
Appeal References:	(1) 2022/A0070 (2) 2022/A0071.
Appeals by:	(1) Mr James Courtney. (2) Mr Niall McNamara.
Appeals against:	The refusal of reserved matters.
Proposed Development:	(1) Infill dwelling (Site 1). (2) Infill dwelling (Site 2).
Location:	(1) 50m east of 86 Ballydonaghy Road, Dundrod, Crumlin. (2) 80m west of 90 Ballydonaghy Road, Dundrod, Crumlin.
Planning Authority:	Lisburn & Castlereagh City Council.
Application References:	(1) LA05/2021/0275/RM. (2) LA05/2020/0311/RM
Procedure:	Hearing on 23 March 2023.
Decisions by:	Commissioner Mark Watson, dated 14 March 2024.

Decisions

1. Both appeals are allowed and the reserved matters are granted, subject to the conditions below.

Preliminary Matter

2. Both appeals included details of a detached garage as part of their reserved matters submissions. The outline permissions pertaining to both appeal sites made no reference to garages. At the hearing both the Council and Appellants' representative stated that whilst this was the case, it was common practice to accept garages within reserved matters applications, even when no garage had been mentioned in the outline permission granted.
3. In accordance with the Planning (General Development Procedure) Order (NI) 2015 (PGDPO), the approval of reserved matters must be within the ambit of the outline planning permission. It is not appropriate to expand their scope or include additional development that did not form part of the outline permission. As such, the proposed garages do not form part of my consideration of these appeals.

Reasons

4. The main issue in both appeals is whether or not additional noise mitigation measures would be necessary and justified as part of the reserved matters submissions.

Policy context

5. 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 of proposals must be in accordance with the LDP unless material considerations indicate otherwise.
6. The Lisburn and Castlereagh City Council Local Development Plan 2032: Plan Strategy has been adopted since the hearings. In line with the transitional arrangements as set out in the Schedule to the Local Development Plan Regulations 2015 (as amended) the LDP now becomes a combination of the Departmental Development Plan (DDP) and the Plan Strategy (PS) read together. In accordance with the subject legislation any conflict between a policy contained in the DDP and those of the Plan Strategy must be resolved in favour of the Plan Strategy. In these appeals the Lisburn Area Plan 2001 (LAP) is the relevant DDP. The LAP does not contain specific policies for development in the countryside, instead referring to the Planning Strategy for Rural Northern Ireland, which itself was superseded by Planning Policy Statement 21 – Sustainable Development in the Countryside. The LAP is not material to the appeal developments. The draft Belfast Metropolitan Area Plan, published in 2004, does not contain any policies or proposals material to the appeal developments.
7. 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.
8. Following adoption of the PS the Council provided updated reasons for refusal pertaining to both appeals. These were based on Policies COU1, COU15 and COU16 of the PS, as well as paragraphs 6.70 and 6.77 of the SPPS. I will address the matter of the applicability of these policies later in my consideration. The other parties to the appeals were afforded opportunity to comment on the new PS context also, so no prejudice arises.

The proposed development

9. Appeal Sites 1 and 2 each comprise approximately half of an irregularly shaped agricultural field on the northern side of the Ballydonaghy Road. Appeal Site 1 comprises the western half of the field and lies adjacent and east of No. 86 Ballydonaghy Road, a one-and-a-half storey dwelling with adjacent garage. Appeal Site 2 comprises the eastern half and lies west of a cottage with a series of outbuildings to its rear. The sites lie slightly below the level of the road and are generally flat in nature. The common roadside frontage is defined by a maintained hedge, with a grass verge. A patchy line of mature trees and vegetation, as well as a watercourse, provides the northern boundary to both sites. A motocross racetrack lies approximately 0.2km to the north-west of the Site 1, the closer of the two sites relative to the track.
10. I visited the appeal sites on a Sunday morning, when a scheduled racing event was taking place at the racetrack. The weather was dry with little to no breeze. The noise from the activity on the track was noticeable from the sites, with variations and spikes in noise arising from accelerating vehicles, tyre skidding and sporadic backfires.

11. Appeal Site 1 was granted outline planning permission for an infill dwelling (ref. LA05/2017/0682/O) on 9 March 2018. Appeal site 2 was granted outline planning permission for an infill dwelling (ref. LA05/2017/0678/O) on the same date. Both permissions included a series of conditions. No conditions in either outline permission referred to noise from the nearby track, or specific noise mitigation design measures for the appeal dwellings.
12. The proposed dwelling at Site 1 would entail a single storey dwelling to be finished in smooth render and a non-profiled tile / slate roof. The plans state that the PVC windows and patio door are to be glazed with acoustic glazing capable of providing 36dB Rw sound reduction. An active / positive mechanical ventilation system is to be installed. A 2m high acoustic grade timber fence is to be erected along the north-western and northern site boundaries. The proposed dwelling at Site 2 would entail a one-and-a-half storey chalet bungalow, to be finished in smooth render and a non-profiled tile / slate roof. The plans state that the PVC windows and patio door are to be glazed with acoustic glazing capable of providing 36dB Rw sound reduction. An active / positive mechanical ventilation system is to be installed. A 1.8m high acoustic grade timber fence is to be erected along the northern, rear site boundary.

Substantive matters

13. Article 4(1) of the PGDPO states that where an application is made to the council for outline planning permission, the council may grant permission subject to a condition specifying reserved matters for the council's subsequent approval. Both appeal sites were granted outline permission with such a condition attached, as well as a series of conditions pertaining to access, ridge height, under-build restriction and landscaping. Whilst the Objector raised issue with the processing and consideration of the outline applications, no challenges to either outline permission were brought at that time when they were granted by the Council. Accordingly, both permissions stand.
14. Article 4(2) of the PGDPO goes on to state that where the council is of the opinion that, in the circumstances of the case, the application ought not to be considered separately from all or any of the reserved matters, the council shall notify the applicant that it is unable to determine it unless further details are submitted, specifying the further details it requires. In the case of both appeal sites, no such notification was given to either of the Appellants.
15. Article 5(a) of the PGDPO states that an application for approval of reserved matters shall give sufficient information to enable the council to identify the outline planning permission in respect of which it is made. It further states that such an application shall include such particulars, and be accompanied by such plans and drawings as are necessary to deal with the matters reserved in the outline permission. In both cases before me, the reserved matters submissions meet these legislative requirements, as well as the remainder of Article 5. The Council accepted the reserved matters submissions for both sites as valid, considered them and progressed them ultimately to decision. Nor was there any dispute from the Council that there had been a departure from the outline planning permissions, or the conditions attached to them.
16. Nevertheless, the Council ultimately considered that the potential noise impacts from the nearby motocross racetrack would adversely impact on the amenity of the prospective occupants of both dwellings. The Council considered that the proposed

dwelling designs for Sites 1 and 2 were not appropriate for the sites and their locality as a consequence of failure to take account of these noise impacts. They disputed a Noise Impact Assessment (NIA) that was submitted alongside the reserved matters submissions, though no condition requiring submission of a NIA was attached to either outline permission. An objector, who initially had concerns in respect to one of the proposed dwellings, widened her objection to both dwellings by the time of the hearing. No prejudice arose as the Appellants' representative had opportunity to respond at the hearing on behalf of both his clients. The Objector's concerns related to the noise impacts from the nearby racetrack upon the amenity of occupants of the two new dwellings.

17. The Council considered that the designs of both dwellings should have been tailored to account for the noise from the nearby racetrack, including features such as habitable rooms positioned on the opposite side of the building from the racetrack and the use of courtyarded amenity areas. These are unusually prescriptive design features. Had the Council wished to, it could have chosen to not reserve the matter of design of the dwellings, instead specifying particular requirements for noise mitigation design features. It did not do so, nor was Article 4(2) of the PGDPO invoked at that point, whereby the Council could have specified the further details they required.
18. Consideration of a reserved matters application is restricted to those matters which have been reserved for approval. It is not a new planning application in its own right, but rather further details pertaining to an already granted outline permission. It is not appropriate to reconsider aspects of the overall principle of development, which has already been approved at outline application stage. Again, no conditions relating to noise mitigation, or the design of each the approved dwellings in that regard, were attached to either outline permission. However, the Council pointed to the inclusion of an informative on both decision notices which related to noise.
19. Informative 15 on both outline permission decision notices stated that:
'the applicant and any prospective owner should be made aware that the proposed development is located in close proximity to a motorsport track. This is likely to give rise to unreasonable conditions and a resulting impact upon the amenity enjoyed by the proposed development due to noise. The applicant and any prospective owner should be advised that nuisance action cannot be used to subsequently address these prevailing conditions and that only future increases or intensification of adverse impacts may be considered in the determination of nuisance. This comment is based upon the current use of the adjacent site.'
20. I find it far from persuasive that the fifteenth informative in a list of seventeen in each decision notice constituted the Council having "highlighted" the issue. Nor does an informative possess any legal standing to compel a developer to carry out development in a specific manner. The wording of the informative itself does not indicate that any particular noise mitigation measures as part of the detailed design would be anticipated or required as part of the reserved matters submission for either appeal development.
21. The Appellants' representative drew my attention to the consultation responses from the Council's Environmental Health Department (EHD) during the processing of the two outline applications. Those responses, the same for Sites 1 and 2, raised a concern about noise from the racetrack, but did not indicate any noise assessment

was required, nor that permission should be refused. Rather, it recommended inclusion of the informative already referred to above. Whilst the EHD did at reserved matters stage raise issues in respect to the appeal developments, again, this was subsequent to the approval of the outline approvals, which were accepting of the principle of development.

22. Turning to the policy objections raised by the Council, it raised concerns under Policies COU1, COU15 and COU16 of the PS, as well as referring to sections of the SPPS, to justify the refusal of the reserved matters. Given my consideration above relating to the grant of the outline approvals, I do not consider it appropriate to seek to refuse the appeal developments on an ex post facto basis.
23. Whilst the Council also referred to the Noise Policy Statement for Northern Ireland (NPSNI) and to the planning system having a role to play in preventing and minimising the impact of noise through its influence on the location, layout and design of new development and consideration of the amenity impacts, the correct time for such an intervention is when considering the principle of development. I am not persuaded that it is acceptable at reserved matters stage to seek to impose additional constraints on an already granted permission, even if there may be a noise issue in the locality.
24. The fact remains that there are extant outline planning permissions on both appeal sites. The reserved matters submissions met the terms of those permissions in respect of the conditions therein. I therefore find that there is no justification for the withholding of granting the reserved matters on the basis of the above policies.
25. The Objector stated that her opposition to the two dwellings was on the basis of seeking to prevent others from experiencing the noise levels she and her family have endured over the past years from the nearby racetrack. She explained that the Council has been unable to address this despite numerous complaints and a court case relating to a Noise Abatement Notice served on the racetrack operator. Various documentation was provided detailing her prolonged endeavours in this respect. She stated that the level of noise during race and practice events had taken a heavy toll, being extremely disruptive to her family life and enjoyment of her property. Whilst it may be the case that there has been a statutory nuisance relating to noise from the racetrack and irrespective of any concerns raised that the racetrack operator does not adhere to their own Noise Management Plan, those are matters for the Council and its EHD. Again, the principle of development cannot be revisited under these appeals.
26. Whilst I have no reason to doubt the testimony of the Objector, the fact remains that outline planning permission was granted for both sites without any specific requirement for noise mitigation measures. Whilst the Appellants' reserved matters submissions included various noise mitigation measures, which they did not have to submit in accordance with any terms of the outline permissions, such as windows with higher noise insulation properties, mechanical ventilation and acoustic fencing along the boundaries closest to the racetrack, these were included on their own volition. I find it questionable that the Council considered it appropriate to refuse both reserved matters submissions on the basis that these measures were insufficient, when neither outline permission contained any such requirements in the first instance. Irrespective of the debated efficacy of such measures, these were not a requirement of the outline permissions and I am not persuaded the granting of

the reserved matters for both Sites 1 and 2 should be withheld on this basis. Furthermore, prospective occupants of the appeal developments would be aware of the environment surrounding their new homes.

27. Whilst the Objector also queried the potential impacts on her property from the potential change in noise arising from the proposed fence along the boundary of appeal Site 2, I have no evidence to persuade me that her own auditory environment would be altered to any adverse degree, if at all. Furthermore, I note the point made by the Appellant's representative that his client for Site 2 could avail of permitted development rights to erect the same fence in any event. This matter would not warrant the withholding of the granting of the reserved matters.

Conclusions

28. The appeal submissions comply with the terms of their respective outline permissions. Whilst there is an ongoing source of noise nearby, it is one both Appellants, through their representative, indicated they are more than aware of and have designed their proposed dwellings accordingly. Nor did the Council impose any conditions to address this matter at the appropriate stage of granting outline planning permission. Whilst the testimony of the Objector and her own experiences cannot be discounted, it does not outweigh the compliance of both appeal developments with their respective outline permissions. Nor would the Council's stated objections under the PS and SPPS, as well as its reference to the NPSNI, in respect to the design of both dwellings, outweigh this compliance. The Council's reasons for refusal and the related concerns of the Objector are not sustained. Both appeals shall succeed.
29. In respect to conditions, I am not persuaded that the Council's suggested conditions relating to submission of further details of the proposed fences, window specifications and mechanical ventilation for approval by the Council prior to occupation taking place are necessary or reasonable in the context of the outline permissions having been granted.
30. A condition relating to implementation of the means of access and required visibility splays would be necessary for both Sites 1 and 2 in the interest of road safety. The suggested condition relating to access gradients is unnecessary in this case given the minor difference in levels between the sites and road level. A suggested condition pertaining to relocation of any street furniture to be removed at the Appellants' expense is unnecessary. Whilst I noted an existing telegraph pole which may require removal to secure the full extent of the visibility splays, if that were to be the case, it would be captured under the access provision condition. The suggested condition regarding siting of the septic tanks for each development is unnecessary, as this matter is governed by a separate legislative process.
31. A condition for each of the sites in respect to the implementation of soft and hard landscaping works, as well as replacement of any damaged or dying plants within the first 5 years of planting, would be required in the interests of visual amenity. The Council's draft condition relating to the timing for implementation of the developments related to five years from the date of the grant of outline planning permission or two years hereof from the date of granting of the reserved matters. As the five years from the date of the granting of outline permission occurred prior to the appeal hearings, it is appropriate to limit the timespan for implementation to two years from the date of these decisions.

Conditions (Appeal 1 - 2022/A0070)

- (1) Prior to any other development taking place, the vehicular access, including visibility splays and any forward sight distance shall be provided in accordance with Drawing 02/1 stamped received by the planning authority on 20 October 2021. The visibility splays shall be kept clear and permanently retained thereafter.
- (2) All hard and soft landscaping works shall be carried out in accordance with the approved details contained in approved drawing 02/1, stamped received by the planning authority on 20 October 2021. The fence along the northern and north-western site boundaries shall be erected prior to occupation of the dwelling and permanently retained thereafter. The remaining landscaping works shall be carried out within the first available planting season after occupation of the dwelling. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.
- (3) The development hereby permitted shall be begun before the expiration of two years from the date of this decision.

Conditions (Appeal 2 - 2022/A0071)

- (1) Prior to any other development taking place, the vehicular access, including visibility splays and any forward sight distance shall be provided in accordance with Drawing 02/2 stamped received by the planning authority on 14 July 2021. The visibility splays shall be kept clear and permanently retained thereafter.
- (2) All hard and soft landscaping works shall be carried out in accordance with the approved details contained in approved drawing 02/2, stamped received by the planning authority on 14 July 2021. The fence along the northern site boundary shall be erected prior to occupation of the dwelling and permanently retained thereafter. The remaining landscaping works shall be carried out within the first available planting season after occupation of the dwelling. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the planning authority gives written consent to any variation.
- (3) The development hereby permitted shall be begun before the expiration of two years from the date of this decision.

These decisions are based on the following drawings (except in respect to the garage) submitted with their respective applications to the planning authority:-

Appeal (1) 2022/A0070

DRAWING No.	TITLE	SCALE	DATE
01	Site Location Plan	1:2500	01/03/2021
02/1	Noise Impact Assessment – Site Plan	1:500	20/10/2021
03/2	Noise Impact Assessment – Floor Plan & Section	1:100	20/04/2022
04/1	Noise Impact Assessment - Elevations	1:100	20/10/2021
05	Sketch Scheme - Garage	1:100	01/03/2021

Appeal (2) 2022/A0071

DRAWING No.	TITLE	SCALE	DATE
01	Site Location Plan	1:2500	08/04/2020
02/2	Site Plan	1:500	14/07/2021
03/1	Sketch Scheme - Floor Plans & Section	1:100	14/07/2021
04/1	Sketch Scheme - Elevations	1:100	14/07/2021
05	Sketch Scheme – Floor Plan & Elevations (garage)	1:100	08/04/2020

COMMISSIONER MARK WATSON

List of Appearances

Planning Authority:-
Mrs R Taylor (L&C CC)
Mrs P Hamilton (L&C CC)
Mr R Henry (L&C CC Environmental Health Dept.)
Ms S Courtney (L&C CC Environmental Health Dept.)

Appellants:-
Mr D Donaldson (Donaldson Planning)
Mr J Courtney (Appeal 1)
Mr T McNamara (Appeal 2)
Mrs S McNamara (Appeal 2)

Third Parties:-
Mrs J A H Smyth (Objector)
Mr L Ross (Ross Planning – representing Mrs Smyth)

List of Documents (common to both appeals)

Planning Authority:-
‘A’ Statement of Case (L&C CC)
‘D’ Post-hearing comments on PS context (L&C CC)

Appellants:-
‘B’ Statement of Case & Appendices (Donaldson Planning)
‘E’ Post-hearing comments on PS context (Donaldson Planning)

Third Parties:-
‘C’ Statement of Case & Appendices (Mrs J A H Smyth)