Planning Appeals Commission

Appeal Decision

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Appeal Reference:	2019/A0146
Appeal by:	Mr Aaron McDowell – Arona Developments Ltd.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Phase three – Erection of 4 No. dwellings, garages and associated site works namely; 2 No. two storey dwellings, (one change of house type for site 17 approved under LA08/2015/0949/F) and 2 No. two storey semi-detached dwellings.
Location:	Land south west of Aughnacloy House, 2 Tandragee Road and north east of 1 Collingwood Avenue, Lurgan.
Planning Authority:	Armagh City, Banbridge & Craigavon Borough Council.
Application Reference:	LA08/2018/1514/F.
Procedure:	Written representations and Commissioner's site visit on 25th August 2020.
Decision by:	Commissioner Damien Hannon, dated 2nd October 2020.

Decision

1. The appeal is allowed in respect of the proposed change of house type at site 17 approved under LA08/2015/0949/F and dismissed in respect of the proposed two storey dwelling and pair of semi-detached dwellings.

Reasons

2. No objection was raised in respect of the change of house type at site 17 approved under LA08/2015/0949/F and in these circumstances I conclude this uncontentious element of the proposal, which has been implemented, to be acceptable. The main issues in this appeal are whether the component of the proposal comprising the three other dwellings would constitute an unacceptable loss of open space and create a quality and sustainable residential environment.

3. The appeal site is designated as white land within the settlement limit of Lurgan in the Craigavon Area Plan 2010 (CAP). This statutory development plan however, contains no policies relevant to the appeal proposal. The relevant policy context is provided by the retained Planning Policy Statement 8 - Open Space, Sport and Outdoor Recreation (PPS 8), Planning Policy Statement 7 - Quality Residential Environments (PPS 7) and the second addendum to PPS 7 - Safeguarding the Character of Established Residential Areas (The Addendum). Guidance in the document entitled 'Creating Places: Achieving Quality in Residential Environments, May 2000' (Creating Places), is also material to consideration of this appeal.

4. The appeal site lies within an estate of semi-detached and detached, red brick dwellings approved in 2016 ref LA08/2015/0949/F and comprises two distinct plots separated by the estate road. One area, namely Plot 17, comprises the curtilage of a detached dwelling and garage. As explained above, the proposed change in house type on plot 17 is not at issue in this appeal. The remainder of the appeal site comprises a flat, rectangular area of some 0·31ha, approved as open space under planning permission ref LA08/2015/0949/F, and part of the estate road linking the appeal site and the Tandragee Road. At the time of my inspection approximately two thirds of this flat, rectangular plot was planted out as open space while the westernmost third was enclosed by temporary, wire mesh panel fencing and used for the storage of building materials. It is proposed to build one detached dwelling and a pair of semi-detached dwellings on this enclosed area.

5. Condition 2 of permission ref LA08/2015/0949/F states that no dwelling that adjoins any open space area shall be occupied until that open space has been laid out in accordance with the approved plans and these areas shall not thereafter be used for any purpose other than as open space.

6. Policy OS 1 of PPS 8 sets out a presumption against the loss of existing open space, irrespective of its physical condition and appearance. The appellant argued that the proposal did not involve loss of open space as the land in question was in use as a builder's compound, had never been used as open space and did not fall within the definition of open space as illustrated in the typology provided in Annex A of PPS 8. However, notwithstanding that it is currently enclosed and used for the storage of builder's equipment, the plot in question was approved, in association with adjoining land, as a purposely designed island of open space integral to the overall residential scheme. In this context I consider this area to have a clear public value as open space and to consequently constitute open space for the purposes of PPS 8. The proposal would involve the loss of existing open space.

7. Policy OS 1 also states that an exception to the presumption against the loss of existing open space will be permitted where it is clearly shown that redevelopment will bring substantial community benefits that decisively outweigh the loss of the open space. The appellant advanced no case in this respect. An exception will also be permitted under Policy OS 1 where it is demonstrated that the loss of open space will have no significant detrimental impact on the amenity, character or biodiversity of the area and where appropriate alternative provision is made.

8. While the appellant did not accept that the area in question constituted existing open space, he did argue that the proposal would have no significant detrimental impact on the amenity or character of the area. He also argued that the whole development i.e. the 36 dwellings approved under LA08/2015/0949/F, was overprovided with open space and that a reduction from 15% to 12%, as proposed, would be appropriate and compliant with the normal expectation of 10% as required under Policy OS 2. He referred to other cases where an amendment to a recently consented housing scheme, involving development of an area approved as open space for housing, was considered acceptable. The appellant argued these cases to constitute a relevant precedent. While all cases must be assessed on their particular characteristics and merits, I do consider it appropriate that the appellant's proposal for an amendment to the original approval, incorporating alternative open space provision, is considered.

9. The appellant's assertion that implementation of the proposal would leave a 12% open space provision for the whole of the 36 dwelling approved scheme (LA08/2015/0949/F) was not disputed. Neither was it disputed that this, being above the 10% as required under Policy OS 2, would be compliant with that policy in terms of quantum. It is stated in Policy OS 2 that the precise amount, location, type and design of open space will be determined having regard to the specific characteristics of the development, the site and its context. I have visited the appeal site and consider that the approved, rectangular area makes a vital contribution to the visual amenity and design integrity of the overall scheme and to develop it in the manner proposed would have a serious detrimental impact on the visual amenity and character of the area. I therefore conclude that the proposal for three new dwellings would involve the unacceptable loss of open space contrary to Policy OS 1 of PPS 8. The Council's objection in principle is upheld and its first reason for refusal based on Policy OS 1 is sustained.

10. Policy QD 1 of PPS 7 states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It requires development proposals to conform to nine stated criteria relating to matters including design, character and amenity. The Addendum provides additional planning policies on the protection of local character, environmental quality and residential amenity within established residential areas. Criterion (b) of Policy LC 1 of the Addendum requires that the pattern of proposed development is in keeping with the character and environmental quality of the established residential area.

11. It is proposed to construct three dwellings with in-curtilage car parking on a plot of approximately 0·1ha, bounded on three sides by the estate road and by open space on the other. The pair of semi-detached, two storey dwellings would front the east-west arm of the estate road while the detached dwelling would face the north-south arm. Consequently, the rear elevations of the semi-detached properties would face the side elevation of the detached property. A 1.8m high wall and some limited planting would mark the proposed boundary between the dwellings and the open space.

12. Criterion (c) of Policy QD1 requires that adequate provision is made for private open space as an integral part of the development. Objection was raised on the grounds that the proposed private open space provision was inadequate and reference was made to guidance in paragraph 5.19 of 'Creating Places' This guidance advises that, in respect of developments such as the appeal proposal, back garden provision should be calculated as an average space standard for the development as a whole, and should be around 70m² per house or greater. While the provision of 61 m² and 56 m² for Nos. 50 and 51 respectively, falls below 70m², the total rear garden provision for the three dwellings is approximately 235m², more than 70m² per dwelling. I consider the shortfall in provision for two individual dwellings to be offset by the fact that the proposed dwellings would border open space. In this context I judge the proposal to make adequate provision for private open space and conclude that criterion (c) would be complied with. Objection on the grounds of inadequate open space provision is not sustained.

13. It was argued that the proposed layout would give rise to overlooking, dominance and overshadowing. Criterion (h) of Policy QD1 requires that the design and layout of proposals 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. While criterion (h) was not mentioned in its second reason for refusal or Statement of Case, the Council referred to guidance in paragraph 7.16 of 'Creating Places'. This guidance advocates the provision of a minimum separation distance of 10m between the rear of new houses and the common boundary with other dwellings, to minimise overlooking. While this advice is aimed at situations where new development borders existing housing, I nonetheless regard it as a useful yardstick in the assessment of proposals for freestanding new residential development.

14. The rear of No. 50 looks onto open space and so the 10m standard, aimed at preventing overlooking and loss of residential amenity, is not engaged. There is a distance of approximately 9m between rear windows of Nos 51 and 52 and the party boundary with No 50. However, Nos 51 and 52 face the side elevation of No 50 and car parking spaces, as opposed to garden area, are proposed along the boundary of No 50 with Nos 51 and 52. In these circumstances I do not consider that the proposed layout would cause occupants of No. 50 to suffer any unacceptable loss of residential amenity through overlooking or over dominance and that consequently, that this minor breach of guidance is not critical. Objection on the grounds of unacceptable loss of residential amenity is not sustained.

15. Objection was raised on the grounds that the proposal would fail to create a quality and sustainable residential environment as it would fail to respect the character and environmental quality of the surrounding area contrary to criteria (a) and (c) of Policy QD 1 and criterion (b) of Policy LC 1. Criterion (a) of Policy QD 1 requires development to respect its surrounding context while criterion (b) of Policy LC1 seeks to ensure that the pattern of proposed development is in keeping with the character and environmental quality of the established residential area. Additionally, criterion (c) of QD 1 also states that where appropriate, planted areas or discrete groups of trees will be required along site boundaries in order to soften the visual impact of the development and assist in its integration with the surrounding area.

16. The scheme juxtaposes the rear and side elevations of dwellings with an area of open space, which I have found critical to the development as a whole in terms of design and character. The proposed boundary treatment, comprising a 1.8m high brick wall would appear as a stark and utilitarian edge to the open space. The proposed boundary planting would not adequately soften views from public aspects and I conclude this design aspect to present a harsh and unacceptable public aspect, detrimental to the character and amenity of the area. I consequently conclude that the proposal would fail, both to protect the character of the surrounding context and to create a quality and sustainable residential environment contrary to criteria (a) and (c) of Policy QD 1 and criterion (b) of Policy LC 1. The Council's second reason for refusal is sustained.

17. Third parties objected on the grounds that the proposal would cause traffic congestion and lead to conditions prejudicial to road safety. However the evidence presented does not establish that the extra vehicular traffic generated by three additional houses in a 36 house estate would have any significant impact on congestion or road safety conditions. The objection of third parties, in this respect

are not sustained. The Council's two reasons for refusal, that I have found sustained, are determining in this case.

This decision is based on the following drawings received by the Council on 25th October 2018:-
1:1250 scale Location Map numbered 01
1:500 scale Proposed Housing Layout numbered 02
1:100 scale Proposed Housing Types numbered 03

COMMISSIONER DAMIEN HANNON

List of Documents

Planning Authority:-	COU 1	Statement of Case
	COU 2	Rebuttal
Appellant:-	APP 1	Statement of Case
	APP 2	Rebuttal
Third Parties:-	TP1	Statement of Case of Cllr J. Nelson
	TP2	Statement of Case of Mr A. Scott