

<b>Report on</b>	Planning Appeal 2022/A0212 for 6 dwellings approximately 90m east of 96 Davagh Road, Omagh
<b>Date of Meeting</b>	9 <sup>th</sup> January 2023
<b>Reporting Officer</b>	Chris Boomer, Planning Manager
<b>Contact Officer</b>	Karen Doyle

<b>Is this report restricted for confidential business?</b>  If 'Yes', confirm below the exempt information category relied upon	Yes	
	No	x

<b>1.0</b>	<b>Purpose of Report</b>
1.1	The purpose of this report is to inform Members that the appeal was dismissed by the Planning Appeals Commission following a decision by the Planning Committee to refuse planning permission for the proposed development.
<b>2.0</b>	<b>Background</b>
2.1	This application for 6 dwellings in a Dispersed Rural Community was refused by Mid Ulster District Council whereupon the applicant lodged an appeal with the Planning Appeals Commission. An informal hearing took place on 6 December 2023 and the Council were represented by Karla McKinless and Karen Doyle.
<b>3.0</b>	<b>Main Report</b>
3.1	The main issues considered by the Commissioner, in this single Commissioner decision were whether the appeal proposal would: <ul style="list-style-type: none"> <li>• Be acceptable in principle;</li> <li>• Visually integrate into its landscape;</li> <li>• Detrimentially change the rural character of the area; and</li> <li>• Adversely affect a scheduled monument.</li> </ul>
3.2	The appeal site is within the Broughderg and Davagh Upper Dispersed Rural Community. The Commissioner refers to the issue of focal points in the DRC and states that policy infers there could be more than one identified focal point within a DRC. The Commissioner accepted the crossroads, the church and the monument represent focal points and the appeal proposal would consolidate those identified focal points and accordingly did not find the proposal to offend Policy CTY 2 of PPS 21 or Policy SETT 3 of the Cookstown Area Plan in this regard.

<p>3.3</p> <p>3.4</p> <p>3.5</p> <p>3.6</p> <p>3.7</p>	<p>The Commissioner addressed the Council’s objection to the visual integration and impact on rural character. In the Council’s statement of case issues of visual integration were covered in depth with various viewpoints identified in the locality from which it was considered the appeal proposal would be contrary to criteria (a), (b) and (f) of CTY 13 in PPS 21. The Commissioner accepted the Council’s argument there are sustained and open views of the site from Broughderg Road northeast of the appeal site. Given the lack of vegetation along the site boundaries, the open nature of the site and the limited backdrop the proposal would break the skyline and would be obtrusive on the landscape. The Commissioner also considered the reliance on new landscaping to aid the integration of the site into the local landscape and considered this was contrary to Policy. Accordingly, the Commissioner found the appeal proposal to be contrary to criteria (a), (b) and (f) of CTY 13.</p> <p>Officers also presented a case which defended the position the proposal would offend criteria (a) and (c) of CTY 14. Criteria (c) requires that the appeal proposal would respect the traditional pattern settlement exhibited in that area. The proposed development, together with the church, the monument at the crossroads and the dwelling at No 96 would form on visual entity in the landscape. The Commissioner considered this would consolidate and respect the traditional pattern of settlement exhibited in this part of the Sperrins AONB and found the proposal would not offend criterion (c) of CTY 14.</p> <p>Criterion (a) of CTY 14 requires that the proposed buildings are not unduly prominent in the landscape. Given the Commissioner’s conclusions that there is a lack of well-established natural boundary treatment and the breaking of the skyline from certain viewpoints, the Commissioner found the appeal proposal would be unduly prominent in the Sperrins AONB and would offend criterion (a) of CTY 14.</p> <p>The Commissioner was not persuaded by third party objections based on the negative impact on the views across to Beaghmore Stone Circles and found the appeal proposal would not offend Policy CON 4 of the Cookstown Area Plan.</p> <p>The appeal was dismissed by the Planning Appeals Commission and the Council’s reason for refusal was upheld.</p>
<p><b>4.0</b></p>	<p><b>Other Considerations</b></p>
<p><b>4.1</b></p>	<p><b>Financial, Human Resources &amp; Risk Implications</b></p> <p>Financial: None identified at present.</p> <p>Human: None identified at present.</p> <p>Risk Management: None identified at present.</p>

<b>4.2</b>	<b>Screening &amp; Impact Assessments</b>
	Equality & Good Relations Implications: None identified
	Rural Needs Implications: None identified
<b>5.0</b>	<b>Recommendation(s)</b>
5.1	Members consider the decision of the Planning Appeals Commission on this appeal.
<b>6.0</b>	<b>Documents Attached &amp; References</b>
	Appendix A – Appeal Decision



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<b>Appeal Reference:</b>	2022/A0212
<b>Appeal by:</b>	M Conway
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposal:</b>	Erection of 6 no. dwellings and associated access road
<b>Location:</b>	Approximately 90 metres east of 96 Davagh Road, Omagh
<b>Planning Authority:</b>	Mid Ulster District Council
<b>Application Reference:</b>	LA09/2018/0566/F
<b>Procedure:</b>	Hearing on 6 <sup>th</sup> December 2023
<b>Decision by:</b>	Commissioner Stevenson, dated 20 <sup>th</sup> December 2023

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in this appeal are whether the appeal proposal would:
  - be acceptable in principle;
  - visually integrate into its landscape;
  - detrimentally change the rural character of the area; and
  - adversely affect a scheduled monument.
3. Section 45(1) of the Planning Act (Northern Ireland) 2011 requires the Commission when dealing with an appeal to have regard to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) requires that where regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Cookstown Area Plan 2010 (CAP) operates as the LDP for the area in which the appeal site is located. In the CAP, the appeal site is outside any defined settlement limit and is within the countryside. It is in the Sperrins Area of Outstanding Natural Beauty (AONB), Beaghmore Area of Special Archaeological Interest (ASAI) and an Area of Constraint on Mineral Development. Policy MN1 of the CAP is entitled 'Areas of Constraint on Mineral Developments'. Given that the appeal proposal is for residential development, Policy MN1 is not engaged.
5. Policy CON4 of the CAP states that planning permission will not be granted for proposals for large-scale development within Beaghmore ASAI unless it can be demonstrated that there will be no significant impact on the character and appearance of this distinctive historic landscape. It expands to say that particular

attention will be paid to the impact of proposals when viewed from the stone circles and other critical viewpoints within this area. I will address this policy later in this decision.

6. The appeal site is also within the Broughderg and Davagh Upper Dispersed Rural Community (DRC). Policy SETT3 of the CAP is entitled 'Dispersed Rural Community'. It states that development proposals at Broughderg and Davagh Upper will be assessed against the prevailing planning policies and the guidance set out for the area in Part 3 of the Plan. Policy SETT3 also states that a DRC is designated at this location to accommodate the need for limited, local housing in recognition of its existing community facilities and strong local identity in an area of low development pressure. It goes on to say that regard will be had to Policy HOU7 of A Planning Strategy for Rural Northern Ireland (PSRNI), and other prevailing regional planning policies and guidance contained in Part 3 of the Plan. I will deal with the PSRNI later in this decision.
7. The CAP identifies the original St. Mary's Church that is now a post office and a community centre as forming a locally significant focal point on Broughderg Road. The Plan also indicates that there is a public house in the area. The CAP states that "new development and individual dwellings should be located on sites that visually integrate into the landscape." It expands to say that "clusters of development will normally be located close to the existing focal point on the Draperstown Road." I will address compliance or otherwise with Policy SETT3 later in this decision.
8. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) outlines transitional arrangements that will operate until a Plan Strategy for the area is adopted. Under those arrangements, certain policies are retained namely Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21). There is no conflict or change in policy direction between the provisions of the SPPS and those of the retained PPS21 insofar as it relates to the appeal proposal. In accordance with the transitional arrangements, PPS21 therefore provides the policy context for assessing this appeal. The Appellant refers to the Council's non-planning policy documents and other planning policies and guidance in her Statement of Case. However, none of those publications are in contention. This decision focuses on PPS21 and the matters that are in contention.
9. The preamble to PPS21 states that its policy provisions will take precedence over Policy HOU7 of the PSRNI. Accordingly, the PSRNI is not applicable. PPS21 clarifies that its policy provisions will take precedence over the policy provisions for Dispersed Rural Communities contained in existing statutory and published draft development plans. Policy CTY1 of PPS21 is entitled 'Development in the Countryside' and it sets out a range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development.
10. The policy expands to say that planning permission will be granted for residential development in the countryside in certain cases. One of these is for a small group of houses in a designated Dispersed Rural Community in accordance with Policy CTY2. If the appeal proposal accords with Policy CTY2, the appeal proposal will satisfy Policy CTY1 of PPS21 in terms of its acceptability in principle. Policy CTY1 states that "all proposals for development in the countryside must be sited and designed to

integrate sympathetically with their surroundings and to meet other planning and environmental considerations.”

11. Policy CTY2 of PPS21 is entitled ‘Development in Dispersed Rural Communities’ and it states that within a Dispersed Rural Community (DRC) designated in a development plan, planning permission will be granted to suitable proposals for a small cluster or ‘clachan’ style development of up to 6 houses at an identified focal point. The policy expands to say that permission will generally be limited to one cluster per focal point. The policy states that “the design of all proposals should be of a high quality appropriate to their rural setting and have regard to local distinctiveness. Proposals for individual dwellings or social/affordable housing schemes in DRCs will be assessed against the other policy provisions of this PPS.”
12. The appeal proposal is for a clachan style development of 6 no. dwellings on a parcel of land that is part of a larger agricultural field. That field is located at the Davagh Road/Broughderg Road crossroads. The appeal site slopes down in a southerly direction from Broughderg Road and rises up from Davagh Road in a north-easterly direction. A post and wire fence defines the roadside boundaries of the appeal site, and the other two site boundaries are undefined. A detached dwelling at No. 96 Davagh Road and Our Lady of the Wayside Church and its graveyard are at the crossroads. At the corner of the crossroads in front of the appeal site is a monument and directional signposts. A stone circle is north-west of the appeal site.
13. The Council accepts that the appeal proposal would be located at an identified focal point. However, a third party argues that the appeal proposal would not be suitable at the appeal site and that other locations would be more appropriate. He contends that the focal point is half a mile away at the community centre. The third party also states that 6 dwellings would be totally out of place in Broughderg. Nevertheless, the policy permits a cluster of development of up to 6 dwellings in the DRC. The Appellant accepts that the community centre is a focal point. However, he alleges that the crossroads, the church and its graveyard, plus the monument are other focal points.
14. While the CAP indicates that the original St Mary’s Church and the post office form a locally significant focal point on Broughderg Road and clusters of development will normally be located close to the existing focal point at Draperstown Road, the use of the word ‘normally’ in the LDP infers that other locations may be appropriate. Moreover, PPS21 was published after the CAP, and it indicates that it takes precedence over the plan. Policy CTY2 refers to “an” identified focal point and does not say “the” identified focal point. The policy therefore infers that there could be more than one identified focal point within a designated DRC. For those reasons, I am satisfied that there can be more than one identified focal point within the Broughderg and Davagh Upper DRC.
15. The amplification text of Policy CTY2 states that “in an effort to help sustain these particular rural communities, the decision-maker will approve a suitable proposal for a small group of houses that build upon and consolidate identified focal points.” To my mind, the crossroads, the church, and the monument represent focal points, and the appeal proposal would consolidate those identified focal points. Accordingly, the appeal proposal would be at an identified focal point and would therefore not offend Policy CTY2 of PPS21 or Policy SETT3 of the CAP in this regard.

16. The Council expressed no concerns with the design of the proposed dwellings or the proposed site layout. Their objection to the appeal proposal relates to visual integration and rural character only. Policy CTY13 of PPS21 is entitled 'Integration and Design of Buildings in the Countryside.' It states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape, and it is of an appropriate design. The Council argue that the appeal proposal would offend criteria (a), (b) and (f) of Policy CTY13 of PPS21 only. The policy states that a new building will be unacceptable where (a) it is a prominent feature in the landscape; or (b) the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the landscape; or (f) it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop.
17. Paragraph 5.58 states that the determination of whether a new building integrates into the landscape is not a test of invisibility; rather it requires an assessment of the extent to which the development of the proposed site, including necessary site works, will blend in unobtrusively with its immediate and wider surroundings. Paragraph 5.62 expands to say that "new buildings should be sited to take advantage of the opportunities afforded by existing mature planting, hills, slopes or other natural features to provide suitable enclosure. These features can provide a visual backdrop to development and equally where located in the foreground between the site and critical views can assist integration by filtering views of the new building."
18. In Appendix 3 of the Council's Statement of Case, viewpoints are identified that they consider are critical. Of those viewpoints, the Council indicate that particular attention should be drawn to Viewpoints 1 (VP1), 2 (VP2), 6 (VP6) and 7 (VP7). They are of the opinion that the appeal proposal would be prominent from those vantage points and that the site or its surrounds offer little in terms of integration. VP1, 2, 6 and 7 are along the Broughderg Road and are all within a short distance from the appeal site. VP7 is furthest away.
19. While the Appellant alleges that visibility levels are generally low in the Sperrins, my visual assessment is based on what I saw on the day of my site visit. VP1 is at the Our Lady of the Wayside church. The church and its car park are on higher ground to the appeal site. Given this and the vegetation that exists along the road boundary in front of the church, the appeal proposal would not read as prominent from this viewpoint.
20. VP6 and VP7 are from Broughderg Road north-east of the appeal site. From those viewpoints, there are sustained and open views of the site as you travel down the hill. While there is some backdrop from higher land in the distance, the site appears open and lacks any enclosure from established natural boundaries. Given these factors, the six proposed dwellings would read as prominent. VP2 is from the corner of the church at the Davagh Road and Broughderg Road crossroads. From VP2, the monument and the traffic signs are in front of the appeal site. A group of trees can be seen in the far distance and hillier ground beyond. The land gently rises up from the corner of the appeal site. The rising topography and the group of trees provide an element of backdrop. However, given the lack of vegetation along the site boundaries, the open nature of the site and the limited backdrop, the proposed dwellings would break the skyline from this viewpoint and would be obtrusive in the landscape.

21. VP3 is from Davagh Road north-west of the crossroads behind the church. From this viewpoint, the proposed dwellings would be on lower ground. The view of the development would be interrupted by the dwelling at No. 96. The higher landform would provide a backdrop when viewed from VP3. Given these factors, I am satisfied that the appeal proposal would not be a prominent feature from this viewpoint. VP4 and VP5 are both from Davagh Road south-east of the crossroads. Looking towards the appeal site in a north-westerly direction from Davagh Road, the appeal proposal would sit on much higher ground above both of these viewpoints. From VP4, there is a dwelling and an outbuilding visible that would be in front of the appeal site. This would interrupt views of the proposed development. For that reason, the proposed dwelling would not read as a prominent feature in the landscape from this viewpoint.
22. From VP5, the built form of the church and the rooftop of the dwelling (No. 96) are visible, and they both sit on the ridgeline of the hill. The land steadily rises to the north. This rising landform provides a certain degree of backdrop for the proposed development. Despite this and notwithstanding the scale and height of the proposed dwellings, the proposed development would break the skyline on a site that lacks enclosure and it would be obtrusive on the landscape from this viewpoint. Given the exposed nature of the site and being sited close to the ridgeline, the appeal proposal would read as a prominent feature in the Sperrins AONB from VP5. Taken in the round, the proposed six dwellings would read as prominent and would offend criterion (a) of Policy CTY13.
23. Given that the site slopes down from the Broughderg Road, the topography together with the trees in the far distance would to a certain degree assist with integration of the proposed dwellings into the landscape. However, the site would not provide a suitable degree of enclosure for the buildings to satisfactorily integrate into the landscape due to the exposed nature of the appeal site and that the site lacks long established natural boundaries. For that reason, the appeal proposal would offend criterion (b) of Policy CTY13 of PPS21.
24. The appeal proposal would not blend with the landform, existing trees, buildings, and slopes when viewed from VP2 and VP5. In addition, the drawing numbered 02 Rev 1 proposes to plant a native species hedgerow to the site boundaries. From VP2 and VP5, it would have to rely primarily on this new landscaping for integration. I therefore find that the appeal proposal would offend criteria (a), (b) and (f) of Policy CTY13 of PPS21 insofar as stated.
25. Policy CTY14 of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area subject to certain criteria. The Council contend that the appeal proposal would offend criteria (a) and (c) of the policy. Criterion (c) of Policy CTY14 requires that the appeal proposal would respect the traditional pattern of settlement exhibited in that area. The proposed development together with the church, the monument at the crossroads and the dwelling (No. 96) would form one visual entity in the landscape. This would consolidate development and respect the traditional pattern of settlement exhibited in this part of the Sperrins AONB. Accordingly, the appeal proposal would not offend criterion (c) of Policy CTY14.
26. Criterion (a) requires that the proposed buildings are not unduly prominent in the landscape. Given my earlier conclusions that there is a lack of well-established natural boundary treatment and that the proposed dwellings would break skyline from

certain viewpoints, the appeal proposal would be unduly prominent in the Sperrins AONB. The appeal proposal would therefore offend criterion (a) of Policy CTY14.

27. A third party expressed concern that the appeal proposal would negatively impact on the view across to the stone circle. The stone circle is a scheduled monument within the Sperrins ASAI. The Historic Environment Division (HED) (Historic Monuments) confirmed in its consultation response to the Council that the proposal satisfies PPS6 archaeological requirements due to the scale and siting of the appeal proposal. The Council consider that the appeal proposal would not be large scale. They are also satisfied that the distance between the proposed dwellings and the stone circles would ensure that there would be no detrimental impact on them, and I agree.
28. HED is of the view that the appeal proposal would not have an adverse impact upon the setting of the ASAI because the proposed buildings would be of an appropriate design and would read with the adjacent existing buildings in views across the wider landscape. The topography rises between the appeal site and the stone circle. Given the landform, HED's comments and that no substantive evidence on the matter was presented by the third party, I am not persuaded that the appeal proposal would offend Policy CON4 of the CAP.
29. A third party alleges that the area is heavily populated with diverse wildlife. While the Appellant's NI Biodiversity Checklist indicates that no known protected or priority species are present within or adjacent to the appeal site, NIEA's consultation response states that they have records of breeding waders occurring within or adjacent to the appeal site and that they are classified as NI Priority Species. Nevertheless, the Council expressed no concerns regarding the impact of the appeal proposal on breeding waders. No bird survey is in the evidence before me, and it is unclear if the person that undertook the Biodiversity Checklist is a qualified ecologist. Notwithstanding the Council's final position on this matter, given these factors and the NIEA's consultation response, I am not satisfied that the appeal proposal would not have an unacceptable adverse impact on priority species. I will revert to this again later in this decision.
30. The Appellant and some of the third parties argue that there is a housing need for the development and that it would bring community benefits to the DRC. She also sets out social value outcomes that she alleges would be delivered from the development. While this may be the case, those benefits would not outweigh my visual integration and rural character concerns set out above. They also complain of procedural concerns regarding the Council's handling of the planning application. However, I cannot comment on such matters given that that would be outside the remit of this appeal. The Council refers to appeal decisions 2004/A650, 2004/A652 and 2005/A971. However, they all relate to policies that are no longer relevant and that are in a different Council area. Given these factors and that Broughderg and Davagh Upper DRC is not a defined settlement, none of those appeal decisions are comparable.
31. Despite the appeal proposal meeting the provisions of the CAP and Policy CTY2 of PPS21, insofar as it would be located at a focal point within a designated DRC, for the reasons outlined above, the appeal proposal would offend Policies CTY13 and CTY14 of PPS21 insofar as stated. It would also not comply with Policy SETT3 of the CAP in terms of visual integration. The adverse visual impacts of the proposed development within this AONB location would outweigh the degree of compliance

with Policy SETT3 of the CAP and Policy CTY2 of PPS21, and this is determining. With respect to the matter regarding the priority species, given my conclusions regarding the non-acceptability of the appeal proposal, in this particular instance, that matter is not determining. The appeal proposal would offend Policy CTY1 of PPS21 in that the development would not integrate sympathetically with its surroundings. The Council's reason for refusal is upheld.

32. For the above reasons, the appeal shall fail.

This decision relates to: -

- **Drawing 01:** Site Location Plan to scale 1:2500, date stamped received by the Council on 26<sup>th</sup> April 2018
- **Drawing 02 Rev1:** Site Plan to scale 1:500, date stamped received by the Council on 26<sup>th</sup> February 2020
- **Drawing 05:** Proposed Dwelling Type D to scale 1:100 and 1:500, date stamped received by the Council on 26<sup>th</sup> April 2018
- **Drawing 07:** Proposed Dwelling Type B to scale 1:100 and 1:500, date stamped received by the Council on 26<sup>th</sup> April 2018
- **Drawing 09:** Wall Details to scale 1:50 and 1:100, date stamped received by the Council on 26<sup>th</sup> April 2018
- **Drawing 10:** Dwelling Type D1a to scale 1:100, date stamped received by the Council on 26<sup>th</sup> February 2020
- **Drawing 11:** Dwelling Type D1 to scale 1:100 date stamped received by the Council on 26<sup>th</sup> February 2020
- **Drawing 12:** Road Layout – PSD drawing, date stamped received by the Council on 2<sup>nd</sup> November 2021

**COMMISSIONER STEVENSON**

## **List of Appearances**

Planning Authority:- Ms K McKinless, Mid Ulster District Council  
Ms K Doyle, Mid Ulster District Council

Appellant: - Ms M Conway  
Mr C Conway  
Mr M Conway  
Mr D O'Neill

Third Parties:- Ms L Dillon, Sinn Fein  
Mr F Molloy, Sinn Fein

## **List of Documents**

Planning Authority: - "A1" Statement of Case  
Mid Ulster District Council

Appellant: - "B1" Statement of Case  
Mr M Conway on behalf of the Appellant

Third Parties: - "C1" Statement of Case  
Mr F Molloy MP

"D1" Statement of Case  
Ms L Dillon MLA

"E1" Statement of Case  
Mr J J Quinn