
Appeal Reference:	2023/A0094.
Appeal by:	Mr. Gary Green.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Proposed change of house type and siting position of rural detached dwelling house under implemented planning application Q/2007/0645/RM, along with proposed erection of new detached garage, rural entrance pillars and gate, additional landscaping and associated site works.
Location:	Lands adjacent to and North West of 25 Ballymacanallen Road, Gilford, BT63 6AD.
Planning Authority:	Local Planning Office Armagh City, Banbridge & Craigavon Borough Council.
Application Reference:	LA08/2022/1122/F
Procedure:	Written Representations with Accompanied site visit on 31 st July 2024.
Decision by:	Commissioner Kieran O'Connell, 30 th August 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the proposal would:
 - be acceptable in principle in the countryside,
 - result in ribbon development; and
 - have an adverse impact on rural character.
3. Section 45(1) of the Planning (Northern Ireland) Act 2011 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. Section 6(4) of the Act requires that, where in making any determination under the Act, 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 Banbridge, Newry and Mourne Plan 2015 (BNMAP) operates as the LDP for the area in which the appeal site is located. In BNMAP, the appeal site lies in the countryside. The plan policies relevant to the countryside are now outdated and have been overtaken by regional policies for rural development. As such, no

determining weight can be attached to them. There are no other provisions in the plan that are material to the determination of the appeal.

5. The Strategic Planning Policy Statement for Northern Ireland (NI) 'Planning for Sustainable Development' (SPPS) is material to all decisions on individual planning applications and appeals. The SPPS retains policies within existing planning policy documents until such times as Plan Strategies for the whole of the Council areas in NI have been adopted. No Plan Strategy has been adopted for this Council area. The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.
6. Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21) is a retained policy. No conflict arises between the provisions of the SPPS and retained policy insofar as they relate to this appeal proposal. The retained PPS 21 therefore provides the policy context for assessing the proposal. Supplementary planning guidance for buildings in the countryside is set out in the document 'Building on Tradition' – A Sustainable Design Guide for Northern Ireland Countryside (BoT).
7. Policy CTY 1 of PPS 21 is titled 'Development in the Countryside'. It 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. It goes on to say that planning permission will be granted for an individual dwelling house in six cases. Other types of development will only be permitted where there are overriding reasons why that development is essential and could not be located in a settlement, or it is otherwise allocated for development in a development plan. The original application for a dwelling house in the countryside was approved under planning reference Q/2004/1221/O and as a result of this, the Appellant argues that he has a fall-back position establishing the principle of development. He contends that he commenced the development of this dwelling. The Outline Planning Permission was granted on 26th April 2006, while the Reserved Matters were approved on 20th February 2008. Both contained a time limit condition requiring the development be begun either before the expiration of five years from the date of the outline permission or two years from the date of the Reserved Matters application. There is no dispute that both permissions have expired.
8. The appeal site is situated on the southern side of Ballymacanallen Road, within the second field back from the road on lands immediately adjacent to and northwest of the dwelling at No.25. The site would be accessed via an existing concrete laneway serving No. 25. The northwestern boundary is defined by post and wire fencing and a mature deciduous hedgerow approximately 3m high. The northeastern boundary is defined by a post and wire fence, an agricultural gate and a 1m high laurel hedge which extends along both sides of the laneway from the site to Ballymacanallen Road. The southeastern boundary adjacent to No. 25 is defined by a 1m high hedge with post and wire fencing on the inside. The southwestern boundary is defined by post and wire fencing and an agricultural gate. The appeal site rises from the existing access laneway in a westerly direction. Within the southeastern section of the site adjacent to No. 25, there is some evidence of an L-shaped foundation and wall.

9. To the south of the appeal site there are several buildings including the adjacent single storey bungalow at No. 25 which has its own curtilage and access which branches off the existing laneway. Further south at the end of the laneway, there is a hard cored access leading to a mono pitched building used as a stable for horses, another longer linear building (which I was advised on site was a former dwelling and subsequently granted to be replaced offsite under planning application reference LA08/2021/1057/F). Set to the rear (southwest) of the “former dwelling” is a smaller pitched red roof building, again used as a stable for horses. A chicken coop is also adjacent to this stable building. These buildings are contained within a separate yard and lands immediately south of No. 25. On the eastern side of the laneway, directly opposite the appeal site, lie two substantial polytunnels, both within the Appellant’s control. These polytunnels are directly accessed from the laneway serving the appeal site and also have a separate access directly onto Ballymacanallen Road. South of these polytunnels and adjacent to the “former dwelling” is a substantial three bay tin shed.
10. The Appellant argues that the commencement works were carried out in accordance with the Planning (Northern Ireland) Order 1991, which was in force at the time of the application. Whilst that may be the case, this appeal is made under Section 58 of the current Planning Act (Northern Ireland) 2011 (Act) and is not an appeal against a refusal to certify lawfulness.
11. The Appellant alleges that significant works have taken place on the appeal site which meet the legislative requirements of the planning permission. The Appellant argues that he obtained advice on commencement of development from the then Departmental website and from letters provided by the then planning authority regarding other specified sites. Additionally, it is argued that Section 170 of the Act which makes provision for certificates of lawfulness of proposed use or development supports his case. It is contended that in using the phrase *‘may make’*, the legislation implies that discretion should be employed and that a certificate of lawfulness is not mandatory. The Appellant has not obtained such a certificate.
12. Section 170 of the Act states *‘that if any person wishes to ascertain whether – (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful, that person may make an application for the purpose to the appropriate council specifying the land and describing the use or operations in question’*. Section 170 of the Act is discretionary regarding whether people make such applications, although given such a statutory vehicle exists, it is prudent to use such a route to certify lawfulness. So called ‘letters of comfort’ from planning authorities may also be obtained. In this appeal, the Council argues that in the absence of a certificate of lawfulness, the Appellant cannot claim a lawful start to the approved development. Given there is no certificate or any other document from a statutory/planning authority to demonstrate the lawful commencement of the development, I concur with the Council and find there is no valid ‘fallback’ position establishing the principle of development as argued.
13. Furthermore, whilst the Appellant argues that he relied on published Departmental advice (provided in evidence), that advice clearly states that *‘if an applicant is unsure about whether or not development has started as a result of works carried out, they should seek advice from the relevant Divisional Planning Office’*. No

documentary evidence has been presented to demonstrate that such advice was sought and obtained in this instance.

14. The Appellant referred to case law in support of his position. However, it has not been appended to his statement of case and as such any direct comparison with the appeal proposal cannot be made. The appellant also alleges that the Council has granted applications for 'changes of house types' within the district without requiring certificates of lawfulness. However, no details have been provided of these approvals to allow for comparisons. Additionally, the Appellant referred to two appeal decisions, namely 2019/E0046 and 2021/E0069, but they relate to appeals against the refusal to certify lawfulness under Section 173 of the Act, unlike this appeal, which is made under Section 58 of the Act. As such, they do not assist the Appellant's case.
15. In light of my findings above, as the proposal does not represent one of the types of development considered to be acceptable in principle in the countryside, and no overriding reasons were presented to demonstrate how it is essential, the proposed 'change of house type' is contrary to Policy CTY1 of PPS21. The Council's first reason for refusal is sustained.
16. Policy CTY 8 of PPS 21 is entitled 'Ribbon Development'. It states that planning permission will be refused for a building which creates or adds to a ribbon of development. In this instance, the Appellant does not seek to engage with the exceptional clause within the infill policy. The dispute solely centres on whether the appeal development would create ribbon development.
17. Paragraph 5.32 of the policy says that ribbon development is detrimental to the character, appearance, and amenity of the countryside. Although PPS 21 does not provide a comprehensive definition of ribbon development, paragraph 5.33 states that a '*ribbon*' *does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. Buildings sited back staggered, or at angles and with gaps between them can still represent ribbon development if they have a common frontage, or they are visually linked* (emphasis added). Policy CTY 14 of PPS 21 'Rural Character' further states that a new building will be unacceptable where it creates or adds to a ribbon of development.
18. The Council considered that a dwelling on the appeal site would result in the creation of ribbon development along the laneway. They stated at the site visit that the ribbon of development would comprise the appeal dwelling, the dwelling at No. 25, the adjacent linear shaped building (former dwelling) and the red roofed pitched outbuilding to its rear. The Council identified the critical view as being along the extent of the appeal site frontage (northeastern boundary) to the laneway. The Appellant contends that the buildings along the laneway inclusive of the polytunnels and large tin shed to the southeast of the appeal site form a grouping of buildings not dissimilar to a farm grouping to which the appeal development would add.
19. When travelling along the laneway off Ballymacnallen Road, on approach to the appeal site, the proposal would be the first building one would encounter on approach along the westernmost side of the laneway. The proposal would visually link with No. 25, the linear shaped building, and the the red roofed pitched outbuilding on the southwestern side of the linear shaped building and the mono

pitched building to the east of the linear shaped building. A dwelling on the appeal site would therefore extend development in a linear fashion adding to a ribbon of development along the laneway.

20. As alluded to above, the Appellant argues that if he were to apply for a farm dwelling, environmental regulations would necessitate the positioning of a dwelling along the same laneway given the practical constraints and the operational layout of the farm. However, the appeal proposal is not for a farm dwelling which would be determined under a different policy context and there is no guarantee that such a proposal, if deemed acceptable in principle, would also satisfy the site-specific requirements of that policy.
21. The Appellant advised at the site visit that the Council granted planning permission for an off-site replacement dwelling, with the retention of the former dwelling in a field further to the south. He argues that ribbon development was not raised as a concern in that case. The circumstances and policy context of that application are different to those before me. In any event, one seemingly poor decision by the Council would not outweigh the policy objection pertaining to ribbon development in this case as outlined above. For the reasons given, the Council's second reason for refusal based on Policy CTY8 is sustained.
22. Policy CTY 14 of PPS 21 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. Given my conclusions above concerning ribbon development, the appeal proposal would detrimentally change the rural character of the area. The appeal development would be contrary to Policy CTY 14 read as a whole. The Council's third reason for refusal is sustained.
23. Whilst the Appellant raised concerns regarding the processing of the planning application by the Council and referred to a 'declined site visit' with senior representatives of the Council, this is a matter for the Council and lies outside the scope of this appeal.
24. In light of my findings above, the appeal must fail.

This decision is based on the following drawings:

- 01 (rev 1) – Site Location Map, 1:2500 scale, overview map, and area zoning map date stamped by the Council on 24th October 2022.
- 02 – Proposed dwelling plans, elevation and specification date stamped 07 September 2022, 1:100 Scale, Date stamped 07 September 2022.
- 03 – Proposed Garage Plans, Elevations, and Boundary Treatment Details 1:50/1:100 Scale Date stamped 07 September 2022.
- 04 (rev 1) – Proposed Site Layout Plan and Proposed Landscaping and Management Plan, date stamped 24th October 2022.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Planning Authority: - Ms. Monaghan (Armagh City, Banbridge & Craigavon Borough Council).
Mr. McClure (Armagh City, Banbridge & Craigavon Borough Council).

Appellant: - Mr. McKeivitt (Blackgate property Services Limited)
Mr. Hamill (Blackgate property Services Limited)
Mr. Green (Appellant)
Mrs. Green (Appellant)

List of Documents

Council: - Statement of Case by Armagh City, Banbridge and Craigavon Borough Council.

Appellant: - Statement of Case by Blackgate Property Services Limited
Rebuttal Statement by Blackgate Property Services Limited