

Enforcement Appeal Decision

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Appeal Reference:	2023/E0028
Appeal by:	Mr Robert McAuley.
Appeal against:	An Enforcement Notice dated 23 May 2023.
Alleged Breach of Planning Control:	Unauthorised close boarded timber fencing along the front boundary of the site.
Location:	101 Ballybogey Road, Ballybogey BT53 6PD.
Planning Authority:	Causeway Coast and Glens Borough Council.
EN Reference:	EN/2023/9969.
Procedure:	Written Representations with accompanied site visit on 24 April 2024.
Decisions by:	Commissioner Mandy Jones, dated 10 May 2024.

Grounds of Appeal

1. The appeal was brought on Ground (a) as set out in Section 143 (3) of the Planning Act (Northern Ireland) 2011. There is a deemed application by virtue of Section 145 (5).

Ground (a) – that planning permission ought to be granted in respect of any breach of planning control which may be constituted by the matters stated in the Notice.

2. The main issues in this appeal are whether the deemed appeal proposal detracts from the appearance and character of the surrounding area and whether it would adversely affect the features that contribute to the character of the LLPA.
3. Section 45 (1) of the Planning Act (Northern Ireland) 2011 requires the Commission in dealing with an appeal, to have regard to the local development plan, so far as material to the application and to any other material considerations. Section 6 (4) states that where regard is to be had to the development plan, the determination must be made in accordance with the Plan unless material considerations indicate otherwise.
4. The Northern Area Plan 2016 (NAP), is the local development plan for the area where the deemed appeal site is located. The deemed appeal site is located within the open countryside and the Burn Gushet, Local Landscape Policy Area (LLPA) Designation BBL 01.

5. Overarching regional policy is provided by the Strategic Planning Policy Statement for Northern Ireland (SPPS). It sets out transitional arrangements which will operate until a local authority has adopted a Plan Strategy for the whole area. The SPPS retains certain existing policy statements including Planning Policy Statement 7 (Addendum) – Residential Extensions and Alterations (PPS 7 Addendum). The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and any retained policy. Any conflict between the SPPS and any retained policy under the transitional arrangements must be resolved in favour of the provisions within the SPPS. No conflict arises between the provisions of the SPPS and retained policy within PPS 7 Addendum in so far as it relates to the deemed appeal proposal.
6. Although within the open countryside, the deemed appeal site is just on the edge of the settlement limit of Ballybogey. No 101 is a single storey dwelling orientated parallel to the Ballybogey Road and set back approx. 10m from the hard shoulder. The close boarded timber fencing is approximately 60m across the entire frontage of no 101 Ballybogey Road and is approx. 2.1m in height. Surrounding no 101, is the heavily vegetated LLPA located on the eastern side of Ballybogey Village. To the western site of Ballybogey Road, opposite the deemed appeal site, is a number of housing developments (Swallow Court and Moorfields). To the south west is a large petrol filling station and shop. A bus stop is immediately south of no 101 Ballybogey Road.
7. PPS 7 Addendum, Policy EXT 1, Residential Extensions and Alterations states that planning permission will be granted for a proposal to extend or alter a residential property where the scale, massing and materials of the proposal are sympathetic with the built form and appearance of the existing property and will not detract from the appearance and character of the surrounding area.
8. The Council argue that the appearance and character of the area to the eastern side of Ballybogey Road at this location is rural with verdant vegetation. It was argued that the deemed proposal by reason of its height of 2.1m, prolonged length of 60m and design of a close boarded form appears highly incongruous thereby detracting from the appearance and character of the surrounding area.
9. Ballybogey Road is an extremely busy road with a traffic speed limit of 40mph within the settlement limit. It is the principal road to Portrush from Ballymoney/Ballymena/Belfast. The fence is set to the rear of a hard shoulder area. At the time of my site visit lorries were parked on the hard shoulder, the drivers of which were visiting the shop across the road. There is a bus stop immediately to the south. The Council have identified critical views on both approaches from the Ballybogey Road.
10. I was told by the appellant that the fencing was constructed to replace a 5 – 6 m high row of Leylandii trees which were planted in the 1970s. The fence was erected for the following reasons;
 - To address Roads Service requirements to cut the trees back heavily on a regular basis, to facilitate the adjacent bus stop. The bus stop was positioned a few years ago, however, is it is too close to the junction to meet their own standards.

Road Service were supportive of the property owner's intention to erect the fence;

- To reduce the maintenance required to maintain the trees as the owners are now elderly;
- To reduce the impact of road noise, loss of privacy and potential damage to the property and cars parked in the driveway from water spray and stones being directed towards the property by passing vehicles.

11. A previous retrospective application for the replacement of existing mature high hedge along the front boundary with new 2.1m high timber fence was refused on 21 April 2023. The reasons for refusal reflect the deemed reasons for refusal.
12. A 2.1m high timber close boarded fence is a relatively benign form of roadside enclosure commonly seen along transport routes. As the fence has been in place for some time it has a weathered patina, and in my opinion, is fairly innocuous. I note that the dwelling is only 10m from the edge of the hard shoulder and as such I am cognisant of the material considerations for the need of the fencing presented by the appellant including privacy, safety and reduction of road noise from the heavily trafficked Ballybogey Road and the close proximity of the bus stop. At the time of my site visit there was broken glass strewn across the road in front of the fencing. I was told by the appellant that this is a regular occurrence as the Ballybogey Road is narrow in front of no 101 and lorries passing each other often clip and break their side mirrors and Road Service are continually clearing the broken glass.
13. From the identified critical viewpoints, travelling the Ballybogey Road, given the speed of traffic, the oblique nature of views of the fencing, the built development to the opposite side of the road within the settlement development limit, I conclude that the scale, massing and materials will not detract from the character and appearance of the overall surrounding area. The Council's first deemed reason for refusal is not sustained.
14. Within the NAP, Policy ENV 1, Local Landscape Policy Areas, states that planning permission will not be granted for development proposals that would be liable to affect adversely those features, or combination of features, that contribute to the environmental quality, integrity or character of a designated LLPA. Where proposals are within and / or adjoining a designated LLPA, a landscape buffer may be required to protect the environmental quality of the LLPA.
15. Designation BBL 01, Burn Gushet LLPA sets out the features or combination of features that contribute to the environmental quality, integrity or character of the LLPA. These are : this LLPA is located on the eastern side of the village and includes a newly planted coppice at the Benvardin and Ballybogey Roads junction, as well as a Listed Building and Ancient Monument; Archaeological sites of industrial heritage comprising a flax mill, mill pond and mill race; The listed Ballybogey House, associated outbuildings and mature garden; River banks comprising Burn Gushet River and associated vegetation; Attractive views of the old flax mill and Areas of local nature conservation interest including the river corridor and associated vegetation, along with the vegetation around the former mill ponds, Ballybogey House and the rising land form to the east of the mill, which are important for biodiversity.

16. The Council argued that the fence would adversely affect the appreciation of those features generally through the introduction of a visually discordant and conspicuous fence. It was argued that the fence undesirably attracts attention and is a competing focus which detracts from the appreciation of the collective features of the LPPA and as such undermines the quality of the designation.
17. The Burn Gushet LLPA to the eastern side of Ballybogey is extensive and there are many features which contribute to its designation, most of which are a considerable distance away from the fencing and not visually associated with it. I note that the closest feature and the only feature visually associated with the fence is the newly planted coppice at the junction of the Ballybogey and Benvardin Road which is within the appellant's ownership, was planted by and is being maintained by the appellant.
18. As required by Policy ENV 1, a landscape buffer, would be difficult as the fencing is positioned tight to the edge of the hard shoulder. The Council and appellant suggested that a form of creeper planting could be specified which could be trained through and over the fencing to soften its impact. A condition requiring details of such planting to be submitted to the Council can be imposed.
19. Although the fencing is approx. 60m in length, the extent of fencing is relatively minor in relation to the overall extent of the western roadside edge of the LLPA. Critical views identified by the Council are from the Ballybogey Road and from the associated hard shoulder. Again, travelling the Ballybogey Road in either direction given the nature of the road, the speed of traffic, the oblique nature of views, the amount of existing roadside vegetation on either approach and the backdrop of vegetation to the rear of the fence, I consider the fence with some simple planting, would read as fairly inconspicuous within the wider western edge of the LLPA.
20. Given the above, when viewed from the Ballybogey Road, in my opinion the fence does not adversely affect the appreciation of the features of the LLPA and does not undermine the quality of the designation as a whole. As such, the deemed proposal is not contrary to Policy ENV1 and BBL 01 of the NAP 2016 and the Council's second deemed reason for refusal has not been sustained.
21. In conclusion, as both of the Council's deemed reasons for refusal have not been sustained. The appeal on ground (a) succeeds.

The Decision is as follows :

- **The appeal on ground (a) succeeds and planning permission is granted for the close boarded timber fence along the frontage of 101 Ballybogey Road, Ballybogey subject to the condition set out below.**

The Enforcement Notice is quashed.

Condition

- 1) Details of creeper planting to be submitted to and agreed by the Council. The scheme of planting as finally approved shall be carried out during the first planting season after the date of this decision. Any planting 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 Council gives written consent to any variation.

COMMISSIONER MANDY JONES

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List of Documents

Planning Authority: ‘A’ Statement of Case
 ‘A1’ Rebuttal

Appellant: ‘B’ Statement of Case

Appearances at Site Visit

Planning Authority: Mr R Kerr (Causeway Coast and Glens Borough Council)
 Ms D Humphries (Causeway Coast and Glens Borough
 Council)

Appellant: Mr Karl Kennedy (Agent)
 Mr McAuley (appellant)
 Mr W Anderson
 Councillor M Fielding

