

PLANNING APPEALS COMMISSION

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

**Appeal by Lennon Homes Ltd
against the refusal of full planning permission for proposed new infill dwelling and
garage
at lands 30m northeast of 3 Lurgill Lane, Upper Ballinderry, BT28 2SG**

**Report
by
Commissioner Gareth McCallion**

Planning Authority Reference: LA05/2021/1248/F

Procedure: Written Representations

Date of Site Visit: 12th April 2024

Report Date: 7th October 2024

1.0 BACKGROUND

1.1. Lisburn and Castlereagh City Council received the planning application on 12th November 2021. By notice dated 12th January 2023, the Council refused permission giving the following reasons: -

1. **The proposal is contrary to the SPPS and Policy CTY1 of the 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 (SPPS) and Policy CTY 8 Planning Policy Statement 21, Sustainable Development in the Countryside, in that the application site is not located within a small gap within an otherwise substantial and continuously built-up frontage, which if permitted would add to a ribbon of development along Lurgill Lane.**
3. **The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY13 of Planning Policy Statement 21, Sustainable Development in the Countryside in that:**
 - **The proposed building is a prominent feature in the landscape;**
 - **The proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; and**
 - **The proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape.**
4. **The proposal is contrary to the Strategic Planning Policy Statement (SPPS) and Policy CTY14 of Planning Policy Statement 21, Sustainable Development in the Countryside, in that the proposal would, if permitted, result in a suburban style build-up of development when viewed with existing buildings, would not respect the traditional pattern of settlement exhibited in the area and would add to a ribbon of development along Lurgill Lane.**

1.2. The Commission received the appeal on 2nd February 2023 and advertised it in the local press on 31st March 2023. The Council forwarded the representations it had received at application stage and further submissions have been made by 3rd parties at appeal stage.

1.3. The Lisburn and Castlereagh City Council, Local Development Plan Strategy (Plan Strategy) was adopted in September 2023. Following this change in circumstances, the Council stated that their original reasons for refusal should be superseded with the following:

1. **The proposal is contrary to the SPPS and Policy COU1 of the Lisburn and Castlereagh 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 the SPPS and Policy COU8 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the development if approved would add to a ribbon of development along Lurgill Lane. Furthermore, the development is not sited within a substantial and continuously built-up frontage nor is the gap site sufficient to accommodate two dwellings whilst respecting the traditional pattern of development.
3. The proposal is contrary to the SPPS and Policy COU15 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development is a prominent feature in the landscape; the proposed site lacks long established natural boundaries and is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; and the proposed building relies primarily on the use of new landscaping for integration and therefore would not visually integrate into the surrounding landscape
4. The proposal is contrary to the SPPS and Policy COU16 of the Lisburn and Castlereagh City Council Plan Strategy 2032 in that the proposed development if approved would not respect the traditional pattern of settlement associated with this part of the Lurgill Lane in terms of plot size.

- 1.4 The Appellant and the 3rd parties were provided with the opportunity to comment on the revised reasons for refusal at appeal stage, so no prejudice arises.

2.0 SITE AND SURROUNDINGS

- 2.1 The appeal site is located between the dwellings at Nos. 1 and 3 Lurgill Lane, a gated, private laneway taken from Lough Road, Upper Ballinderry, Co. Antrim.
- 2.2 The appeal site comprises of a grassed area located to the front and northeast of No. 3 and west of No. 1 Lurgill Lane. The southern boundary of the appeal site is defined by a hedgerow, which demarcates part of the front curtilage of No. 3. The south-eastern boundary is defined by a c. 1-metre-high post and wire fence. Directly beyond this and demarcating the western curtilage and boundary of No. 1 is a c. 2-metre-high close boarded fence. This boundary also contains the north-west facing elevation of an outbuilding associated with No. 1. The northern boundary of the appeal site, whilst physically constrained by Lurgill Lane, is undefined. A section of the south-eastern boundary of the appeal site sits juxtaposed to an agricultural field.
- 2.3 Lurgill Lane extends in a southern direction from Lough Road, through two stone pillars and gates, over undulating pasture, interposed with mature hedgerows and trees. It crosses a small river (Rooghan River) before turning in a westerly direction towards the appeal site. Access, to several newly constructed dwellings, is taken from the laneway. The first of these is No. 1, located south of the junction of Lough Road and a short distance from the river crossing. This property comprises of a large two storey dwelling, two storey garage and an outbuilding.

- 2.4 Northwest of this property is a construction site wherein the foundations for a dwelling have been poured. To the southwest of No. 1 is No. 3, a two-storey dwelling with a detached two storey garage. Some distance west of No. 3 is No. 5 (“the Wedge House”). This is a corner site and comprises a two-storey dwelling and a double storey garage. A brief distance north of No. 5 is No. 4. The southern boundary of this property is open and undefined. This property also contains a double storey garage. Each of the properties are finished with a smooth, white render, black roof tiles and black window fittings.
- 2.5 The remaining environs comprise of undulating agricultural land, interposed with established field boundary vegetation. Several properties, including farm dwellings, buildings and single houses are located along the Lough Road in either direction of Lurgill Lane, with a small collection of ostensibly mixed-use developments located approximately a short distance west of the lane at the crossroad, where the Lough Road dissects the Crumlin Road.

3.0 PLANNING AUTHORITY’S CASE

- 3.1 The relevant planning history associated with the application site is:
- LA05/2021/0606/PAD infilling site for a new dwelling between Nos. 1 and 3 Lurgill Lane, Upper Ballinderry; and
 - LA05/2022/0367/F for retrospective retention of extension to curtilage and proposed extension to existing detached garage to provide covered outdoor patio and first floor terrace, at 3 Lurgill Lane, Upper Ballinderry, planning permission granted on 20th February 2023.
- 3.2 There were several representations received in relation to the planning application now subject to appeal which related to:
- More housing being built in a protected area;
 - Procedural issues;
 - Roads and traffic concerns;
 - Environmental concerns;
 - Historic environment concerns; and
 - Planning Policy issues.
- 3.3 In accordance with the transitional arrangements, the existing Local Development Plan and draft Belfast Metropolitan Area Plan 2004 (draft BMAP) remain material considerations. The site is located within the greenbelt in the Lisburn Area Plan 2001 (LAP) and at page 49 it states that “*the Department’s regional development control policies for the countryside which will apply in the Plan area are currently set out in the various Planning Policy Statements published to date*”.
- 3.4 In draft BMAP this site was in the open countryside and the Belfast Metropolitan greenbelt. In the subsequent revision to the draft BMAP (2014) the site was in the open countryside but reference to the Belfast Metropolitan Area greenbelt is removed. It is stated at Policy SETT 4 at page 32 of Part 3, Volume 1 that “*the policies contained in ‘A Planning Strategy for Rural Northern Ireland’ except where*

superseded by prevailing regional planning policies, will apply to the entire Plan Area”.

- 3.5 The Council’s original reasons for refusal were framed upon the policies in Planning Policy Statement 21 ‘Sustainable Development in the Countryside’. This was the relevant policy context when the Council issued its decision. The Lisburn and Castlereagh Development Plan 2032, draft Plan Strategy (dPS) was published on 28th June 2023. Following legal advice, planning applications determined from this date had to be assessed under the new policy provisions contained within the dPS. Following consideration of paragraph 22 of the Joint Ministerial Statement (JMS) the dPS was a material consideration of determining weight in the assessment of the appeal. However, the decision-making process is not concluded until the outcome of the appeal is known. Following the adoption of the Lisburn and Castlereagh Local Development Plan 2032, Plan Strategy (PS) the reasons for refusal were updated to take account of the adopted policy provisions contained therein.
- 3.6 Policy COU1 ‘Development in the Countryside’, of the PS, which is applicable to this proposal, states, *“there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Details of operational policies relating to acceptable residential development proposals are set out in policies COU2 to COU10. Any proposal for development in the countryside will also be required to meet all the general criteria set out in Policies COU15 – COU16”*. This is an application for an infill dwelling and in accordance with the requirements of COU1, the application falls to be assessed against policies COU8, COU15 and COU16. However, the proposal is not considered to be an acceptable type of development in the countryside, and as such it fails to meet the provisions of Policy COU1.
- 3.7 Policy COU8 ‘Infill/Ribbon Development’ states that *“planning permission will be refused for a building which creates or adds to a ribbon of development”*. *Exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built up frontage, may be acceptable”*. For the purpose of this policy a substantial and continuously built-up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway. The proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. Buildings forming a substantial and continuously built-up frontage must be visually linked.
- 3.8 The proposal is contrary to Policy COU8. This policy is restrictive with any infill proposal required to be an exception to the prohibition on ribbon development. The first step is to consider whether the proposal creates or adds to a ribbon of development. The justification and amplification of Policy COU8 states that *“a ribbon of 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. Most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. Infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development”*.

- 3.9 The proposal does not engage ribbon development for the following reasons. There are two dwellings located along this section of Lurgill Lane, one to each side of the site. No. 3 Lurgill Lane presents a frontage to the lane and No. 1 Lurgill Lane presents access only onto the lane. These dwellings are both set back at almost equi-distance from the lane. Both are large, two storey dwellings of a similar scale and massing. Both have large ancillary domestic buildings within their curtilages, which are excluded from the assessment.
- 3.10 Notwithstanding the view expressed above, for completeness, a further assessment is included below in the event that the findings on ribbon development, in the first instance, is not accepted. The next step is to consider whether the proposal comes within the exception set out in the policy and to determine whether there is a substantial and continuously built up frontage. This is described in the policy as a line of four or more buildings, of which at least two must be dwellings excluding domestic ancillary buildings.
- 3.11 There are only two qualifying buildings at this location. The first is the dwelling at No. 3 Lurgill Lane. The associated detached outbuilding (garage) within the curtilage of this property is excluded as it is an ancillary building. The second dwelling is No. 1 Lurgill Lane. This dwelling presents an access only to the laneway. No other part of the curtilage of this property abuts or shares a common boundary with the laneway. An access point does not constitute a frontage to the road and for this reason, the dwelling at No. 1 does not have a frontage to the lane. This approach is supported by various appeal decisions. By way of an example, the appeal 2016/A0114 states that *“a building has frontage to the road if the plot on which it stands abuts or shares a boundary with the road”*. Paragraph 5 of this appeal decision states that *“I do not consider an access, regardless of the access features that delineate it, to constitute a frontage to a dwelling from which it is physically separate”*.
- 3.12 For the reasons stated above, the dwelling at No. 1 Lurgill Lane does not have frontage to the road. Therefore, it does not form part of the substantial and continuously built-up frontage. The photograph provided by the Appellant was taken from the stone bridge located off the lane. No.1 has an access and pillars only onto the lane. Sites need to have a greater frontage than only an access and that frontage should be somewhat comparable to other sites along the lane to be in keeping with the established character of an area. Likewise, the two ancillary buildings located within the curtilage of No. 1, which are excluded from the assessment, do not present a frontage to the laneway.
- 3.13 Whilst the two dwellings are visually linked, for the reasons outlined, it is considered that the existing buildings along this section of Lurgill Lane do not form part of a substantial and continuously built-up frontage. The two ancillary buildings are additional to the main dwelling houses and as such, are excluded from the assessment. There are no other buildings bookending either side of the proposed site.
- 3.14 The next step to consider is whether a small gap exists sufficient to accommodate two dwellings. In this case, the size of the gap is constrained on one side by the detached garage associated with No. 3 and on the other side by the domestic outbuilding associated with No. 1. The gap between these closest two buildings measures 57 metres. That said, due to the siting and orientation of these buildings

on the ground, the size of the gap is not an accurate reflection of the size of the appeal site, as the buildings from which the measurement is taken (consistent with a PAC ruling) are in the most southeastern and southwestern corners of the site.

- 3.15 Notwithstanding the view expressed above and having regard to the existing plot sizes within the immediate area, the application site is not considered to be a small gap sufficient to accommodate two dwellings consistent with Policy COU8. This part of the policy is not met.
- 3.16 Without prejudice to the conclusions reached above and for the purpose of completeness, consideration is given to whether the proposal would respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development.
- 3.17 Travelling in both directions along this part of the Lurgill Lane, there is a visual awareness of both dwellings due to the sparse vegetation around their boundaries. A new building at this location would not respect the traditional pattern of development for the following reasons:
- The plot and frontage width associated with the curtilage of No. 3 Lurgill Lane is 0.52 hectares and 41 metres respectively.
 - The plot area of the dwelling at No. 1 Lurgill Lane is 0.63 hectares. As established above there is no frontage associated with this dwelling but access only.
 - The plot frontage of the appeal site is 93 metres and it measures 0.41 hectares.
- 3.18 However, as it has been established that the site is not sufficient to accommodate two dwellings, the proposed development fails to respect the existing pattern of development in terms of plot size.
- 3.19 The proposal is also contrary to Policy COU15. Taking the topography of the site into account, only two of the proposed boundaries are defined on the ground, one along the eastern boundary with a 2-metre close boarded fence and the other on the southern boundary with a 1 metre hedge. The remaining boundaries are undefined. As there is no significant vegetation along these boundaries, a dwelling designed to respect the adjacent properties would be a prominent feature in the landscape.
- 3.20 Furthermore, the lack of long-established natural boundaries means that the site would be unable to provide a suitable degree of enclosure for the building to integrate into the landscape. As such, the dwelling would rely primarily on the use of new landscaping for integration. The only backdrop provided is that associated with the existing dwellings at Nos. 1 and 3 Lurgill Lane. There are no other natural features for the building to blend with.
- 3.21 For the reasons outlined, the proposal is contrary to criteria (a), (c), (d) and (e) of Policy COU15 of the PS.

- 3.22 Regarding Policy COU16, as explained above, the gap is not a small gap sufficient to accommodate two dwellings. For two dwellings to be accommodated, the site would have to be sub-divided. This would result in plots measuring approximately 0.205 hectares. This, when compared with the plots associated with Nos. 1 and 3 Lurgill Lane which are 0.63 hectares and 0.52 hectares respectively, would not respect the traditional pattern of settlement found along this stretch of the Lurgill Lane.
- 3.23 Therefore, for the reasons outlined, the proposal fails to comply with criteria (a) and (c) of Policy COU16 of the PS. It is considered that the development, if approved, would not respect the traditional pattern of settlement associated with this part of the Lurgill Lane in terms of plot size.
- 3.24 Should the appeal be allowed the following conditions are proposed on a without prejudice basis:
- Time limit;
 - Vehicular access and visibility splays;
 - Hard surfacing requirements; and
 - Landscaping scheme

4.0 3rd PARTIES CASE

- 4.1 The subheading 'introduction of new reasons for refusal' within the Appellant's statement of case purports to open the discussion on material considerations. Crucially, new reasons for refusal have not been introduced and these remain as set out on the original decision notice. The Appellant is apparently concerned that an opportunity was not provided to address reasons for refusal relating to integration and rural character during the application process. Even if this were the case, the appeal process provides an arena to facilitate consideration of these matters. However, the evidence provided by the Appellant fails to address these issues.
- 4.2 The appeal proposal is contrary to the provisions of PPS21 'Sustainable Development in the Countryside', specifically Policy CTY8 'Ribbon Development'. The policy's justification and amplification specify that many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and help maintain rural character. The infilling of those gaps should not be permitted. It is not sufficient to simply show how a house can be inserted into the gap. Consideration needs to be given on how a dwelling can knit seamlessly with the landform. In the proposed situation, it is apparent that there is significant rural character, as evidenced by the fact that there exist two disconnected and visually unrelated planning units separated by the appeal site.
- 4.3 Under paragraph 6.73 of the SPPS, planning permission will be refused for a building which creates or adds to a ribbon of development. This proposal does not constitute a continuously built-up frontage. There are already a significant number of applications approved for large, detached dwellings in this rural location, creating an intensification in traffic.

- 4.4 Lurgill Lane is private and unadopted. It currently serves five houses (approvals (S/2007/0950/RM, S/2007/0953/RM, S/2007/0964/F, S/2010/0099/F & LA05/2015/0220/O). Three of which are completed and two have foundations commenced. The current planning submission LA05/2021/1248/F would necessitate the laneway to be upgraded to adoptable standards to facilitate a 6th dwelling. The current entrance geometry is substandard and adding a 6th property would jeopardise road safety, both for existing residents of Lurgill Lane and public road users.
- 4.5 The planning application form at Q12, states that no alterations to the existing access is required. It is contended that significant works are needed to bring the Lough Road access up to standard. The width of the entrance apron is less than 6m wide for the first 10m between the edge of the carriageway and the entrance gates which would be expected for 5 houses. This negates two cars being capable to pass or reside adjacent to one another as they wait for the gates to open. Furthermore, they could not pass based on the existing geometry at the entrance, without the existing gates being realigned and the access widened. No provision is given for manoeuvring in a forward gear, i.e. a lay-by, in the event the gates are closed to rejoin the Lough Road. Therefore, 'Dia1' of the RS1 form, with 6m wide laneway for the initial 10m, would be more appropriate.
- 4.6 The roadside hedge when looking left is obstructed by a mature roadside tree. When looking right upon exiting, a hedgerow obstructs the 2.4m x 80m sightline and requires alteration. A survey of the entrance of the site, where it joins the Lough Road, confirms up to 52m of mixed hedgerow is required to be relocated behind the sightline. As hedgerows are a priority habitat, its removal has the potential to impact on a wildlife corridor. The biodiversity checklist submitted states in Q4 that no hedgerow over c. 30m is impacted by the development. This is erroneous.
- 4.7 It is noted that DFI roads have measured the speed of the Lough Road as 60Mph and have deviated from their own standards for the 'Y' dimension based on 'preservation of trees/hedges'. However, the speed of traffic in conjunction with insufficient width at the entrance and reduced sightlines would endanger life on this fast-flowing section of road. The measured speed of Lough Road is 60mph. This necessitates upwards of 110m sightlines in both directions. Equally due to the number of houses now using Lurgill Lane, the requirements for a 'X' dimension of 2.4m should be increased to 4.5m in accordance with Table A of DCAN 15.
- 4.8 It could be argued that the proposal would increase the traffic flow from Lurgill Lane onto the Lough Road and breach the 5% threshold for intensification of an existing access, as noted in Development Control Advice Note (DCAN) 15, paragraph 1.2. In accordance with DCAN15 – Table A Note 3, "if there is a dispute about the predicted minor road (access) traffic flow, it shall be determined by reference to a recognised database such as TRICS, or failing that, by a direct survey of a similar existing development over an acceptable period." Therefore, it is requested that the Appellant provide speed survey data for the Lough Road for assessment. In accordance with DCAN 15 Table A, the minimum visibility X distance for the intensified site access is 4.5m. It is accepted that there are provisions for the visibility X-distance to be reduced to 2.4m, but only if traffic speeds on the priority road are below 60kph (37mph) and danger is unlikely to be caused.

- 4.9 The entrance of the approval LA05/2019/1228 on the Lough Road has moved 15m north-west and is now closer to the point where Lurgill Lane meets the Lough Road. The impact of traffic from four occupied houses on Lurgill Lane and the additional traffic from the entrance of the development at 29 Lough Road (adjacent to Lurgill Lane) will further intensify the traffic flow onto the Lough Road.
- 4.10 No biodiversity checklist was provided at the time of the application. This was retrospectively submitted by 'Sterna Environmental Ltd' (Sept 2022), in response to our initial objection. The Appellant, under Q14 of the P1 form, stated that they are not aware of any protected wildlife within the application red line. It is considered that this was an inaccurate statement and at best a guess as at that point no ecologist had been appointed. The current proposal for a relaxed sightline of 2.4m x 80m conflicts with a mature roadside tree which will need felled to facilitate this reduced visibility splay. This tree was not covered within the Ecologist's report but bats often roost in hollows and crevices within mature trees. The deviation from the standard was offered in error by DFI, as the expected sightline should remain at 2.4m x 110m. This deviation from the standard does not prevent the hedgerow from being impacted, as inferred, as the right-hand hedgerow still needs removed.
- 4.11 The Ecologist's report confirms that the Rooghan River is hydrologically linked to the Portmore Lough which is a designated ASSI offering habitat to lapwing, snipe, redshank and Irish Hare. Lough Portmore is designated as an Area of High Scenic Value (AoHSV) and should be considered carefully when assessing potential impacts upstream. The Rooghan River would need checked for the presence of newts as part of the Ecologist's report, as the proposal to use a septic tank holds the potential for pollution due to proximity to the river. There are concerns over the proximity of the watercourse as uncontrolled releases of sediment and polluting discharges, e.g. hydrocarbons and cement during the construction phase of the development, have the potential to cause degradation of the adjacent aquatic environment and the designated sites it flows into.
- 4.12 Under Policy COU8, it states 'exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built-up frontage'. As this application is for one dwelling it fails this test.
- 4.13 The application does not demonstrate why the dwelling is fundamentally required in the countryside rather than within a designated settlement limit. For this policy, a substantial and continuously built-up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway. This application does not meet the criteria and therefore must be refused. Whilst the Appellant supplied photos showing the proposed site in its current state of maintained grassland, infilling of the gap is visually undesirable and will create or add to a ribbon of development.
- 4.14 In summary, it is urged that the Commission uphold the Council's recommendation to refuse. The proposal is contrary to the local development plan, Policy COU8. The existing access requires an upgrade to 6m width over the initial 10m, contrary to the proposal as submitted. The proposed sightlines should not be relaxed to 2.4m x 80m but maintained in accordance with the DFI speed survey necessitating 2.4m x

110m in both directions. The impact of the sightlines necessitates the removal of excessive hedgerow which is a protected habitat.

5.0 APPELLANT'S CASE

- 5.1 The background documents to the appeal demonstrate the level of communication between the Council and the Appellant. Throughout these negotiations, the Council did not raise issues of integration and rural character. The introduction of these reasons for refusal is unfair. The appellant was not offered the opportunity to address these matters during the processing of the planning application.
- 5.2 Prematurity reasons surrounding the draft Plan Strategy (dPS) did not form any part of the decision, nor was matters regarding the dPS raised during the processing of the planning application or subsequent submission of the appeal. The appeal was made 21 days after the decision on the application was issued. The Council had ample opportunity to raise any concerns they may have had on the grounds of prematurity. The policies contained within the PS should not take precedence over the reasons for refusal attached to the original decision. However, on a without prejudice basis, if the Commission is of the opinion that the PS is to be applied and reliance on PPS21 and Policy CTY8 thereof is misplaced, we have considered both approaches.
- 5.3 The Appellant has been prejudiced due to the processing time of the application which was outside of their control. The following declaration is made: *"It is our strong contention that failures of the Planning Authorities are the reason why this case was not resolved long before 28 June 2023. The application was submitted 12 Nov 2021 and the refusal notice some 14 months later on 16 Jan 2023. We the appellants immediately lodged the appeal and were only invited to make the first SOC some 6 months later. It is our understanding that the LPA has a statutory duty to issue planning decisions within 8 weeks of receipt of applications, and clearly the 14 months taken in this case represents a huge failure. Sufficient weight must be given to these unwarranted delays as a determining factor. We have incurred considerable costs in professional fees and fees paid to LCCC and the PAC during this process. COU8 should not be a determining factor of considerable weight since this process should have been completed long before the directive of 28 June 2023. Rather determining weight should be given to the timeline in this case, and the failure in the planning system. The SOC relies heavily on the new policy as a material consideration of considerable weight, yet our representative Mr Michael McKeown (Healy McKeown Architects) has confirmed that at no time during discussions did the planners raise this as a possible objection. We emphasise again that the frontage of No1 onto the Lane was the only disputed issue discussed as a possible barrier to approval of this application."*
- 5.4 The Appellant's solicitor provided a letter wherein it is stated that *"in the legal system, the general rule is that legislation changes apply prospectively, not retrospectively. This is a cardinal principle of our law. The fact that the LPA are going against this critical aspect of the law is unfair, unreasonable and in contradiction to the Human Rights Act 1998. The LPA appears to be moving the goalposts at this late stage of the process, without any prior discussion or warning to our client"*.

- 5.5 Paragraph 21 of the Joint Ministerial Statement states: *“planning applications will continue to be considered in the light of both current policies and policies in emerging development plans that are going through the statutory procedures. However, in circumstances where development would accord with the provisions of an extant development plan but the development, either individually or cumulatively, would prejudice the ability of an emerging new or replacement development plan to achieve or retain general conformity with the RDS, or would prejudice the outcome of the plan process as outlined at paragraph 20(b) then greater weight needs to be given to the provisions of the emerging development plan than to the extant plan...”*.
- 5.6 Paragraph 1.11 of the SPPS instructs that *“where a Council adopts its Plan Strategy, existing policy retained under the transitional arrangements shall cease to have effect in the district of that council and shall not be material from that date, whether the planning application has been received before or after that date”*. As the current planning application, to which this appeal relates, was determined prior to the direction, it is contended that it is required to be assessed under the provisions of PPS21. The language used in the forgoing two paragraphs suggest ‘applications’ only and do not mention ‘appeals’. There is a distinction between both.
- 5.7 The proposal adheres to one of the types of residential developments listed as acceptable in principle, namely the development of a small gap site within an otherwise substantial and continuously built-up frontage. The appeal site sits within a gap that exists between Nos. 1 and 3 Lurgill Lane. Together the properties consist of 5 buildings. These comprise a two-storey dwelling, two storey detached garage and ancillary building at No. 1 Lurgill Lane and two-storey dwelling with two storey detached garage at No. 3 Lurgill Lane. Except for the ancillary building associated with No. 1 Lurgill Lane, all the buildings are of a considerable scale, set within generous and substantial plots. Thus, for the purposes of the policy, the appeal site sits within a minimum of three buildings and can be considered an exception to the policy.
- 5.8 The garages located at Nos. 1 and 3 Lurgill Lane could not be considered ancillary in terms of scale or design. These are substantial buildings in their own right. ‘Ancillary’ is not defined within the policy, but reference is made to the size and scale of buildings. The buildings are large two storey, prominent buildings located along this stretch of the laneway. LA05/2022/0367/F granted planning permission for the *“retrospective application for retention of extension to curtilage and proposed extension to the existing detached garage to provide covered outdoor patio and first floor terrace at No. 3 Lurgill Lane”*. This building could not be considered ancillary in terms of scale, use and design as it provides more independent living accommodation, separate from the main dwelling and goes beyond the meaning of a garage which is normally for the storage of vehicles. This building provides first floor accommodation including shower room, office, games room and covered terrace area. Similar, the two-storey building located at No. 1 Lurgill Lane is a detached building with separate external first floor access, first floor balcony and Velux windows and goes beyond the meaning of ancillary garage in terms of size and scale.
- 5.9 The policy is silent on what exactly a frontage onto a laneway, footpath or public road consists of. However, the appeals process has established that for a property to comprise part of a substantial built-up frontage, it must share a boundary with the laneway, footpath or public road and should not be severed from it by a physical

feature. It is not sufficient to have only an access leading onto the thoroughfare which is an approach which has been consistently applied and upheld.

- 5.10 The Council are of the opinion that No. 1 Lurgill Lane does not have a frontage onto the laneway. However, the northwestern boundary of No. 1 fronts and extends onto the laneway. Whilst this boundary includes the access point for the property, it also comprises of the stone pillars either side of double gates with lawns located immediately behind the close boarded fencing which front onto and meet the laneway. This frontage measures 11.2m and thus, does not just comprise the access. Furthermore, the plot is not severed from the laneway by any physical feature.
- 5.11 Appeal 2016/A0114 is applicable to this case insofar as in that case the Commission deemed that the property (that of N.74 Crosskeenan Road) did not have frontage on the public road. It was an access and a laneway leading to the property which abutted the road. In that case it was clear that no garden, hard surface or building associated with the curtilage of the property extended to meet the road. This is distinguishable from No. 1 Lurgill Lane as the plot including the gardens and northwestern boundary for this property does extend to the laneway, not just the access. Respectfully, similar plot configurations have been deemed as acceptable frontages by the Commission and this should be upheld in this appeal.
- 5.12 In line with policy, buildings do not need to comprise of a uniform building line or building grain to comprise ribbon development, providing they have a common frontage or are visually linked. Thus, the decision maker is invited to complete a visual appraisal. When considering the established development pattern, the appeal site is slotted within two bookends of development which comprise of large-scale detached buildings or sizeable plots. The fact that the actual frontages do not sit on all fours when compared against each other is not fatal to the overall spirit of the policy. The appeal site, when considered in the context of the established character, respects the pattern of development in terms of plot size, scale and siting. Frontages do not need to be equal to or proportionate in length. Recently, the Council approved infill opportunities on sites where the frontage was not consistent or similar, including LA05/2022/0563/F and LA05/2021/1303/O.
- 5.13 The site could accommodate two dwellings. However, when considered against the established character, the Appellant is seeking to respect this in terms of plot size and scale. Whilst the policy says 'sufficient to accommodate 2 dwellings' this does not preclude the development of only one dwelling as there would be no demonstrable harm or offence caused to the policy's objectives and aims of sustainable development. The development of one infill dwelling has a reduced impact than the development of two dwellings. As a visual test, how would two dwellings at this location present as a better visual outcome than the development of one property which respects the established pattern of development and makes no greater visual impact?
- 5.14 Regarding the rural character and integration, the Appellant submitted a contextual elevation drawing and photomontage to help address this matter. It is measured and demonstrated that the proposal will not be a prominent feature in the landscape when considered against the established built fabric. The proposal slots into the existing ribbon development, has a lower ridge height than the existing dwellings

which, along with the detached two-storey garages, already feature grandly in the landscape. When considered against the established character, the proposal is not a prominent feature in the landscape and will read with the bookends of development.

- 5.15 The existing buildings are still visible and protrude above their respective boundary treatment, some of which remain low lying. The proposal will emulate this character by implementing the landscape scheme which has been detailed and annotated on the site layout plan. Although additional planting is proposed, the proposal does not rely on this for integration. The photomontage denotes vegetation in the background and, along with the existing buildings, provides a suitable backdrop which the proposal will be read against. Furthermore, the appeal site benefits from intervening vegetation along the field boundaries and approaching the laneway (including during winter months). This vegetation remains within the ownership of the Appellant and will be retained in perpetuity.
- 5.16 As outlined, the appeal site sits within a gap within a substantial and built-up frontage. Therefore, it will not result in suburban type development. A ribbon of development already exists along this stretch of the laneway. The proposal seeks to consolidate this pattern of development. Although the properties exhibit different designs, they still complement each other due to their bespoke character, design and plot size. With the Council having no objections to the plot size and design it is considered that the development respects the established character. As the proposal is one which satisfies an infill opportunity, it cannot result in suburban style build-up of development, as this already exists.
- 5.17 The resident of No. 41C Crumlin Road, lives approximately 600m from the appeal site. Given the separation distance between the appeal site, together with the intervening vegetation and topography, the proposal will have no impact on this property. This resident had no objections to planning applications seeking infill dwellings which are closer to their property. LA05/2020/0039/F granted permission c. 125m south of No. 41C Crumlin Road. LA05/2021/0483 granted permission approximately 550m south of No. 41C Crumlin Road. These approvals are closer to 41C Crumlin Road than the appeal proposal. Furthermore, the property of No. 41C Crumlin Road was approved as an infilling dwelling in line with Policy CTY8 'Ribbon Development' under Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21). The property was developed by and is referred to as 'Jasmine House' on the Appellant's website. Regarding the representation made by the resident of No. 1 Lurgill Lane, this property was developed by the Appellant and also features on the website.
- 5.18 Road safety and access provisions did not form a reason for refusal. Notwithstanding, these matters were addressed during the planning application process, with the site layout and topographical survey both of which annotate exactly the features present on the ground. It is noted that the statutory consultee and expert, the Department for Infrastructure Roads (DFI Roads) had no objection to the proposal nor requested a speed survey.
- 5.19 The sight visibility splays cross under the crown spread of the trees located along the roadway. There has been no information or ecological assessments provided by 3rd parties to substantiate that bats roost in the trees. Nevertheless, they do not require

to be removed or felled. Accordingly, there was no requirement for the Appellant's ecologist to survey the trees.

- 5.20 A thorough appraisal of the site has been carried out by the Appellant's ecologist and a Biodiversity Checklist was provided. Species and protected areas were considered as part of the appraisal. It has been determined that no impact would be caused to protected sites and species and no further ecological assessments are required. Recommendations have been put forward which will be implemented on approval of planning permission.
- 5.21 There is a 3rd party letter of support appended to the evidence. The letter backs the bespoke design of the proposal which will complement the surrounding developments off the Lurgill Lane. It acknowledges that the access benefits from good visibility and advocates on behalf of the Appellant's deep connection with the land.

6.0 CONSIDERATION

- 6.1 The main issues in this appeal are whether the proposed development would:
- be acceptable in principle in the countryside;
 - integrate into the surrounding landscape;
 - result in a detrimental change to the rural character and settlement pattern of the area;
 - prejudice road safety; and
 - impact on natural heritage.
- 6.2 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.
- 6.3 The Council adopted the Lisburn and Castlereagh City Council Local Development Plan 2023 Plan Strategy (PS) on 26th September 2023. The PS sets out the strategic policy framework for the Council area. Compliant with the transitional arrangements, as set out in the Schedule to the Planning (Local Development Plan) Regulations (NI) 2015 (as amended), reference to the Local Development Plan now becomes a reference to the Departmental Development Plan (DDP) and the PS read together. Any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
- 6.4 In this appeal, the DDP is the Lisburn Area Plan 2001 (LAP). In it, the site is located in the countryside. The LAP directs to the Planning Strategy for Rural Northern Ireland (PSRNI). However, most of its policies pertaining to development in the countryside were superseded by the regional Planning Policy Statement 21 'Sustainable Development in the Countryside', (PPS21). The appeal site also falls within greenbelt as designated within the draft Belfast Metropolitan Area Plan 2004 (dBMAP), and again, this former designation has been superseded by regional policy in PPS21. The dBMAP does not contain any policies material to the appeal

development. I am satisfied, having reviewed the DDP, that there is no conflict with the PS.

- 6.5 In compliance with paragraph 1.11 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), operational policies set out in the PS are now in effect in this council area. Whilst the appellant referred to the JMS in their overall arguments that the previous policy provisions of PPS21 should still apply to this case, existing policy retained under the transitional arrangements, including PPS21, has now ceased to have effect in this council area. Planning applications and appeals must be determined under the legislative and policy context prevailing at the time. Therefore, despite the arguments advanced by the Appellant, the previous regional policies have been superseded and the length of time the proposal has been in the planning system does not circumvent the legislation and the transitional arrangements currently in place. The LDP has statutory primacy subject to other material considerations. It now falls to the Commission to assess the proposal in the context of the LDP, having regard to the amended reasons for refusal, which the Appellant had the opportunity to address. Guidance contained within Development Control Advice Note 15 'Vehicular Access Standards' (DCAN 15) is also a material consideration.
- 6.6 Policy COU1 of the PS is titled 'Development in the Countryside'. It 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*". Details of these operational policies are set out in policies COU2 to COU10. Policy COU1 also advises that any proposal for development in the countryside will be required to meet all the general criteria set out in policies COU15 'Integration and Design of Buildings in the Countryside' and COU16 'Rural Character and other Criteria'.
- 6.7 Policy COU8 'Infill/Ribbon Development' states that "*planning permission will be refused for a building which creates or adds to a ribbon of development*". However, it goes on to state "*exceptionally, there may be situations where the development of a small gap, sufficient to accommodate 2 dwellings within an otherwise substantial and continuously built-up frontage, may be acceptable. For the purpose of this policy a substantial and continuously built-up frontage is a line of 4 or more buildings, of which at least 2 must be dwellings, excluding domestic ancillary buildings such as garages, sheds and greenhouses, adjacent to a public road or private laneway*".
- 6.8 There are two dwellings located either side of the appeal site. Both have domestic ancillary buildings in the form of two storey detached garages within their plots. No. 1 Lurgill Lane, also has a second ancillary, linear building. The appellant referred to the ancillary building within the curtilage of No. 1 as a garage. Whilst I acknowledge that the garages within the curtilages of Nos. 1 and 3 are of a considerable scale, I have not been furnished with persuasive evidence that these buildings have moved beyond an ancillary use. Indeed, planning permission LA05/2022/0367/F, which the Appellant points to, approved an extension to the curtilage of No. 3 Lurgill Lane together with a covered outdoor patio. The policy does not allow for the inclusion of ancillary domestic buildings, such as garages, within the consideration of what is deemed to be a substantial and continuously built-up frontage.

- 6.9 I acknowledge that the access to the property at No. 1 abuts the lane. However, the stone pillars and close boarded fencing define the mouth of the access, and an access alone does not constitute frontage. Therefore, the property at No. 1 Lurgill Lane does not have frontage to the laneway. Indeed, this was acknowledged by the Appellant in relation to appeal decision 2016/A0114, whereby it was found that an access point alone does not constitute a frontage to a public road. Appeals 2019/A0198, 2018/A0209 and 2017/A0249 which were also referred to, have not been appended in full. Thus, contextually I cannot compare their circumstances to those of the proposal before me. Pursuant to the policy, the two-storey garages are not qualifying buildings and there remains only one building on the southwestern side of the appeal site which has frontage to the private laneway. Consequently, there is no substantial and continuously built-up frontage at this location.
- 6.10 Policy COU8 goes on to state that “*the proposed dwellings must respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage*”. There are a total of five new properties located off the Lurgill Lane, largely set apart from each other. Four of these dwellings are completed and occupied. The footprint of each is sizable, and each has a detached garage. The properties are set in generous plots with large areas of private amenity space. The appeal site is comparable in size to those plots hosting Nos. 1 and 3. The proposal is for a single dwelling and garage which would reflect the size, scale, plot size and width of neighbouring dwellings located along Lurgill Lane, particularly those of Nos. 1 and 3. Whilst I agree with the Appellant that a single dwelling on the appeal site would respect the existing development pattern on the ground, however, it does not meet the terms of Policy COU8 as there is no substantial and continuously built up frontage and the policy, as written, requires two dwellings.
- 6.11 I now turn to consider the issue of ribbon development. The justification and amplification of Policy COU8 is limited in its description of this type of development. It states that, “*a ribbon of 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*”.
- 6.12 Whilst the Council refused the proposal based on their assessment that it would *add* to ribbon development, they advise that the proposal *does not engage ribbon development* (emphasis added). In reaching its conclusion, they argue that there are two dwellings located along this section of the lane, Nos. 1 and 3 “*one to each side of the site*”. The Council further deliberates that, “*3 Lurgill Lane presents a frontage to the lane and 1 Lurgill Lane presents access only onto the lane. They are both set back at almost equi-distance from the lane. Both are large two storey dwellings of similar scale and massing*”.
- 6.13 As noted above, No. 1 Lurgill Lane does not have frontage to the laneway. However, the policy, with reference to ribbon development, refers to ‘fronting’ a road which, to my mind, is different to having frontage to a road. Given their orientation, the dwellings at Nos. 1 and 3 both front onto Lurgill Lane. None of their ancillary buildings front onto the lane as their front elevations face towards the principal dwelling and into their own respective curtilages. The two dwellings are located either side of the appeal site, with their curtilages bounding same. They are not, however, beside one another given the alignment of the lane, the physical separation

of the buildings and their disposition within their respective plots. Therefore, I consider that there is no ribbon development currently at this location. However, the appeal proposal would create a ribbon of development as it would introduce an additional two buildings, one of which would front the lane and be beside the dwelling at No. 1 and also read with the dwelling at No. 3.

- 6.14 The decision held in 2016/A0114 was undertaken in the superseded policy context and does not sit 'on all fours' with the appeal before me. Considering my findings in relation to Policy COU8, and those matters as raised by 3rd party representations, the appeal proposal does not meet the infill criteria specified in extant policy. Therefore, the Council's second reason for refusal, so far as stated, is sustained.
- 6.15 The Council consider that the proposal fails to satisfy Policy COU15 'Integration and Design of Buildings in the Countryside' and Policy COU16 'Rural Character and other Criteria'. Whilst the Council has only suggested that criteria a), d) and e) under Policy COU15 and criteria c) under Policy COU16 are offended, I note that its evidence expands to include criterion c) of Policy COU15 and criterion a) of Policy COU16. The Appellant has been provided with an opportunity to respond, so whilst the introduction of additional objections is unhelpful, no prejudice arises.
- 6.16 Criterion (a) of Policy COU15 states that a new building will not be permitted if it is a prominent feature in the landscape. The amplification of the policy advises that prominent, skyline or top of slope/ridge locations are unacceptable and new planting alone would not be sufficient for integration purposes. Criterion (a) of Policy COU16 states that a new development proposal would be unacceptable where it is unduly prominent in the landscape.
- 6.17 The appeal site is not located on a prominent landform such as a ridge or the top of a slope/hill. Public views are largely limited to those found along a short section of Lough Road and are restricted by intervening topography and vegetation. When looking south towards the appeal site, the top of the dwellings and ancillary buildings of Nos. 1 and 3 are discernible but not prominent. Travelling south along Lurgill Lane, views of the appeal site, together with the buildings at Nos. 1 and 3 are generally intermittent due to the rolling nature of the surrounding topography, which is interposed in places, with existing vegetation, including mature trees.
- 6.18 The Appellant's evidence, which includes contextual views of the proposal, demonstrates how the proposed dwelling and garage would blend with the existing landform, trees and buildings. The contextual view also illustrates that due to the siting of the proposal, its ridge heights will not exceed those of the buildings at Nos. 1 and 3 Lurgill Lane. Whilst there would be some sightings of the proposal from viewpoints along the public road, given the rolling topography of the site and surroundings these views would be limited. Therefore, I do not agree that the proposal would be a prominent or unduly prominent feature in the landscape.
- 6.19 Visual integration is an assessment of the extent to which proposed development will blend unobtrusively with its surroundings and policy advises that new planting alone will not be sufficient for integration purposes. As stated above, the appeal site is not situated in a prominent location. The rolling topography, as well as the intervening vegetation, means that the proposal would blend with the landform. The southern and eastern boundaries of the appeal site are established by virtue of the boundary

treatments undertaken by the occupants of Nos. 1 and 3 Lurgill Lane. While some landscaping would be required along the northerly boundary of the appeal site, not so much would be necessary as to offend the policy. Given the topography, the intervening vegetation and the established boundaries to the east and south of the appeal site, the proposal would not rely primarily on the use of new landscaping for integration. Therefore, for the reasons stated, I find that the proposal does not offend criteria a), c), d) and e) of Policy COU15, nor criterion a) of Policy COU16. The Council's third reason for refusal is not sustained.

- 6.20 The Council consider the proposal is contrary to Policy COU16 criterion c), which states that a new development proposal will be unacceptable where, it does not respect the traditional pattern of settlement exhibited in the area. The Council do not define what they consider the traditional pattern of settlement in the area to be but have advised that the proposal is contrary to the policy by virtue of its plot size. I note that the Council referred to Policy COU8 and the requirement for two dwellings. However, there is no specific requirement in Policy COU16 regarding the number of dwellings. In line with the Council's calculations, the plot size of the appeal site is comparable to those of Nos. 1 and 3. The Appellant has applied for one dwelling and associated garage on an equivalent plot size and of a similar design, size and scale of those already exhibited off the Lurgill Lane. Notwithstanding my earlier conclusions in respect of the existing pattern of development under Policy COU8, which relates to whether the appeal proposal constitutes an exception to that policy, I find for the above reasons that the proposal would respect the traditional pattern of settlement exhibited in the area. Therefore, I do not find that criterion c) of Policy COU16 is offended. For the reasons given above, I consider that the Council's fourth reason for refusal is not sustained.
- 6.21 The 3rd parties concern regarding road safety relate to the access arrangements from Lough Road, matters pertaining to widths along the laneway and the need to potentially upgrade Lurgill Lane to adoptable standards due to the number of properties accessing it. DCAN 15 advises that intensification is considered to occur when a proposed development would increase the flow of traffic using an access by 5% or more. There are currently five buildings approved, with four built and occupied, off Lurgill Lane and I accept that intensification would occur from the potential vehicle movements associated with an additional dwelling. I note that the Council, following consultation with DfI Roads, has not objected to the appeal development on road safety grounds and recommend visibility splays of 2.4m x 80m. According to the DfI Roads consultation response, these standards are based on measured traffic speeds (85thile on priority road) of 60mph. DCAN 15 deals with matters relating to, inter alia, new development access standards to the public road with associated sight visibility splays.
- 6.22 I am satisfied from my own on-site observations that the entrance to Lurgill Lane is both wide enough and has sufficient length to the gates to allow a normal sized car to pull in off the road. I note that the gates can be used to control the flow of traffic on the lane and there is an intercom system in place also. There are several formal passing bays located along the laneway and, whilst it is undulating to reflect the natural topography, the surface of the laneway largely comprises an even surface dressing. I note within the consultation from DfI Roads, consideration was given to the Roads (NI) Order 1993 but there was no recommendation by the statutory authority that the laneway was required to be brought up to adoptable standards.

- 6.23 Having regard to Table A of DCAN 15, I concur with the 3rd party that the private lane onto the public road benefits from an x-distance of c 2.4 metres. Regarding the y-distance, again from my assessment, and those measurements as denoted on the plans which accompanied the appeal, there exists a sightline distance of some 80 metres in either direction. The splays extend under the crown spread of the mature trees, the trunks of which are located within the hedgerow which sits behind the splay, to the west. Thus, following consideration of DCAN15, the above assessed access arrangements, measured speeds and existing laneway specifications, I am satisfied that, if planning permission was to be forthcoming, the extant visibility splays, access width or the laneway would not require upgrading beyond current standards.
- 6.24 The appeal site is largely comprised of grassland. There are no water courses traversing it, although I note the location of the Rooghan River, which Lurgill Lane crosses at a point close to the entrance to No.1. This river also abuts the northern boundaries of this property, together with the site under construction opposite the appeal site, and also that of No. 4 Lurgill Lane. The appeal proposal is located at a greater distance from the river than these recently constructed properties. If the proposal was approved, no hedgerows would be required to be removed and a construction method plan to control and mitigate sediment and potentially polluting discharges during the construction phase of the development, could be secured with by conditions. Matters pertaining to a septic tank could also be a condition of approval and discharge from same is regulated by statute. Furthermore, I note that, from the background papers, the Department of Agriculture, Environment and Rural Affairs (DAERA) advised that it had considered the impacts of the proposal on designated sites and other natural heritage interests and had no objections to the proposal. Therefore, I consider that the objections raised on ecology and natural heritage matters would not warrant the withholding of planning permission.
- 6.25 Regarding the length of time the application was with the Council, I note that the Appellant held discussions with the planning authority and there was an ongoing dispute regarding the 'frontage' of No. 1 Lurgill Lane being a possible barrier to planning approval. I also acknowledge the issues raised by the Appellant with respect to those refusal reasons relating to concerns which may not have been disclosed by the Council before the decision was issued. Whilst the issue of delay is one which should be addressed with the Council directly, the Appellant always had the option to invoke their right under Section 60 of the Act to appeal against the non-determination of their planning application. Furthermore, the Commission is assigned to address the final position of the Council who, as the planning authority, is tasked with defending their ultimate objections.
- 6.26 Regarding the Human Rights Act 1998, Human Rights are qualified rights, and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. I have already concluded that the proposal runs contrary to planning policy and therefore I do not regard it to be in the public interest that such development is approved. Furthermore, I consider the approach adopted by the Council, in its interpretation of the legislative and planning policy requirements, to be both reasonable and proportionate in balancing the rights of the individual with the public interest and it follows that I find no unacceptable or disproportionate infringement of the appellant's human rights.

6.27 For the reasons given above, the appeal proposal is contrary to Policy COU8 of the Council's Plan Strategy. Notwithstanding the correspondence submitted in support of the appeal development, as I have found that the appeal proposal is not a type of development which in principle is acceptable in the countryside, it follows that Policy COU1 is not met. Thus, the Council's first reason for refusal is also sustained. The Council's first and second reasons for refusal, so far as stated, are sustained and are determining in this appeal.

7.0 RECOMMENDATION

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

7.2 The recommendation relates to the following drawings: -

Drawing No.	Title	Scale	Date
PL-01	Location Map and Proposed Site Plan	1:2500 & 1:500	Council Date Stamped 12 th November 2021
PL-02	Proposed Floor Plans, Elevations and Garage	1:100	Council Date Stamped 28 th February 2022

List of Documents

Planning Authority: -	Statement of Case, Lisburn and Castlereagh City Council Rebuttal Statement, Lisburn and Castlereagh City Council Council Comments on the Plan Strategy, Lisburn and Castlereagh City Council
Appellant: -	Appellant's Statement of Case, TC Town Planning Appellant's Rebuttal Statements, TC Town Planning Appellant's Comments on the Plan Strategy, TC Town Planning
3 rd Parties: -	Statement of Case by Ballymullan Architect Ltd Statement of Case by Ms SJ McCann Rebuttal Statement by Ms SJ McCann

