscaping exists. Any approval can be conditioned to provide a small amount of additional landscaping to the front of the new dwelling.
- 4.19 Regarding the Council's refusal reason that, if permitted, the proposal would create a ribbon of development, it is clear on site that the proposed dwelling will be set back approximately 70m from the edge of the road. The proposed dwelling, with some additional planting to the front, will not create a ribbon of development or result in a detrimental change to the rural character of this area. There is an existing building belonging to water service already visible to the rear of the site the proposed dwelling will replace this in terms of what is viewed from the road.

## **5.0 CONSIDERATION**

- 5.1 The main issues in this appeal relate to whether the proposal would be acceptable in principle in the countryside, whether it would result in a detrimental change to the rural character of the area and its impact on natural heritage.
- 5.2 Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
- 5.3 The Council adopted the Lisburn and Castlereagh City Council Local Development Plan 2032 Plan Strategy (PS) on 26<sup>th</sup> September 2023. The PS sets out the strategic policy framework for the Council area. Pursuant to the transitional arrangements as set out in the Schedule to the Planning (Local Development Plan) Regulations (NI) 2015 (as amended), the Local Development Plan now becomes a compilation of the Departmental Development Plan (DDP) and the PS read together. The Lisburn Area Plan 2001 is the DDP for this appeal. In accordance with the legislation, any conflict between policy contained in the DDP and that of the PS must be resolved in favour of the PS.
- 5.4 At the request of the Commission, comments were submitted to the appeal by both parties following the adoption of the PS. In compliance with paragraph 1.11 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), operational policies set out in Part 2 of the Plan Strategy are now in effect. Existing policy retained under the transitional arrangements has ceased to have effect in the district. Despite the arguments advanced by the Appellant, the previous Regional Policies have now been superseded. The length of time the proposal has been in the planning system does not represent exceptional circumstances that outweigh the transitional arrangements outlined above. It now falls to the Commission to assess the appeal

proposal in the context of the PS, in accordance with the legislative provisions and the amended reasons for refusal as proposed by the Council.

- 5.5 In the DDP, the appeal site is in the countryside and is located within the green belt. The DDP policies relating to the green belt are now outdated. Accordingly, limited weight is attached to them. There is no conflict between the DDP and the PS insofar as it relates to the appeal development.
- 5.6 Policy COU 1 of the PS 'Development in the Countryside' states that "*there are a range of types of development which in principle are acceptable in the countryside and which will contribute to the aims of sustainable development*". Under Policy COU1, details of operational policies relating to acceptable residential development proposals in the countryside, are set out in policies COU2 to COU10.
- 5.7 The appeal before me relates to a proposal which sought outline planning permission for a replacement dwelling. Policy COU 3 'Replacement Dwellings' states that "*planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. For the purposes of this policy all references to 'dwellings' includes buildings previously used as dwellings*".
- 5.8 The appeal building has been constructed on a linear plan and the external walls are intact. The roof is pitched and has been enclosed with corrugated tin. The Appellant has advanced that this roof replaced a thatched one. The building exhibits a broad vernacular style. It has been constructed in a traditional manner, largely using local materials, including natural stone. The front elevation has been rendered and painted white. The depth of the building is approximately 6 metres from front to back.
- 5.9 There is no dispute that all the external walls are substantially intact. However, the Council states that the appeal building "*lacks the essential features typical of a dwelling house*". The Council referred to and provided appeal decision 2019/A0254 and cited "*the essential characteristics of a dwelling includes original features such as doors/window openings of domestic scale, chimneys or internal evidence of chimneys or fireplaces, internal walls defining individual rooms*". I would agree that it is reasonable to expect to see a chimney, a chimney breast and some internal room divisions, together with original features such as window and door openings. However, it is also important to examine every aspect of the building to ascertain if it exhibits the essential characteristics of a dwelling.
- 5.10 The Appellant provided photographs of both the appeal building and two vernacular rural dwellings within his evidence. When viewed from the front, the appeal building resembles similar features of those examples as shown in photographs. The appeal building, like the photographs, has domestic scaled windows and a front door, which is defined by a lean-to porch that projects from the building's façade. This porch has an external stone doorstep and subsequent threshold, which is a feature associated with domestic use. These are comparable characteristics with a dwelling as depicted in one of the photographs. One photograph of a dwelling depicts its front windows being supported by sills. Likewise, each of the front windows of the appeal building are supported by sills, again, which are domestic features.

- 5.11 Externally, the rear wall of the building has been constructed using natural stone and there are 5, domestic scaled, single glazed windows. The fenestration of the building's windows, front and rear, lack symmetry, vary in size, and exhibit a low proportion of void to mass. Red brick is found around the rear window openings and under the eaves. This red brick is aged and weathered and has also been used to increase the height of the northeastern gable. The brick has been placed directly on top of the c. 2m high natural stonework of this wall. This gable includes a tall and broad arched doorway, containing a green painted, corrugated metal door. There is also a natural stone path which runs the length of the appeal building's front elevation.
- 5.12 The building is accessed through the domestic scaled doorway and porch on the front elevation. The inner wall of the porch is finished with a rough render. A feature of this inner wall is that it curves into the building's central room. My site visit confirmed that the external walls are original and are largely constructed from natural stone. The building is separated into three rooms. The internal walls have been constructed using modern block work with doorways providing intramural access between the three rooms. However, the fourth room, located to the south of the building, cannot be accessed internally. Access to this room is taken through the double doors found on the front elevation. This is discussed further below.
- 5.13 The central room was largely empty at the time of my site visit. Centrally, along the rear wall there is a single domestic scaled window. Another window is located on the front wall to the right of the doorway as one enters. The floor has been finished in concrete and modern electric ceiling lights including corresponding switches are present.
- 5.14 The room north of the central room was also largely empty at the time of inspection. The original stone floor remains underfoot. The room contains domestic scaled windows, two along the front elevation and another two along the rear. Corresponding to my external observations, the northern gable has been vertically extended, with red brick placed on top of the c.2-metre-high original stone wall and converging to a point at ridge height. To the righthand side of the arched doorway and affixed to the gable wall is a modern oil-fired boiler and associated flue, which exits through the red brickwork, just below the roof. The boiler was not operating at the time of my inspection. There are no radiators or other heating appliances found within the appeal building. Therefore, the boiler, if connected and functioning, facilitates a heating system beyond the appeal building, possibly that of No. 144 Ballygowan Road. Like the previous room, modern electric ceiling lights and corresponding switches are present.
- 5.15 The final internal room, located to the south of the central room, was being used to store domiciliary and garden furniture, including an assortment of other household possessions, with paintings mounted on the southern internal wall. This room also contained a domestic scaled window on the front elevation and a similar scaled window, on the rear wall.
- 5.16 The double doors, found along the front elevation, provide access to a fourth room in the building. At the time of my inspection, this room was being used to store several quadbikes, hand-tools and a large wooden workbench with tools and other

equipment placed on and around it. Electric fittings are present throughout and a domestic scaled window is located on the rear wall of this room.

- 5.17 There is no evidence of a chimney on the appeal building. The flue pertains to an oil-fired boiler which is not connected to a heating system within the appeal building. As advanced by the Appellant, these characteristics would have been removed during the execution of renovations to the appeal building, including the works to increase the height and pitch of the roof. These fixes also include the use of modern block to separate the internal rooms and the installation of modern electrical fittings. The rebuilding appears to be for maintenance only and is not of a significant amount. From my site visit, it is evident to me that the appeal building exhibits some of the essential characteristics of a dwelling. It has been developed on an informal linear plan, the depth of the appeal building (front to back) is no greater than 6 metres and the building exhibits external walls of mass load-bearing materials. Domestic scaled windows are present. The window openings exhibit a lack of symmetry and regularity. The domestic scaled front entrance is defined by a lean-to porch and the windows along the front elevation incorporate established domestic sills. Combined, these characteristics, as the Appellant's photographs demonstrate, are exhibited on vernacular style or old dwellings and are not features typically required for, or found on, barns or other types of ancillary and non-domestic outbuildings – in particular, the presence of a threshold and a rounded internal wall. Whilst the stated features do not replicate all of the typical characteristics, as catalogued within the justification to Policy COU 3, the list is non-exhaustive. For the reasons given, I am broadly satisfied that the building exhibits the essential characteristics of a dwelling.
- 5.18 The policy also requires that the building to be replaced, should have been previously used as a dwelling. The Land Registry folio information, provided by the Appellant, reveals that the appeal site, including the building to be replaced, was registered in 1929 to a Thomas Mercer of Ballygowan, Hillsborough. Reference is made within the register to the transfer of these lands to Mrs Mercer, a widow. However, the date of this transfer and other details are not legible.
- 5.19 The Appellant also provided historical maps of the appeal site, with the lands pertaining to the Land Registry folio depicted on them. The first map, Down Sheet 21, dated between 1919-1920 denotes the footprint of the appeal building, and the stone barn, together with the associated access point and driveway to it from the Ballygowan Road. The second map, Sheet 183 is dated between 1964 – 1971. This map denotes the footprint of the appeal building, the stone barn and that of No. 144 Ballygowan Road. The map also depicts other properties in the vicinity of the appeal site which correspond to structures which are still, as noted from my site visit, on the ground currently. The second historical map, which denotes the footprint of No. 144 Ballygowan Road, points to the erection of this building before 1964. The Council has provided no substantive evidence that this building was an actual replacement opportunity.
- 5.20 Whilst the Appellant's conversations with a member of the Mercer Family in relation to the appeal building being used as a dwelling up until 1962 is anecdotal, I consider that the Land Registry information, historical maps which show a building on the site and the overall appearance of the building have established that, on balance, the appeal building was historically used as a dwelling. Therefore, this aspect of the

policy is satisfied. Thus, for the above reasons, I consider that the proposal represents a replacement opportunity.

- 5.21 Additionally, Policy COU 3 requires that proposals for a replacement dwelling will only be permitted where all the three criteria as listed in the Policy are met. Criterion (a) states that the *“proposed replacement dwelling must be sited within the established curtilage of the existing building, unless either (i) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (ii) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits”*. As the PS advises, for the purposes of Policy COU3 ‘curtilage’ means the immediate, usually defined, and enclosed area, for example by landscaping, hedging or fencing surrounding an existing or former dwelling house.
- 5.22 From my site visit, the appeal building does not have an appreciable curtilage. Whilst it may have done in the past, it has now been subsumed within the curtilage of No. 144 Ballygowan Road. Therefore, criterion (a)(i) of Policy COU 3 is met.
- 5.23 Notwithstanding the above, even if I had found in the alternative, the elevated nature of this land and its proximity to the existing dwelling would result in unacceptable amenity issues, with the replacement dwelling being constructed in tandem with 144 Ballygowan Road. These issues would include overlooking and the loss of privacy of the occupants of No. 144 Ballygowan Road. Whilst access to a dwelling within the curtilage could be taken from the verge that serves the NI Water structures, and the mature boundary treatments of the in-curtilage site would provide a suitable backdrop, it is considered that an alternative position for a dwelling nearby would result in demonstrable amenity benefits. Therefore, as I have assessed, criterion (a)(ii) of Policy COU 3 is also satisfied.
- 5.24 The preferred replacement site is located southwest of the appeal building. It is proposed to position the dwelling in an excised area to the northwest of this field. The preferred site’s topographical elevation would be comparable to that of No. 144 Ballygowan Road, and the established mature trees would provide a suitable backdrop. The existing trees and hedgerows, along the southwestern boundary, would assist with the integration of a dwelling at this location.
- 5.25 The NI Water structures, whilst sited at a greater elevation than that of the appeal building, are visibly larger in terms of their height, width and overall footprint to the domestic buildings and farm shed in front of them. These structures are moderately screened from the Ballygowan Road by mature trees. However, they are appreciable in the landscape, particularly when viewed from the junction of Listullycurran Road and the Ballygowan Road.
- 5.26 Minor landscaping would therefore be required along the southern boundary of the preferred site, where access to it is proposed to be taken from the existing driveway to No. 144 Ballygowan Road. This marginal requirement would also demarcate a physical boundary between the preferred site and the public road, with the proposed dwelling having no frontage extending to the public road. Therefore, even with its elevated siting, the construction of a dwelling on the preferred site would not have a visual impact significantly greater than that of the existing building or indeed the NI Water structures beyond.

- 5.27 Regarding the design and layout, and notwithstanding the provision of a notional site layout plan, as discussed further below, matters pertaining to the ultimate design and layout would be considered at reserved matters stage. The ridge height and levels could be regulated by condition, if planning permission was to be granted.
- 5.28 I am satisfied that the proposal meets the policy tests of COU 3. The appeal building exhibits the essential characteristics of a dwelling and, for the reasons given, an off-site replacement dwelling is merited. Due to its condition and use in association with No. 144 Ballygowan Road and its inter-relationship to the host dwelling, the appeal building could be retained, as advocated in the justification and amplification of the policy, subject to a planning condition for its retention as an ancillary domestic building. This would ensure that the appeal building could not be considered for a further replacement opportunity. Hence, for the above stated reasons, the Council's second and third reasons for refusal are not sustained.
- 5.29 Policy COU 8 states that "*planning permission will be refused for a building which creates or adds to a ribbon of development*". The justification and amplification of policy states that, "*a ribbon development cannot be defined by numbers, although if **there are two buildings fronting a road and beside one another**, there could be a tendency to ribboning*" (emphasis added). The Council advise that the existing ribbon development consists of the property at No. 144 Ballygowan Road, a barn style outbuilding and the appeal building. Consequently, the Council consider that the appeal proposal would, if permitted, add to ribbon development.
- 5.30 No. 144 Ballygowan Road fronts onto the road. The appeal building is situated behind No. 144 Ballygowan Road and therefore it does not front onto the road. The barn does not front onto the Ballygowan Road due to its orientation. Accordingly, within the context of Policy COU 8, which differs from previous retained policy on this matter, I find that there is only one building fronting onto the road, that of No. 144 Ballygowan Road. Based on the buildings identified by the Council, there is no ribbon of development present at this location. Therefore, the proposal before me does not offend Policy COU 8 and the Council's fourth reason for refusal is not sustained.
- 5.31 Policy COU 16 'Rural Character and other Criteria' states that "*in all circumstances proposals for development in the countryside must be in accordance with and must not cause a detrimental change to, or further erode the rural character of an area*". The Council contend that the off-site replacement will add to an existing ribbon of development and as such would have an adverse impact on and damage the rural character of the area. It is for this reason only that they consider the proposed development is contrary to the policy. I have considered the ribboning development aspect above and concluded that there is no ribbon of development. In any case, unlike former Policy CTY14, Policy COU 16 does not address ribbon development. Therefore, the Council's fifth reason for refusal is not sustained.
- 5.32 Policy NH2 of the PS states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species; or not likely to harm other statutorily protected species and which can be adequately mitigated or compensated against. Policy NH5 states planning permission will only be granted for development which is not likely to result in an unacceptable adverse impact on, or damage to, known natural heritage features worthy of protection.



Within the evidential context, the Council has not provided any information regarding the nature or type of species or any adverse effects of the proposed development on same. Indeed, no consultation was carried out with the statutory authority on these matters, in this case the Department for Agriculture, Environment and Rural Affairs (DAERA). Additionally, the Council have considered the requirement for a biodiversity checklist is based upon their conviction that the appeal building will be demolished. However, the Appellant is undecided whether the building to be replaced will be demolished. Nevertheless, given its upkeep and current use, its retention and future use could be conditioned if planning permission was to be forthcoming.

- 5.33 The Appellant has demarcated the preferred location of the replacement dwelling together with details like its footprint including width and size. This location is acceptable for the reasons outlined earlier in this report. Matters regarding the siting, and design could, if planning permission is forthcoming, be conditioned and brought forward at reserved matters stage.
- 5.34 The Council's Environmental Health Department raised no objection in principle to the proposal, subject to a plan being submitted at reserved matters stage detailing, inter alia, the location of the septic tank/biodisc and area of sub-soil irrigation for disposal of effluent. As per the submitted plans, the Appellant is proposing a minor alteration to the existing access onto the public road. The Department for Infrastructure (Roads) consultation response raised no objection subject to the provision of access details including visibility splays of 2.4m x 93m. However, given my on-site observed access arrangements and road speeds, I am not persuaded that the extant visibility splays width require augmentation beyond the 90m as depicted on the submitted plans. Whilst the provision of these splays will involve the realignment of the existing hedgerow fronting onto the public road, it could be replanted behind the proposed splays. All the above matters could be conditioned in the event of permission being granted.
- 5.35 Following my site inspection, I concluded that the preferred site for the replacement dwelling largely comprised of grassland which has been improved by agricultural undertakings. There are no water courses traversing the appeal site. Areas of established woodland were identified on site, although, as per the notional site layout plan, these are being retained, and their retention can be conditioned if planning permission was to be forthcoming. Therefore, in the context of the appeal before me, I am not persuaded that the proposed development with the retention of the appeal building and the removal of a portion of roadside hedgerow is likely to harm protected species or have an unacceptable adverse impact on natural heritage. Subsequently, the Council's sixth reason for refusal is not sustained.
- 5.36 The Appellant, on notional layout plan 04 dated stamped 22<sup>nd</sup> February 2022, has demarcated the preferred siting of the replacement dwelling. This plan also denotes the curtilage of the proposed dwelling, including an area to its front, which is to be restricted and can be conditioned. Given this and the preferred site's sloping nature, in the interests of visual amenity, levels will be required as will a ridge height restriction.
- 5.37 In line with the above reasoning, I find that the proposal meets with Policies COU 3, COU8 and COU16 of the PS. Thus, it follows that the proposal is compliant with

Policy COU 1 of PS. Furthermore, objections pursuant to Policy NH2 and Policy NH5 have not been upheld. For the reasons given above, the Council has not sustained any of its reasons for refusal.

## 6.0 RECOMMENDATION

6.1 I recommend to the Commission that the appeal be allowed and that outline planning permission be granted, subject to the following conditions: -

1. Except as expressly provided for by condition 5, the following reserved matters shall be as approved by the planning authority – the design and external appearance of the dwelling.
2. Any application for approval of reserved matters shall incorporate plans and sections indicating existing and proposed ground levels and proposed finished floor levels for the dwelling, all in relation to a known datum point.
3. The building shaded green on the attached drawings PAC1 and PAC2 shall be retained and shall be used for domestic storage purposes only.
4. The dwelling including its curtilage area shall be sited within the area shaded blue on the attached drawing PAC 3, date stamped 22<sup>nd</sup> of February 2022.
5. The ridge height of the dwelling shall not exceed 6 metres above existing ground level at the lowest point within its footprint.
6. Road and visibility splays of 2.4 metres x 90 metres shall be laid out in both directions onto Ballygowan Road before any building operations commence and thereafter shall be retained.
7. No development shall take place until there has been submitted to and approved by the planning authority a landscaping scheme showing:
  - trees and hedgerows to be retained along the northern, western and eastern boundaries of the site;
  - new planting along the proposed access verge to the site and associated southern site boundary of the site;
  - hedge planting to the rear of the visibility splays; and
  - and the location, numbers, species and sizes of trees and shrubs to be planted within the site.

The scheme of planting, as finally approved, shall be carried out during the first planting season after the dwelling is occupied. Trees and 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. An application for approval of reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.
9. The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of the last of the reserved matters to be approved, whichever is the later.

6.2 This recommendation relates to the following drawings: -

<b>Drawing No.</b>	<b>Title</b>	<b>Scale</b>	<b>Date</b>
Council No. 01/PAC 1	Location Plan	1:2500	13 August 2021
Council No. 02/PAC2	Site Location Plan	1:500	13 <sup>th</sup> August 2021
Council No. 04/PAC 3	Site Layout Plan	1:500	22 <sup>nd</sup> February 2022

**List of Documents**

Planning Authority: - Comments submitted on Behalf of Lisburn City and Castlereagh Council in relation to the Plan Strategy.

Appellant: - Statement of Case submitted on behalf of the Appellant.  
Comments submitted on behalf the Appellant regarding the Planning Strategy

