
Appeal Reference:	2021/A0182
Appeal by:	Mr Gerard Milligan
Appeal against:	The refusal of full planning permission
Proposed Development:	Proposed 3no. self contained tourism units
Location:	Immediately north west of 102 Tullybrannigan Road, Newcastle
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/0246/F
Procedure:	Written representations and Commissioner's site visit on 25 th April 2024
Decision by:	Commissioner K S Donaghey, dated 27 th June 2024

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appellant has provided a significant volume of information at rebuttal stage. This includes a Preliminary Ecological Assessment (ATEC NI, October 22) and a Tree Survey Report (M Large, October 22). The appellant also provided further supporting information in respect of tourism amenities and a revised block plan showing further details regarding visibility splays and septic tank provision.
3. Third parties have argued that the provision of this information at rebuttal stage has deprived the Council or the third parties of the opportunity to consider and comment on this information. Furthermore, it must also be considered if this information constitutes a matter which was before the Council at the time which it made its decision in accordance with Section 59 of the Planning Act (Northern Ireland) 2011.
4. The Preliminary Ecological Appraisal was provided in response to an issue raised by third parties in their statement of case. The Council did not raise any issues regarding the impact of the proposed development upon natural heritage in its consideration of the planning application or as part of this appeal. The Council did assess the Biodiversity Checklist and Preliminary Ecological Appraisal (PEA) which were submitted as part of a previous approval at this site. Application reference LA07/2020/0655/O granted approval for an infill dwelling at the appeal site. This approval was issued on 5th November 2020. Throughout the consideration of the appeal proposal, it is evident that the Council considered the natural heritage issues. The Council then decided that these issues remained similar to the appeal development. Whilst the Council did not insist that the

appellant provide a new PEA or Tree Survey Report, it did assess natural heritage issues as part of its consideration of the appeal development. Therefore, the submission of a PEA and an accompanying Tree Survey Report in respect of the appeal development are not new matters. These documents shall form part of the consideration of this appeal.

5. Furthermore, issues around the septic tank and visibility splays were also considered by the Council at the time of its decision. Therefore, the provision of a block plan showing some of these details amended is not a new matter which was not before the Council at the time of its decision. I agree with the third parties that the provision of this material at rebuttal stage is not appropriate practice. However, I do not consider that parties have been deprived of an opportunity to consider these matters as they constituted many of the issues raised at planning application stage. The revised block plan (002 Revision A) shall form part of the consideration of this appeal.

Reasons

6. The main issue in this appeal is whether the appeal development would be acceptable in principle as tourism development in the countryside.
7. Section 45(1) of the Planning (Northern Ireland) Act 2011 states that regard must be had 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 requires that, where in making any determination under the Act, regard is to be had to the LDP, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
8. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for this council area, wherein the appeal site is located in the countryside outside any defined settlement. The site is within the Mourne Area of Outstanding Natural Beauty (AONB). The ADAP contains no specific policies of relevance to the appeal development.
9. The Strategic Planning Policy Statement for Northern Ireland (SPPS) is material to all decisions on planning applications and appeals. The SPPS sets out the transitional arrangements that will apply until a local authority has adopted a Plan Strategy for its council area. The SPPS retains certain existing Planning Policy Statements (PPSs) during this period. In accordance with the transitional arrangements set out in the SPPS, as there is no conflict between the provisions of the SPPS and those of retained policy regarding issues relevant to this appeal, the proposal should be determined in accordance with the retained policies of Planning Policy Statement 21 Sustainable Development in the Countryside (PPS21). Supplementary planning guidance for buildings in the countryside is set out in the document "Building on Tradition" – A Sustainable Design Guide for Northern Ireland Countryside.
10. The appeal site is located in the countryside, outside any designated settlement development limit. Consequently, Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21), which is identified by the SPPS as a retained policy document, provides the regional policy context.

11. Policy CTY 1 of PPS 21 states that there are 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. It points out that planning permission will be granted for non-residential development in the countryside in specific circumstances. These include tourism development in accordance with the TOU Policies of the Planning Strategy for Rural Northern Ireland (PSRNI). These have been superseded by the policies of Planning Policy Statement 16: Tourism (PPS 16).
12. The aim of PPS 16, set out in Paragraph 3.0, is to manage the provision of sustainable and high quality tourism development in appropriate locations within the built and natural environment. Paragraph 3.1 sets out its objectives: to facilitate sustainable tourism; facilitate tourism growth; safeguard tourism assets; develop the tourism potential of settlements, support tourism development of an appropriate nature, location and scale in rural areas; and ensure a high standard of quality and design for all tourism development. Paragraph 6.260 of the SPPS adopts the same approach. The pertinent policy within PPS 16 is Policy TSM 5, which relates to self-catering accommodation in the countryside.
13. Policy TSM 5 states that planning approval will be granted for self-catering units of tourist accommodation in any of three circumstances. The appellant argues that the appeal proposal complies with circumstance (b): a cluster of 3 or more new units are to be provided at or close to an existing or approved tourist amenity that is / will be a significant visitor attraction in its own right. In this respect the appellant relies upon several possible tourist amenities in proximity to the appeal site.
14. A tourist amenity is defined within Appendix 1 of PPS 16 as an amenity, facility or service provided primarily for tourists but does not include tourist accommodation. The appellant states that the appeal site is located within a tourism hotspot and is within walking distance of several local tourist amenities. These include:
 - Dedicated, specially built cross country mountain biking and downhill biking paths within Donard Forest;
 - “Mourne Way”, “Newcastle Way” and “Ulster Way” walking trails which pass the site;
 - Christian heritage walking trails;
 - 380m from Newcastle settlement;
 - 100 metres from tourist attraction sites;
 - Tollymore Forest Park;
 - The Mourne Mountain Range walking paths including the “Granite Trail” walking path;
 - Three bike hire companies within 1 mile of appeal site;
 - Royal County Down Golf Course;
 - Game of Thrones filming locations and official tours;
 - Tollymore National Outdoor Centre;
 - Newcastle promenade, and
 - Castlewellan Forest Park.
15. The site is within a wider area which is utilised by tourists. To satisfy the policy requirement of Policy TSM 5 the accommodation units must be provided at or

close to an existing or approved tourist amenity. The suggestion that large geographical areas such as the AONB or Newcastle itself can be viewed as a 'tourist amenity' as defined by the policy is plainly at odds with the aim of PPS 16 and the definition of a tourist amenity set out within the policy. The appellant has also identified several recreational facilities within the wider area such as the Royal County Down Golf Course, the Game of Thrones Tours and Newcastle promenade. I do not consider that the proposed development is at or close to these tourist amenities.

16. The appellant has outlined that that proposed development is within walking distance from Tollymore Forest Park. Whilst there are several recreational activities that can be undertaken within the forest park, the wider extent of the forest itself is not an amenity, service or facility which is provided primarily for tourists. The proposed development is around 500m from the edge of the forest park, the Tullybrannigan Road does not allow direct vehicular access to the forest park. The main entrance and elements which make provision for visitors such as parking, toilet facilities and camp sites, which may be considered as the tourist amenity element to the forest park itself are over 2km from the proposed development, this is not at or close to the appeal site.
17. The appellant's evidence in respect of tourist numbers and the economic benefit of tourism for the region is based on sound research. However, the policy test within TSM 15 requires that the development be at or near an existing or approved tourist amenity. This is a test based on physical location as opposed to one of perceived need or benefits. Whilst there are several tourist amenities within the wider area, the proposed development is not at or close to any of them.
18. Several previous examples of approvals for self-catering units were provided by the appellant. Application LA07/2020/0652/F involved the approval of three glamping pods in close proximity to the entrance to Slieve Binnian. Application LA07/2021/1219/O involved the provision of five self-catering units of accommodation at 4 Quarter Road, Annalong. Whilst this was recommended for refusal by planning officers, elected members approved the development as, in their view, it was close to the Mourne Mountains. I do not consider that the provided examples are directly comparable with the appeal development. The test as set out within TSM 5 is in relation to the location of the development in proximity to an existing or approved tourist amenity and is assessed on an individual, site specific basis. The proposed development does not satisfy the requirement of Policy TSM 5, circumstance (b). The Council's refusal reason in this regard is sustained.
19. Third parties also argue that the proposal is contrary to Policy TSM 7 of PPS 16. Policy TSM 7 lists six design criteria (a-f) and nine general criteria (g-o) The third parties allege that insufficient detail has been submitted with the appeal development to allow the consideration significant issues including drainage, access, parking and design. The third parties further argue that the provision of hard standing area for the parking of three vehicles to the eastern side of the site would have a significant impact upon rural character.
20. The appellant has provided adequate information to address the issues which the third parties have raised, the submitted block plan shows the required visibility splays, parking and septic tank arrangements. The design of the building appears

as a single dwelling from the front elevation, it is typical of the dwelling types along this stretch of Tullybrannigan Road. The hard standing to the east also is typical of many dwellings in the locality. Drainage issues could be adequately addressed by condition if necessary. I do not consider that the detailed design of the development offends policy TSM 7. Therefore, the concerns of third parties in respect of this matter are not sustained.

21. The appellant has further argued that the proposed development would warrant approval under Policy CTY 8 of PPS 21 which allows for the infilling of a small gap within an otherwise substantial and continuously built-up frontage with an appropriate economic development proposal, Outline planning permission has been granted on the site for an infill dwelling (LA07/2020/0655/O). Reference is also made to Policy CTY 2 – development in dispersed rural communities which states that “appropriate economic development enterprises, including schemes for tourist development, and new social or community facilities may also be accommodated”. The appellant argues that this statement within Policy CTY 2 then allows that tourism development is included within the definition of economic development in the countryside. The appellant further argues that the approval of three self-catering units could generate around £20,000 in visitor spend per annum.
22. Critically, the caveat within Policy CTY 8 that allows for the infilling of a small gap within an otherwise substantial and continuously built-up frontage with an appropriate economic development proposal, states that the development must meet all other planning and environmental requirements. This policy does not negate the requirement for three or more self-catering units to comply with policy TSM 5 of PPS 16. I have already considered above that it does not. Therefore, I do not consider that Policy CTY 8 of PPS 21 allows for this type of development.
23. Third parties argue that the proposal is contrary to Planning Policy Statement 2 (PPS2) in that no detailed information has been provided to ascertain the impact upon designated sites (Policy NH1), European or nationally protected species (Policy NH2), or sites of nature conservation importance (Policies NH3 & NH4). Third parties also allege that the proposal has not considered the impact of the removal of existing hedge rows and is contrary to Policy NH 5 and as the proposal has not sought to retain these features it is contrary to Policy NH6.
24. Both the appellant and the Council are of the view that the previous outline approval on site had considered these matters and as the proposed development replicates the approved built form this represents a fall-back position against which the ecological impact of the development should be measured. Notwithstanding this, the appellant submitted a PEA in evidence to this appeal. This appraisal followed up on the initial reports which were completed as part of the outline approval which was granted on site for an infill dwelling. As a result of this appraisal, the appellant has sought to retain the trees to the eastern boundary of the site, which were found to have a moderate potential for bat roosts. This appraisal reaches the view that the development will not have a significant impact upon any natural heritage elements.
25. The submission of the PEA demonstrates that the development will not have a significant impact upon natural features in or around the site. The objector’s concerns in respect of PPS 2 are not sustained.

26. Third parties also raised objections in relation to Planning Policy Statement 3, Access, Movement and Parking. Whilst third parties have alleged that certain parts of the application process were incorrect or that the submission lacked detail, they did not state what the resultant impact upon the safety and convenience of road users would be.
27. The appellant's submitted topographical survey demonstrates that the requisite visibility splays of 2 meters by 60 metres in both directions can be achieved without the need for third party lands. It also demonstrates that the access itself is properly dimensioned and that three car parking spaces can be provided within the curtilage of the site. The third parties' objections in respect of this matter are not sustained.
28. The proposal does not satisfy the requirement of Policy TSM 5 of PPS 16 and no policy support is provided by Policy CTY 8 of PPS 21. Policy CTY 1 of PPS 21 states that other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a nearby settlement. I was given no persuasive evidence why this development is essential and could not be located in a settlement. The proposed development is therefore contrary to Policy CTY 1 of PPS 21. Therefore, the Council has sustained its first reason for refusal.
29. In consideration of the points above, both of the Council's reasons for refusal have been sustained and the concerns of the third parties in regard to these elements are well founded. The appeal is dismissed.

The decision is based on the following drawings:-

Drawing Number	Title	Scale	Received by Council
001	Site location map	1:1250	4 th February 2021
002 rev A	Proposed block Plan	1:500	Rebuttal statement
003	Floor plans and elevations	1:100 @ A3	4 th February 2021

COMMISSIONER KENNETH DONAGHEY

List of Documents

- Planning Authority:- "A" - Statement of case and appendices (Newry, Mourne and Down District Council)
- Appellant:- "B" - Statement of case and appendices (Planning Permission Experts)
"B1"- Rebuttal statement and appendices (Planning Permission Experts)
- Third Parties:- "C" - Objectors statement (Matrix Planning)
"C1" - Objectors rebuttal statement (Matrix Planning)