Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2020/A0095.
Appeal by:	Garrett Homes Ltd.
Appeal against:	The refusal of full planning permission.
Proposed Development:	5 no. residential dwellings (4 no. semi-detached and 1 no. detached), garages, landscaping and all other associated site works.
Location:	Lands opposite and north-west of Nos. 10 – 20 Old Church Heights, Milltown, Lisburn
Planning Authority:	Lisburn & Castlereagh City Council.
Application Reference:	LA05/2019/0640/F.
Procedure:	Written representations and Commissioner's site visit on 21 April 2022.
Decision by:	Commissioner Mark Watson, dated 16 May 2022.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether or not the development would:
   - be acceptable in principle;
   - result in urban sprawl;
   - prejudice road safety, including that of pedestrians; and
   - adversely impact on the amenity of existing residents.

3. The appeal site comprises a rectangular section of a larger grassed field, situated on the north-western side of the roadway for the Old Church Heights residential estate. The land slopes gently down to the north-west and north-east. A wooden fence and recently planted vegetation defines the south-eastern, roadside boundary. The south-western boundary is provided by the fencing belonging to an adjacent dwelling, whilst a mature hedge provides the north-eastern boundary. The north-western boundary is undefined. There are two-storey semi-detached dwellings to the south and south-east of the site. Access to the site would be afforded by the existing estate roadway, which exits onto the Derriaghy Road. The appeal site lies on the northern edge of Milltown village.

4. The appeal development comprises two pairs of semi-detached dwellings and a detached dwelling. They would each have a garage within their curtilage. The dwellings are to be finished in brick with concrete roof tiles. Their appearance is designed to tie into that exhibited by the existing Old Church Heights dwellings.

Landscaping is also proposed. The Appellant considered that the proposed dwellings would round off the existing development, providing a more logical limit to this part of Milltown.

Principle of development

5. The Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) to be unlawful on 18 May 2017 and consequently BMAP must be disregarded. The Lisburn Area Plan 2001 (LAP), despite its vintage, operates as the local development plan (LDP) for the area the site is in. In the LAP, although the access roadway is within the settlement limit, the area where the houses would be located (hereafter referred to as the site) lies within the open countryside but adjacent to the development limit of Milltown. Although also within the Green Belt, that designation has since been superseded by the provisions of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21). From a plain reading of the LAP, it does not envisage new housing developments outwith, but adjacent to, the limit of settlements within the plan area.

6. A further consequence of the aforementioned Court of Appeal judgement is that the draft BMAP, published in 2004, is a material consideration in the determination of this appeal. In draft BMAP (dBMAP) the appeal site lies in the countryside adjacent to the settlement development limit of Milltown. It also lies within a proposed Local Landscape Policy Area MN08 (LLPA) and proposed Rural Landscape Wedge LN02. There was no suggestion that the appeal development would have a significant adverse effect on the features or integrity of the proposed LLPA designation. I shall address the appeal development in relation to the proposed Rural Landscape Wedge later in this decision.

7. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and those of PPS21 in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development. In respect of matters raised by Objectors against the appeal development, there is no conflict or change in policy direction between the provisions of the SPPS and that contained in Planning Policy Statement 7 – Quality Residential Environments (PPS7) and Planning Policy Statement 3 – Access, Movement and Parking (PPS3). PPS7 and PPS3 also remain applicable to the appeal development.

8. Policy CTY1 of PPS21 states that there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. Whilst provision is made for small scale social housing developments in the countryside and single dwellings, the appeal development does not fall within any of the specified housing categories envisaged as being acceptable in principle. The policy goes on to state that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan. Part 5 of PPS21 states that its policy considerations will prevail unless there is other overriding policy or material considerations that outweigh them and justify a contrary decision.

9. The Appellant considered that Old Church Heights appeared unfinished as there are only six dwellings along one side of estate roadway, with houses along its full

length on the opposite side. It was also considered that the urban form at this part of Milltown bled into countryside. According to the submitted evidence, there was previously an existing defined boundary along the rear of the site, but that hedge line, which constituted the settlement limit, was removed to accommodate a construction compound for building the existing dwellings in Old Church Heights.

10. Whilst it may have been the case that when the site was being used for storage of building supplies, there was an ambiguity to the defined edge of Milltown at this location, I must assess the site and its condition at the time of the appeal. As it stands there is a fence and planted hedge along the site frontage to the northern edge of the estate road. The planting, though not yet fully matured, nevertheless along with the fencing provides a sufficiently robust buffer and logical definition between the village and countryside at this location. The development limit along the north-western edge of Old Church Heights is defined by the closeboard wooden fences marking the rear curtilages of those dwellings. The limit then becomes what is the appeal site frontage. Despite this physical 'step' in of the settlement limit and whilst there are only dwellings to the southern side of the length of the estate road opposite the appeal site, there is no ambiguity or illegibility to the settlement limit as currently defined.

11. Although I accept that the appeal development would not be at odds with the pattern of development and the critical views are very limited, the appeal development would not provide a better edge of settlement than the fence and hedge that is presently there. The Appellant's various supporting material and visual analysis, including the drone photography, would not persuade me otherwise.

12. Whilst it is the case that the rear gardens belonging to Nos. 1 – 3 of the original Old Church Heights development extend slightly beyond the settlement limit into the countryside, I am not persuaded it would be in the public interest to allow further intrusions of a greater scale. The nearby Speckled Hen restaurant was also permitted a slight extension to a corner of its car park beyond the settlement limit into the countryside. Again, I am not persuaded that that development would justify five new dwellings breaching the limit and occupying what is countryside in planning policy terms. Any changes to the settlement limit is a matter best addressed through the LDP process.

13. The Appellant pointed out that identified sites within Milltown which could be utilised for housing have not been developed and their permissions have since lapsed. Other small scale potential sites had other constraints rendering them unsuitable. Using Housing Monitor information the Appellant had estimated that there only remained a potential for 9 dwellings within Milltown. Whilst it may be the case that there are no committed housing sites available, it does not follow that new applications could not be made on those sites within the settlement limit, or that small windfall developments could not come forward. Nor would the provision of 5 additional dwellings necessarily relieve pressure for single dwellings in the countryside. I am not persuaded that the stated housing need put forward by the Appellant would not justify the appeal development. Whilst the appeal site may represent a comparatively small area of land measured against the overall area within the settlement limit of Milltown, that would not justify the appeal development.

14. The Appellant considered that the appeal proposal had parallels with an earlier appeal decision 2009/A0245. That decision granted outline permission on 24 August 2010 for '*approximately 12 new terraced and semi-detached dwellings*' on land adjoining the rear boundaries of Nos. 32, 33, 42 to 47 Ardgrange, Grangemore Park, Londonderry. Whilst there are several similarities to the present case, I would note the following differences:
    - the LDP (in this case the LAP) has primacy in the determination of planning decisions following the advent of the Planning Act (NI) 2011;
    - the land the proposed dwellings would occupy is entirely outwith the statutory settlement limit, unlike in 2009/A0245 where approximately 60% of that site lay within the Derry development limit;
    - whilst the limit of development in 2009/A0245 may not have followed a logical line at the time of designation, I am told that the Milltown limit did follow an established boundary, albeit one that has since been removed. In the case of appeal decision 2009/A0245 that site was deemed to represent a strong physical boundary, but the appeal site before me does not have such an existing physical boundary on its north-western edge, but rather would simply be a cut out from a larger field, thus still requiring establishment of a new physical boundary; and
    - the appeal site has been cleared of any remaining building materials, grass resewn and a new boundary fence and planting established. There is no planning gain or betterment to be achieved through the development of the appeal dwellings, unlike in 2009/A0245 where agricultural buildings and ancillary storage were removed.

    Given the differences between the appeal development before me and that considered in appeal decision 2009/A0245, I am not persuaded that they are on all fours, or that the previous decision would justify the granting of permission in this case.

    Urban sprawl

15. Policy CTY15 of PPS21 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. Whilst access to the site would be via the existing Old Church Heights estate road, the appeal development would still represent an addition to the settlement, located within the countryside. Despite its relatively small size and lack of visual prominence from public viewpoints, development of the appeal site would nevertheless blur the distinction between the defined edge of Milltown and the countryside. Although the appeal development would be contiguous with the existing Old Church Heights dwellings, including their rear boundary line, the appeal development would not represent rounding off or consolidation at this part of Milltown given there already exists a legible boundary in the form of the fence and planting. Irrespective of the relatively small size of the site and regardless of the proposed landscaping, the appeal development would nonetheless result in urban sprawl.

16. However, notwithstanding this, there would still remain sufficient distance between Milltown and the nearest part of Belfast City, Lagmore Heights, as to avoid any impression of conglomeration between the two arising from the appeal development. Nor would the appeal development harm the integrity of the proposed Rural Landscape Wedge in dBMAP given the small proportion of the overall wedge it would represent. These particular elements of the Council's objection is not sustained.

17. However, for the reasons given above the appeal development would mar the distinction between Milltown and the surrounding countryside and result in urban sprawl. The Appellant's supporting information including the site analysis, aerial and drone photography would not persuade me otherwise. The appeal development is contrary to Policy CTY15 of PPS21. The Council's second reason for refusal is sustained to the extent specified.

18. The Council pointed to the potential for precedent throughout the district if permission was granted. Although I am not persuaded that the potential precedent would apply to every settlement throughout the district at all levels of the hierarchy, it would nevertheless be difficult to resist applications for new residential development outwith the limits of villages at the least. It would not be in the public interest to permit development that could enable further housing developments outwith the settlement limits of villages throughout the district.

Road safety

19. Policy AMP2 of PPS3 states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where two criteria are met; firstly that such access will not prejudice road safety or significantly inconvenience the flow of traffic and secondly, that the proposal does not conflict with Policy AMP 3 Access to Protected Routes. The appeal development is not on a protected route, thus the second criterion is not engaged.

20. Objectors raised concerns that the existing estate road was not wide enough to accommodate further traffic arising from the appeal development. The lack of a footpath was also raised, along with fears that pedestrian safety would be affected. It was also stated that the new traffic, including potential on-street parking associated with the appeal dwellings, could block emergency vehicles reaching dwellings in the estate.

21. The estate roadway is built to an appropriate standard that two normal sized vehicles can pass one another. Although I accept that large lorries would take up a greater proportion of the road when traversing it, such deliveries would be limited and even during the construction phase, in the event permission was granted, smaller construction and delivery vehicles could be utilised. Each proposed dwelling has sufficient in-curtilage parking and I have been given no persuasive evidence that the appeal development would give rise to situations where emergency vehicles could not reach the existing or proposed dwellings in the Old Church Heights estate.

22. Whilst the estate does not have a footpath it would be reasonable to expect drivers to be cognisant of the potential for pedestrians walking within the estate and drive with due care. From the totality of the evidence and my own on-site assessment I am satisfied that the development of 5 additional dwellings along with their associated traffic movements would not prejudice road safety, including that of pedestrians, or significantly inconvenience the flow of traffic. I note that DFI Roads did not object to the appeal development. Policy AMP2 of PPS3, as well as the related provisions of the SPPS, are met. The Objectors' concerns on this matter are not sustained.

Residential amenity

23. An Objector considered that the appeal development would result in overlooking into the existing dwellings, as well as potential loss of light. Matters pertaining to potential amenity impacts arising from new residential development fall to be considered under criterion (h) of Policy QD1 of PPS7. Criterion (h) states that the design and layout will not create conflict with adjacent land uses and there is no unacceptable adverse effect on either or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance.

24. The appeal dwellings would occupy a position on the opposite side of the estate roadway from the existing properties in a configuration and separation distance considered conventional in terms of modern residential development. The separation distance between the proposed and existing dwellings would be sufficient to ensure no unacceptable adverse impact on residential amenity through loss of privacy, including overlooking. As the proposed dwellings lie to the north and north-west of the existing Old Church Heights dwellings, there would be no overshadowing or loss of light resulting from the proposed new dwellings given the relative path of the sun, along with the separation distance between the proposed and existing dwellings. The appeal development satisfies criterion (h) of Policy QD1 of PPS7 and the related provisions of the SPPS. These matters would not warrant the withholding of planning permission.

Conclusions

25. There is no support in principle for the appeal development and it would give rise to urban sprawl. There are no overriding reasons why the appeal development is essential and could not be located in a settlement. I find that the appeal development does not comply with Policy CTY1 of PPS21. The Council's first reason for refusal is sustained. The various material considerations advanced by the Appellant, as well as the letter of support from a local resident, would not in themselves or taken as a whole, outweigh or justify a decision contrary to the provisions of the LDP and PPS21. The Council's reasons for refusal have been sustained to the extent specified and are determining. The appeal must fail.

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

DRAWING NUMBER	TITLE	SCALE	DATE
01	Location Plan	1:1250	14/06/2019
02 Rev 1	Site Survey	1:1250	10/07/2019
03 Rev 1	Site Layout & Car Parking Schedule	1:500	10/07/2019
04	A1 House type – Plans	1:100	14/06/2019
05	A1 House type - Elevations	1:100	14/06/2019
06	B House type - Plans	1:100	14/06/2019
07	B House type - Elevations	1:100	14/06/2019
08	Single Garage – Plan & Elevations	1:100	14/06/2019
09	Twin Garage – Plan & Elevations	1:100	14/06/2019
10	Boundary Details	1:100	14/06/2019
11	Roads Sections	1:500	04/09/2019
12	PSD Layout	1:250	04/09/2019

COMMISSIONER MARK WATSON

List of Documents

Planning Authority:-	'A' Statement of Case & Appendices (L & C CC) 'B' Rebuttal Statement & Appendix (L & C CC)
Appellants:-	'C' Statement of Case & Appendices (TSA Planning) 'D' Rebuttal Statement (TSA Planning)
Third Party:-	'E' Statement Letter (Mr M Anderson, Objector)