Report on	Planning Appeal decisions
Date of Meeting	4th September 2018
Reporting Officer	Chris Boomer
Contact Officer	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 Provide update on recent appeal decisions by the Planning appeals commission (PAC)
2.0	**Background**
2.1	As detailed below, two appeal decisions have recently been received on Enforcement cases in the MUDC area. A further appeal on a planning application has been withdrawn
3.0	**Main Report**
3.1	LA09/2016/0123/CA An appeal by Paul Clarke against a Submission Notice for an application to regularise unauthorised extension of a domestic curtilage and erection of an unauthorised building was dismissed because the applicant did not provide satisfactory evidence to suggest it had occurred 5 years ago.
3.2	LA09/2016/0093/CA An appeal by Barry O'Neill for a change of use to dance studio and to a vehicle repair business was dismissed on all grounds although the applicant was given a new date to remedy the breach.
3.3	I/2014/0413/F Appeal by Beltonanean Renewable Energy for a windfarm has been withdrawn.

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 position with regard to appeal decisions
6.0	**Documents Attached & References**
6.1	Copies of appeal decisions

Planning Appeals Commission

Submission Notice Appeal Decision

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Appeal Reference:	2018/E0001
Appeal by:	Mr Paul Clarke against a Submission Notice dated 6th March 2018
Alleged matters that constitute development:	The unauthorised extension of domestic curtilage and erection of a domestic building outside the established curtilage of a residential property
Location:	Lands approximately 50m south-west and 50m south-east of No. 123 Gulladuff Road, Drumlamph, Maghera
Council's Reference:	LA09/2016/0123/CA
Procedure:	Informal Hearing on 19th July 2018
Decision by:	Commissioner Julie de-Courcey, dated 14th August 2018

Grounds of Appeal

1. As set out in Section 44 of the Planning Act (Northern Ireland) 2011 [the Act], an appeal against a submission notice (SN) issued under Section 43 thereof, may be brought on any of the following grounds:

   a) that the matters alleged do not constitute development;
   b) that the development alleged in the notice has not taken place;
   c) that the period of 5 years referred to in Section 43(2) has elapsed at the date when the notice was issued.

2. The appeal was initially brought on grounds (a) and (c) but, at the hearing, the appellant advised that he was not pursuing ground (a).

Ground (c) - that the period of 5 years referred to in Section 43(2) has elapsed at the date when the notice was issued.

3. Section 43(2) of the Act says that a SN may be issued within the period of 5 years from the date on which the development to which it relates has begun, and the provisions of section 63(2) apply in determining for the purposes of this section when development shall be taken to begun. Section 63(2) of the Act says that development shall be taken to be begun on the earliest date on which any of the following operations comprised in the development begins to be carried out -

(a) where the development consists of or includes the erection of a building, any work of construction in the course of the erection of the building; and

(c) where the development consists of or includes a change of use of any building or other land, that change of use.

The onus is on the appellant to show that the development alleged by the SN begun before 6th March 2013. He acknowledged that the (new) building subject of the SN was erected in 2015 so is not pursuing the appeal in respect of it.

4. No. 123 Gulladuff Road is a small, traditional cottage, set gable-end onto the road. Parallel to its front elevation is an outbuilding. Both enclose a cottage-style garden. To the south is an orchard. The area of land subject of the SN lies to the rear of the outbuilding and extends south-westwards beyond the orchard. It is irregularly shaped and extends over 100m from Gulladuff Road. The area occupied by the new building adjoins a vehicular access and hardstanding both of which are outwith the area subject of the SN. This area comprises a mixture of mown and wild grasses, flowers growing both informally and in beds and a bench seat. Trees have also been planted. The boundary of the area subject of the SN to the south of the building is not contiguous with the post and wire fence that bounds a meadow/dog pen area. The area subject of the SN then comprises a mown strip south of the hardstanding that extends between the orchard and meadow/dog pen with ornamental planting on the outer side of the enclosure. Where this strip widens out is a vegetable/herb garden, compost heaps, seating, linear washing line suspended between posts that have been set in concrete and a portable clothes dryer. To the south-west is a chicken coop set within a fenced area. The mown strip extends alongside both these areas.

5. The appellant has owned, took possession of and occupied the subject lands since 2002. He said that the land was in agricultural use in 2003 but that it has not been used for grazing since 2005/6. He added that: part of the area was initially used, prior to 2006, for growing fruit and vegetables for the family's consumption; and that creation of the remainder as residential curtilage initially began in 2005 but that it was intensively developed from 2008 onwards. Mr Clarke stated that the area provides a space in which his 3 children can play, safely separated from the road. However, it also provides a sustainable lifestyle and pleasure in rural living for the whole family. He submitted a screen shot of dated files of photos from his PC's hard-drive, which he took, and attested in the sworn affidavit that these digital copies correspond to those dates. The photos show: the vegetable garden in 2005 and 2007, with seating provision; his family on the mown strip immediately south-east of the orchard in 2008 and this area in 2009 before the fence enclosing the meado/dog pen was erected. The mown paths show no signs of wear and tear but if used predominantly by small children and their bicycles/tricycles, this would not necessarily mean that they were not used in that way. The fixed washing line is also evident in some of the photos.

6. The Council submitted two sets of Google Street View images as follows:

- The first is dated December 2008. Both show the upper end of the host field from 2 different angles. The area that now adjoins the new building is agricultural in appearance. Work appears to be taking place on the hardstanding area; and

- The next 2 are from June 2011. The area adjoining the new building has higher vegetation than in December 2008, unsurprising given the season, and the area behind the established outbuilding, outwith the appeal site, comprises mown grass. One or two new trees are evident but, from the angle, it is hard to tell whether they are within the appeal site. The second is from the approach from the south-east on Gulladuff Road. At the distance from which it is taken relative to the linear part of the appeal site to the western side of the host field, it is difficult to see if this comprises a mown strip as opposed to the long grass on the eastern side of the host field. The poles to which the washing line is fixed are evident.

The "critical date" in terms of Section 43(2) of the Act is almost 2 years before the most recent of these photos but, the washing line apart, they provide little support for Mr Clarke's evidence that extension of the curtilage pre-dates 2008.

7. The Council submitted 4 ortho (flight) images as follows:

- May 2008 & April 2011. There appears to be a mown strip around the host field and the linear area subject of the SN. That occupied by and surrounding the new building appears to be rough grassland. There is no sign of the chicken coop and associated enclosure and I cannot be certain whether the vegetable/herb garden is in situ though the area that it now occupies appears as a slightly different colour than the surrounding apparently mowed grass;

- May 2013 (after the "critical date"). The only apparent difference from the previous 2 images is that there is less differentiation between the former mown strip and remainder of the host field suggesting the grass is longer; and

- April 2016. The chicken coop is not apparent otherwise the layout of the host field, including the site subject of the SN, appears to be consistent with what I saw on site.

8. The Department of Agriculture, Environment and Rural Affairs (DAERA), in a letter of 6 June 2018, said that:

- Mr Clarke has a farm business with Business ID number, registered at No. 123 Gulladuff Road;
- There is no correspondent herd or flock number;
- He claimed Single Farm Payment (SFP) from 2005 – 2014;
- His 2014 Single Application included two fields one of which is that containing the land subject of the SN (the host field);
- The appellant has not submitted any claims for the Basic Payment Scheme (BPS), introduced in 2015;
- The land Mr Clarke declared for SFP in 2014 has not been claimed for BFS by any other business in 2015-18.

It was not disputed that each claim year for SFP is commensurate with the calendar year. Mr Clarke said that he should have notified DAERA of the extension of his residential curtilage into the host field. However, it was de-

EA DETERMINATION SHEET

Applic. No. LA09/2017/0797F Date Received 09.06.2017

Case Officer: **Phelim Marrion**

Proposal: **Proposed 2 additional pig sheds (to contain a total of 4000 weaner pigs 30kg weight with 2 additional feed bins and associated site works, existing pig shed to have a reduction in pig numbers to 2000 weaner pigs 30kg (giving a total site capacity of 6000 weaner pigs 30kg)**

Location: **Land approx. 200m S.W. of 26 Tullyaran Road Dungannon**

Deadline for Determination: **07.07.2017**

Extension of time requested: **Y** Date Agreed to :

The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017

Does the development fall within the scope of Schedule 1 of the above Regulations: -

No

Does the development fall within the scope of Schedule 2 of the above Regulations: -

Yes

If 'Yes' which category: -

Under Regulation 12 (I) (a) this application would require determination as to the need for environmental impact assessment, as a schedule 2;

1 (c)

Intensive livestock installations (unless included in Schedule 1);) as the area of floor space exceeds 500sqm.

13 (b) Any change to or extension of development of a description listed in Schedule 1 (other than a change or extension falling within paragraph 24 of that Schedule) where that development is already authorised, executed or in the process of being executed.

As per 'The Planning (Environmental Impact Assessment) Regulations (Northern Ireland) 2017' the site does not fall falls within 'a sensitive area'.

a **the size and design of the development;**
The proposal is for a 1975sqm pig rearing shed and 2 feed bins it will require cutting and filling of the site and the creation of a swale for water attenuation. The proposed building is for 4000 weaners (up to 30kg weight) poultry shed and ancillary development to house 16000 layers. The assessment of the visual impact will be carried out through the application consideration

b **the cumulation with other existing development and/or approved development**
This pig unit is in the rural area beside an existing pig shed and other agricultural buildings. The development is proposed to have a total facility capacity of 6000 weaners (up to 30kg weight). The emissions from this building will be considered through the submitted air quality assessment and slurry disposal plan.

c **the use of natural resources, in particular land, soil, water and biodiversity;**

the buildings are in a disused sand quarry and have mature native species trees around it, no hedges or other vegetation will be removed.

d **the production of waste;**

the nitrates and ammonia in the waste and method of disposal will be considered through the waste management proposals

e **pollution and nuisances;**

noise and dust from construction traffic may be issues depending on time of year of construction - odour, flies and noise generation can be considered through the development management process and submission of necessary reports

f) **the risk of major accidents and/or disasters which are relevant to the development concerned, including those caused by climate change, in accordance with scientific knowledge;**

There is limited risk from accidents during the operations of this site or during construction due to the nature of the proposal and the rearing of pigs. Swine flu and influenza are possibilities which will be advised by central government and managed by appropriate on site biosecurity protocols.

g **the risks to human health (for example due to water contamination or air pollution**

there is potential pollution which could impact on human health if appropriate guidance, construction and management guidance and methods are not properly adhered to

2009/147/EC on the conservation of wild birds;

The site is not identified with any special areas , NIEA, EHO and Shared Environmental Service have been consulted and have not identified any potential to adversely impact on any such areas.

vi.) **areas in which there has already been a failure to meet environmental quality standards laid down in Union legislation and relevant to the development, or in which it is considered that there is such a failure or;**

EHO & NIEA have not raised any issues relating to these matters.

vii.) **densely populated areas;**

The surrounding area is rural in character and the proposal can be absorbed into the area without causing significant harm to the natural environment. There are several residential properties, however the level of population is not such that the proposal is likely to have a significant environmental impact.

viii.) **Landscapes and sites of historical, cultural or archaeological significance.**

The site is not located within any such sites.

Characteristics of the potential impact: -

The likely significant effects of development on the environment shall b considered in relation to criteria set out under paragraphs 1 and 2 of Schedule 3 of the Planning (EIA) Regulations (NI) 2017, with regards to the impact of the development on the factors specified in regulation 5(2), taking into account –

a) **the magnitude and spatial extent of the impact (for example geographical area and size of the population likely to be affected);**

The impact of this proposal will be limited to the area where it can be viewed from, the air within the ammonia dispersal zone and close to where the slurry is spread.

b) **the nature of the impact;**

The impact could be from ammonia dispersal which could result in raised nitrogen levels and alter habitats.

In conclusion:
In considering the proposed scheme in light of supporting information and consultation response information, it is not considered the application should be accompanied by an Environmental Statement, as there will be no significant environmental impacts.

Signatures		Dated
1.	.....	.....
2.	.....	.....
3.	.....	.....

registered at the end of the 2016 calendar year as set out in the Department's letter of 24th November 2016.

9. The definition of "agriculture" set out in Section 250 of the Act includes, amongst other things, horticulture, fruit growing, livestock breeding and keeping and the use of land as meadow land. The Collins English Dictionary definition of meadow is a field that has grass and flowers growing in it. The inclusion of meadow within the definition of agriculture is at odds with the appellant's stance that for land to be in agricultural use it would be sprayed. The definition would encompass long, mixed species grass including that interspersed with flowers. The definition does not preclude the growing of fruit and vegetables and the keeping of hens to lay eggs, all for the producers' family consumption. Thus establishing a vegetable/herb garden and keeping hens in pursuit of a sustainable lifestyle prior to the "critical date" does not necessarily equate to the site subject of the EN not being in use for agriculture after that date. The lack of a defensible, physical boundary between the area immediately around the dwelling and adjoining outbuilding, orchard and hardstanding area that separates it from the site subject of the SN is not, of itself, persuasive that the latter was not in agricultural use after the "critical date". The grass could have been mown to facilitate ease of access to the vegetable path and chicken coop. The photographic evidence points to the fixed washing line having been located within the appeal site before the "critical date" but this is not persuasive that the primary use of the land for agricultural purposes started before 6th March 2013.

10. The appellant said that agricultural use of the site ceased in 2005/6 yet it was registered to his agricultural holding until November 2016 and SFP was claimed until 31st December 2014. I note his evidence that this was an oversight and that DAERA did not seek to reclaim any money from him. Account has also been taken of Mr Clarke's submission that registration does not equate to certification that the land was used for agriculture and that if there is no other evidence that it has been used as such then the Council's reliance on the DEARA submission is misplaced. He added that there are legal cases supporting this stance but did not cite any.

11. Having taken into account and weighed the parties' evidence, I am not persuaded that the change of use took place prior to 6th March 2013. Accordingly the appeal on ground (c) is dismissed.

Decision

The decision on this appeal is as follows:

(i) The appeal on ground (c) fails; and

(ii) The submission notice is upheld.

COMMISSIONER JULIE DE-COURCEY

Appearance at Hearing

Council:	Ms M Mc Kearney Mr S Mc Nia
Appellant:	Mr P Clarke

List of Documents

Council:	"LPA 1"	Statement of Case with11 appendices
	"LPA 2"	Farm Map received post-hearing
Appellant:	"APP 1"	Statement of Case with appendices
	"APP 2"	Farm Map and DAERA letter of 24th November 2016 received post-hearing

Planning Appeals Commission

Enforcement Appeal Decision

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Appeal Reference:	2017/E0050
Appeal by:	Mr B O'Neill
Appeal against:	An enforcement notice dated 23rd January 2018
Alleged Breach of Planning Control:	Unauthorised change of use of: unit 4 to a dance studio with associated gymnasium; and unit 11 to a vehicle repair business
Location:	Lands 10m west and 10m north of No. 18 Cookstown Road, Dungannon, specifically identified as units 4 and 11, Ross Beg, Dungannon
Planning Authority:	Mid-Ulster District Council
Authority's Reference:	LA09/2016/0093/CA
Procedure:	Hearings on 15th June, 6th July & Site Visit on 2nd August 2018
Decision by:	Commissioner Julie de-Courcey, dated 13th August 2018

Grounds of Appeal

1. The appeal was brought on Grounds (a), (b), (c), (d), (f) and (g) as set out in Section 143 (3) of the Planning Act (Northern Ireland) 2011 [the Act].

The Notice

2. The appellant said that the Enforcement Notice (EN) should refer to a dance studio only and omit mention of "*with associated gymnasium*".

3. Entering unit 4, there is a kitchen/reception area with WC and the dance studio is off to the left. That area contains 12 no. fixed poles. Behind the vestibule is a smaller room that contains a range of fitness equipment. The Council's photo of this room, taken on 13th June 2017, is representative of what I saw on site. It also provided an extract from "Dee's Barbelles" Facebook page, the business operating from unit 4, which describes the enterprise as a "Gym/physical fitness centre". The two photos show the dance studio and the room containing a comparable range of fitness equipment to that which was in place when I visited the premises.

4. Mr Gourley said that his client filled out the statement of facts himself and misrepresented the current use of unit 4 as a gymnasium. He added that gymnasium suggests a large building that accommodates a variety of equipment and athletic activities, often with public access/for public use, that could also be a venue for other events, such as are found in many schools, and whose scale

distinguishes it from the current set-up. Whilst gymnasium is more commonly used to describe a large room or hall equipped for games or physical training, the Collins English Dictionary says that it is the same as a gym. *"Gym"* is the diminutive of "*gymnasium*". Therefore, whilst a room of the size in question would be more commonly referred to as a gym, it has not been misdescribed and there is no need to use my statutory powers to correct the EN.

Ground (b)

5. Account has been taken of the fact that in response to a Planning Contravention Notice (PCN) dated 20 February 2017 the appellant described the use of unit 4 as a "*gym equipment store*". However, little weight is attached to this in the context of the appeal on ground (b) as the Council subsequently described the alleged breach on the EN in a different manner. In his statement of facts on the enforcement appeal form, the appellant described the use of the units 4 and 11 as "*gymnasium and vehicle repair workshop*". Notwithstanding this consideration, there was no dispute that the larger room within unit 4 is used as a dance studio and that this was the case when the EN was served. The bone of contention relates to the gymnasium element of the alleged breach, which the appellant said is ancillary to the overall use of unit 4 as a dance studio.

6. Ms Cairns, the tenant of unit 4 and proprietor of "Dee's Barbelles" said that the fitness equipment is solely for her own use as she needs to be physically fit in order to provide dance and fitness instruction. Although her 2 sons help her deliver tuition, they do not use the gym. She added that it was initially available to customers when she relocated to this premises but that there was no demand for it. As is evident from her Facebook page, she employed a photographer/ designer to style it and said she couldn't afford to have the photos re-done to reflect the change in offer. The advertised range of services included resistance training, men's conditioning and one to one personal training. Ms Cairns said that the aforementioned types of training could all be provided in the dance studio and the only equipment needed to do so are the fixed poles. The appellant argued that the room containing the fitness equipment is ancillary to the dance studio in the same way that some homes include a room with fitness equipment for personal use/home gym. He characterised use of it as akin to Ms Cairns' continuing professional development. At the site visit, the appellant pointed to use of the gym for the storage of mats that were said to be associated with use of the dance studio and added that it was also used to store equipment and props as and when they were required for choreographed dance routines.

7. The appellant's evidence in this respect is persuasive, on the balance of probabilities, that although the gymnasium occupies a separate room within unit 4, its use is incidental to its primary use as a dance studio. Therefore, the appeal on ground (b) is successful in respect of the gymnasium but fails as regards unit 4's overall use as a dance studio.

8. From inspection of the premises, the activities carried out in unit 11 are correctly described on the EN. The appellant acknowledged that it is used for general servicing and repairs but not including the fixing of punctures. As the matters alleged by the EN in respect of unit 11 have occurred, the appeal on ground (b) fails.

Ground (c)

9. Class A2 of the Schedule to The Planning (Use Classes) Order (Northern Ireland) 2015 (UCO) headed "financial, professional and other services" relates to use for the provision of services which it is appropriate to provide in a shopping area, where the services provided are principally to visiting members of the public including financial services or professional services. The appeal site is located in the open countryside approximately 0.3 miles outside Dungannon's settlement development limit, as defined in the Dungannonn & South Tyrone Area Plan 2010 (DSTAP) and cannot reasonably be said the be located within a shopping area. Therefore the use of unit 4 as a dance studio does not come within Class A2.

10. Article 3 (4) (k) of the UCO says that no class specified in the Schedule includes use as a swimming bath, skating rink, gymnasium or area for other indoor or outdoor sports or recreations including those involving motorised vehicles or firearms. There is no qualification within the statute that this legislative provision relates only to indoor sports or recreations carried out within large, grand, purpose-built buildings. The use of unit 4 as a dance studio providing fitness training, dance tuition and choreography for competitive dance routines constitutes an area for indoor recreation. Therefore the use of unit 4 is *sui generis*.

11. The appellant gave extensive evidence on the range of uses carried out within unit 4 prior to the current tenancy. In 2014-15 Saturn LED reportedly operated from it as an on-line wholesaler for solar panels and electrical equipment and used the premises as an office. The appellant's understanding of their business was that goods were not stored on the premises, rather Saturn was the "middle man" between the manufacturer and consumer. A letter from the apparent owner of that business confirmed the reported time-line. On the basis of this evidence, that use came within Class B1 (a) of the UCO which relates to use as an office other than use within Class A2. Saturn LED was seemingly the previous occupant of unit 4 prior to Ms Cairns.

12. When the appellant completed the PCN on 20 February 2017, he said that unit 4 was occupied by Ms Cairns, was used as a "*gym equipment store*" and that this use commenced in April 2012. Such a storage use falls within Class B4 of the UCO. The PCN, in laypersons' terms, referred to the provisions of Section 134 (5) and (6) of the Act as regards the criminal law implications of recklessly making a statement that is false or misleading. The appellant said that, despite the PCN being returned by planning consultants on his behalf, he did not seek their professional advice in responding to it and that he made a mistake in the information given about unit 4. Submitted evidence suggests that the current use of the premises started on or after 27 November 2015, namely: a tenancy agreement between the appellant and Ms Cairns, dated 27 November 2015; evidence taken from her Facebook page, dated 21 December 2015, about her bidding a final farewell to her previous premises in Moygashel; and another Facebook screenshot from 1 February 2016 when Ms Cairns was celebrating three years of "Dee's Barbelles" being in business. This points to current use of the premises commencing in late 2015/early 2016 and corroborates the appellant's evidence that his information given on the PCN in respect of unit 4 was incorrect. Therefore, the previous use of unit 4 came within Class B1 (a) prior to commencement of the current *sui generis* use.

13. Article 2 (1) (b) of the UCO defines "*industrial process*" as a process for or incidental to the altering, repairing, maintaining, ornamenting, finishing, cleaning, washing, packing, canning or adapting for sale of any article. Unit 11 is used as a vehicle repair business, which comes within the definition of an "*industrial process*". Class B2 of the UCO defines a light industrial use as being for any industrial process which can be carried out without detriment to amenity by reason of noise, vibration, smell, fumes, smoke, soot, ash dust or grit. Class B3 general industrial use is defined as the carrying on of any industrial process other than one falling within Class B2. The differentiation between these two use classes is not predicated on scale. There is nothing in the UCO to suggest that Class B3 applies solely to an engineering works, complex buildings with a multitude of on-going activities, a significant enterprise or large-scale manufacturer such as Terex. The fact that no cutting, boring, metal-working, burning or smelting takes place within unit 11 does not exempt its use from potentially falling within Class B3.

14. The premises contains a hydraulic lift, that takes 33 seconds to raise/lower, and a compressor unit, used to power tools, that is limited to a noise emission of 97 db LAeq. The unit only "kicks in" when pressure falls below a certain level. Mr Armstrong demonstrated both in operation with the main door to the premises open. I was told that, despite that it is shut for 90% of the time the unit is in use, it would be impractical to require that it be kept shut all of the time. When the lift was being elevated it emitted a loud whine from my position at the gable end of No. 18 Cookstown Road opposite the unit's open door and some 8m removed. However, moving downhill from the premises towards Cookstown Road (A29), the noise dissipated relatively quickly relative to the ambient noise level from traffic at around 5pm on a Friday afternoon. The compressor's noise output was much louder. Albeit that its noise emissions are restricted and the use of both pieces of equipment intermittent, when added to any banging sounds, metal tools being dropped and welding of exhausts, the use has the potential to cause detriment to amenity by reason of noise. As the definition of Class B2 and Class B3 uses are prescribed by legislation, I do not have the discretion to take account the fact that the appellant, who owns unit 11, occupies No. 18 Cookstown Road. Accordingly, the use of unit 11 involves an industrial process that comes within Class B3 of the UCO.

15. The appellant said that the previous occupant of unit 11 was Printone and a letter from the seeming proprietor of that business said it was used "*for storage and for my print company and manufacturers of bespoke flags and bunting*". The company notepaper describes its business as, amongst other things, manufacturers of flags, bunting, signs, vehicle graphics, banners, health and safety signage, printed workwear, business cards, flyers. Evidence from Land and Property Services (LPS) said that units 10 and 11 were valued as a single entity in June 2009 as a workshop with industrial status for rating purposes on the basis that they were used for the manufacture of signs, light boxes and small trailers for sign display purposes. Printone subsequently downsized, vacated unit 10 and occupied only unit 11. When these units were split for rating purposes in December 2014, the latter was described as a workshop but no industrial status granted. This industrial de-rating was subsequently removed as the occupant did not complete and return the necessary paperwork and its rating reverted to the valuation class "warehouses, stores, workshops (Non Industrial) Garages". This is the rating applied to unit 11 since 2 November 2016 when it was occupied by Armstrong Exhausts.

16. On the basis of Printone's letter, the Council considered the use of the unit might have come within Class B4 and potentially Class B2. However, as it only extends to approximately 100 sq.m., my reading of the rather clumsily worded letter is that the Class B4 storage element was incidental to the Class B2 use as provided for by Article 3 (3) of the UCO. This is consistent with the appellant's verbal evidence. Although LPS valuation classes are not synonymous with the UCO, this evidence points towards a use from December 2014 onwards for Class B2 purposes. The reversal of industrial de-rating was attributable to Printone's inaction and administrative process with LPS as opposed to a change in the nature of the business for rating purposes. This combination of considerations leads me to conclude that the previous use of unit 11 was for light industry (Class B2).

17. The definition of "development" set out in Section 23 (1) of the Act includes the making of any material change in the use of any buildings. A change of use from Class B1 of the UCO to a *sui generis* use is not one of the uses of land not taken to involve the development of land by virtue of Section 23 (3) of the Act. The same is true for a change of use from Class B2 to Class B3. In accordance with Section 24 of the Act, planning permission is required for the carrying out of any development of land. Section 131 (1) (a) of the Act states that the carrying out of development without the planning permission requires constitutes a breach of planning control. Therefore the appeal on ground (c) fails in respect of both units.

Ground (d)

18. The onus is on the appellant to explain why that, at the date when the notice was issued, no enforcement action could be taken in respect of any breach of planning control which may be constituted by those matters. In accordance with Section 132 (3) of the Act, the current uses of both units 4 and 11 would have to started on or before 23 January 2013 in order for them to be immune from enforcement action.

19. For reasons set out in paragraphs 11 and 12, the current *sui generis* use of unit 4 commenced sometime after 27 November 2015. Therefore, it is not immune from enforcement action and the correspondent appeal on ground (d) fails.

20. Printone occupied units 10 and 11 in 2009, as corroborated by evidence from LPS. This same source indicated that the business vacated unit 11 by the end of July 2015 and that it lay vacant until rated in respect of "Armstrong Exhausts" in early November 2016. However, a bank statement, supplier's invoice and 2 utility bills appear to corroborate Printone's evidence that it occupied unit 11 until August 2016. Whilst not all these documents refer to unit 11, indeed one refers to unit 10-11, taking into account the earlier LPS evidence about the splitting of units 10 and 11 in 2014 for rating purposes, it is more likely than not, that they relate to unit 11.

21. When the appellant completed the PCN on 20 February 2017, he said that unit 11 was occupied by Mr Armstrong Senior, was used as a "*welding equipment store*" and that this use commenced in January 2016. As with the entries on the PCN in respect of unit 4, he said that he made a mistake in the information given about unit 11. Mr Armstrong gave contrary evidence saying that he had occupied the premises since 1 August 2016. Given the appellant's admission that the information on the PCN was incorrect, I prefer the Mr Armstrong's evidence. This

establishes that the material change of use occurred after 23 January 2013 and is not immune from enforcement action. Therefore the appeal on ground (d) fails in respect of unit 11.

Ground (a)

22. The site is located within the Dungannon Green Belt (GB) as designated in DSTAP. The preamble to Planning Policy Statement 21: "*Sustainable Development in the Countryside*" (PPS 21) says that its policy provisions will take precedence over those for GBs contained in existing statutory development plans. As there are no specific policies in DSTAP that are material to this development, it provides limited assistance in dealing with this appeal.

23. The provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) are material in all decisions on individual planning applications and appeals. The SPPS sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for the whole of the council area. During this transitional period planning authorities will apply the SPPS and retained planning policy statements. Planning Policy Statement 3: "*Access, Movement and Parking*" (PPS 3), Planning Policy Statement 3 (Clarification): "*Access, Movement and Parking*", Planning Policy Statement 4: "*Planning and Economic Development*" (PPS 4), PPS 21 and Development Control Advice Note 15: "*Vehicular Access Standards*" (DCAN 15) are such retained policy documents. Paragraph 1.12 of the SPPS says that any conflict between them and PPS 21 must be resolved in favour of the provisions of the latter.

24. Policy CTY 1 of PPS 21 sets out the types of development that are considered to be acceptable in the countryside. These include industry and business uses in accordance with PPS 4. The Preamble to PPS 4 says that for its purposes, economic development uses comprise industrial, business and storage and distribution uses defined in Part B "Industrial and Business Uses" of the UCO. As the use of unit 4 does not come within this definition, PPS 4 does not apply.

25. Policy PED 2 of PPS 4 says that proposals for economic development in the countryside will be permitted in accordance with the provisions of, amongst others, Policies PED 3 or PED 4. The latter applies to redevelopment of an established economic development use in the countryside. The overall complex, including the buildings subject of this EN, comprises 19 units. Two are subject of a Certificate of Lawfulness of Existing Use or Development (CLEUD) as manufacturing workshops and one was approved as a multi-purpose shed/store in 2006. The completed PCN suggests that the buildings that were erected prior to 2006 were formerly used as mushroom houses but that this use ceased in March 1997. Whilst the complex of buildings is an established physical feature in the countryside, save for three, their use for economic development has not been established via either planning consent or CLEUD. On this basis, Policy PED 4 of PPS 4 provides not support for the retention of unit 11.

26. Policy PED 3 relates to the expansion of an established economic development use in the countryside. It is permissive in nature and does not require the appellant to justify why such a proposal must be located in the countryside. Whilst only 3 of the units are authorised for Class B uses, I consider that this is the applicable policy against which to assess the retention of the current use of unit 11. The proposal

involves the reuse of an existing building whose footprint (approximately 110 sq.m.) and scale will not be altered. Taken in the context of the economic development uses within the overall complex, addition of unit 11 is not a major expansion of the existing industrial enterprise and does not represent a major increase in its site area. Regardless of their status in planning law, the buildings within the overall complex are an established visual feature within the rural landscape and industrial and business uses are permitted in 3 of the units. In this context, there is no persuasive evidence that the scale and nature of retention of the use of unit 11 as a vehicle repair workshop would harm the rural character or appearance of the local area. Therefore, this element of the proposal is consistent with Policy PED 2 and the Council's second and third draft reasons for refusal are not sustained in respect of it.

27. Policy PED 9 of PPS 4 says that a proposal for economic development use, in addition to its other policy provisions, will be required to meet all of 13 criteria. Again, it does not require the appellant to justify why such a proposal must be located in the countryside. The Council is concerned with criteria (a), (b), (e), (g), (h), (i) and (k).

28. A description of the potential noise impact of the use of unit 11 and its relationship to the nearest dwelling is set out in paragraph 14 above. Even with background noise from traffic on the A29 such intermittent noise, coupled with associated, additional vehicle movements could create a noise nuisance, harm the amenities of nearby residents and be incompatible with this adjoining land use contrary to criteria (a), (b) and (e) of Policy PED 9. This assessment does not take account of the potential cumulative impact from the uses within the overall complex that could exacerbate the situation. However, the appellant has ownership and control of unit 11 and could take measures to cease its use if its impact on his residential amenity were unacceptable. Accordingly, for the purposes of applying policy, little weight is attached to the proposal's potential impact on No. 18.

29. The next nearest dwelling is located approximately 80m to the south-west of unit 11 on slightly lower ground. It is set back approximately 116m from the A29 and elevated above it; both factors that would ameliorate the impact of noise from passing traffic. Units 1-4 inclusive and the appellant's dwelling are located between this sensitive receptor and unit 11 and would provide some attenuation for the intermittent noise coming from it. However, this noise source both of itself and when added to unquantified levels of noise emanating from the use of other premises within the appellant's overall complex could render the proposal inconsistent with criteria (a), (b) and (e) of Policy PED 9.. In the absence of a noise impact assessment, it is reasonable to adopt a precautionary approach and conclude that the proposal is inconsistent with the 3 criteria in this respect.

30. Criterion (g) of Policy PED 9 requires that the existing road network can safely handle any extra vehicular traffic the proposal will generate or suitable developer led improvements are proposed to overcome any road problems identified. Criterion (h) states that adequate access arrangements, parking and manoeuvring area are provided. No parking layout or details of manoeuvring areas were provided and there are no such demarcated areas on the ground. However, there appears to be sufficient space within the extensive, shared concrete hardstanding to accommodate these requirements without conflict with vehicle movements to other units or No. 18 Cookstown Road. Nevertheless, for the reasons set out

below that I find the Council's 5th and 6th draft refusal reasons to be sustained, the use of unit 11 for vehicle repairs is inconsistent with criteria (g) and (h) of Policy PED 9. Notwithstanding that there are no footpaths or cycle lanes in the vicinity of the site, no movement pattern was provided as required by criterion (i) to address the considerations set out therein. The proposal is consequently inconsistent with this requirement.

31. Units 4 and 11 will remain regardless of the outcome of this deemed planning application. As the EN does not relate to any areas of outside storage, the visual impact of their use cannot be considered in this context. Paragraph 38 of this decision sets out the required improvements to visibility to the north of the existing access. The likely scale and extent of the associated works, including the removal of vegetation, have the potential for significant, localised visual impacts. In the absence of any specific details about the visual and landscape impact of improving visibility, I cannot conclude that boundary treatment is appropriate as required by criterion (k) of Policy PED 9.

32. Whilst retention of the current use of unit 11 finds support in Policies PED 2 and PED 3 of PPS 4, it is contrary to Policy PED 9 and the Council's 4th draft reason for refusal is sustained. As it is inconsistent with the provisions of PPS 4 when considered in the round, retention of the vehicle repair use is not in accordance with the permissive approach in Policy CTY 1 of PPS 21 to industry and business uses.

33. Policy CTY 1 says 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. It adds that all such development must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations including those for access and road safety. It states that access arrangements must be in accordance with the Department's published guidance. The appellant advanced no overriding reasons why the continued use of unit 11 for vehicle repairs is essential at this location and could not be located in a settlement. For reasons associated with noise and road safety, this element of the proposal is also inconsistent with Policy CTY 1 in site-specific terms.

34. Similarly, there are no persuasive, overriding reasons in respect of the dance studio at this location. There is unlikely to be overlap between its hours of use and those of unit 11. However, I do not have this information in respect of the other uses within the complex of buildings. The rear wall of the dance studio is approximately 50m from the dwelling to the south-west. Albeit that its only source of natural light is via opaque roof panels, as a building that was constructed for agricultural use, there is unlikely to be any in-built soundproofing and there is no evidence of any having been retro-fitted. Account has been taken that the music must be at a volume that the dance instructor can to speak over it. However, this could be done via a wearable microphone. I am also mindful that the appellant is unaware of any associated complaint to the Council's Environmental Health Department and that the planning authority's witnesses were not in a position to rebut this contention. However, without a noise impact assessment providing an appraisal of the noise levels associated with the use of unit 4 as a dance studio and the potential cumulative impact of noise from other sources within the complex of buildings, applying a precautionary approach, I cannot conclude that this

development does not have the potential to have a detrimental impact on neighbours' residential amenity. For reasons already set out, little weight is attached to the potential impact on the occupants No. 18. The road safety implications of continued use of unit 4 as a dance studio together with the potential visual impact of necessary improvements to visibility are considered elsewhere in this decision. Both these considerations weigh against retention of the use. Accordingly, Policy CTY 1 of PPS 21 provides no support for this element of the proposal.

35. The A29 is shown in Annex A of the Addendum to PPS 3 as a Protected Route (PR). All 19 units within the complex and No. 18 Cookstown Road share a single point of access onto it. Policy AMP 2 of PPS 3 says that planning permission will only be granted for a development proposal involving intensification of the use of an existing access onto a public road where: such access will not prejudice road safety or significantly inconvenience the flow of traffic; and it does not conflict with Policy AMP 3. In respect of PRs outside settlement limits, Policy AMP 3 says that in such instances approval may be justified for other developments, which would meet the criteria for development within a GB or Countryside Policy Area (CPA) where access cannot be reasonably obtained from an adjacent minor road. As already considered, GB policy is no longer a material consideration and the site is not within a designated CPA. There is no opportunity for access being obtained from an adjacent minor road. Paragraph 1.2 of DCAN 15 says that intensification is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more.

36. The dance studio provides three classes per weekday evening and although it can accommodate 11 people in addition to the instructor, Ms Cairns said that usually 8-10 participants attend. Nevertheless, it has the potential to give rise to 34 potential (return) vehicle movements per weekday (vpd). Given the hours of operation and the size of both the premises and workforce, it is reasonable to assume that no more than 2 vpd are worked on in unit 11. In addition to the Armstrongs coming and going to work on the site, a further 3 vpd for deliveries or going to collect parts would appear reasonable. As no breakdown service is provided, no associated allowance is made. This amounts to 7 return vehicle movements and 41 in total in respect of both units. A dwelling is usually assumed to generate 10 vpd. For the vpd associated with units 4 and 11 to represent less than 5% of movements associated with use of the site access onto the A29, No. 18 Cookstown Road and the other uses on the site would have to generate over 820 vpd. Construction Fasteners occupy units 17, 18 and 19, which total almost 420 sq.m. The business is engaged in engineering and distribution. Aluplas occupies units 8, 13 and 14 that total some 550 sq.m. They reportedly. use the site for storage of rainwater goods, fascias, soffits etc manufactured at Cookstown's Derryloran Industrial Estate. However, the likely level of activity associated with these uses is unlikely to give rise to 810 vpd and there is no evidence that this is the case. Therefore, intensification of use of the existing access is a material consideration.

37. There was no dispute over DFI Roads' evidence that the A29 carries over 1,500 vpd. It is reasonable to assume that the uses carried out in the other 17 units generate more than 9 vpd. Albeit that it was around 5pm when we were assessing the access on site, the Council counted 12 vehicles using it in a 5 minute period with third-thirds leaving the site and I saw a further two leaving whilst we walked

from the access to unit 4. This evidence supports my assumption. This puts use of the access into the second row of Table A of DCAN 15 whereby the minimum x-distance is normally 4.5m. This may be reduced to 2.4m but only if traffic speeds on the priority road are less than 37mph and danger is unlikely to be caused. As a result of follow-on speed surveys, the appellant said that the 80%ile speed for traffic approaching from the north is 43-45mph whereas DFI Roads estimated it in the region of 53-54mph. Having carried out my own surveys, along the approaches identified by the appellant, I observed speeds from the northern direction in the range of 47-49 mph. In this context and taking into account the road's horizontal and vertical alignment to the north of the access where there is a bend in the road some 120m away and a crown slightly beyond, it is surprising that DfI Roads considers that the X distance can be reduced to 2.4m. In this evidential context, I consider the appropriate X distance to be 4.5m. In accordance with the first row of Table B of DCAN 15, the appropriate Y distance for traffic speed of 44 mph is 120m. Given that the average of the three sets of surveys is higher than that I am not persuaded that application of the bracketed figure would be appropriate. Therefore, splays of 4.5m x 120m are required in the interests of road safety. In reaching this conclusion account has been taken of the parties' evidence on the accident record in the vicinity of the access.

38. The required splay could be achieved to the south of the access with little impact on topography and relatively minor works. However, to the north is a wooded embankment that rises steeply above the road. Achieving the necessary splay and the, albeit reduced, standard of visibility in a vertical plane required by paragraph 4.2 of DCAN 15, given topography and the road alignment, TAS (Technical Approval Schedule) approval would be required and retaining structures would be likely. The Council witness said that her last experience of TAS approval took 2 years to resolve. The DfI representative said that final approval would take in excess of a year as there are only 2 engineers for NI. The appellant disputed this and said that subsequent to submission of his application, the matter could be resolved in 8-12 weeks. However, he gave no evidential basis for this time-scale. In this evidential context, significant weight is attached to the evidence of the Council's witnesses. The combination of time taken to prepare the application for TAS approval, its consideration and determination and that required to implement the works is likely to amount to well in excess of a year. With such uncertainty over when agreed works would be likely to be completed, imposition of a condition requiring the necessary improvements to visibility within a given time-scale would not be reasonable as required by paragraph 5.65 of the SPPS. In this context, retention of the unauthorised development using a sub-standard access would be likely to prejudice road safety contrary to Policy AMP 2 of PPS 3. For reasons set out above, the deemed application does not satisfy the policy tests for development in the countryside. Therefore, it is contrary to Policy AMP 3 of PPS 3, as clarified. Accordingly, the Council's 5th and 6th draft reasons for refusal are sustained.

39. For the above reasons, the deemed planning application does not comply with Policy CTY 1 of PPS 21 and the Council's first draft reason for refusal is sustained in addition to its fourth, fifth and sixth. Accordingly, the appeal on ground (a) fails.

Ground (f)

40. The onus is on the appellant to explain why the steps required by the Notice to be taken exceed what is necessary to remedy the breaches of planning control or the injury to amenity caused by those breaches. Aside from saying that the use of both units meets specified planning policy requirements having regard to the established use of both, he offered no other evidence to support his appeal on this ground. The breaches of planning control can only be remedied by permanent cessation of the unauthorised use of both units. Accordingly, the appeal on ground (f) fails.

Ground (g)

41. The appellant considers that the 60-day period for compliance with the Notice falls short of what should reasonably be allowed and asks that it be extended to 6 months to allow for the tenants to find alternative accommodation and relocate their businesses. I agree that 60 days would be rather onerous. However, given the identified potential prejudice to the safety of road users on the A29 from continued use of these units, it would be unreasonable to extend the period to 6 months. Weighing these competing considerations, I find that a period of 3 months is reasonable. The appeal on ground (g) succeeds on this basis

Decision

- The appeal on Ground (b) succeeds in respect of unit 4 only in that its current use is as a "*dance studio*" rather than a "*dance studio and gymnasium*".
- The appeal on Ground (b) fails in respect of unit 11.
- The appeal on Ground (c) fails in respect of both units 4 and 11.
- The appeal on Ground (d) fails in respect of both units 4 and 11.
- The appeal on Ground (a) fails in respect of both units 4 and 11.
- The appeal on Ground (f) fails in respect of both units 4 and 11.
- The appeal on ground (g) succeeds in respect of both units 4 and 11 and the notice is varied so that the period for compliance is 3 months.
- The notice, as varied, is upheld.

COMMISSIONER JULIE DE-COURCEY

List of Appearances

Both days unless indicated otherwise

Planning Authority:	Mr D Stewart Mr S Mc Nia Ms M Mc Kearney (Day 2 only) Mr A Alderdice, DfI Roads (Day 1 only) Mr P Traynor, DfI Roads, (Day 2 only)
Appellant:	Mr B O'Neill, Appellant Mr T Gourley, Planning Consultant Ms D Cairns (Tenant Unit 4) Mr R Armstrong, Tenant Unit 11 (Day 2 only) Mr K Armstrong, involved in father's business operating from Unit 11 (Day 2 only)

List of Documents

Planning Authority:	"LPA 1"	Statement of case with 8 appendices
	"LPA 2"	Supplementary statement of Case with 8 appendices
	"LPA 3"	LPS Information Request Pro Forma submitted at hearing on 06.07.18
Appellant:	"APP 1"	Statement of case with 2 appendices
	"APP 2"	Post-hearing submission dated 16.07.81