Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2022/A0004
Appeal by:	Mr Sam Marks
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of residential development comprising 11 no. 1.5 storey dwellings (3 no. detached, 2 no. semi detached and 6 no. townhouses), private amenity space, parking, landscape scheme including walled garden maintenance plan and ancillary site works
Location:	Land immediately adjacent and to the west of Gosford Castle, Markethill, BT60 1FP
Planning Authority:	Armagh City, Banbridge and Craigavon Borough Council
Application Reference:	LA08/2021/0758/F
Procedure:	Informal Hearing on 20th January 2023
Decision by:	Commissioner Laura Roddy, dated 16th June 2023

Decision

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

Reasons

2. The main issues in this appeal are whether the appeal proposal would:
   - be acceptable in principle in the countryside;
   - adversely affect the setting of the Gosford Castle listed building;
   - cause harm to the Gosford Forest Park and Castle Grounds;
   - have acceptable access arrangements and parking provision; and
   - create a quality residential environment.

3. Section 45(1) of the Act states that regard must be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) of the Act requires that, where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.

4. The Armagh Area Plan 2004 (AAP) operates as the relevant LDP, as amended by AAP Alteration No. 1: Armagh Countryside Proposals. In the plan the site is located outside of any defined settlement limit, in the countryside. The rural policy as expressed in the AAP is now outdated, having been overtaken by a succession of regional policies for sustainable development in the countryside. Therefore, the rural policies in the plan are not determining in this appeal.

5. In the AAP the appeal site is located within the designated Gosford Castle Historic Park and Garden. Policy HP1 'Historic Parks, Gardens and Demesnes' of the AAP states that designated parks, gardens and demesnes will be protected, and development proposals will be assessed in accordance with the provisions of regional planning policy. Therefore, in accordance with Policy HP1, the impact on the designated park and garden will be assessed in accordance with regional policy. In the AAP Gosford Forest Park is also designated in the plan as a Site of Local Nature Conservation Importance (SLNCI). No objections have been raised relating to the potential impact of the proposal on the SLNCI.

6. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out the transitional arrangements that will apply until a local authority has adopted a Plan Strategy for its council area. Until a plan is adopted the SPPS states that certain existing Planning Policy Statements will be retained including Planning Policy Statement 21: Sustainable Development in the Countryside (PPS21); Planning Policy Statement 6: Planning, Archaeology and the Built Heritage (PPS6) and Planning Policy Statement 3: Access, Movement and Parking (PPS3). There is no conflict between the provisions of the SPPS and those of retained policy regarding issues relevant to this appeal. Therefore, in accordance with the transitional arrangements set out in the SPPS, the appeal should be considered in accordance with the retained policies of PPS21, PPS6 and PPS3.

7. Third parties made reference to Planning Policy Statement 7: Quality in Residential Development (PPS7). The preamble to PPS7 notes that the policies in PPS7 apply to all residential development proposals with the exception of proposals for single dwellings in the countryside. Although this is a proposal for multiple dwellings in the countryside, rather than a single dwelling, the policy does not appear to envisage or explicitly allow for groups of dwellings in the countryside except for social and affordable housing (CTY5) or housing in a dispersed rural community (CTY2). The development before me is not for social affordable housing, nor is it linked with a dispersed rural community. However, the provisions of PPS7 allow for the consideration of the issues raised in respect of providing a quality residential environment, which is relevant in respect of the appeal proposal. Creating Places – Achieving Quality in Residential Developments (CP) however provides relevant supplementary planning guidance that is material in the consideration of the appeal proposal.

The Proposed Development

8. The appeal proposal is for eleven 1.5 storey dwellings including private amenity space, parking and landscaping. A pathway is proposed running east to west through the appeal site, from the boundary with the castle to the walled garden. The proposed site layout includes three detached dwellings to the north of the pathway and eight dwellings to the south of the pathway. The eight dwellings would be arranged in a U-shape around a central parking area with two rows of three dwellings facing each other and two semi-detached dwellings between and to the south of these. The dwellings would be finished with natural grey/black locally sourced stone with a blue/black natural slate roof. A landscaping plan shows that each group of dwellings would be surrounded by a mixture of trees and shrubs. All existing trees would also be retained.

The Principle of Development

9. The Council's first reason for refusal states that the appeal proposal would be contrary to Policy CTY1 of PPS21. This policy states that there are a range of types of development which are acceptable in the countryside in principle. In regard to housing development, details are set out at thirteen bullets points within the headline text of the policy which primarily relate to single houses in the countryside. As the appeal proposal is for eleven dwellings in the countryside and is not for social housing, or in a cluster, it does not fit within any of the specified types of residential development which are acceptable in principle in the countryside.

10. Policy CTY1 of PPS21 also allows other types of development in the countryside but only 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. The appellant has not sought to argue that the appeal proposal falls within any of the range of types of development set out within Policy CTY 1 of PPS21 as being acceptable in principle in the countryside or that there are any overriding reasons why the development is essential and could not be located in a settlement. Therefore, the proposal is contrary to Policy CTY1 of PPS21 in principle. Nonetheless, the appellant has sought to argue that the principle of development relates to the valid fallback position for 23 garages on the appeal site which must be considered in favour of the appeal proposal.

11. Planning permission was granted on 19th December 2006 for the change of use of the castle building to 23 no. dwelling houses and associated alterations and site works to include bin store, garaging, tennis court and pavilion for residents use only (O/2006/0045/F). The garages, tennis court and pavilion were approved in the same area as the appeal site. Planning permission was subsequently granted on 14th September 2009 for amendments to the existing approved scheme, together with proposed new site entrance gateposts and gates together with single storey meter enclosures for gas and electricity supplies to the approved dwellings (O/2007/0939/F). Again, the approved garages, tennis court and pavilion were in the same area as the appeal site. Before I consider this fallback, I will first make my consideration of the other issues raised in respect of the appeal proposal.

Impact on Listed Buildings

12. Section 91(2) of the Planning (Northern Ireland) Act 2011 (the Act) states that in considering whether to grant planning permission for development which affects a listed building or its setting, and in considering whether to grant listed building consent for any works, a council or, as the case may be, the Department must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

13. In addition to the legislative requirement to have special regard to the desirability of preserving the setting of the listed building, Policy BH11 of PPS6 sets out policy for development affecting the setting of a listed building. The justification and amplification at paragraph 6.30 of Policy BH11 notes that buildings should be designed to respect their setting, follow fundamental architectural principles of scale, height, massing and alignment and use appropriate materials. The

paragraph also goes on to say that this does not mean buildings have to copy their older neighbours in detail.

14. The appeal site is a vacant former carpark, finished in a rough tarmac surface, located within Gosford Forest Park. It is located between Gosford Castle to the east and a walled garden to the west, both of which are listed buildings. Gosford Castle is a Grade A listed building and is described in the listing as a mansion designed for the 2nd Earl of Gosford, the third home for the family on the Gosford Demesne. It comprises the main castle and an adjoining stable block. The castle is of predominantly Norman Revival style with some 14th century and Gothic details. It is the earliest major composition in the Normal Revival style anywhere in the UK. The appeal site is within the 'pink wash' for castle which is the immediate area around a building in which special consideration of curtilage and setting are required. The pink wash extends to include the appeal site and walled garden to the west and includes a large part of the forest park to the south.

15. Third parties' and the Ulster Architectural Heritage (UAH) raised issues in relation to the impact of the appeal proposal on the setting of Gosford Castle which is a Grade A listed building. Third parties stated that the appeal proposal would undoubtedly spoil views from the castle and looking to the castle. UAH consider the density and proximity of the appeal proposal would be detrimental to the setting of both the listed castle and walled garden. They also consider the appeal proposal would alter the historic rear approach to the castle and stables. However, the Council do not consider there would be an impact on the setting of the listed buildings. The Historic Environment Division (HED) of the Northern Ireland Environment Agency (NIEA) also considers the appeal proposal complies with Policy BH11 of PPS6 and represents betterment in comparison to the fallback position.

16. Taking account of the views of UAH, the third parties and the Council, I consider the layout of the dwellings has been designed to reflect courtyards and walled gardens which are traditionally more formally laid out. The northern portion of the appeal site contains only three of the proposed dwellings and would be heavily landscaped. The majority of the proposed development is located within the south of the appeal site, away from the main approach to the castle, and is also well landscaped. I find the layout proposed would minimise the impact on the approach to the castle, along the private laneway, and this combined with the proposed landscaping would be sympathetic to and respect the listed building.

17. The ground slopes gently away from the castle towards the appeal site, which sits slightly lower than the level of the castle. The proposed dwellings would have a finished floor level of between 87.60m to 88.20m whereas the castle sits at some 91-92m. The proposed dwellings would have a ridge height of 6.3m whereas the castle has heights ranging from some 6m to over 20m. The difference in levels between the appeal site and the castle, combined with the height of the proposed dwellings, would result in the appeal proposal being subservient to and respecting the castle. The scale and massing proposed, with the low elevation design, would also respect the listed building. Whilst the proposed dwellings would be of a more modern design than the castle, this, combined with the simplicity of the design would ensure that the proposed dwellings would be sympathetic to, and do not compete with or detract from, the castle.

18. Policy also requires that the nature of the use proposed respects the character of the setting of the building. The appeal site, while originally an orchard, was most recently used as a public car park by Forest Service which would involve the coming and going of a number of cars and people. The castle itself was designed as a residence and is currently in residential use, with planning approval for 23 apartments and garages. Accordingly, the proposed residential use of the site is not incompatible with the character of the listed building. Whilst some concerns have been raised about the impact of the proposed residential use for eleven dwellings, I am not persuaded that this use would have an adverse effect on the setting of the castle of the site. Whilst activity would increase on the site, and in the vicinity of the listed building, the level of activity associated with eleven dwellings would not create undue noise or disturbance given there is already activity in and around the castle from both its residents coming and going, and also users of the forest park.

19. The appeal proposal also includes the proposed restoration of the walled garden, which is a Grade B2 listed building. There are no proposals for any landscaping works within the walled garden as part of the appeal proposal with works restricted to the structure itself. An Architectural Heritage Survey and Conservation Plan (AHSCP) was submitted with the appeal and includes a condition report on the walled garden. The report notes that the walls are heavily overgrown with ivy and therefore only a small portion of the overall red brick wall could be surveyed. It also notes that the ivy has caused damage and decay to the underlying bricks and there is extensive evidence of salt efflorescence. The greatest damage to the bricks has come from the extensive ivy coverage and the report concludes that a number of measures will need to be adopted to ensure the continued stability of the historic structure. The works proposed include the treatment of areas of biological growth with fungicide prior to removal, cement based mortar to be removed and repointed, original decayed mortar to be repointed and replacement of bricks and masonry where required. Monitoring of salt efflorescence will then be undertaken after repointing. The improvements to the walled garden represent a heritage benefit which would improve the character of the listed building itself, and also the setting of the listed Castle building. I note that the restoration of the walled garden has been welcomed by UAH, who have also acknowledged that the present state of the land detracts from the setting of the listed building.

20. While third parties argued that the appellant let the walled garden fall into disrepair and therefore the offer to restore the walled garden should not be commended, the AHSCP notes that the walled garden has not been properly maintained since its closure in 2006. The evidence before me suggests that the appellant purchased the site in 2011. There is no persuasive evidence to demonstrate that the appellant has deliberately let the walled garden get into such a state of disrepair, at the very least it was not maintained properly for some five years before he purchased it. Given the extent of damage to the walls, it has likely taken many years to get into such a state of disrepair. In any event, the appellant told me that there is no basis on which he could be compelled to make the improvements to the walled garden. However, should the appeal be allowed, a condition could be imposed to require the works to the walled garden to be undertaken. Such works could be undertaken prior to commencement. Therefore, given this appeal proposal is the only way to secure any firm improvements to the walled garden and ensure its structural stability, I consider the improvements to this listed building must be given significant weight in the determination of this appeal.

21. The appellant also referred to the reinstatement of the historic link from the walled garden to the castle. This is part of the proposed development. Whilst one third party queried the existence of any historic link or pathway, the first edition OS map provided in the Archaeological Impact Assessment clearly shows a pathway between the castle and the walled garden, part of which extends slightly beyond the red line boundary of the appeal site. Given the evidence of an original pathway from the castle to the walled garden, one which is no longer present on site today, I consider the proposal to reinstate this would be a further heritage benefit of the appeal proposal. This, I consider, would reinforce and respect the character of the castle. Despite third party arguments that the wall between the castle and appeal site would be blocked up, there are no firm proposals for such, and such works may require listed building consent. In any event, even if the wall were to be blocked up, I consider the reinstatement of the majority of the pathway would still be of benefit as it would retain a visual link though the appeal site between the castle and walled garden.

22. Overall, I find the appeal proposal would be of a sympathetic scale of development and would respect the character of the setting of the listed castle and walled garden. Further, it would restore the listed walled garden, reinstate the historic pathway between the castle and walled garden and include a significant level of landscaping which would be sympathetic to its setting. HED also considers the appeal proposal complies with Policy BH11 of PPS6. In combination, these factors lead me to conclude that the appeal proposal would not have an adverse setting on the listed buildings that are the castle and walled garden. For all of these reasons, I consider the appeal proposal would comply with Policy BH11 of PPS6 and the objections in relation to the listed buildings are not sustained. Given the location of the appeal site within proximity of the listed castle and walled garden, and as my assessment has been made on the specifics of the proposed development, should the appeal be allowed a condition would be necessary to remove the permitted development rights of any future residents to ensure no additional structures are built which could impact on these listed buildings.

Impact on the Historic Park and Garden Demesne

23. Policy BH6 of PPS6 'The Protection of Parks, Gardens and Demesnes of Special Historic Interest' states the Department will not normally permit development which would lead to the loss of, or cause harm to, the character, principal components or setting of parks, gardens and demesnes of special historic interest. Where planning permission is granted, this will normally be conditional on the recording of any features of interest which will be lost before development commences.

24. The Council and third parties' raised concerns in relation to the impact on the Gosford Castle Historic Park and Garden Demesne (HPGD). The Council consider that this is a historic designated landscape, the setting is of historic significance and the appeal proposal would have a detrimental effect on this. The Council consider that the main impact on the character, principal components and setting of the HPGD comes from the introduction of built form at this location. The early OS maps show no built form on this part of the HPGD and the Council considers this 'gap' is a principal component of the HPGD. They argued that the appeal proposal, which would introduce buildings in this location, would impact on the original design concept of the area between the castle and the walled garden and is therefore contrary to Policy BH6 of PPS6. Third parties' also argued that the

appeal proposal would impact on the use and enjoyment of the forest park, and that it would impact on the tranquillity of the park.

25. The HPGD is some 255ha in size and is described in the register as 'the site of a succession of noble dwellings, beginning with Cloncarney Castle, followed by an early 18th century house and the present neo-Norman castellated house, of 1819 (HB15/7/1)'. I note the extract of the HPGD register provided by the appellant refers to the walled garden as an 'important remaining feature' of the historic park and garden. As already considered above, given the state of disrepair that the walls are in, and that the appeal proposal is the only way to secure its improvement and future structural stability, this would be of significant benefit to the HGPD.

26. The appeal site is a vacant former carpark, finished in a rough tarmac surface. It is approximately 0.66ha and is located in the northwest area of the Gosford Castle HPGD. There is temporary fencing around the boundary of the site and around an area in the middle of the site. There is a portacabin on the northern boundary of the appeal site, some storage containers along the southern boundary, building materials, loose fencing and other loose materials around the site. The current state of the appeal site is out of keeping with its context within a mature and well landscaped forest park. I consider that the appeal proposal (including the walled garden restoration and proposed landscaping) would be an improvement compared to the current condition of the appeal site.

27. The Council have not provided any evidence to demonstrate that the appeal site itself or the lack of buildings it constitutes part of the character, principal components or setting of the HPGD. The introduction of buildings on the appeal site would represent a change to the original design of the historic park and garden. However, I consider that any impact caused by the introduction of buildings on the appeal site would be outweighed by the benefit resulting from the improvements to the walled garden which is noted as an important feature in the HPGD.

28. I have also determined that the residential use of this scale on the appeal site would be appropriate, and compatible in its context, including within its location in the HPGD and adjacent to other residential development in the castle. While the appeal proposal will introduce activity, I have already concluded that any increase in activity at the site would not be significant, and I do not consider it would have an unacceptable impact on the tranquillity of the HPGD as stated by third parties.

29. For all of these reasons, I consider that the development of the appeal site, representing a small area within the overall large HPGD, would have a neutral impact on the HPGD and would not lead to the loss of, or cause harm to, the character, principal components or setting of the Gosford HPGD. It therefore complies with Policy BH6 of PPS6. The Council's second reason for refusal, and third party concerns in this regard, are not sustained.

Visual Integration

30. In addition to the Council's two reasons for refusal, third parties raised a number of concerns in relation to the appeal proposal. These concern include the integration of the appeal proposal in the countryside, specifically in respect of Policy CTY 13

of PPS21. The policy states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. The Council do not have any concerns in respect of Policy CTY13 of PPS21. The third parties however consider that the modern style of appeal proposal would be in sharp physical contrast to the historic castle. The appeal site is set within a forest park which has mature and well established trees and vegetation throughout. The site is also enclosed, on most of its boundaries, by a stone wall. This, combined with extensive landscaping surrounding the appeal site, would ensure that the proposed development is well integrated into its surroundings. The third party concerns in relation to integration and Policy CTY13 of PPS21 are not sustained.

Road Safety, Access and Parking

31. The appeal proposal would use the existing access point onto the public Mullaghbrack Road, which is connected to the appeal site via a private lane. This is also used as the access to the existing Gosford Castle and by its residents. As this existing access and visibility splays are in place, no works are proposed to provide access to the public road. Mullaghbrack Road is not a Protected Route and Policy AMP3 of PPS7 is not engaged. However, the appeal proposal does involve the intensification of an existing access onto Mullaghbrack Road and Policy AMP2 of PPS3 applies. Twenty car parking spaces would be provided as part of the proposed development, in undesignated communal parking bays.

32. Third parties' raised a number of concerns in relation to the impacts on access, road safety and parking. This includes concerns regarding the number of parking spaces, the public road/access point and issues surrounding safety along private lane. The Council are content in relation to access and parking, noting that parking is sufficient and the statutory consultee, Department for Infrastructure – Roads (DfI), have no concerns subject to a condition requiring hard surfaces to be constructed in accordance with the plans, to provide parking and circulation space.

33. The access and private lane already serves the apartments in Gosford Castle. In granting permission for that residential development, it has been determined to be suitable to provide a safe access to those 23 apartments. The visibility splays onto Gosford Road are in excess of 2.4m x 90m and DfI Roads have raised no objection in relation to the access to the public road. While the Mullaghbrack Road is busy, at my site visit I noted there was good visibility in both directions. I consider the existing access, and visibility splays provided, are sufficient to achieve a safe access to the public road. I am reinforced in this by the evidence from the appellant which states that records from 2015 - 2020 show no records of any traffic accidents along this part of the public road. While third parties refer to accidents on the public road since 2020, no evidence was provided to substantiate this. Given all of this, I do not consider that the appeal proposal, which would result in approximately 30 vehicle movements a day, would prejudice road safety or significantly inconvenience the flow of traffic onto the public road. The appeal proposal therefore complies with Policy AMP2 of PPS3.

34. Third parties also raised concerns in relation to the use of the private lane for the access, specifically that the increase in traffic associated with the site would present a hazard to walkers, cyclists, horse riders and other users of the forest park who have a right of way to use the access and pathways in the forest park. At

my site visit I observed the public access and the private laneway in use. I noted a number of walkers, cyclists and horse riders crossing the private laneway as well as cars from the Gosford Castle apartments coming and going. I did not note any issues of concern or conflict with regards to the laneway being used by this variety of users.

35. Whilst third parties argued that pedestrians etc may not be aware of the existence of a vehicular roadway as there is no footpaths, lighting or traffic calming measures, the laneway is well signposted with speed restriction signs and signs warning of both vehicle use and pedestrian/cyclist/horserider crossings. The laneway is wide with good visibility along it to see other users and there are also footpaths along part of the laneway. The laneway is distinctive from the rougher finished walking paths in the forest path as it is wider, has traffic signposts and is finished to a higher standard. I therefore consider that, despite the lack of lighting along this laneway, it would be apparent to users that there are cars using the laneway for vehicle access and the private laneway would provide a safe access to the site.

36. Third parties argued that accidents have already occurred along the laneway. While I have concluded that the public access and private laneway would provide a safe access to the site, accidents cannot be avoided in their entirety. The apartments have been in use for a number of years and anecdotal evidence of one accident, between an animal and a vehicle using the private laneway, does not persuade me that the access is unsafe or would prejudice road safety.

37. Third parties have also raised concerns that the proposed access from the exiting private laneway, into the site, is narrow and suitable for single vehicle traffic only. Whilst a short stretch of the private access track, from the laneway into the site, would only be wide enough for a single vehicle at any given time, the walls on either side of this access are listed. Therefore, to make the access any wider would cause an impact to this heritage asset. Those using the access into to the site are most likely to be residents, visitors or delivery drivers and are likely to be aware that there is a possibility of other vehicles coming and going. Users are likely to be travelling at low speeds, and given this part of the access is also straight, there would be good visibility of other traffic using it. Given the low volume of traffic generated by the appeal proposal, I am not persuaded that a short section of single length track within the appeal site would cause any impacts to traffic or impact on road safety. The third parties concerns in this regard are not sustained.

38. Third parties state that the private laneway and vehicle access are owned by Forest Service (part of the Department of Agriculture and Rural Development - DARD) and the appellant has no right to use it. The right to use the access is a civil matter and is outwith the remit of this appeal. It is for the appellant to ensure that they have the rights to use the land, should permission be granted.

39. Third parties have also stated that insufficient parking is proposed and that there is no provision for excess parking. They consider the lack of adequate parking will lead to obstructive parking on the roadway leading to the castle. The appellant and Council have both stated that 20.25 spaces would be required for the proposal, with the third parties considering that 24.25 spaces would be required in accordance with the guidance in CP. Twenty spaces are provided as part of the

proposed development, in undesignated communal parking bays. DfI Roads did not object to the appeal proposal, subject to condition.

40. CP provides guidance on the number of parking spaces to be provided within new residential development. Table 7 sets out the parking requirements for apartments and terraced houses that only have communal provision. Table 8 sets out the requirements for houses having one or more parking spaces within the curtilage. Although the appeal proposal is for townhouses, semi-detached and detached houses, I find the guidance within Table 7 to be relevant to the appeal proposal as it deals with proposals for communal parking and Table 8 caters only for proposals with in-curtilage parking. Based on the guidance in guidance in table 7, I consider that 19.25 parking spaces would be required for the appeal proposal. As 20 are provided, I find there to be adequate parking for the proposed development. Whilst third parties stated that there is no provision for additional users such as visitors, the guidance in CP is clear that the total requirements given in the tables include spaces for residents, visitors and other callers. The third parties' concerns in relation to insufficient parking are therefore not sustained.

Quality Residential Development

41. A third party raised concerns with regards to privacy and distances from the proposed dwellings to apartments in castle. They stated the castle is less than 4m from the boundary of the appeal site. They consider that the west tower, a 2.5 storey development 4m from the boundary of the proposed development, will be detrimentally impacted in terms of aesthetics, privacy and noise. But if approved, all upper windows on the proposed development should be fitted with obscure glass to maintain privacy of residents in castle. The appellant states the distance to the shared boundary is approximately 16m and it is 25m from the closest proposed dwelling to the north western gable of the castle with no potential for overlooking. Having scaled the submitted plans, I accept these distances are accurate.

42. Whilst the distance from the shared boundary to the castle is approximately 4m, this does not determine the impacts on residential amenity. As the closest distance from any proposed dwelling to an existing dwelling would be 25m, I am satisfied there would be no unacceptable overlooking, loss of privacy or noise created by the appeal proposal. Given this, I do not consider that a condition to obscure glass on the second floor of the dwellings within the appeal proposal is necessary or reasonable in this case.

43. Third parties also state that the proposed development is to be unlit and that CP, at paragraph 12.16 recommends good quality lighting scheme should be provided with new residential development. The appeal site is surrounded by mature trees and vegetation which could be used by bats for roosting and foraging. The presence of lighting could disturb bats. I note that the NIEA:NED are content that no exterior lighting is proposed, and this could be secured by condition. Whilst the guidance in CP is a material consideration in the determination of this appeal, I consider the potential harm that a lighting scheme could cause to bats, a protected species, would outweigh the guidance in CP and justifies an unlit scheme. Should the appeal be allowed, a condition could be used to ensure the development would be unlit. The third party concerns in this regard are not sustained.

44. Third parties' raised concerns regarding the security of the castle residents and grounds. They consider the appeal proposal would open up the castle grounds to the public as members of the public could access the castle though the planned pathway. This argument is somewhat contrary to the third parties' arguments that they intend to repair and restore the wall on the eastern boundary of the appeal site, between the site and the castle. In any event, the appeal site is currently only closed off to the public by temporary fencing. This could be removed by the appellant at any time. I therefore disagree that the appeal proposal, of itself, would compromise the security of the castle residents.

45. Third parties have stated that no account has been taken of four underground gas tanks on the appeal site which services the castle apartments. They refer to an exclusion distance of 5m being required for safety and access to the tanks. At the hearing the appellant told me there is a distance of 5m from the proposed dwelling 3 to the nearest tank. They also stated that a distance of 3m from the lid of any gas tank to any building/structure or potential source of ignition is required. They stated that the distance from the lid to the building is 6.59m and that there is already a stone wall within 3.2m of the lid. Given these distances, and that the nearest part of any proposed development is further from the gas tanks than the existing stone wall, I find the third parties concerns in this regard are not determining.

46. Third parties have stated that the proposed bin storage area, just 3m from the gate to castle grounds, would impede vehicle access to castle for residents and would be unsightly at entrance to the listed castle. The appellant stated that this is in an existing grass area, will not impede access and further DfI Roads have no issue with the proposed bin refuge point. Given the proposed bin storage area is adjacent to the existing access to the castle, I do not see how it could impede access to the castle grounds. I also consider the size and scale is such that it would not have any unacceptable visual impact on the entrance to the castle.

47. All in all, I have considered the concerns raised in respect of the proposed residential environment and I am satisfied that the proposal will create a quality and sustainable residential environment which would draw upon the positive aspects of the character and appearance of the surrounding area.

Natural Heritage

48. The third parties' also raised a number of concerns in relation to Pine Martens which are protected by the Wildlife (NI) Order 1985, as amended. They argued that Pine Marten use the appeal site and surrounding area and that the proposed storm sewer connection, which is several hundred metres in length, would impact the local ecosystem. Third parties' also stated the appeal proposal would disturb birds and their habitat, and that there was no bat survey carried out. Overall, the third parties' consider that between 100 – 200 trees would need to be felled to accommodate the services for the appeal proposal and digging half a mile through the forest would have an impact on wildlife. The Council have no concerns in relation to the impacts on ecology or protected species.

49. Considering the Council and third parties views, I note the appeal site is currently finished in tarmac, and is predominantly bare ground of little ecological value. There is some light scrub of low ecological value and not a priority habitat. The

landscape proposals show that no trees will be removed to facilitate the appeal proposal. At the hearing the appellant told me that there is no evidence of bats using the portacabins on site. All trees will be retained and no illumination is proposed. Therefore, in the absence of any evidence to the contrary, I am not persuaded that there would be any direct or indirect impact on bats. Further, the appeal proposal includes planting of trees and landscaping which would be of ecological benefit.

50. In relation to the services to be provided, the appellant told me that there is an existing storm sewer which traverses the private road and that the appeal proposal will connect into this. Pine Martens are a protected species and it is an offence, except under licence, to capture or kill a pine marten, or to destroy or disturb its resting places. The statutory undertakers, when providing the services, would be required to comply with the legislation. In the absence of any persuasive evidence to the contrary, I am not persuaded that Pine Martin would be impacted on by the appeal proposal or service connections. I am reinforced in this view by the lack of objection from Northern Ireland Environment Agency: Natural Environment Division (NIEA:NED), the statutory consultee. A condition would be required, should the appeal be allowed, to ensure there would be no vegetation clearance during the bird breeding season.

51. A draft Construction and Environmental Management Plan (CEMP) was submitted with the planning application. Third parties raised issues raised regarding some inconsistencies in the draft CEMP. I find these could be addressed by requiring a final CEMP to be submitted and agreed with the planning authority. Should the appeal be allowed, this could be secured by planning condition.

Other Concerns

52. Third parties raised concerns regarding the lack of engagement from the appellant with residents. Section 27 of the Act sets out the requirements for pre-application community consultation which is required for major developments. The appeal proposal is not a major development and pre-application community consultation is not mandatory. Given the minimum statutory requirements in respect of consultation and notification have been complied with, the third parties concern with regards to lack of engagement by the appellant is not determining in this appeal.

53. In relation to statements that the Council should take over the car park and walled garden, I can only assess the proposal before me. A number of other issues have been raised by third parties including legal issues, restrictive covenants in the deeds, payment to the management company of Gosford Castle, payment for the use of the gate, financial gain by the appellant, whether the appellant is a resident in the castle and building control regulations. A number of these issues are civil matters and none of these are germane to my assessment of the appeal proposal.

Consideration of the Fallback Position

54. Overall, while the appeal proposal would comply with PPS6 in respect of the impacts on the setting of the adjacent listed buildings and the HPGD, I find it would not comply with PPS21 and the principle of residential development is unacceptable in this countryside location. However, the appellant has argued that

there are material considerations which outweigh any failure to comply with Policy CTY1 of PPS21. These comprise betterment brought about by the appeal proposal by comparison to the fallback position for 23 garages on the site. The appellant also refers to betterment from the restoration of the walled garden which is part of the proposed development and would take place before any other works, the reinstatement of the historic link between the castle and the walled garden and the reinstatement of a significant planting scheme.

55. In respect of the fallback position, the parties referred to two planning permissions relevant to the appeal site, O/2006/0045/F and O/2007/0939/F. In both permissions 23 garages, tennis court and pavilion were approved in the same area as the appeal site. The appellant drew my attention to case law including *R v on the application of Zurich Assurance Ltd (t/a Threadneedle Property Investments) v North Lincolnshire Council [2012] EWHC 3708* and *Alexander v Causeway Coast and Glens Borough Council [2018] NIQB 10664*. The case law establishes that there are three important principles when it comes to the fallback position. First, it must be established if there is a lawful ability to undertake the fallback, then it must be established if there is a realistic possibility that the fallback position would be implemented. If there is, then comparison must be made between the proposed development and the fallback development in terms of their respective impacts on the environment. In weighing up the relative environmental impacts of the proposal and the fall-back position it must be shown that the former would have less or no more detrimental effect on amenity.

56. A certificate of lawfulness for proposed development (CLUD) was issued on 23rd March 2022 and the description certified is 'proposed certificate of lawfulness of proposed use or development establishing the lawful commencement of full planning permission O/2007/0939/F for amendments to existing approved scheme (change of use of castle into 23 dwellings and garages) by way of alterations and residential occupation of Gosford Castle and laying of garage foundations prior to the expiration date of 14th September 2014 allowing future completion at a subsequent date'. Whilst some third parties' stated that they did not consider the works undertaken on the garages amounted to the commencement of development, a CLUD is the correct mechanism to determine the lawfulness of any existing or proposed development. Given the presence of the CLUD, I can only consider that planning permission O/2007/0939/F has lawfully been implemented and the permission remains extant. I am satisfied that a lawful fallback position therefore exists for 23 garages, tennis court and pavilion on the appeal site.

57. I must now consider if there is a realistic possibility that the fallback would occur should the appeal proposal be refused. Case law indicates that the basic principle is that for a prospect to be a real prospect, it does not have to be probable or likely; a possibility will suffice. The appellant told me that the fallback position can and will be implemented. The Council did not dispute this, and I have no evidence to suggest the garages would not be built. Further, third parties' indicated that prospective buyers of the castle had been told the garages would be built at a later date and available for them to purchase. Given that the appellant commenced construction of the garages, obtained an CLUD for same and the confirmation from the appellant that they are in a financial position to implement the garages, I am satisfied that there is a greater than theoretical possibility that the garages would be built.

58. This, in turn, leads me to assess the impacts of the proposed development against the fallback position. The Council considers that while the fallback would be more detrimental aesthetically than the appeal proposal, houses would result in more activity and 'coming and going' compared to garages. The Council referred to the proposed houses as a 'substantial change of use' from the approved garages stating that houses would have a very different function and perception compared to garages.

59. The fallback includes 23 two storey garages arranged in one rectangular block around a formal courtyard. A tennis court is also permitted to the south of the garage block and is within the appeal site. The pavilion is within the same block as the garages. The courtyard would be finished with gravel, paving and cobbles and 4 specimen trees would be located in the centre of the courtyard. The garages would be finished in rubble granite stone with dressed stone to openings to match the castle walls. They would have a Bangor blue natural slate roof and wrought iron gates.

60. Third parties agree with the Council's concerns stating the garages in the fallback would only be used by castle residents who would likely use them during the daylight hours only, whereas dwellings would be occupied 24/7 with access required at all times. They consider that the presence of a housing development would be an inappropriate modern development in this location, whereas the garages would be appropriate and therefore better than the appeal proposal. A third party has also raised concerns regarding the accuracy of the cross sections submitted and the presentation of the CGI images of the approved garages compared to the appeal proposal. I am satisfied that the submitted documents are accurate, cross sections by their nature cannot include every aspect of either proposed or existing development as they cut through the development at a specific point. In any event, my assessment is made taking account of all evidence submitted by all parties, and my inspection on the ground.

61. The appellant considers the appeal proposal would result in betterment compared to the garages. They stated that the design has been an iterative process and they have worked with the statutory consultee HED, throughout this process. Furthermore, they note that HED consider the appeal proposal to be betterment in comparison to the fallback position and that this should be afforded significant weight in the determination of this appeal. The appellant also considers that, as a matter of law, the garages are not linked to the residential apartments and that 23 garages could result in more activity in general and more traffic compared to the appeal proposal which is only for 11 houses.

62. Visually, I consider the appeal proposal both in terms of its character and use, would be an improvement in comparison to the approved garages given the reduction in the overall height, footprint and scale of development. The layout is also improved compared to the courtyard style arrangement of the garages as the appeal proposal is broken up and does not have the same bulk or massing as the garage block. The appeal proposal also has a significant increase in planting compared to the garage development. This would help to screen the proposed dwellings and integrate into its surroundings and, should the appeal be allowed, the landscaping could be secure by planning condition. Further, the layout allows for views through the development to the walled garden which is not possible with the approved garage/pavilion block.

63. In relation to the increase in activity that would result from the proposed dwellings compared to the approved garages, third parties note that condition 16 of planning permission O/2006/0045/F stated the garages shall be for domestic use only and shall be ancillary to the residential accommodation approved. The lawful fallback position, evidenced by the CLUD, relates to planning permission O/2007/0939/F. That permission does not have any conditions requiring the garages to be for domestic use only. Therefore, there is nothing to prevent the garages to be used by persons who live outside the castle grounds or any restrictions on the time they can be used. The appellant considers they can, and will, introduce activity to the appeal site and that this activity could be significant given there are 23 double garages. They stated that once the appeal proposal is completed, there would be similar levels of traffic generated compared to the garages. I consider that the proposed dwellings would likely generate more coming and going than the approved garages, as the garages may not be used on a daily basis. However, I do not consider the likely increase in the frequency of coming and going from the appeal proposal would be significant in comparison to the approved garages, given these are not restricted to use by castle residents and will likely generate activity of their own at all times of day and night.

64. Third parties stated that the presence of a modern residential development would be inappropriate in the forest park. However, I am not persuaded that the residential development would be inappropriate, given it sits next to Gosford Castle which is already in residential use and is also now part of the character of the area and the forest park. I have already found that visually it would be an improvement compared to the fallback position and any increase in activity on the site would not be significant in comparison to the unrestricted garages. The concerns of the Council and third parties in relation to the nature of residential development compared to garages are not sustained.

65. The appeal proposal would also offer heritage benefits, though the improvements to the walled garden and the restoration of the majority of the original pathway between the castle and walled garden, both of which would not be realised should the fallback position be implemented.

66. Third parties' also argued that the failure to build the garages is a significant detriment to property owners in the castle given the limited storage available. The concerns of the third parties in relation to the lack of storage for residents in the castle do not outweigh the heritage benefits that would be provided by the appeal proposal and are not determining in this appeal.

67. I have already concluded that there is more than a theoretical possibility that the approved garages would be built on the appeal site should the appeal be dismissed. Therefore, built form will be introduced on this site irrespective of the appeal proposal. Given all of the above, I consider that the appeal proposal represents betterment in comparison to the fallback position. It would also deliver benefits which would not be realised with the fallback position, specifically the restoration of the walled garden, original pathway between the castle and the landscaping within the site. I am not persuaded that the change from garages to dwellings would be so significant to override the visual and heritage benefits that would result from the appeal proposal. I am reinforced in this conclusion by the HED response which concludes that, in terms of the overall impact on the castle, the appeal proposal is a betterment to the extant permission. They also welcome

the reinstatement of the link between the castle and the walled garden, and retention of views through the development to the walled garden. Overall, I consider the appeal proposal would result in heritage benefits in comparison to the fallback position and this should be given significant weight in the determination of this appeal.

Conclusion

68. As I have noted above, the appeal proposal does not sit neatly within the principle of development in the countryside as it fails to satisfy Policy CTY1 of PPS21. However, I consider that there exists a realistic fallback position that could be implemented. The appeal proposal provides an opportunity to provide betterment to what has already been approved particularly in terms of the impact on the heritage assets resulting from the reduction in the scale and height of development, the improved layout, the proposed landscaping, the restoration of the walled garden, the reinstatement of the historic link from the castle to the walled garden. These all weigh in favour of the appeal proposal and significant weight should be given to the betterment of the appeal proposal in comparison to the lawful fallback position.

69. For the reasons stated above, I find that the appeal proposal would be acceptable as the existence of the fallback position outweighs the non-compliance with PPS21. I have also found the appeal proposal would comply with PPS6 and the SPPS. Accordingly, the Council's reasons for refusal have not been sustained. None of the third parties' other concerns are sustained and they are not, either individually or cumulatively, determining in this appeal. For these reasons, the appeal is allowed.

70. The Council, third parties' and Ulster Architectural Heritage (UAH) raised concerns in respect to precedent. They were concerned that, should the appeal be allowed, it would set a precedent for other residential developments in close proximity to listed buildings and within Historic Parks and Gardens. However, neither the Council nor any third party could provide any examples where a similar set of circumstances existed to which exist in relation to the appeal site. Given the specific set of circumstances in this appeal, which I consider unlikely to be widely replicated elsewhere, I do not consider that approval of the appeal proposal would result in an undesirable precedent. In coming to this conclusion, I have taken into account and given significant weight to the following:

- The CLUD for 23 garages amounting to built development associated with a residential use on the site;
- My conclusion that the appeal proposal would represent betterment from the extant consent in terms of the reduction in the built form, the proposed landscaping, the reinstatement of the historic link from the castle to the walled garden and the impact on the listed buildings;
- My conclusions are also generally consistent with the view of the statutory consultee who also consider the appeal to be betterment in comparison to the fallback position;
- The improvements to the listed walled garden which would take place prior to any other development; and
- The creation of a quality and sustainable residential environment.

71. The matter of conditions remains to be considered. The appellant stated that it would be necessary to have a management plan for the appeal proposal to incorporate the overall maintenance and control of the development. They stated that this should refer to aspects of the development in communal ownership and include maintenance for the access and contributions from residents. Given that the appeal proposal includes communal areas, including parking, landscaping and access, which will require ongoing maintenance, I agree that such a condition would be necessary and reasonable to ensure the upkeep of the communal aspects of the development.

72. A Generic Quantitative Risk Assessment report has been submitted by the appellant, informed by site investigations and environmental monitoring data obtained from 4 on-site boreholes. While no unacceptable risks to environmental receptors have been identified for the development, given the proposed residential use of the site it is important that should any evidence of contamination be detected during the construction phase that this is investigated and remedied prior to further works taking place. A condition is therefore reasonable to ensure that any potential contamination can be addressed. While a condition was put forward in relation to the method of sewage disposal, a separate consenting procedure relates to this as it dealt with by separate legislation. A condition is therefore not necessary.

Conditions

1) No development of any kind shall be undertaken until a remediation and restoration report for the walled garden has been submitted and agreed in writing by the planning authority. Apart from the agreed works to the walled garden, no further works of any kind shall be undertaken until the works to the walled garden have been implemented and a verification report is submitted and agreed in writing by the planning authority in respect of the walled garden restoration and remediation.

2) All existing trees as depicted on drawing No L101 date stamped 17th August 2021 shall be permanently retained intact. No retained tree shall be cut down, uprooted or destroyed, or have its roots damaged within the crown spread nor shall arboricultural work or tree surgery take place on any retained tree other than in accordance with the approved plans and particulars, without the prior written approval of the planning authority.

3) The hard and soft landscaping works shall be carried out in accordance with the approved details as shown on the Landscape Proposals Plan, Drawing Number L101 date stamped 17th August 2021, and the Site Layout Plan, Drawing Number L102 date stamped 19th October 2021. The hard landscaping works shall be carried prior to the occupation of the first dwelling and the soft landscaping works shall be carried out in first available planting season following occupation of the first dwelling, or in in accordance with a programme of works to be submitted to and approved in writing by the planning authority. If within a period of 5 years from the date the development is completed, any new tree, shrub or hedge is removed, uprooted, destroyed, dies, or becomes, in the opinion of the planning authority, seriously damaged or defective, another tree, shrub, or hedge of the same species and size as

that originally planted shall be planted at the same place, unless the planning authority gives written consent to any variation.

4) No development shall commence until a hard and soft landscape and management and maintenance plan has been submitted to and approved by the planning authority. The plan shall set out the period of the plan, long term objectives, management responsibilities, performance measures and maintenance schedules of all areas of hard and soft landscaping and open space areas including, communal areas, planting, access way and gates. It shall also set out details of the arrangements that will be put in place for the future management and maintenance in perpetuity of these areas, including details of the legal agreement, between the prospective residents and any Management Company, which are to be put in place. The hard and soft landscape and management and maintenance plan shall be carried out as approved.

5) No dwelling shall be occupied until hard surfaced areas have been constructed in accordance with drawing No PLO2 date stamped 19th October 2021, to provide adequate facilities for parking and circulating within the site. No part of these hard surfaced areas shall be used for any purpose at any time other than for the parking and movement of vehicles.

6) No vegetation clearance or removal of hedgerows or shrubs shall take place between 1st March and 31st August in any year (inclusive) unless an ecologist has undertaken a detailed check for active bird's nests immediately before clearance and provided written confirmation to the planning authority that no nests are present/birds will be harmed and/or there are appropriate measures in place to protect nesting birds. Any such written confirmation shall be submitted to the planning authority within 6 weeks of works commencing.

7) There shall be no street lighting or exterior lighting fitted to structures or exterior lighting of any kind, on the site during construction or operation.

8) Notwithstanding the provisions of the Planning (General Permitted Development) Order (Northern Ireland) 2015 (or any legislation revoking that Order and re-enacting those provisions), no buildings, structures, walls or fences shall be erected within the areas of communal open space, as depicted on Drawing Number L102 date stamped 19th October 2021, and shall not thereafter be used for any purpose other than as communal open space.

9) If during the development works, new contamination or risks are encountered which have not previously been identified, works shall cease and the planning authority shall be notified immediately. A remediation plan shall be submitted to the planning authority and agreed in writing. Upon completion of the remediation works contained in the plan, a verification report shall be submitted to the planning authority and agreed in writing prior to any further works.

10) No development shall commence on site until a Final Construction Environment Management Plan (CEMP) is submitted to and agreed by the planning authority.

11) Prior to occupation a management plan shall be submitted to the planning authority, agreed in writing and implemented thereafter. The plan shall set out

objectives, management responsibilities, maintenance schedules and contributions from residents for the approved development.

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

This decision relates to the following drawings:-

Drawing No.	**Title**	**Scale**	**Date Received by Council**
01A (3120-PL100)	Site Location Plan	1:2500	17th August 2021
04A (3120-PL104)	Proposed House Types A & B Floor Plans and elevations (Units 1-3)	1:100	12th August 2021
05A (3120-PL105)	Proposed House Types B & B Floor Plans and elevations (Units 4 – 11)	1:100	12th August 2021
06A (3120-PL103)	Proposed Site Elevations and Typical Elevation	1:500 and NTS	12th August 2021
PL102	Proposed Site Layout Plan	1:500	19th October 2021
L101 (20-078)	Landscape Proposals	1:500	17th August 2021

COMMISSIONER LAURA RODDY

List of Appearances

Planning Authority:-	Ms McAvoy, Armagh City, Banbridge and Craigavon Borough Council
Appellant:-	Mr Beattie KC, instructed by TLT Mr Bell, Clyde Shanks Mr Dougan, Vision Design Mr Long, Gahan and Long Mr Ryan, TLT
Third parties':-	Ms McCorry Ms Singleton Mr Dalzell

List of Documents

Planning Authority:-	"A1" Statement of Case by Armagh City, Banbridge and Craigavon Borough Council "A2" Rebuttal by Armagh City, Banbridge and Craigavon Borough Council
Appellant:-	"B1" Statement of Case by Clyde Shanks "B2" Rebuttal by Clyde Shanks
Third parties':-	"C1" Statement of Case by G Maginnis "C2" Statement of Case by J Singleton "C3" Statement of Case by A McCorry on behalf of 6 no. residents "C4" Statement of Case by T Dalzell, C Dalzell, S Dalzell and S Williams. "C5" Statement of Case by L Singleton "C6" Statement of Case by Alderman J Speers "C7" Statement of Case by L Carroll "C8" Rebuttal by A McCorry on behalf of 6 no. residents "C9" Rebuttal by L Carroll "C10" Rebuttal by T Dalzell, C Dalzell, S Dalzell and S Williams.