Appeal Decision

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Appeal Reference:	2014/A0250.
Appeal by:	Mr Dynes.
Subject of Appeal:	The refusal of full planning permission.
Development:	Proposed development of 8 no. dwellings to replace existing buildings and storage area.
Location:	61 Ballyhornan Road, Ballyalton, Downpatrick.
Planning Authority:	Department of the Environment.
Application Reference:	R/2012/0502/F.
Procedure:	Written Representations with Commissioner's Site Visit on 24 September 2015.
Decision by:	Commissioner Mark Watson, dated 30 September 2015.

Decision

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

Reasons

2. Following the Appellant's submission of a Drainage Assessment and a Desk Study and Site Investigation Report in respect of potential land contamination, the planning authority withdrew its single reason for refusal. Therefore, only the matter of conditions remains to be considered.

3. A series of roads based conditions relating to matters such as street lighting, relocation of telegraph poles and other technical matters were suggested. These matters are either detailed on the submitted plans or are addressed through separate legislative procedures and I am not persuaded that planning conditions are necessary. Whilst I note that the Private Streets determination has already been carried out, I consider that a condition requiring implementation of the works to the public road would be necessary in the interests of road safety. Likewise, conditions relating to the provision of the visibility splays, access and parking provision are also necessary. A condition restricting the position of any garages to a prescribed distance from the rear of footways and service strips would be necessary to maintain visibility for vehicles to safely exit from properties within the development.

4. No justification was provided for the suggested removal of permitted development rights for windows, dormers and extensions and as such I am not persuaded that such a condition would be necessary. Implementation of the landscaping scheme,

including replacement of dying plants within five years, would be required in the interest of visual amenity and ensuring a quality environment. A condition relating to discharge of storm water is unnecessary as again this matter is more properly addressed through a separate statutory process.

5. Conditions were proposed in respect of potential land contamination, notwithstanding the undisputed conclusions of the preliminary risk assessment document. As it cannot be excluded that previously unidentified contamination could be uncovered, I agree that suitably framed conditions requiring further investigation and potential remediation in the event a potential risk were to be identified during excavations would be necessary in the interests of human health.

Conditions

1. If during development works new, previously unidentified contamination and risks are encountered, works shall cease and the Planning Authority shall be notified immediately. Full investigation of any new contamination shall be carried out in accordance with the Model Procedures for the Management of Land Contamination (Contaminated Land Report 11), published by the Environment Agency. In the event of unacceptable risks being identified, a remediation strategy shall be agreed with the Planning Authority in writing. This remediation strategy shall be implemented in full.

2. Following completion of all the measures identified in the approved remediation strategy, a verification report that demonstrates the effectiveness of the remediation carried out shall be submitted to and approved in writing by the Planning Authority prior to the occupation of any dwelling.

3. No other development hereby permitted shall be commenced until the works necessary for the improvement to the public road have been completed in accordance with the details outlined in blue on the approved Private Streets Determination drawing numbered 12.

4. The visibility splays shown on the approved drawing numbered 04 shall be laid out before any building operations commence. These splays shall be permanently retained thereafter.

5. The access shall be completed and car parking provided in accordance with the approved drawing numbered 04 before the before the dwellings are occupied and shall be permanently retained.

6. Notwithstanding the provisions of the Planning (General Permitted Development) Order (NI) 2015 (or any Order revoking and re-enacting that Order), no garages shall be sited closer than 5.6 metres from the back of the footway or service strip.

7. The proposed landscaping scheme as detailed on approved drawing 06 shall be implemented in full during the first available planting season after the first dwelling is occupied. 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 Planning Authority gives written consent to any variation.

8. The development shall be begun before the expiration of five years from the date of this permission.

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

DRAWING No.	TITLE	SCALE	DATE
01	Location Map	1:2500	Oct 2012
02	Site Layout with Existing & Proposed Levels	1:250	Sep 2013
03	Drainage Details	1:250	Oct 2012
04	Roads Details	1:250	Oct 2012
05	Roads Sections	1:100 & 1:20	Oct 2012
06	Landscaping Scheme	1:250	Sep 2013
07	Proposed House Type A	1:100	Oct 2012
08	Proposed House Type A1	1:100	May 2013
09	Proposed House Type B	1:100	Oct 2012
10	Proposed House Type C	1:100	Oct 2012
11	Proposed House Type B1	1:100	May 2013
12	Private Streets Determination	1:250	Sep 2013
13	Roads Details	1:250	Oct 2012

COMMISSIONER MARK WATSON

List of Documents

Planning Authority:- A1 – Statement of Case. (Newry, Mourne & Down District Council)
A2 – Rebuttal Letter (Newry, Mourne & Down District Council)

Appellant:- B1 – Statement of Case. (Headland Design)