Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2020/A0123
Appeal by:	Valor Homes Ltd
Appeal against:	The non-determination of an application for full planning permission
Proposed Development:	Application under Section 54 of the Planning Act (NI) 2011 in respect of Planning Approval LA09/2018/1510/F comprising of 33 dwellings. Application seeks to vary Condition No.09 to replace stamped approved drawing No.22/1, which required the provision of a right-hand turning lane on Coolshinney Road, to Drawing No.20-068-P-100, which shows the creation of T-junction in lieu of the right-hand turning lane
Location:	Development lands at 14 Moneymore Road, situated adjacent and south-west of Oakvale Manor, adjacent and north-east of Thornhill Avenue, between Cooshinney Road and Moneymore Road, Magherafelt
Planning Authority:	Mid Ulster District Council
Application Reference:	LA09/2020/0951/F
Procedure:	Informal Hearing on 12 November 2021
Decision by:	Commissioner McShane, dated 12 April 2022.

Decision

1. The appeal is dismissed.

Reasons

2. Planning permission, subject to planning conditions, was initially granted on land, including the appeal site, in February 2017 (LA09/2016/0730/F). The description of development read as follows: "Proposed residential development comprising of 120 no dwellings (30 detached and 90 semi-detached), associated road accesses, including right turn lanes (RTLs) onto the Coolshinney Road and Moneymore Road, provision of amenity space and all associated site works". Condition 8 of the planning permission required that "no other development hereby permitted shall be occupied until the road works indicated on Drawing No.27/1, bearing the date stamp 2 December 2016, have been fully completed in accordance with the approved plans".

3. In August 2019, planning permission was granted on the appeal site for a change of house type (LA09/2018/1510/F). Condition 9 reads as follows:

   Condition 9: The road works on Coolshinney Road (including the right-hand turning lane) shall be provided in accordance with Drawing No. 22/1 bearing the

date stamp 11 March 2019 within 6 months of this application being approved. The Department for Infrastructure hereby attaches to the determination a requirement under Art 3 (4A) of the above Order that such works will be carried out in accordance with an agreement under Article 3 (4C) and Article 32.

Reason: To ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users.

4. A RTL consists of local widening of the priority road with associated carriageway markings to define a deceleration taper and dedicated waiting area for vehicles intending to turn right into the minor road. Guidance on the standards for RTLs is provided in Paragraphs 5.1 and 5.2 of Development Control Advice Note 15: Vehicular Access Standards (DCAN 15).

5. Section 6 (4) of the Planning Act (NI) 2011 requires that the determination of proposals must be in accordance with the local development plan (LDP), unless material considerations indicate otherwise. The Magherafelt Area Plan 2015 (MAP), which was adopted in 2011, operates as a LDP. The appeal site lies within the settlement development limit for Magherafelt as designated in the MAP. There are no operational policies within the plan material to this proposal.

6. The appeal site comprises land designated in the MAP as Housing Zoning MT08, which is subject to a number of Key Site Requirements (KSRs). KSRs identify difficulties or constraints particular to an individual site. They are imposed to offer site specific guidance to potential developers and to alert them to important matters that are key to the development of the site. They assist developers in making investment decisions and provide guidance for designing site layout in advance of submitting an application.

7. The Plan Strategy states that particular site development proposals will be assessed against KSRs in order to help achieve good quality development, to respect environmental assets and facilitate the development of balanced communities. The KSRs set out a direction for development in terms of zoning, access, housing density etc.

8. The KSRs for Housing Zoning MT08 include the following:
    - Access to the site shall be taken from Coolshinney Road; and
    - A right turn lane on Coolshinney Road, which must not compromise a right turn lane into site MT15.

9. The Appellant is seeking to remove Condition 9 and is proposing to provide a T-junction on Coolshinney Road instead of the RTL. The main issue in this appeal is whether the proposal is in accordance with the development plan.

10. The Strategic Planning Policy Statement for Northern Ireland (SPPS) is applicable to all planning applications. Paragraph 5.65 of the SPPS advises on the use of planning conditions and says that they should only be imposed where they are: necessary; relevant to planning; relevant to the development being permitted; precise; enforceable; and reasonable.

11. The Appellant argues that there has been a material change in circumstances since the MAP was prepared and adopted. Specifically, the Magherafelt by-pass

is now in place. Prior to its opening, Moneymore Road was a protected route and as such the objective was to protect the free flow of traffic on it. Accordingly, the KSR required access to Housing Zoning MT08 to be taken from Coolshinney Road. However, as of September 2017, following the opening of the by-pass, the status of Moneymore Road was downgraded, and it is no longer a protected route.

12. Furthermore, Housing Zonings MT08 and MT09, which were two separate zonings, are now interlinked (LA09/2017/1215/F). This means that traffic entering and leaving the MT08 site is split over two accesses: one from Coolshinney Road and another from Moneymore Road, where a right-hand turn lane is in situ.

13. DFI Roads accepted that a flexible approach is appropriate, given the change in circumstances and the TRICS analysis figures presented. Consequently, in the event that this were a stand-alone junction, it is considered that the proposed T-junction would be acceptable. Accordingly, the Council's second draft reason for refusal based upon Policy AMP 2 of PPS 3 is not sustained; there would not be an increased number of vehicles entering and leaving the proposed T-Junction.

14. However, the KSR attached to Housing Zoning MT08 also states that a right turn lane on Coolshinney Road *must not compromise a right turn lane into site MT15* (my emphasis). The MT15 site comprises 3.39 hectares of land located opposite the appeal site. The KSRs associated with the MT15 zoning include the following: the housing development is to be a minimum gross density of 20 dwellings per ha and a maximum gross density of 25 dwellings per ha; and a right turning lane is required on Coolshinney Road that must not compromise a right turn lane into site MT08.

15. There are two live applications for planning permission for housing on the MT15 site: LA09/2018/0935/F for 14 dwellings and LA09/2018/1643/F for 42 dwellings. The proposed layout is based upon approval LA09/2016/0730/F on the appeal site, which is reflected in the approved drawing No.22/1 of planning approval LA09/2018/1510/F.

16. The Interested Party argues that the non-provision of the RTL into the MT08 site has stymied development of the MT15 site. DFI Roads confirmed that the Private Streets Determination agreement for both applications on the MT15 site was imminent prior to the submission of the application subject to this appeal. Council confirmed that decisions on the MT15 site applications, which were submitted in December 2018, have been delayed pending the appeal outcome.

17. The Interested Party also argues that if the right-hand turn lane into Housing Zoning MT08 is considered to be unnecessary, then the requirement for a right turning lane on Coolshinney Road into Housing Zoning MT15 should also be considered unnecessary. However, any application in respect of Zoning MT15, including to remove the requirement for the RTL, must be submitted to the Council in the first instance and is not a matter for this appeal.

18. It was stated, on behalf of the Appellant, that it was his intention to offer the land between the appeal site boundary and the road for adoption by DFI Roads, which would then be available for any future road widening to provide the RTL into the MT15 site. DFI Roads confirmed that it would have no concern over this in principle but pointed out that both developers would have to agree, a detailed

assessment would be required prior to determination; and issues relating to Third Party lands addressed. The Appellant, Mr Logue, confirmed that there has been no discussion with the developers of the MT15 site to date. In any event, Council confirmed that irrespective of the stated intention, the provision of the RTLs into the MT08 and MT15 sites with each access providing the required visibility splays without the need for Third Party lands is achievable at this location.

19. Notwithstanding the Appellant's stated intentions, the matter before me is whether the provision of a simple T-junction to MT08 would compromise the provision of the RTL into site MT15.

20. The RTL into the MT15 site would require a hatched approach taper that would run along the frontage of the appeal site, including across its access. Removing the RTL to MT08, given the stagger distance between the two junctions, would result in vehicles turning right into the appeal site crossing the hatched approach taper of the MT15 RTL (Drwg No. 26-068-SK001: Draft Concept Design). Furthermore, vehicles waiting to turn right into the appeal site would be encouraged to wait in the hatched area, which would not be of an appropriate width. Similarly, there would be a restricted road width for through traffic. This would constitute poor practice and lead to road safety issues for drivers. In addition, the absence of the RTL into the appeal site would mean there would be no refuge for pedestrians crossing between the two housing developments, which raises concerns about pedestrian safety. Consequently, the provision of a simple T-junction into the appeal site would compromise and have a negative impact on the RTL into the MT15 site. However, such issues can be designed out by retaining the requirement for the provision of the RTL into the appeal site.

21. The Appellant referred to development at Killyfaddy Road to the south of Park Lane, which was approved by Council, notwithstanding that it did not meet one of the KSRs for Housing Zoning MT13 (LA09/2018/0945/F). However, the circumstances of that case are not directly comparable with the appeal proposal.

22. On the basis of the evidence before me it has not been demonstrated that the appeal proposal would not compromise the RTL into Housing Zoning MT15. This would be contrary to the development plan. Accordingly, the Council has sustained its first draft reason for refusal based upon the MAP and the appeal is dismissed.

23. In the event of the appeal being dismissed, the Council sought a condition requiring the RTL into the appeal site to be provided in accordance with the extant approved plans within 3 months of the date of this appeal decision.

24. The RTL into the MT08 site was, however, approved and conditioned under Condition 8 of LA09/2016/0730/F, which required that "no other development hereby permitted shall be occupied until the road works indicated on Drawing No.27/1, bearing the date stamp 2 December 2016, have been fully completed in accordance with the approved plans.

25. In addition, Condition 9 of planning permission LA09/2018/1510/F, which was approved in August 2019, requires that the road works on Coolshinney Road (including the right-hand turning lane) shall be provided in accordance with

Drawing No. 22/1 bearing the date stamp 11 March 2019 within 6 months of the application being approved.

26. The RTL has been bonded in accordance with Private Streets legislation as of 2/10/2019. In these circumstances, it is unnecessary to attach a further condition requiring its provision.

This decision is based on the following drawings:-

- LPA Drwg No.01 (Drwg No.2584/LM22.1): Site Location Map (Scale 1:1250)
- LPA Drwg No.02 (Drawing No.20-068-P-100): Proposed Access (Scale 1:500 @ A3)

COMMISSIONER MCSHANE

List of Appearances

Planning Authority:-	Mr M Bowman (Mid Ulster District Council) Mr Alderdice (DFI Roads)
Appellant:-	Ms E Kelly (Turley) Ms K McShane (KMcS Ltd) Mr D Logue (Appellant)
Interested Third Party:-	Mr Agus (Transport Planning MRA Partnership) on behalf of Mullaghboy Construction Ltd in respect of planning application LA09/2018/1643/F

List of Documents

Planning Authority:-	"LPA 1" Statement of Case and Appendices
Appellant:-	"APP 1" Statement of Case and Appendices
Interested Third Party:-	"TP 1" Statement of Case and Annexes