

Appeal Decision

Appeal Reference:	2023/A0031.
Appeal by:	Mr Patrick McKenna.
Appeal against:	The refusal of Full Planning Permission.
Proposed Development:	Stable and store.
Location:	Lands approximately 55m west of 303 Battleford Road, Dungannon.
Planning Authority:	Mid-Ulster.
Application Reference:	LA09/2021/0352/F.
Procedure:	Informal Hearing on 15 th April 2024.
Decision by:	Commissioner Kieran O’Connell, dated 4 th June 2024.

Decision

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

Preliminary Matter

2. The Council’s Rebuttal Statement (RS) belatedly raised concerns regarding ribbon development and cited Policy CTY 8 of Planning Policy Statement 21 (PPS21). However, at the hearing the Council’s witness stated that this policy should be disregarded and that their final position was that the proposal was contrary to Policy OS3 of PPS 8, as set out in their decision notice.

Reasons

3. The main issues in this appeal are whether the siting of the building would be acceptable and if it would adversely impact the visual amenity of the area.
4. 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.
5. The Dungannon and South Tyrone Area Plan 2010 (DSTAP) operates as the LDP for the area. In it, the appeal site is within the countryside and outside any designated settlement limit, Green Belt or Countryside Policy Area. The plan contains no policies relevant to the appeal proposal and directs to regional policy

where material. There are no other provisions in the plan that are material to the determination of the appeal.

6. The Strategic Planning Policy Statement for Northern Ireland (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 PPS 8 – ‘Open Space, Sport and Outdoor Recreation’ (PPS 8) and PPS 21 – ‘Sustainable Development in the Countryside’ (PPS 21). The SPPS sets out the transitional arrangements to be followed in the event of a conflict between it and the 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 PPS 8 and PPS 21 applies.
7. Policy CTY 1 states that there are a range of types of development which are considered to be acceptable in principle in the countryside and that will contribute to the aims of sustainable development. One of the categories listed for non-residential development involves outdoor sports and recreational uses in accordance with Planning Policy Statement 8 (PPS 8). Policy OS 3 of PPS 8 deals specifically with outdoor recreation in the countryside. The headnote states that development proposals will be permitted for outdoor recreational uses in the countryside where eight criteria are met.
8. The headnote of Policy OS 3 does not distinguish between recreational facilities for personal use and larger commercial provision. Various types of outdoor recreational uses are referred to in the Justification and Amplification section. Paragraph 5.33 refers specifically to equestrian uses, pointing out that the keeping and riding of horses for recreational purposes is increasingly popular in many parts of the countryside. It recognises that outdoor participatory recreational uses such as riding schools will normally be considered acceptable in principle, providing the scale of ancillary buildings is appropriate to the location and can be integrated into their landscape surroundings.
9. The appeal site, in part, comprises a rectangular shaped field adjacent to Battleford Road. It sits slightly below the level of Battleford Road. The western roadside boundary is defined by mature hedgerow and trees approximately 4-6m in height. The southern site boundary is defined by mature trees approximately 6-8m high, with intermittent gaps along it. The eastern boundary adjacent to the dwelling at No. 303 Battleford Road is defined by hedgerow and 4-6m high trees. A concrete laneway separates a post and 4-bar wooden fence which defines the northern field boundary, and the northern boundary of the appeal site. The post and 4-bar wooden fence, extends along both sides of the concrete laneway.
10. The aforementioned concrete laneway serves two dwellings, namely, the bungalow at No. 303 and the two-storey dwelling at No. 309 Battleford Road and their ancillary garages. The laneway also provides access to another agricultural field within the Appellant’s control to the east of No. 303. The laneway turns 90 degrees and runs along the eastern side of No. 303 Battleford Road, terminating at No. 309 Battleford Road located to the rear and southeast of No. 303.

11. The Council's concerns, as set out in their decision notice, broadly relate to criteria (iii) and (iv) of Policy OS 3. Criterion (iii) requires no adverse impact on visual amenity or the character of the local landscape and seeks that the development is readily absorbed into the landscape by using existing vegetation and/or topography. Criterion (vi) requires that any ancillary buildings or structures be designed to a high standard, be of a scale appropriate to the local area and be sympathetic to the surrounding environment in terms of their siting, layout, and landscape treatment.
12. The appeal building would be a modest single storey building with a pitched roof. The Council's witness clarified at the hearing that they have no concerns regarding the design or appearance of the building. However, they used the term 'tendency to ribboning' to describe their siting concerns regarding the 'drawing out of development along the laneway'. They argued this would result in an adverse impact on the visual amenity and character of the area.
13. The Appellant maintains that the appeal building would be absorbed into the landscape in accordance with Policy OS 3 due to its design and modest scale. Moreover, he asserts that given the topography of the site and the presence of mature vegetation along the eastern, western, and southern boundaries, it would integrate well.
14. I agree with the Appellant that Policy OS 3 contains no reference to a 'tendency to ribbon' nor is it one of its policy tests, therefore, the Council's stance is misplaced. Had the Council concerns that the appeal building would have either created or added to ribbon development at this location, those concerns ought to have been expressed clearly and under the relevant policies contained within PPS 21.
15. The Council argues that the appeal building would be perceptible travelling northward along Battleford Road, and it would be appreciable with other development on the laneway. However, given the angle and orientation of Battleford Road, the presence of intervening vegetation along the wider field boundaries and along the southern and western boundaries of the appeal site, the proposal would be adequately screened. Accordingly, it would not have an adverse impact on the visual amenity, or the character of the local landscape as argued by the Council.
16. The Council also argues that the appeal building would be unacceptable when travelling along the laneway and when travelling south along Battleford Road. Even though the appeal building would inevitably extend development, it would be adequately screened and benefit from a landscaped backdrop from these views. Therefore, in the particular evidential context of this appeal, I find that, given the modest scale of the building and that it would visually integrate into its local landscape setting, it would not adversely impact on visual amenity or the character of the local landscape. The Council has not adequately demonstrated why the 'drawing out' of development along the laneway would be at odds with Policy OS 3. For the reasons outlined above, I find that criterion (iii) and (vi) are satisfied and the Council's concerns on these matters are not sustained.
17. Consideration of the merits of alternative/future development sites as discussed between the parties during the processing of the planning application are not matters for this appeal. However, I do note within the background papers that two

of the sites suggested by the Council and discussed between the parties are within the same host field as the appeal building. I therefore find it unusual that these alternative positions would be anymore acceptable to the Council than the proposed siting.

18. Proposed conditions were discussed at the hearing on a without prejudice basis. Conditions seeking the retention of the existing trees and vegetation would be necessary in the interest of visual amenity. The provision of visibility splays and forward site distance prior to the commencement of any other development would also be necessary in the interests of road safety. At the hearing, the Council proposed an additional condition requiring that the stable and shed should only be used for domestic and recreational purposes. As the Appellant's address is given as Drumflugh Road, Benburb, circa two miles from the appeal site, it is necessary to impose a condition to reinforce the proposed development and prevent the building being used for an inappropriate use in the countryside.
19. As the reason for refusal has not been sustained, the appeal is allowed, subject to the conditions set out below.

Conditions

1. The stable and store hereby approved shall be used solely for domestic and recreational purposes associated with the keeping of horses and associated storage.
2. The visibility splays and forward sight distance shown on the approved drawing No. 02A date stamped received 12th April 2021, shall be laid out before any building operations commence and permanently retained thereafter.
3. All trees/vegetation along the eastern, southern, and western boundaries of the site save that required for the construction of the access shall be permanently retained at a height of no less than 3 metres above ground level.
4. The development shall be begun before the expiration of five years from the date of this permission.

This decision is based on:

- 1:2500 scale "Site Location Map," Drawing No. 01 date stamped received by Council on 3rd March 2021.
- 1:500 scale, 'Site Plan Rev A, Drawing No. 02A date stamped received by Council on 12th April 2021.
- 1:100 scale, Layout Plan and Elevations, Drawing No. 03 date stamped received by Council on 3rd March 2021.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Planning Authority: -	Ms. Karen Doyle Ms. Cathy Hughes	Mid Ulster District Council Mid Ulster District Council
Appellant: -	Mr. Declan Owens Mr. Patrick McKenna Mrs. Sheila McKenna	CD Consulting

List of Documents

Planning Authority: -	Statement of Case by Mid Ulster District Council Rebuttal Statement by Mid Ulster Council
Appellant: -	Statement of Case by CD Consulting