
Appeal Reference:	2022/A0051
Appeals by:	S & A Monaghan Builders Ltd.
Appeals against:	The refusal of full planning permission.
Proposed Development:	Retention of pair of semi-detached dwellings including removal of first floor rear elevation windows, provision of additional side elevation windows and new first floor layout
Location:	Sites 25 & 27 Lower Retreat, Omagh
Planning Authority:	Fermanagh and Omagh District Council
Application Reference:	LA10/2021/0929/F
Procedure:	Written representations with Commissioner's site visit on 8 th May 2024
Decisions by:	Commissioner Kevin Gillespie, dated 31 st July 2024

Decision

1. The appeal is allowed and full planning permission is granted, subject to the condition below.

Preliminary Matter

2. On 25th April 2022, Fermanagh and Omagh District Council (Council) refused planning application LA10/2021/0929/F because it was, in their opinion, contrary to Policy QD 1 of Planning Policy Statement 7 (PPS 7).
3. Following the adoption of the Fermanagh and Omagh Local Development Plan 2030: Plan Strategy on 16th March 2023 (PS), the Commission wrote to the parties to invite comments in respect of the recently adopted PS in so far as it related to the appeal development.
4. The Council subsequently wrote to the Commission advising that the refusal reason for the above application was being revised to take account of the adopted PS. This correspondence was exchanged with the appellants and the third parties. However, neither the appellants or the third parties provided comments either in respect of the PS or the Council's revised reason for refusal. As both the appellants and the third parties have therefore had the opportunity to make representations on the revised reason for refusal at appeal stage, no prejudice arises. This appeal decision is based on the revised reason for refusal.

Reasons

5. The main issue in this appeal is whether the appeal proposal would have an unacceptable effect on the residential amenity of neighbouring properties.

6. 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.
7. As indicated above, in March 2023, Fermanagh and Omagh District Council adopted its PS. In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations (NI) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. In this appeal the Omagh Area Plan 1987-2002 (OAP) is the relevant DDP. Again, in accordance with the subject legislation any conflict between the DDP and the PS must be resolved in favour of the PS.
8. In accordance with paragraph 1.9 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), as the Council has now adopted the PS the previously retained policies such as the Planning Policy Statements have now ceased to have effect within this Council District.
9. In the DDP, the site lies within the settlement limit of Omagh. It is zoned as housing land (Zoning 28.7.15) comprising an area of 32.2 hectares to the south of Killyclogher Road at Mullaghmore-Cranny. There are no other policies in the DDP that are pertinent to the appeal. Consideration of the relevant policies in the PS are set out below.
10. Part 1 of the PS at Section 5.0 includes Strategic Policy SP01 titled 'Furthering Sustainable Development'. It states the Council will permit development proposals which further sustainable development and promote measures to mitigate and adapt to climate change, and which have regard to the Local Development Plan and other material considerations, unless the proposed development will cause demonstrable harm to interests of acknowledged importance. In such cases, planning permission should be refused.
11. In the PS, the appeal site is located within the settlement limit of Omagh which is designated as a main town. Criterion (a) titled 'Main and Local Towns', of Policy HOU01 indicates that the Council will support proposals for housing on sites zoned for such land use within the towns and on brownfield land within the urban footprint of towns. Given that the proposal comprises the retention of a pair of semi-detached dwellings on land zoned for housing in the DDP and subsequently approved as part of a wider housing development (LA10/2017/0626/F) in March 2018, I agree with the Council that the principle of housing on the site is acceptable such that the appeal proposal complies with Policy HOU01 of the PS in so far as stated. Notwithstanding this, the Council have raised objections regarding policies DE01 and HOU05 of the PS.
12. The appeal site comprises a pair of semi-detached dwellings (Sites 25 and 27) which are currently under construction and which front onto an access road. The front elevation of each dwelling contains an entrance doorway and single window opening at ground floor level and two window openings at first floor level. The rear elevation contains a rear doorway and a double-door opening at ground floor level

and two window openings at first floor level. The side elevations contain two window openings at ground floor level and a single window opening at first floor level. To the south of the appeal site lies Retreat Heights, an established residential development generally comprising two storey detached dwellings.

13. Initially the proposal attempted to regularise the positioning of the dwellings within the site to that approved in 2018. However, during the processing of the application, amended plans were submitted in an attempt to address council and third-party concerns regarding overlooking and loss of privacy. The appeal proposal also seeks planning permission for a new internal floor layout for both dwellings and the following corresponding elevational changes:
 - the removal of the 4No. first floor rear elevation windows;
 - the addition of 2No. velux windows/skylights sited on the rear aspect of the appeal buildings' pitched roofs; and
 - the addition of a second first floor side elevation window and a new internal first floor layout in respect of each dwelling.
14. In his Statement of Case, the appellant explains that whilst the ground floor internal layout remains largely unchanged from that approved, the first-floor level floor plans for each dwelling have now been reversed, with the front rooms (bathroom and bedroom) switched with the rear two bedrooms. With this amended layout, there are now no windows proposed on the first-floor rear elevation which faces the properties to the rear at Retreat Heights.
15. Policy HOU05 of the PS states that the Council will support development proposals for residential development where it is demonstrated that the proposals will create a quality and sustainable residential development. The Council's objection falls under criterion (b) thereof which requires that the development would not result in unacceptable damage to the local character, environmental quality, or residential amenity of established residential areas.
16. Policy HOU05 is read alongside Policy DE01 'General Amenity Requirements' of the PS. Paragraph 1.4 of the PS states that this is one of a suite of development management policies which will be used in determining planning applications and appeals. Policy DE01 states that the Council will not support development proposals where they would unacceptably affect: (1) the amenities of the area or the residential amenity of nearby properties or sensitive receptors in a number of circumstances: and (2) the existing use of land and buildings, public safety (including road safety) and visual amenity that ought to be protected in the public interest. In this case, the Council's objection relates to criterion (b) of policy HOU05 in respect of residential amenity insofar as it relates to dominance. I note that the third party holds similar concerns. Guidance contained in 'Creating Places – Achieving Quality in Residential Developments' (Creating Places) is also material to the consideration of this appeal.
17. The Council has no objections in respect of the impact of the appeal development on existing properties in terms of overlooking, loss of privacy, loss of light and overshadowing. However, as the appeal development has been constructed some two metres closer to the common boundary with Nos. 24, 26 & 28 Retreat Heights, the Council is of the view that it would have an unacceptable adverse effect on the

residential amenity of neighbouring properties through dominance and its overbearing impact.

18. In respect of amenity and separation distances, paragraph 7.16 of Creating Places advises that where the development abuts the private garden areas of existing properties, a separation distance greater than 20 metres will generally be appropriate to minimise overlooking (my emphasis) with a minimum of around 10 metres between the rear of new houses and the common boundary.
19. On the ground, I observed that the appeal development has been constructed some 8 metres from the 2-metre-high rear boundary fence with Nos. 24, 26 and 28 Retreat Heights. The back garden depth is therefore 2 metres less than that which was previously approved. However, on the opposite side of the common boundary, the back garden of No. 26 Retreat Heights, which aligns directly to the south of appeal proposal, is also some 8 metres from the rear boundary fence. Furthermore, there is also a difference in ground levels between the appeal development and No. 26 Retreat Heights, with the appeal development some 0.5m – 1m lower than the existing properties at Retreat Heights.
20. Creating Places is an advisory document. Whilst it advocates a separation distance greater than 20 metres where new development abuts the private rear gardens of existing properties, this is to minimise overlooking, not dominance. It does however acknowledge that a smaller separation distance may be acceptable, particularly if mitigation measures are employed to reduce overlooking as in this case as the first-floor windows on the rear elevation have been removed to minimise overlooking.
21. Although there are no windows on the first-floor rear elevations, based on my onsite observations and given the modest two storey nature of the development, the fact that it is situated on lower ground and located some 16 metres away from the properties to the rear, I am not persuaded that the development is dominant or manifests as overbearing. The fact that the Council accepts that the appeal development does not overlook or overshadow the specified properties reinforces my conclusions.
22. For the reasons above, I am satisfied that the appeal development provides a quality residential development. It therefore complies with Strategic Policy SP01 and Policies DE01 and HOU05 of the PS and thus the LDP. The Council's sole reason for refusal is not sustained nor are the related concerns of the third party.
23. The Council put forward two planning conditions to be imposed should the appeal be allowed. I consider it necessary to secure the erection of a two metre high rear garden fence between the dwellings in the interest of residential amenity. Given that the development is retrospective, the second time limiting condition is not necessary.

Condition

1. Prior to the occupation of any dwelling hereby approved, the fencing as detailed on drawing 01 received 03 August 2021, shall be erected in the positions shown.

This decision is based on the following drawings:

Drawing No.	Title	Scale	Received by the Council
01	Location Map and Site Plan	1:2500/1:250	3 rd August 2021
02 (Rev 02)	Plan & Elevations	1:100	11 th February 2022

COMMISSIONER KEVIN GILLESPIE

List of Documents

Planning Authority:-	“A1” Fermanagh and Omagh District Council Statement of Case
	“A2” Fermanagh and Omagh District Council Rebuttal Statement
	“A3” Fermanagh and Omagh District Council - LDP Comments
Appellant:-	“B1” CD Consulting (Agent) - Statement of Case
Third Party:-	“C1” Statement of Case
	“C2” - Rebuttal Statement