

PLANNING APPEALS COMMISSION

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

**Appeal by Noel McHugh and Daniel McHugh
against the refusal of full planning permission for retention of an existing agricultural
building with ancillary hard standing area and new agricultural access link on lands
24m North of 24 Cluain-Air, Lurganare, Newry, BT34 1PW**

**Report
by**

Commissioner Rachel Taylor

Planning Authority Reference: LA07/2023/2250/F

Procedure: Written Representations

Commissioner's Site Visits: 23rd and 30th April 2024

Report Date: 23rd May 2024

1.0 BACKGROUND

- 1.1 Newry, Mourne and Down District Council received the application for planning permission on 14th February 2023.
- 1.2 By notice dated 25th August 2023 the Council refused 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 and Policy CTY12 criteria (a) and (e) of Planning Policy Statement 21 Sustainable Development in the Countryside, in that;**
 - **It has not been demonstrated that it necessary for the efficient use of the agricultural holding or forestry enterprise;**
 - **The shed will result in detrimental impact on the amenity of residential dwellings outside the holding or enterprise including potential problems arising from noise, smell and pollution.**
 3. **The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY12 of Planning Policy Statement 21 Sustainable Development in the Countryside, in that;**
 - **the applicant has not provided sufficient information to demonstrate that there are no suitable existing buildings on the holding or enterprise that can be used;**
 - **the proposal is not sited beside existing farm or forestry buildings and it has not been demonstrated that the siting is essential for the efficient functioning of the business or that there are demonstrable health and safety reasons.**
 4. **The proposal is contrary to the Strategic Planning Policy Statement and Policy CTY14 criterion (b) and (c) of Planning Policy Statement 21, Sustainable Development in the Countryside, in that;**
 - **The development results in a suburban style build-up of development when viewed with existing and approved buildings;**
 - **The development does not respect the traditional pattern of settlement exhibited in that area.**

5. The proposal is contrary to Policy CTY15 of Planning Policy Statement 21, Sustainable Development in the Countryside in that the development mars the distinction between the defined settlement limit of Lurganare and the surrounding countryside.

- 1.3 The Commission received the appeal on 5th October 2023 and advertised it in the local press on 18th October 2023.
- 1.4 No representations were received from third parties.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site is located off the Glen Road and is approximately 24m north of Cluain-Air, a residential development which lies within the settlement of Lurganare, Newry.
- 2.2 It comprises an irregular shaped parcel of land which has been cut out of a larger agricultural field, with a large rectangular shed located in it. The existing access to the appeal site is via a double field gate. Beyond this is a further field gated access to an agricultural field to the north with another field gate marking the end of an overgrown laneway which leads directly to the appeal site. There are two relatively overgrown laneways parallel to one another with a mature hedgerow between them, which abut the rear, northern boundary of Cluain-Air housing estate.
- 2.3 Proposed access is via an existing concrete lane which serves 2 dwellings, Nos. 59 and 61 Glen Road. The concrete lane currently terminates at No. 61. An access link is proposed to extend the concrete lane to connect to the existing shed for access purposes. The proposed link would cross steeply sloping land and has not been constructed.
- 2.4 The area around the shed is relatively flat with areas of compacted loose stones creating a hardstanding, predominantly to the south-eastern "front" gable. There is a grassed embankment which has been cut out of the field for the creation of the hardstanding area, with the topography then rising steadily in a northern and eastern direction beyond the site.
- 2.5 The appeal shed measures approximately 18.9m by 8.8m with a ridge height of 4.7m, it has a pitched roof, is finished in green cladding and has black PVC guttering. The shed is based on a concrete slab and there are no windows. The shed has two openings on the south-eastern gable, consisting of a large roller shutter door and a single pedestrian sized door, which were locked on the date of the first inspection. There are transparent sheets on the north-eastern plane of the pitched roof to allow light in.
- 2.6 On internal inspection, there were two field gates tied in a corner of the shed to create a pen and some fresh straw on the otherwise clean floor. No animals were present nor was there any evidence that they had been. Within the shed there was one horse box, some hay, 2 bags of meal, a small domestic sized trailer, a tractor, 2 empty storage shelving units, some gateposts, an off road buggy, a length of plastic piping, some wood and a saddle. I estimate that the shed was 60-70% empty and

had to be opened from locked to gain access inside. On the day of my second inspection, including organised access to the building interior, a horse was standing outside to the rear of the shed. Sheep were in a nearby field.

- 2.7 The site boundaries are defined by a mature field hedge to the south west which wraps partly around to the north west. The remainder of the north western and north eastern boundaries are defined by a post and wire fence with the south eastern boundary defined by part of a mature hedgerow. The new access link element which has not been constructed is undefined within the field parcel and the remainder of the proposed access boundaries are defined by a concrete lane with part hedging and part post and wire fencing.
- 2.8 Surrounding land use is mainly agricultural in nature with the settlement of Lurganare to the south and agricultural fields to the west. No. 61 Glen Road is a single storey white rendered bungalow with single garage and lean to outbuilding within the domestic curtilage beyond which to the east are agricultural lands which rise to a rolling drumlin landscape.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The appeal site is located within the countryside as designated under the Banbridge, Newry and Mourne Area Plan 2015 (BNMAP). It lies outside of the settlement development limits of Lurganare. Glen House, Number 46 Glen Road is south west of the application site and is a Grade B1 listed building (HB16/21/004). There are no specific policies in the Plan relating to the proposal which is assessed against regional policy.
- 3.2 The red line boundary comprises an existing shed (subject to live enforcement (LA07/2017/0384/CA)) and a proposed access to the shed from Glen Road via an existing laneway that provides access to two adjacent dwellings. There is an existing access to the shed along the northern boundary of Cluain-Air. The shed measures approximately 18.9m by 8.8m with a ridge height of approximately 4.7m and is finished with green cladding. The building stands alone and is viewed in isolation adjacent to residential dwellings to the north-east and south. The shed is sited in a flat part of the field before the lands rise upwards in an easterly direction. An area of hard standing has been created around the shed. Floor plans show 3 stable blocks in the corner of the shed. Internal access was gained during a site visit which confirmed that there are no stable blocks within the shed. A corner had been cordoned off using metal barriers and some hay was visible on the ground. At the time of the site visit the shed was used for the storage of machinery.
- 3.3 The access to the shed along the northern boundary of Cluain-Air is unauthorised. The planning application proposes to use an existing private laneway.
- 3.4 A previous planning application LA07/2019/0214/F – Retention of all purpose agricultural shed, site works and laneway onto Glen Road, was refused permission on 16th October 2020, citing 4 reasons for refusal relating to Policies CTY 12, CTY 13, CTY 14 and CTY 15 of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21).

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- 3.5 The application was advertised in line with statutory requirements and relevant neighbours notified. No representations were received during the processing of the application.
- 3.6 The application was delegated to officers to determine under the Council's Scheme of Delegation.
- 3.7 In terms of regional planning policy, the Strategic Planning Policy Statement (SPPS) is material to all decisions on individual planning applications. A transitional period will operate until such times as a Plan Strategy for the whole Council area has been adopted. Paragraph 1.12 of the SPPS states that any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS i.e. where there is a change in policy direction, clarification or conflict with the existing policies then the SPPS should be afforded greater weight. However, where the SPPS is silent or less prescriptive on a planning policy matter, then the retained policies should not be judged to lessen the weight afforded to retained policy.
- 3.8 PPS 21 Policy CTY 1 identifies the instances where planning permission will be granted for non-residential development in the countryside. Agricultural and forestry development is referred to Policy CTY 12 of PPS 21 whilst outdoor sport and recreational uses is referred to Planning Policy Statement 8 – Open Space, Sport and Outdoor Recreation (PPS 8).
- 3.9 The proposal description is outlined as “retention of an existing agricultural building with ancillary hard standing area and new agricultural access link”. The agent has referred to Policy OS 3 of PPS 8 as the applicable policy given the alleged equestrian use of the shed.
- 3.10 The various types of outdoor recreational uses are referred to in the justification and amplification of Policy OS 3. Paragraph 5.33 specifically deals with ‘Equestrian Uses’ and states that outdoor participatory recreational uses such as riding schools will normally be considered acceptable in principle provided the scale of ancillary buildings are appropriate to their location and can be integrated into the landscape. Whilst only the example of riding schools is stated as being acceptable in principle, this would not bar consideration of other equestrian uses under the policy, including stables.
- 3.11 The Supporting Statement states that “the existing building is currently used for storage and sheltering of equines and other equipment.” It indicates that the building is considered multipurpose and could also be used for calving [sic] of ponies, which is also associated with the applicants’ personal hobbies and interests. Further correspondence from the agent states that “the building can house and protect farm machinery, vehicles, tools and other equipment from the elements. It may also include designated storage areas, shelving and racks for organised equipment and management. The building has also been used to house and manage small horses owned by the applicant. A designated space within the building has been allocated for a small workshop and maintenance activities. This area has been equipped with tools, work benches, and storage to support repairs and maintenance of farm equipment.”

- 3.12 The supporting information alludes to the shed as being 'multipurpose' and outlines the various potential uses which are not firm but rather vague and hypothetical.
- 3.13 "Development on a Farm" has been ticked on the application form. The applicants are Noel and Daniel McHugh of 37 Canal Bank, Poyntzpass. The application form states that the farm business is jointly owned by the applicant. No details of the farm business owners have been provided in terms of names. The farm business address is listed as Mourn House Poyntzpass. The farm business ID is listed as 663326. The agent has answered 'yes' that single payment is claimed and 'no' to the application involving the siting away from an established group of buildings. Farm maps dated 2015 for a Noel John Irwin who is associated with farm business 649080 have been submitted. Horse passports were also submitted alongside the application. Details of the farm holding are contradictory.
- 3.14 The agent has referred to a previous approval LA07/2017/0195/F which was allowed by the PAC under 2018/A0008 whereby the PAC decision recognised that "none of the listed criteria to be met under Policy OS3 entails provision of supporting information to demonstrate that there is a need for this type of development within the rural area."
- 3.15 The information that has been submitted alongside this application has demonstrated that the applicants are proposing to use the shed for agricultural use, not solely equestrian use. The equestrian use appears to be ancillary to the overall proposed use which is outlined in the application description of an existing agricultural building. A farm ID has been provided as well as farm maps, albeit from a different farm holding. Given the above, the Council consider the applicable policy is Policy CTY 12 of PPS 21. During the site visit when arranged internal access was gained, no horses were present. The conditions of the shed were observed whereby the Council was not satisfied that the shed's primary use is equestrian. Although the shed at times may house horses, the information provided to date directed the Council to CTY 12. The assessment of the development against Policy OS 3 is misplaced.
- 3.16 The agent also considered the application against CTY 12 of PPS21. The Council consider that the appellants fail to recognise that planning permission will be granted for development on an active and established agricultural holding. Paragraph 5.56 of PPS 21 which clarifies that for the purposes of CTY 12 the determining criteria for an active and established business will be that set out under Policy CTY 10. Criteria (a) of Policy CTY 10 requires that the farm business is currently active and has been established for at least 6 years. Paragraph 5.38 states that the applicant will therefore be required to provide the farms DAERA business ID number along with other evidence to prove active farming over the required period.
- 3.17 Regarding the agents reference to equestrian activity, Paragraph 5.43 of PPS 21 states that under Policy CTY 10, an equine business is to be afforded the same benefits as the established and active farm. Applicants are required to provide sufficient information to demonstrate a level of involvement commensurate with commercial activity over the requisite 6 years. Equine Passports were submitted to the Planning Office.

- 3.18 Based on the information provided, there is nothing to indicate that the appellants have either an equine or farm business. Paragraph 5.44 of Policy PPS 21 goes on to state that those keeping horses and/or ponies for hobby purposes will not satisfy the policy requirements of CTY 12.
- 3.19 DAREA were consulted, and their response advised that the farm business number identified on the application form has not been in existence for more than 6 years (established December 2017) and that the farm business has not claimed payments through the Basic Payment Scheme or Agri Environment scheme in each of the last 6 years. DAERA advised that the farm business identified on the P1C is a category 3 status that is not eligible for claiming farm payments.
- 3.20 The policy sets out the onus is on the applicant to provide information to confirm all of the following:
- There are no suitable existing buildings on the holding or enterprise that can be used;
 - The design and materials to be used are sympathetic to the locality and adjacent buildings; and
 - The proposal is sited beside existing farm buildings or forestry buildings.
- 3.21 The agent advised that there are no redundant buildings on the holding, however no evidence was provided to clarify this given the submission of 2015 farm maps for a different farm business. The shed is sited in isolation. It is not apparent where/if there are any other existing buildings on the farm given the contradictory information provided and lack of clarification. No. 61 Glen Road has been included within the blue line shown on the site location, however the Council was not furnished with any information to advise if these buildings are within the subject farm holding.
- 3.22 It is considered that the applicant/agent has not provided sufficient information to confirm that: there are no suitable existing buildings on the holding or enterprise that can be used; the building is sited beside existing farm or forestry buildings; the building is essential for the efficient functioning of the business; or there are demonstrable health and safety reasons to justify the selection of the siting away from the main agricultural buildings.
- 3.23 The nearest dwellings to the shed are those in Cluain-Air which are not associated with the farm holding. It is noted there is no slurry pit included in this proposal. In their final response, Environmental Health (EH) advised that given the close proximity of the shed to the residential dwellings, and given the proposed use of the shed as advised by the agent (storage of equipment and machinery, housing of livestock and also for carrying out of maintenance activities in a designated workshop area within the building), the proposal may result in noise and odour emanating from the site which may affect the amenity of the neighbourhood. The separation distance between the shed and the development to the south is approximately 20m. It is considered, due to its proximity, in adopting a precautionary approach, the residential amenity of the existing houses may be impacted upon due to the future uses of the shed. It is unlikely that planning conditions could be used to mitigate against this.

- 3.24 Keeping a permanent building for the housing of livestock and horses would result in the storage of manure, although there is no slurry pit, which would have been likely to result in more sustained odours in the immediate area. The proximity of the shed to the properties at Cluain-Air is such that these dwellings would suffer from unpleasant odours and unacceptable noise given the agricultural use of the shed. The Council notes EH concerns and reiterates that conditions are unlikely to mitigate against this.
- 3.25 For the reasons outlined, there are no overriding reasons why this development is essential in this rural location and could not be located within a settlement as per Policy CTY 1.
- 3.26 Integration and rural character policies CTY 13 and 14 are also applicable for new buildings in the countryside. The isolated and 'random' siting of the shed away from other buildings on the farm holding essentially results in a suburban style build-up of development when viewed with existing and approved buildings. The siting also does not respect the traditional pattern of settlement exhibited in the area whereby the nearby agricultural sheds are clustered together to form farm holdings. Moreover, the shed is located immediately adjacent to the development limit of Lurganare which directs to Policy CTY 15 - The setting of Settlements. When viewed from the north the shed will appear to be visually associated with Lurganare and will give the impression that the settlement actually extends beyond its defined settlement limit, which is contrary to the provisions of the policy. As a result, it mars the distinction between Lurganare and the immediate countryside.
- 3.27 Paragraph 6.1 of the justification and amplification of CTY 15 states that landscapes around settlements have a special role to play in maintaining the distinction between town and country, in preventing coalescence between adjacent built-up areas and in providing a rural setting to the built-up area. The aim of the settlement limits is to maintain a clear distinction between the built-up area and surrounding countryside. Contrary to the appellants' claim, the presence of the "existing agricultural laneway" does not serve as a barrier between the retention building and the settlement limit for Lurganare given the buildings visual linkage with Cluain-Air housing development to the south. When viewed from the north the shed will appear to be visually associated with Lurganare and will give the impression that the settlement actually extends beyond its defined development limit, which is contrary to the provisions of the policy.
- 3.28 The photographs submitted in the appellants' Statement of Case (SoC) of agricultural buildings in the local area demonstrate existing buildings in farm groups/holdings which show the importance of clustering and visually linking agricultural buildings to assist in integration and to avoid 'random' development which essentially goes against the scope of PPS 21. The shed appears as an isolated structure not associated with any other group of buildings, therefore not respecting the traditional pattern of settlement exhibited in the area resulting in a suburban style build up.
- 3.29 The agent has clarified in his SoC that the use of the building is not solely outdoor recreational use but rather the "buildings multipurpose use aligns with the diverse functions and activities associated with their agricultural pursuits" and that the

building “provides short term shelter for livestock and equines associated with their agricultural activities”.

- 3.30 The Council reaffirm that the proposal description lends itself to CTY 12 of PPS 21 and that the contradictory and conflicting information submitted, whilst creates a degree of ambiguity, on balance directs the Council to agricultural development in accordance with CTY 12 and not outdoor sport and recreation in accordance with PPS 8.
- 3.31 The agent advises that the retention building “is located adjacent to a number of agricultural buildings, including a single storey dwelling associated with the farm business.” No information has been provided to show that the adjacent single storey dwelling is associated with the farm business, other than being included within the blue line boundary; and although within the blue line boundary, the new building must be sited beside existing farm buildings, not merely sited beside buildings that may be owned by the applicant. It has not been demonstrated that the siting is essential for the efficient functioning of the business or that there are demonstrable health and safety reasons.
- 3.32 If the Commission determines that planning permission should be granted, the following conditions are recommended:
- Retrospective condition;
 - Requirement for the vehicular access, including visibility splays and any forward sight distance to be in accordance with drawing PL-03A prior to any other development hereby permitted;
 - The requirement for the building to be used only for agricultural purposes and for no other purpose; and
 - The requirement for no animals to be housed within the shed at any time.

4.0 APPELLANTS' CASE

- 4.1 The appeal building to be retained is adequately screened by a mature existing hedgerow when viewed from the Glen Road and is located adjacent to a number of agricultural buildings, including a single storey dwelling associated with the farm business.
- 4.2 The existing agricultural multi-purpose storage building is currently accessed from the Glen Road, however the existing agricultural building also has a right of way from another access, which is also located along the Glen Road from which the site can be accessed onto an existing private concrete laneway which serves two existing detached dwelling houses, both of which have a domestic detached garage.
- 4.3 The appeal building is set back more than 65m from the country road. The access runs to the west of the site via an existing laneway from Glen Road. The southern site boundary is defined by a wooden fence while the northern boundary is defined by an agricultural gate and boundary fencing. All boundaries feature mature deciduous hawthorn hedging which provides more than adequate screening from the Glen Road.

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- 4.4 There are no critical views from the public road and no long range views of the site when travelling in either direction along the county adopted Glen Road due to the existing mature hedgerows which screen the existing agricultural storage building from any critical views along this stretch of Glen Road.
- 4.5 The site is located just beyond the settlement limits for Lurganare and the predominant land use is agriculture with some examples of detached dwellings, industrial/commercial buildings and other agricultural buildings located along the Glen Road.
- 4.6 Policy CTY 1 of PPS 21 is referenced and acknowledges that the retention application building falls under the category of development types outlined in Policy CTY 1. The current multifunctional agricultural building has been designed to adapt to a variety of functions and activities associated with the applicant's agricultural pursuits. The appeal building aligns with the guidelines of Policies OS 3 of PPS 8 and CTY 8, 12, 14 and 15 of PPS 21. Consequently, the development meets the guidelines featured and is acceptable in principle, as per Policy CTY 1.
- 4.7 The appeal pertains to a versatile, multi-purpose agricultural building. The appellants intentionally incorporated a specific area within the structure designated for housing small horses that they personally own. Duplicates of horse passport documentation were provided with the planning supporting statement. Although the planning officer may not have immediately observed the presence of these horses during their site visit, the assertion that the information leads to the application of only CTY12 of PPS 21 is flawed. This is because the appellants consistently emphasise that the buildings multipurpose use aligns with the diverse functions and activities associated with their agricultural pursuits.
- 4.8 From a critical perspective, the building does not exceed the skyline, and the almost minimalist planting effectively obscures it from public view. Currently, it enjoys an appropriate level of enclosure and integration. In this regard, we assert that the proposal aligns with criterion (III) of policy OS 3, ensuring no adverse impact on visual amenity or the character of the local landscape. The development seamlessly integrates into the surroundings by leveraging existing vegetation and topography.
- 4.9 The consideration of the building's impact on the landscape, as per Policy OS 3, intersects with the assessments outlined in Policy CTY 12 of PPS 21, which addresses the integration of buildings in rural areas.
- 4.10 Given the proposal also embodies an outdoor sport and recreation use in accordance with PPS 8, it falls within the category of developments that are, in principle, deemed acceptable in the countryside under CTY 1 of PPS 21.
- 4.11 Paragraph 5.39 of Policy CTY 12 states "for the purposes of this policy 'agricultural activity' refers to the production, rearing and growing of agricultural products including harvesting, milking breeding animals and keeping animals for farming purposes, or maintaining the land in good agricultural condition". The appellants possess and oversee the maintenance of the adjacent agricultural lands surrounding the retention building. This versatile structure served various purposes, such as

storing equipment for land maintenance and ensuring the agricultural and environmental well-being of the lands. Additionally, it provides short-term shelter for livestock and equines associated with their agricultural activities. The appeal building plays a crucial role in enhancing the efficiency and daily operations of the farm holding.

- 4.12 The activities mentioned within the supporting statement encompass the operations conducted within the multipurpose building. Access to the shed occurs on a daily basis, and the duration is minimal, primarily reserved for emergency purposes. As of our current knowledge, there is no awareness of any planning permissions granted by any council that impose restrictive conditions regarding operational duration.
- 4.13 There are no plans to install flood lighting on the site or the building. Any waste, excluding animal waste, will be appropriately disposed of by licensed contractor. It is noteworthy that the existing building does not house any underground tank or slurry pit. Additionally, the applicant has not received any communication from the EH department regarding the operations carried out at the building.
- 4.14 The location chosen for the appeal building demonstrates a regard for the traditional settlement pattern prevalent in the local area. This pattern encompasses various typologies such as dwellings at farm holdings, clusters of dwellings, isolated dwellings and housing developments.
- 4.15 The retention building's modest scale, low ridge height, and the elevation of lands to the east collectively contribute to its unobtrusive presence in the landscape, preventing it from appearing excessively prominent. Furthermore, the existing mature hedgerows along the boundaries play a crucial role in ensuring that the retention building does not contribute to a sub-urban style accumulation of development when juxtaposed with the existing and approved buildings. An appendix of visual representations showcasing different designs of multipurpose agricultural structures was submitted.
- 4.16 The modest scale, low ridge, combined with natural topography facilitate its seamless integration into the surrounding landform. The presence of the existing agricultural laneways serves as a barrier between the retention building and the settlement limit of Lurganare, effectively preventing any ambiguity in distinguishing between the boundary of the rear of the settlement limit and the countryside. This measure safeguards against the risk of urban sprawl, ensuring a clear delineation between areas in the rural landscape.
- 4.17 The development is crucial for optimising the efficiency of the agricultural enterprise, and its character and scale are fitting for its location. It seamlessly integrates into the landscape, remaining unobtrusive from critical road viewpoints. There is no adverse impact on natural or built heritage, and the proposal as sited, avoids any negative impact on the amenity of residential dwellings outside of the holding. The placement of the appeal building at this location is indispensable for the day-to-day operations of the farming enterprise, facilitating improvements in efficiency, environmental practices, animal health and welfare, as well as health and safety.

- 4.18 The establishment of stables within the building intended for the privately owned small horses of the appellants might be viewed on a modest scale yet this should not preclude the consideration of Policy OS 3.
- 4.19 As previously outlined the existing agricultural laneway delineating the boundary of the settlement limit and the rural countryside helps mitigate any possibility of urban expansion, preserving a distinct boundary between developed areas and the surrounding landscape.
- 4.20 The appellants face limited access to farmlands and existing agricultural structures within their holding. Therefore, considering the Policy CTY 12 requirement of being “necessary for the efficient use of the agricultural holding”, it is evident that the holding at this outlying farm location is essential. Consequently, based on these key considerations, it is justified and clear that this development is crucial for the efficient operation of the agricultural enterprise. The appellants’ desire to retain the building clearly indicates their intention to enhance the day-to-day operations of their agricultural and equine pursuits and hobbies.

5.0 CONSIDERATION

- 5.1 The main issues in this appeal are whether the development is:
- acceptable in principle in the countryside;
 - detrimental to amenity, rural character and
 - the setting of Lurganare and the surrounding countryside.
- 5.2 Section 45(1) of 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 Local Development Plan (LDP), the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 5.3 The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is within the countryside, a short distance to the north of the settlement limit for Lurganare. The BNMAP contains no specific policy for agricultural buildings in the countryside and directs to regional policy.
- 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 the local Council adopts a Plan Strategy (PS). No Plan Strategy has been adopted for this area. The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. The retained policy of relevance to this appeal is Planning Policy Statement 21 ‘Sustainable Development in the Countryside’ (PPS21). As no conflict arises between the policy provisions of the SPPS and retained policy insofar as it relates to the appeal proposal, the latter provides the relevant policy context.

Principle of development

- 5.5 Policy CTY 1 of PPS 21 indicates that there is a range of types of development that are considered to be acceptable in principle in the countryside and that contribute to the aims of sustainable development. Matters to be considered in the appeal relate to Policy CTY 12 of PPS21 and Policy OS3 of PPS8. Whilst the appellants refer to Policy CTY 8 of PPS 21, no arguments were advanced under this policy.
- 5.6 The Council consider the applicable policy to be Policy CTY 12 of PPS21. A farm business ID has been provided by the appellants as well as a farm map. Paragraph 5.43 of PPS 21 states that under Policy CTY 10, an equine business is to be afforded the same benefits as the established and active farm. It also states at Paragraph 5.44 of Policy PPS 21 that those keeping horses and/or ponies for hobby purposes will not satisfy the policy requirements of CTY 12.
- 5.7 Policy CTY 12 is entitled 'Agricultural and Forestry Development'. It states that planning permission will be granted for development on an active and established agricultural or forestry holding where it is demonstrated that several stated environmental and planning requirements are met. The fundamental requirement of Policy CTY 12 is that the development is on an active and established farm holding. The farming information submitted however, is contradictory, which is unhelpful. It is noted though that the evidence from DEARA indicates that the farm business being relied upon does not meet the basic requirement of the policy and no evidence has been provided to demonstrate farming activity for the required 6-year period. The Council raise other concerns regarding this policy, which are considered below.
- 5.8 Despite opportunities to clarify the extent of the farm holding, any buildings associated with it, the relevant business ID or indeed supporting documentary evidence, clarity around the active and established nature of the farm holding has not been provided. The farm map provided is outdated (2015) and does not include the lands to which the appeal site relates. The address on the the farm map differs to that stated on the P1 form as the applicants' address, and the address completed on the P1 form as associated with the Farm Business differs again. None of the three addresses given are associated with the land indicated in blue. The explanation of the operations of the building as being used daily but also only for emergency use and then for storage, as a workshop, for livestock and equine use do not help in identifying the extent of the holding or the buildings associated with it, nor whether it is necessary for the efficient use of the agricultural holding.
- 5.9 Both parties referred to horse passports that were supplied to the Council. The Council provide no commentary in relation to these, nor have I been furnished with them within either parties' submissions. They are therefore of limited assistance.
- 5.10 The evidence advanced to justify why the building is necessary for the efficient use of the holding is unclear. Whilst it is stated it is 'crucial and indispensable for optimising the efficiency of the agricultural enterprise', this statement was not qualified or explained. References regarding improvement in efficiency, environmental practices, animal health and welfare and health and safety are cited but were not accompanied by any supporting evidence. Some comment is also made regarding limited access to farmlands and existing agricultural structures

within the holding, but without knowing the extent of the holding and the buildings to which it relates, there is insufficient evidence to support the necessity for the shed.

- 5.11 The appellants have stated within their P1 form that the shed has been completed from 17/11/2017 and 'is accessed daily, with the duration being minimal, primarily reserved for emergency purposes'. This statement is contradictory and does not, when taken with the evidence as a whole, persuade me that the building is necessary for the efficient use of the holding. I am reinforced in this opinion by my observations of the interior of the building. It is not fully utilised. Whilst the appellants also refer to a *desire (my emphasis)* to retain the building, with the intention to enhance the operations of the agricultural and equine pursuits and hobbies, that aspiration is not demonstrative of a need for the building.
- 5.12 The extent of the farm holding being relied upon is unclear as are the buildings associated with that holding. The sheds referenced are within the curtilage of No. 61 Glen Road and are small domestic outbuildings. Taken as a whole, the limited evidence provided does not persuade me that the appeal shed is necessary for the efficient use of the holding. Criterion (a) of Policy CTY 12 of PPS 21 is not met.
- 5.13 For the reasons set out above, it is not possible to ascertain if there are no suitable buildings on the holding or enterprise that can be used.
- 5.14 Exceptionally, Policy CTY 12 allows consideration to be given to an alternative site away from existing farm buildings, provided there are no other sites available at another group of buildings on the holding, and where it is essential for the efficient functioning of the business.
- 5.15 Given the limitations of the evidence before me, I am not persuaded that the appeal building is essential for the efficient functioning of the business or that there are demonstrable health and safety reasons to justify it. The exceptional test of Policy CTY 12 is not met. The Council's concerns in this respect are well founded.
- 5.16 The appellants advance an argument that a small portion to the rear of the shed is marked out for three stables and this entitles the appeal to be assessed against Policy OS 3 of PPS 8. They comment that the establishment of stables within the building is intended for privately owned small horses which might be viewed on a modest scale, so this should not preclude the consideration of Policy OS 3 of PPS 8.
- 5.17 The Council's view is that the appellants are proposing to use the shed for agricultural use, not solely equestrian use and that PPS 8 is not applicable to the appeal development. It considers the equestrian use to be ancillary to the overall proposed use, which is outlined in the application description. I must determine whether the appeal development falls to be considered under PPS 8.
- 5.18 Paragraph 5.33 of Policy OS 3 of PPS 8 discusses Equestrian Uses and states that the keeping and riding of horses for recreational purposes is increasingly popular in many parts of the countryside. Outdoor participatory recreational uses such as riding schools will normally be considered acceptable in principle.

- 5.19 In order to establish the intended use of this building several factors must be considered. Firstly, the proposal description states, 'existing agricultural building'. The fee paid was also for an agricultural building and not that pertaining to floorspace associated with stables which are outside of the curtilage of a dwelling house. Within the P1 application form the agent has ticked agricultural building and supplied farm business IDs and a farm map, as discussed above. In addition, the appearance of the building is agricultural in nature with no internal stabling, only a makeshift arrangement of gates.
- 5.20 The design of the shed is such that it is not well suited to be used for the keeping of animals, even if, in some instances, livestock could be present for a period of isolation. The concrete slab floor, lack of fixed internal enclosures, limited natural light, along with the roller shutter and pedestrian doors, together with the rough stoned external hardstanding are not conducive to keeping livestock, particularly horses. Internally, it does not appear that the shed has been used for housing livestock, as despite some hay in one corner and the gated enclosure, the interior floor was clean and the building free from any odour. Furthermore, the appellants also indicated minimal daily use of the building, which again, is not suggestive that the building is to be used for the stabling of horses on a recreational basis. The padlocked field gate, overgrown existing laneway and locked pedestrian gate and roller shutter door all indicate that the shed is not intensively used.
- 5.21 During my site visit, when arranged internal access was gained, no horses were present in the shed. One horse was noted to be standing outside. This animal was not present the previous week on the first inspection.
- 5.22 Taking the limited evidence provided along with the utilitarian design of the building and my observations of it and its surroundings, I am not persuaded that the appeal shed is a stable facility in association with an outdoor participatory recreational use or that Policy OS 3 of PPS 8 is engaged.

Amenity

- 5.23 The Council raise concerns under criterion (e) of Policy CTY 12 as to potential detrimental impacts on the amenity of residential dwellings outside the holding or enterprise, including potential problems arising from noise, smell and pollution.
- 5.24 The alleged existing and proposed activities conducted within the appeal shed are conflicting in nature. The information given indicates that it is accessed daily, but the duration of time used is minimal and it is primarily reserved for emergency purposes.
- 5.25 The appellants confirm there are no plans to install flood lighting. Waste, excluding animal waste, will be appropriately disposed of by licensed contractor. Additionally, the applicant has not received any communication from the Environmental Health (EH) department regarding the operations carried out at the building, but from my own observations there was minimal activity at the building and it did not appear to be in full use.
- 5.26 The appellants refer to the shed as providing short-term shelter for livestock and equines/private owned small horses. Whilst sheep were present in a field on the

first and second day of my inspection, there was no evidence of horses on initial external inspection, nor was the design of the shed conducive to the keeping of horses for the reasons stated earlier.

- 5.27 The Council confirms the nearest dwellings to the shed are those in Cluain-Air which are not associated with the farm holding. They note there is no slurry pit included in this proposal but rely on EH advice regarding the close proximity of the shed to the residential dwellings and the proposed use of the shed as advised by the appellants' agent. The Council did not request any noise or odour reports to allay their concerns in this regard during the processing of the application, which to my mind, is suggestive that this objection was not given substantive weight overall.
- 5.28 I have been given no evidence of any third-party complaints in respect of the current use of the shed, which I am told has been in existence from 2017, to substantiate the Council's concerns. Nor did the Council elaborate on the types of, or where the noise and odour would emanate from. Whilst they state that the objection on this basis is precautionary, the shed is in-situ and has been there for a period of time, albeit not fully utilised.
- 5.29 The stated use of the shed for the activities listed by the appellants gives difficulty in assessing the potential effects that it may have on the neighbouring properties, which are approximately 20m away at the closest. However, notwithstanding this, the onus is on the Council to substantiate the reason for refusal in this respect.
- 5.30 The appeal site is located in the rural area where low level odour and noise associated with farming activities and the keeping animals is to be expected. Sheep were noted in the field shown in the appellants' ownership on the site location map, to the north of Cluain-Air, beyond the agricultural laneways. The area therefore already experiences background noise and odour levels associated with agriculture in my opinion.
- 5.31 Notwithstanding the lack of three stables in the building and despite their inclusion on the drawings, I am not persuaded that 3 horses or ponies would be likely to have a detrimental impact on the amenity of neighbouring properties.
- 5.32 Taking account of the above, I am therefore satisfied that even with the potential short term housing of livestock, including equines, which could be controlled by way of condition in the event of permission being granted, the appeal development would not give rise to noise or odour levels that would have an unacceptable adverse impact on the amenity of the closest neighbouring dwellings at Cluain-Air. The Council's objection under criterion (e) of Policy CTY 12 of PPS 21 is not sustained.

Rural Character

- 5.33 The fourth refusal reason relates to CTY 14 rural character in that the shed is stated to result in a suburban style build-up of development when viewed with existing and approved buildings and that it does not respect the traditional pattern of settlement exhibited in that area.

- 5.34 There is one peripheral view of the shed when travelling from the north towards the appeal site for a short distance after the junction of Carrickrovaddy Road and Glen Road. The shed's appearance is not untypical of a modern rural shed and I have been given no substantive reasoning as to why the building would result in *suburban style* (my emphasis) build up. For these reasons the appeal development would not result in suburban style build up. Furthermore, given the disposition of development in the nearby rural area, the appeal development would respect the pattern of development.
- 5.35 It is considered that given the topography and alignment of the road, the limited peripheral view, the siting, scale and design, the rising topography to the rear and the existence of a suitable degree of integration and enclosure that the landscape has the capacity to absorb the building at this location without detriment to the rural character.
- 5.36 For the reasons given above, the appeal development satisfies Policy CTY 14 and the related provisions of the SPPS. The Council's fourth reason for refusal is not sustained.

Setting of the settlement

- 5.37 As already assessed above, there is only one peripheral view of this shed from the north. The appeal building occupies a position in the landscape where it does not read as an extension of the settlement but as a building set within the countryside. The presence of the double laneway helps reinforce the distinction between the settlement limit of Lurganare and the countryside within which the appeal building sits. The appeal development does not mar the distinction between Lurganare and the countryside. Policy CTY 15 and the related provisions of the SPPS are met and the Council's fifth reason for refusal is not sustained.

Conclusions

- 5.38 Although the Council's concerns under criterion (e) of Policy CTY 12 are not sustained, for the reasons given above, the appeal development does not comply with that policy read as a whole. There is no evidence to suggest that the appeal development is acceptable in principle in the countryside under Policy CTY 1, or that there are any overriding reasons why the development is essential and could not be located in a settlement. Nor are there any material considerations to outweigh the policy objections to the proposal. The proposal is contrary to Policy CTY 1 and the related provisions of the SPPS. The first reason for refusal is sustained. Whilst the Council's fourth and fifth reasons for refusal have not been sustained, the remaining reasons are sustained to the extent specified and are determining.

6.0 RECOMMENDATION

- 6.1 I recommend to the Commission that the appeal be dismissed.
- 6.2 This recommendation relates to the following drawings.

PL-01A: Published to the Planning Portal on 17 July 2023

PL-02: Published to the Planning Portal on 7 March 2023; and
PL-03A: Published to the Planning Portal on 17 July 2023

List of Documents

Planning Authority: - Statement of Case – Newry, Mourne and Down District Council
 Rebuttal Statement - Newry, Mourne and Down District Council

Appellants: - Statement of Case – Blackgate Property Services
 Rebuttal Statement - Blackgate Property Services