Appeal Decision

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2014/A0117
Appeal by:	Marden Developments against the refusal of full planning permission
Development:	Housing development
Location:	Adjacent to Ferny Ridge, Annaghmckeown Road, Castlecaulfield
Application Reference:	M/2013/0595/F
Procedure:	Informal Hearing on 5 March 2015
Decision by:	Commissioner Brigid McGlinchey dated 30 March 2015

Decision

1. The appeal is dismissed and full planning permission is refused

Preliminary Matter

2. The development scheme refused by the Department was for 9 dwellings. In his appeal submission the appellant submitted an amended site layout plan for 8 dwellings. It is this amended scheme that he is now seeking to rely on to challenge the Department's decision. To determine if the amended scheme can be accepted at this stage of the appeal process I must be satisfied that the proposed changes are not substantial and that they would not significantly alter the nature of the proposal. I also have to consider the likelihood of anyone being prejudiced or deprived of the opportunity of making representations on the scheme as now proposed.

3. The revisions indicated in the amended drawings have not resulted in any enlargement of the site. Relative to that originally submitted to the Department, the revised layout plan indicates a reduction in the proposed number of housing units. This is not a substantial change to the original proposal. However, the amended plan also indicates an increase in the size and extent of a proposed area of public open space. This area of open space adjoins the rear curtilages of at least five dwellings within the existing adjoining housing development to the SE of the appeal site. The residents of those properties were not involved in the exchange of evidence at the appeal stage nor were they present at the hearing. Consequently, they could be deprived of an opportunity to comment on the revised public open space provision now being put forward by the appellant. Whilst a similar amended scheme may have been submitted to the Department at

an advanced stage in the processing of the planning application, it was not publically advertised nor was it the scheme ultimately determined by the Department. I therefore consider that there could be prejudice to other parties if I was to consider the amended plan being promoted through the appeal process.

4. I have additional reservations about accepting the amended site layout plan in that this is a full planning application and there is a distinct lack of detail provided on the submitted plan. It is little more than an indicative concept plan. There are considerable variations in levels across the site and to enable me to properly assess the impact of the proposal information should have been provided in respect of existing and proposed levels, including details of cross sections.

5. Taking all the above factors into consideration, I conclude that the revised scheme changes the nature of the original full planning application and cannot be taken as an amendment to the determined scheme at this stage of the process. I further find that if the amended scheme were to be considered it is likely that some who would be entitled to comment on the amendments would be deprived of that opportunity. Accordingly, my consideration is confined to and focused on the scheme and site layout refused by the Department.

Reasoning

6. The main issues in the appeal are:

   - the weight to be given to the development plan;
   - what is the appropriate policy context;
   - whether the proposal would create a quality residential development and provide adequate provision of appropriate open space.

7. Article 25 (1) of the Planning (Northern Ireland) Order 1991 requires the decision maker to have regard to the development plan, in so far as material to the application, and to any other material considerations. The relevant plan in this case is the Dungannon & South Tyrone Area Plan 2010 (DSTAP). The appellant questioned the relevance of DSTAP which was adopted in 2005 with a notional end date of 2010. However, Paragraph 45 of Planning Policy Statement 1: General Principles (PPS1) states that the number of years that has elapsed since a plan was adopted is not in itself important. It goes on to state that even after their stated end dates, plans continue to be a material consideration to the extent that that their policies and proposals remain applicable in current circumstances. The DSTAP therefore remains applicable in determining the policies pertinent to determining this appeal.

8. Paragraph 35 of PPS1 states that development plans provide a basis for rational and consistent decisions on planning applications and provide a measure of certainty about where development will and will not be permitted. Map 75: Castlecaulfield of DSTAP shows that the appeal site is located in the countryside outside the development limit of the village. Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21) sets out the planning policies for development in the countryside and therefore forms the appropriate policy context to consider the appeal proposal. Policy CTY1 sets out the range of

development which in principle will contribute to the aims of sustainable development. The appellant did not advance any arguments that the proposal fits into any of the acceptable categories of development listed under Policy CTY1. However, he referred to Section 5 of PPS21 which indicates that the provisions of the policies within the document will prevail unless there are other overriding policy or material considerations that outweigh them and justify a contrary decision. In this context, the appellant sought to rely on the planning history of adjacent sites as demonstrating that the appeal site should be considered as an exception to the development limit defined in DSTAP and the setting aside of Policy CTY1 of PPS21.

9. The appeal site is bounded to the south by a modern housing development of 23 units known as Ferny Ridge. A number of houses and gardens within this housing development fall outside the defined settlement limit of Castlecaulfield. I note that the settlement limit at this location crossed the middle of a field and did not follow any apparent topographical feature or built form. Examination of the planning history of the Ferny Ridge site indicates that initial outline approval was granted for housing on this site in October 2004 and over a series of a further four approvals, a detailed scheme for a housing layout evolved and was finally approved in March 2011. All these applications were dealt with by the same Departmental Case Officer (DCO). However, in his detailed report for the outline application, the DCO erroneously stated that the whole of the field forming the development site lay inside the settlement limit and this error was further compounded in his consideration of the subsequent applications. However, I am not persuaded that the carelessness of this one DCO in itself is indicative of a Departmental decision to move the settlement limit of Castlecaulfield.

10. The other planning histories referred to by the appellant relate to residential developments outwith the settlement limit of the village. A single house fronting onto Annaghmckeown Road to the east of the appeal site was submitted by the appellant in May 2011 and was dealt with by the same DCO. This dwelling was approved as an infill dwelling under Policy CTY8 of PPS21 in June 2011. As part of the processing of this planning application, the appellant stated that a concept plan was requested to show how the lands to the rear, which now form the appeal site, were to be accessed. The submitted concept plan indicated the access to the land via the creation of a 5.5m wide turning head within the Ferny Ridge development which effectively altered the layout of that development as approved in March 2011. However, it is not unusual for a concept plan to make provision for access to adjacent land to allow the possibility of future development. Even if the subject turning head has been approved as part of the Private Streets determination for the Ferny Ridge development and has been subsequently laid out, this cannot be taken as a guarantee that future development on the adjacent land would be permitted.

11. In referring to the aforementioned planning histories and other existing and approved development around the appeal site, the appellant also sought to rely on Policy CTY15 of PPS21. Policy CTY15 states that planning permission will be refused for development that mars the distinction between a settlement and the surrounding countryside or that otherwise results in urban sprawl. This policy is relevant where the proposal meets one of the exceptions in Policy CTY1 and is not a free standing policy. The appellant argued that the proposed development would lie unobtrusively within the existing visual envelope and result in a natural

rounding off to the settlement. Whilst the appellant contended that the appeal site is flanked by development on three sides, I note that a significant part of the appeal site is flanked along its northern boundary by an agricultural field to the rear of No.28 Annaghmckeown Road and by an agricultural field to the west. Based on my own on-site observations and the aerial photograph submitted by the appellant, I consider that irrespective of the other existing and identified approved developments, the appeal site does not read as part of the urban form. Consequently, the appeal proposal would not offer a better and more logical edge to the development limit of Castlecaulfield. The physical disposition of the appeal site and the nature of the proposal are not comparable to the circumstances considered in appeal decision 2013/A0133 which related to a single dwelling within the residential curtilage of an existing dwelling which lay within the settlement limit and which was surrounded by other development inside the settlement.

12. Taking into account the planning histories around the appeal site, I consider that this issue is not sufficient to outweigh the provisions of DSTAP or override Policy CTY1 of PPS21. I agree with the Department that decisions regarding the extension of the development limit should properly be taken through the development plan process. Permitting development on the appeal site would set a precedent for development outside the limits of Castlecaulfield and other settlements in DSTAP. Whilst I acknowledge the signed petition of support, I am not persuaded that this or the arguments advanced by the appellant are overriding reasons why the development is essential and could not be located within a settlement. In these circumstances, the proposal is unacceptable in principle and the Department has sustained its second reason for refusal under Policy CTY1 of PPS21.

13. Whilst I have concluded that the proposal is unacceptable in principle, I nonetheless must deal with the other site specific issues raised by the Department and the objectors. Policy QD1 of Planning Policy Statement 7: Quality Residential Developments (PPS7) states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It goes on to state that the design and layout of a residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area. The policy sets out nine criteria that all proposals for residential development are expected to conform to. The concerns raised by the Department and the objectors relate to criteria (a), (c), (f) and (h).

14. Criterion (a) requires that the development respects the surrounding context and is appropriate to the topography and character of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas. A concept plan did not accompany the planning application. Based on the accompanying site layout drawings, I consider that the general form and layout of the proposed scheme reflects that of the adjoining Ferny Ridge development. However, though finished floor levels are shown, there is an absence of specific details on existing site levels, proposed site sections and the vertical alignment of the buildings. I consider that there is insufficient information to determine whether the proposal is appropriate to the undulating topography of the site and the proposal therefore fails to satisfy criterion (a).

15. Criterion (c) requires that adequate provision is made for public and private open space and landscaped areas are an integral part of the development including planting along site boundaries. Policy OS2 of Planning Policy Statement 8: Open Space, Sport and Outdoor Recreation (PPPS8) sets out the policy for public open space in new residential developments and indicates that in developments of 25 or more units, public open space is to be provided as an integral part of the development. The proposed development is described as 'Phase 2' in the P1 form accompanying the planning application and the appellant has stated that the proposed development is an extension to the Ferny Ridge development. In this evidential context, I agree with the Department that the assessment on the amount of open space should be based on the overall number of houses in both phases. The Ferny Ridge development consists of 23 houses with no provision for public open space. The addition of the 9 houses in the Phase 2 scheme brings the overall development over the threshold where a normal expectation under Policy OS2 is that at least 10% of the total site area is public open space. The proposal does not meet and falls significantly short of this minimum requirement.

16. However, Policy OS2 indicates that provision at a lesser rate may be acceptable where the residential development is close to and would benefit from ease of access to areas of existing open space. There is no persuasive evidence that the playing field of the Walker Memorial Primary school situated opposite the Ferny Ridge is available for public use. The area of public open space at Old Caulfield Road is approximately 400m away and is within walking distance. However, even if I take into account the accessibility of this existing area of public open space, the policy also requires that the proposed open space within the development is of demonstrable and recreational or amenity value and takes into account the amenity of the nearby residents. The small triangular shaped grassed area shown in the site layout is located along the access road and is of limited recreational value. It is positioned next to the low wooden fences defining the boundary of the rear gardens of a number of dwellings in Ferny Ridge. There is no proposed planting along this site boundary and in the absence of any substantial screening the open space would provide views into the private amenity space of the adjoining houses at close proximity. This would unacceptably detract from their residential amenity. If buffer planting was provided as suggested by the appellant at the hearing, this would further reduce the amount and recreational value of the open space. The proposal therefore does not satisfy criterion (c) and the Department's third reason for refusal under Policy OS2 of PPS8 is sustained.

17. Criterion (h) requires that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on existing properties. Given my consideration above on the proposed area of open space, I conclude that there would be an unacceptable conflict with the amenity of the existing residents contrary to criterion (h).

18. Criterion (f) requires that adequate and appropriate provision is made for parking. The required number of parking spaces is set out in supplementary guidance document 'Creating Places: Achieving quality in residential developments'. The requirement varies depending on house type and the number of bedrooms in each unit. Whilst the mix of house types has not been identified on the site layout, provision has been made for two car parking spaces in the curtilage of each dwelling. I am satisfied that, though on street car parking spaces have not been

identified, there are a number of on street parking opportunities to satisfactorily cater for the development. I find that criterion (f) is met.

19. Nonetheless, because of the conflict with criteria (a), (c) and (h) the proposal would not result in a quality and sustainable residential environment. The objectors' concerns in this regard and the Department's first reason for refusal under Policy QD1 of PPS7 are therefore sustained.

This decision relates to the following drawings submitted with the application:

- 01 1:1250 Site layout
- 01 1:1250 Site location plan;
- 02 Rev1 1:500 & 1:1250 Proposed site layout plan and longitudinal section B-B date stamped 14/2/14 PSD;
- 03 1:50 Proposed layout plans and sections;
- 04 1;50 & 1:100 Proposed elevations;
- 05 1:50 Layout plans and sections;
- 06 1:50 & 1:100 Proposed elevations;
- 07 1:50 Proposed layout plans and sections
- 08 1:50 & 1:100 Proposed elevations

COMMISSIONER BRIGID McGLINCHEY