
Appeal Reference:	2023/A0044
Appeal by:	Ann Speers
Appeal against:	The refusal of full planning permission
Proposed Development:	Section 54 Application: Non-compliance with Condition 2 of planning approval LA11/2020/0210/F to reduce visibility splays in both directions to 33m
Location:	43m. N.E. of 71 Bellspark Road with access on to Sommerville Road, Urney, Strabane
Planning Authority:	Derry City and Strabane District Council
Application Reference:	LA11/2021/0375/F
Procedure:	Written representations and accompanied site visit on 28 th February 2024.
Decision by:	Commissioner Cathy McKeary, dated 4th September 2024

Decision

1. The appeal is dismissed.

Claim for Costs

2. A claim for costs was made by the third parties against the appellant. This claim is the subject of a separate decision.

Preliminary Matter

3. A traffic assessment (TA) and an amended drawing (Drawing 23-105-SK-001) were submitted as part of the appellant's statement of case, detailing relocation of the access point to immediately southwest of the existing access (within the existing red line of the application) and provision of visibility splays for the said dwelling of 2m (x distance) x 39m (y distance) without the need for any third party lands.
4. All parties had the opportunity to comment on them through rebuttals however, the Council and third parties do not consider that the information is admissible under section 59 of the Planning Act (NI) 2011 (the Act). Both the TA and the amended drawing pertain to the matter in hand, that is, the access and visibility splays for the appeal site. These matters were before the Council when considering the planning application and therefore additional information pertaining to them can be considered as part of this appeal. In relation to the requirement for press advertisement, this was carried out on 31st August 2023 and stated that the appeal related to the reduction of visibility splays at the appeal site. Any interested party had the opportunity to comment at that point and would have been aware of the

amended plans during the subsequent exchange of documents. All parties had the opportunity to comment on the amended plans in their rebuttal statements. Furthermore, any third party unaware would not be prejudiced as the amended plan and access relocation does not go to the heart of the overall scheme. I find the amended drawing admissible and shall consider the appeal on that basis.

Reasons

5. The main issue in this appeal is whether with a reduced visibility splay the development would prejudice the safety and convenience of road users.
6. Full planning permission was granted for a dwelling and driveway accessing onto Somerville Road via an existing access under application LA11/2020/0210/F on 9th November 2020 (the 2020 permission) subject to a number of conditions including condition 2 which stated that,

“The vehicular accesses [SIC], including visibility splays of 2.4m x 60.0m and forward sight distance of 60.0m, shall be provided in accordance with drawing number 02 (Rev. 3)”.

The reason given for the condition was *“to ensure there is a satisfactory means of access in the interests of road safety and the convenience of road users”.*

7. Section 54 of the Act applies to applications for planning permission for the development of land without complying with conditions subject to which a previous planning permission was granted. On an appeal arising from a S54 application, the Commission can consider only the conditions subject to which permission should be granted, in this case condition 2.
8. The appeal site entails an access point onto Somerville Road which is currently shared by four self catering units and a dwelling. The dwelling is that which was granted approval under the aforementioned planning permission with an associated laneway. There is also an adjacent agricultural access onto Somerville Road. There is a hedge within the visibility splay to the left hand side exiting as it approaches the slight bend in the road which is owned by a third party. The visibility splay to the right hand side exiting provides clear views up to the junction with Bellspark Road. The Somerville Road has no footways and has sporadic residential development along it.
9. A subsequent application (now subject of this appeal) to not comply with condition 2 of the previous permission sought a reduction of the visibility splays to 2m x 33m. It was refused on the basis of prejudicing the safety and convenience of road users.
10. S45(1) of the Act requires that regard must be had to the local development plan, so far as material to the application, and to any other material considerations. Section 6(4) of the Act requires that, where in making any determination, regard is to be had to the local development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise. The relevant LDP is the Strabane Area Plan 1986-2001. The appeal site falls within a Policy Area, however, as the principle of development is accepted and the only

matter under consideration is the condition, no policies within the Plan are material to the proposal.

11. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy (PS) for a Council area is adopted. In this Council area, no PS has been adopted yet. As such, during the intervening transitional period, the SPPS retains certain Planning Policy Statements (PPSs) including PPS3 and PPS21 'Sustainable Development in the Countryside'. 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 aforementioned retained PPSs apply.
12. Policy CTY1 of PPS21 identifies a range of types of development which, in principle, are considered to be acceptable in the countryside. The principle of development of the dwelling has already been deemed acceptable under Policy CTY1 and I am limited to looking at the condition in hand which relates to access arrangements. For this proposal, the relevant policy is PPS3 and the guidance laid out in Development Control Advice Note 15 - 'Vehicular Access Standards' (DCAN15).
13. PPS3 sets out the planning policies for vehicular and pedestrian access, transport assessment, the protection of transport routes and parking. Policy AMP2 'Access to Public Roads' states that planning permission will only be granted for a development proposal involving direct access, or the intensification of the use of an existing access, onto a public road where such access will not prejudice road safety or significantly inconvenience the flow of traffic. This is not a protected route and this element of the policy is not engaged.
14. The existing access is also used by the four longstanding self-catering units. Visibility splays of 2.4m x 60m were required but were never provided and according to the third parties that particular access is immune from enforcement action. The reasoning for the visibility splay requirements for these units does not form part of my consideration, which is limited to access for the single dwelling.
15. Notwithstanding this, the shared nature of the access must be considered in terms of whether an intensification of use would occur. According to the appellant the four self-catering units do not operate at full occupancy. The appellant assumes that even if they each have the 10 vehicle movements per day (vpd), as a dwelling would, then this would generate 40 vpd. None of this is disputed. Therefore, the use of the access by another dwelling creating 10vpd would be an increase of 25%. This constitutes intensification of the access in accordance with paragraph 1.2 of DCAN15.
16. The third parties challenge the methodology of the surveys carried out, including the vehicle count and the speed surveys, and not being provided with the detailed data. The submitted evidence for this appeal has been shared with all participating parties and I am satisfied that there is sufficient detail to consider the matter adequately. The onus is on each party to support their own position and the third parties have not provided any substantive evidence to challenge the

conclusions of the TA. Unhelpfully, the Council made no comment on the amended proposal or TA and deferred responsibility to DfI Roads, who also did not comment, nor attend the accompanied site visit.

17. The traffic speed on the road combined with vpd is used to determine the requirements for visibility splays. The total of 50 vpd, which is put forward by the appellant as a worst case scenario, is still under the 60vpd access flow threshold laid out in Table A and Table B of DCAN15. The access would be taken onto the Somerville Road with less than 3000 vpd. The parties disagreed regarding the speed on the road. However, on the day of my site visit the traffic was not moving along it particularly slowly or cautiously. Taking the evidence as a whole along with my own observations of traffic using the road, I consider DfI Roads assessment of the traffic 85thile speed as 28mph to be a fair representation of the road speed. Considering this, I am satisfied that danger is unlikely to be caused by reducing the x distance to 2m.
18. The appellant considers that their TA justifies the amended proposed access which would provide 39m y distance and is superior to the existing access which has a 33m y distance (the Table B minimum requirement). Where the 85th percentile traffic speed is 28mph, the interpolated y distance would be 55m. The appellant states that the y distance could be reduced below the DfI roads required standard *“if it can be demonstrated to the department, that danger to road users is unlikely to be caused”*. However, the test for a reduction in the y distance is in the notes for Table B in DCAN15 which state that, in exceptional circumstances (my emphasis) a reduction in visibility standards may be permitted where, in the judgement of the Department, danger to road users is not likely to be caused.
19. Moving the point of access to the southwest of the existing access would avoid the hedge to the left hand exiting falling within the visibility splay and I accept it would provide better visibility when exiting compared to the current situation. However, a 39m y distance is 16m short of the interpolated y distance of 55m which I find to be significant.
20. The appellant provided Northern Ireland Statistics and Research Agency (NISRA) evidence of only two road traffic collisions in the vicinity between 2013 and 2020, but none at the holiday cottage access, which they stated has been used for more than ten years without incident. DfI Roads in their consultation response stated there was no record of any accidents in relation to the existing entrance.
21. Satisfactory road safety was disputed by the Council and third parties who respectively referred to an unusual volume of fast traffic on the day of their site visit, and a number of ‘near misses’ and danger to road users along the Sommerville Road. Concerns were also raised by the third parties in relation to risk to pedestrians using the road. However, substantive evidence to support this was not provided by either party and it would be anticipated that pedestrians using a road with no footpath would exercise due caution. Notwithstanding the lack of recorded accidents at the access, I am not persuaded that the proposed relocation of the access would be justified given it cannot provide the requisite splay of 2m x 55m which I find necessary to provide a safe access. The reasoning provided by the appellant in support of the reduced y distance, even though it would still present betterment over what is in-situ at present, would not justify the setting

aside of this requirement, nor constitute exceptional circumstances that would warrant a relaxation to the bracketed figure of 33m.

22. The third parties raised a number of other concerns. Defamatory comments, relationships between parties, allegations of calculated delays, failure to provide a TA to the Council within the application process, and parking by attendees at the local church, are not within the remit of this appeal. Relocation of a farm business is not part of the proposal of this appeal and any future unauthorised uses are a matter for the Council. These matters on their own or cumulatively would not warrant the refusal of this appeal.
23. For the reasons given above the appeal development is contrary to Policy AMP2 of PPS3 and the related provisions of the SPPS. The Council's reason and related concerns of objectors are sustained. The appeal must fail.

This decision relates to the following drawing:-

Drawing No.	Title	Scale	Date
23-105-SK-001	Visibility Splays	1:250 @A3	21 st September 2023

COMMISSIONER CATHY McKEARY

List of Appearances

Planning Authority:-	Laura Coyle (Derry City and Strabane District Council)
Appellant:-	John Corry (Planning Pal) Ann Speers (Appellant) David McKinley (David McKinley Architecture)
Third Parties:-	Michael McShane Daniel McCrossan (MLA) Robert Maxwell Chris Keys Antaine Ó Fearghail (Councillor) Lee Kennedy (Lee Kennedy Planning) Liam Carlin Lee McDaid

List of Documents

Planning Authority:-	Statement of case by Derry City and Strabane District Council Rebuttal by Derry City and Strabane District Council
Appellants:-	Statement of case by Planning Pal on behalf of Ann Speers Rebuttal by Planning Pal on behalf of Ann Speers
Third Parties:-	Statement of case by Lee Kennedy Planning on behalf of: Mr & Mrs Carlin – 1 Sommerville Road; Mr & Mrs Keys – 3 Sommerville Road; Mr & Mrs Duffy - 4 Sommerville Road; Mr & Mrs McShane - 5 Sommerville Road; Mr & Mrs Devine – 7 Sommerville Road; Ms Hunter – 9 Sommerville Road; Mr & Mrs McDaid – 3 Hillview Road; Mr Coyle – 10 Rabstown Road; & Miss McCormick – 40 Prospect Road. Rebuttal by Lee Kennedy Planning on behalf of the above parties