

Appeal Decision

Appeal Reference:	2021/A0213
Appeal by:	Mr Andrew Wallace
Appeal against:	The refusal of outline planning permission
Proposed Development:	Replacement 2 storey dwelling and garage with associated site works and conversion of existing dwelling into domestic store
Location:	40m west of 329 Gilnahirk Road, Belfast
Planning Authority:	Lisburn and Castlereagh City Council
Application Reference:	LA05/2021/0202/O
Procedure:	Written representations and Commissioner's site visit on 16 th November 2022
Decision by:	Commissioner Gareth Kerr, dated 2 nd December 2022

Decision

1. The appeal is dismissed.

Preliminary Matter

2. The Council refused outline planning permission for the appeal proposal on 5th October 2021 citing two refusal reasons based on the Strategic Planning Policy Statement for Northern Ireland (SPPS) and Policies CTY1 and CTY3 of Planning Policy Statement 21 (PPS 21). The Council's Statement of Case in the appeal, which was received by the Commission on 14th April 2022, listed two additional reasons for refusal under Policies CTY8 and CTY14 of PPS 21 (concerning ribbon development). This matter had not been raised with the appellant during the processing of the application and they first became aware of it on receipt of the Council's Statement of Case in the appeal.
3. It is poor practice to introduce additional reasons for refusal after the decision of the planning authority has been made, and particularly at such a late stage in the appeal process. No justification was offered for doing so. Notwithstanding the poor practice of the Council in this instance, the appellant acknowledged the two additional refusal reasons in his rebuttal statement and took the opportunity to comment upon them. Accordingly, the appellant has not been prejudiced by the Council's actions and the additional concerns raised can therefore be considered as part of the appeal.

Reasons

4. The main issues in this appeal are whether the development would be acceptable in principle in the countryside, whether the building to be replaced exhibits the

essential characteristics of a dwelling and whether the proposal would add to a ribbon of development.

5. Section 45 (1) of the Planning Act (Northern Ireland) 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. Where regard is to be had to the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.
6. The Court of Appeal declared the adoption of the Belfast Metropolitan Area Plan 2015 (BMAP) unlawful on 18th May 2017. This means the previous Belfast Urban Area Plan 2001 (BUAP) and the draft Belfast Metropolitan Area Plan (dBMAP), published in 2004, remain material considerations in the appeal. In both BUAP and dBMAP, the appeal site is located in the countryside within the Belfast green belt. In the BUAP, the site also lies within an Area of High Scenic Value. It lies just outside this designation in dBMAP.
7. Policy GB2 of the BUAP relates to new and replacement houses within the green belt. It states that buildings to be replaced should exhibit the essential characteristics of a dwelling. The preamble of PPS 21 states that its policy provisions will take precedence over green belts designated in existing statutory development plans. As the green belt policy of the above plans is now outdated, no determining weight can be attached to them.
8. The SPPS sets out the transitional arrangements that will operate until a local authority has adopted a Plan Strategy for their council area. It also retains certain existing Planning Policy Statements including PPS 21. The SPPS is no more prescriptive than the retained policies on the issues raised in this appeal and thus the retained policies take precedence in decision making in accordance with the transitional arrangements outlined in paragraph 1.12 of the SPPS.
9. Policy CTY1 of PPS 21 identifies a range of types of development which, in principle, are considered to be acceptable in the countryside. One of these is a replacement dwelling in accordance with Policy CTY3. 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 settlement.
10. Under Policy CTY3, planning permission will be granted for a replacement dwelling where the building to be replaced exhibits the essential characteristics of a dwelling and as a minimum all external structural walls are substantially intact. The policy goes on to state that all references to 'dwellings' will include buildings previously used as dwellings. Buildings designed and used for agricultural purposes, such as sheds or stores, will not be eligible for replacement under this policy. Where replacement is acceptable in principle, there are five additional criteria to be met relating to siting, size, design, services and access arrangements.
11. Policy CTY8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. It is considered detrimental to the character, appearance and amenity of the countryside. Policy CTY14 sets out instances where a new building would harm rural character including where it creates or adds to a ribbon of development.

12. The appeal site comprises the eastern half of a larger agricultural field and an adjacent building which it is proposed to replace. The field slopes from north to south away from the Gilnahirk Road. To the east of the appeal site is a two storey dwelling, 329 Gilnahirk Road. It is accessed from the Gilnahirk Road to the north, but fronts onto the Gransha Road to the east and is set within a substantial curtilage. The building to be replaced is within this curtilage to the rear of the dwelling and is in use as a domestic garage and play room. Although outline planning permission is sought, an indicative layout is provided showing the proposed dwelling and garage located centrally in the site with a new access to Gilnahirk Road to be provided at its north western corner. It is proposed to retain the existing building as a domestic store. It is not clear whether it would remain associated with the existing dwelling or become an outbuilding for the new dwelling.
13. The appellant has provided historical information relating to the site and building to be replaced including historic maps, deeds, census records and photographs. He has also provided a report on the condition of the building which concludes that its layout is that of a typical Irish vernacular dwelling. The evidence indicates that a dwelling on the site was occupied by the Magowan family since 1883. Rates were paid on the property by previous owners before 1883 as evidenced by extracts from the Griffiths Valuation and accompanying map. The evidence does not state when it ceased to be occupied as a dwelling. An extract from the Second Edition Ordnance Survey Map indicates that there was a building on the northern part of the site in the period 1832 – 1846. The building was recorded as a one room house in the 1901 census and by the 1911 census had two rooms. It appears that the buildings were extended down the slope to the south over time. Based on the totality of the evidence provided including the testimony of the previous owner of the building, I am persuaded that there was a dwelling house on the site, occupied by the Magowan family.
14. However, significant changes have occurred to the building over the years. The northern portion of the building, closest to the Gilnahirk Road, was demolished as shown in Figure 8 of the Existing Building Report. The northern portion of the original building contained the chimney and this along with the historic maps which show the oldest part of the building being adjacent to the road suggests that it was this part of the building that comprised the one room dwelling house. This part of the building, including the chimney no longer exists. The addition of another room before the 1911 census and the wider and taller hayloft section photographed in the 1950s were both later additions. The hayloft to the southern end was also demolished sometime in the 1950s. An electricity supply was installed around 1965, from which the dwelling at 329 is now powered.
15. The building now on site has two rooms which are not internally linked, but are separated by a stone wall which extends to and supports the roof. The Existing Building Report offers an analysis of the materials used in the building. This stone wall, along with a small section of the front and rear walls are the only sections of stone wall remaining in the building. Another section of the rear wall is constructed with red bricks. The report states that these were reclaimed from the hayloft which was demolished in the 1950s. The greater part of the building now on site is constructed from concrete breeze blocks. This includes both external gables and the remainder of the front and rear walls. There is a large window opening in the

upper play room and a steel beam in the lower gable of the garage above a double door opening. The extensive use of modern building materials and larger openings indicates that significant demolition of the original structure and rebuilding was undertaken to convert it to the present domestic outbuildings. It may have been built around the remains of the original dwelling house, but I consider that it was effectively purpose built as a garage and store.

16. The Council quotes from appeal decision 2019/A0254 which related to a replacement dwelling. The Commissioner stated, "The essential characteristics of a dwelling are not prescribed by the policy, however, it would not be unreasonable to expect to see a chimney, domestic scaled window and door openings, a chimney breast and some internal room divisions all of which would give a building the appearance of a dwelling." The building to be replaced does not exhibit the essential characteristics of a dwelling. There is no chimney or fireplace remaining. The wider window and door openings are at odds with those that would be found on an original vernacular dwelling. There are no internal room divisions or linkage between rooms. With the northern part of the original dwelling demolished and the remaining part so altered that only a small section of the original stone walls is left, the building to be replaced does not meet the minimum policy requirement that all external structural walls are substantially intact. Accordingly, replacement of the building is unacceptable in principle under Policy CTY3. The Council has sustained its second reason for refusal.
17. The Council's evidence raised concerns about the proposed siting of the dwelling and garage under Policies CTY8 and CTY14. They are concerned that the proposal would add to a ribbon of development which comprises the building to be replaced and the dwelling at 329 Gilnahirk Road. They have not engaged with the specific provisions for siting of replacement dwellings in Policy CTY3. It states that a replacement dwelling should be sited within the established curtilage of the existing building, unless either (a) the curtilage is so restricted that it could not reasonably accommodate a modest sized dwelling, or (b) it can be shown that an alternative position nearby would result in demonstrable landscape, heritage, access or amenity benefits. The building to be replaced is effectively within the curtilage of the dwelling at 329. It does not have its own curtilage within which a modest sized dwelling could be sited. Therefore, if the building met replacement standard, an off-site replacement dwelling would comply with criterion (a).
18. The appellant argues that due to the restricted curtilage, it is acceptable to retain the existing structure and incorporate it into the overall layout of the development. However, this provision in Policy CTY3 relates only to non-listed vernacular dwellings that do not make an important contribution to the heritage, appearance or character of the locality. As the only significant remains of the original vernacular dwelling are an internal wall, the building to be replaced cannot be described as a non-listed vernacular dwelling. Therefore it would be appropriate to condition its demolition if the principle of a replacement dwelling was established. If the existing building was demolished, a replacement dwelling nearby would not increase the number of buildings in the ribbon of development. Provided any garage was tucked behind the new dwelling, it would not add to a ribbon of development.
19. However, the appellant's proposal is for retention of the existing building as a domestic store. I consider that the addition of a new dwelling and garage to its west

would add to a ribbon of development along Gilnahirk Road as the four buildings would have a common frontage. The appellant refers to several pieces of case law which have not been provided in evidence. These decisions concern the ability to amend a planning application. He argues that they permit him to vary the application in respect of the siting of the building and that the proposed garage could be removed. While this is correct, it is not for the decision-maker to vary the application to make it acceptable and I must determine the appeal based on the proposal in front of me which includes retention of the existing building in its description. The indicative layout shown on drawing No. 02/A would add to a ribbon of development. This would also be the case if I were to accept any of the amended siting positions shown as appendices to the appellant's rebuttal statement. Accordingly, the Council has sustained its third and fourth reasons for refusal based on ribbon development.

20. As the proposal is not acceptable in principle under Policy CTY3 and no other overriding reasons why the development is essential in this location have been put forward, it is also contrary to Policy CTY1. The Council has therefore sustained its first reason for refusal. As the Council's four reasons for refusal have been sustained, the appeal fails.

This decision is based on drawing Nos. 01/A and 02/A (site location maps at scale 1:1250) which were received by the Council on 17th May 2021.

COMMISSIONER GARETH KERR

List of Documents

Planning Authority:-	A	Statement of Case and Appendices Lisburn and Castlereagh City Council
	B	Rebuttal Statement Lisburn and Castlereagh City Council
Appellant:-	C	Statement of Case and Appendices Mr Andrew Wallace
	D	Rebuttal Statement and Appendices Mr Andrew Wallace