Appeal Decision

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Appeal Reference:	2014/A0216.
Appeal by:	Easteden Ltd.
Subject of Appeal:	Alterations, repairs and extension to derelict nursing home including 2 storey extension to the south to provide an 80 bed care/residential home; revised car parking layout to allow additional car parking (amendment to previous approval A/2013/0304/F).
Location:	167 Culmore Road, Derry.
Planning Authority:	Department of the Environment.
Application Reference:	A/2014/0332/F.
Procedure:	Written Representations with Commissioner's Site visit on 11th August 2015.
Decision by:	Commissioner Helen Fitzsimons 14th August 2015

Decision

1. The appeal is allowed subject to the conditions set out below.

Reasons

2. The main issues in this appeal are whether the proposal would have an unacceptable adverse impact on safety and convenience of road users and if it would have an adverse impact on the residential amenity of adjacent occupiers.

3. The Derry Area Plan 2011 is the statutory local development plan for the area. The appeal site lies within the village of Culmore as designated by the plan. The plan is silent on proposals of this nature. However, the plan designates Culmore Road (A2) as a Protected Route. Protected Routes Policy is contained within Policy AMP 3 'Access to Protected Routes' of Planning Policy Statement 3 'Access Movement and Parking' (PPS 3) and this is a material consideration in this appeal.

4. The appellant provided me with the Regulation and Quality Improvement Authority Staff Ratio Guidelines for Nursing Homes and his assessment of traffic generation is based on this. Although an objector raised the matter of how robust the appellant's figures regarding traffic generation were, he did not offer any alternative which would be to his mind a realistic assessment of the proposal. I will therefore rely on the appellant's evidence.

5. Policy AMP 3 of PPS 3 states that the Department will restrict the number of new accesses and control the level of use of existing accesses onto Protected Routes. It continues that within Settlement Limits planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access in two sets of circumstances. The first is that access cannot be reasonably taken form an adjacent minor road. I was presented with no evidence from the Planning Authority that an alternative route was available. From my site visit I could not discern an adjacent minor road from where access could reasonably be taken. Given this the first circumstance can be met. As the second circumstance relates to residential development it is not applicable. The proposal is therefore acceptable in principle under Policy AMP 3 and the second reason for refusal is not sustained.

6. Paragraph 5.28 of Policy AMP 3 states that where access to a protected route is acceptable in principle, it will also be required to be safe in accordance with AMP 2 'Access to Public Roads'. Policy AMP 2 states that planning permission will only be granted for a development proposal involving direct access, or the intensification of use of an access onto a public road where it meets two requirements. The second requirement is that it does not conflict with policy AMP 3 Access to Protected Routes, which given my earlier conclusions is met. The first requirement is that such an access will not prejudice road safety or significantly inconvenience the flow of traffic. Paragraph 5.18 of the policy relates to Use of an Existing Access which states that where an existing access is to be used, but is substandard, a condition requiring its improvement prior to the commencement if development will normally be imposed on the grant of planning permission.

7. 'Development Control Advice Note 15 'Vehicular Access Standards' sets out the requirements for visibility splays, and the access as it is configured at present is substandard. The appellant has proposed visibility splays of 4.5m x 90m right hand side (RHS) and 4.5m x 120m left hand side (LHS). The Planning Authority stated that splays of 4.5m x 116m in both directions are required. I conclude that an acceptable visibility splay to the LHS is available, and could be provided by negative condition. Table B: Y - Distance (m) and Forward Sight Distance of DCAN 15 sets out 2 figures; the desired figure and a lesser bracketed figure. The Planning Authority stated that the bracketed figure may not be used on a trunk road, protected route, however, I can find nothing in either the PPS or the DCAN to support this assertion. Note 1 of Table B advises that the values in square brackets are permitted where visibility standards will not be reduced to such a level that danger is likely to be caused. Traffic speeds of 41.6 mph and 43.6 mph have been measured on Culmore Road. In such circumstances a reduced figure would be somewhere around 90m and this can be provided. The Planning Authority and the objector have not demonstrated that there would be prejudice to road safety or that such an access standard would significantly inconvenience the flow of traffic.

8. Paragraphs 5.1 to 5.3 of the DCAN deal with the necessity for right turning lanes. Paragraph 5.2 states that a right hand turning lane will often be required where the priority road is a primary, district or local distributer or a main traffic route as defined in PPS 3. Paragraph 5.3 sets out factors that will be taken into account to include 8 considerations set out at bullet points.

9. The Planning Authority has raised objections under the first bullet point which requires particular consideration when right hand turns into the development are the dominant movement. The Planning Authority argued that the predominant vehicle movements are likely to be right hand turning into the site i.e. from the city in regard to both visitors and staff, but have given me no means to substantiate this. In addition it is also asserted that peak times for would occur between 8.00 - 10.00 hours and 17.00 - 18.00 hours and that this would accord with peak times on the Culmore Road in general. I note from the background papers that the appellant has anticipated peak hours at 7.00 - 8.00 hours; 14.00 hours and 20.00 hours (coinciding with the shift pattern) with a maximum of 15 vehicles arriving per shift; and 19.00 - 20.00 hours (coinciding with visiting) with estimated 8 - 10 visitors per day thereby avoiding peak times on the public road network.

10. The Planning Authority provided me with a Speed Bins Report for the period 9th August – 9th December 2013 and this includes hourly traffic counts. Traffic flow on the A2 moving country bound between the 7.00 am and 8.00 hours is measured as increasing from 75 vehicles to 221 vehicles within that one hour period. Notwithstanding that the flow of traffic into the city is between 313 and 374 in the same time period , given the country bound traffic flows; that it is outside peak hours and that it is estimated by the appellant that 15 vehicles, which the Planning Authority did not dispute, will arrive at the appeal site during this time period I consider it highly unlikely that there would be queuing to the extent it would have an adverse impact on the safety and convenience of road users It therefore follows that the remaining concentrated traffic movements associated with the appeal proposal which are also most likely to occur outside peak flow times would not result in unacceptable queues within the road network at this location. A right hand turn lane is not necessary.

11. Paragraph 52 of Planning Policy Statement 1 'General Principles' states that 'the basic question is not whether owners and occupiers of neighbouring properties would experience financial or other loss from a particular development, but whether the proposal would unacceptably affect amenities and the existing use of land and buildings that ought to be protected in the public interest. Good neighbourliness and fairness are among the yardsticks against which development proposals can be measured.' Matters of loss of residential amenity are therefore material considerations in this appeal.

12. The Planning Authority has concerns regarding the proposed car parking spaces adjacent to gardens of Nos. 9 and 11 Cloncool Park. An acoustic fence as suggested by the appellant would mitigate against noise emanating from the car parking spaces adjacent to Nos. 9 and 11 Cloncool Park and this could be secured by condition.

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13. An objector has raised concerns on the impact of scale, bulk and massing of the appeal proposal on his property. On 8th January 2014 the then Department granted planning permission for 'Alterations, repairs and extension, including 2

storey extension to the south, to provide a 61 bed care/ residential home' (planning permission/2013/0304/F). I note from those approved plans that the footprint of that extension and that of the appeal proposal are the same distance from the objector's property; that the height of the 2 storey extension is the same; that the proposed new fence and planting is the same; and that the vehicle turning area has not changed. Given this the impact on the objector's residential amenity from the appeal proposal would not be any greater than that of the extant permission, and his objections in this respect are not sustained. I am satisfied that sufficient car parking and manoeuvring space has been provided within the appeal site. I do not consider that this proposal would have any greater significant impact on the qualities of Culmore Village than that the extant approval. The P1 planning application form which accompanied this application for planning permission and the appeal form were completed at Certificate D which stated that ownership of part of the land was unregistered and the owner was not known. Accordingly an advertisement was published in the Derry Journal on 14th November 2014. Given this the then requirements of Article 22 of the Planning (Northern Ireland) Order 1991 were met. The objector's other concerns are not sustained and are not determining in this appeal.

14. As the objector's other concerns are not determining in this appeal and that I have concluded that satisfactory visibility splays can be provided and that a right hand turning lane is not necessary the Planning Authority has not sustained its first reason for refusal based on Policy AMP 2 of PPS 3, and the appeal must succeed.

Conditions

1. No building works shall commence until visibility splays of 4.5m x 116m(LHS) and 4.5m x 90m (RHS) have been provided at the junction of the access with Culmore Road. The visibility splays shall be permanently retained.

2. Prior to the approved development becoming occupied an acoustic fence shall be erected along the southern boundary of the appeal site to the rear of car parking spaces numbered 37 – 41 on drawing numbered 13-54-26 and permanently retained.

3. This development shall be begun before the expiration of five years from the date of this decision.

This decision relates to the following drawings:-

1:1250 scale site location plan numbered 13-54-29
1:200 scale ground floor plan; first floor plan and elevations numbered 13-54-25
1:200 scale site layout numbered 13-54-26
1:200 scale road details numbered 13-54-27; and
1:200 scale sectional drawings numbered 13-54-28

COMMISSIONER HELEN FITZSIMONS

List of Documents

Authority:- PA 1 Written Statement.
PA 2 Comments.

Appellants:- A1 Written Statement.

A2 Comments.