
Appeal Reference:	2023/A0102
Appeal by:	Mr. Michael Robinson
Appeal against:	The conditional grant of full planning permission
Development:	Proposed extension to domestic curtilage of existing dwelling to include existing outhouse to become ancillary to the existing dwelling as domestic office and domestic gym
Location:	30 Dunlady Road, Dundonald, Belfast
Planning Authority:	Lisburn & Castlereagh City Council
Application Reference:	LA05/2022/0977/F
Procedure:	Informal Hearing on 19 th June 2024
Decision by:	Commissioner Trudy Harbinson, dated 30 th August 2024

Decision

1. The appeal is allowed and condition 2 of permission LA05/2022/0977/F is amended as set out below.

Reasons

2. The main issue in this appeal is whether condition 2 of permission LA05/2022/0977/F meets the legal tests for a planning condition.
3. On 28th September 2023 the Council granted full planning permission (LA05/2022/0977/F) on the appeal site for *the proposed extension to domestic curtilage of existing dwelling to include existing outhouse to become ancillary to the existing dwelling as domestic office and domestic gym*. This permission was subject to two conditions, a standard time condition and condition 2, which the Appellant challenges under this appeal. Condition 2 reads as follows: -

The office and gym hereby permitted shall be used solely for domestic purposes ancillary to the existing dwelling at No. 30 Dunlady Road Dundonald and for no other purposes. In particular at no time shall the building be used for; residential accommodation, industrial, trade or business activity of any description.

The following reason was given for Condition 2: -

To safeguard the amenity of nearby residents and the character of the rural area as a whole.

4. In the determination of this appeal, Section 45 (1) of the Act 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. Where regard is to be had to

the LDP, Section 6 (4) of the Act requires that the determination must be made in accordance with the plan unless material considerations indicate otherwise.

5. On 26th September 2023 the Council adopted the Plan Strategy (PS) entitled 'Lisburn and Castlereagh Local Development Plan 2032'. In line with the transitional arrangements set out in the Schedule to the Planning (Local Development Plan) Regulations (Northern Ireland) 2015 (as amended), the LDP now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. Again, in accordance with the subject legislation, any conflict between a policy contained in the DDP and those of the PS must be resolved in favour of the PS.
6. The Belfast Urban Area Plan (BUAP) is the relevant DDP. In that plan the site is located outside any settlement and within the Belfast Urban Area Green Belt and within an Area of High Scenic Value (AHSV). Policy GB1 of the BUAP states that there will be a general presumption against further development in the green belt unless it is essential to the operation of farming and must be located in the countryside rather than in a nearby town or village. This green belt policy in the DDP is now outdated, and limited weight is given to it. Policy L4 'City Setting' of the DDP seeks to protect Areas of High Scenic Value in the Antrim and Castlereagh Hills, the Lagan Valley and Lough Shores. While the Draft Belfast Metropolitan Area Plan 2004 (dBMAP) is not a DDP as it was never adopted, it could still be a potential material consideration in certain cases. Within dBMAP the appeal site is also located in the green belt and an AHSV. There is no conflict between the DDP and the PS insofar as they relate to the proposal.
7. In compliance with paragraph 1.11 of the Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS), operational policies set out in the PS are now in effect. In accordance with paragraph 1.9 of the SPPS, as the Council has now adopted the PS the previously retained policies such as the Planning Policy Statements (PPS) have now ceased to have effect within this council district.
8. The decision on the application (28th September 2023) closely coincided with the adoption of the PS and the Council's delegated report considered the proposed development under both the previously retained policy, which in this case was PPS7 Addendum, Residential Extensions and Alterations, and Policy HOU7, Residential Extensions and Alterations of the PS. The Council considered that the appeal development complied with these policies.
9. The appeal site is located at the end of a laneway off Dunlady Road and contains a single storey building with hardstanding to its frontage and side. The building was previously an agricultural byre and store, externally it is finished in exposed stonework and render and has a metal roof. To its west there is a single storey dwelling, number 30 Dunlady Road, which sits gable end to the appeal building. To the north of the appeal site there is a building with a paddock to its rear. The surrounding area is agricultural countryside. The application, now subject of this appeal, sought to extend the curtilage of the dwelling at number 30 to include the appeal building as an ancillary domestic building for use as a home office and home gym. Externally existing stonework is to be retained, rendered walls re-rendered and cedar cladding added around door and window openings and to the upper part of the eastern gable. A large double glazed window and glazed

entrance door will replace existing gate openings and a narrow vertical window will be added to the western gable.

10. The Appellant stated that the description of development was imposed on him by the Council. The evidence is somewhat confusing on this matter. In the written evidence he states that the application is to *'rejuvenate the vernacular out-buildings to create office space to enable long term working at home'*. He goes on to state that the original description on the planning application form was for *'Proposed renovation and conversion of Out-Buildings Byer/Implement Shed to Office/Games Room Gym'*. However, this was not the case, the original Form P1 as submitted described the development proposed as *'Proposed Renovation of Outbuildings (98.5m2) to provide a. Home working Office b. Home Gym'*. Where the form asked for the present use of land/buildings, the Appellant referenced the replacement dwelling, at 30 Dunlady Road, approved under LA05/2016/0185/F and stated that the application related to outbuildings within the curtilage of the dwelling. The approved drawings for that application, however, show the appeal building outside the red line application boundary of the replacement dwelling.
11. The Council agreed an amended description of development to incorporate the extension to the domestic curtilage of 30 Dunlady Road to include the outhouse which the Appellant sought to use as a home office and home gym. The drawings submitted with the application labelled the floor plan 'home office' and 'home gym'. The amended description was agreed with the Appellant, incorporated similar wording with respect to the proposed use of the building, albeit the word 'domestic' was used as opposed to 'home', and is the description that was advertised, neighbour notified and subsequently granted permission. Furthermore, throughout their evidence the Appellant makes reference to homeworking, the buildings being in private domestic use of the family and being ancillary to the existing dwelling. I find the concerns raised by the Appellant with respect to the amended description to be misplaced.
12. In their evidence the Appellant referred to Policy COU4 of the PS. This is entitled *the conversion and reuse of buildings for residential use*. This policy is applicable when considering conversion to a single dwelling but is not relevant to the consideration of an application for an ancillary domestic use. Should the Appellant intend to use the appeal building as a separate single dwelling house that would require an application for planning permission for that specific use. Notwithstanding this, the Appellant confirmed at the hearing that the purpose of the subject building was for a home office and home gym for their own use. Reference to Policy COU4 is misdirected within the context of the ancillary domestic proposal before me. In addition to this PS policy, the Appellant also references PPS21 Sustainable Development in the Countryside, PPS7 Addendum and PPS 4 Planning and Economic Development Annex A – Homeworking, however for the reasons set out earlier in this report those policies have been superseded by the PS. In any event the advice that was provided in PPS4 Annex A Homeworking is similarly provided in the Supplementary Planning Guidance (SPG) to the PS.
13. Conditions should only be imposed which are necessary, relevant to planning, relevant to the development being permitted, precise, enforceable and reasonable. The Appellant raised matters which fall to be considered under a number of these requirements. He contested the reason given for Condition 2 was questionable

given that there are no neighbours within 300m of the appeal site. He stated that as there are no amenity impacts from the proposal in terms of traffic, noise, omissions or overlooking there is no requirement for the condition. He also stated that there was no evidence that the rural character would be damaged. He referred to other dwellings in the surrounding rural area that advertise business use. He also contested the wording of the condition.

14. The Appellant stated that the wording of the condition would impose restrictions on potential future use of the building. Whilst he would use a gym regularly now, that might not always be the case, and he considered the condition would restrict him from using it, in the event it is no longer required, for other purposes such as an additional bedroom. He also stated that whilst the family's current work from home situation is that of employees that he was concerned that the wording of the condition would preclude any self-employment as that would be a business. The Appellant considered that the condition precludes 'residential accommodation' and 'business activity of any description'.
15. Furthermore, he considered there was ambiguity as to whether working from home differentiated between an employee and a self-employed person who had their own business. He referred to Homeworking guidance and ambiguity as to whether a separate building such as the appeal building is considered as equivalent to a room in a house. He considered that the wording of the condition removes the rights of the occupant, preventing the family from using the refurbished building to suit their domestic needs and that it is unwarranted.
16. The Council considered that the proposed development was compliant with policy requirements on the basis of the information that was presented to them, in that it was proposed to use the appeal building as a home gym for personal use and a home office to serve existing family members to work from home. It stated that Condition 2 was imposed to control how the development would be managed long term, to ensure it is acceptable in perpetuity and not just on the date it was approved. Furthermore, it stated that any level of activity beyond the domestic nature of what has been applied for would be outwith the scope of Policy HOU7 with potential negative impact on the amenity of others.
17. The Council deemed Condition 2 necessary to bind the domestic use of the appeal building to the dwelling and to control the level of domestic activity, with its removal potentially creating a separate unit that could be independently used as freestanding accommodation or used in association with the secondary equestrian use adjacent to the appeal site. It considered that the Condition meets all the legal tests and is not unduly restrictive.
18. The Justification and Amplification (J&A) text to Policy HOU7 Residential Extensions and Alterations of the PS states that *where an extension to the existing house is not practicable and it is proposed to convert an existing outbuilding, planning permission will be dependent on the development being of a modest scale. It further states that in all cases the Council must be satisfied that the proposed accommodation will remain ancillary to the main residential property and that where permission is granted it will be subject to a condition that the extension will only be used for ancillary residential purposes in connection with the main dwelling and not as a separate unit of accommodation.* The SPG of the PS states that an extension or alteration to a residential property to provide an ancillary use,

should be designed to demonstrate dependency on the existing residential property and that ancillary uses that could practically and viably operate on their own will not be acceptable.

19. The SPG to the PS contains guidance on Homeworking. It recognises that many small businesses are started by people working in their own homes. It advises that homeworking does not necessarily require planning permission and that permission is not normally required where the use of part of a dwelling house for business purposes does not change the overall character of the property's use as a single dwelling. It gives as examples, the use by a householder of a room as an office or the provision of a child-minding service. It states that homeworking is likely to be ancillary to the residential use if the work is carried out primarily by persons living in the residential unit; the business use is clearly secondary to the main use of the property as a dwelling house; the use is carried out totally within the building; there will be no loss of amenity for neighbouring residents, for example, from noise, advertising, impact on visual amenity or traffic generation; and the use is not one which by its nature would attract more than occasional visitors. It further states that where the business activity increases and the non-residential use of the property ceases to be ancillary to its use as a single dwelling, a material change of use for which planning permission is required is likely to have taken place.
20. Whilst the absence of any demonstrable impact from the appeal development on amenity or character of the area contributed to its policy compliance and the Council's decision to grant permission, it is not an indication that an attached planning condition is not required or that it is unreasonable. The appeal building is separate to the existing dwelling house and I agree with the Council that a condition is required to ensure that it will only be used for ancillary residential purposes in connection with the main dwelling and not as a separate unit of accommodation. Given it is for a home gym and home office I consider it reasonable that the condition specifies that no industry, trade or business activity take place at any time in order to control the nature and level of activity at the appeal site.
21. With respect to the Appellant's concern that there is ambiguity in policy and guidance on homeworking, whilst the SPG refers to the use of a room, that is an example of homeworking, but not the sole example of what constitutes homeworking. Furthermore, I do not agree that there is ambiguity in policy and guidance as to homeworking allowing for self-employment. The SPG specifically refers to small businesses. The relevant consideration is whether the homeworking, employed or self employed, is ancillary to the main use of the dwelling. It is a matter of fact and degree as to whether a use is ancillary. The Appellant's concerns in this regard are hypothetical in any event, however, if in the future, the nature of his homeworking alters to an extent that it is no longer ancillary to the main residential use of the dwelling then a new planning application for the introduction of a commercial use would be required whereupon any impact could be measured. Similarly, if any residential use became separate and self-contained an application for a single dwelling would be required. However, for the purposes of this appeal and on the basis of the information before me I am content that the drawings and description of development indicate personal use of the appeal building by the Appellant.

22. The proposed floorplan shows a domestic home gym on one side of the appeal building and a domestic home office with three workstations detailed on the other with a small bathroom in between. I was told that both are for the private use of the residents of 30 Dunlady Road, ancillary to the main use of the property as a dwelling house and as such there are no amenity impacts. Whilst the uses are in an outhouse as opposed to within the main house, it will be an ancillary residential building within the newly defined residential curtilage of the dwelling. Given these specific circumstances homeworking is acceptable in the appeal building.
23. Notwithstanding the Council's position that the condition meets the legal tests, it accepted that the wording '*residential accommodation*' could be omitted as the domestic gym and domestic office are both considered to be domestic accommodation. It considered the wording '*used solely for domestic purposes*' would be sufficient to ensure that the condition remained enforceable and met the other legal tests. Furthermore, at the hearing, it suggested the words '*of any description*' after the words '*business activity*' could be removed to address the Appellant's concern with respect to self-employment. It stated that, with the exception of these two omissions, the condition should not be removed. At the hearing the Appellant indicated that they would be content with the revision to the condition as suggested by the Council.
24. I agree that the words '*residential accommodation*' should be omitted from the condition as the purpose of the converted building is to provide ancillary domestic accommodation and the permission subsumes the building within the residential curtilage. The condition is clear that it is to be used solely for domestic purposes ancillary to the existing dwelling.
25. Notwithstanding my above conclusion that homeworking does not preclude self-employment, the reference in the condition to '*business activity of any description*' presents some uncertainty as self-employment, in itself, would be a business of some description and therefore could be considered contrary to the condition. I agree that the words '*of any description*' should be omitted in recognition that the home office itself could, if the Appellant is self-employed, be in use as a business of some description. The overall wording of the condition requires that it be ancillary to the main use of the dwelling. However, I agree that the remainder of the second part of the condition is necessary to ensure that the appeal building is not used independently for industry, trade or business.
26. For the reasons given above I consider that Condition 2, as amended, would meet all the legal tests for a planning condition. Accordingly, the appeal shall succeed and Condition 2 of permission LA05/2022/0977/F is amended as follows:
 - (2) The office and gym hereby permitted shall be used solely for domestic purposes ancillary to the existing dwelling at No. 30 Dunlady Road, Dundonald and for no other purposes. In particular at no time shall the building be used for; industrial, trade or business activity.

The decision is based on the following drawings:

DRAWING No.	TITLE	SCALE
01B (PL/00 C)	Site Location	1:2500
03B (PL/03 B)	Proposed Drawings	1:100

COMMISSIONER TRUDY HARBINSON

List of Appearances

Planning Authority:- Laura McCausland, Lisburn & Castlereagh City Council

Appellant:- Samuel Wilson (Samuel Wilson Consulting)
Michael Robinson
Alix Robinson

List of Documents

Planning Authority:- Statement of Case (Lisburn & Castlereagh City Council)

Appellant: - Statement of Case (Samuel Wilson Consulting)