Planning Appeals Commission

Appeal Decision

Park House
87/91 Great Victoria Street
BELFAST
BT2 7AG
T: 028 9024 4710
F: 028 9031 2536
E: info@pacni.gov.uk

Appeal Reference:	2019/A0070
Appeal by:	Mr Padraig Cunningham.
Appeal against:	The refusal of full planning permission.
Proposed Development:	The retention of an unauthorised building with amendments to form 2 dwellings.
Location:	65 Armagh Road Newry.
Planning Authority:	Comhairle Ceantair an Iúir, Mhúrn agus an Dúin. Newry, Mourne and Down District Council.
Application Reference:	LA07/2018/1149/F
Procedure:	Hearing on 5th November 2019.
Decision by:	Commissioner Damien Hannon, 13th March 2020.

Decision

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

Reasons

2. The main issue raised by this appeal is whether the proposal would create a quality and sustainable residential environment.

3. The appeal site is located within the settlement of Newry as designated in the Banbridge, Newry and Mourne Area Plan 2015 (BNMAP). The BNMAP, which operates as the statutory Local Development Plan relevant to the appeal site, contains no provisions specific to the appeal proposal. Furthermore, no conflict arises between the provisions of the Strategic Planning Policy Statement for Northern Ireland - Planning for Sustainable Development - September 2015 (SPPS) and any retained policies regarding issues raised by this proposal. Consequently, Planning Policy Statement 7 – Quality Residential Environments (PPS 7), provides the operational policy context. Relevant PPS 7 provisions are echoed in guidance contained in planning control principles for housing 1 and 2 of Planning Policy Statement 12- Housing in Settlements (PPS 12).

4. Policy DES 2 of the erstwhile Department of the Environment's document 'A Planning Strategy for Rural Northern Ireland 1993' (The Rural Strategy) is entitled 'Townscape' and requires development proposals in towns and villages to make a positive contribution to townscape and be sensitive to the character of the area surrounding the site in terms of design, scale and use of materials. While still extant, the provisions of Policy DES 2 are however, reaffirmed by those of the more recent PPS 7. Guidance contained in the document entitled 'Creating Places - Achieving

Quality in Residential Environments' (Creating Places) is also relevant to consideration of this appeal.

5. The appeal relates to a two storey, substantially completed building, known as 'Block E', which is one of a 6 block housing scheme, accessed off Armagh Road, that is currently under construction. Permission for a residential scheme ref. P/2008/1503, was approved in July 2011. This scheme was not however constructed as approved and this precipitated enforcement action by the Council leading to an enforcement appeal. While the outcome of the enforcement appeal was to approve the bulk of the scheme, permission was however, withheld in respect of Block E, which consequently remains unauthorised. In an attempt to regularise the situation, an amended design of Block E is proposed involving retaining the existing footprint but removal of the first floor to leave a single storey building accommodating two dwellings. The fact that the appellant did not propose such a solution at the enforcement hearing does not preclude subsequent consideration of such a scheme. The argument forwarded by a third party in this respect is not therefore well founded.

6. Where it abuts the dwelling, Block E is sited 5m from the boundary with 67 Armagh Road and, at its closest point, 3.5m from its rear garden. This is some 7m closer to the boundary with No. 67 than the two-storey development approved in July 2011. However, as that approval was never implemented and has now expired, it does not constitute a fall-back position and I shall therefore assess the appeal proposal on its own merits.

7. Policy QD 1 of PPS 7 provides operational policy on new residential development. It states that in established residential areas, housing development will not be permitted where it would result in unacceptable damage to local character, environmental quality or residential amenity. It requires all residential development proposals to conform to nine stated criteria.

8. Criterion (a) of Policy QD 1 requires development to respect the surrounding context and be appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas. Objection was raised on the grounds that the scheme constituted town cramming and would thereby fail to respect the surrounding context contrary to criterion (a). The council and objectors argued that this failure to respect the surrounding context was evidenced by other shortcomings exhibited by the scheme including insufficient open space and detriment to neighbouring residential amenity through inadequate separation distances, overlooking, loss of light, overshadowing, noise and other disturbance. It was consequently argued that the criteria (c) and (h) would therefore also be offended.

9. Criterion (c) of Policy QD1 requires that adequate provision is made for public and private open space and landscaped areas as an integral part of the development. At the hearing, the Council conceded there to be adequate private open space, in terms of quantum, to accommodate two dwellings in compliance with guidance provided in 'Creating Places'. They nonetheless argued that this open space would be inadequate as it was overlooked and, because of its narrow layout, of limited functional value.

10. The ground level of the curtilage of No. 67 Armagh Road rises to approximately 1m above that of the bordering appeal site. The proposed private open space is an elongated strip of between 5m and 3.5m in width sited to the rear of Block E and running the length of its 23m wide rear elevation. There is a small first floor landing window in No 65 from which no material overlooking would occur. Oblique views of part of this area would nonetheless, be available from a north facing upstairs bedroom window of No. 67. However, the proposed boundary treatment, comprising a 2m high close-boarded fence and a row of Rowan trees is substantially in place. This provision, if completed in a timely fashion, would ensure that this amenity area is not subject to unacceptable overlooking. Furthermore, although restricted in width, such an area would nonetheless provide privacy and opportunity for residents to carry out a full range of garden related activities. In addition, the more spacious open areas serving the whole development are unenclosed and would be available for use by residents of the proposed dwellings if required. In this context I conclude the open space provision to be adequate and compliant with guidance in 'Creating Places'. Criterion (c) of Policy QD1 would be met and objection on these grounds is not sustained.

11. Criterion (h) seeks to ensure that the design and layout of a proposal does not create conflict with adjacent land uses and that there is no unacceptable adverse effect on existing or proposed properties in terms of overlooking, loss of light, overshadowing, noise or other disturbance.

12. Objectors argued that mutual overlooking would occur between windows of the proposed dwellings and those of 67 Armagh Road. The Council made reference to paragraph 7.16 of 'Creating Places' that states "Where the development abuts the private garden areas of existing properties, a separation distance greater than 20m will generally be appropriate to minimise overlooking, with a minimum of around 10m between the rear of new houses and the common boundary". Paragraph 7.18 however, states that smaller separation distances will generally be acceptable for single storey development.

13. Mutual overlooking would occur between the northernmost ground floor windows of the proposed dwellings and the north facing upstairs bedroom window of No. 67. The extent of this overlooking would be reduced by the oblique nature of the views given the juxtaposition of the windows in both buildings and by the screening impact of proposed boundary treatment comprising fencing and planting. Taking these factors and the relevant policy and guidance in the round, I conclude that the proposal would not cause the occupants of either existing or proposed dwellings to suffer any unacceptable loss of amenity through overlooking.

14. The proposed boundary treatment would prevent any unacceptable impact on the occupants of the proposed dwellings from nuisance emanating from the lights of cars used by occupants of No. 67. Furthermore, I have been given no persuasive evidence to establish that the noise and disturbance generated by the occupants of the proposed dwellings would have an unacceptable impact on the occupants of No. 67. Additionally, the single storey construction of the proposed building would ensure that adequate light can percolate between the proposed building and No. 67 and that no unacceptable detriment to amenity will accrue through loss of light or overshadowing. Furthermore, taking the submitted evidence in the round, I am not persuaded that the proposed planting would have any detrimental structural impact on nearby buildings or give rise to loss of amenity through leaf fall. In these circumstances, I consider that the proposal would not cause any unacceptable

adverse impact on existing or proposed properties through overlooking, overshadowing, noise or other disturbance. I conclude that the proposal would not create unacceptable conflict with adjacent land uses and would comply with criterion (h).

15. I find none of the arguments presented by either the Council or objectors, based on detriment to townscape character or amenity, to be well founded and in these circumstances consider that the proposal would comply with criteria (a), (c) and (h) of Policy QD1. I conclude that the scheme would create a quality and sustainable residential environment and would comply with Policy QD 1of PPS 7 and Policy DES 2 of the Rural Strategy. I consequently conclude that guidance contained in 'Creating Places' and PPS 12, would also be complied with. Both the Council's reasons for refusal based on Policies QD 1, DES 2 and on PPS 12 and are not upheld and in the absence of sustained objection the appeal succeeds and full planning permission is granted.

Conditions

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

(2) The scheme of planting as indicated on the 1:200 scale Landscape Proposals – House Type E numbered 07 received by the Council on 20th July 2018 shall be completed prior to the commencement of any hereby approved building works. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the council gives written consent to any variation.

This decision approves the following drawings received by the Council on 20th July 2018:-
1:1250 scale Ordnance Survey extract numbered 01.
1:500 scale Proposed Site Plan numbered 02.
1:100 scale Existing Floor Plans – House Type E numbered 03.
1:100 scale Proposed Floor Plans – House Type E numbered 04.
1:100 scale Existing Elevations – House Type E numbered 05.
1:100 scale Proposed Elevations – House Type E numbered 06.
1:200 scale Landscape Proposals – House Type E numbered 07.

COMMISSIONER DAMIEN HANNON

2019/A0070

List of Appearances

Planning Authority: -	Mr. Gareth Murtagh
Appellant:-	Mr. Barry Owens (Agent)
Third party Objector: -	Mr. C Goss of 69 Armagh Road appearing on behalf of himself and Mr P. Makem of 67 Armagh Road

List of Documents

Planning Authority: -	COU 1 Statement of Case
Appellant:-	APP 1 Statement of Case
Third party Objector: -	TP1 Statement of Case of Messrs. C Goss and P. Makem