

Appeal Decision

Appeal Reference:	2021/A0189.
Appeal by:	Mrs Elaine Montgomery.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Detached dwelling.
Location:	35m south west of 2 Kildrum Road, Ballymena.
Planning Authority:	Mid & East Antrim Borough Council.
Application Reference:	LA02/2021/0667/F.
Procedure:	Hearing on 7 March 2023.
Decision by:	Commissioner Mark Watson, dated 16 March 2023.

Decision

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

Reasons

2. The main issues in this appeal are whether or not the appeal development would:
 - be acceptable in principle; and
 - adversely impact on rural character.
3. The Ballymena Area Plan 1986 – 2001 (BAP) operates as the statutory local development plan for the area the site is in. In it the appeal site lies within the countryside. The BAP offers no specific policy or guidance in respect of the appeal development and is not material. There is no conflict or change in policy direction between the provisions of the Strategic Planning Policy Statement for Northern Ireland (SPPS) and those of Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS21) in respect of the appeal proposal. The policy provisions of PPS21 remain applicable to the proposed development.
4. The appeal site is situated along the north-western side of Kildrum Road, a short distance to the north from its junction with the Woodgreen Road. At the time of my site visit the appeal site was covered in loose soil and defined by temporary metal fencing on three sides. The northern site boundary is defined by a 1.8m closeboard wood fence, separating the site from a recently completed and occupied one-and-a-half storey dwelling. Adjacent and north of that new dwelling is No. 2 Kildrum Road, a single storey dwelling with a detached roadside garage. To the east of the site on the opposite side of Kildrum Road are several detached dwellings of varying design. To the south on a small parcel of land between the appeal site and the Woodgreen Road is an electrical pylon. To the south on the opposite side of Woodgreen Road is a sizeable building complex accommodating several commercial businesses, along with a large parking area. The land to the west of

the appeal site is agricultural and slopes downwards in that direction. A relatively short distance further west is the A26 Lisnevenagh Road dual carriageway.

5. The appeal development comprises a detached one-and-a half storey dwelling to be built in the same style as the adjacent, recently constructed dwelling. It would be finished in a mix of white render and timber cladding, with flat black roof tiles. The dwelling would utilise a shared access with the adjacent recently built dwelling.
6. 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 a dwelling sited within an existing cluster of buildings in accordance with Policy CTY2a. It follows that if the development complies with Policy CTY2a it will also comply with Policy CTY1 of PPS21.
7. 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's final position was that it considered that the appeal development failed to meet the fourth, fifth and sixth criteria, the sixth only being advanced in the Council's statement of case. The late stage introduction of an additional objection was unhelpful, however, the Appellant was afforded an opportunity to respond at the hearing. The fourth criterion is that the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster. The fifth criterion is that development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside. The sixth criterion is that development would not adversely impact on residential amenity.
8. The planning history in respect to the appeal site is significant. The Council granted full planning permission for a dwelling on the land immediately adjacent and north-east (ref. LA02/2021/0293/F) on 24 June 2021. Two prior outline permissions had previously been granted on the same site (refs. LA02/2016/0565/O and LA02/2019/0873/O). As referenced earlier, that dwelling has been constructed and is occupied. That permitted site included the portion of land which constitutes the appeal site before me now, with the Council stating that it was part of the amenity space for the approved and now constructed dwelling. I note that in the stamped approved plans for LA02/2021/0293/F the appeal site, although with the overall red line site boundary, was identified as land 'for additional proposal to be submitted'. The Council evidence is that the approved application for that dwelling was judged to not fully comply with the provisions of Policy CTY2a of PPS21, but on balance was found to be acceptable. However, the Council has issue with what it considered is effectively sub-division of that approved site to facilitate another dwelling.
9. In respect to the fourth criterion of Policy CTY2a, the appeal site is not bounded on two sides with other development in the cluster. It is only bounded to the north by the approved and built dwelling. This was the same situation when that dwelling was granted permission, it only being bounded to the north by No. 2 Kildrum Road. The same is the case in respect to the degree of enclosure the appeal site can provide. In comparing what was deemed acceptable then by the Council in choosing to grant that permission and the appeal development, the Council's witness was unable to differentiate the two against the fourth criterion. I agree with

this candid assessment as there is little substantive difference between what was granted permission and the appeal development in respect to the enclosure of the site and it being bounded on only one side by other development in the cluster. Nevertheless, the fourth criterion of Policy CTY2a is not met.

10. Assessing the appeal development against the fifth criterion, again, the Council witness did not provide any reasoning as to what substantive difference existed between what the Council had deemed acceptable and the appeal development. Whilst the appeal dwelling is sited slightly further south than the dwelling granted permission, both are situated on the edge of the cluster with similar spatial relationships to the overall cluster when observed from critical views on Lisnevenagh Road and Woodgreen Road. The same is the case from the more limited views on Kildrum Road. I do not accept that the appeal development extends the development beyond the extent of existing development or that it would significantly alter its existing character, nor visually intrude into the open countryside in comparison to that was deemed acceptable by the Council previously. I find that in the evidential context of what was previously permitted, the fifth criterion is in the round met.
11. In respect to the issue of amenity, the Council's concerns related to the level of private amenity space for the proposed dwelling, along with the consequently reduced private amenity space the approved and built dwelling adjacent would have. The proposed dwelling would still have approximately 135 sq. m of private amenity space to its rear, which the Council witness admitted would more than satisfy the guidance if it were a dwelling, for the purposes of planning policy, located in an urban area. Whilst the proposed and existing dwelling would utilise a shared access, that is not a particularly uncommon feature and given the disposition of the two dwellings relative to one another, along with the parking arrangements for each dwelling, I am satisfied that both the proposed and existing dwellings would have sufficient private amenity space. For this and reasons given below in respect to the pattern of settlement, I am not persuaded that the appeal development would represent over-development. The appeal development would not adversely impact on the residential amenity of the neighbouring dwelling, nor would prospective occupants of the appeal dwelling suffer in this respect. The sixth criterion of Policy CTY2a is met.
12. I accept the Council's proposition that the appeal development does not satisfy the fourth criterion of Policy CTY2a. However, the particular planning history associated with the adjacent dwelling and the lack of any substantive difference between that approved dwelling and the appeal development in regard to that element of the policy is such that I consider that any shortcomings against one part of the policy are greatly outweighed by the planning history, as well as the development satisfying the overall thrust of Policy CTY2a. In this respect I find that the Council's second reason for refusal cannot stand.
13. Policy CTY14 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. The Council considered that the appeal development would create ribbon development, though made no reference to Policy CTY8. No. 2 Kildrum Road, its detached garage and the approved, now built dwelling sit in a line along the frontage without accompanying development to the rear. The granting of the previous dwelling resulted in the creation of a ribbon of development along

the north-western side of Kildrum Road. However, the dwelling in question was still deemed to be broadly acceptable against Policy CTY2a and permission was granted. I note the Council's witness did not provide a substantive rationale for this difference in stance between the appeal development and the approved dwelling and again, given my conclusions in the paragraph above in respect to Policy CTY2a, this matter should not be determining against the appeal development.

14. In respect to the traditional pattern of settlement exhibited in the area, I do not agree with the Council that the appeal development would be greatly at variance with it, particularly given the adjacent approved and built dwelling. The Appellant calculated the density of the appeal development to equate to approximately 20 dwellings per hectare (dph). The density of the two large housing developments that make up a significant component of the cluster, Woodgreen Avenue and Woodgreen Park, have densities of approximately 24 and 39 dph respectively. Whilst density is only one of a number of indicators in respect to the pattern of settlement, in this case I agree that it assists the Appellant's case insofar as it demonstrates the appeal dwelling would not be of a density out of keeping with those within the overall cluster. There are also several one-off dwellings situated along the frontages of Kildrum Road and Woodgreen Road to the east that further reduce any impression of a resolute uniformity to the traditional pattern of settlement in the locality of the appeal site. Furthermore, the appeal development would read as a detached dwelling set within its own plot, relating well to those nearby dwellings in terms of pattern of settlement. Notwithstanding the sizeable commercial development across the Woodgreen Road to the south on lower land, the appeal development respects the traditional pattern of settlement exhibited in the area.
15. The character of the area in the vicinity of the appeal site has experienced a strong degree of suburbanisation. However, given my conclusions above in regard to Policy CTY2a and the particular planning history associated with this site, I am not persuaded that the remaining rural character of the area would be eroded by, what would be in this particular case arising from the position relative to the approved and built dwelling, essentially consolidation on the edge of a cluster. For the reasoning given above Policy CTY14 of PPS21 is met. The Council's third reason for refusal is not sustained.
16. As the proposed development is not at odds with the overall thrust of Policy CTY2a of PPS 21 in the round, it is one of the types of housing development that is acceptable in the countryside in accordance with Policy CTY 1 and the related provisions of the SPPS. The Council's first reason for refusal is not sustained.
17. As the Council's reasons for refusal have not been sustained the appeal shall succeed. In respect to conditions, the provision of the access prior to other development taking place would be necessary in the interests of road safety, as would the permanent retention of the visibility splays. At the hearing the Council witness suggested that further augmentation of the western site boundary with additional planting would soften the impact of the proposed closeboard fencing. The Appellant was amenable to such augmentation and I agree that such planting would be necessary in the interests of visual amenity. It could be secured through submission of a revised landscaping scheme to be agreed with the Council prior to commencement of development, as was suggested by the parties at the hearing. Implementation of the planting during the first available planting season after occupation would be necessary in this case in order to avoid potential damage to

the planting arising from construction activities on what is, without prejudice to my consideration of amenity above, a reasonably compact site. The Council and Appellant were agreeable to such implementation of the landscaping scheme. Replacement of any new vegetation dying, removed or seriously damaged during the first 5 years would also be necessary in the interests of visual amenity.

Conditions

- (1) Prior to any other development permitted, the vehicular access, including visibility splays and any forward sight distance shall be provided in accordance with drawing 02, stamped received by the planning authority on 29 June 2021. The area within the visibility splays and any forward sight distance shall be cleared to provide a level surface no higher than 250mm above the level of the adjoining carriageway. These splays shall be permanently retained and kept clear thereafter.
- (2) All hard and soft landscaping works shall be carried out in accordance with a landscaping scheme, including a scheme of planting along the western site boundary, to be submitted to and agreed in writing with the planning authority prior to development commencing. The landscaping works shall be carried out within the first available planting season after occupation of the dwelling. Trees or shrubs dying, removed or becoming seriously damaged within five 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.
- (3) The development hereby permitted shall be begun before the expiration of five years from the date of this permission.

This decision is based on the following drawings submitted with the application:-

DRAWING NUMBER	TITLE	SCALE	DATE
01	Site Location Map, Existing Site Analysis, Concept Plan, Concept Statement	1:1250 & 1:500	29/06/2021
02	Proposed Plans, Section, Elevations, 3D View	1:500 & 1:50	29/06/2021
03/1	Proposed Plans, Section, Elevations, 3D View	1:100	30/06/2021

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:- Mr K Patterson (M&E A BC)

Appellant:- Mr D Donaldson (Donaldson Planning)
Mr & Mrs Montgomery (Appellant and husband)

List of Documents

Planning Authority:- 'A' Statement of Case & Appendices (M&E A BC)

Appellant:- 'B' Statement of Case & Appendices (Donaldson Planning)
'C' Rebuttal Statement (Donaldson Planning)