

Appeal Decision

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Appeal Reference:	2021/A0239
Appeals by:	Mr & Mrs L Venney
Appeals against:	The refusal of outline planning permission
Proposed Development:	2No. Infill dwellings and detached garages
Location:	Lands contained between 1 Minerstown Road and 55 Rossglass Road, Downpatrick
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/0368/O
Procedure:	Written representations with Commissioner's site visit on 16 th February 2024
Decisions by:	Commissioner Kevin Gillespie, dated 21 st March 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the appeal development would:
 - be acceptable in principle in the countryside;
 - result in ribbon development;
 - adversely impact on rural character; and
 - exacerbate coastal erosion.
3. Section 45(1) of the Planning Act (NI) 2011 (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. Section 6(4) of the Act 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.
4. The Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is in the countryside and within a designated Area of Outstanding Natural Beauty as defined in the plan. As the rural policies in the plan are now outdated, having been overtaken by a succession of regional policies for rural development, no determining weight can be attached to them. There are no other provisions in the operating LDP that are material to the determination of the appeal.
5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy (PS) for the Council area is adopted. In this Council area, no PS has been adopted.

Accordingly, during the transitional period, the SPPS retains certain Planning Policy Statements including Planning Policy Statement 21: Sustainable Development in the Countryside (PPS 21) and it sets out the arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the two must be resolved in favour of the provisions of the SPPS. As no conflict arises between the policy provisions of the SPPS and retained policy in PPS 21 in so far as it relates to the appeal proposal, the latter provides the relevant policy context for the appeal proposal.

6. Policy CTY 1 of PPS 21 states that there are a range of types of development which are 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 dwellinghouse in six cases. One of these is a dwelling sited within an existing cluster of buildings in accordance with Policy CTY 2a. Another is the development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY 8. It follows that if the development complies with Policy CTY 2a or Policy CTY 8, it will also comply with Policy CTY 1 of PPS 21. Supplementary planning guidance is contained in Building on Tradition – A Sustainable Design Guide for the Northern Ireland Countryside (BOT).
7. The appeal site, which rises gradually from west to east, is broadly rectangular in shape and cut from a larger agricultural field. The western and southern boundaries of the appeal site are bounded by a post and wire fence with a mature hedge set behind the post and wire fence along the western boundary. There is no defined northern and eastern boundary. The site is located where the Minerstown Road converges with the Rossglass Road/Rossglass Road South. To the east of the site there is an entrance which provides access to the host field. Adjacent to this entrance is No. 55 Rossglass Road, a detached 1.5 storey dwelling. To its west lies No. 1 Minerstown Road which comprises a detached single storey dwelling with a detached garage to its rear. Part of the appeal site's southern boundary adjoins the Minerstown Road whilst the remainder abuts a grassed area/road verge which forms part of the adopted highway network. From the evidence, I note this is maintained by DfI Roads. Further to the south, the Minerstown Road 'forks' to become the Rossglass Road South, where there is a linear form of development comprising mainly detached dwellings and associated garages/outbuildings and St. Joseph's RC Church.
8. Policy CTY 2a 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 considered that the appeal development failed to meet the first, second and third criteria. The first criterion is that the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings. The second is that the cluster appears as a visual entity in the local landscape. The third is that the cluster is associated with a focal point such as a social / community building/facility, or is located at a cross-roads.
9. A cluster of development is not defined by the Policy, but its first three criteria give an indication of the intended meaning. In this case, as the building grouping on the ground lies outside of a farm and there are more than four qualifying buildings of

which at least three are dwellings within the grouping, the first criterion of Policy CTY 2a is met.

10. In respect to the third criterion, the appellant considered that St. Joseph's RC Church represented a focal point. Notwithstanding that the grouping of buildings is not located at a cross-roads, a church would be a social/community building for the purposes of policy. Given that the grouping of buildings is associated with St. Joseph's RC Church by reason of their positioning in relation to it, the third criterion of Policy CTY 2a is met.
11. In respect to the second criterion, because of the diffuse scattering of the buildings along the Minerstown and Rossglass Roads and along the Rossglass Road South, they do not present as a visual entity or a discrete visual unit in the local landscape. Furthermore, the mature intervening boundary vegetation surrounding many of them serves to reinforce the physical separation between the buildings and any impression of them representing a 'cluster' of development. I am also not persuaded that the ability to view a number of these buildings from longer distances demonstrates those buildings form part of a 'cluster' that appears as a visual entity in the local landscape. The appellant's panoramic photographs do not persuade me otherwise. For the reasons given, the second criterion of Policy CTY 2a is not met.
12. Although the Council did not explicitly object to criteria 4 and 5 of Policy CTY 2a, it is clear from reviewing the evidence in the round that these criteria are engaged in the appeal.
13. In respect to the fourth criterion, and as detailed previously, the appeal site is part of a larger agricultural field which comprises no defined northern and eastern boundaries. Given the openness of these aspects on the ground, the appeal site would not provide a suitable degree of enclosure for the appeal development. The appellant considered that the appeal site was bounded on at least two sides with other development, namely No. 1 Minerstown Road and No. 55 Rossglass Road. However, whilst No. 1 Minerstown Road abuts the appeal site to its west, immediately to its east is an entrance which provides access to the host field beyond which is No. 55 Rossglass Road. The appeal site is therefore only bounded on one side with other development in the cluster. For the reasons given above, the fourth criterion of Policy CTY 2a is not met.
14. In respect to the fifth criterion, for reasons given later in this decision, development on the appeal site would result in ribbon development and consequently would cause harm to rural character. The fifth criterion of Policy CTY 2a is not met.
15. All in all, as the appeal development would not satisfy criteria 2, 4 and 5 of Policy CTY 2a, it fails to meet Policy CTY 2a when read as a whole. The Council's third reason for refusal is sustained as specified.
16. Policy CTY 8 of PPS 21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. However, it permits an exception for 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. The policy states that for its purposes, the definition of a substantial and built-up frontage includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.

17. The Council accepts that, on the ground, the dwellings at Nos. 1 Minerstown Road and 55 Rossglass Road both share common frontage to 'the' road (my emphasis). However, as these dwellings front onto two separate road frontages, namely the Minerstown Road and the Rossglass Road and not one as prescribed by the policy, they cannot form part of a substantial and continuously built-up frontage.
18. The Council also disputes that the detached garage which is positioned to the rear of No. 1 Minerstown Road constitutes a 'frontage' building and referred to appeal decision 2019/A0075 to support their position. I agree with the Council on this matter because the garage is positioned mainly behind the dwelling at No. 1, so it does not have a frontage to the Minerstown Road. Even if I were to consider the garage as a qualifying building, the fact that two frontages are being relied upon is fatal to the proposal which seeks to infill a gap along a (singular) frontage. For these reasons, the proposal finds no support in Policy CTY 8.
19. The Council also considered that the appeal development would create a ribbon of development. There would be transient views of the existing buildings and the appeal development in both directions when travelling along the Minerstown Road/Rossglass Road, especially given the elevated position of the appeal development in these views. Irrespective of the positioning of the appeal development within the site itself, it would create ribbon development along this part of the road as it would visually link with No. 1 Minerstown Road and No. 55 Rossglass Road contrary to Policy CTY 8 of PPS 21 and the related provisions of the SPPS.
20. Policy CTY 14 of PPS 21 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. As I have already concluded above, the appeal development would result in the creation of ribbon development. This would result in a detrimental change in the rural character of the area contrary to Policy CTY 14 read as a whole and the related provisions of the SPPS. For all these reasons, the Council's second reason for refusal is therefore sustained.
21. Policy CTY 13 of PPS 21 states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. Travelling from north-east to west along Rossglass Road and in particular on its downward trajectory in the vicinity of No. 55, the two dwellings and garages on the elevated appeal site would be prominent features in the landscape. This would be due to the lack of established natural vegetation along the eastern and northern site boundaries and the consequent lack of enclosure for the proposed buildings. Given the reliance on new planting as shown on Drawing No. 1829.02P Rev A which would take time to mature and the topography of the site, I agree with the Council that the appeal development would not visually integrate into the landscape contrary to Policy CTY 13 of PPS 21. Accordingly, the Council's sixth reason for refusal is sustained.
22. The Council's fourth reason for refusal relates to Policy NH 6 of PPS 2 titled 'Areas of Outstanding Natural Beauty'. This states that planning permission for new

development within an Area of Outstanding Natural Beauty will only be granted where it is of an appropriate design, size and scale for the locality and where three stated circumstances are met. Although I am not persuaded that the scale of the proposal would be unsympathetic to the identified special character of the AONB as a whole given its stated features would remain intact, I consider that, for the reasons outlined above, as the siting of the proposal would be detrimental to the rural character of this particular locality, it would therefore be unsympathetic to the AONB. The Council's fourth reason for refusal is sustained for this reason.

23. Paragraph 3.13 of the SPPS states that the planning system should help to mitigate and adapt to climate change by avoiding development in areas with increased vulnerability to the effects of climate change, particularly areas at significant risk including from landslip and coastal erosion. Paragraph 6.33 of the SPPS states that the Regional Development Strategy 2035 (RDS) recognises that coastal areas need to be protected from coastal squeeze, to safeguard against loss of distinctive habitats, and to help adaption to climate change, and accordingly states the landscape setting of features should also be conserved.
24. The appellant submitted a Coastal Erosion Assessment (CEA) at planning application stage and a rebuttal to negative responses from DAERA Marine and Fisheries Division (M&FD) at appeal stage. In its Statement of Case, the Council included a further submission from M&FD in respect of the matter of coastal erosion and coastal squeeze which stated that *'the proposed development is located adjacent to an area of coastline that has been classified as a high erosion risk by the 'Baseline Study and Gap Analysis of Coastal Erosion Risk Management in Northern Ireland'.* This report notes that some areas identified as being at 'high risk' of erosion may not necessarily be eroding, however, they should be regarded as priority areas for further study on coastal change and until this dataset has been collected and subsequently analysed, the precautionary principle should be adhered to.
25. It goes on to state, *'this development is proposed to be built along a section of the coast which would be considered undeveloped. If allowed to go ahead this development would likely limit the ability of the coast to roll back and adapt to the impacts of sea level rise and climate change: this would ultimately lead to coastal squeeze and will likely reduce the natural level of this coastline to the impacts of climate change and sea level rise'.* It also states that the 'proposed development is located in close proximity to the projected climate change sea floodplain, with the access road being located adjacent to this projected floodplain. As such, given the location of this proposed development, the consultees note that both it and its access road may become vulnerable to the impacts of climate change and sea level rise in the future'.
26. I note that the appeal site is located some 80 metres north-east of the shoreline of Dundrum Bay. On the ground, I noted no evident signs of coastal erosion. Given this and in the absence of any detailed, reliable baseline data for this particular part of the NI coastline, I have not been persuaded that the appeal development would, in itself, exacerbate coastal erosion within this part of Dundrum Bay. The Council's fifth reason for refusal is not sustained.
27. The appellant raised several appeal decisions and planning permissions for infill dwellings at a number of locations both in the Newry, Mourne and Down District

Council area and further afield. Notwithstanding their conclusions, each application must be assessed on its own merits. The issues in this appeal are germane to this appeal site, its surroundings and the evidential context provided.

28. For the reasons given above, the appeal proposal fails to satisfy the requirements of Policies CTY 2a, CTY 8, CTY 13 and CTY 14 of PPS 21 and the related provisions of the SPPS. No overriding reasons have been presented to demonstrate how the proposal would be essential in the countryside, thus it is also contrary to Policy CTY 1 and the related provisions of the SPPS.
29. As the Council has sustained its first, second, third, fourth and sixth reasons for refusal, the appeal must fail.

This decision is based on the following drawing numbers:

Drawing No.	Title	Scale	Received by the Commission
1829.01P	Location Map	1:2500	14 th March 2022
1829.02P Rev A	Indicative layout & access arrangement concept	1:500	14 th March 2022

COMMISSIONER KEVIN GILLESPIE

List of Documents

Planning Authority:-

**“A1” Newry, Mourne and Down District
Council - Statement of Case**

Appellant:-

**“B1” Hawthorne Associates (S&A) Ltd.
Statement of Case**

**“B2” Hawthorne Associates (S&A) Ltd.
Rebuttal Statement**