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<b>Appeal Reference:</b>	2022/A0019
<b>Appeal by:</b>	Mr Trevor Lindsay
<b>Appeal against:</b>	The refusal of outline planning permission
<b>Proposed Development:</b>	Site for Dwelling and Garage
<b>Location:</b>	Between 5 & 7 The Nursery Killyleagh
<b>Planning Authority:</b>	Newry, Mourne and Down District Council
<b>Application Reference:</b>	LA07/2021/1781/O
<b>Procedure:</b>	Written representations and Commissioner's site visit on 3 <sup>rd</sup> September 2024
<b>Decision by:</b>	Commissioner Trudy Harbinson, dated 12 <sup>th</sup> September 2024

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## Decision

1. The appeal is dismissed.

## Reasons

2. The main issues in the appeal are whether or not the appeal proposal would have an unacceptable impact on:
  - the character and environmental quality of the established residential area;
  - residential amenity, and
  - road safety.
3. In the determination of this appeal, Section 45 (1) of the Planning Act (Northern Ireland) 2011 (the Act) 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. The Ards and Down Area Plan 2015 operates as the statutory LDP for the area. The appeal site is within the settlement limit of Killyleagh. Policy SETT 1 states that favourable consideration will be given to development proposals within settlement limits including zoned sites provided that the proposal is sensitive to the size and character of the settlement in terms of scale, form, design and use of materials. There are no specific provisions in the plan relevant to the appeal proposal.
4. The Strategic Planning Policy Statement for Northern Ireland '*Planning for Sustainable Development*' (SPPS) is material to all decisions on individual planning applications and appeals. It refers at paragraph 6.137 to the need to deliver increased housing without town cramming and the importance of new development respecting local character and environmental quality as well as safeguarding the amenity of existing residents. The SPPS retains policies within

existing planning policy documents until such times as a Plan Strategy (PS) for the Council area has been adopted. No PS has been adopted for this council area. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS. As there is no conflict between the provisions of the SPPS and the retained policy relevant to this appeal, in accordance with the transitional arrangements set out in the SPPS, the provisions of Planning Policy Statement 7 '*Quality Residential Environments*' (PPS7), the second addendum to PPS7 entitled '*Safeguarding the Character of Established Residential Areas*' (the Addendum) and Planning Policy Statement 3 '*Access, Movement and Parking*' (PPS3) remain applicable to the appeal development.

5. The appeal site is within a residential development, 'The Nursery', which is located to the east of Downpatrick Road and north of Inishmore Road. It incorporates 16 dwellings in two cul-de-sacs to the west and east of its entrance road. The appeal site is located at the end of the eastern cul-de-sac, with frontage on to its hammerhead. It is somewhat triangular in shape with a narrow plot frontage gradually increasing in width to the rear. Levels rise across the site from front to back. They also rise from south to north towards No.7 'The Nursery'. The appeal site boundaries are defined by a field gate and a post and wire fence along its rear separating it from the field behind, a wall and stepped fence separating it from the single storey detached dwelling at No.7 to its north, and a stepped fence separating it from the single storey detached dwelling at No.5 to its south. It is open to the pavement at its front with a dropped kerb on to a hammerhead.
6. There is planning history on the site. Planning reference R/93/1007 approved ten detached dwellings, nine of which are in place, these are numbered one to five and seven to ten, with a vacant plot between No.5 and No.7 at the end of the cul-de-sac. The Appellant refers to this as 'No.6'. The appeal seeks outline planning permission for a dwelling and garage on this vacant plot.
7. Although the planning application subject of this appeal seeks outline planning permission, the accompanying drawing "Site for dwelling and garage (for information only)" informs consideration of the proposal. The dwelling is detached, single storey, with a pitched roof and a ridge height of approximately 5.6m. The rear door is on the side of the rear return. Two dwelling options are shown. A right-hand return with a longer southern side gable, measuring some 12m, and shorter northern gable, measuring some 9m. The other option is a left-hand return with a longer northern gable and shorter southern gable. On both options the dwelling is set back approximately 12m into the site and is orientated to face onto the cul-de-sac, its front facade measuring some 10.4m. The site's frontage to the pavement measures approximately 8m. A driveway enters the site to its front and then curves alongside the southern boundary with No.5, south of the proposed dwelling's side gable. The dwelling is approximately 1m off the common boundary with No.7 to its north. A garden is shown to the front and rear. The drawing also shows an elevation and plan of the 'existing' dwelling type, this has a frontage of some 13m and a depth of some 9m.
8. The Policy Context to PPS7 seeks to balance the promotion of a more sustainable form of development with avoiding any significant erosion of the local character and the environmental quality, amenity and privacy enjoyed by existing residents (paragraph 1.4) within established residential areas (ERAs). Policy QD1 of PPS7

states that planning permission will only be granted for new residential development where it is demonstrated that the proposal will create a quality and sustainable residential environment. It states that the design and layout should be based on an overall design concept that draws upon the positive aspects of the character and appearance of the surrounding area. It adds that all proposals for residential development will be expected to conform to nine criteria. The Council consider that the proposal would fail to comply with criterion (a) of Policy QD1 which requires that the development respects the surrounding context and is appropriate to the character and topography of the site in terms of layout, scale, proportions, massing and appearance of buildings, structures and landscaped and hard surfaced areas. Third party objectors echoed these concerns.

9. Policy LC1 of the Addendum states that in ERAs planning permission will only be granted for the infilling of vacant sites to accommodate new housing where all the criteria set out in Policy QD1 and three additional listed criteria are met. The Council consider the proposal to be at odds with criterion (b) whereby the pattern of development is not in keeping with the overall character and environmental quality of the ERA. Again, third party objectors echoed these concerns.
10. Neither party to the appeal has defined the ERA however the Council stated that the appeal proposal would directly read with the properties within the cul-de-sac wherein it is situated and considered that this area provides the appropriate context. It considered that the area exhibits a spacious character due to a broadly uniform layout, spacious side driveways, garden areas to the front for each dwelling and separation distances between units. It stated that the narrow frontage of the Appeal proposal would be at odds with this. The Appellant in their evidence referred to properties throughout 'The Nursery' housing development which he considered exhibits a wide variety of plot sizes and frontages with a lack of uniformity to be at odds with.
11. 'The Nursery' is one overall housing development encompassing two cul-de-sacs, each with a distinctive spatial structure. The western cul-de-sac is a shared surface of seven detached bungalows, all similar in form, layout, scale and design, with open grass verges to their fronts and driveways to their side. It is set down at a lower level than the road at Inishmore to its south, the rear gardens of the southernmost dwellings sitting at a gradient. The dwellings are all level. To the east of the entrance road to 'The Nursery', the first two dwellings step down into the eastern cul-de-sac which accommodates a further seven dwellings which gradually step up towards the appeal site at the end of the cul-de-sac. This cul-de-sac is also characterised by single storey detached dwellings with side driveways and both front and rear gardens. They display a regular roof profile with gable ended pitches. Unlike the neighbouring cul-de-sac, it is not a shared surface, it has a pavement around its perimeter with all but two of the properties having a front boundary wall or fence to encompass their front garden. Given the comparable design styles and building forms the ERA encompasses 'The Nursery' as a whole. Notwithstanding that there are shared uniform features in the overall ERA, each cul-de-sac also has its own distinguishing characteristics. Given the position of the appeal site at the end of the eastern cul-de-sac, removed from the western part of the ERA, I consider that any development on it would read with the properties within this immediate context.

12. Third party objectors raised the absence of detail on existing and proposed levels. They stated that the site slopes considerably more than what is shown on the drawing that accompanied the application. They considered that any development would require considerable cut or fill and the use of high-level retaining walls or large foundation structures to create a level site for development. They also stated that a garage, whilst in the description, was not shown on the plan and that its inclusion would result in a greater impact on density with a higher built form to garden ratio. Such matters fall to be considered under criterion (a) of Policy LC1 of the Addendum.
13. The Appellant stated that 17 dwellings were originally planned for The Nursery in 1993. Nos. 1 and 6 were not built during the original construction. No.1 has since been built and a gap was left for No.6. The Appellant stated that the original approved plot frontage for Nos. 5 and 6 was 6.7m and 16.8m respectively however adjustments on site during construction resulted in plot frontage dimensions of 12.7m and 8m respectively. He considered that the site is of an adequate size to accommodate a dwelling, garage, driveway and amenity space. A drawing detailing plot dimensions is included in his evidence for information. This drawing also details the position of a garage at the end of the side driveway.
14. The drawing provided in the Appellant's evidence also shows existing levels. It does not specify the datum point from which these are measured, however it indicates that levels rise from front to back across the site from 99.50/100.00 to 102.49/103.80. Levels fall from 103.80 at the northeastern rear corner boundary with No.7 to 100.79 at the southeastern rear corner boundary with No.5. Levels through the centre of the site fall (north to south) from 102.99 to 99.27. Proposed levels are not detailed however a 'Street Scene' section indicates some 1.1m of cut into the site at a boundary with No.7. More detailed sections through the site would have been helpful, regardless of the outline nature of the application.
15. Given the topography of the site, the earthworks required to facilitate a dwelling would not be insignificant. Retaining structures would inevitably be required to facilitate the development. The Appellant stated that cut would be required to allow the proposed dwelling to sit below No.7 and that a retaining wall would be proposed to accommodate the lower level at No. 6 and again between No.6 down to No.5 if necessary. He considered that their use would be appropriate and not out of keeping with surroundings, referencing those separating Nos. 7 and 8, Nos. 8 and 9, and Nos. 3 and 4.
16. The planning approval for the site is of an age that pre-dated the introduction of PPS7 and the Addendum. It granted full planning permission, however little detail appears to have accompanied it other than a basic site layout and details of two house types, both of which had approximately 13.1m wide frontages and a depth of some 8.6m, plus a 0.5m porch. Those drawings show no consideration of topography or boundary treatment.
17. Whilst the Appellant seeks to complete the development and the planning history is a material consideration, construction on site has resulted in a reconfigured plot at 'No.6', having lost a triangular part of its frontage and gained a triangular part of land to its rear. The triangular configuration of the appeal site differs from what was a rectangular plot on the approved housing layout. Its development now, along with its context and constraints, fall to be assessed within the prevailing

policy context. The appeal plot size of 589sqm is acceptable, not being at odds with the other plots throughout the ERA, which range between 442sqm and 666sqm. It would not result in a density significantly higher than that found in the ERA, satisfying criterion (a) of Policy LC1 of the Addendum. The drawing provided illustrates that the plot can accommodate a dwelling, driveway, garage and amenity space. I must consider however whether the development would result in a quality residential environment in keeping with its surrounding context.

18. The dwellings approved and built mostly have a minimum frontage width of some 13m, driveways to their side and both front and rear gardens. The configuration of the appeal plot requires the dwelling to be set back in order to accommodate both it and the driveway. The proposed set back in itself is not unacceptable given similarities at Nos. 3 and 4 within the same cul-de-sac. However, even with this set back the dwelling frontage, at some 10.4m, is narrower than all of those within the immediate context of the cul-de-sac.
19. Whilst the dwelling frontage of No.1 'The Nursery' is 10m, it is a corner site at the entrance into the housing development. Its immediate context differs to that of the appeal site which sits centrally at the end of a cul-de-sac with a dwelling either side. Similarly, the narrow plot frontage of 6.5m at No.15 'The Nursery', whilst comparable in that it is at the end of a cul-de-sac and faces on to a hammerhead, is distinguishable given its shared surface nature and level topography, both of which contribute to an open appearance, diminishing any visual appreciation of the narrower frontage at that particular location. Whilst there are exceptions to the prevalent character, a narrower dwelling and a narrower plot frontage at these two properties cannot define the overall character of the ERA which in the main has dwellings more generous in width and plot frontage.
20. Whilst the dwelling would be single storey and use similar design features to those in situ, its smaller scale and narrower appearance would not be in keeping with its surrounding context. It would appear somewhat squat in comparison to the other dwellings, and together with its driveway and garage, squeezed into the plot. It would also have an unusual proximity to its common boundary with No.7, the separation distances between dwellings and their neighbouring common boundary being greater in the remainder of this cul-de-sac. The proximity at this boundary would likely be worsened by the requirement for a retaining wall to overcome the change in level. Whilst retaining walls may be features within part of this ERA I do not consider that their replication here would draw upon the positive aspects of the character and appearance of the surrounding area. All of these factors combined would be even more apparent given the central location of the appeal site at the end of the cul-de-sac.
21. The appeal development, utilising either of the design options advanced by the Appellant, would appear incongruous failing to respect the surrounding context, contrary to criterion (a) of Policy QD1 and resulting in a pattern of development not in keeping with the overall character and environmental quality of the ERA, failing criterion (b) of Policy LC1 of the Addendum. The Council's reason for refusal and third party related objections are sustained.
22. Third party objectors were concerned that the development would have adverse effects on the amenity of Nos. 5 and 7 through overlooking, overshadowing and loss of light. The drawing provided shows no windows on the side gables of the

main dwelling, with only a small kitchen window on the side return. In the event of permission being granted, the requirement that the development be in general conformity with this plan could be secured by condition. Similarly, boundary treatments could be secured by condition to protect the privacy of outdoor amenity spaces. Given the indicative plan, the single storey nature of the dwelling and the potential to secure adequate boundary treatment, I am satisfied that there would be no unacceptable overlooking from the proposed development into its neighbours.

23. The appeal development is north of No.5, the dwelling is set back from the boundary and where it is closest the relationship is gable to gable. The garage would sit alongside the common boundary, however, it is small in scale, measuring approximately 2m to its eaves and with a pitched roof to its ridge. There would be no unacceptable overshadowing or loss of light to No.5. The appeal development is due south of No.7 and in close proximity to its common boundary however given the angled orientation of No.7 any overshadowing would be limited to an area of side garden alongside its gable wall. I do not consider that there would be an unacceptable impact on residential amenity that would warrant refusal of the appeal development.
24. Objectors also raised concern that a greater concentration of vehicles at a tight corner site would prejudice road safety. The two dwellings at Nos. 5 and 7 take their access onto this hammerhead, the appeal development would introduce a third. However, I have not been presented with any evidence that would persuade me that the level of traffic generated by one additional dwelling would prejudice road safety. I am reinforced in that view given the lack of objection from the Department for Infrastructure Roads to the proposal. Whilst it may be the case that site traffic during the construction period would likely cause some degree of disruption, this would be of a temporary nature and careful management by the developer could minimise this.
25. The objectors also referenced the proposals failure to comply with the Regional Development Strategy (RDS), PPS12 Housing in Settlements and Development Control Advice Note 8 (DCAN8) Housing in Existing Urban Areas. PPS12 does not contain operational policy for determination of development proposals. The RDS provides strategic guidelines and DCAN8 supplementary planning guidance, however, they do not add to the requirements of the policy under which the appeal development has been considered above.
26. Whilst these third party concerns are not determining, the Council's reason for refusal and related third party objection are sustained and determining. The appeal must fail.

The decision is based on Drawing A 5255.

**COMMISSIONER TRUDY HARBINSON**

**List of Documents**

Planning Authority:- "A" Statement of Case

Appellant:- "B" Statement of Case