

<b>Modification to Planning Agreement</b>	<b>28<sup>th</sup> August 2019</b>
<b>PLANNING COMMITTEE</b>	

<b>Linkage to Council Strategy (2015-19)</b>	
<b>Strategic Theme</b>	Protecting and Enhancing our Environment and Assets
<b>Outcome</b>	Pro-active decision making which protects the natural features, characteristics and integrity of the Borough
<b>Lead Officer</b>	Development Management and Enforcement Manager
<b>Cost: (If applicable)</b>	N/A

## **For Decision**

### **1.0 Background**

- 1.1 Planning application LA01/2018/1164/F at 59 Green Road, Coleraine is currently under consideration for 'the retention of existing holiday cottage as a dwelling on a farm'.
- 1.2 The holiday cottage previously approved is subject to a Planning agreement restricting the use of the units approved to Self-Catering only. The applicant now seeks an amendment to the agreement to allow one of the two self-catering units to become a permanent dwelling.
- 1.3 Protocol states that modification of the planning agreement is not a delegated function. Therefore this needs to be considered by the Planning Committee.

### **2.0 Detail**

- 2.1 The previous history on the site relates to C/2001/0660/O, Green Road, for two holiday cottages Granted 14.01.2004 and C/2006/1152/RM, Site adjoining 55A Green Road, Coleraine for a Proposed Holiday Cottage Granted 14<sup>th</sup> June 2007. The dwellings were approved subject to a Planning Agreement restricting the use to holiday accommodation only, Appendix 1.
- 2.2 The applicant now wishes for the holiday cottage is used as as permanent dwelling and has applied for a dwelling on a farm under Policy CTY 10 of PPS 21, planning application LA01/2018/1164/F. This application is being considered under the Scheme of Delegation. This application is considered acceptable in principle meeting with the criteria of CTY 1 and CTY 10, in that it is an active and established farm, no other dwellings or development

opportunities have been sold off within 10 years of the date of the application and the existing cottage visually links with other buildings on the farm.

- 2.3 The above application is being held to allow the Planning Committee to consider the modification of the Planning Agreement, see draft attached in Appendix 2. If the amendment is agreed, planning permission can be granted. However, if the amendment is not agreed, planning permission would be refused.
- 2.4 To allow the modification of the Planning agreement to permit permanent residential accommodation of the holiday cottage in substitution of a dwelling on the farm is considered to be consistent with the SPPS and PPS 21.
- 2.5 The terms of the agreement shall remain applicable to the other holiday cottage.

### **3.0 Options**

**Option 1:** Agree to support the amendment: or

**Option 2:** Agree to oppose the amendment.

### **4.0 Recommendation**

- 4.1 **IT IS RECOMMENDED** that Members agree either Option 1 or 2 above to modification of the Planning Agreement

Dated the 5 day of December 2003

**AGREEMENT UNDER ARTICLE 40 OF THE PLANNING (NI) ORDER 1991**

**BETWEEN**

**THE DEPARTMENT OF THE ENVIRONMENT**

**AND**

**RAYMOND MOODY**

**ROBIN F COLE**  
**Solicitor**  
**Department of Finance and Personnel**  
**Departmental Solicitor's Office**  
**Victoria Hall**  
**12 May Street**  
**BELFAST**  
**BT1 4NI.**

LAND REGISTRY

FOLIO 15436 COUNTY LONDONDERRY

REGISTERED OWNER: RAYMOND MOODY

REGISTERED OWNER OF CHARGE:

THE PLANNING (NORTHERN IRELAND) ORDER 1991

ARTICLE 40 AGREEMENT

THIS AGREEMENT is made the 5<sup>th</sup> day of DECEMBER 2003 Between THE DEPARTMENT OF THE ENVIRONMENT of Clarence Court Adelaide Street Belfast ("the Department") of the first part and RAYMOND MOODY of 55 Green Road Coleraine Co Londonderry ("the Owner") of the second part and ("the Chargee") of the third part

WHEREAS

- (A) The Department is the planning authority for the purposes of the Planning (Northern Ireland) Order 1991 ("the Order")
- (B) The Owner is the owner of the land comprised in Folio 15436 County Londonderry ("the Land")
- (C) The Owner has by application No.C/2001/0660/0 ("the Planning Application") applied to the Department for permission to construct two holiday cottages on the land
- (D) The owner is desirous of developing that portion of the Land as is shown hatched blue on the drawing marked "A" attached hereto by constructing two holiday cottages in the manner and for the uses set out in the Planning Application and in the plans, specifications and particulars deposited with the Department and forming part of the Planning Application ("the Development")

(F) The existence of this Agreement is a material consideration in the determination by the Department of the Planning Application

**NOW THIS AGREEMENT** is made in pursuance of Article 40 of the Order and the covenants herein are covenants to which that Article applies

**WITNESSES** as follows:-

1. In respect of that portion of the Land as is shown hatched blue on the drawing marked "A" attached hereto comprising part of Folio 15436 County Londonderry the Owner covenants with the Department that the 2 proposed cottages shall be used for holiday letting accommodation only and shall not be used at any time as permanent or residential accommodation
2. It is agreed and declared as follows:
  - 2.1 The expressions "the Department", "the Chargee" and "the Owner" shall include their successors in title and assigns
  - 2.2 Words denoting the singular number only shall include the plural and vice versa words denoting any gender include all genders and words denoting persons shall include firms and corporations and vice versa
  - 2.3 Words denoting any obligation on any party to this Agreement to do any act matter or thing include an obligation to procure that it be done and words placing any party under a restriction include an obligation not to permit or allow infringement of the restriction
  - 2.4 No person shall be liable for a breach of covenant contained in this Agreement after he shall have parted with all interest in the land or the part in respect of

which such breach occurs but without prejudice to liability for an subsisting breach of covenant prior to parting with such interest

2.5 If the permission granted pursuant to the Planning Application shall expire before the Development is begun within the meaning of Article 36 of the Order or shall at any time be revoked this Agreement shall forthwith determine and cease to have effect

2.6 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than one relating to the Development and specified in the Planning Application) granted (whether or not on appeal) after the date of this Agreement

2.7 The Owner and the Chargee hereby consent to the registration of this Agreement in the Land Registry as a burden on that portion of the Land as is shown hatched blue on the drawing marked "A" attached hereto and comprising part of Folio 15436 County Londonderry

IN WITNESS whereof the parties hereto have executed this Agreement as hereinafter appears

Present when the Official Seal of )  
the DEPARTMENT OF THE )  
ENVIRONMENT was affixed )  
hereto: *Gr J Mayo* )  
*A senior officer of the* )  
*Department of the Environment* )

SIGNED, SEALED and DELIVERED )  
by RAYMOND MOODY )  
in the presence of:- )  
*Celso Muxu* )  
*Schmitt* )  
*Celso* )

*Raymond Moody* ●

JMcC-JT5239

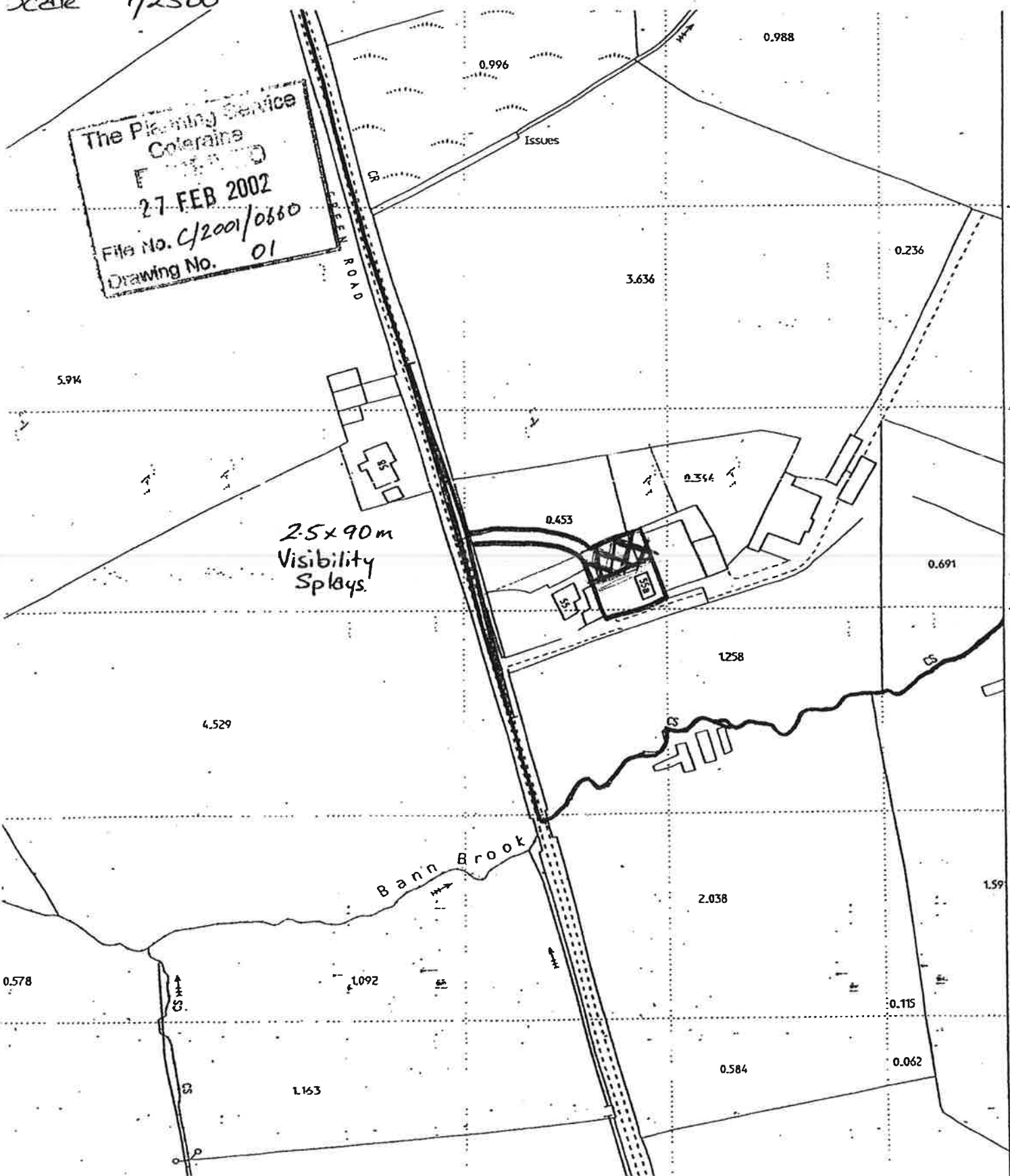
Holiday Cottages  
Green Road, Coleraine  
for R. Moody Esq.

A<sup>n</sup>

**RUSSELL FINLAY,**  
BUILDING DESIGN CONSULTANT,  
12 DRUMRAMMER ROAD,  
AHOGHILL.  
02825 - 871538

O.S.S. I.G. 12/11  
Scale 1/2500

The Planning Service  
Coleraine  
27 FEB 2002  
File No. C/2001/0660  
Drawing No. 01



DATED THE

DAY OF

2019

BETWEEN

CAUSEWAY COAST AND GLENS BOROUGH COUNCIL

AND

G MOODY

**MODIFICATION TO PLANNING AGREEMENT PURSUANT TO SECTION 77 OF THE PLANNING ACT  
(NI) 2011**

RELATING TO:

LANDS AT 59 GREEN ROAD, COLERAINE, COUNTY LONDONDERRY



**THIS AGREEMENT** is made the                      day of                      2019

BETWEEN:

- (1) CAUSEWAY COAST AND GLENS BOROUGH COUNCIL of "Cloonavin" 66 Portstewart Road Coleraine. BT52 1EY ("the Council")
- (2) G MOODY of 55A Green Road, Coleraine, County Londonderry, BT51 4LX ("the Owner").

WHEREAS:

1. The Council is the Planning authority for the purposes of the Planning Act (Northern Ireland) 2011 ("the Act") for the area in which the Application sites are situated.
2. The Owner is the owner of all that land comprising the Application.
3. On 5<sup>th</sup> December 2003 Raymond Moody entered into a Planning Agreement ("the Agreement") under Article 40 of the Planning (NI) Order 1991 with the Department of the Environment ("the Department") relating to lands at 59 Green Road, Coleraine.
4. Under Clause 1 of the Agreement Raymond Moody entered into a covenant with the Department in the following terms:  
  
"that the two proposed cottages shall be used for holiday letting accommodation only and shall not be used at any time as permanent or residential accommodation."
5. The Owner has submitted an MD 1 application dated 23<sup>rd</sup> May 2019 to modify the terms of the 2003 Planning Agreement.
6. The Owner has further submitted a planning application number LA01/2018/1164/F for retention of one of the existing holiday cottages as a dwelling on a farm under CTY 10 of Planning Policy statement 21.

NOW THIS AGREEMENT is made in pursuance of Section 77 of the Act.

WITNESSETH AS FOLLOWS:

7. The Council hereby releases that part of the lands, shown edged red on the map attached hereto, from the planning restriction contained in clause 1 of the Agreement dated 5<sup>th</sup> December 2003, which said lands may now be used as permanent and residential accommodation.
8. Nothing herein contained shall prejudice or release the remaining cottage subject to the Agreement, which shall remain restricted for use as holiday letting accommodation only.
9. Nothing in this deed shall prejudice the discharge by the Council of its powers, duties or functions as may be conferred by statute or common law.
10. References to any party to this deed shall include the successors and assigns in title to that party and to any deriving title through or under that party, and shall include and administrator or fixed charge receiver appointed in respect of the Application site or the property and in the case of the Council the successors to its statutory functions.

IN WITNESS whereof the parties have executed this agreement the day and year first before written.

PRESENT when the Corporate Seal of the

Council was affixed hereto

In the presence of:

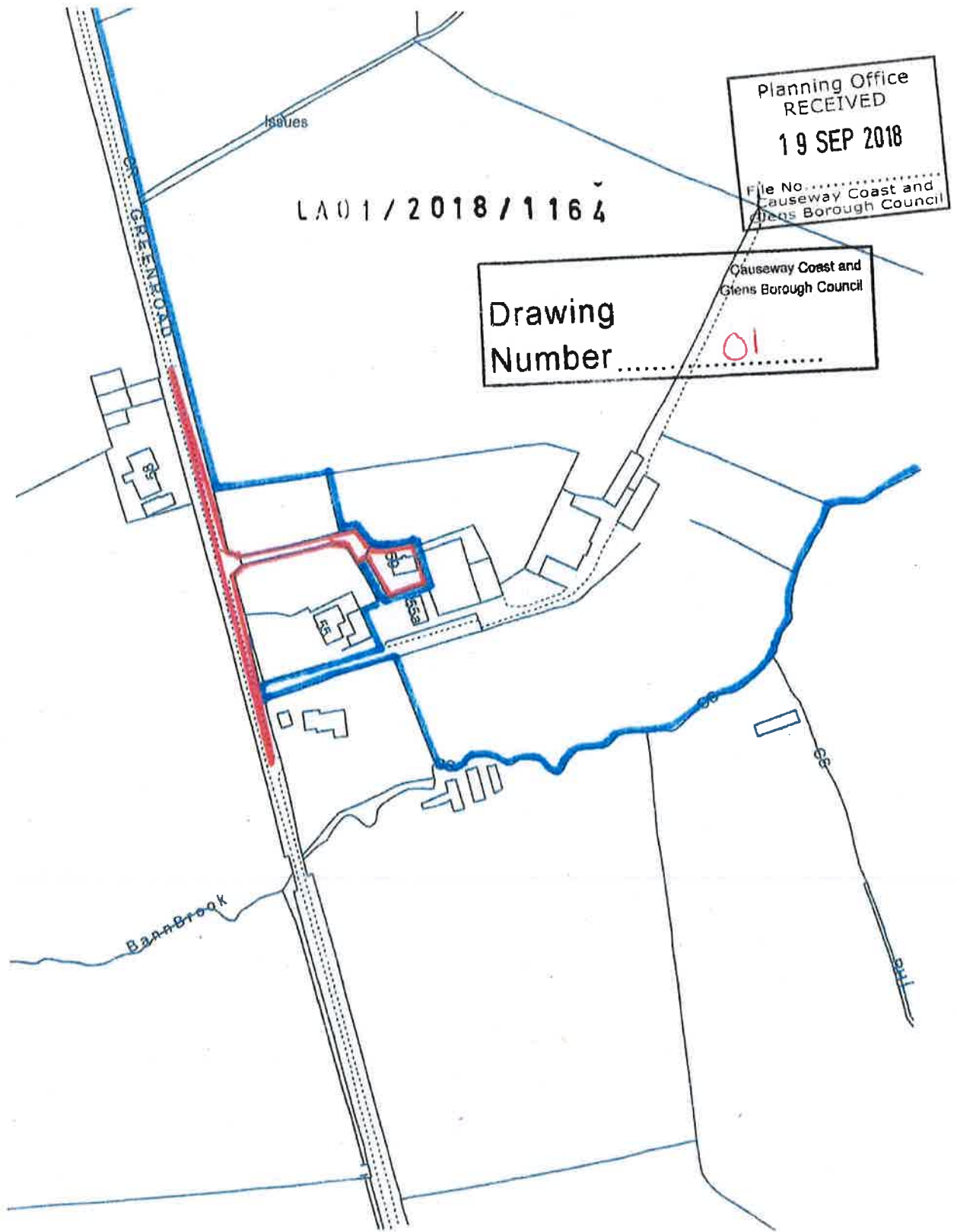
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Mayor

Chief Executive.

Executed as a Deed by the Owner

In the presence of:



**Location Plan for No. 59 Green Road, Coleraine.**

Scale 1:2500  
 O.S. 01211NW  
 Crown Copyright Reserved  
 19<sup>th</sup> September 2018

