
Appeal Reference:	2022/A0073
Appeal by:	Mrs Rosina Herron
Appeal against:	The refusal of full planning permission
Proposal:	Two single storey infill dwellings
Location:	Lands adjacent to and south of 9 Killinakin Road, Killinchy
Planning Authority:	Ards and North Down Borough Council
Application Reference:	LA06/2019/1195/F
Procedure:	Written Representations with Commissioner's site visit on 9 August 2024
Decision by:	Commissioner B Stevenson, dated 15 October 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the appeal proposal would:
 - be acceptable in principle;
 - visually integrate into the landscape;
 - detrimentally change the rural character of the area; and
 - have an unacceptable adverse impact on priority habitats.
3. Section 45(1) of the Planning Act (Northern Ireland) 2011 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.
4. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area wherein the appeal site is located. In the ADAP, the appeal site is in the countryside. The site also lies within Strangford and Lecale Area of Outstanding Natural Beauty (AONB), and an unscheduled monument is nearby. While there are no policies in the plan relating to either the AONB or the unscheduled monument, there are separate regional policies that deal with both. However, the Council and the third parties have raised no objection to those regional policies in this appeal. The ADAP also contains no material policies in relation to dwellings in the countryside.
5. Transitional arrangements are set out in the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS). Those arrangements are in operation until a Plan Strategy (PS) for each of the Council

areas is adopted. As there is no adopted PS for this area, the SPPS retains certain Planning Policy Statements (PPSs) including Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) and Planning Policy Statement 2 'Natural Heritage' (PPS2). There is no conflict or change in policy direction between the provisions of the SPPS, PPS21 and PPS2 insofar as they relate to the issues that arise in this appeal. In accordance with the transitional arrangements, the retained policies provide the policy context for assessing the proposal. Supplementary planning guidance is contained in 'Building on Tradition – A Sustainable Design Guide for the Northern Ireland Countryside' (BoT).

6. Policy CTY1 of PPS21 is entitled 'Development in the Countryside'. It sets out a range of types of development which, in principle, are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development. The development of a small gap site within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY8 'Ribbon Development' is one of those types of development. The appeal is made under this particular policy and underpins my consideration of the proposal as set out below.
7. Policy CTY8 states that planning permission will be refused for a building which creates or adds to a ribbon of development. Notwithstanding the presumption against ribbon development, the policy permits under the exception test, the development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. The policy defines a substantial and built up frontage as including a line of three or more buildings along a road frontage without accompanying development to the rear.
8. The appeal site is part of a much larger agricultural field and is located on a hill between the detached bungalow at No. 1 Killinakin Road and a one and a half storey detached dwelling and its detached garage at No. 9, which sits on the brow of the hill. The topography of the appeal site falls significantly from the road to the eastern boundary and steadily rises in a northerly direction towards No. 9. The Killinakin Road is on the northern side of Whiterock Road and lies between the settlements of Killinchy and Whiterock. The latter faces onto Strangford Lough.
9. The appellant is seeking full planning permission for two detached single storey dwellings – Sites A and B. The footprints of the proposed dwellings and their adjoining double garages are the same and take a L-shaped form. Their floorspace measures around 260m² each. Before separating into single driveways, both dwellings would be accessed by a shared vehicular access point in the centre of the appeal site.
10. While there is no dispute between the parties that there is a substantial and built-up frontage, the third parties argue that the built-up frontage is not continuous and that there is no awareness of any frontage. Nevertheless, the policy test is not one of 'awareness' and while the word 'continuously' is cited in the policy, this relates to the nature of the frontage which is qualified in the policy as "including a line of 3 or more buildings along a road frontage". It is a matter of fact whether or not buildings have frontage to the road. In this case, Nos. 1 and 9 have frontage to the road because the plots upon which they sit abut the road. The substantial and continuously built up

frontage therefore comprises three buildings as specified in the policy, namely, the two detached dwellings at Nos. 1 and 9 and the detached garage at No. 9. As per the high court judgement – *Gordon Duff v Newry, Mourne and Down District Council [2022] (NIQB37)* and the subsequent court of appeal judgement - *Gordon Duff's Application (Re. Glassdrumman Road, Ballynahinch) [2024] NICA 42*, Policy CTY8 refers to a small gap site within an otherwise substantial and continuously built-up frontage, that is to say, which is continuously built up (in line with the policy) but for a 'small gap site' which is under consideration for development.

11. The Council and the third parties contend that there is no small gap site because the gap could accommodate more than two houses while still respecting the existing development pattern along the frontage. Paragraph 5.34 of the amplification text of Policy CTY8 states that *"many frontages in the countryside have gaps between houses or other buildings that provide relief and visual breaks in the developed appearance of the locality and that help maintain rural character. The infilling of these gaps will therefore not be permitted except where it comprises the development of a small gap within an otherwise substantial and continuously built up frontage. In considering in what circumstances two dwellings might be approved in such cases it will not be sufficient to simply show how two houses could be accommodated. Applicants must take full account of the existing pattern of development and produce a design solution to integrate the new buildings."*
12. The above quoted paragraph infers that for the purposes of the policy, the 'gap' is between buildings. The gap between the two dwellings is approximately 91 metres wide. In assessing whether that gap is 'small' and thus compliant with the policy, one must assess it in the context of the existing pattern of development along the frontage in terms of size, scale, siting and plot size. In relation to the plot of No. 1, unlike the position of the Council, I consider that the vegetation reads as part of the garden area, thus it is part of its plot which is approximately 0.48 hectares. The plot at No. 9 is around 0.22 hectares. The plot size of the appeal dwellings would be around 0.3 hectares per dwelling plot which, from my site inspection, would respect this aspect of the development pattern along the frontage.
13. The BoT states that where a gap frontage is longer than the average ribbon plot width the gap may be unsuitable for infill. It goes on to say that when a gap is more than twice the length of the average plot width in the adjoining ribbon it is often unsuitable for infill with two new plots. The guidance states that a gap site can be infilled with one or two houses if the average frontage of the new plot equates to the average plot width in the existing ribbon. From the Killinakin Road, the plot width of No. 1 is approximately 83 metres and No. 9 is around 60 metres. The average plot width is therefore some 72 metres. Factoring this in and given that the width of the gap is approximately 91 metres, the gap is not more than twice the length of the average plot width at around 72 metres. Again, this aspect of the proposal would be acceptable.
14. Notwithstanding my findings above, while the proposed dwellings would have a bigger footprint than that of No. 9, and be similar in size and scale to No. 1, both dwellings would be sited further back from the road when compared to Nos. 1 and 9. The majority of their built form would be sited behind the rear building line of the two adjacent dwellings meaning that they would have much deeper front gardens which would read as visually discordant. The overall layout arrangement together with the centralised shared access point would be uncharacteristic of the development pattern

in this rural area and more akin to a suburban style setting. I therefore conclude that while there is a small gap site within an otherwise substantial and continuously built-up frontage, the proposed dwellings would not respect the existing development pattern along the frontage for the reasons given.

15. Policy CTY8 of PPS21 also requires that the proposal meets other planning and environmental requirements. The Council contends that the gap frames an attractive viewpoint in the Strangford and Lecale AONB that overlooks Strangford Lough from the Killinakin Road and that this represents an important visual break. The Council also argues that the gap when viewed from the Whiterock Road is located on the horizon and thus constitutes an important visual break amongst the existing development. Page 72 of BoT states that “some gaps are not suitable for infilling if they frame a view or provide an important visual break in development.”
16. The appellant refers to three locations that she contends the appeal site is only visible from. While I observed the site from those viewpoints, it is for the Council to defend their objections and to provide what they consider to be the critical views. The Council expresses concern regarding one of those viewpoints only – from the Whiterock Road. It also refers to a critical view on the Killinakin Road itself.
17. On the Killinakin Road, there is a long-distance view of the rolling countryside, Strangford Lough and its islands. Given that the proposed dwellings would be single storey, they would not unacceptably obscure this important public view of the lough and the AONB. After leaving Whiterock village along the Whiterock Road, the subject gap is fully visible on the exposed hill. Irrespective of the size of the gap or the limited visibility of No. 1, it frames the viewpoint of the hillside and provides visual relief between the two settlements in the AONB. For this reason, it therefore constitutes an important visual break in this part of the AONB.
18. As outlined above, the appeal proposal fails to respect the development pattern. It would also add to a ribbon of development in that it would share common frontage with the dwelling and detached garage at No. 9 and the bungalow at No. 1. Moreover, the gap represents an important visual break as discussed above. The proposal therefore offends Policy CTY8 of PPS21. The Council’s second reason for refusal and the third parties’ concern in this regard are sustained.
19. Policy CTY13 of PPS21 ‘Integration and Design of Buildings in the Countryside’ states that planning permission will be granted for a building in the countryside where it can be visually integrated into the surrounding landscape and it is of an appropriate design. It goes on to say that a new building will be unacceptable where certain criteria are not met. The Council and the third parties contend that the proposed dwellings would be a prominent feature in the landscape and that the site is very open with no visual backdrop to provide a suitable degree of enclosure. Criteria (a), (b) and (f) of Policy CTY13 are in dispute.
20. Paragraph 5.60 of the amplification text of Policy CTY13 states that the assessment of integration will be judged from critical views along stretches of the public road network. Paragraph 5.61 states that new buildings that would read as skyline development or occupy a top of slope/ridge location or otherwise be a prominent feature in the landscape will be unacceptable. While the existing dwelling at No. 8, opposite the site, would provide a certain amount of backdrop to the proposed dwelling at Site A, it would not provide a backdrop to that at Site B. Notwithstanding

the proposed ground level changes and that the site sits below the Killinakin Road, I consider that the proposed dwelling at Site B would partly break the skyline when read from the identified viewpoint on Whiterock Road.

21. Despite the ground level changes and No. 8 providing a certain amount of backdrop for one of the dwellings, the two dwellings would be very exposed on the hillside given the openness of the appeal site. Notwithstanding that No. 9 reads as prominent and that the appellant proposes to plant new native species hedgerows between the dwellings and along the eastern boundary, both dwellings would also be prominent features in the landscape due to their siting on an exposed hillside and the extent of their built form.
22. For the reasons given, I find that the site is unable to provide a suitable degree of enclosure for the buildings to integrate into the landscape. The appeal proposal therefore offends criteria (a) and (b) of Policy CTY13 of PPS21. The Council's fourth reason for refusal and the third parties' concerns in this regard are therefore sustained.
23. The third parties argue that the removal of the roadside hedging to create a new and safe site access would fail the test of integration. Paragraph 5.72 of Policy CTY13 requires that wherever possible, access to a new building should be taken from an existing laneway. It continues to say that a new access drive should, as far as practicable, run unobtrusively alongside existing hedgerows or wall lines, and should respect site contours and cross them gently. The paragraph also states that sweeping driveways which create a suburban emphasis will not be acceptable.
24. Given that the proposal would involve the creation of a new shared vehicular entrance before splitting into separate sweeping suburban-like driveways, and that the land would require a certain amount of regrading to provide the necessary splays and safe access, such ancillary works would be obtrusive and fail to integrate into their surroundings. The third parties' concerns in this regard are sustained.
25. Criterion (f) of Policy CTY13 states that a new building will be unacceptable where it fails to blend with the landform, existing trees, buildings, slopes and other natural features which provide a backdrop. While the site is not on the hilltop, it is on the approach to it. The proposed dwellings would sit on a flat platform on the exposed hillside.
26. Bearing in mind the steep topography and that the two dwellings would be sited back from the road and have extensive footprints, there would be a significant amount of cutting into the landscape to achieve the flat building platform. This is contrary to paragraph 5.64 of Policy CTY13. The appeal proposal would permanently alter the landscape of an exposed hill in this highly scenic location. As both dwellings would rely on significant earth works, the appeal proposal would fail to blend with the natural landform contrary to criterion (f) of Policy CTY13. The third parties' concern in this regard are sustained.
27. Policy CTY 14 'Rural Character' of PPS21 states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The policy states that a new building will be unacceptable where (b) it results in a suburban style build-up of

development when viewed with existing and approved buildings and (d) it creates or adds to a ribbon of development.

28. When the proposal is viewed with the two existing dwellings at Nos. 8 and 9 together with the rooftop of the bungalow at No. 1 and for the reasons given above at paragraph 14, both dwellings would result in a suburban style build-up of development. It would therefore offend criterion (b) of Policy CTY14. I have already concluded that the proposal would add to ribbon development offending criterion (d) of Policy CTY14. The Council's third reason for refusal and the third parties' concerns are therefore sustained.
29. The third parties advanced other objections including (i) impact of the loss of hedgerows; (ii) impact on biodiversity; (iii) drainage issues, and (iv) road safety concerns. They allege that the proposed access would obliterate 50% of the roadside verge and hedge and that as hedging is a priority habitat, such removal should not be supported. They also argue that the proposed hardstanding and the manicured garden space would further reduce habitats.
30. Despite the third-party's position, Policy NH5 of Planning Policy Statement 2 'Natural Heritage' (PPS2) was considered in the Council's Development Management Officer's Report (DMOR) at planning application stage. Accordingly, it is not a new matter, and in any event, the parties were given an opportunity to consider the third parties' comments on this issue. No prejudice therefore arises. Policy NH5 of PPS2 'Habitats, Species or Features of Natural Heritage Importance' states that planning permission will only be granted for a development proposal which is not likely to result in the unacceptable adverse impact on, or damage to, inter alia, priority habitats, priority species or rare or threatened native species.
31. The proposed 5 metres wide shared vehicular entrance and visibility splays are marked out on the block plan. This plan indicates which part of the roadside hedgerow would be retained, which part would be lost and which part would be adjusted to allow for the splays to be kept clear. The block plan also states that "the existing hedging, trees, banks etc. relocated to behind the visibility splays. Existing hedging to be strengthened with native species and maintained." In relation to the existing southern and northern hedgerow boundaries, the block plan indicates that they would be retained, strengthened and maintained with native species. There would also be new hedging along the boundary between the two proposed dwellings and along the eastern boundary using only native species.
32. In respect of this matter, as part of the determination of the planning application, the Natural Environment Division (NED) informed the Council to refer to the Department of Agriculture, Environment and Rural Affairs' (DAERA) Environment Advice for Planning. The Development Management Officer's Report indicates that while the proposal would result in the removal of hedgerows, the Council's Biodiversity Officer stated that they were content. The Council's final position is that the proposal would not likely harm a protected species or adversely impact on priority species or habitats and conclude that further investigation would not be required.
33. The subject roadside hedgerow is relatively low at approximately 1-1.5 metres high. It is devoid of any mature trees. I am satisfied that I can adequately gauge from the planning drawings the extent of the hedgerow that would be removed and adjusted. While 5m of the roadside hedgerow boundary would be lost to facilitate the access,

the rest of the hedgerow would be retained or relocated to behind the visibility splays and strengthened with native species. For those other hedgerows that would be retained, the appellant proposes to augment with native species also. Moreover, I have not been provided with persuasive evidence that the existing hedgerows are species rich or have biodiversity value. However, even if they are, in these circumstances, I am satisfied that there would not be a significant negative impact on priority habitats or priority species. Therefore, in the evidential context provided, I find that the proposal would not likely result in an unacceptable adverse impact on priority habitats or priority species contrary to Policy NH5 of PPS2. The third parties' concerns in this regard are not sustained.

34. Given my on-site observations, I also consider that the proposal would not prejudice road safety or significantly inconvenience the flow of traffic. I am reinforced in my conclusion by the limited number of vehicle trips that would be associated with the proposed dwellings, and that the Department for Infrastructure Roads Service had no objections to the proposed access arrangements.
35. In relation to concerns regarding the stormwater drainage and the proposed septic tanks, the block plan indicates that treatment plants would be piped to a soakaway and that percolation tests and consent to discharge would be sought prior to installation. I am satisfied that septic tanks could be accommodated within the appeal site for each dwelling at an appropriate distance from existing and proposed dwellings. In any event, separate legislation would have to be adhered to if the proposed dwellings were to be permitted.
36. Issues around setting an unwelcome precedent do not fall to be addressed given the sustained objections to the proposal above. Accordingly, and in considering the other concerns raised by the third parties, they would neither individually nor cumulatively warrant the dismissal of the appeal.
37. The corporate view of the Council was to refuse the application and concerns regarding internal Council procedures or its change in opinion are a matter for the appellant to address with the Council. In relation to other Councils approving sites for two dwellings including application LA05/2018/1163/O, full details of those decisions have not been provided. I therefore cannot comment on them. In any case, all decisions are based on their individual site-specific circumstances.
38. All in all, I have found that the appeal proposal does not comply with policies CTY8, CTY13 and CTY14 of PPS21. No overriding reasons as to why the development is essential have been advanced, contrary to Policy CTY1 of PPS21. The Council's four reasons for refusal are sustained, so the appeal must fail.

This decision relates to the drawings numbered below and date stamped received by the Council on 2 Dec 2020 unless specified: -

- **03A** Existing Block Plan to scale 1:500 @A3
- **04A** Site Location Map 1:2500 @A3
- **05G** Proposed Block Plan 1:500 @A3, date stamped received on 18 Jan 2022
- **06A** Proposed Floor Plan @A3
- **07A** Proposed Elevations 1 of 2, 1:100 @A3
- **08A** Proposed Elevations 2 of 2, 1:100 @A3

- **09A** Site Elevations / Sections 1 of 2, 1:200 @A1
- **10A** Site Elevations / Sections 2 of 2, 1:200 @A1
- **21** Proposed Block Plan, Graded Banks 1:500 @A3, date stamped received on 17 Jan 2022

COMMISSIONER B STEVENSON

List of Documents

Planning Authority: -
Ards and North Down Borough Council

A Statement of Case and Appendices
A1 Rebuttal Comments
A2 Comments on Court of Appeal
Judgement

Appellant: -
Robert Gilmour Architects
on behalf of Mrs R Herron

B Statement of Case
B1 Rebuttal Comments
B2 Comments on Court of Appeal
Judgement
B3 Rebuttal Comments on Court of
Appeal Judgement

Third Parties: -
Bell Architects

C Statement of Case
C1 Rebuttal Comments and Appendix
C2 Comments on Court of Appeal
Judgement and Appendix