
Appeal Reference:	2022/A0111
Appeal by:	Ms Feithlinn McCullagh
Appeal against:	The refusal of full planning permission
Proposal:	Proposed farm dwelling with associated site works and landscaping
Location:	Lands adjacent and 64m SW of No. 22 Donaghaguy Road, Warrenpoint
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/1171/F
Procedure:	Hearing on 20 June 2023
Decision by:	Commissioner Stevenson, dated 7 October 2024

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant presented a fresh set of drawings with the note 'no dimensions to be scaled from drawings' removed. This was in response to the third party's contention that the drawings that the Council made its decision on, are inaccurate and not to scale. Other than the removal of the 'do not scale' note, the drawings remain the same.
3. While the existing telegraph poles are not marked on the site entrance detail drawing, the dimensions of the vehicular access, the proposed dwelling and its site are accurate. Given that the only difference is the removal of the note, no prejudice arises to any parties in admitting those drawings in this appeal and I will base my decision on them. Accordingly, they are numbered PAC1, PAC2 and so on.
4. The third parties contend that the appellant is not in possession or control of all the lands outlined in red on the site location plan. They expand to say that to obtain the required visibility, significant changes will have to be made including the removal of a neighbour's hedgerow and communication poles moved onto her land. Section 42(6) of the Planning Act (Northern Ireland) 2011 (the Act) is also cited. The appellant contends that visibility can be achieved entirely within the existing road verge that is adopted by the Department for Infrastructure (DfI).
5. Section 42 of the Act prohibits the Commission from entertaining an appeal against the refusal of planning permission unless it is accompanied by a certificate identifying the ownership of land in respect to the site which is the subject of an

application for planning permission. Certificate A conveys that the appellant is in actual possession of every part of the land to which the appeal relates. Certificate C conveys that there are other landowners, and that requisite notice of the application has been given by or on behalf of the appellant to each person who has an interest in the land. The purpose of a notice is to inform people with a potential interest in the land of an application.

6. Certificate A has been completed on both the application and appeal form. Those certificates indicate that the appellant has ownership or control of all lands associated with the appeal proposal. Undisputed correspondence from DfI Roads dated 23 June 2022 indicates that the road and road verges highlighted by the green and yellow lines are adopted and maintained by the Department. The green and yellow lines are on either side of the proposed vehicular access onto the appeal site. The drawing entitled 'Site Entrance Detail' and numbered MCCA/20/148/PL-02 RevA shows visibility splays of 2m by 60m in one direction and 2.4m by 70m in the other. DfI Roads expressed no objection to the Council regarding those proposed site entrance arrangements.
7. The drawing numbered MCCA/20/148/PL-02 RevA indicates that the splays could be achieved mostly on DfI Roads adopted lands. Part of the hedgerow facing the road on either side of the lane would likely require to be cut back. Given that the Council consulted with DfI Roads regarding the proposed dwelling, I am satisfied that that department is aware of the proposed dwelling and its associated site works. The third parties claiming that they own the hedgerow, made submissions to the Council and to the Commission. Accordingly, I am content that they are also aware of the proposed dwelling. No prejudice therefore arises in proceeding to determine this appeal.

Reasons

8. The main issues in this appeal are whether the appeal proposal would:
 - be acceptable in principle;
 - visually integrate into the landscape;
 - detrimentally change the rural character of the area, including the Mourne Area of Outstanding Natural Beauty (AONB); and
 - prejudice road safety.
9. Section 45(1) of the Planning Act (Northern Ireland) 2011 ("the Act") requires the Commission when dealing with an appeal to have regard to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) requires 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.
10. The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) operates as the LDP for the area wherein the appeal site is located. In the BNMAP, the appeal site is within the countryside, outside any settlement designated in the plan. The site is identified as lying within the Mourne Area of Outstanding Natural Beauty (AONB). There are no policies in the plan that are material to the appeal proposal.

11. Overarching regional planning policy is set out in the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). The SPPS also outlines transitional arrangements, which are in operation until a Plan Strategy (PS) is adopted for the area. As there is no adopted PS, the SPPS retains certain Planning Policy Statements (PPSs) including Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21), Planning Policy Statement 2 "Natural Heritage" (PPS2) and Planning Policy Statement 3 "Access, Movement and Parking" (PPS3). While the Council and the third parties raise concerns under PPS21, the third parties also object to the proposal in relation to the latter two retained policies.
12. No conflict arises between the provisions of the SPPS and those retained policies insofar as they relate to the issues that arise in this appeal. In accordance with the transitional arrangements, PPS21, PPS2 and PPS3 provide the policy context for assessing the proposal. Guidance contained in Development Control Advice Note 15 "Vehicular Access Standards" (DCAN15) has also been referred to by the third parties.
13. Policy CTY1 'Development in the Countryside' of PPS21 sets out a range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A dwelling house on a farm that is in accordance with Policy CTY10 is one of them. The third parties refer to Policy CTY12. However, that policy is not applicable in this appeal as it relates to non-residential agricultural development.
14. Policy CTY10 'Dwellings on Farms' of PPS21 states that planning permission will be granted for a dwelling house on a farm where all three criteria are met. It also states that planning permission granted under this policy will only be forthcoming once every 10 years. The Council expresses concern with criterion (a) of Policy CTY10. Criterion (a) requires that the farm business is currently active and has been established for at least 6 years.
15. The appellant alleges that the Council has misapplied Policy CTY10 in applying the tests of an equine business when she does not operate such a business. The appellant contends that she is operating an active and established farm business in that she is maintaining the land in good agricultural and environmental condition and that this falls within the definition of 'agricultural activity'. I will therefore consider the appeal proposal on that basis.
16. The appeal site is the second field set back from the Donaghaguy Road. The site comprises the majority of a rectangular agricultural field, which is to the rear of a detached two-storey dwelling (No. 22). That dwelling fronts onto the Donaghaguy Road. Access to the field is via a single lane that runs along the western boundary of No. 22. On either side of the gated lane are mature hedgerows, approximately 2 metres in height. There are two buildings and a concrete yard on the appeal site, which are located behind No. 22. One of those buildings is a shelter for horses.
17. The southern, western and northern boundaries of the appeal site are defined by well-established hedgerows. The eastern boundary of the appeal site is undefined but the wider eastern field boundary is demarcated by a hedgerow. A group of trees and mature vegetation are north of the site at the end of the rear garden of No. 22.

The undulating land gently rises to the southern part of the site, and continues to rise beyond the site to the south-west.

18. The proposed one and a half storey dwelling would be adjacent to the two existing buildings and the concrete yard. The proposed dwelling would include an open plan kitchen, dining and living area, a separate living room, a study and four double bedrooms. Attached to the proposed dwelling would be a double garage and a car port.
19. Paragraph 5.38 of the amplification text of the policy indicates that the appellant will be required to provide the farm's DARD business identification number along with other evidence to prove active farming over the required period. Paragraph 5.39 outlines certain activities that can be regarded as agricultural for the purposes of the policy. This is in broad conformity with the definition as set out in paragraph 6.73 of the SPPS. The definition sets a very low bar for what constitutes active farming, and maintaining the land in good agricultural and environmental condition is included as an acceptable agricultural activity.
20. Correspondence from the Department of Agriculture, Environment and Rural Affairs (DAERA) indicates that the appellant was allocated a farm business identification number on 23 December 2013 and that it is Category 3. The farm business identification number is 658958 and it is registered to the appellant's address at 19 Seafields in Warrenpoint. The DAERA consultation response that was forwarded to the Council during the processing of the planning application indicates that no Single Farm Payment has been claimed in each of the last 6 years. There are no farm maps given that payments have not been claimed. However, the appellant informed me that the holding of the alleged farm comprises the land outlined in blue and in red on the site location plan. This correlates with the Folio maps provided. The alleged farm holding therefore comprises four fields that are to the rear of No. 22 Donaghaguy Road. DAERA advised the Council that prior to 2021, the appeal site was located on land associated with another farm business. I will return to the issue of another farm business later in this decision.
21. The appellant contends that as the farm business number associated with the appellant and the appeal site has been in existence since 23 December 2013, this in itself demonstrates that the farm business has been established for at least six years and thus meets the second element of criterion (a). The word "established" means more than mere existence; the business must therefore be set up and operating.
22. The appellant alleges that paragraph 5.38 introduces more onerous requirements. While the justification and amplification text is an aid to interpretation of the policy, the text cannot introduce more onerous requirements than those in the policy. In this instance, I do not consider that paragraph 5.38 does. The requirement for evidence of active farming over a six year period is no more onerous than the requirement that the farm business is established for at least six years. Furthermore, it is not the responsibility of DAERA to determine whether a farm is active and a farm does not have to be in receipt of subsidies in order to be considered active for the purposes of the policy.
23. While the Council did not submit a Statement of Case, the appellant refers to the Council's Development Management Officers Report (DMOR) at paragraph 6.11 and that it acknowledges receipt of 'other evidence'. The Council states that "the

'information submitted does show that the land has been maintained and used from December 2013 consistently.' The appellant and the third parties also quote a sentence in the Council's DMOR that *"it is considered that the information presented to the Planning Department does not demonstrate that the applicant's level of involvement in farming is proportionate with commercial activity both currently and within the past 6 years, as required by Policy CTY10 of PPS21."* It is apparent from reading the Council's DMOR that the Council's latter sentence is referring to whether there is a commercial equine business operating. The Council also cites in its DMOR a paragraph from appeal decision 2017/A0258. That appeal decision relates to an alleged equine business. However, the appellant has clarified that she is not making a case that such a business is in operation.

24. While Policy CTY10 explicitly requires an equine business to demonstrate a level of involvement commensurate with commercial activity over the requisite period of six years, the test for a farm business is whether there is 'agricultural activity' being carried out over the required six-year period. Policy CTY10 does not specify the type of evidence to be provided but I must be satisfied that the evidence demonstrates agricultural activity on the farm holding associated with the farm business (my emphasis). For there to be a business, there must be the transaction of monies related to the agricultural activity on the holding. It is realised that farming activity tends to fluctuate markedly over time.

25. Documentary evidence is provided in Appendix 5 of the appellant's statement of case. The appellant submitted undated photographs and a volume of other material for the years ranging from June 2012 to May 2023, which includes:
 - McDonald invoice to F McCullough for fencing and labour at Donaghaguy Fields (Jan 2023);
 - Quinn Agricultural Contracting invoice to Ms F McCullagh at Seafields for grassland spraying at Donaghaguy Farm (Jul 2022);
 - Silverwood Landscapes invoice to Feithlinn McCullough at Seafields for hedge trimming at Donaghaguy (Oct 2021);
 - Rollins Insurance Brokers letter and Insurance Policy for Mrs F McCullagh at greenfield land used for grazing horses at Donaghaguy Road, Warrenpoint – covering Dec 2019 to Dec 2020 (Jan 2020);
 - MCK Contracts invoice to Mrs F McCullagh for installation of 2 no. cattle drinkers at Donaghaguy Road, Warrenpoint (Jul 2019);
 - MCK Contracts invoice to Mrs F McCullagh for remedial works to area of wetlands at Farmland, Donaghaguy Road, Warrenpoint (Apr 2018);
 - Dollymount Farms Invoice to Mrs F McCullough for cutting of farm hedges at Donaghaguy Road, Warrenpoint (Oct 2017);
 - Dollymount Farms invoice for cutting haylage and turning three acres at Donaghaguy Road, Warrenpoint (Aug 2016);
 - Dollymount Farms invoice for spreading fertilizer and spraying field at Donaghaguy Road, Warrenpoint (May 2015);
 - Hand-written invoice for Feithlinns and Erins haylage, baling, wrapping of bales, fertiliser spread etc. (Jul 2014);
 - Dollymount Farm invoice to Ms F McCullough for work carried out at ground at Donaghaguy Road, Warrenpoint (spraying weeds, haylage, bailing of 90 bales) (Dec 2013); and
 - Byrne hand-written invoice for labour digger work carried out at Clontafleece, Warrenpoint (Jun 2012).

26. The third parties express concerns relating to the authenticity of the information provided at application stage but admit that they did not see those documents. No persuasive reason has been presented that justifies not accepting the authenticity of the submitted documents that the appellant provided in her Statement of Case. Not all the invoices presented specifically refer to the lands at Donaghaguy Road. Some refer to lands at Ballymoney Road. Other invoices do not specifically relate to any lands. The appellant informed me at the hearing that the lands at Ballymoney Road are associated with another farm that she previously owned.
27. The appellant's documentary evidence that relates to the land at Donaghaguy Road includes hedge trimming, spraying the lane, sheep grazing, digger hire, supplying and spreading of agri-lime, supplying and sowing grass seed, cutting of farm hedges, and cutting and bailing haylage. There are also several land liability insurance renewals for the subject land. This evidence indicates that the land has been maintained in good agricultural and environmental condition. Moreover, the Council accepts that the land has been maintained and used from December 2013 consistently.
28. The third parties argue that the appellant has not provided evidence that the land is kept in a good agricultural and environmental condition and allege in any case that the land is not maintained to even the minimum standard. The Noxious Weeds (Northern Ireland) Order 1977 is cited, and the appellant indicates that ragwort, creeping thistle, spear thistle, broad leafed docks, curled leafed docks and wild oats are defined as noxious weeds. Photographic evidence is also provided. However, those photographs are undated and limited weight can be given to them. In any event, I observed the subject field and it was in relatively good condition.
29. Given these factors and the volume of the appellant's documentary evidence presented over a considerable length of time together with the allocation of the farm business identification number in 2013 and the low bar of criterion (a) of Policy CTY10, I am satisfied that there has been active farming over the requisite six-year period.
30. The Council also contends that there are two farm businesses actively farming the land and that the whole thrust of Policy CTY10 relates to a singular farm and its business. The appellant claims that she was unaware of another farm business prior to 2021 claiming subsidy on her land and that there is an investigation ongoing within DAERA and that it should in no way prejudice the appellant in this case.
31. The agricultural contractor, who the appellant has employed to carry out works on her holding, clarified at the hearing that he was spreading slurry on those lands free of charge to build up soil fertility and that to comply with the Nitrogen Loading Assessments, those lands were included within his Single Farm Payment Application. He goes on to say that the inclusion of those lands was in no way to claim additional land for his entitlements but to comply with the requirements of the Nutrients Action Programme Regulations. His farm business number is 604080. He contends that there has been no monetary gain from the inclusion of the holding within his Single Farm Payment. This is undisputed.
32. While there may not have been any monetary gain, the inclusion of the appellant's field wherein the appeal site is located as part of the contractor's farm holding prior to

2021 means that the appeal site related to another farm business up until 2021. Policy CTY10 requires that the proposed dwelling is “on a farm” that is associated with “the” farm business (singular). Furthermore, paragraph 5.40 of the amplification text states that planning permission will not be granted for a dwelling under this policy where a rural business is artificially divided solely for the purpose of obtaining planning permission. Given that the DAERA response indicates that the appeal site has been associated with another farm business up until 2021, the appeal site has not been associated with a single active and established farm business for at least 6 years.

33. Notwithstanding the stated ongoing investigation within DAERA relating to another business having claimed subsidy on the Appellant’s land, that the land is no longer associated with the contractor’s farm business (604080), that the land has been part of the Appellant’s farm holding since 2021 and despite the appellant’s farm business having been active for more than six years, the farm holding itself has not been given that the appeal site was associated with a separate farm business up until 2021. Accordingly, the proposal fails to meet criterion (a) of Policy CTY10 even with its low bar. The Council’s second reason for refusal and the third parties’ concerns in this regard are therefore sustained.
34. While the Council does not dispute criterion (c) of Policy CTY10, the third parties contend that the proposed dwelling would not be visually linked or sited to cluster with an established group of buildings on a farm. The third parties also cite paragraph 6.73 of the SPPS which states that “new buildings must be sited beside existing farm or forestry buildings on the holding or enterprise.” However, that sentence relates to non-residential agricultural developments.
35. The subject buildings are a horse shelter and a store, which were granted planning permission (P/2014/0042/) under Planning Policy Statement 8 ‘Open Space, Sport and Outdoor Recreation’ (PPS8). The appellant states that the horse shelter and a store constitute buildings as defined by Section 250 of the Act. However, it is for the decision maker to determine what constitutes a building for the purpose of the policy based on fact and degree. In any event, from my on-site observations, I accept that they constitute two buildings for the purpose of the policy.
36. While the appellant admits that the horse shelter and store are being used for hobby purposes, the policy does not require the buildings to be ‘farm/agricultural buildings’. They must be an ‘established group of buildings on the farm’ (my emphasis) as per the wording of criterion (c) of Policy CTY10. Given that I have accepted that there is a farm, the horse shelter and store are therefore an established group of buildings on that farm. I am satisfied that the proposed dwelling would be visually linked or sited to cluster with those buildings. The appeal proposal does not offend criterion (c) of Policy CTY10 of PPS21. The third parties’ concerns insofar as stated are therefore not upheld.
37. Policy CTY13 ‘Integration and Design of Buildings in the Countryside’ of PPS21 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It goes on to say that a new building will be unacceptable where certain criteria are not met. The Council and the third parties contend that the proposed dwellings would be a prominent feature in the landscape and that the site is very open with no visual backdrop to provide a suitable degree of enclosure. While

criteria (a), (b) and (c) of Policy CTY13 are disputed by the Council, the third parties contend that the proposed dwelling would offend all of the criteria listed in the policy.

38. Criterion (a) of Policy CTY13 requires that the new building is not a prominent feature in the landscape. In the absence of a Statement of Case from the Council, the Council clarified at the hearing that the viewpoints identified in the appellant's Landscape Visual Assessment (LVA) from where the dwelling can be viewed from, should be considered as the critical vantage points. Those viewpoints are identified in the appellant's LVA as Viewpoint (VP) 1, VP2, VP3 and VP4. The first three are along the Donaghaguy Road and the fourth one is on Ballydesland Road. From the other viewpoints identified in the LVA, the appeal site is screened and obscured from view by the rolling drumlin topography.
39. In my opinion, the proposed dwelling would nestle into the low lying drumlin and the surrounding higher landform would provide a natural backdrop to the proposed dwelling. Given these factors together with the intervening natural screening on three of the site boundaries and the built form of the existing dwelling (No. 22) in front of the proposed dwelling, I am satisfied that the appeal proposal would not be a prominent feature in the landscape from all four viewpoints (VP1, VP2, VP3 and VP4).
40. Policy CTY13 states that a new building will be unacceptable where (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or (c) it relies primarily on the use of new landscaping for integration; or (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.
41. As the site has three well-defined hedgerow boundaries around the site and given the mature boundary hedgerows on either side of the lane together with the mature vegetation north of the site, the site does not lack long established natural boundaries. Moreover, given the rising landform south of the site that provides a backdrop and the way the site is nestled behind No. 22, the site is able to provide a suitable degree of enclosure for the proposed dwelling to integrate into the landscape and blend with the surrounding topography and natural features. While the site layout plan indicates that a new native species hedgerow would be provided along the eastern boundary of the appeal site and that the existing well-established boundary hedgerow would be augmented with native species and this could be conditioned if the appeal were to be allowed, the appeal proposal would not rely primarily on new landscaping for integration. The appeal proposal would not offend criteria (b), (c) and (f) of Policy CTY13.
42. Policy CTY13 also states that a new building will be unacceptable where (d) ancillary works do not integrate with their surroundings; or (e) the design of the building is inappropriate for the site and its locality; or (g) in the case of a proposed dwelling on a farm it is not visually linked or sited to cluster with an established group of buildings on a farm. The third parties allege that the proposal would involve removal of the hedgerow and that this would compromise its contribution to the visual amenity of the area. They go on to say that the proposed works would entail the removal and undermining of a significant part of the bank which forms an integral part of the roadside boundary along the Donaghaguy Road including removal of their hedge. The appellant contends that the design of the proposal negates the need to

undertake excessive ancillary works and that the access laneway would retain its established hedgerows.

43. There are a number of large detached dwellings of varying rural design within the vicinity. The design of the proposed building would be appropriate for the site and its locality and would thus not offend criterion (e) of Policy CTY13. In relation to the ancillary works, the site layout plan indicates that the hedgerow would be mostly maintained. Some areas would likely need to be cut back and the area in front would have to be kept clear. To my mind, the hedgerow would not require significant alteration. The grassy area in front of the hedgerow would most likely need to be levelled to align with the maintained grass area in front of No. 22. I am satisfied that those works and all other ancillary works associated with the proposed dwelling would integrate with their surroundings and not offend criterion (d) of Policy CTY13.
44. As I have already found that the proposed dwelling would be visually linked or sited to cluster with an established group of buildings on a farm, the appeal proposal complies with criterion (g) of Policy CTY13. The Council's third reason for refusal and the third parties' concerns insofar as stated above are therefore not sustained.
45. Policy CTY 14 'Rural Character' of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The policy goes on to state that a new building will be unacceptable in certain circumstances. The Council and the third parties contend that the proposal would be (a) unduly prominent in the landscape. Given that I have already found that the proposal would not be prominent in the landscape, the proposed dwelling would also not be unduly prominent. The appeal proposal would not offend Policy CTY14 of PPS21. The Council's fourth reason for refusal and the third parties' concerns in this regard are therefore not sustained.
46. Criterion (e) of Policy CTY14 states a new building will be unacceptable where the impact of ancillary works (with the exception of necessary visibility splays) would damage rural character. The third parties contend that in order to facilitate and obtain the necessary visibility splays, significant alterations to the boundary along the Donaghaguy Road and profiling works would be required and that this would raise awareness of the development and draw the eye to the detriment of the rural character of the area.
47. As this criterion excludes considering the impact on rural character from ancillary works associated with any required visibility splays, it is not appropriate to consider alterations to the roadside hedgerows under Policy CTY14 but I will consider the splays later in this decision under road safety. Bearing in mind that an existing laneway would be used to access the proposed dwelling and its hedgerows on either side of that laneway would be retained and given the outline of the proposed dwelling indicated on the visuals presented in the LVA and the site levels shown on the site layout plan, I am not persuaded that ancillary works would damage rural character. The proposed dwelling would not offend criterion (e) of Policy CTY14. The third parties' concerns in this regard are not sustained.
48. Policy NH6 of PPS2 states that planning permission for new development within an AONB will only be granted where it is of an appropriate design, size and scale for the locality and certain criteria are met. The third parties argue that the proposed

dwelling would be detrimental to the environmental quality of the area by reason of its design, siting and scale and that it does not respect the special character and landscape quality of the locality. Criterion (a) of Policy NH6 requires that the siting and scale of the proposal is sympathetic to the special character of the AONB in general and of the particular locality.

49. Given that the proposed one and a half storey detached dwelling would be sited behind an existing large detached dwelling (No. 22) and beside two buildings on a farm in a low part of a drumlin, and factoring in the limited viewpoints of the proposed dwelling together with a backdrop of higher landform, I am satisfied that the proposal would be sympathetic to the special character of the Mourne AONB in general and of its particular locality; thus not offending Policy NH6 of PPS21. The third parties' concerns insofar as stated are therefore not upheld.
50. The third parties raise other objections under Policy AMP2 of PPS3. Policy AMP2 of PPS3 states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where (a) such access will not prejudice road safety or significantly inconvenience the flow of traffic; and (b) the proposal does not conflict with Policy AMP3 Access to Protected Routes.
51. Paragraph 5.15 of Policy AMP2 of PPS3 states that applicants will be expected to have control over the land required to provide the requisite visibility splays and ensure that they are retained free of any obstruction. Minor departures from keeping the area within the visibility splays cleared may be permitted as long as visibility is not materially affected. The third party contends that the appellant is not in control over the required land and that there is no certainty of the provision of the splays in the short to medium term, if ever. She goes on to say that it would not be appropriate to impose a condition requiring works whose implementation cannot be definitely secured.
52. While no written confirmation was presented that removal or re-positioning of the telegraph pole has been agreed, I am not persuaded that the pole would materially affect visibility from accessing the laneway. Moreover, despite the third party contending that no certainty can be given over the provision of the splays, the possibility of achieving a negotiated arrangement for provision of the splays cannot be ruled out over the lifetime of any permission, if the proposal were to be allowed. An appropriately worded negative condition requiring the provision of the splays in accordance with the site entrance detail drawing numbered MCCA/20/148/PL-02A before building operations take place could be imposed if permission is to be granted.
53. I note that DfI Roads expressed no objections to the proposed access arrangements and given my above considerations, I find that the appeal proposal would not prejudice road safety or significantly inconvenience the flow of traffic, thus satisfying Policy AMP2 of PPS3. The third parties' concerns in this regard are not sustained.
54. Another concern that the third parties raise relates to an alleged risk of flooding from the proposed dwelling. The third parties contend that the appeal site is susceptible to flooding. The Department for Infrastructure (DfI) Rivers informed the Council that there are no designated watercourses within the appeal site but that an undesignated watercourse bounds the east of the site. DfI Rivers indicate that a drainage

assessment is not required given that the proposal does not exceed the thresholds. The department states that where a drainage assessment is not required but there is potential for surface water flooding as indicated by the surface water layer of the Strategic Flood Map, it is the developer's responsibility to assess the flood risk and damage impact and to mitigate the risk to the development and any impacts beyond the site. At planning application stage, NI Water recommended a condition be imposed requiring foul disposal and surface water drainage works to be agreed prior to works commencing on site.

55. Given that the Council did not require a drainage assessment for this development, that no persuasive technical evidence is before me to justify otherwise and it is the developer's responsibility to mitigate any potential surface water flooding and a condition could be attached to any permission should this appeal be allowed, I am not persuaded that this is a justifiable reason for withholding granting permission for the proposed dwelling. The third parties' flooding concerns are therefore not sustained.
56. As the appeal proposal offends criterion (a) of Policy CTY10 of PPS21 and the policy read as a whole, and no overriding reasons were advanced as to why the development is essential and could not be located in a settlement, the proposed dwelling offends Policy CTY1 of PPS21. The Council's first refusal reason is therefore upheld.
57. All in all, as the Council's first and second reasons for refusal are sustained, the appeal shall fail.

This decision relates to: -

PAC No.	Architects' Drawing No.	Title	Scale	Architects Date
PAC1	MCCA/20/148/PL-01B	Site Location Plan	1:1250 @A4	27 May 2021
PAC2	MCCA/20/148/PL-02A	Site Entrance Detail	1:500 @A3	27 May 2021
PAC3	MCCA/20/148/PL-03B	Site Layout Plan	1:500 @A3	27 May 2021
PAC4	MCCA/20/148/PL-05A	Proposed Elevations	1:100 @A2	27 May 2021
PAC5	MCCA/20/148/PL-06	Proposed Plans	1:100 @A2	27 May 2021

COMMISSIONER B STEVENSON

List of Appearances

Planning Authority:- A Donaldson, Newry, Mourne and Down District Council

Appellant:- M Graham, Tetra Tech Planning
T O'Hare, McCreanor Company
F McCullagh
E Murphy
P McKay, Dollymount Farms

List of Documents

Appellant: - A Statement of Case and Appendices
Tetra Tech Planning

Third Parties: - B Statement of Case
E Quinn

C Statement of Case and Appendices
P McConville