
Appeal Reference:	2023/A0029
Appeal by:	Paul Califf and Patrick McDonald
Appeal against:	The refusal of full planning permission
Proposed Development:	Proposed retention of existing detached domestic garage, access road, existing pillars, existing entrance gate and laneway
Location:	Grounds adjacent to no.16 Annaghmare Road
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/1768/F
Procedure:	Written representations and accompanied site visit on 31 st January 2024
Decision by:	Commissioner Cathy McKeary, dated 31 st July 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the development would:
 - be acceptable in principle;
 - be unacceptable in terms of scale, massing and design;
 - respect rural character;
 - contribute to ribbon development; and
 - have an unacceptable adverse impact on a Site of Local Nature Conservation Importance (SLNCI) and a priority habitat.
3. Section 45(1) of the Planning Act (NI) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act states that where regard is to be had to the Local Development Plan (LDP), the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
4. The Banbridge, Newry, and Mourne and Area Plan 2015 (BNMAP) operates as the relevant LDP. In the plan, the site is located within the countryside and within a SLNCI. There are no policies or proposals material to the appeal development except in regard to the SLNCI which I will address later in this decision.
5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for a Council area

is adopted. In this Council area, no Plan Strategy has been adopted yet. As such, during the intervening transitional period, the SPPS retains certain Planning Policy Statements (PPSs) including PPS2 – ‘Natural Heritage’ (PPS2), PPS7 (Addendum) – Residential Extensions and Alterations (APPS7), and PPS21 – ‘Sustainable Development in the Countryside’ (PPS21). The SPPS sets out the transitional arrangements to be followed in the event of a conflict between it and retained policy. Any conflict arising between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the SPPS. As no such conflict arises in this instance, the aforementioned retained PPSs apply.

6. The appeal site is located approximately 1 mile northwest of Crossmaglen and is a cut out of a field to the rear of 16 Annaghmare Road, which is a modestly sized, single storey dwelling, finished in render with a tiled roof. The northeastern boundary of the appeal site is defined by existing mature hawthorn hedging and post and wire fencing. The southeastern boundary is partly defined by the appeal entrance pillars and gates, and access. The southwestern boundary is defined by existing mature hawthorn hedging and trees. The northwestern boundary remains undefined within the larger agricultural field. The site slopes downwards from southeast to northwest. Dwellings at nos. 12 and 14 Annaghmare Road are located immediately to the southwest and to the northwest of the site respectively.
7. The appeal development access is defined by two pillars, one with a post box and a partial wall at the roadside flanking a new laneway. This then leads to further pillars, wing walls and large central double gates set back from the roadside, which provides access to the land around the appeal building. The appeal building is already fully constructed and is 21m in length, with a ridge height of 5.5m and a total footprint of 195m² (approximately). The building is finished in 300mm concrete block walls, red brown sheeting walls and roof, with an aluminium roller shutter door and smaller pedestrian door. On the day of my site visit, it was being used to store four tractors, vehicle wheels, a barbeque and some pallets.
8. Policy CTY1 of PPS21 identifies a range of types of development which, in principle, are considered acceptable in the countryside. One of these is an extension to a dwelling house where this is in accordance with the APPS7. While they may not always be direct extensions to dwellings, garages also fall to be considered under this policy document. Policy EXT1 of APPS7 indicates that planning permission will be granted for a proposal to extend or alter a residential property where all of four criteria are met. The Council considers that the scale, massing, design and external materials of the development are not sympathetic with the built form and appearance of the existing property and will detract from the appearance and character of the surrounding area, contrary to criterion (a) of APPS7. They also consider that there would be the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality contrary to criterion (c) of APPS7. A third party considers that the building is overbearing, contrary to criterion (b) of APPS7. The guidance set out in Annex A will also be taken into account when assessing proposals against those criteria.
9. Paragraph A11 of APPS requires that, ancillary garages should be subordinate in scale and similar in style to the existing property, taking account of materials, the local character and the level of visibility of the building from surrounding views.

The scale of this structure is not subordinate to or sympathetic with the built form and appearance of the existing property at 16 Annaghmare Road which is a modest single storey dwelling. The materials and design of the building are usually more associated with either agricultural or commercial use and do not reflect the domestic architecture of the property at no. 16.

10. Paragraph A13 of APPS7 states that in the countryside, ancillary buildings should be designed as part of the overall layout to result in an integrated rural group of buildings. As described above, again, the materials used do not reflect the existing dwelling and the boundary wall to the rear of the dwelling reinforces the perceived separation of the dwelling and appeal building. Furthermore, the creation of an additional access with new walls, pillars, and a gate, to exclusively serve the appeal building, all act to give it the appearance of a separate entity, distinct from the existing dwelling, rather than part of any integrated group of buildings.
11. Paragraph A24 of APPS7 indicates that development which requires the use of land outside the established curtilage of the property, will result in a detrimental change to rural character. The Council considers that the development constitutes an extension of curtilage of no.16 Annaghmare Road and is contrary to PPS21 in principle in that an extension to curtilage does not fall within any of the exceptions in Policy CTY1. The appellants consider that the curtilage of the dwelling includes the land beyond the rear boundary wall due to the septic tank and soakaway being located there, which is therefore being used in relation to the dwelling, ergo forms part of the curtilage. The Council disagrees and considers that it is not normal that the septic tank defines the curtilage, but rather that the curtilage of the dwelling in this case is defined by the boundary wall of 16 Annaghmare Road.
12. Even though the rear boundary wall of the dwelling has a gate which accesses the appeal site, aside from the septic tank and soakaway, the appeal development on the face of it, is functionally separate from the dwelling. The building is set to the rear of the dwelling at a lower level and does not read as part of, nor appears to be associated with, the existing dwelling. The separate access, with gates and pillars for the appeal building, further reinforces this. Neither party provided any definitive evidence of the extent of the curtilage. No Certificate of Lawfulness of Existing Use or Development has been provided and, in the absence of this, I cannot be certain whether the appeal site forms part of the lawful curtilage of no. 16.
13. As the wider area is rural in character, I am not persuaded that the design and materials of the building are inappropriate for the locality or that these in themselves, would detract from the appearance and character of the surrounding area. As a domestic garage, however, for the reasons given above, the appeal building is not sympathetic to the dwelling at no. 16 Annaghmare Road and is contrary to criterion (a) of Policy EXT1 of APPS7.
14. In accordance with Policy CTY1, all proposals for development in the countryside must be sited and designed to integrate sympathetically with their surroundings and to meet other planning and environmental considerations. The Council considers that the development, is contrary to criteria (a), (d), (e) and (f) of Policy CTY13 and criteria (a), (c) and (e) of Policy CTY14. Criterion (d) of CTY14 regarding ribbon development does not form part of the decision notice but is

included in the Council's statement of case. As this crosscuts with Policy CTY8, which was referenced within the decision notice, all other parties were aware of the Council's concerns in this regard and had the opportunity to comment. No prejudice has arisen and this issue is already before me. A third party also raised general concerns about adverse impacts on the rural area.

15. I concur with the appellants that, as the building is located to the rear of no. 16 Annaghmare Road and is sited downhill from the dwelling, it respects the landform in accordance with criterion (f) of Policy CTY13. The building also has a strong backdrop of mature vegetation with some existing vegetation on the appeal site's northeastern boundary, which along with the site topography, ensures that the building is not unduly prominent when viewed from the critical northeastern approach from in front of no. 18 Annaghmare Road towards the appeal site. Criterion (a) of Policy CTY13 and criterion (a) of Policy CTY14 are met. For the reasons already given above, the design and scale of the building, although inappropriate in relation to no. 16, it is nevertheless fairly typical of a modern style agricultural building. Therefore, the design is not inappropriate for the local area which is predominantly rural in character and it accords with criterion (e) of Policy CTY13.
16. The Council considers that the access arrangements contribute to a suburbanisation of the area and damage rural character. Red brick pillars and walls at no. 12 Annaghmare Road are located in proximity to the appeal pillars and walls which are also constructed of similar finish materials. I agree with the appellants that, due to this, the appeal walls and pillars are not atypical of the immediate area. Notwithstanding this, the access is sweeping, open and reads together with the walls, gates and pillars of the other adjacent properties. There is limited existing landscaping or natural screening to mitigate this impact and the ancillary works do not integrate with their surroundings, contrary to criterion (d) of Policy CTY13 and they damage rural character contrary to criterion (e) of Policy CTY14 of PPS21.
17. The access arrangements contribute to a suburban style build up when read with the adjacent dwellings and their associated gates, walls and pillars at nos. 12 and 16. The roadside pillar, wall, gate and access configuration all contribute to the formation of a separate entrance to the appeal building. Despite the appellants' position that it is ancillary to no. 16, this separate access arrangement for the appeal building does not respect the pattern of settlement exhibited in this local area where ancillary buildings share accesses with their host dwelling and therefore is contrary to criterion (c) of Policy CTY14 of PPS21.
18. Notwithstanding the existing vegetation and any potential road safety gains from creating a separate access, even if the access to no. 16 were to be closed up, I do not consider that these would outweigh the objections to the development. For the reasons given above the appeal development access is detrimental to the rural character of the area. For the reasons given, the appeal development does not comply with the aforementioned provisions of Policy EXT1 of APPS7 and Policies CTY13 and CTY14 of PPS21. The Council's fourth, sixth and seventh refusal reasons and the third party concerns are sustained to the extent specified.

19. The Council considers that there is an existing ribbon of development arising from the appeal development access and nos. 12 and 16 Annaghmare Road. Policy CTY8 states that buildings sited back, staggered or at angles and with gaps between them can still represent ribbon development, if they have a common frontage or are visually linked. It goes on to say that ribbon development creates and reinforces a built up appearance to roads, footpaths and private laneways. The appeal building is to the rear of a dwelling using its own access. The appeal access is not a building and the dwellings at nos. 12 and 16 are not visually linked due to the intervening mature trees. Despite the dwellings having a frontage to the road, there are only two of them and there is no existing ribbon of development on this section of the Annaghmare Road. For these reasons the appeal development does not contribute or add to a ribbon of development and Policy CTY8 and criterion (d) of Policy CTY14 of PPS21 are not offended. The Council's eighth refusal reason is not sustained.
20. The site falls within the Creenkill Grassland SLNCI as designated within BNMAP. Even allowing for the thickness of the demarking line on the relevant LDP map, the boundary of the designation clearly follows the rear boundary of no. 16 Annaghmare Road, which excludes the dwelling but includes the field to its rear, therefore including the appeal site. According to Northern Ireland Environment Agency (NIEA), Natural Environment Division (NED) its 2002 NIEA survey identified the appeal site as being within a species rich grassland and therefore also a priority habitat (lowland meadow). This is not disputed.
21. Policy CVN1 of the BNMAP states that planning permission will not be granted to development that would be liable to have an adverse effect on the nature conservation interests of a designated Site of Local Nature Conservation Importance. Criterion (c) of APPS7 requires that the proposal will not cause the unacceptable loss of, or damage to, trees or other landscape features which contribute significantly to local environmental quality. Policy NH4 of PPS2 states that planning permission will not normally be granted for a development proposal that is likely to have a significant adverse effect on the integrity of a Local Nature Reserve. Policy NH5 of PPS2 states that planning permission will not normally be granted for a development proposal which is likely to result in the loss of, or damage to known priority habitats. A third party also has concerns about damage to local ecology.
22. The Council states that in light of the consultation response from NED, which indicates that it is likely that this priority habitat has been lost from the site due to the development, and in the absence of any information from the appellants to the contrary, the proposal is contrary to Policy CVN1 of the BNMAP. The Council also considers that the development has resulted in significant losses to the Creenkill Grassland SLNCI, contrary to criterion c) of APPS7. However, the Council accepts that there is no evidence of tree and hedge removal on the portion of the SLNCI that constitutes the appeal site. Therefore, there has been no unacceptable loss of trees and criterion (c) of APPS7 is not offended. The Council also considers that it has not been demonstrated that the works carried out on site have not had an adverse impact on a site of local importance i.e. the SLNCI and priority habitat, that no mitigation or compensatory measures have been submitted for consideration and the development is therefore contrary to Policies NH4 and NH5 of PPS2.

23. In this instance the development has already been constructed and the appellants have stated that any removal of grassland or damage to the priority habitat occurred before they purchased the land and prior to the construction of the building. The other parties have not disputed this. In light of this, it does not necessarily follow that the appeal development in itself resulted in that loss or damage. Irrespective of when the loss or damage occurred, construction of the building will not have improved this situation, but the undisputed position is that the appeal development was not the cause of this.
24. The appellants also consider that the development meets the exception tests within Policies NH4 and NH5 of PPS2 as the lands located to the north of the appeal site within the designation remain unaffected by the development. These exceptions permit development where there is significant adverse impact (Policy NH4) and likely to result in loss of or damage to species, habitats or features (Policy NH5). The appellants have not provided substantive evidence to demonstrate that the proposal is of local importance and that the benefits of the proposed development outweigh the value of the site in accordance with Policy NH4. Nor am I persuaded that the benefits of the proposed development outweigh the value of the species, habitat or feature in accordance with Policy NH5. These exceptions are not met.
25. Policy CVN1 of BNMAP and Policies NH4 and NH5 of PPS2 are framed in the context of considering proposals for new development and do not appear to envisage scenarios involving retrospective development, being silent on this matter. Nevertheless, it is for the Council to justify their refusal reasons. In the evidential context I am not persuaded that there has been an adverse effect on the nature conservation interests of the SLNCI, a significant adverse impact on a Local Nature Reserve nor the unacceptable loss or damage to a priority habitat caused by this particular development. The Council's first, second and third refusal reasons are not sustained.
26. Third parties raised a number of concerns, namely damage to property, flood risk, and negative impact on residential amenity due to noise and disturbance from the development, overlooking, road safety and commercial use of the building. Alleged damage to property is a civil matter between the parties and I have been provided with no persuasive evidence to substantiate any increased flood risk in the area caused by the development, nor any unacceptable adverse impact on residential amenity due to noise or disturbance. Whilst a third party considers that the development overlooks their property and causes a lack of privacy, I was given no persuasive evidence to support this. Moreover, the building has no windows at a level which could cause overlooking into any dwelling or private amenity space. Criterion (b) of Policy EXT1 of APPS7 is met as the development does not unduly affect the privacy or amenity of neighbouring residents.
27. Regarding road safety concerns, I note that neither DfI Roads nor the Council had any concerns regarding this. From my own assessment on site I am not persuaded that domestic use of the appeal development would significantly increase the levels of traffic in the area that would prejudice road safety. Any concerns regarding the building being used commercially without planning permission are outside the remit of this appeal. In the evidential context these

objections either alone or in combination do not merit withholding permission. The third party concerns in these respects are not sustained.

28. The appellants provided planning application reference LA07/2023/2163/O as a comparable application in close proximity to the appeal site. They consider that it raises a noteworthy inconsistency. However full details were not provided and there was insufficient explanation on how that decision is contradictory to the Council's approach in this appeal. This does not assist the appellant's case.
29. The appeal development does not represent one of the types of development which are considered acceptable in the countryside for the reasons given above. One of the appellants presented some information to the Council that they are part of a vintage vehicle club and require the building to house vintage vehicles in a safe and secure location. Notwithstanding that there were several tractors in the building at the time of the accompanied site visit, no information in terms of numbers and types of vehicles to be stored there was provided to me, therefore I am not persuaded of a need for the building on this basis. Whilst the lawful extent of the curtilage to no. 16 has not been established by any party, notwithstanding this, I am not persuaded that these are overriding reasons why the development is essential and could not be located within a settlement. The development is therefore contrary to Policy CTY1 of PPS21. The Council's fifth refusal reason is sustained.
30. The matter of precedent was raised but given that I have found the proposal unacceptable in principle, this would not arise. For the reasons given above the Council's first, second, third and eighth refusal reasons and the third party concerns are not sustained. However, the fourth, fifth, sixth and seventh refusal reasons are sustained to the extent specified. These are determining and the appeal must fail.

This decision is based on the following drawings received by the planning authority:-

Drawing No.	Title	Scale	Date
PL-01 Rev B	Site location maps	1:2500	23 rd November 2022
PL-03	Existing detached domestic garage elevation and floor plans	1:100	4 th October 2021
PL-04	Existing site layout and existing site boundary and entrance details	1:1000 & 1:50	4 th October 2021
PL-05 Rev B	Proposed site layout plan	1:500	31 st March 2022

COMMISSIONER CATHY MCKEARY

List of Appearances

Planning Authority:- Maria Fitzpatrick (Newry, Mourne and Down District Council)
Wayne Donaldson (Newry, Mourne and Down District Council)

Appellants:- Barney McKeivitt (Blackgate Property Services)
Paul Califf (appellant)

Observer:- James Califf

List of Documents

Planning Authority:- Statement of case by Newry, Mourne and Down District Council
Rebuttal by Newry, Mourne and Down District Council

Appellants:- Statement of case by Blackgate Property Services on behalf of Paul Califf and Patrick McDonald
Rebuttal by Blackgate Property Services on behalf of Paul Califf and Patrick McDonald

Third Parties:- Statement of case by Adrian McConville