Appeal Decision

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Appeal Reference:	2013/A0160
Appeal by:	Trinity Housing Association against the refusal of full planning permission
Development:	Twenty social housing units incorporating 8 semi detached dwellings and a 12 unit block (amended plans/additional information)
Location:	Mourne Hospital, Newry Road, Kilkeel.
Application Reference:	P/2012/0707/F
Procedure:	Informal Hearing on 19 March 2014
Decision by:	Commissioner Pauline Boomer, dated 21 October 2014.

Decision

1. The appeal is allowed and planning permission is granted, subject to the conditions set out below.

Preliminary Issue

2. In his Statement of Case, the appellant introduced a revised Private Streets Determination (PSD) drawing incorporating some minor alterations to the parking area for the large block of accommodation and a number of dwellings alongside, an additional pedestrian crossing point opposite the proposed access onto Ben Crom Place and the inclusion of visibility splays on the speed control bends within the development. Given the minor alterations proposed, for the most part within the appeal site, I agree with the objector's representative that no prejudice would result if the appeal were based on these revised drawings. I shall base my assessment on this revised PSD drawing.

3. Whilst the appellant revised his PSD and other technical drawings to address Roads Service concerns, he did not adjust the site layout plan accordingly to reflect the changes to the PSD drawing where some dwellings were repositioned within their plots, pulled closer to the development road with parking spaces realigned. However the revised PSD drawing incorporating most of these changes was submitted during the processing of the planning application when objectors were notified and offered the opportunity to comment on these changes. In any case, although this is a full planning application, the site layout plan does not even show the full extent of the appeal site and fails to provide details of the existing and proposed vegetation or boundary treatments. As the latest PSD drawing provides the most up-to-date layout with the revised siting of these dwellings realigned parking spaces for all units (including those allocated

for the objectors), I shall base my assessment of the proposed development on the latest PSD drawing rather than the original site layout plan and am satisfied that no prejudice would result.

Decision

4. Taking account of the revised PSD Drawing, the Department withdrew their 2nd, 3rd and 4th Reasons for Refusal at the Informal Hearing. The remaining issue relates to whether or not the existing roads infrastructure within Ben Crom Place can sustain the additional traffic generated by the proposed development without prejudicing the safety and convenience of road users.

5. The appeal site lies within the Settlement Development Limits of Kilkeel and incorporates part of a 1.25ha site identified in the Banbridge/Newry and Mourne Area Plan 2015 as Zoning KL24. This zoned site, extending from Newry Street to Ben Crom Place, was considered suitable for a mixed use development and currently accommodates a privately operated Doctors surgery and an dwelling to the south-south-west of the appeal site. The appeal site incorporates the northern section of the zoned area; extending to an area of 0.72ha. It was last used as the former Kilkeel Hospital with a 2-storey main block and ancillary stores and Nissan huts in situ at present, all in semi-derelict condition. All parties agree that the demolition of all of the existing buildings and the erection of a social housing scheme incorporating a total of 20 units is an appropriate use for the appeal site which would provide accommodation of different forms for those most in need. I agree with the assessment of Ms Ritchie MP that the proposed development would provide much needed housing support for the elderly and vulnerable in the Mourne Area whilst improving the visual amenity of this part of Kilkeel.

6. However whilst the principle of this type of development is established, the main area of concern relates to whether the appeal site should be directly accessed from the south via Newry Street or can be safely accessed via Ben Crom Place, the residential housing estate to the north. The Department considers that the proposed development conflicts with Policy AMP 2 of Planning Policy Statement 3: Access, Movement and Parking as it would prejudice the safety and convenience of road users since the existing roads infrastructure at Ben Crom Place is unable to sustain the additional traffic generated by the development due to the restricted width of carriageway caused by on-street parking.

7. Policy AMP 2 states that planning permission will only be granted for a development proposal involving direct access, or intensification of the use of an existing access, onto a public road where such an access will not prejudice road safety or significantly inconvenience the flow of traffic and the proposal does not conflict with Policy AMP 3 Access to Protected Routes. It also indicates that consideration will also be given to a number of factors including the nature and scale of the development, the character of existing development and the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase. The policy also states that new development will often affect the public road network surrounding it and it is part of the function of planning control to seek to avoid or mitigate adverse impacts, whilst ensuring that access arrangements are safe and will not unduly interfere with the movement of traffic.

8. The Ben Crom Place estate is served by a mixture of off-street parallel parking, a car park, a row of private garages and incurtilage parking. The appeal proposal seeks to access the social housing scheme via the cul-de-sac section of Ben Crom Place which serves 6 semi-detached dwellings at Nos. 17-27. This section of road is 5.5m wide with a footpath across the frontages of all six dwellings. Whilst only No. 21 has parking within its curtilage, some of the other residents park on the public road in front of their properties. There is however an area of hardstanding at the top of the cul-de-sac, the status of which is unclear. Although it could provide alternative parking arrangements for residents, on my three site visits, no cars were parked in this area, a fact acknowledged by the appellant.

9. The existing road infrastructure on Ben Crom Place is provided to a 5.5m wide carriageway standard which serves a total of 35 existing dwellings. The cul-de-sac which would provide access to the appeal site is also 5.5m wide. The proposed development of 20 units would therefore increase the total number of residential units accessing Ben Crom Place to 55 dwellings. The Department's published supplementary guidance on residential development "Creating Places" details guidance on carriageway widths and alignments and in Table 3 indicates that a 5.5m wide carriageway can accommodate up to 200 dwellings. In Paragraph 16.05 it also states that "a 5.5m minimum width on access road will allow for one service vehicle to pass another and for parking on the carriageway". Whilst the Department acknowledges that the existing carriageway is of sufficient width to accommodate the 20 additional units now proposed, their concerns relates to the potential parking of vehicles in front of Nos. 17-27 which they consider would restrict the carriageway width and obstruct visibility of traffic travelling northwards. I note that they failed to comment on the amended plans including the additional residents' parking, traffic and parking surveys submitted by the appellant, concentrating only on the geometry of the restricted width of the cul-de-sac.

10. The appellant carried out a number of parking surveys along this cul-de-sac at different times during the day and presented photographic evidence which indicated that generally no more than two vehicles were parked along the frontages of Nos. 17-27 at any time with no parking evident in the hardstanding to the north. This supported my own findings during the three site visits undertaken when I also found a car parked on and obstructing the wider section of footpath close to the junction. The Department acknowledged that residents found it desirable to park in front of their homes for convenience when off loading shopping and for security reasons. The representative of Mr Wells MP confirmed that elderly residents living in these properties were unable to walk far and did not find the parking area at the top of the cul-de-sac convenient. Taking account of the residents' concerns, the appellant proposes to provide three parking spaces within the appeal site close to and at right angles to the junction with Ben Crom Place allocated specifically for the residents of Nos. 17-27 which offers an alternative to parking on the street. No comments were received by residents on this arrangement which reflects similar parallel parking provided elsewhere in the estate. Whilst I acknowledge that residents cannot be forced to utilize these spaces, they do provide a feasible alternative to occasional on street parking on which the Department solely base their objection to the proposed development.

11. The critical factor in this appeal is whether or not the occasional parking by residents on the cul-de-sac would interfere with the free flow of traffic or prejudice the safety and convenience of road users. I agree with the appellant's assessment that vehicles moving towards the appeal site from the junction off Ben Crom Place would have a clear view past any parked vehicles to sight any vehicles exiting the development before they commit to passing the parked vehicles. The same would apply when vehicles were leaving the development where they would have a clear view to the junction off Ben Crom Place and would be aware of any vehicle passing a parked car and be able to allow time for those vehicles to complete their passing manoeuvre and return to their own side of the carriageway.

12. Account has also to be taken off the fact that traffic speeds will be reduced due to the introduction of a speed control bend opposite 27 Ben Crom Place, at the entrance to the development. The appellant also proposes to realign the junction of the cul-de-sac with the main Ben Crom Place carriageway. At present visibility on the approach to this junction is restricted by the close proximity of the dwelling and garage at No. 33 to the junction whilst the parking of vehicles on the wider section of footpath abutting that junction obstructs pedestrian access, forcing pedestrians to walk on the public road. The alteration to the kerbline to square up the junction would increase visibility and remove the hazard presented by cars parked on the footpath and I consider that it represents an improvement in the safety of both pedestrians and vehicles.

13. The appellant had also conducted an existing traffic survey which concluded that the existing 35 dwellings plus 24 space car park generated a total of 46 movements in the AM peak and 42 movements in the PM peak which was not disputed by the Department who expressed no issue with the capacity or volume of traffic. I note the objector's representative concerns about significant movements of staff, visitors, minibuses and ambulances to the supported units of accommodation. However staff numbers will be restricted to two per day, one for day and one for night and visitors will be likely to arrive early evenings and weekends. I am not persuaded that the volume of traffic generated by the proposed development would increase the volume of traffic using Ben Crom Place so significantly that it warrants dismissal of the appeal. I note that the PSNI have no record of any road traffic collisions in the area within the last three years. Given the function improvements and speed control bend now proposed, along with the limited increase in traffic volume, I am satisfied that the existing infrastructure, once altered, can sustain this proposed development.

14. It is uncertainty about the reaction of local residents to the proposed access arrangements. Whilst both the MP Mr Wells and the Housing Association refer to consultations with residents being carried out, no one hast provided me with any evidence about their findings or clarified the number of residents opposed to the proposed access or the nature of their objections. However it is a matter before me.

15. Whilst not objecting to the appeal development in principle, the MP Mr Wells indicates that the local residents consider that an alternative access is available onto Newry Street directly and that the local residents consider that an alternative access is available onto Newry Street directly with the onus lying with the appellant to acquire the necessary land to achieve adequate sightlines.

The appellant acknowledged that one of the key site requirements attached to Zoning KL 24 was for access to be provided via Newry Street, but indicated that not only did the Housing Association not own the entire plot but they only had a right of way over the existing drive and had no control over that entrance or sightlines. There was uncertainty about the ownership of the lands extending between the appeal site and Newry Street with the section abutting the Police Station owned by the PSNI but no clarity about access arrangements or lands owned by the privately owned doctor's surgery. The Department agreed that the rebuilding of the Police Station premises had significantly encroached into the sightlines which by achieving only 2.4m by 47m were substandard at present. The presence of the PSNI building does not offer the appellant or anyone else an opportunity to improve this substandard access. They also acknowledge that as the original hospital building had been accessed via this substandard access, they would have to accept the continued use of that existing access to serve the proposed development, despite its inadequate visibility and inability to be brought to an adoptable standard.

16. This substandard access onto Newry Street currently serves emergency vehicles going to and from the PSNI building and the Doctors' surgery, in addition to the vehicles of patients using the surgery and the occupants of the roadside dwelling. There is no opportunity to improve the sightline provision used by these emergency vehicles. There is no pedestrian access available from the appeal site to Newry Street with the appellant unable to facilitate a direct pedestrian link as neither the Housing Association nor the Trust has control of this land. The appeal proposal seeks to provide accommodation for elderly and vulnerable residents and I am not persuaded that the use of a substandard access utilised by emergency vehicles with no pedestrian linkage or street lighting available offers a safe alternative route. The proposed access via Ben Crom Place links onto the existing footpaths with additional pedestrian crossings proposed which the Department agreed would facilitate a safer environment for both vehicular and pedestrian movement. The Ben Crom Place entrance offers adequate visibility splays and speed control bends whilst alterations proposed at the junction with the main estate road also improves visibility here. Despite the Newry Street access being established, I conclude that the use of that substandard access to serve the appeal proposal would prejudice the safety and convenience of road users and pedestrians and consider that the access as now proposed offers the safest option for both vehicular and pedestrian traffic from the appeal site.

17. Although neither the Department nor the MP referred to the impact on the residential amenity in the reason for refusal or Statements of Case, I acknowledge the need to take account of not only the amenities of the residents of Nos 17-27 Ben Crom Place but also those prospective residents of the Housing Association development. Given the low volume of traffic generated by the proposed development which was not disputed, the junction improvements and alternative parking arrangements, I conclude that the amenities of the existing residents would not be so significantly affected to justify accepting a substandard arrangement for the future Housing Association residents if the Newry Street access were to be implemented as an alternative. A balance has to be struck between the safety of those vehicles and pedestrians using the Ben Crom Place access and that onto Newry Street. On the basis of the evidence submitted, I am satisfied that Ben Crom Place offers the safer option for

access, to an adoptable standard, with compatible land uses adjoining when compared to the substandard access abutting incompatible uses available onto Newry Street. In so doing, it finds support in Policy AMP2 which seeks to ensure that access arrangements are safe and will not unduly interfere with the movement of traffic.

18. I find that the intermittent and informal use of the cul-de-sac for on street parking does not warrant the dismissal of this appeal and am not persuaded that proposed development would prejudice road safety or significantly inconvenience the flow of traffic along Ben Crom Place. As I find no conflict with Policy AMP2, the reason for refusal and objectors' concerns are not sustained.

19. The resident at No 47 Mountain Road to the rear of the appeal site raised no objection but sought clarification on the boundary treatment proposed along the shared boundary. Whilst the drawings do not show boundary treatments around or within the site, the appellant indicated that it is proposed to erect a 1.5m high close bounded fence along that eastern boundary which will be adequate to secure the site and protect amenities. Details of all boundary treatments within and around the appeal site are required to be submitted to and agreed by the Department prior to the commencement of development, as is the appropriate PSD drawing including visibility splays. All parking bays both communal and private are required to be provided prior to the occupation of any of the units. Prior to commencement of development, details of all hard and soft landscaping are required as well as details of fencing to be constructed to protect trees designated within the Local Landscape Policy Area to the north of the site. A landscape management plan is required to facilitate the upkeep of all communal areas.

20. The representative of Mr Wells requested that, in order to minimize the impact on the residents of Ben Crom Place, the access to Newry Street be used for heavy traffic during the construction period and that bollards be introduced once the development is completed to ensure that the site was not used as a "rat race" for drivers. Although the appellant offered to erect bollards, a further site inspection has indicated that to do so would interfere with the access to and from the car park serving the private doctor's surgery and would not therefore be feasible without negotiations and future agreement with all interested parties. I consider that the use of the substandard access onto Newry Street with limited visibility and potential conflict with emergency vehicles would not make its use by construction traffic a safe alternative. I conclude that such conditions are neither reasonable nor enforceable.

Conditions

1. The development shall be begun before the expiration of 5 years from the date of this permission.

2. No development shall take place until drawings necessary to enable a determination to be made in accordance with Article 3 of the Private Streets (Northern Ireland) Order 1980 have been submitted to and approved by the Department.

3. In accordance with the approved Drawing 15114-CO10-Rev P2, out before any building operations commence, the access shall be completed and visibility splays laid and permanently retained.

4. The communal and private parking bays shall be provided in accordance with the approved drawing 15114-C010-Rev P2 before any of the buildings are occupied and shall be permanently retained.

5. No development shall take place until there has been submitted to and approved by the Department a scheme showing hard and soft landscaping within and around the site and the location, numbers, species and sizes of trees and shrubs to be planted within the site. The scheme of planting as finally approved shall be carried out during the first planting season after the commencement of the development. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Department gives written consent to any variation.

6. Before any buildings are occupied, a landscape management plan showing all hard and soft landscaping, shall be submitted to and approved by the Department setting out the period of the plan, long-term objectives, management responsibilities, performance measures and maintenance schedules for all landscaped areas. The landscape management plan shall be carried out as approved.

7. No development shall take place until measures have been agreed in writing with the Department to protect those trees to be retained along the northern boundary of the site from damage during construction works. The measures as approved shall be put in place before the commencement of development and retained during the construction period.

8. No development shall take place until details of all boundary treatments around and within the site have been submitted to and approved by the Department.

This decision relates to the following drawings:-

Drawing date stamped received by Department on 3/9/12

Drawing No 05-100-01	1:1250 Site Location Map
Drawing No. 05-02-300-01	1:50 Elevations for House Type A
Drawing No. 05-03-200-01	1:50 Floor Plans for House Type B
Drawing No. 05-100-03	1:500 Existing Site Survey
Drawing No. 05-03-300-01	1:50 Elevations for House Type B

Drawings date stamped received by Department on 5/9/12

Drawing No: 05-04-200-01- REV A 1:100 Floor Plans and Elevations for Nursing Home

Drawing No. 05-02-200-01- REV A 1:50 Floor Plans for House Type A

Drawings submitted with Appellant's Statement of Case

Drawing No. 15114-C010	Rev P2	1:200 Proposed PSD Layout
Drawing No. 15114-C001	Rev P1	1:200 Existing Site Layout
Drawing No. 15114-C002	Rev P2	1:200 Proposed Chainage Layout
Drawing No. 15114-C003	Rev P1	1:500/1:100 Proposed road Longitudinal Sections
Drawing No. 15114-C004	Rev P2	1:200 Proposed Levels Layout
Drawing No. 15114-C005	Rev P2	1:200 Proposed Drainage Layout

Drawings submitted at Informal Hearing

Figure B.2 Pedestrian Desire Lines

COMMISSIONER PAULINE BOOMER