

PLANNING APPEALS COMMISSION

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

**Appeal by Mr B and Mrs R Wilson
against the refusal of full planning permission for the extension of dwelling curtilage
and erection of shed and polytunnel (retrospective) at No. 26 Tullykin Road,
Killyleagh, Downpatrick.**

**Report
by**

Commissioner Kieran O'Connell

Planning Authority Reference: LA07/2022/1216/F

Procedure: Written Representation

Commissioner's Site Visit: 4th January 2024

Report Date: 4th March 2024

1.0 BACKGROUND

1.1 Newry Mourne and Down District Council received the application on 8th August 2022.

1.2 By notice dated 20th January 2023, the Council refused permission giving the following reasons: -

1. The proposed development is contrary to the SPPS and Policy CTY1 of Planning Policy Statement 21 – Sustainable Development in the Countryside in that:

- the proposed extension of curtilage, shed and polytunnel are within the countryside and no over-riding reasons have been provided to justify that the proposed development is essential in this rural area.

2. The proposal is contrary to the Addendum to Planning Policy Statement 7- Residential Extensions and Alterations, Policy EXT1 in that:

- the outbuildings are not located within the established curtilage of the dwelling and the positioning of these buildings would detract from the appearance and character of the surrounding area resulting in a detrimental change to the rural character of the area.

3. The proposal is contrary to Policies CTY8 and CTY 14 of Planning Policy Statement 21 – Sustainable Development in the Countryside in that the proposal would:

- create a ribbon of development along this section of the Tullykin Road,
- result in a suburban-style build-up of development when viewed with existing buildings and would consequently have an adverse impact on the rural character of the countryside.

4. The proposal is contrary to the Strategic Planning Policy Statement for Northern Ireland and Policy NH6 of Planning Policy Statement 2 – Natural Heritage in that:

- in that, the extension to curtilage and associated development cannot be justified and cannot be accommodated in the landscape without detriment to rural character.

1.3 The Commission received the appeal on 25th February 2023 and advertised it in the local press on 12th April 2023.

1.4 Two representations of support were received from third parties during the processing of the planning application. The Council forwarded these representations to the Commission.

2.0 SITE AND SURROUNDINGS

2.1 The appeal site is located at No. 26 Tullykin Road. The irregular shaped appeal site is located on the eastern side of Tullykin Road to the southeast of the junction of Tullykin Lough Road, Tullykin Road and Cuttyshane Road. The western roadside boundary is defined by 2.5-3.5m dense hedgerows except for the access point to the site. The northernmost boundary is defined by a hedgerow approximately 2.5m high.

The eastern and southern boundaries of the site are defined by post and wire fencing with recently planted hedgerows (60cm high) on the inside.

- 2.2 The appeal site incorporates the dwelling and one-and-a-half storey garage at No. 26 Tullykin Road which are elevated and set back from Tullykin Road. The lands on the southern side of No. 26 contain a portal-framed steel shed parallel to the western site boundary and a polytunnel running 90 degrees to the western boundary. It is this portion of land that constitutes the extension to the curtilage of the property. The landform rises in an easterly direction towards and beyond the dwelling and garage. A greenhouse and two wooden sheds are located to the rear (east) of the shed and polytunnel along with several planting beds.
- 2.3 Beyond the appeal site, the area is largely characterised by agricultural lands and interspersed with isolated dwellings located at or along extended laneways to main roads. Dwellings within this area consist of a mix of house designs and finishes on a variety of plot sizes, many of which contain outbuildings within their plots.

3.0 PLANNING AUTHORITY'S CASE

- 3.1 The appeal site forms a roadside plot along Tullykin Road. The red line of the site encompasses the dwelling and detached garage and associated garden area of No. 26 Tullykin Road and extends to the south to an area that has been recently cleared and on which a corrugated shed, polytunnel, two wooden sheds and a greenhouse have been developed and includes a vegetable patch.
- 3.2 Due to the topography, land levels within the site rise as you move away from the road frontage. The dwelling and garage at No. 26 are at an elevated position above Tullykin Road. Land continues to rise beyond the dwelling to the west. Access to the site is available from the Tullykin Road.
- 3.3 The appeal site is located outside development limits and is included in the Strangford and Lecale Area of Outstanding Natural Beauty.
- 3.4 Relevant Site History:
- R/1995/0127, 26 Tullykin Road Killyleagh, Alterations and extension to existing dwelling and erection of detached domestic garage, Permission Granted.
 - LA07/2022/0873/O, Adjacent to 26 Tullykin Road, Killyleagh, Site for Dwelling and Garage, New Access, and associated Site works, Under Consideration.
 - LA07/2022/0256/CA, 26 Tullykin Road, Killyleagh, Down, BT30 9TW, Alleged U/A extension to domestic curtilage and erection of buildings, New Enforcement Case
- 3.5 Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires regard to be had to the local development plan (LDP), so far as material to the application, and to any other material considerations. The Ards and Down Area Plan 2015 is the local development plan for the area and the appeal site is located within the open countryside. The plan contains no material policies for the type of development proposed.
- 3.6 The Strategic Planning Policy Statement for Northern Ireland (SPPS) retains policies within existing planning policy documents until a new Plan Strategy for the whole

Council area has been adopted. It sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy or when the SPPS is silent or less prescriptive on certain policies. There is no conflict or change in policy direction between its provisions and those of Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) and Planning Policy Statement 7 (addendum): Residential Extension and Alterations (APPS7). Therefore, PPS 21 and APPS7 provide the policy context for the assessment of this proposal.

- 3.7 Further to site inspection and as indicated on the Site Plan submitted (Drawing No. MT21.21.07(A)), two additional sheds and a greenhouse have also been erected. These have not been included within the proposed description nor have detailed drawings been provided of these buildings. A photo has been provided of the additional buildings and a site plan identifying their positioning within the site.
- 3.8 Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) Policy CTY 1 of PPS 21 states that there is a range of development types that in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. A number of types of acceptable development are set out. Within these, there is no provision for residential land to be extended further into the countryside within Policy CTY 1. However, the policy goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement.
- 3.9 As demonstrated by the proposed site plan, the residential curtilage has been extended to the south of the dwelling and the detached garage at No. 26 Tullykin Road and into an adjoining agricultural field. The curtilage extends an additional 48m along the road frontage. Within the extended curtilage, a shed and polytunnel have been constructed, which sit just 7m back from the road frontage.
- 3.10 The detailed drawings provided for these two buildings indicate that the shed measures 10m by 7m, with a pitched roof measuring 4m to the ridge. The shed is provided with a roller door and a pedestrian door opening along its northern elevation, and external finishes include corrugated metal cladding. This building contains different machinery and appears to be in use as a workshop.
- 3.11 The polytunnel measures 9m by 6.5m, with a maximum building height of 3m. Land levels within the site rise as you move across it from west to east, resulting in these two buildings being positioned on the lower portions of the site. As noted above, three other buildings have been constructed within the extended curtilage namely two wooden sheds and a greenhouse. These buildings sit further into the site and away from the road frontage and are positioned behind the front building line of the dwelling at No. 26. Given the sloping nature of the site, these buildings are positioned on more elevated ground. New boundaries are formed by timber posts and wire fencing.
- 3.12 Two Google Earth images dated March 2020 and June 2022 demonstrate the extent of recent works undertaken.
- 3.13 The proposed extension of the curtilage is considered to represent a significant increase to the original residential curtilage as demonstrated on the Google Aerial

Imagery, resulting in a large plot within the rural area and an extensive curtilage width along the road frontage. The dwelling and detached garage at No. 26 were set within a residential curtilage measuring circa 2762 sqm and provided with a generous garden area, which could not be considered overly restrictive. On extending the curtilage, the resulting curtilage measures circa 5500 sqm, almost double the size of the original curtilage. On review of the supporting statement provided by the Appellant, no explanation or justification has been offered on the need for the extended curtilage and erection of buildings within the extended area. It is therefore concluded that it has not been sufficiently demonstrated that this proposal is essential at this rural location, outside the existing curtilage of the dwelling and therefore, on this basis, the proposal is unacceptable.

- 3.14 Policy CTY1 directs consideration of an extension to a dwelling house in the countryside to the Addendum to PPS7, 'Residential Extension and Alteration. This is the policy framework against which to assess the impact of the building works on the visual amenities of the countryside.
- 3.15 Policy EXT1 of APPS 7 states that planning permission will be granted for a proposal to extend or alter a residential property where four criteria are met. These relate to the scale, design and appearance of the proposal, the privacy and amenity of neighbours, impacts on trees and landscape features, and leaving sufficient space for recreational and domestic purposes, including the parking, and manoeuvring of vehicles. Criterion (a) of Policy EXT1 addresses the same issues for domestic extensions as those contained within CTY13 and CTY14.
- 3.16 Paragraph 11 provides specific guidance in relation to garages and outbuildings and states that buildings within the residential curtilage can require as much care in siting and design as works to the existing residential property. It goes on to say that such buildings should be subordinate in scale and similar in style to the existing property, taking into account the materials, the local character, and the level of visibility of the building from surrounding views. The new buildings are considered acceptable in scale and remain subordinate to the main dwelling. Policy does not require the new outbuildings to duplicate the existing dwelling in terms of material or design. However, the shed adjacent to Tullykin Road, due to its design and materials, has a non-domestic appearance. Within the supporting statement however, the agent has referred to other buildings along Tullykin Road that have a similar appearance and roadside positioning to that within the appeal site, and as such, in this context, this building is considered acceptable in design.
- 3.17 Paragraph A13 of Annex A of APPS7 states that in the countryside, ancillary buildings should be designed as part of the overall layout in an integrated group of buildings. Further, Paragraph 24 of the Annex says that proposals should be in keeping with the character of the existing property and its countryside setting and that extensions which require the use of land outside the established curtilage of the property will result in a detrimental change to the rural character.
- 3.18 Travelling in a southern direction along Tullykin Road and on approach to the appeal site, the shed, greenhouse, and wooden shed can only be viewed once you reach the vehicular entrance to the site.

- 3.19 When travelling in a northerly direction along the Tullykin Road and on approach to the site, due to the existing roadside hedging, only the top section of the corrugated shed will be visible.
- 3.20 However, the most damaging and critical view in terms of impact on rural character is from the west of the appeal site on Cuttyshane Road. From here, the dwelling and garage at No. 26, along with the new buildings and curtilage extension, are the most visible and are viewed as a spread of development ribboning along the roadside (photo provided). For comparison, an image from Google Street View shows the dwelling, detached garage, and curtilage at No. 26 prior to the works undertaken.
- 3.21 The corrugated shed has been constructed 28m from the dwelling's southern gable elevation, and the polytunnel is positioned 38m from the dwelling. When viewed from the Cuttyshane Road, due to their separation distance from the dwelling and detached garage at No. 26, the new buildings do not appear as an integrated group of domestic buildings with the domestic property at No. 26 but instead extend into the countryside and away from the existing building group at No. 26. Consequently, the development under consideration does not form an integrated rural group of buildings within a domestic curtilage and no reasoned justification has been given for the need for this considerable extension to the curtilage of No. 26. Therefore, they result in a detrimental change to the rural character of the surrounding area, which is contrary to the requirements of EXT1 of APPS7.
- 3.22 Further, the appeal site is included within an AONB and as such, the requirements of Policy NH6 of Planning Policy Statement 2 (Natural Heritage) are applicable. Based on the assessment above, considering the context and siting of the proposal outside the original curtilage of No. 26 and the resulting linear arrangement of buildings extending into an open agricultural field, the siting is not sympathetic to the special character of the AONB and for this reason, does not comply satisfactorily with the requirements of Policy NH 6 (a).
- 3.23 While the buildings would benefit from a backdrop of rising land and the mature roadside hedging, it will nevertheless extend development further into the countryside, which would be highly visible from Cuttyshane Road, as referred to above.
- 3.24 Policy CTY8 of PPS21 'Ribbon Development' states that planning permission will be refused for a building that creates or adds to a ribbon of development. Paragraph 5.32 of the policy says that ribbon development is detrimental to the character, appearance, and amenity of the countryside. Further, Paragraph 5.33 states that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back staggered, or at angles and with gaps between them can still represent ribbon development if they have a common frontage or they are visually linked. Policy CTY14 of PPS21 'Rural Character' further states that a new building will be unacceptable where it creates or adds to a ribbon of development. The new buildings subject to this appeal when viewed with the dwelling and detached garage at No. 26, would create a ribbon of development along this section of the Tullykin Road, particularly when viewed from the Cuttyshane Road. The creation of ribbon development is detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside. The new buildings

create a suburban-style build-up of development when viewed with the existing buildings at No. 26. The development would therefore not comply with the requirements set out by Policies CTY8 and CTY14 of PPS21.

4.0 APPELLANTS' CASE

- 4.1 The appeal site is at No. 26 Tullykin Road, Killyleagh and falls within the countryside of the Ards and Down Area Plan 2015. The site is located within the Strangford and Lecale AONB. The topography rises steeply from the western boundary with Tullykin Road to the east. The site proposal is located on the lowest slopes of the land.
- 4.2 Regarding the first reason for refusal, paragraph 6.65 of the SPPS states that “the aim of the SPPS with regard to the countryside is to manage development in a manner which strikes a balance between protection of the environment from inappropriate development, whilst supporting and sustaining rural communities.”
- 4.3 PPS 21 Policy CTY1 sets out that an extension to a dwelling house where it is in accordance with the Addendum to PPS7. [sic]
- 4.4 The Appellants' have resided at No. 26 Tullykin Road for 26 years. This appeal development is for the retention of buildings and curtilage extension for purposes ancillary to the enjoyment of the dwelling house.
- 4.5 The Appellants' wish to enjoy a sustainable way of life and grow vegetables led them to extend their curtilage to erect the polytunnel, which is in the southwestern corner of the site and sits behind the shed. Images contained within Appendix 2 show produce grown on-site and additional biodiverse planting.
- 4.6 Page 5 of the Case Officer Report (COR), states that “the dwelling and detached garage at No. 26 were set within a residential curtilage measuring circa 2726sqm and provided with a generous garden area which could not be considered overly restrictive”. Figure 1 (Google Earth Aerial View 2016) shows the original restricted curtilage. Private amenity was only available to the front of the dwelling; there was no rear or side garden to avail of. A soakaway serving the dwelling also runs across the front garden. It was therefore impossible to erect vegetable plots or the shed to the rear or side of the dwelling.
- 4.7 The Google Earth ariel image (2022) attached illustrates the amended curtilage. The COR states the amended curtilage measures circa 5500 sqm (0.55Ha) but is approximately 0.534Ha as noted on the P1 form. The surrounding area has varied plot sizes (some roadside dwellings and other larger detached dwellings). No. 11 Tullykin Road sits on a plot size of approximately 7422 sqm, and No. 46 sits on a plot size of approximately 5400 sqm, therefore on balance, the plot size is in keeping with the surrounding area.
- 4.8 The shed is for domestic use only and houses some technology equipment and gardening equipment, given its proximity to the polytunnel. The increase in the site curtilage is within the Appellants' ownership and extended into vacant agricultural lands to the south of the dwelling. The overall impact of the proposal does not affect any neighbouring properties in terms of loss of privacy, overlooking, overshadowing or breach of a boundary.

- 4.9 In respect of the second reason for refusal, this appeal is for a correction to the dwelling curtilage, to include the retention of the shed and polytunnel.
- 4.10 The COR confirms that the Council agree that the new buildings are of an acceptable scale to remain subordinate to the dwelling and confirms acceptance that the shed is acceptable in design, based on examples of constructed sheds along Tullykin Road.
- 4.11 The COR (page 6) states that travelling in a southern direction and on approach to the application site, the shed can be viewed at the vehicular entrance. The building is appropriately sited on the lower slopes of the land and the intervening vegetation provides a degree of enclosure to the site and aids with visual screening.
- 4.12 The COR (page 6) states that, when travelling in a northern direction, only the top of the shed is visible. The site inspection was carried out in the Autumn. Figure 4 is an image taken in July 2022 showing the shed is not visible along the northern approach along Tullykin Road.
- 4.13 Figure 5 taken from the COR illustrates the difference in seasonal foliage. In appeal decision 2013/A0189, the Commissioner states there is a seasonal factor to be taken into consideration, with enhanced foliage during the summer months.
- 4.14 The COR details “the most damaging and critical view in terms of impact on the rural character,” which is shown in Figure 11. Again, there is a seasonal factor to this consideration, and the site is only visible from approximately 100m along the Cuttyshane Road, due to topography and intervening vegetation. Public views of the site are static from this part of the elevated road and limited only to this one location.
- 4.15 A series of images are provided regarding the critical views of the site. These include:
- Figure 6: Junction of Cuttyshane Road with Tullykin Road (Jan 2023)
 - Figure 7: Image from Cuttyshane Road (Jan 2023)
 - Figure 8-9: Image from Cuttyshane Road (July 2023)
 - Figure 10: Image on the southern approach showing seasonal foliage on both sides of Tullykin Road.
 - Figure 11: Image two from Page 7 of COR.
- 4.16 In figures 8-9, trees can be seen with foliage and will screen the development from views along Cuttyshane Road; arguably, the proposal is not “highly visible.” The retained mature vegetation to the western boundary ensures that the main visual impact is restricted to the immediate site frontage.
- 4.17 Integration is not a test of invisibility; it is how development blends unobtrusively into the landscape. The development is well screened, benefits from a suitable degree of enclosure, and is read against the drumlin backdrop. The topography of Northern Ireland is not flat; the shed and polytunnel have been sited sympathetically to suit the constraints of the dwelling curtilage.
- 4.18 Paragraphs 5.09-5.12 of appeal decision 2021/A0009 discuss APPS 7 and PPS 21 and conclude that it “would be reasonable to decide that the guidance is outweighed

in certain circumstances where the extension or outbuilding is well designed and visual amenity and rural character are not adversely affected.”

- 4.19 Regarding the third refusal reason, Annex A13 of APPS7 states that proposals should be in keeping with the character of the existing property and its countryside setting and that extensions which require the use of land outside the established curtilage of that property will result in a detrimental change to rural character.
- 4.20 Policy CTY14 relates to Rural Character in the Countryside and states that planning permission will be granted for a building where it does not cause a detrimental change to or further erode the rural character of an area. Criterion (a) – (e) are to be met to be acceptable.
- 4.21 The buildings are not unduly prominent in the landscape. The site photographs taken in July 2022 and the Case Officer site inspection show a difference in seasonal foliage. The mature trees and hedgerows combined with the siting of the buildings on the lower slopes of the lands preclude them from being prominent in the landscape, complying with criteria (a) of CTY 14.
- 4.22 The COR confirms acceptance of the siting, scale and design of the proposal based on the surrounding context examples found along Tullykin Road. The COR also agrees that the buildings benefit from the rising land backdrop and mature roadside hedging, which aid integration and allow development to be absorbed.
- 4.23 There are no suburban features; the materials are sympathetic to the countryside, complying with criterion (b).
- 4.24 Criterion (c) relates to the traditional pattern of settlement. Figure 12 shows an aerial view of the wider context around Tullykin Road and demonstrates the proposal is in keeping with the wider area.
- 4.25 The proposal does not create a ribbon of development; they are not visually linked to surrounding development, nor do they cluster with any other development other than that within the curtilage No. 26 Tullykin Road.
- 4.26 A recent JR ruling 2022 (NIQB37) 2, Paragraph 90 (ii) states, “It will only be permissible to grant permission if the development falls within one of the exceptions set out in Policy CTY8 (either for infill housing development or infill economic development) or where, exceptionally, the planning authority rationally considers that other material planning considerations outweigh the non-compliance with Policy CTY8.” The proposal therefore does not conflict with policies CTY 8 and CTY 14, and this reason for refusal should not be sustained.

5.0 THIRD PARTIES CASE

- 5.1 The conduct of the Council's Planning Department has been egregious in its unfairness. The retrospective application was recommended for refusal, stating no valid reason had been provided for the curtilage extension. The Council is required to conduct a site inspection and an informed assessment based on policy grounds and from any site inspection, it was obvious that the shed, polytunnel and greenhouse could not be erected to the rear of the site given the restrictive rear amenity space. It

would also have been inappropriate to be sited within the front garden of the dwelling. Whilst in the front of the garden to the side, the shed and polytunnel do not obstruct the views from the main house and the buildings are in keeping with the surrounding area being sited to the site [sic].

- 5.2 There was a reasonable expectation for the Council to engage with the Appellant to inquire as to the reasons for the curtilage extension, however, the Council did not engage and simply refused the application without the option to “call in,” based on the alleged enforcement case. The Appellant never received a copy of the letter detailing the enforcement action. This was sought from the enforcement section at the stage where the application was being refused.
- 5.3 It is the view that the Council recommended refusal of the retrospective application based on the two outline planning applications for two infill dwellings which relied on the curtilage extension.
- 5.4 The Council confirms that the new buildings are of an acceptable scale, remain subordinate to the house and are of similar materials found within the locality. Their reasons for refusal are contradictory to the details within their professional planning report.
- 5.5 The Appellant extended their curtilage and erected the buildings contained within this appeal for purposes ancillary to the enjoyment of the dwelling house. The extension of the curtilage houses an extended garden area and greenhouses where vegetables are grown, with the polytunnel and shed on the lower slopes of the lands. I fail to see how a proposal that extends the Appellants’ garden “has an adverse impact on the rural character of the countryside” and “cannot be accommodated in the landscape without detriment to rural character” when the proposals are simply rural in nature.
- 5.6 Paragraph 6.65 of the SPPS states that “The aim of the SPPS with regard to the countryside is to manage development in a matter which strikes a balance between protection of the environment and inappropriate development, whilst supporting and sustaining rural communities.” PPS 21 CTY 1 sets out that an extension to a dwelling house where it is in accordance with the Addendum to PPS7 [sic].
- 5.7 The Appellants’ have resided at No. 26 Tullykin Road for 26 years. This application is for the retention of buildings and curtilage extension for purposes ancillary to the enjoyment of the dwelling house. The Appellants’ wish to enjoy a sustainable way of life and grow vegetables, and extended their curtilage to erect the polytunnel which is to the southwestern corner of the site and sits behind the shed.
- 5.8 Page 5 of the Case Officer Report (COR) refers to “a generous garden area which could not be considered overly restrictive”. Private amenity was only available to the front of the dwelling; there was no rear or side garden to avail of. A soakaway serving the dwelling runs across the front garden.
- 5.9 The COR states the amended curtilage measures circa 5500 sqm (0.55Ha) but is approximately 0.534Ha as noted on the P1 form. The surrounding area has varied plot sizes (some roadside dwellings and other larger detached dwellings). No. 11 Tullykin Road sits on a plot size of approximately 7422 sqm, and No. 46 sits on a plot

size of approximately 5400 sqm, therefore, on balance, the plot size is in keeping with the surrounding area.

- 5.10 The shed is for domestic use only and houses some technology equipment, horticultural equipment, and a tractor. The increase in the site curtilage is within the Appellants' ownership and extended into vacant agricultural lands to the south of the dwelling.
- 5.11 The overall impact of the proposal does not affect any neighbouring properties in terms of loss of privacy, overlooking, overshadowing or breach of a boundary.
- 5.12 The garden has increased biodiversity and community cohesiveness, both dogmas of Newry Mourne and Down District Council, therefore this reason for refusal cannot be sustained.
- 5.13 The first part of the second reason for refusal states the outbuildings are not located within the established curtilage of the dwelling. This has been addressed above.
- 5.14 The second part of the second refusal reason states that the positioning of the buildings would detract from the appearance and character of the surrounding area, resulting in a detrimental change to the rural character of the area.
- 5.15 The COR confirms that the Council agrees that the new buildings are considered acceptable in scale so as to remain subordinate to the dwelling and confirms acceptance that the shed is acceptable in design, based on examples of constructed sheds along Tullykin Road, therefore in keeping with the rural character of the area.
- 5.16 The shed has been appropriately sited on the lower slopes of the lands so as not to be visually prominent in this Area of Outstanding Natural Beauty. The proposal is screened by the existing long-established natural boundaries along Tullykin Road. This reason for refusal therefore cannot be sustained.
- 5.17 The proposal does not create a ribbon of development along Tullykin Road; the buildings will be read with the existing dwelling and against the backdrop of the extended garden. There is a gap of 175m between the polytunnel and the existing dwelling to the south, which could be considered too large for dwellings under Policy CTY 8.
- 5.18 The proposal is for buildings relating to domestic horticultural activities; therefore, they do not result in a suburban-style build-up of development when viewed with existing buildings; in fact, they are in keeping with the rural character of the area, which the Council has confirmed. The third reason for refusal, therefore, cannot be sustained.
- 5.19 The fourth refusal reason states that the extension to curtilage and associated development cannot be justified and cannot be accommodated in the landscape without detriment to rural character.
- 5.20 The reason for the curtilage extension has been provided above. About the detriment of rural character, Newry Mourne and Down District Council confirmed that the

buildings were acceptable in scale and design, with the shed being akin to examples along Tullykin Road, which is completely rural in nature.

- 5.21 The proposals, as outlined above, are for horticultural activities. The polytunnel simply cannot be considered to have an adverse impact on rural character when they would usually be located within the countryside. The shed is made of materials sympathetic to the rural location, which the Council has agreed with; therefore, it is contended this reason for refusal cannot be sustained.

6.0 CONSIDERATION

- 6.1 The main issues in this appeal are whether the development is acceptable in principle in the countryside and its effect on rural character.
- 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 (LDP), 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. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is within the countryside and outside of any settlement limit. As the plan policies relevant to the countryside are now outdated having been overtaken by regional policies for rural development, no determining weight can be attached to them. There are no other provisions in the plan that are material to the determination of the appeal.
- 6.3 The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole of the Council area. As no Plan Strategy has been adopted for the Newry, Mourne and Down District Council area, both the SPPS and other regional policies apply. In line with the transitional arrangements, as there is no conflict or change in policy direction between the provisions of the SPPS and retained policy; Planning Policy Statement 2 'Natural Heritage', Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS 21) and the Addendum to Planning Policy Statement 7 'Residential Extensions and Alterations' (APPS 7) provide the relevant policy context for assessing this appeal.
- 6.4 The subject appeal development relates to the retention of an extended curtilage area, a shed and a polytunnel. The two additional sheds and a greenhouse lie outside the scope of this appeal.
- 6.5 Policy CTY 1 of PPS 21 states that planning permission will be granted for an extension to a dwelling house in the countryside where it complies with the APPS 7. The preamble to APPS 7 states that the policy contained in this addendum will apply to all dwelling houses throughout the region, including single dwellings in the countryside.
- 6.6 An extension to the residential curtilage of a dwelling in the countryside involves a material change of use of the land. The APPS7 does not consider such development unless it is associated with a residential extension or alteration (operational

development). In this appeal, the curtilage extension was to facilitate the house extension, namely the erection of the shed and polytunnel. Therefore, it is of relevance to my consideration.

- 6.7 Policy EXT 1 of APPS 7 states that planning permission will be granted to extend or alter a residential property where all four criteria are met. These relate to the scale, design and appearance of the proposal, the privacy and amenity of neighbours, impacts on trees and landscape features, and leaving sufficient space for recreational and domestic purposes, including the parking, and manoeuvring of vehicles. It goes on to state that the guidance set out in Annex A will be taken into account when assessing proposals against these criteria.
- 6.8 Paragraph A24 of Annex A states, *'the impact of an extension or alteration on the visual amenity of the countryside and, in particular, Areas of Outstanding Natural Beauty needs to be considered. Proposals should be in keeping with the character of the existing property and its countryside setting. Through poor design the individual and cumulative effect of extensions and alterations which are disproportionate in size to the existing property, or which require the use of land outside the established curtilage of the property, will result in a detrimental change to rural character'*. Furthermore, Paragraph A25 states that *'many rural dwellings occupy larger plots than their urban counterparts. Whilst there may be sufficient room on the plot to accommodate an extension in physical terms, great sensitivity is required to ensure the proposal integrates with the existing dwelling and surrounding landscape'*.
- 6.9 The Council's main concern generally relates to criterion (a) of Policy EXT 1 in that the shed and polytunnel are located outside the established curtilage of the dwelling such that their positioning detracts from the appearance and character of the area.
- 6.10 The Appellant argues that the appeal site measures 0.53ha and not 0.55ha as suggested by the Council. Nevertheless, the extension of the curtilage at No. 26 is substantially greater than the original curtilage (approximately 2762 sqm based on the Council's evidence) and extends the road frontage of No. 26 by approximately 48m. This results in a disproportionately large plot for an individual dwelling house and garage in the countryside particularly as its original plot was extensive comprising of an extensive front garden and associated rear amenity space.
- 6.11 Although the Appellant and Third-Party state that it was 'impossible' within the original curtilage to erect vegetable plots or a shed to either the rear or side of the dwelling, no persuasive evidence has been provided to support this position. Furthermore, I note from Figure 1 of the Appellants' evidence that there was an ancillary building or structure to the rear of the garage in 2016. Given this and my on-site observations, I am not persuaded that it would be impossible to erect a shed or polytunnel within the lands to the side or rear of the existing buildings and within the original curtilage.
- 6.12 The Appellant and Third-Party state that a soakaway in the front garden prevents the appeal development from being erected in this area. Notwithstanding the potential visual implications, no evidence has been provided either indicating the location or the extent of the soakaway. Nor has it been demonstrated how it would restrict the usability of the entirety of the front or side garden for growing vegetables or prevent the development of ancillary buildings.

- 6.13 Notwithstanding the Appellants' rationale or the Third-Party's support for extending the curtilage of No. 26, I agree with the Council that the original curtilage of No. 26 was not so restricted that it could not accommodate a shed and polytunnel within it. From my assessment on site, the shed and polytunnel could be accommodated within a much smaller area that would not disproportionately increase the extent of the site curtilage into the countryside.
- 6.14 While the Appellant recognises that there are varied plot sizes within the wider area and identifies two dwellings with large plots (No. 11 and No. 46 Tullykin Road), no details of these have been provided within the evidence other than a figure applied to their respective plot sizes. However, during my site visit I noted varying plot sizes in the wider area with some of those quite large. However, none are directly comparable to the specific circumstances of this appeal.
- 6.15 The Council's concerns relate to the location of the shed and polytunnel and are predicated on the basis that their location is somewhat removed from the dwelling group at No. 26 and, as such, they do not form part of an integrated group of domestic buildings. I consider that the extensive use of land outside the established curtilage is disproportionate in size to accommodate the operational development aspect of the development which adversely impacts on the character and countryside setting of the property. The shed and polytunnel are a significant distance (some 28m and 38m respectively) forward of the building line of the dwelling and garage. This means they are not grouped with the existing buildings when viewed in transit along both the Tullykin Road and Cuttyshane Road. Such ancillary buildings should be designed as an integral part of the overall layout resulting in an integrated rural group of buildings. These are not and the overall extension of built form into the adjacent field has resulted in a detrimental change to rural character in this AONB location.
- 6.16 All in all, given that the appeal development cumulatively involves the use of a substantial amount of land outside of the established curtilage of No. 26, it is disproportionate in size to the host property. The location of the shed and polytunnel detracts from the character and appearance of the area when viewed from the identified viewpoints. I do not agree that the topography of the site and surrounding lands justify such a physical separation between the shed and polytunnel and the host dwelling and garage. For the reasons stated, the appeal development detracts from the rural character of the area. The Council's second refusal reason is therefore sustained.
- 6.17 Both Policy CTY 8 and Policy CTY 14 relate to buildings in the countryside. They do not relate to the extension of the curtilage element of the appeal proposal. Policy CTY 8 refers specifically to 'ribbon development' and states that planning permission will be refused for a building which creates or adds to a ribbon of development. There are exceptions to this policy but they are not engaged in this appeal. Policy CTY 8 further indicates that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development if they have a common frontage 'or' are visually linked.

- 6.18 Policy CTY 14 is related to Policy CTY8 as both deal with ribbon development. Paragraph 5.80 of Policy CTY 14 states that ribbon development is always detrimental to the rural character of an area as it contributes to a localised sense of build-up and fails to respect the traditional settlement pattern of the countryside.
- 6.19 Notwithstanding the Appellants' and Third-Party's arguments that the buildings are not visible along Tullykin Road following the additional vegetation growth along the roadside boundary, neither Policy CTY 8 nor its justification or amplification require there only to be a visual appreciation of buildings from any particular road, nor does it discount ancillary buildings from creating or forming part of a ribbon of development. From my observations on site, the dwelling at No. 26 and its associated one-and-a-half-storey garage along with the shed and polytunnel all share common frontage to Tullykin Road. As the dwelling and garage are two buildings, the shed represents a third building along the frontage of Tullykin Road creating a ribbon of development.
- 6.20 While the shed and polytunnel are not readily intervisible together along Tullykin Road or Cuttyshane Road due to the integration afforded by the landform and intervening vegetation they remain appreciable in the landscape and, for the reasons given a ribbon of development exists along the frontage of Tullykin Road. Consequently, the Council's third reason for refusal is sustained so far as stated.
- 6.21 Given my earlier conclusions regarding the impact the appeal development has on rural character, the siting of the appeal development is also unsympathetic to the special character of this AONB landscape contrary to the provisions of Policy NH 6 of PPS 2 and the related provisions of the SPPS.
- 6.22 The Third-Party supporters state that the extension of the curtilage at No. 26 Tullykin Road is not motivated by the potential of creating infill site(s) on the adjacent field. Irrespective of the perceived motivation of the proposal, the appeal proposal before me must be assessed on its own merits. Other previous or current planning applications before the Council have no bearing on this appeal.
- 6.23 Whilst the Third-Party supporters raised concerns regarding the processing of the planning application by the Council, these are matters between the parties and outside the scope of this appeal.
- 6.24 The Third-Party supporter states that the garden has increased biodiversity and community cohesiveness. Notwithstanding whether this is the case, these matters do not outweigh the policy objections to the proposal as stated above.
- 6.25 The Appellant referred to appeal decisions and a Judicial Review ruling to support their position. I do have these before me. In any event, direct comparables are rare. The issues in this appeal are specific to this site and its surrounding area.
- 6.26 There is no evidence to suggest that the proposal is acceptable in principle in the countryside or that there are any overriding reasons why the development is essential and could not be located in a settlement. The proposal is thus contrary to Policy CTY 1 and the related provisions of the SPPS. The Council's first reason for refusal is sustained.

7.0 RECOMMENDATION

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

7.2 This recommendation relates to the following drawings: -

- 1:2500 / 1:500 Site, Location Plan / Site Plan. Drawing reference: MT21.21.07(A) Date stamped 8th August 2022.
- 1:100, Shed Floor Plan and Elevations. Drawing reference: MT21.21.08. Date stamped 8th August 2022.
- 1:100 Polytunnel Floor Plan and Elevations MT21.21.09. Date stamped 8th August 2022.

List of Documents

Planning Authority: Statement of Case Newry Mourne and Down District Council

Appellant: Statement of Case by Claire Millar

Third Parties: Statement of Case by Patrick Brown MLA