
Appeal Reference:	2022/A0024
Appeal by:	Gary Gordon
Appeal against:	The refusal of full planning permission
Proposed Development:	The erection of a shed for equestrian use and retention of extension to domestic curtilage
Location:	14 Church Road, Kilkeel
Planning Authority:	Newry Mourne and Down District Council
Application Reference:	LA07/2021/1011/F
Procedure:	Written representations and Commissioner's site visit on 23 rd September 2024
Decision by:	Commissioner Cathy McKeary, dated 30 th October 2024

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended drawings were submitted as part of the statement of case showing a redesigned building. The originally submitted design entailed a corrugated sheeting pitched roof, block walls building measuring approximately 13.7m x 9.3m and 4.6m high, with roller shutter doors, and metal pedestrian doors. The amended design entailed a hipped tiled roof, smooth painted render walls building with all timber doors, which would measure approximately 13.7m x 9.3m and 4.5m high. In both versions the building would be subdivided to form four stalls and a larger area for vehicle storage. The proposed extension to curtilage of approximately 17m length across the breadth of the appeal site also features in both versions.
3. The Council does not consider the amended design to be admissible under S59 of the Planning Act (NI) 2011 (the Act). The amended drawings pertain to the matter in hand, that is, the erection of a shed on the appeal site. This matter was before the Council when considering the planning application and therefore additional information can be considered as part of this appeal. The Council had the opportunity to comment on the amended drawings in their rebuttal statements but did not. Notwithstanding this, the changes do not go to heart of the proposal, which remains as the erection of a shed for equestrian use. No third parties unaware of the amended design would be prejudiced by its consideration. The amended design is therefore admissible.
4. The Council obliquely refers to policy EXT1 in their statement of case in relation to the scale, massing and design of the proposed building, but this is not referred to in

their decision notice. Notwithstanding this, the appellant has had the opportunity to address this in their rebuttal and moreover, similar concerns are already raised within the Council's fourth and fifth refusal reasons. No prejudice has arisen. For completeness I will consider both designs.

5. Part of the Council's second refusal reason is worded in such a way that it reads that the Council have no issue in relation to visual amenity and the development being absorbed into the landscape under Policy OSM3 (sic) of Planning Policy Statement 8, Open Space, Sport and Outdoor Recreation (PPS8). However, the Council, in their statement of case, make an argument on that basis as a refusal reason under Policy OS3 of PPS8. The appellant accepts that these are typographical errors and makes their case regardless. While it is essential that a decision notice should clearly state the reasons for refusal, the appellant in this instance has understood the intent and had the opportunity to comment. No prejudice has arisen.

Reasons

6. The main issues in this appeal are whether the proposal would:
 - be acceptable in principle;
 - be of a scale and design appropriate to the local area; and
 - have an adverse impact on visual amenity and character of the local landscape.
7. 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, 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 Local Development Plan (LDP), the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
8. The Banbridge, Newry, and Mourne Area Plan 2015 operates as the relevant LDP. In the plan, the site is located in the countryside. There are no policies in the plan that are pertinent to this proposal. The site also falls within the Mournes Area of Outstanding Natural Beauty (AONB).
9. The Strategic Planning Policy Statement (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for a Council area is adopted. In this Council area, no Plan Strategy has been adopted yet. As such, during the intervening transitional period, the SPPS retains certain Planning Policy Statements (PPSs) including the Addendum to Planning Policy Statement 7, - 'Residential Extensions and Alterations' (APPS7), Planning Policy Statement 8 – 'Open Space, Sport and Outdoor Recreation' (PPS8), and PPS21 – 'Sustainable Development in the Countryside' (PPS21). The SPPS sets out the transitional arrangements to be followed in the event of a conflict between it and retained policy. Any conflict arising between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the SPPS. As no such conflict arises in this instance, the retained policy contained in PPS21 applies.
10. The appeal site is within the countryside at 14 Church Road, approximately 4km northeast of Kilkeel. The site contains a single storey dwelling, a partly constructed associated garage and an area of hard core to the rear. The area of hardcore sits

on a higher level on land to the rear of the existing rear garden of the dwelling. There is a retaining wall of approximately 2m high at its highest point defining the area between the dwelling and the extended area of hard core. A ramp is set within the wall to provide vehicular access to the extended area. The northeastern boundary of the appeal site is comprised of dry stone wall for part of its length and then transitions to a post and wire fence approximately 1m high. The northwestern boundary of the appeal site is a post and wire fence approximately 1m high. The southeastern and southwestern boundaries of the appeal site comprise of dry stone wall approximately 1m high. The surrounding area is rural in character.

11. Policy CTY1 of PPS21 identifies a range of types of development which, in principle, are considered acceptable in the countryside. One of these is an extension to a dwelling house where this is in accordance with the APPS7. In this instance the Council considers Policy EXT1 of APPS7 to be the appropriate policy for consideration of the retrospective extension of the curtilage. Another is outdoor sport and recreational uses in accordance with PPS8 which would relate to the proposed shed for equestrian use.
12. The appellant considers that he requires the extension of curtilage of approximately 17m in length to accommodate the proposed shed and a vehicle parking and turning area for equestrian vehicles. Excavations of approximately 1.2m are required to accommodate the siting of the proposed shed. While Policy EXT1 broadly refers to buildings, the Council considers that the extension of curtilage is contrary to criterion (a) of Policy EXT1 of APPS7 in that it would result in a detrimental change to the rural character. There are limited views of the extension of curtilage in itself, and there is no requirement to demonstrate a need for it. In this case, however, the extension of the curtilage only exists to serve the construction of the proposed building as referred to above and therefore cannot be considered in isolation. Paragraph A24 of Policy EXT1 of PPS7 states proposals should be in keeping with the character of the existing property and its countryside setting. Furthermore, paragraph A24 states that proposals which require the use of land outside the established curtilage of the property, will result in a detrimental change to rural character. This matter will be considered below.
13. Policy OS3 of PPS8 states that the Department will permit the development of proposals for outdoor recreational use in the countryside where all eight criteria are met. Both parties agree that the proposed equestrian use falls within the remit of Policy OS3 of PPS8. The Council has concerns in relation to criterion (iii) which requires that there is no adverse impact on visual amenity or the character of the local landscape and the development can be readily absorbed into the landscape by taking advantage of existing vegetation and/or topography, and in relation to criterion (vi) which states that any ancillary buildings or structures are designed to a high standard, are of a scale appropriate to the local area and are sympathetic to the surrounding environment in terms of their siting, layout and landscape treatment. There are also concerns that the scale, massing and design of the proposal would be unsympathetic, insubordinate, and not appropriate to the local area.
14. The Council has concerns in relation to criteria (b), (c), (e) and (f) of Policy CTY13 of PPS21 in that the site lacks long established natural boundaries or is unable to provide a suitable degree of enclosure for the building to integrate into the

landscape; it relies primarily on the use of new landscaping for integration; the design of the building is inappropriate for the site and its locality; and it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop. The Council also considers that the proposal would result in a suburban style build up of development when viewed with existing and approved buildings contrary to Policy CTY14 of PPS21.

15. Even if the garage under construction at the appeal site was approved for use as stables, this does not preclude the appellant from seeking permission for additional stables through this proposal. There is no requirement to demonstrate need within the relevant policy, nor to demonstrate the unsuitability of other buildings, justify a safety reason for the proposal, nor indicate how many horses are currently owned or are intended to be kept. While there is no requirement for the proposed building to be subordinate to the existing development under OS3 of PPS8, there remains an expectation under the thrust of APPS7.
16. The proposed building would be sited to the rear of the existing dwelling and associated garage at no. 14. Whilst this would be a common enough arrangement of buildings in the countryside in principle, the matter of whether the appeal development would form part of an integrated rural group of buildings in accordance with paragraph A13 of APPS7 is a matter I will address below.
17. I am satisfied that the size, scale and massing of the building of both designs are appropriate for equestrian use and for the countryside setting. Overall, the proposed building of both schemes is similar to other large non domestic buildings usually seen in the rural area and therefore in accordance with criterion (vi) of Policy OS3 of PPS8 in regard to these matters. However, I consider a hipped roof design to be typically suburban in character and would be inappropriate for the rural area even where it is used to try to reduce the height and visual impact of a building. Considering this, the amended design of the building is inappropriate for the site and locality and therefore contrary to criterion (e) of Policy CTY13. The original design of a traditional pitched roof is appropriate in this context and would satisfy criterion (e) of Policy CTY13.
18. The critical views of the proposal would be from in front of the host dwelling, along Church Road and along Brackenagh West Road. Public views of the proposal would be very limited from in front of the host dwelling where the proposal would be obscured by the dwelling and garage, and also due to the land topography and intervening vegetation. Public views from the northwest travelling along Church Road are restricted by other buildings and intervening vegetation. Travelling west from no. 16 Church Road, there would only be glimpses of the proposal due to the high stone walls and hedges and the direction of the road. However, driving south along Brackenagh West Road the appeal development in either design, would fail to blend with the landform or any other natural features within the wider panoramic landscape by interrupting the skyline over the rolling fields and hills.
19. Irrespective of the lack of short range views, the elevated position of the proposal would appear to extend the development into a greenfield area, rather than allowing it to cluster with the existing group of buildings which nestle together on lands which are lower than those of the extension of curtilage. This would be more akin to suburban style build up when viewed with the existing buildings and would not form

part of an overall layout which would result in an integrated rural group of buildings and would detract from the appearance and character of the surrounding area.

20. Considering both versions of the proposal, due to the lack of vegetation boundaries, even with the proposed reduction in ground level and ridge height, the proposed building would not integrate with the existing buildings and would appear prominent, dominant and isolated on its elevated site. While there are traditional stone walls enclosing the site, there are no existing vegetation boundaries on the appeal site and there would be no significant adjacent vegetation boundaries. No detailed planting scheme has been submitted even though the drawings indicate that the boundaries will be supplemented where necessary. This new landscaping would be required to secure integration. Notwithstanding my conclusion above in relation to the size, scale and massing, both versions of the proposal would be unsympathetic to the surrounding environment in terms of siting, layout and landscape treatment, would cause an unacceptable adverse impact on visual amenity and consequently, along with the proposed extension to curtilage, would result in an unacceptable detrimental change to rural character.
21. The Council also has concerns that the retaining wall required to accommodate the extension to curtilage would not integrate with the surroundings and would be detrimental to the rural character of the area contrary to criterion (d) of Policy CTY13 and criterion (e) of Policy CTY14. The retaining wall would measure approximately no more than 2m in height from the excavated ground level. It has not been demonstrated that the appellant would not have the rights to construct such a retaining wall under Part 3 'Minor Operations' of the General (Permitted Development) Order (NI) 2015. There are no views or fleeting glances of the retaining wall from the public road in front of the dwelling at no. 14 as it sits behind the said dwelling, and associated garage. The wall in question would be in front of and below the proposed building to the degree that it is mostly obscured from all other views. This particular element of the appeal development in itself integrates with its surroundings and does not damage rural character. Thus, criterion (d) of Policy CTY13 and criterion (e) of Policy CTY14 would not be offended in this regard. These elements of the Council's fourth and fifth reasons for refusal are not sustained.
22. Nevertheless, for the reasons given above, both proposed designs would be contrary to criterion (iii), and part of criterion (vi) of Policy OS3, Policy EXT1 of APPS7, criteria (b), (c), (e) and (f) of Policy CTY13 of PPS21, and criterion (b) of Policy CTY14 of PPS21. The Council's second, third, fourth and fifth refusal reasons are sustained to the extent specified.
23. The appeal site is located within the Mourne AONB. The Council has concerns that the proposal would be contrary to Policy NH6 of PPS2 in that it is not sympathetic to the special character of the AONB and would "*affect the rural nature of the area*". The Council have not indicated how the proposal could have a detrimental impact on the special character and appearance of the AONB and the onus is on them to sustain their refusal reasons. Notwithstanding my concerns in relation to rural character, I am not persuaded that the proposal would not be sympathetic to the special character of the AONB. For the reasons given, the Council's sixth refusal reason is not sustained.

24. Whether or not the Council engaged in discussions or refused to accept revised plans is a matter between the parties. Planning appeal 2018/A0008 was referenced within the appellant's statement of case, but was not provided in full, and it is not clear if that proposal is directly comparable with the appeal before me. It, therefore, does not assist my consideration.
25. Policy CTY1 of PPS21 states that *“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”*. The arguments made in respect of the need for the appeal development and its stated benefits, the appellant's requirement for more space to manoeuvre vehicles, the need for other uses such as the dog pen and the amended drawings are not overriding, nor would they persuade me that the development is essential. The appeal development is contrary to Policy CTY1 of PPS21 and the related provisions of the SPPS. The Council's first refusal reason is sustained.
26. Whilst the Council's sixth reason for refusal is not sustained, the remaining refusal reasons are sustained to the extent specified and are determining. Accordingly, the appeal must fail.

This decision is based on drawing P01 received by the Council and the further drawings submitted with the Appellant's Statement of Case, received by the Planning Appeals Commission:-

Drawing No.	Title	Scale	Date
P01	Plans, Elevations, Site Layout, & Site Location Plan	1:100, 1:1250, 1:500	17 th May 2021
P01B	Site Location Plan	1:2500	14 July 2022
P02	Site Layout Plan	1:2500	14 July 2022
P03	Plans and Elevations	1:100	14 July 2022
P04	Section	1:100	14 July 2022

COMMISSIONER CATHY MCKEARY

List of Documents

Planning Authority:-

“A” – Statement of Case by Newry, Mourne and Down District Council

“B” – Rebuttal by Newry, Mourne and Down District Council

Appellant:-

“C” – Statement of Case by O’Callaghan Planning on behalf of Gary Gordon

“D” – Rebuttal by O’Callaghan Planning on behalf of Gary Gordon