

Appeal Decision

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Appeal Reference:	2021/A0245
Appeal by:	Seamus Agnew
Appeal against:	The refusal of full planning permission.
Proposal:	Erection of 2 no. dwellings
Location:	Lands between 61 and 63 Victoria Road, Larne
Planning Authority:	Mid and East Antrim Borough Council
Application Reference:	LA02/2021/0814/F
Procedure:	Written Representations with Commissioner's Site Visit on 5 th March 2024
Decision by:	Commissioner Stevenson, dated 4 th April 2024

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council's Local Development Plan 2032: Plan Strategy (PS) was adopted post the exchange of the evidence. There is a legislative requirement under the Planning Act (Northern Ireland) 2011 ("the Act") to have regard to the Council's adopted PS. The Commission therefore requested written comments on the PS from the parties involved in the appeal. The Council proposed three new reasons for refusal. Those reasons take account of certain policies in the Council's PS. The first two refusal reasons cover issues raised in the original refusal reason, but framed under the new policies in the adopted PS. The third refusal reason reflects a new policy in the PS.
3. The Appellant contends that the third refusal reason should not be considered in this appeal as he alleges that he is prejudiced in his ability to properly respond in the timeframes allowed. The Appellant states that the Council will be aware that the process to ascertain whether there is capacity in the system has changed since the submission of this appeal. He expands to say that Northern Ireland (NI) Water now invites applicants to apply for a 'Wastewater Impact Assessment' and in practice these are taking 14-18 months to process to completion. For that reason, he says it is procedurally unfair to the Appellant to introduce this reason at this late stage.
4. Whilst the Council did not originally include a refusal reason on this matter, NI Water did state in its consultation response that there was not sufficient mains wastewater capacity to accommodate the development. The Appellant is therefore likely to have been aware of that potential issue as early as during the processing of the application given that NI Water's consultation response and/or the

Development Management Officers Report are likely to have been available to view from the Council's Planning Portal. In any event, I must have regard to the adopted PS and its policies that the Council alleges that the appeal proposal would now offend, and they must be considered in this appeal. No prejudice or unfairness has arisen given that the Appellant had the opportunity to respond to the Council's comments on the PS.

5. The Appellant's Statement of Case was accompanied by an amended scheme. That amended scheme proposes a reduction in the overall ridge height of the proposed dwellings to one and a half storeys. This was in response to the Council's concerns and was submitted as an indicative sketch to the Council prior to the Council making its decision. The amended scheme was also referred to in the Development Management Officers Report. Nevertheless, the Council refused the planning application based on the original design. Given that the Council had sight of the amended scheme before it made its decision, that the amended scheme is a reduction in the overall ridge height and that it does not go to the heart of the proposal, no prejudice to any party would arise in considering the amended scheme. The amended scheme is admissible, and I will base my decision on it. The revised drawing therefore replaces drawing 04 and is numbered PAC1.

Reasons

6. The main issues in this appeal are whether the appeal proposal would have:
 - a detrimental impact on the character of the area;
 - an unacceptable adverse impact on residential amenity; and
 - inadequate means of sewage disposal.
7. Section 45(1) of the Act requires the Commission when 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) requires 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. In accordance with the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP comprises the Departmental Development Plan (DDP) and the PS read together.
8. The Larne Area Plan 2010 (LAP) is the DDP for the area wherein the appeal site for the proposed dwellings are located. The site is within the settlement limit of Larne and is on unzoned land. Any conflict between a policy contained in the LAP and those of the PS must be resolved in favour of the latter. Policy H2 of the LAP encourages the reuse for housing purposes of vacant or under used land within existing built-up areas. There are no other policies contained within the DDP that are material to this appeal. No conflict arises between the LAP and the PS. I will come onto the PS policies later in this decision.
9. Paragraph 1.5 of the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) states that its provisions apply to the whole of Northern Ireland and it is material to all decisions on individual planning applications and appeals. Paragraph 1.11 says that where a Council adopts its PS, existing policy retained under the transitional arrangements shall cease to have effect in that Council area. Policy retained under the transitional arrangements is set out at

paragraph 1.13 of the SPPS. Given that the PS is adopted for the area, those policies at paragraph 1.13 of the SPPS no longer have effect.

10. Paragraph 1.14 of the SPPS states 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. This includes Creating Places (CP) and Development Control Advice Notes (DCANs). The Appellant relies on DCAN 8 'Housing in Existing Urban Areas'.
11. Policy GP1 of the PS is entitled 'General Policy for all Development.' It states that "planning permission will be granted for sustainable development where the proposal accords with the LDP and there is no demonstrable harm to interests of acknowledged importance. Where this is not the case there will be a presumption to refuse planning permission." The policy goes on to say that "all development proposals requiring planning permission with the exception of minor proposals will be assessed against the following general policy criteria (a) – (e) and will, where relevant, be required to demonstrate compliance with them." The Council contend that the appeal proposal would offend criteria under both Part (a) and Part (b) of Policy GP1 of the PS. The criteria under Part (a) relates to design quality and respecting local character and distinctiveness, whilst the criteria under Part (b) relates to safeguarding residential amenity.
12. The appeal site is an irregular-shaped plot of land behind a pair of semi-detached chalet bungalows (numbers 63 and 65) that front onto Victoria Road. Access to the backland site is from a laneway that is between two dwellings (numbers 61 and 63). The appeal site is bounded to the south by shrubbery and a watercourse beyond. A 2 metres high timber fence, a 2 metres high hedgerow or wall define the other site boundaries. Concrete foundations and a sub-floor are in-situ on the site. The Appellant and the Council indicate that the foundations are associated with an approval (F/2009/0100/F) for one single storey detached dwelling. There is also a metal framed building on the site and ad-hoc building materials. The site slopes gently down from Victoria Road before falling steeply towards the watercourse.
13. The appeal proposal is for a pair of semi-detached one and a half storey dwellings on the appeal site. Those dwellings would have a half-hipped roof, a dormer window on the front elevation and rooflights to the rear. A first-floor bedroom window would be on each side gable. The revised scheme indicates that the proposed dwellings would be approximately 6.5 metres in height to the ridgeline. The Appellant argues that the principle of backland development is established on the appeal site by virtue of planning permission F/2009/0100/F and that this permission has also been implemented and represents a fall-back position. He indicates that he intends to fully construct the dwelling if the appeal is unsuccessful. The Council did not dispute that the approval is a fall-back position. Given my on-site observations, I accept that that permission F/2009/0100/F for that one single storey dwelling could be fully implemented if the proposed dwellings are not permitted.

Character

14. The Council does not specify which criteria under Part (a) of Policy GP1 of the PS that is in contention but does allege that Part (a) requires new development to respect its surroundings and be of an appropriate design for the site and its locality, having regard to the relationship with nearby buildings and spaces, the density and pattern of development. The first criterion under Part (a) is most relevant. That

criterion requires that the development is compatible with surrounding land uses and neither the use or the built form and associated infrastructure (including hard/soft landscaping) will detract from the visual amenity, landscape quality, local distinctiveness and inherent character of the locality. Footnote 21 of the PS indicates that built form refers to the siting, layout, density, scale, height, massing, form, levels, materials and detailing of buildings within the development site.

15. Policy HOU1 of the PS is entitled 'Quality in New Residential Development in Settlements'. It states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a high quality, sustainable and safe residential environment. It goes on to say that "the design and layout of residential development should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area, provides adequate public and private open space and ensures good connectivity with existing local facilities and amenities."
16. Policy HOU1 also states that "in established residential areas, with the exception of such areas in main towns that are located adjacent to main public transport nodes or within or closely associated with the town centre, planning permission will only be granted for the redevelopment of existing buildings, or the infilling of vacant sites (including extended garden areas) to accommodate new housing where the proposed density is not significantly higher than that found in the established residential areas and the pattern of development is in keeping with the overall character and environmental quality of the established residential area." The policy refers to taking into account in assessing proposals the guidance set out in Appendix D of the PS, the Creating Places design guide, alongside the Living Places – An Urban Stewardship Design Guide.
17. The appeal site is outside the town centre boundary of Larne that is defined in the LAP. Whilst the Appellant made no case as to whether the site is closely associated with the town centre, he did state that the site is in a highly accessible location, close to Larne Town Centre where local shopping, employment opportunities and access to the public transport network are available within a five-minute walking distance. Nevertheless, none of the parties indicate if Larne is a 'main' town. In any event, both the Council and the Appellant accept that the site is in an established residential area, and I agree.
18. Victoria Road comprises a mix of house types ranging from terraced, semi-detached and detached dwellings that are mainly two storeys. However, on the same side of the street as the appeal site, single storey semi-detached bungalows are the predominant house type. The properties on the opposite side of Victoria Road sit on higher ground. The topography generally falls from Victoria Road towards Glenarm Road. The established residential area comprises the houses on the same side of Victoria Road as the appeal site and the houses that face onto Princes Gardens and back onto the appeal site. The dwellings that front onto Glenarm Road do not make up part of the surrounding area as they are separated from the appeal site by the vegetation and the watercourse.
19. The Council consider that the proposed semi-detached dwellings would not result in a density that is significantly higher than that found in the established residential area. The Appellant indicates that the appeal site measures 0.118 hectares in area, and I agree. Given the size of the appeal site, I accept that the density of the appeal

proposal would not be significantly higher than that found in the established residential area.

20. Appendix D of the PS sets out guidance for new residential development in settlements. The site context section of Appendix D states that the design for a housing development should seek to reinforce and evolve local characteristics that are considered positive and attractive, while those urban design features that undermine the overall character of an area should not be replicated nor used as a precedent. It expands to say that context is particularly important for backland development in established residential areas and that particular regard should be given to layouts, plot sizes, ratios of built form to garden area, spacing between buildings etc. The Council remains of the view that the revised scheme is unacceptable. Its concerns relate to the plot size, ratio of built form to garden area and spacing between buildings of the two proposed dwellings. The Council and third parties contend that the proposed dwellings would not be in keeping with the overall character of the area.
21. Despite no plot sizes being provided by the Council or the Appellant, given the extent of the appeal site even with part of it falling steeply down to the watercourse, and factoring in the driveway and proposed garages, I am satisfied that the plot size for each of the proposed dwellings would respect the neighbouring plots. The back gardens of number 63 and 65 are approximately 12 metres deep and most of the others in the surrounding area are more. The depth of the rear gardens of the proposed dwellings would be approximately 6 metres at the deepest end and 3 metres at the narrowest end. This lack of depth to the rear gardens of the two proposed dwellings would be uncharacteristic of the surrounding area given that most of the rear gardens are generally 12 metres or more in depth. Nevertheless, the single approved dwelling (F/2009/0100/F) was granted on the appeal site with a similar depth of rear garden to the proposed dwellings.
22. Although that approved bungalow was granted with much more private rear amenity space than that proposed for the two individual dwellings, the proposed separation distances from the common boundary are established under the live permission (F/2009/0100/F). Accordingly, the separation distances of the built form of the proposed dwellings from the common boundary with numbers 63 and 65, together with the plot size of each proposed dwelling would be in harmony with the existing development pattern.
23. There is dispute between the Appellant and the Council over the amount of private rear amenity space that each dwelling would have. The Appellant contends that the proposal allows for the provision of approximately 68 sq. m private amenity space. However, the Council argue that each dwelling would have only 50 sq. m of private rear amenity space. The Appellant expands to say that regard should be had to the additional garden space to the front of each dwelling given the discreet location of the site and that it would only be accessible to residents and not the general public. He contends that the appeal site is located within walking distance to Smiley Park.
24. Paragraph 5.19 of CP states that “on green-field sites and in lower density developments all houses should have an area of private open space behind the building line... To promote choice for residents a variety of different garden sizes should be provided and back garden provision should therefore be calculated as an average space standard for the development as a whole, and should be around 70

square metres per house or greater. Garden sizes larger than the average will generally suit dwellings designed for use by families, while smaller areas will be more appropriate for houses with 1 or 2 bedrooms or houses located opposite or adjacent to public or communal open space. For any individual house however an area less than around 40 square metres will generally be unacceptable.”

25. I calculate that the rear private amenity space for each proposed three-bedroom dwelling would be between 60-70 sq. m. Whilst Smiley Park is in walking distance of the appeal site, it is not opposite or adjacent to the proposed dwellings. Nevertheless, given the closeness of Smiley Park, the uniqueness of the site and the proposed layout arrangement, I am content that the amount of private rear amenity space provision proposed for both dwellings accords with CP.
26. The Council initially had concerns that the dwellings originally proposed would appear incongruous and overbearing in the streetscape and out of character with the area. However, the Appellant argues that regard should be paid to the secluded nature of the site and its limited visual presence when viewed from surrounding public areas. He goes on to say that this should allow for some form of autonomy in terms of providing for a suitable design and layout and that the requirement to strictly adhere to the characteristics of existing dwellings fronting Victoria Road and Princes Gardens is overstated. He concludes that the backland nature of the site would ensure that the proposal would not be visually apparent from the local area, and would therefore not harm its overall character.
27. Even with the slight fall in the topography from the road and the reduced height of the proposed dwellings, I consider that their roofline would remain visible from Victoria Road given that they would be one and a half storeys in height and the dwellings in front are single storey from the road. Nevertheless, adjacent to the bungalows, there are a pair of two storey semi-detached dwellings (numbers 59 and 61) that front onto Victoria Road also. For that reason, I am not persuaded that seeing the rooflines of the proposed dwellings from Victoria Road would necessarily harm the character of the area.
28. Given that the proposed dwellings’ plot sizes would be in keeping with the surrounding pattern of development, that the separation distance of the built form to the rear common boundary would be similar to the live approval on the site, and that the proposal is on a unique backland site where only its roofline would be visible from Victoria Road, I am satisfied that the appeal proposal would not harm the character of the area and would not result in overdevelopment of the site. The appeal proposal would not offend the SPPS, Policy HOU1, Policy GP1(a) and Appendix D of the PS. The Council’s first reason for refusal and the third parties’ concerns in this regard are therefore not sustained.

Residential Amenity

29. The first criterion of Part (b) of Policy GP1 states that neither the use or the built form shall have an unacceptable adverse impact upon the amenity of existing residents living within, adjacent to or in reasonable proximity to the development site. The second criterion states that appropriate boundary treatment and means of enclosure are provided so as to effectively mitigate against significant adverse impacts on visual amenity and, where relevant other amenity impacts.

30. Policy HOU1 of the PS states that all dwellings in established residential areas should not result in unacceptable damage to the residential amenity of established residential areas. Appendix D expands to say that particular regard should be given to inter alia the safeguarding of privacy, distance from boundaries of adjoining properties and the impact of overlooking, loss of light or overshadowing. The Council contend that the proposed dwellings would only be 3-6 metres from the common boundary with numbers 63 and 65 Victoria Road and that whilst the reduction in the ridge height of the amended scheme may reduce the potential for overlooking, there still exists the potential for general disturbance arising from the day-to-day activities associated with the proposal. Third parties also object to the proposal on amenity grounds. They consider that the appeal proposal would affect the privacy and enjoyment of their homes.
31. Appendix A of the PS states that proposals should seek to provide reasonable separation from existing adjacent buildings and between proposed properties within the development in order to minimise overlooking. It goes on to say that this will assist in providing acceptable levels of daylight to properties and refers to CP as providing the levels of separation. Paragraph 7.16 of CP indicates that “where the development abuts the private garden areas of existing properties, a separation distance greater than 20m will generally be appropriate to minimise overlooking, with a minimum of around 10 metres between the rear of new houses and the common boundary. An enhanced separation distance may also be necessary for development on sloping sites.” The properties that the Council raises its concerns regarding are numbers 63 and 65 Victoria Road. The other residential properties raised by the third parties are numbers 61, 63, 65, 67 and 69 Victoria Road as well as certain dwellings on Glenarm Road.
32. The proposed dwellings would be located 3-6 metres from the common boundary with numbers 63 and 65 and would sit on slightly lower ground to those properties. They would have rooflights on the northern elevation and two side first-floor bedroom windows on both gable elevations. There would be two dormer windows and rooflights on the southern elevation of the proposed dwellings. Given the orientation of the two side first-floor bedroom windows, there would be no direct overlooking into the rear gardens of numbers 63 and 65. As the upper floor windows facing numbers 63 and 65 would be rooflights and that a 1.8 metres fence and a 2 metres hedgerow exist between the existing and proposed properties, again there would be no direct overlooking into the rear gardens of numbers 63 and 65. Accordingly, I find that the appeal proposal would not result in unacceptable adverse overlooking into numbers 63 and 65.
33. There would be a separation distance of around 5-6 metres at the nearest point from the rear garden of number 61 Victoria Road and 1-3 metres from number 67’s rear garden adjacent to the eastern gable elevation of the proposed dwellings. There would be intervening vegetation of 2-4 metres along the common boundary with number 67. I am satisfied that this intervening vegetation would partially break any direct overlooking from the proposed first-floor bedroom gable window on the eastern elevation of that dwelling into the rear garden of number 67. In any event, the direct overlooking would be into the lower part of the garden. I consider that there would be an oblique view from the first-floor bedroom window into the rear garden of number 61 Victoria Road. Given the siting of the proposed dwelling in relation to number 61 and that the direct overlooking into number 67 would be into the lower part of its garden, the overlooking would not to my mind be to an unacceptable adverse level.

34. Whilst the properties that face onto Glenarm Road sit on much lower ground to the proposed dwellings, they generally have long rear gardens and the watercourse traverses between those dwellings and the appeal site. The proposed dwellings would be approximately 13 metres from the site boundary and there would be a separation distance of approximately 30-40 metres between the built form of the proposed dwellings and the existing terraced properties on Glenarm Road. Notwithstanding the change in topography between those dwellings and the appeal proposal, given the separation distance and the intervening vegetation in between, I am satisfied that there would be no unacceptable overlooking from the first-floor dormer bedroom windows and the rooflights on the southern elevation of the proposed semi-detached dwellings.
35. The third parties expressed concerns that the appeal proposal would be visually overbearing and intrusive and would result in loss of light and overshadowing onto their properties. I consider that there would be some loss of light and subsequent overshadowing into the bottom part of the rear gardens of those dwellings numbered 63 and 65 in the early part of the day due to the height and position of the proposed dwellings sited close to the common boundary. However, the overshadowing impact would not be to an unacceptable adverse level. I am also satisfied that there would be no unacceptable adverse overbearing impact on those properties (63 and 65).
36. For the reasons set out above, the amenity and privacy of those existing residents identified by the Council and the third parties would not be impaired from unacceptable adverse overlooking or overshadowing into their properties. I am not persuaded that the appeal proposal would neither cause nuisance or disturbance, nor have an unacceptable adverse overbearing impact. I conclude that the appeal proposal would not have an unacceptable adverse impact on the amenity of existing residents and that it would not offend Policy GB1(b), Policy HOU1, Appendix D of the PS and the SPPS insofar as stated. The Council's second reason for refusal and the third parties' objections in this regard are therefore not sustained.

Non-Mains Wastewater Infrastructure

37. The Council argue that the Appellant has not demonstrated the means of wastewater treatment and disposal required for the proposed dwellings, and if the proposal were to rely on non-mains wastewater infrastructure, it would not create or add to pollution. Policy WW11 of the PS is entitled 'Development relying on non-mains wastewater infrastructure.' It states that "a proposal for new development relying on non-mains wastewater infrastructure will only be permitted where the applicant has demonstrated, through the submission of sufficient information on the means of wastewater treatment and disposal that it will not create or add to a pollution problem. In those areas identified as having a pollution risk, in exceptional circumstances non-mains wastewater infrastructure will only be permitted where appropriate mitigation measures have been identified."
38. The amplification text of Policy WW11 states that this policy seeks to ensure that proposals for new development relying on non-mains wastewater infrastructure, either individually or cumulatively, do not increase the risk of pollution. It also states that "where there are WwTW capacity or network capacity constraints, or where the development is within an area identified as having a pollution risk, the applicant must also submit detailed information on proposed mitigation measures. In some cases, the applicant may be requested to provide a private WwTW or contribute to

infrastructure upgrade costs to facilitate their development. This will be required to be agreed with the Council.”

39. The Appellant indicates that the proposed garden would offset storm water and could potentially reduce any potential increase load to the network. However, the Council’s concerns relate to wastewater. At application stage, NI Water stated in its consultation response that there was not sufficient mains wastewater capacity to accommodate the development. However, the Appellant alleges that the process to ascertain whether there is capacity in the system has changed since the appeal was submitted and that NI Water now invites ‘Wastewater Impact Assessment’ applications to be made and that they are taking 14-18 months to process to completion.
40. Whilst that may be the case, NI Water informed the Council that there is no wastewater treatment capacity available at present for the proposed development. NI Water expands to say that the public system cannot presently serve the proposal without significant risk of environmental harm. They also state that NI Water plans to upgrade the Waste Water Treatment Works in this drainage area, subject to prioritisation and funding and that meanwhile NI Water is recommending connections to the system are curtailed. The Appellant alleges that the earlier approval demonstrates capacity for one dwelling on the site and that the proposal would result in a minimal uplift.
41. Notwithstanding that I have accepted the validity of the Appellant’s fallback position, it only relates to a single dwelling that would only take up half the potential additional load onto the sewage system in comparison to the two proposed dwellings. The Appellant put forward no proposals to avoid, mitigate or offset any environmental harm, but suggests that a negative condition could be attached to any approval requiring that a method of sewerage disposal be secured with NI Water prior to the commencement of development. However, the possibility cannot be excluded that the means of waste water treatment and disposal would, although permission had already been granted, not be acceptable as per the policy requirements. Moreover, if the method of sewerage disposal is to be a private WwTW, it is unknown if it could be physically accommodated within the confines of the site.
42. Given my findings above, I conclude that the appeal proposal offends Policy WWI1 of the PS. The Council’s third reason for refusal is therefore sustained.
43. The Council indicate that an appeal was dismissed in 2008 for two semi-detached dwellings on the appeal site. The third parties also refer to a refusal on the site. However, no further details were provided. I therefore cannot comment on that appeal decision or any other refusal if it is not in the evidence before me.
44. The third parties cite Article 8 of the European Convention on Human Rights (ECHR). It is appreciated that Articles 1 and 8 of the ECHR, which provide for the protection of property and the peaceful enjoyment of possessions, may be engaged in this appeal. Rights under the ECHR are qualified, however, and the legislation clearly envisages that a balance be struck between the interests of individuals and those of society as a whole. Whilst I have already concluded that the appeal proposal would not have an unacceptable adverse impact on residential amenity, I have found that the appeal proposal would run contrary to planning policy for the reasons set out above. It is not therefore in the public interest that such development is approved.

45. Other issues were raised by the third parties. However, having considered them, they would not either individually or cumulatively warrant the dismissal of the appeal. In any event, I have found that one of the Council's reasons for refusal is sustained, and that is determining in this appeal.

Conclusions

46. All in all, as the Council's third reason for refusal is sustained and the Appellant's fallback position would not justify the granting of permission for the appeal proposal, the appeal must fail.

This decision relates to the following drawings: -

Drawing Number	Drawing Title	Scale	Date Received by the Council
01	Location Map	1:2500	19 th August 2021
03	Block Plan	1:500	6 th August 2021
PAC1	Floor Plans, Elevations & Section	1:100; 1:200	N/A
05	Garage Floor Plan & Elevations	1:50; 1:100	6 th August 2021

COMMISSIONER B STEVENSON

List of Documents

Planning Authority: -
Mid & East Antrim Borough Council

A1 Statement of Case
A2 Rebuttal Comments
A3 LDP Comments
A4 LDP Rebuttal Comments

Appellant: -
da architects Ltd

B1 Statement of Case
B2 Rebuttal Comments
B3 LDP Comments
B4 LDP Rebuttal Comments