

Appeal Decision

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Appeal Reference:	2021/A0160
Appeal by:	Mr Stephen Gibson
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of 2 No. rural detached dwelling houses along with 2 No. domestic detached dwelling garages, ancillary works and associated landscaping
Location:	Lands approximately 38 metres (dwelling 01) and 88 metres (dwelling 02) south of No. 83 Salters Grange Road, Armagh
Planning Authority:	Armagh City, Banbridge and Craigavon Borough Council
Application Reference:	LA08/2021/0292/F
Procedure:	Written Representations with Commissioner's site visit on 4 th April 2024
Decision by:	Commissioner B Stevenson, dated 19 th April 2024

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council expresses concern that the Appellant submitted a Biodiversity Checklist and a Preliminary Ecological Assessment (PEA) as part of its Statement of Case and that this information was not before the Council at the time the decision was appealed against was made. The Council goes on to say that the admission of that information would offend Section 59 of the Planning Act (Northern Ireland) 2011 ("the Act"). The Appellant submitted the information in response to the Council's fourth and fifth refusal reasons. Those reasons state that it has not been demonstrated that the proposal is not likely to result in the unacceptable adverse impact on priority habitats or priority species including European or National protected species.
3. The Biodiversity Checklist and the Preliminary Ecological Assessment (PEA) were not submitted prior to the Council issuing its decision. However, the Appellant contends that he was not afforded an opportunity to provide the necessary ecological information despite regularly requesting updates on the progress of the application. He alleges that it was only upon finding out that the application was going to be refused that an extension of time (10 days) was provided before the refusal notice was issued. The Appellant contends that this timeframe was

inadequate to instruct an ecologist to compile the relevant information. He indicates that he advised the Council that it would be more likely September before the PEA could be completed but that the Council proceeded to issue the refusal.

4. The Development Management Officers Report (DMOR) dated 20th July 2021 indicates that the Council had concerns with the principle of development and to avoid putting the applicant to further expense that the Biodiversity Checklist and the PEA had not been requested. The decision notice is dated 18th August 2021. There is nothing in the background papers to indicate when the Appellant became aware that the Council would be refusing the application. But given the length of time between the date of the DMOR and the decision notice, I am satisfied that around 10 days was likely given before the Council issued its decision. To my mind, this would not be sufficient time to enable an ecologist to be appointed to undertake a Biodiversity Checklist and a PEA particularly as it was around covid times.
5. Given that limited time was given before the refusal notice was issued and that the Appellant submitted the information merely to address the fourth and fifth refusal reasons, I am satisfied that the matter of ecology was already before the parties and it is not a new matter. Moreover, the Appellant is entitled to address the Council's concerns in this appeal. In any event, the Council was given the opportunity to comment on both documents through the exchange of evidence despite choosing not to. No prejudice would therefore arise in admitting the information. Accordingly, the Biodiversity Checklist and the PEA are admissible, and Section 59 (1) is not engaged.

Reasons

6. The main issues in this appeal are whether the proposal would:
 - be acceptable in principle in the countryside;
 - erode the rural character of the area;
 - likely harm European protected species; and
 - have an unacceptable adverse impact on priority habitats or priority species.
7. Section 45(1) of 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. Where in making any determination, regard is to be had to the LDP, Section 6(4) of the Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Armagh Area Plan 2004 (AAP) and its Alteration No. 1: Armagh Countryside Proposals operate as the LDP for the area wherein the appeal site is located. The appeal site is within the countryside and is located outside any defined settlement limit in the AAP. The LDP contains no policy provisions in the AAP that are material to the appeal proposal.
8. Other policies of relevance to this appeal are set out in the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). It sets out transitional arrangements that will operate until a Plan Strategy has been adopted for the area. As no Plan Strategy has been adopted in this

area, those transitional arrangements apply. In accordance with the transitional arrangements, certain retained policies namely Planning Policy Statement 21 (PPS21) and Planning Policy Statement 2 (PPS2) together with the SPPS are material in this appeal. There is no conflict or change in policy direction between the provisions of the SPPS, PPS21 and PPS2 insofar as those policies relate to this appeal. The retained PPS21 and PPS2 therefore provide the policy context for determining the appeal proposal.

9. Policy CTY1 'Development in the Countryside' of PPS21 sets out a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. One of those listed is the development of a small gap site within an otherwise substantial and continuously built-up frontage that accords with Policy CTY8. Policy CTY1 also indicates that developments other than those listed will be permitted where there are overriding reasons why they are essential and could not be located in a settlement.
10. Policy CTY8 'Ribbon Development' of PPS21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Notwithstanding this presumption against ribbon development, the policy permits under the exception test 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.
11. The Council expresses concern that the appeal site does not represent a small gap site within a substantial and continuously built up frontage. The policy defines a substantial and built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear. The word 'including' indicates that Policy CTY8 does not exclude situations where there is accompanying development to the rear. The Appellant raises the issue of curtilage and the legal judgement *Sutcliffe v Calderdale BC (1982)*. However, the exception test under Policy CTY8 does not relate to curtilage but whether there is a line of 3 or more buildings along a road frontage. A building has frontage to a road if the plot on which it stands abuts or shares a boundary with the road. This aligns with appeal decision 2020/A0037 that was raised by the Appellant.
12. The appeal site is part of a larger agricultural field and is located on the eastern side of Salters Grange Road between two bungalows (Nos. 81 and 83). No. 81 is to the south and No. 83 is to the north. At No. 81, there is a bungalow and an ancillary garage. It has its own driveway that provides access onto Salters Grange Road. Adjacent and behind this dwelling and detached garage are other buildings and a sand arena. A separate laneway south of No. 81 provides access to those buildings and the sand arena. There are ancillary buildings in the yard surrounding the bungalow to the north (No. 83). There is one vehicular entrance that provides access to that bungalow and its yard area. The gable-end of that bungalow fronts onto the road. Opposite the site on the other side of Salters Grange Road is another dwelling. An orchard is to the north, and a quarry is north-west of the appeal site.

13. The Appellant states that all the existing buildings at No. 81 share a common access laneway and that both the sets of buildings located at No. 81 and No. 83 are part and parcel of the curtilage of the existing buildings and all the buildings have direct frontage, as the existing laneway fronts the roadway. At No. 83, the dwelling and the buildings within its yard area are accessed by a private laneway and there is no physical separation between them. Those buildings are therefore on one plot. The dwelling at No. 83 and the adjacent building in the yard have frontage to the road given that their plot abuts it. The other buildings in the yard do not have frontage as a building is in front of it.
14. The detached dwelling (No. 81) and its ancillary detached garage have frontage to the road as its plot abuts the road. Whilst those buildings adjacent to No. 81 can gain access into the plot of the detached dwelling and its detached garage at No. 81 via a gate, it is a secondary access. The other buildings and the sand arena have their own separate main access laneway and are generally divided from the dwelling, its detached garage, and its garden by a fence. To my mind, two separate plots exist with the dwelling and its ancillary garage at No. 81 representing one plot, and the adjacent buildings and the sand arena on another.
15. Nevertheless, the buildings wholly behind the detached dwelling and detached garage cannot be counted as they are to the rear and do not have frontage. In any event, given that an access alone does not constitute frontage, all the buildings adjacent to the dwelling and its detached garage at No. 81 do not have frontage onto the road. They therefore do not make up part of the substantial and built up frontage.
16. The Appellant argues that development has commenced for an approved dwelling and that consideration should be given to it. The Appellant refers to planning application LA08/2020/1527/F but in Appendix 1 of the Appellant's Statement of Case, the planning details are for LA08/2020/1525/F. Given that no details have been provided for LA08/2020/1527/F, I can only comment on LA08/2020/1525/F. It was apparent from my site visit that that dwelling approved under LA08/2020/1525/F has not been erected. The policy refers to 'buildings' and 'existing development pattern along the frontage'. Given the policy wording, I am not persuaded that future buildings can be considered. It therefore does not count towards the substantial and built up frontage and is not part of the existing development pattern along the frontage. Notwithstanding this, the appeal site lies within a substantial and built up frontage comprising the detached bungalow and its detached garage at No. 81, and the detached dwelling at No. 83 and one of its ancillary buildings.
17. The Council alleges that the appeal site could accommodate more than two dwellings, that it is not a small gap site and that the appeal proposal would not respect the existing development pattern. However, the Appellant contends that the appeal site could only accommodate a maximum of two dwellings based on the existing plot sizes. The amplification text of the policy goes on to state that for the purposes of the policy, the 'gap' is between buildings.

18. The gap between the closest part of the building at Nos. 81 and 83 is approximately 116 metres. The gap could accommodate more than two dwellings while respecting the neighbouring plot sizes at Nos. 81 and 83. No. 81's plot measures approximately 1770m². The Appellant considers the plot of No. 83 to incorporate land beyond the yard area to the east. However, this portion of land to my mind does not make up part of the plot. I therefore calculate No. 83's plot to be much less than 2182m² as suggested by the Appellant. The proposed dwellings' plot sizes would each be 2180m² and 2924m². Their plot sizes would be significantly larger than that of Nos. 81 and 83. No. 81's plot frontage width is 30.8 metres and No. 83's is 35.5 metres. In comparison, the frontage width for the proposed dwellings would be significantly wider at approximately 44 metres and 65 metres.
19. Given that the plot sizes and frontage widths of the proposed dwellings would be considerably larger than Nos. 81 and 83, the appeal proposal would fail to respect the existing development pattern. Moreover, more than two dwellings could be accommodated on the gap site while respecting the existing development pattern.
20. The Appellant argues that there is a similar pattern of existing developments along the Salters Grange Road south of the appeal site. He goes on to say that the appeal proposal would consolidate development between the existing buildings at Nos. 81 and 83 similar to existing development at Nos. 71, 74, 75 and 79 further south of the appeal site. However, those properties at Nos. 71, 74, 75 and 79 are a significant distance away and would not be part of the substantial and continuously built up frontage pertinent to this appeal. In any event, I have already concluded that there is a substantial and built up frontage. Moreover, given their separation distance, Nos. 71, 74, 75 and 79 do not form part of the existing development pattern along the frontage.
21. The appeal site also provides an important visual break between the developed appearance at Nos. 81 and No. 83 and this relief helps maintain rural character. As I have already found that the gap could accommodate more than two dwellings, it is therefore not sufficiently small for the purposes of Policy CTY8. Moreover, the site itself provides an important visual break. Accordingly, the appeal proposal offends Policy CTY8 of PPS21 and the SPPS respectively. The Council's second reason for refusal is therefore sustained.
22. The Appellant contends that properties that have a common frontage or are visually linked can form part of the frontage. Paragraph 5.33 of the amplification text of 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 they are visually linked." The reference to visually linked is a test for establishing whether ribbon development exists whereas the exceptional test relates to frontage. The Appellant alleges that the planning department published guidance on the interpretation of commencement with regards to Policy CTY8. However, the Appellant did not provide the exact details of that guidance. I therefore cannot comment on it.
23. Policy CTY 14 'Rural Character' of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental

change to, or further erode the rural character of an area. A new building will be unacceptable in certain circumstances. The Council's third refusal reason states that the proposal would fail to respect the traditional pattern of settlement exhibited in that area, and would if permitted, create a ribbon of development, and would therefore result in a detrimental change to further erode the rural character of the area. This relates to criteria (c) and (d) of Policy CTY14.

24. As I have already found that the appeal proposal would not respect the traditional pattern of development and not meet the exception test under the infill policy, the appeal proposal would as a consequence offend criterion (c) of Policy CTY14. It would also offend criterion (d) of Policy CTY14 in that it would create a ribbon of development. I therefore conclude that the appeal proposal would cause a detrimental change to, or further erode the rural character of the area. The Council's third reason for refusal is sustained.
25. Policy NH2 'Species Protected by Law' of Planning Policy Statement 2 (PPS2) states that planning permission will only be granted for a development proposal that is not likely to harm a European protected species. The policy goes on to say that in exceptional circumstances a development proposal that is likely to harm these species may only be permitted in certain circumstances. Policy NH2 also states that planning permission will only be granted for a development proposal that is not likely to harm any other statutorily protected species and which can be adequately mitigated or compensated against. The Council's fourth refusal reason states that it has not been demonstrated that the development is not likely to harm European or National Protected Species.
26. Policy NH5 'Habitats, Species or Features of Natural Heritage Importance' of PPS2 states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to known priority habitats, priority species or features of importance. The Council's fifth refusal reason states that it has not been demonstrated that the development is not likely to result in the unacceptable adverse impact on, or damage to priority habitats or priority species or features of natural heritage importance. Prior to the submission of a Biodiversity Checklist and a PEA, NED informed the Council that they had concerns over the impact on bats, badgers and wild birds. The Appellant commissioned ATEC to prepare a Biodiversity Checklist and a PEA. Both were submitted at appeal stage. The Council had no comment to make on them.
27. The completed Biodiversity Checklist identifies that the appeal site and its immediate environs contain habitats that can provide potential for protected species including badgers, nesting birds, smooth newts and bats. A PEA was therefore deemed necessary. The PEA concludes that results from the site survey confirm that with the exception of hedgerow vegetation, there are no NI Priority Habitats within the development zone. It indicates that the main development area comprises species poor improved grassland and that this type of grassland does not have a recognised conservation status and is assessed as having 'low' conservation value. The PEA states that hedgerows are a NI priority habitat, and that some roadside hedgerow may be removed to provide sightlines and access to the site. It recommends that where loss of vegetation is unavoidable, this should

be reinstated and enhanced with compensatory, like-for-like replacement native species planting.

28. The PEA recommends that the mature trees that occur along the southern boundary marked 'B2' on the map in Figure 2 should have protection measures applied during construction works. Nevertheless, NIEA Natural Environment Division (NED) informed the Council during the processing of the application that the drawings do not indicate that the mature trees along the southern boundary of the appeal site would be retained, particularly at the south eastern corner of the development. Whilst the drawing numbered 07 indicates that two trees would be retained along that boundary, all trees along that southern boundary could be retained by a suitably worded condition if the proposal is to be permitted. Nevertheless, NED goes on to recommend that trees that are to be felled or lopped as part of the development would require an assessment of their suitability for roosting bats.
29. The PEA indicates that none of the mature trees within the appeal site were assessed as having significant bat roosting potential and that the trees that occur within the southern boundary marked 'B2' were all assessed as having either 'low' or 'negligible' bat roosting potential. It goes on to say that the appeal proposal would be unlikely to have an impact on roosting bats and that the removal of roadside hedgerow would be unlikely to have a significant impact on foraging and commuting bats and that replacement planting with native hedgerow species would mitigate for any vegetation loss. It goes on to conclude that the hedgerow vegetation within the appeal site offers potential for breeding, nesting and feeding birds and it recommends that to avoid destroying nesting birds that any necessary clearance of vegetation should be undertaken outside the bird nesting season. If the proposal is permitted, I am satisfied that a replacement native species hedgerow could be conditioned on any approval.
30. The PEA identifies no evidence of badger activity on the appeal site and concludes that the proposed dwellings would be unlikely to have a significant impact on badgers. The PEA also finds that there are no areas of standing water or suitable smooth newt habitat within the appeal site and that the likely impact of the development on smooth newts would be low.
31. The PEA also concludes that the appeal site does not form part of any site that has been nationally, internationally or locally designated for its nature conservation importance. It does however indicate that the site is within 500 metres of Annacramph Meadows Area of Special Scientific Interest (ASSI) and that a small watercourse which is a tributary of the River Callan flows approximately 125 metres north-east of the appeal site. The PEA states that the River Callan is hydrologically connected to Lough Neagh ASSI and Lough Neagh and Lough Beg Special Protection Area (SPA) and Ramsar sites.
32. The Appellant recommends that all works on site would apply best environmental practice and would be in accordance with all relevant Pollution Prevention Guidelines (PPGs) including PPG1 "Understanding your environmental responsibilities – good environmental practices", GPP5 "Works and maintenance in or near water" and PPG6 "Working at Construction and Demolition Sites". He

also indicates that the storm drainage of the site, during site clearance, construction and operational phases of the development should be designed to the principles of Sustainable Drainage Systems (SuDS) in order to minimize the polluting effects of storm water on waterways.

33. The Assessment concludes that if the above best practice methods are followed that the predicted impacts of the appeal proposal on designated/protected sites would be low. Given the above findings of the undisputed Biodiversity Checklist and PEA, I am satisfied that subject to the inclusion of suitably worded conditions the appeal proposal would neither likely harm European protected species nor result in the unacceptable adverse impact on priority habitats, priority species or features of importance. In addition, given the distance of the site from the tributary of the River Callan, I am content that the appeal proposal would not likely have a significant effect on Lough Neagh ASSI and Lough Neagh and Lough Beg SPA and Ramsar sites. The appeal proposal would not offend Policies NH2 and NH5 of PPS2. The Council's fourth and fifth reasons for refusal are therefore not sustained.
34. The Appellant alleges that planning precedent has been set by the Council under two planning applications (LA08/2019/1512/F and LA08/2021/0093/F). Those permissions are distinguishable from the appeal proposal as they are not on all fours and their site context differs.
35. Given that Policy CTY8 was not met read as a whole, and no overriding reasons were presented to demonstrate that the proposal is essential, the appeal proposal would also offend Policy CTY1 of PPS21 and the SPPS. The Council has therefore sustained its first reason for refusal.
36. As three of the five reasons for refusal are sustained and they are determining, the appeal must fail.
37. This decision is based on:

Drawing Number	Drawing Title	Scale @A2	Date Received by Council
01	Site Location Map, Location Overview Map and Existing Site Topographical Survey	1:2500; 1:1000	17 Feb 2021
02	Existing Site Feasibility Analysis	1:1000	17 Feb 2021
03	Proposed Dwelling 01 Floor Plans and Specification	1:100	17 Feb 2021
04	Proposed Dwelling 01 Elevations	1:100	17 Feb 2021
05	Proposed Dwelling 02 Floor Plans and Specifications	1:100	17 Feb 2021
06	Proposed Dwelling 02 Elevations	1:100	17 Feb 2021
07	Proposed Site Layout Plan and Proposed Landscaping & Management Plan	1:500	17 Feb 2021
08	Proposed Garage Plans, Elevations and Proposed Boundary Treatment Details	1:100; 1:50	17 Feb 2021

COMMISSIONER B STEVENSON

List of Documents

Planning Authority: -

A Statement of Case

A1 Rebuttal Statement

Appellant: -

B Statement of Case