

Appeal Decision

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Appeal Reference:	2021/A0141.
Appeal by:	Sean and Linda Tumelty.
Appeal against:	The refusal of outline planning permission.
Proposed Development:	Single dwelling house (retirement).
Location:	Adjacent to and north-west of 150a Vianstown Road, Downpatrick.
Planning Authority:	Newry, Mourne & Down District Council.
Application Reference:	LA07/2021/1066/O.
Procedure:	Written Representations with Commissioner's Site Visit on 5 March 2024.
Decision by:	Commissioner Mark Watson, dated 25 March 2024.

Decision

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

Claim for Costs

2. A claim for costs was made by the Appellants against Newry, Mourne & Down District Council. This claim is the subject of a separate decision.

Reasons

3. The main issue in this appeal is whether or not the appeal development would be acceptable in principle.
4. 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 (LDP), 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 LDP, the determination must be made in accordance with the Plan unless material considerations indicate otherwise. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is within the countryside and outside of any settlement limit. The ADAP policies relevant to the countryside are now outdated, having been overtaken by regional policies for rural development and no determining weight can be attached to them. There are no other provisions in ADAP that are material to the determination of the appeal.
5. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out the transitional arrangements that will operate until such times as the local Council adopts a Plan Strategy for the whole

of the Council area. As no Plan Strategy has been adopted for the Newry, Mourne and Down District Council area, both the SPPS and other regional policies apply. In line with the transitional arrangements, as there is no conflict or change in policy direction between the provisions of the SPPS and retained policy contained in Planning Policy Statement 21 - Sustainable Development in the Countryside (PPS 21), PPS21 policy provisions remain applicable to the proposed development.

6. The appeal site comprises a modest, relatively flat, rectangular plot of land situated on the north-eastern side of a shared, private laneway that serves several dwellings and farmland. No. 150A, a single storey dwelling, lies immediately adjacent and south-east of the site. The appeal site itself constitutes a portion of that dwelling's curtilage and also contains its existing detached garage. A large length of the laneway from the roadside is concreted up to the point of entry to No. 150A, before giving way to a gravel surface for its remainder. There are large, conjoined barrel-roofed sheds situated adjacent and north-west of the site, with a silage storage area between the appeal site and those buildings. Two smaller agricultural sheds with pitched roofs lie adjacent and north-west of the large sheds. Beyond those and next to the mouth of the laneway where it meets with Vianstown Road, is a single storey dwelling, No. 150. Further along the laneway on the opposite side from the appeal site lies another single storey dwelling, No. 156. The laneway joins to the Vianstown Road opposite the junction with the Point Road.
7. On the opposite side of the laneway to No. 150 is another single storey dwelling and garage, No. 2 Carrickinab Road. There is a large yard area to its rear, accessed from the shared laneway. It accommodates rubble, building supplies and other related paraphernalia. Opposite No. 2 and to the north-west is a large dwelling under construction at the time of my site visit. An older, traditional style, two storey dwelling, No. 2 Point Road, lies opposite at the junction of the Point Road and Vianstown Road, being also directly opposite and west of the mouth of the laneway the site lies on. There is a chalet bungalow, No. 148 Vianstown Road, adjacent and north-east of No. 150. The Vianstown Road / Carrickinab Road is the priority road, with give-way markings at the junction between Point Road and Vianstown Road. There is no obvious demarcation between Vianstown Road and Carrickinab Road, with one simply transitioning into the other.
8. The appeal development seeks a dwelling on the site. A supporting drawing at planning application stage illustrates that the dwelling would face onto the lane. An example of a one-and-a-half storey dwelling with a ridge height of 7.2m from ground level (already deemed acceptable elsewhere by the Council) was provided, but only in order to illustrate the capacity of the site to accommodate a dwelling.
9. Policy CTY1 of PPS21 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. It goes on to state that planning permission will be granted for an individual dwelling house in the countryside in six cases. One of these is the development of a small gap site within an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. Another is a dwelling sited within an existing cluster of buildings in accordance with Policy CTY2a. It follows that if the development complies with Policy CTY8 or CTY2a it will also comply with Policy CTY1 of PPS21. Supplementary guidance on the integration of sites with clusters and infilling gap sites is contained in Building on Tradition - A Sustainable Design Guide for the Northern Ireland Countryside.

10. Policy CTY8 of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Policy CTY8 states that an exception will be permitted for the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy states that for its purposes, the definition of a substantial and built up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
11. The Council accepted that the site lay within an otherwise substantially and continuously built up frontage comprised of No. 150, the 4 farm sheds and No. 150A. However, the Council considered that the appeal site plot size did not accord with those of the in-situ buildings and the proposed development did not respect the existing development pattern along the frontage in terms of size, scale, siting and plot size.
12. Whilst there is a variety of plot sizes evident along the laneway, the development pattern is nevertheless characterised more by the large agricultural sheds and No. 150A itself, all of which sit facing onto the laneway and on larger plots compared to No. 150, which has a dual frontage onto both the laneway and Vianstown Road given its location just north-east of the junction between the road and laneway. Both parties had their own assessment of the plot sizes along the laneway frontage and a resultant average plot size. Irrespective of the dispute between parties, from my own assessment and the evidence as a whole, a dwelling on the appeal site, irrespective of its siting or design, would not respect the development pattern along the laneway. This would be reinforced by the fact the site represents a section of the existing curtilage of No. 150A. I therefore agree that the appeal development would not respect the existing development pattern along the laneway frontage in terms of size, scale, siting and plot size, thus failing to satisfy the exception under Policy CTY8 of PPS21. The Appellants' supporting material, including the Design and Access Statement submitted at application stage, would not persuade me otherwise. As a consequence, Policy CTY8 of PPS21 is not met when read as a whole. The Council's objections on this matter are sustained.
13. Policy CTY2a of PPS21 states that planning permission will be granted for a dwelling at an existing cluster of development provided all of six criteria are met. The Council considered that the appeal development only failed to meet the third criterion of the policy; that the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads. The Council considered that despite the cluster of buildings nearby, the private lane intersecting with the Vianstown Road to the west of the site did not constitute a crossroads. It also pointed to a lack of community buildings / facilities in the vicinity.
14. Although three roads join in proximity to the cluster, the Vianstown Road and Carrickinab Road run into one another without any delineation or change in alignment between the two roads. Point Road joins to the end of Vianstown Road at an angle, with give-way road markings between the two. This arrangement, as well as the shared laneway the appeal site lies upon joining the Vianstown Road opposite the junction with Point Road does not represent a crossroads or focal point for the purposes of the policy, although I accept it does in some respects appear

akin to a crossroads. Whilst the area may be locally termed Grant's Corner and despite the arrangement of buildings in and around the junction between Vianstown Road, Carrickinab Road, Point Road and the private laneway, I agree that this does not constitute a focal point as envisaged by the policy. Nor are there any community buildings or facilities associated with the cluster. The appeal development fails against the third criterion of Policy CTY2a of PPS21.

15. However, although the third criterion of Policy CTY2a is not met and notwithstanding my earlier Policy CTY8 conclusion in regard to the development pattern along the shared laneway, which is a different assessment entailing a more narrow geographic and spatial focus compared to that under CTY2a, the appeal development nevertheless complies with Policy CTY2a's broad overall intent. The appeal development would round off and consolidate the existing cluster of development without changing the character of the area. In this respect, there are compelling site-specific characteristics that to my mind outweigh the fact that the cluster is not associated with a focal point, even though the arrangement of roads and the shared laneway is akin to a crossroads to some degree. The appeal site comprises a modest portion of an existing curtilage, which is both visually associated with the adjoining dwelling and other adjacent buildings. It is well enclosed and its development for a modest dwelling could be facilitated, including access onto the laneway, without any adverse effect on the rural character of the area as a whole. As such, the proposal is not at odds with the spirit of Policy CTY2a of PPS 21 taken in the round.
16. There can be instances where failure to adhere to all criteria of a policy is not fatal, with that a matter of judgement individual to each proposal. In my judgement, I find the failure against the third criterion of Policy CTY2a is not in this case critical and the various site-specific matters referred to above outweigh that failure as there would be no demonstrable harm to any interests of acknowledged importance. The Council's first reason for refusal is not sustained.
17. For the reasons given above, the Council's first reason for refusal has not been sustained. The appeal proposal also meets Policy CTY1 of PPS21 and the related provisions of the SPPS, which along with my overall conclusions on CTY2a, outweigh the Council's sustained objection on CTY8. The appeal development is an acceptable in principle form of development in the countryside. The appeal shall succeed.
18. In respect to conditions, restricting the ridge height of the dwelling to 6.5m (including an allowance for under-build) would be necessary in order that it respect the existing nearby built development. I do not accept that the higher ridge of 7.2m suggested by the Appellants would be suitable given the particular context of the site and the height of the dwellings closest to the appeal site. Submission of levels in relation to a known datum point would also be necessary. The Council's suggested condition requiring, prior to any development taking place, submission of a consent to discharge to be agreed in writing with the Council, is unnecessary, as it is commonplace to ascertain a suitable means of sewage disposal prior to implementing development and a process itself administered under a separate legislative regime. A landscaping scheme including new planting along the rear site boundary would be necessary in the interests of rural amenity, as would replacement of any dying or damaged vegetation within the first 5 years of planting. The Appellants demonstrated through a supporting drawing submitted with the

application that the requisite 2m x 60m visibility splays could be provided. A negative condition requiring provision of these, prior to other development taking place, along with their permanent retention, would be necessary in the interests of road safety.

Conditions

1. Except as expressly provided for by Conditions 2, 3, 4 and 5 the following reserved matters shall be as approved by the Planning Authority – the siting, design and external appearance of the dwelling and the means of access thereto.
2. The dwelling shall have a ridge height not exceeding 6.5 metres from the lowest point of existing ground level within its footprint.
3. Any application for approval of reserved matters shall incorporate plans indicating existing and proposed ground levels all in relation to a known datum point.
4. No development shall take place until there has been submitted to and approved by the Planning Authority a landscaping scheme including the planting of new native species hedge along the north-eastern site boundary. The scheme of planting as finally approved shall be carried out during the first planting season after the commencement of the development. Trees or shrubs dying, removed or becoming seriously damaged within 5 years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Planning Authority gives written consent to any variation.
5. Before the commencement of any other development, visibility splays of 2 metres x 60 metres shall be laid out in both directions at the point of access onto Vianstown Road and shall be permanently retained thereafter.
6. Application for the approval of the reserved matters shall be made to the Planning Authority before the expiration of three years from the date of this decision.
7. The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

This decision is based on the following drawings submitted with the application to the Planning Authority.

DRAWING No.	TITLE	SCALE	DATE
01	Site Location Plan	1:1250	08/06/2021
02	Block Plan	1:500	08/06/2021

COMMISSIONER MARK WATSON

List of Documents

Planning Authority:- 'A' Statement of Case & Appendices (N,M & D DC)

Appellant:- 'B' Statement of Case & Appendices (F J Moore)
'D' Rebuttal Statement (F J Moore)

Third Party:- 'C' Statement Letter of Support (Cllr O Hanlon)