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<b>Appeal Reference:</b>	2021/A0181
<b>Appeal by:</b>	Mr C McCord
<b>Appeal against:</b>	The refusal of full planning permission
<b>Proposal:</b>	Proposed detached dwelling
<b>Location:</b>	Rear garden of 65 Antrim Road, Lisburn
<b>Planning Authority:</b>	Lisburn and Castlereagh City Council
<b>Application Reference:</b>	LA05/2020/0971/F
<b>Procedure:</b>	Written Representations with Commissioner's site visits on 23 February 2024 & 19 June 2024
<b>Decision by:</b>	Commissioner B Stevenson, dated 21 June 2024

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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Two issues have arisen regarding the ownership of the appeal site. One of the third parties alleges that the appellant is not in actual possession of all the appeal site and that the use of the laneway is shared amongst the owners of certain properties. That laneway is part of the appeal site. In addition, the third parties and the Council allege that the property at No. 65 was up for sale and has since been sold. They contend that the sale of the house would introduce another party onto the laneway. The appeal site does not include the dwelling itself (No. 65) but does include the land in front of it. The appellant proposes to remove the existing wall of No. 65 that runs parallel to the footpath and use the area in front for cars to pass each other at the laneway entrance.
3. Section 42 of the Planning Act (Northern Ireland) 2011 prohibits the Commission from entertaining an appeal against the refusal of planning permission unless it is accompanied by a certificate relating to the ownership of the appeal site. Certificate A conveys that the appellant is in actual possession of every part of the land to which the appeal relates. The applicant for planning permission is identified as Mr C McCord on the Council's decision notice and an appeal was submitted on 22 December 2021. Certificate A was completed on both the application form and appeal form identifying Mr C McCord as the owner of the appeal site. Those forms indicate that Mr C McCord's address is No. 65 Antrim Road.
4. A third party provided details of the deeds for Nos. 61, 63 and 65 Antrim Road together with land registry maps. Those deeds indicate that those properties have a right of way over the laneway. The appellant also submitted at planning

application stage title documents relating to No. 65. Those documents confirm that the owner of No. 65 has right of way only over the laneway that is identified within the appeal site boundary. With regards to the selling of the property at No. 65, a photograph of the dwelling with an estate agency sold sign erected in front of it is in the evidence before me. The parties provided no other documentary evidence regarding the alleged sale.

5. The Commission sought clarification from the appellant regarding the land ownership matter and he submitted a revised Certificate of Ownership. The appellant completed Certificate D. Certificate D is completed when the applicant is unable to issue a certificate. The appellant indicates that the owner of the laneway is unknown to him and that he was unable to identify the landowner through land registry searches and local research. He says that due enquiries were made but he is unable to issue a certificate which would satisfy the requirements of Section 42(1)(c) of the said Act. Accordingly, the appellant completed Certificate D and placed an advertisement in the local newspaper on 21 March 2024 giving public notice of the appeal proposal.
6. The appellant also states that despite No. 65 having been marketed for sale at a time, the property never sold due to the outstanding appeal decision and its impact on the front boundary walls of No. 65. He confirms that No. 65 remains in his ownership and that he has control of the land necessary to deliver the access improvements proposed. Notwithstanding that I did not observe an estate agency sign erected, I accept that the house (No. 65) was placed on the market given the photographic evidence. While the Council and the third party allege that the property has now been sold, the photograph however does not prove that the property exchanged hands. The appellant confirms that the property never sold due to the pending appeal. Given this and that the appellant placed an advertisement in the local newspaper serving notice of the proposal, on the balance of probabilities, I am satisfied that there is a valid appeal before me.
7. The Council withdrew its second reason for refusal as the Department for Infrastructure (DfI) Roads informed them that the B101, between its junction with Westbourne Terrace to the south and its junction with the A513 Derriagh Road to the north, is no longer classified as a Protected Route. No other party has raised any concerns under the Protected Routes policy. As this part of the road is no longer identified as a Protected Route, the relevant policy relating to Protected Routes is no longer engaged. In this evidential context, I will therefore focus my decision on the Council's remaining reason for refusal and the third parties' concerns.
8. Given that the Council's Local Development Plan 2032: Plan Strategy (PS) was adopted post the exchange of the evidence, the Commission requested in advance of the hearing written comments from the parties involved in the appeal on the Council's adopted PS. The Council proposes revisions to its remaining first reason for refusal. Those changes reflect the corresponding policies in the Council's PS. All parties involved in the appeal had an opportunity to consider the proposed revisions to the refusal reason, therefore no prejudice arises. As I must have regard to the adopted PS, its relevant policies that the Council alleges that the appeal proposal would now offend are before me and are thus considered in this appeal.

## Reasons

9. The main issues in this appeal are whether the appeal proposal would prejudice road safety and adversely affect residential amenity.
10. Section 45(1) of the Planning (Northern Ireland) Act 2011 requires regard to be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Section 6(4) 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.
11. As the Council recently adopted its Plan Strategy (PS), in accordance with the Planning (LDP) Regulations (Northern Ireland) 2015 (as amended), the LDP comprises the Departmental Development Plan (DDP) and the PS read together. The DDP in this appeal is the Lisburn Area Plan 2001 (LAP). The legislation also requires that any policy contained in the LAP and those of the PS must be resolved in favour of the latter. In May 2017, the Court of Appeal declared that the adoption of the 2014 version of the Belfast Metropolitan Area Plan (BMAP) was unlawful. While the draft 2004 version of BMAP (dBMAP) is not a DDP or a LDP, it remains a potential material consideration.
12. In the LAP, the appeal site is located within the settlement limit of Lisburn and is on unzoned land. In dBMAP, the site is also on unzoned land within the Lisburn development limit. The proposed dwelling would be accessed from the Antrim Road. That road is identified for information only as a Protected Route in the LAP and dBMAP. As previously mentioned, the Council states that the relevant section of the Antrim Road is no longer identified as a Protected Route. No policy provisions are in either plan that are material to the appeal proposal.
13. Policy TRA2 'Access to Public Roads' of the PS states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where: (a) it will not prejudice road safety or significantly inconvenience the flow of vehicles; and (b) it does not conflict with Policy TRA3 Access to Protected Routes. The second criterion is no longer engaged. I will therefore focus my consideration on criterion (a) of Policy TRA2 of the PS.
14. Other relevant policy is set out in the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). It outlines the transitional arrangements that will operate in circumstances where a PS has yet to be adopted. As the PS is adopted for the area wherein the appeal site is located, those transitional arrangements no longer apply, and the policies retained under paragraph 1.13 of the SPPS cease to have effect. The appellant refers to Planning Policy Statement 7 'Quality Residential Environments' (PPS7) and one of its Addenda. However, PPS7 and its Addenda are no longer retained. In any case, that policy and its Addenda are not in dispute by the Council or the third parties. Neither is Planning Policy Statement 3 'Access, Movement and Parking' (PPS3) retained.
15. The appeal site is located behind two storey terrace dwellings (Nos. 61, 63 and 65) that face onto the Antrim Road and two detached dwellings that front onto Monaville Drive. It is a relatively flat site and is overgrown in grass. The backland site is accessed from Antrim Road via an existing laneway that runs between two end-

terrace dwellings (Nos. 65 and 67). The proposal is for a detached three bedroom two storey dwelling that would be accessed from that laneway.

16. To the rear of the terrace dwellings (Nos. 61, 63 and 65) and east of the appeal site is a recently constructed dwelling (No. 59B). That dwelling is accessed from the Antrim Road via another access. There are also two detached single garages behind the rear gardens of Nos. 67 and 69 Antrim Road. Access to those two garages is from the laneway.
17. Paragraph 1.14 of the SPPS indicates that all Departmental planning documents which will continue to be treated as material considerations after the expiry of the transitional period are listed on the Department's website. The list includes Development Control Advice Notes (DCANs). DCAN 15 'Vehicular Access Standards' (DCAN15) is raised in this appeal. Paragraph 6.303 of the SPPS also states that in assessing development proposals, planning authorities must apply the Department's published guidance.
18. While the Department for Infrastructure (DfI) Roads initially expressed concerns regarding the proposed access arrangement for the proposed dwelling, in its final response to the Council, DfI Roads had no objections to the proposal. Nevertheless, the Council refused the proposal on the basis that it would offend the SPPS and Policy TRA2 of the PS in that the appeal proposal would allegedly involve the intensification of the use of an existing access onto a public road and that it had not been demonstrated that the nature and scale of the development contributes to the creation of a quality residential environment. The Council also alleges that the existing access is substandard, and that the proposal would harm the character of the existing development.
19. The Council argues that the use of the access point to the proposal would impede the flow of traffic in and out of the site. Policy TRA2 states in bold font that "consideration will also be given to (i) the nature and scale of the development, (ii) character of existing development, (iii) the contribution of the proposal to the creation of a quality environment, (iv) the location and number of existing accesses and (v) the standard of the existing road network together with the speed and volume of traffic using the adjacent public road and any expected increase." This essentially repeats Policy AMP2 of PPS3. The Council argues that the appeal proposal would offend the first, second and third bullet points of Policy TRA2. No other planning policies are in contention by the Council.
20. The appellant contends that areas of hardstanding and parking between the back of the footway and the front of dwellings along the length of the Antrim Road is typical of the area. The stamped refused drawing No. 04 indicates that the intention would be to remove the front boundary wall of No. 65 and the area in front of that end-terrace dwelling would be used for waiting vehicles accessing the laneway. While I observed cars parked off-street in front of properties on the Antrim Road, I saw no other access arrangement onto Antrim Road that is akin to this proposed access arrangement. The proposed access arrangement is not common place as alluded to by the appellant. It is uncharacteristic of the area.
21. This part of the Antrim Road is heavily trafficked. DfI Roads confirmed in one of its consultation responses to the Council that based on measured traffic speeds of 31 miles per hour on the priority road and a footway width of 2.4 metres that visibility

splays of 2.0 metres by 60 metres would be required. Full planning permission (LA05/2017/0095/F) was previously granted on 22<sup>nd</sup> January 2018 for a detached dwelling on the appeal site. The access arrangement approved for that dwelling was from Monaville Park. Two dwellings were previously refused on the appeal site on 19<sup>th</sup> October 2016 (LA05/2016/0756/F). In that refused application, the width of the subject laneway was found to be unacceptable. There are also two further planning histories (S/2001/1263/O and S/2006/1300/O) on the appeal site. Both were for a single dwelling with one approved and one refused. The access to those approved and refused dwellings were from the same laneway as that proposed to be used in this appeal. Those two decisions lapsed a considerable time ago.

22. The appellant argues that since the 2006 approval (S/2006/1300/O), there has been no change in the planning policy context framed by PPS3 and DCAN15. He also contends that the advice on access width in DCAN15 relates to the formation of new vehicular accesses only and that the re-use and improvement of an existing vehicular access within a settlement limit is a matter of judgement for the decision-maker. While PPS3 no longer applies, Policy TRA2 of the PS that replaces it, explicitly states in its amplification text that “the use of an existing access **must** be in compliance with the requirements of the Department’s DCAN15” (my emphasis). In addition, DCAN15 states that its purpose is to give general guidance on the standards for vehicular access and paragraph 1.2 of the Advice Note refers to proposals for a new access or the intensification of use of an existing access.
23. Considering these factors, I am satisfied that DCAN15 is a material consideration in assessing the access arrangement for the proposed dwelling. Given that DCAN15 was published prior to permission being granted for the lapsed approval (S/2006/1300/O) on the appeal site, I accept that the planning policy context between that permission and this appeal are relatively similar, and in the more recently refused application (LA05/2016/0756/F).
24. The Council contends that the proposal would result in intensification of the lane up to 50% and that this would be significantly above that set out in the guidance. Paragraph 1.2 of DCAN15 states that intensification is considered to occur when a proposed development would increase the traffic flow using an access by 5% or more. The appellant indicates that the proposed single dwelling would generate 6 car-based trips over the day based on the Trip Rate Information Computer System (TRICS) database and that this volume of traffic generation associated with the proposal would be very low equating to 1 car trip every 2 hours over a 12 hour day. The number of trips that the appellant alleges the proposed dwelling would generate is undisputed by the parties.
25. Nevertheless, there is disagreement between the parties over how many use the laneway to access the rear of their property. The appellant indicates that there are existing vehicle users of the laneway. On the two occasions that I visited the site, I observed two detached single garages that are accessed from the laneway and two small cars parked in the backland. One of the small cars appeared to be abandoned. In this evidential context, I accept that the occupiers of some of the surrounding dwellings are currently using the laneway to access and park their small cars to the rear of their properties. However, the number of cars currently using the laneway for access is minimal. Notwithstanding that the number of trips generated from the proposed dwelling would be low, given the limited number of vehicles currently using

the laneway, I accept that the development would result in intensification of the use of an existing access.

26. The Council indicates that a DfI Roads representative measured the existing laneway as 2.7 metres wide. While the appellant's traffic consultant refers to the laneway width as being approximately 2.75 metres, 2.71 metres is annotated on the appellant's stamped refused drawing numbered 04. On the balance of probabilities, I accept that the width of the laneway is 2.71 metres. The Council and the third parties argue that the vehicular entrance width would be sub-standard and that a more suitable access is available to the appeal site at Monaville Park. The stamped refused drawing numbered 04 indicates that the proposed removal of the wall at No. 65 would mean that the proposed vehicular entrance of the laneway would be approximately 6.32 metres in width before narrowing to 2.7 metres.
27. Under the sub-heading 'Layout of Accesses for Single or Paired Dwellings', paragraph 9.3 of DCAN15 states that "the minimum width of a single access will normally be 3.2 metres with a maximum width of 5.0 metres". Under the sub-heading 'Layout of Other Accesses', paragraph 10.2 states that the minimum width of the access shall be 6.0 metres for a two-way access and 3.75 metres for a one-way access.
28. Given that the entrance of the laneway would be approximately 6.32 metres wide, I find its width at this point acceptable. However, the rest of the laneway would remain at 2.71 metres wide. Despite seeing two small cars parked in the backland, the laneway width is narrow. This is further emphasised by the gables of the two terrace blocks abutting either side of the laneway. From my assessment on site, given its narrow width together with the terrace buildings on either side, I am not persuaded that those driving larger cars, jeeps or delivery vehicles could visit and leave the proposed dwelling via the laneway safely.
29. The amplification text of Policy TRA2 states that "within settlements there is a need to secure a higher level of design, layout and landscaping for residential development. The number of accesses onto the public road needs to be balanced with the greater emphasis on the overall quality of design and sustainability of development." The appellant contends that the provision of the passing bay in front of No. 65 would provide betterment over the current arrangement. However, the Council and the third parties express concern with that layout and its impact on pedestrian safety.
30. The appellant's stamped refused drawing indicates that the widening of the entrance to 6.3 metres is for the first 5.0 metres when measured from the kerb line, before the laneway tapers in to approximately 2.71 metres. The 5 metres distance takes in the width of the footpath. The appellant indicates that this is to allow for a two-way access scenario where one car would exit the laneway and one car would enter the laneway simultaneously. In this scenario, the vehicle that would enter the laneway would wait off the road in front of No. 65. A vehicle that makes this manoeuvre would be stationary until the other car exits the laneway. This access arrangement is the same as that previously approved in the lapsed permission (S/2006/1300/O) and in those refused permissions (S/2001/1263/O and LA05/2016/0756/F).
31. Given the dimensions and my on-site observations, I am not persuaded that there would be sufficient space for a standard car to wait in front of No. 65 and provide

adequate clearance without the vehicle overhanging most of the footpath. The waiting vehicle on the footpath would cause an obstruction to pedestrians using the footpath. This obstruction would inconvenience pedestrians as it would force them onto the public road and thus prejudice their safety. The removal of the wall and the waiting of a vehicle that would overhang the footpath while taking up the area in front of No. 65 means that this access arrangement would not contribute to the creation of a quality environment for pedestrians or other road users on the Antrim Road.

32. As the proposal would encourage a vehicle to wait in front of the dwelling at No. 65 and this arrangement would block the footpath and prejudice the safety of pedestrians, I am not persuaded that the proposed widening of the laneway entrance would result in betterment of the existing vehicular access as alleged by the appellant. The appellant indicates that the visibility splays and forward sight distance at the existing access from Antrim Road exceeds the standards set out in DCAN15. While that may be the case and even if vehicle trips would be low from the development, it does not overcome my concern that the proposed access arrangement would encourage waiting vehicles to obstruct the public pavement which in turn would force pedestrians onto the public road.
33. The third parties contend that cars are often parked on either side of the proposed access restricting vision. They go on to argue that cars pulling into the passing layby would restrict the line of sight along the footpath and endanger emerging motorists, pedestrians and other road users. Paragraph 10.6 of DCAN15 states that “where the access crosses a footway it is important to have intervisibility between pedestrians and emerging motorists. In these circumstances there should normally be visibility splays between a driver’s viewpoint 2m back into the access and a distance measured along the back of the footway for 2m on each side of the viewpoint.” A waiting car parked in the proposed layby would obstruct the viewpoint for the driver of the vehicle emerging from the access viewpoint. This would mean that that driver would not have clear intervisibility of pedestrians using the footpath and of vehicles travelling along the Antrim Road.
34. The appellant states that the proposal would enable all vehicles to safely exit the site in forward gear and that this would deliver betterment over the existing situation. The appellant argues that there are other forms of available transport that would reduce the reliance on the use of the private motor car. He also encloses a copy of the collision statistics for this section of the Antrim Road from July 2016 to June 2021. It identifies a nil return. The narrow width of most of the laneway, the use of the proposed layby for waiting cars that would result in obstructing visibility for drivers exiting the laneway along with causing an obstruction to pedestrians using the pavement, all lead me to conclude that despite a lack of reported collisions, other forms of available transport and the ability of vehicles to exit in forward gear, prejudice to road safety would still arise. Furthermore, given this conclusion, I am not persuaded that such a situation would represent betterment given the increased number of vehicles that would be using the laneway as a result of the appeal proposal.
35. The amplification text of Policy TRA2 of the PS states that “where an existing access is available the Council will generally expect this to be used, unless there is an opportunity to provide a more acceptable access arrangement.” The Council argues that the proposed dwelling could be accessed from Monaville Park and that this access would be a more suitable available access to the site. However, the

appellant alleges that the access via Monaville Park has been physically blocked by the erection of a locked gate and that this prevents any alternative means of access to the site. In addition, the third parties allege that the property at No. 65 has no entitlement, deed or access via Monaville Park. Monaville Park is a single laneway that provides access to a number of residential dwellings. That laneway abuts the southern boundary of the appeal site.

36. While the Monaville Park laneway is single width, it is wider than the one the appeal development proposes to use. I observed no locked gate at the laneway entrance into Monaville Park and was able to drive along it. Even if it is the case that the owner of No. 65 has no right of way for the use of the Monaville Park laneway at present, it does not follow that one could not be secured. Notwithstanding that the above reference in the amplification to Policy TRA 2 is not an absolute requirement, factoring in my on-site observations and from the evidence before me, I am not persuaded that that existing access at Monaville Park is necessarily unavailable to the proposed dwelling. Nor am I persuaded that the proposed means of access for the appeal proposal represents an opportunity to provide a more acceptable access arrangement.
37. In relation to the historic approval (S/2006/1300/O) that was granted permission for the same identical access arrangements, that approval lapsed a considerable time ago and was determined by another authority. That decision does not justify setting aside the road safety concerns raised above in this appeal. In any event, permission was refused twice for dwellings on the same site using the same access arrangement as that proposed in this appeal; one of those refusals (LA05/2016/0756/F) was decided in more recent times in comparison to the approval (S/2006/1300/O) that the appellant relies on.
38. For the reasons given earlier, I am not persuaded that the appeal proposal would contribute to the creation of a quality residential environment. Accordingly, I find that it would prejudice road safety and offend Policy TRA2 of the PS read as a whole, and the SPPS. The Council's reason for refusal is sustained insofar as stated.
39. A third party expresses concern that the appeal proposal would tower over their property and that the proposed dwelling would negatively affect their privacy and reduce the amount of sunlight into the rear of their property (No. 9 Monaville Park). However, the Council has no objection to the proposal on residential amenity grounds. On the ground floor of the side gable closest to No. 9, patio doors and two living room windows are proposed. I assessed the amenity impact on No.9 from its rear garden/patio area and from within the property. I consider that no unacceptable adverse overlooking into No. 9 would arise from those proposed windows and patio doors given that an existing approximately 2 metres high timber fence would be retained along that boundary.
40. Two first floor bedroom windows are also proposed on the side gable. Stamped refused drawing No. 03 indicates that those two bedroom windows would be obscured glass. Another window on the rear gable is proposed in that bedroom. It would not be obscured. While the use of obscure glass is often acceptable for bathroom and landing windows, I do not consider it an acceptable solution for windows serving a main room such as a bedroom. Nevertheless, the other proposed window in the other gable would not be obscure glazing. Given this, I am content to accept in this instance the proposed obscure glazing in those two side windows. If



the appeal is permitted, this could be managed by a suitably worded condition. Bearing this in mind and given the distances involved, the position of the existing and proposed dwellings in relation to one another and the retention of the intervening 2 metres fence, I am satisfied that there would be no unacceptable adverse overlooking into No. 9's dwelling.

41. In terms of potential overshadowing and loss of light, overshadowing to a garden area on its own will rarely constitute grounds to justify a refusal of permission. While I accept that a sizeable portion of the rear garden area would be overshadowed in the morning and that there would be a certain level of loss of light into No. 9's living room, given the orientation of the sun path and the positioning of the proposed dwelling in relation to the neighbouring dwelling (No. 9) together with the ground levels, I am satisfied that the proposed dwelling would result in no overshadowing from 11am onwards.
42. Consequently, I find that the loss of light would not be to an unacceptable adverse level. Accordingly, I am content that the proposed dwelling would not result in an unacceptable adverse impact on the amenity of neighbouring residents. The third party's concerns regarding overlooking and loss of light are therefore not upheld.
43. Other issues were raised by the third parties. One of the third parties contends that the laneway should be designed to adoptable standards. However, having considered that matter, this would not either individually or cumulatively warrant the dismissal of the appeal. In any event, I have found that the Council's reason for refusal is sustained and the related concerns of the third parties are upheld, and that is determining in this appeal. The appeal must fail.

This decision relates to: -

<b>Drawing No.</b>	<b>Drawing Title</b>	<b>Scale</b>	<b>Date Received</b>
01	Site Location Plan	1:1250 @A4	19 Nov 2020
02	Proposed Site Layout Plan	1:200 @A2	19 Nov 2020
03	Proposed Plans, Section & Elevations	1:100 @A1	19 Nov 2020
04	Proposed Plans, Section & Elevations (Access Arrangement)	1:100 @A4	19 Nov 2020

**COMMISSIONER B STEVENSON**

**List of Documents**

Planning Authority: -

- A Statement of Case  
Lisburn and Castlereagh City Council
- A1 Rebuttal Statement  
Lisburn and Castlereagh City Council
- A2 LDP Comments  
Lisburn and Castlereagh City Council

Appellant: -

- B Statement of Case  
CMP Planning & Design
- B1 Rebuttal Statement  
CMP Planning & Design
- B2 LDP Comments  
CMP Planning & Design
- B3 Land Ownership Comments

Third Parties: -

- C Statement of Case  
Mrs H Haldane
- D Statement of Case  
Mr T Burns
- E Statement of Case  
Mr and Mrs M Richardson
- E1 Rebuttal Statement  
Mr and Mrs M Richardson
- F Statement of Case  
Mr W Magee
- G Statement of Case  
Mr P Johnson
- G1 Rebuttal Statement  
Mr P Johnson