

Report on	PAC decisions dismissing appeals against: 1) the refusal of planning permission for Mr Bryan Turkington, Retention of a 20ft x 8 ft container to house vending machines at 42 Main Road Moygashel 2) the issuing of an enforcement notice against the unauthorised siting of a metal container used for retailing at Lands/premises 30m East of 41 Main Street, Moygashel, Dungannon BT71 7QU
Date of Meeting	2nd March 2021
Reporting Officer	Phelim Marrion/Maeve McKearney
Contact Officer	Dr Chris Boomer

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

1.0	Purpose of Report
1.1	To advise members of the outcome of appeals against the Councils Decisions to: 1) refuse planning permission for Retention of a 20ft x 8 ft container to house vending machines at 42 Main Road Moygashel for Mr Bryan Turkington, 2) issue an enforcement notice against the unauthorised siting of a metal container used for retailing at Lands/premises 30m East of 41 Main Street, Moygashel, Dungannon BT71 7QU
2.0	Background
2.1	The planning committee considered an application for the retention of the container with amendments to the appearance of it and restricting the hours of operation.
2.2	The development is located in Moygashel and there had been a number of objections about noise and nuisance from the development from neighbouring properties. The Council refused planning permission as the development did not enhance the character of the area and caused nuisance. This decision had a direct bearing on an enforcement case and the Council issued an enforcement notice.
2.3	The applicant exercised their right of appeal against these decisions.
3.0	Main Report
3.1	The Planning Application Appeal The PAC considered the information submitted by the applicant, the objectors and the information submitted by the Council in relation to noise and appearance of the structure as well as appearance of the surrounding area.

3.2	The Commissioner did not consider the development had a permanence to it that would be expected and took account of the objectors concerns in relation to noise and nuisance.
3.3	It was noted this is an innovative type of development that would be better suited to a more commercialised area away from residential areas.
3.4	The Commissioner indicated that Policy SETT1 of the Dungannon and South Tyrone Area Plan is also a material consideration and the proposal did not meet with some of the criteria contained in it.
3.5	It was concluded the development is not appropriate in this locating, it does not meet with DES2 of PSRNI as such dismissed the appeal, refusing planning permission.
3.6	<p>The Enforcement Notice Appeal</p> <p>Grounds of Appeal</p> <p>The appeal was brought on grounds (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. At the hearing the appellant withdrew his ground of appeal on (f). There is a deemed planning application for the development referred to in the Enforcement Notice (EN).</p>
3.7	<p>Decision</p> <ul style="list-style-type: none"> • The Notice is corrected at Part 2 to read Land/Premises 30m East of Main Road Moygashel; • The appeal on ground (a) fails and the deemed planning application is refused; and • The appeal on ground (g) succeeds in that the timeframe for compliance has been extended from 60 days to 90 days given the various difficulties being experienced during the current pandemic. <p>The Enforcement Notice is upheld and the remedial actions set out within the Notice must be complied with.</p>
4.0	Other Considerations
4.1	Financial, Human Resources & Risk Implications
	Financial: N/A
	Human: N/A
	Risk Management: N/A
4.2	Screening & Impact Assessments

	Equality & Good Relations Implications: N/A
	Rural Needs Implications: N/A
5.0	Recommendation(s)
5.1	That members note the decisions by the Commission, Planning Officers are reminded to fully consider the existing policies in the extant Development Plan when assessing applications and Enforcement Officers monitor the site for compliance with the enforcement notice.
6.0	Documents Attached & References
6.1	Copies of appeal decisions 2020/E0006 and 2020/A0008

Enforcement Appeal Decision

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Appeal Reference:	2020/E0006
Appeal by:	Mr Bryan Turkington
Alleged Breach of Planning Control:	The alleged unauthorised siting of a metal container used for retailing.
Location:	Lands/premises 30m East of 41 Main Street, Moygashel, Dungannon BT71 7QU
Planning Authority:	Mid Ulster District Council
Authority's Reference:	EN/2020/0087
Procedure:	Remote Hearing on 21 st January 2021
Decision by:	Commissioner Helen Fitzsimons on 9th February 2021

Grounds of Appeal

1. The appeal was brought on grounds (a), (f) and (g) as set out in Section 143(3) of the Planning Act (Northern Ireland) 2011. At the hearing the appellant withdrew his ground of appeal on (f). There is a deemed planning application for the development referred to in the Enforcement Notice (EN).

The Notice

2. Part 2 of the EN identifies the land to which it relates as 30m East of 41 Main Street Moygashel, Dungannon BT71 7QU.
3. Section 138 of the Act provides for the issuing of an EN where it appears to the Council that there has been a breach of planning control. Section 140(1) (a) of the Act says that an EN must state the matters which appear to the Council to constitute the breach of planning control. Section 140 (2) of the Act states that a notice complies with this requirement if it enables any person on whom a copy of it has been served to know what those matters are.
4. Section 144 (2) of the Act empowers the Commission to correct any misdescription, effect or error in the notice or vary its terms if it is satisfied that the correction or variation can be made without injustice to the appellant or the Council.
5. At the hearing it was accepted by the parties that the correct address of the appeal site is 30m East of Main Road Moygashel and that a misdescription had arisen. However, despite this misdescription the appellant received the EN and a map correctly identifying the subject site of the EN and was able to lodge and attend an appeal against it. The EN can be corrected without injustice to the appellant.

Ground (a) – that planning permission ought to be granted for the matters stated in the notice

6. The main issues in this appeal are whether the proposed development is sensitive to the character of the settlement in terms of its form, design and use of materials, whether it would respect its surroundings and if it would have an adverse impact on residential amenity.
7. Section 45 (1) of The Planning (Northern Ireland) Act 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. The appeal site lies on unzoned land located within the Settlement Limit of Dungannon as designated by Policy SETT 1 'Settlement Limits' of the Dungannon and South Tyrone Area Plan 2010 (DSTAP) the local development plan (LDP) which operates in the area where the appeal site is located.
8. Policy SETT 1 of (DSTAP) says that favourable consideration will be given to development proposals within settlement limits including zoned sites where seven criteria are met. The following criteria are pertinent in this appeal; criterion one 'the proposal is sensitive to the size, character and function of the settlement in terms of scale, form, design and use of materials; criterion two 'the proposal respects the opportunities and constraints of the specific site and its surroundings, and where appropriate considers the potential for the creation of a new sense of place through sensitive design; and criterion three 'there is no significant detrimental affect on amenities'.
9. Policy RSO 5 'Local Shops' of DSTAP says that proposals for local shops will be determined in accordance with prevailing regional planning policy. There is no evidence that the proposed development would fail prevailing retail planning policy for shops and this provision of DSTAP would not be offended. Consequently I do not need to consider the appellant's arguments regarding the merits of the proposed development in relation to retail policy.
10. The appellant referred me to The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) is regional policy and relied upon the following paragraphs in respect of his proposal. Paragraph 3.8 'the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.'; paragraph 4.11 the 'planning system has a role to play in minimising potential adverse impacts such as noise or light pollution on sensitive receptors by means of its influence on the location layout and design of new development.'; paragraph 4.19 'planning authorities should therefore take a positive approach to appropriate economic development proposals, and proactively support and enable growth generating activities. Large scale investment proposals with job creation potential should be given particular priority. Planning authorities should also recognise and encourage proposals that could make an important contribution to sustainable economic growth when drawing up new plans and taking decisions.'; and paragraph 4.20 'when assessing the positive and negative economic implications of planning applications planning authorities should ensure the approach followed is proportionate to the

scale, complexity and impact of the proposed development. When taking into account the implications of proposals for job creation, planning authorities should emphasise the potential of proposals to deliver sustainable medium to long-term employment growth. Furthermore, in processing relevant planning applications planning authorities must ensure appropriate weight is given to both the public interest of local communities and the wider region

11. Policy DES 2 'Townscape' of 'A Planning Strategy for Rural Northern Ireland' (PSRNI) is retained regional policy under the SPPS and is also a material consideration in this appeal. The stated objective of DES 2 of PSRNI is to 'require development proposals in towns and villages to make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials.'
12. Paragraph seven of Policy DES 2 within the heading 'Development' says that ' new development will normally be required to be appropriate in use and sensitive in siting, scale, layout, design and materials both in itself and in relation to adjoining buildings, spaces and views. The main concern is to ensure that development proposals neither conflict with or detract from the character, amenity and design of an area.'
13. Paragraph eleven of the policy entitled 'Amenity' says that 'new developments should provide reasonable standards of amenity both in terms of the environment which the development creates and in terms of its effect on neighbouring properties. Where there is inherent incompatibility with neighbouring developments, or where remedial action cannot be made effective, applications will normally be refused.'
14. Both the Council's and objectors' concerns are based upon the requirements of Policy DES 2 of PSRNI in respect of character of area and detriment to residential amenity.
15. The appeal site comprises the site of a former petrol filling station and shop which fronted Main Road. Those buildings were demolished some time ago and the site lay vacant until the container was sited upon it. Inside the container are three vending machines; one for cold drinks; one for hot drinks and one for snacks. The vending activities at the appeal site are unmanned and have the potential to operate 24 hours a day seven days a week.
16. Immediately adjacent to, on the northern side of the appeal site, is Gordy's Fish and Chip shop the front elevation of which is finished with a timber fascia and stonework to the walls. Beside Gordy's is a café, with its front elevation finished in painted timber sheeting. Both buildings are single storey and have an appearance of permanency within the street scene. Some 50m North West on the opposite side of the road is a Costcutter supermarket and car park. The supermarket is set back approx. 70 from the road to the rear of the site with the car park in front. Its roadside boundary comprises a low brick wall with metal railings atop which are set between brick pillars. This roadside boundary treatment is approximately 2m high. The 'Linen Green' retail outlet which comprises a number of shops and a restaurants lies just north of the Costcutter supermarket. A day care centre is located east of and to the rear of the appeal site.
17. Opposite the appeal site, fronting Main Road, are six dwellings whilst in the south is a residential terrace. All of these dwellings are mainly finished in render with tiled

roofs, except No 29 Main Road which is constructed in stone. The dwellings vary in height from single storey to two storey. The front boundaries of the dwellings typically comprise either 1m high close boarded fencing, rendered 1m high walls or 1m high brick built walls. The streets leading off this part of Main Road comprise a mix of housing types. The part of Main Road, where the appeal site lies, appears built up and this is mainly due to the number of residential properties, both fronting the road and in the streets behind.

18. Because of the existing buildings and structures in the area surrounding the appeal site, its character is one of permanence within its built fabric.
19. In my opinion the nature and appearance of the metal container makes it an incongruous element in the street scene. Because of this it would appear as an unsatisfactory feature which would be out of character with its surroundings. It would not integrate in the area, and be unacceptable even on the temporary basis proposed. Consequently I do accept the appellant's arguments that its retention would make 'efficient use of the vacant site and create a more positive street frontage'
20. Although the proposed development would not be insensitive to the size of the settlement it would be out of character with the settlement in terms of its temporary appearance due to its scale, form, design and use of materials at this location and criterion one of Policy SETT 1 of DSTAP would not be met. It would also offend criterion two of the LDP policy in that it would not respect the constraints of the specific site and its surroundings and it has failed to consider the potential for the creation of a new sense of place through sensitive design. The proposed development would not meet the provisions of Policy DES 2 of PSRNI in that it would not make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design and use of materials.
21. The Council and objectors raised the matters of noise and disturbance associated with the appeal premises, especially at night, and additional concerns regarding compliance with health and safety measures that should be in place during the current Covid 19 health crisis.
22. The appellant proposes restricted opening hours of 7.00 – 23.00 seven days a week, which I consider reasonable given both the opening hours of other convenience and food outlets in the wider area and what are considered to be 'daytime hours' as set out in British Standard BS4142:2014, British Standard BS8233:2014 and the WHO guidelines referred to me by the appellant and this could be dealt with by way of a planning condition.
23. Although the appellant referred to WHO guidelines for the maximum recommended day time noise and night time noise levels within dwellings no evidence was presented to demonstrate that those levels would not be breached. Whilst the appellant eluded to 'a relatively high background noise climate' due to the area's 'mixed use context' I was given no substantive evidence in support of this argument.
24. Photographic evidence submitted by an objector shows a number of young people, bikes and cars congregated outside the vending facility during hours of darkness. A day time photograph shows five bicycles on the ground outside the container with a number of young people inside. The background papers also contain photographs

showing cars queued up at night at the appeal site. This demonstrates to me that it is a congregating point both during the daylight and in darker hours. I note that no photographic or CCTV evidence was presented by the appellant to refute the objectors' claims

25. The Environmental Health Department (EHD) originally offered no objections to the proposed development. However, the EHD officer told me at the hearing that he had since changed his opinion on the basis of noise complaints received between July 2019 – November 2020 regarding the operation of the proposed development, and he is entitled to do so. Because of the EHD concerns and the objectors' evidence I am not persuaded that a letter from one resident in support of the scheme is sufficient to outweigh the Council's objections and the objectors' evidence in this respect.
26. Notwithstanding the definition of daytime hours set out in guidance and the similarity of the proposed opening hours of other nearby convenience shops, it is my view that the unmanned nature of the proposal has the potential to attract gatherings at any time as there is no member of staff to deter people congregating in and around the appeal site. Given this, the remedial action of limiting the hours of opening is not sufficiently effective to mitigate the inherent incompatibility of the proposed development with neighbouring properties. This has already given rise to and has the potential for a further adverse detrimental impact on the amenities of nearby residents irrespective of opening hours. The proposed development would fail to meet the requirements of criterion three of Policy SETT 1 of DSTAP; paragraph 4.11 of the SPPS would be offended and paragraph eleven Policy DES 2 of PSRNI would not be met.
27. All of this distinguishes it from the Costcutter which was granted planning permission under M/2012/0106/F and other convenience stores referred to, where staff are present, which from my own experience can act as a deterrent to people congregating, and where I have been given no evidence of noise complaints.
28. At my site visit I observed that hand sanitiser has been provided within the container and there are health and safety signs in place. It is a matter for individuals to avail of the sanitising facilities provided. Therefore I do not accept that the appellant is in breach of Covid 19 regulations. The Council and objectors' concerns are not determining in this regard.
29. Whilst I accept that the appellant's proposal is an innovative and new form of retailing, it is my opinion that such an operation is better suited to a more predominantly commercial area or one located away from residential properties. I do not agree with the appellant that it constitutes sustainable economic development in an environmentally sensitive manner because of both its temporary appearance and the potential for noise disturbance. I do not agree with the appellant that the provision of the two jobs provided, of which there was no explanation as to what those jobs entailed, is of sufficient economic weight to warrant allowing the appeal.
30. As required by Section 45 (1) of the Act I have had regard to the DSTAP and in doing so I have concluded that the proposed development does not accord with criteria one, two and three of Policy SETT 1 of the LDP. I have also had regard to the SPPS and concluded that the proposed development would fail to meet the requirements of its paragraphs 3.8, 4.19 and 4.20. I have taken account of Policy DES 2 of PSRNI and concluded that the proposed development does not meet the provisions of that

policy. As a consequence the appeal must fail, the Council has sustained both of its draft reasons for refusal based on PSRNI and the objector's concerns are upheld. The appeal on Ground (a) fails.

Ground (g)

31. Part 4 of the EN requires that the unauthorised metal container be removed from the site within 60 days of the date on which the EN takes effect. At the hearing the Council said that agreed with the appellant that the period for compliance could be extended to 90 days given the various difficulties being experienced during the current pandemic. The appeal on ground (g) succeeds

Decision

- The Notice is corrected at Part 2 to read Land/Premises 30m East of Main Road Moygashel;
- The appeal on ground (a) fails and the deemed planning application is refused; and
- The appeal on ground (g) succeeds.

Commissioner Helen Fitzsimons

Attendances

Planning Authority: -	Mr P Marion Ms M Mc Kearney Mr David Stewart Mr G Evans (EHD)
Appellant: -	Ms G Jobling Ms A Wallace
Objectors:-	Mr and Mrs S & A Salt

List of Documents

Planning Authority: -	C1	Written Statement and Appendices
Appellant: -	A1	Written Statement and Appendices
Objectors:-	Obj 1	Written Statement and Appendices

Appeal Decision

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Appeal Reference:	2020/A0008
Appeal by:	Mr Bryan Turkington
Appeal against:	Refusal of full planning permission
Proposed Development:	Retention of a 20ft x 8 ft container to house vending machines
Location:	42 Main Road Moygashel
Planning Authority:	Mid Ulster District Council
Application Reference:	LA09/2019/0357/F
Procedure:	Remote Hearing on 21 st January 2021
Decision by:	Commissioner Helen Fitzsimons on 9 th February 2021

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposed development is sensitive to the character of the settlement in terms of its scale, form, design and use of materials, whether it would respect its surroundings and if it would have an adverse impact on residential amenity.
3. Section 45 (1) of The Planning (Northern Ireland) Act 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. The appeal site lies on unzoned land located within the Settlement Limit of Dungannon as designated by Policy SETT 1 'Settlement Limits' of the Dungannon and South Tyrone Area Plan 2010 (DSTAP) the local development plan (LDP) which operates in the area where the appeal site is located.
4. Policy SETT 1 of DSTAP says that favourable consideration will be given to development proposals within settlement limits including zoned sites where seven criteria are met. The following criteria are pertinent in this appeal; criterion one 'the proposal is sensitive to the size, character and function of the settlement in terms of scale, form, design and use of materials; criterion two 'the proposal respects the opportunities and constraints of the specific site and its surroundings, and where appropriate considers the potential for the creation of a new sense of place through sensitive design; and criterion three 'there is no significant detrimental affect on amenities'.

5. Policy RSO 5 'Local Shops' of DSTAP says that proposals for local shops will be determined in accordance with prevailing regional planning policy. There is no evidence that the proposed development would fail prevailing retail planning policy for local shops and this provision of DSTAP would not be offended. Consequently I do not need to consider the appellant's arguments regarding the merits of the proposed development in relation to retail policy.
6. The appellant referred me to The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) is regional policy and relied upon the following paragraphs in respect of his proposal. Paragraph 3.8 'the guiding principle for planning authorities in determining planning applications is that sustainable development should be permitted, having regard to the development plan and all other material considerations unless the proposed development will cause demonstrable harm to interests of acknowledged importance.'; paragraph 4.11 the 'planning system has a role to play in minimising potential adverse impacts such as noise or light pollution on sensitive receptors by means of its influence on the location layout and design of new development.'; paragraph 4.19 'planning authorities should therefore take a positive approach to appropriate economic development proposals, and proactively support and enable growth generating activities. Large scale investment proposals with job creation potential should be given particular priority. Planning authorities should also recognise and encourage proposals that could make an important contribution to sustainable economic growth when drawing up new plans and taking decisions.'; and paragraph 4.20 'when assessing the positive and negative economic implications of planning applications planning authorities should ensure the approach followed is proportionate to the scale, complexity and impact of the proposed development. When taking into account the implications of proposals for job creation, planning authorities should emphasise the potential of proposals to deliver sustainable medium to long-term employment growth. Furthermore, in processing relevant planning applications planning authorities must ensure appropriate weight is given to both the public interest of local communities and the wider region
7. Policy DES 2 'Townscape' of 'A Planning Strategy for Rural Northern Ireland' (PSRNI) is retained regional policy under the SPPS and is also a material consideration in this appeal. The stated objective of DES 2 of PSRNI is to 'require development proposals in towns and villages to make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials.'
8. Paragraph seven of Policy DES 2 within the heading 'Development' says that 'new development will normally be required to be appropriate in use and sensitive in siting, scale, layout, design and materials both in itself and in relation to adjoining buildings, spaces and views. The main concern is to ensure that development proposals neither conflict with or detract from the character, amenity and design of an area.'
9. Paragraph eleven of the policy entitled 'Amenity' says that 'new developments should provide reasonable standards of amenity both in terms of the environment which the development creates and in terms of its effect on neighbouring properties. Where there is inherent incompatibility with neighbouring developments, or where remedial action cannot be made effective, applications will normally be refused.'

10. Both the Council's and objectors' concerns are based upon the requirements of Policy DES 2 of PSRNI in respect of character of area and detriment to residential amenity.
11. The appeal site comprises the site of a former petrol filling station and shop. Those buildings were demolished some time ago and the site lay vacant until the proposed container was sited upon it. The appellant intends to affix timber cladding to all four sides of the container, and finish a signage area along its upper front portion and the edges of each side in dark grey metal cladding. The door and the shuttered window in the front elevation would be painted dark grey. The boundaries on the north and the south of the appeal site would be defined by a close boarded fence of some 1.5m in height. Inside the container are three vending machines; one for cold drinks; one for hot drinks and one for snacks. The vending activities at the appeal site are unmanned and have the potential to operate 24 hours a day seven days a week.
12. Immediately adjacent to, on the northern side of the appeal site, is Gordy's Fish and Chip shop the front elevation of which is finished with a timber fascia and stonework to the walls. Beside Gordy's is a café, with its front elevation finished in painted timber sheeting. Both buildings are single storey and have an appearance of permanency within the street scene. Some 50m North West on the opposite side of the road is a Costcutter supermarket and car park. The supermarket is set back approx. 70 from the road to the rear of the site with the car park in front. Its roadside boundary comprises a low brick wall with metal railings atop which are set between brick pillars. This roadside boundary treatment is approximately 2m high. The 'Linen Green' retail outlet which comprises a number of shops and a restaurants lies just north of the Costcutter supermarket. A day care centre is located east of and to the rear of the appeal site.
13. Opposite the appeal site, fronting Main Road, are six dwellings whilst in the south is a residential terrace. All of these dwellings are mainly finished in render with tiled roofs, except No 29 Main Road which is constructed in stone. The dwellings vary in height from single storey to two storey The front boundaries of the dwellings typically comprise either 1m high close boarded fencing, rendered 1m high walls or 1m high brick built walls. The streets leading off this part of Main Road comprise a mix of housing types. The part of Main Road, where the appeal site lies, appears built up and this is mainly due to the number of residential properties, both fronting the road and in the streets behind.
14. Because of the existing buildings and structures in the area surrounding the appeal site, its character is one of permanence within its built fabric.
15. Although not iterated in its reason for refusal the Council argued that the container is a temporary structure which is out of character with the surrounding area. The objectors raised similar concerns. The appellant did not dispute the temporary nature of the structure.
16. In my opinion the close boarded style of the proposed timber finishes to the container, and the characteristics of the container of itself, would not provide the architectural character one would expect to see with a permanent building, it would appear as a short term, temporary and unsatisfactory design solution to integrate the proposed development into the street scene and be inappropriate in this area. Therefore I do

not accept that its retention would make 'efficient use of the vacant site and create a more positive street frontage'

17. Although the proposed development would not be insensitive to the size of the settlement it would be out of character with the settlement in terms of its temporary appearance due to its scale, form, design and use of materials at this location and criterion one of Policy SETT 1 of DSTAP would not be met. It would also offend criterion two of the LDP policy in that it would not respect the constraints of the specific site and its surroundings and it has failed to consider the potential for the creation of a new sense of place through sensitive design. The proposed development would not meet the provisions of Policy DES 2 of PSRNI in that it would not make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design and use of materials.
18. The Council and objectors raised the matters of noise and disturbance associated with the appeal premises, especially at night, and additional concerns regarding compliance with health and safety measures that should be in place during the current Covid 19 health crisis.
19. The appellant proposes restricted opening hours of 7.00 – 23.00 seven days a week, which I consider reasonable given both the opening hours of other convenience and food outlets in the wider area and what are considered to be 'daytime hours' as set out in British Standard BS4142:2014, British Standard BS8233:2014 and the WHO guidelines referred to me by the appellant and this could be dealt with by way of a planning condition.
20. Although the appellant referred to WHO guidelines for the maximum recommended day time noise and night time noise levels within dwellings no evidence was presented to demonstrate that those levels would not be breached. Whilst the appellant eluded to 'a relatively high background noise climate' due to the area's 'mixed use context' I was given no substantive evidence in support of this argument.
21. Photographic evidence submitted by an objector shows a number of young people, bikes and cars congregated outside the vending facility during hours of darkness. A day time photograph shows five bicycles on the ground outside the container with a number of young people inside. The background papers also contain photographs showing cars queued up at night at the appeal site. This demonstrates to me that it is a congregating point both during the daylight and in darker hours. I note that no photographic or CCTV evidence was presented by the appellant to refute the objectors' claims
22. The Environmental Health Department (EHD) originally offered no objections to the proposed development. However, the EHD officer told me at the hearing that he had since changed his opinion on the basis of noise complaints received between July 2019 – November 2020 regarding the operation of the proposed development, and he is entitled to do so. Because of the EHD concerns and the objectors' evidence I am not persuaded that a letter from one resident in support of the scheme is sufficient to outweigh the Council's objections and the objectors' evidence in this respect.

23. Notwithstanding the definition of daytime hours set out in guidance and the similarity of the proposed opening hours of other nearby convenience shops, it is my view that unmanned nature of the proposal has the potential to attract gatherings at any time as there is no member of staff to deter people congregating in and around the appeal site. Given this, the remedial action of limiting the hours of opening is not sufficiently effective to mitigate the inherent incompatibility of the proposed development with neighbouring properties. This has already given rise to and has the potential for a further adverse detrimental impact on the amenities of nearby residents irrespective of opening hours. The proposed development would fail to meet the requirements of criterion three of Policy SETT 1 of DSTAP; paragraph 4.11 of the SPPS would be offended and paragraph eleven Policy DES 2 of PSRNI would not be met.
24. All of this distinguishes it from the Costcutter which was granted planning permission under M/2012/0106/F and other convenience stores referred to, where staff are present, which from my own experience can act as a deterrent to people congregating, and where I have been given no evidence of noise complaints.
25. At my site visit I observed that hand sanitiser has been provided within the container and there are health and safety signs in place. It is a matter for individuals to avail of the sanitising facilities provided. Therefore I do not accept that the appellant is in breach of Covid 19 regulations. The Council and objectors concerns are not determining in this regard.
26. Whilst I accept that the appellant's proposal is an innovate and new form of retailing, it is my opinion that such an operation is better suited to a more predominantly commercial area or one located away from residential properties. I do not agree with the appellant that it constitutes sustainable economic development in an environmentally sensitive manner because of both its temporary appearance and the potential for noise disturbance. I do not agree with the appellant that the provision of the two jobs provided , of which there was no explanation as to what those jobs entailed , is of sufficient economic weight to warrant allowing the appeal
27. As required by Section 45 (1) of the Act I have had regard to the DSTAP and in doing so I have concluded that the proposed development does not accord with criteria one, two and three of Policy SETT 1 of the LDP. I have also had regard to the SPPS and concluded that the proposed development would fail to meet the requirements of its paragraphs 3.8, 4.19 and 4.20. I have taken account of Policy DES 2 of PSRNI and concluded that the proposed development does not meet the provisions of that policy. As a consequence the appeal must fail, the Council has sustained it sole reason for refusal based on PSRNI and the objector's concerns are upheld.

This decision relates to the:- 1:1250 scale site location plan; 1:200 scale proposed site plan; 1:50 scale existing elevations; 1:50 scale existing plan and section; 1:50 scale proposed plans and section; 1:50 scale proposed elevations; and the photomontage titled Proposed 3D

COMMISSIONER HELEN FITZSIMONS

Attendances

Planning Authority: -	Mr P Marion Ms M Mc Kearney Mr David Stewart Mr G Evans (EHD)
Appellant: -	Ms G Jobling Ms A Wallace
Objectors:-	Mr and Mrs S & A Salt

List of Documents

Planning Authority: -	C1	Written Statement and Appendices
Appellant: -	A1	Written Statement and Appendices
Objectors:-	Obj 1	Written Statement and Appendix

