
Appeal Reference:	2024/A0005.
Appeal by:	John Martin.
Appeal against:	The refusal of full planning permission.
Proposed Development:	Erection of a dwelling.
Location:	North and adjacent to 55D Bailliesmills Road, Lisburn, BT27 6XT.
Planning Authority:	Lisburn & Castlereagh City Council.
Application Reference:	LA05/2023/0024/F.
Procedure:	Written representation with Commissioner's Site Visit on 29 th August 2024.
Decision by:	Commissioner Kieran O'Connell, dated 30 th October 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the development would:
 - be acceptable in principle in the countryside;
 - adversely impact residential amenity;
 - adversely impact the environment and character of the area, and
 - create or add to a pollution problem.
3. 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.
4. The Lisburn and Castlereagh City Council Local Development Plan 2032 Plan Strategy (PS) sets out the strategic policy framework for the Council area. In line with the transitional arrangements set out in the Schedule to the Planning (Local Development Plan) Regulations (NI) 2015 (as amended), the Local Development Plan (LDP) now becomes a combination of the Departmental Development Plan (DDP) and the PS read together. 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.

5. The Lisburn Area Plan 2001 (LAP) operates as the DDP for the area, with the draft Belfast Metropolitan Area Plan 2004 remaining a material consideration in certain circumstances. Within the LAP, the appeal site is within the countryside and the greenbelt. The LAP contains no policies relevant to the appeal proposal. It directs to the Planning Strategy for Rural Northern Ireland, which was superseded by Planning Policy Statement 21 – Sustainable Development in the Countryside (PPS 21). The appeal site also falls within the greenbelt designated within the draft BMAP 2004. However, it too would have been superseded by the rural policies within PPS 21 and does not contain any policies material to the appeal development.
6. As the PS has been adopted in this council area, in accordance with paragraph 1.9 of the Strategic Planning Policy Statement for Northern Ireland (SPPS), the previously retained policies, such as the Planning Policy Statements, now cease to have effect. Accordingly, there is no conflict between the DDP and the PS. Guidance provided in 'Building on Tradition: A Sustainable Design Guide for the Northern Ireland Countryside' (BoT) is also pertinent to the assessment.
7. Policy COU 1 of the PS is titled 'Development in the Countryside'. It states that *'there are a range of types of development which in principle are considered to be acceptable in the countryside and that will contribute to the aims of sustainable development'*. One such type of development relates to new dwellings in clusters, in accordance with Policy COU 2, 'New Dwellings in Existing Clusters'. Policy COU 1 goes on to state that any proposal for development in the countryside will also be required to meet all the general criteria set out in Policies COU 15 'Integration and Design of Buildings in the Countryside' and COU 16 'Rural Character and Other Criteria'.
8. Policy COU 2 states that planning permission will be granted for a dwelling at an existing cluster of development provided all five stated criteria a-e are met. The Council's concerns under this policy relate to criterion c), however, the Third Party has raised concern with criteria b) – e). Accordingly, there is no dispute that there is a 'cluster' of development outside of a farm holding consisting of more than four qualifying buildings, and that criterion (a) is met. However, there is dispute around what constitutes a 'cluster' for the purpose of the policy.
9. The Council's Case Officer Report (COR) states that the cluster in this instance comprises No. 55 immediately west of the appeal site, No. 55c and 55d immediately south and southeast of the appeal site and No. 55a and 55b to the northeast of the appeal site. The Council also recognises that there is an agricultural shed to the north of the appeal site. The Appellant argues that the cluster is much larger, comprising a series of buildings extending from No. 55 Bailliesmills Road in an easterly direction to the crossroads junction with Old Ballynahinch Road and River Road. Several buildings north of the crossroads extending from No.166 to No.155 Old Ballynahinch Road and its outbuildings are included, as are buildings on the eastern side of Old Ballynahinch Road.
10. Criterion b) stipulates that the cluster must appear as a visual entity in the local landscape. The justification and amplification of the policy advises that a visual entity is *'a collective body of buildings, separated from the countryside when viewed from surrounding vantage points'*.

11. Criterion b) requires the cluster to appear as a visual entity *singular* (emphasis added) in the local landscape. A dense belt of mature woodland trees between No. 7 Bailliesmills Road and No. 55c Bailliesmills Road visually separates development to the north and south of the crossroads and along both sides of Old Ballynahinch Road, including No. 7 Bailliesmills Road, from the appeal site. This mature woodland has the effect of visually dividing the development akin to the type of circumstances cautioned against on page 69 of BoT, as recognised by the Third Party. Furthermore, from my onsite observations, I find most favour with the Council's arguments that the 'cluster' of development comprises the four established dwellings at No. 55, 55a, 55c, and 55d, all of which form a close grouping of buildings, and are outside of a farm. The agricultural shed to the north is an outbuilding and, therefore, discounted. Whilst I agree with the parties that criterion a) is satisfied, I concur with the Third Party that No.55a is not visible with the aforementioned buildings, nor is No.55b. The main view of the appeal site and adjacent development is from the westerly approach travelling along Bailliesmills Road. From this vantage point, only No's 55, 55d and 55c are visible in the landscape. No. 55a and 55b are not visible owing to their setback and the maturity of vegetation surrounding their plots. Nor is the agricultural shed to the north of the appeal site visible for the same reasons, even if it were counted as a qualifying building. From the eastern approach, only No. 55c, 55d and 55 would read as a collective body of buildings from this vantage point.
12. The Council argued that views from 'within' the appeal site would constitute a vantage point for assessment purposes. Whilst Policy COU 2 is silent on the definition of a vantage point, the policy requires a cluster to appear as a visual entity in the landscape from surrounding vantage points. It follows that a vantage point must form a public view rather than a view from within a site.
13. Taken in the round, while there is a collective body of buildings within the area when viewed aerially on a plan, the alleged cluster does not appear as a single visual entity in the local landscape when viewed from surrounding vantage points as only three qualify buildings are visible together. As such, criterion b) of Policy COU 2 is not met.
14. Criterion c) of Policy COU 2 further requires that '*the cluster is associated with a focal point such as a social/community building*'. The justification and amplification of Policy COU 2 defines a focal point as '*a social/community building, usually visually significant within the cluster and which defines a different built form and use to the rest of the buildings in the cluster*'. Given my conclusions above regarding the qualifying buildings, there is no social/community building within or near these buildings, and as such, there is no focal point. The former flax mill, Cargycreevy Masonic Hall and the building between No. 164b and 166b Old Ballynahinch Road highlighted by the parties all lie outside of the aforementioned buildings at a distance away and are not visible or associated with this development. Accordingly, criterion c) of Policy COU 2 is not met.
15. Criterion d) of Policy COU 2 states that '*the identified site provides a suitable degree of enclosure and is bounded on at least two sides with other development in the cluster*'. As I have found that the subject buildings are not development in a cluster for the reasons outlined above, this criterion cannot be met.

16. Criterion e) of Policy COU 2 requires that *'development of the site can be absorbed into the existing cluster through rounding off and consolidation and will not significantly alter its existing character, or visually intrude into the open countryside through the creation of ribbon development'*. There is no development opportunity for a dwelling in these circumstances as there is no cluster to round off or consolidate. As such, the proposal fails to comply with criterion e) of Policy COU 2.
17. The Council's third, fourth and fifth reasons for refusal are interrelated in so far as they relate to the impact of non-mains sewerage infrastructure on residential amenity, the character of the locality and the environment.
18. The third and fourth refusal reasons relate to Policy COU 16, titled 'Rural Character and other Criteria of the PS'. It requires that all development in the countryside must be in accordance with and must not cause a detrimental change to or further erode the rural character of an area. It goes on to list nine instances where new development will be unacceptable. The Council's concerns relate to criteria (f) and (g) in that, they argue that the appeal development would adversely impact on residential amenity, and all necessary services, including the provision of non-mains sewerage, are not available or cannot be provided without significant adverse impact on the environment or character of the locality.
19. The Council's amenity concerns relate solely to the position of the proposed treatment plant. They argue that *'the proposed dwelling is positioned 5m from the boundary with 55d, the area identified for the soakaway is most likely insufficient, and the proposed treatment plant is located less than 9m from this dwelling'*. They go on to state that *'the detail provided does not demonstrate, therefore, that the dwelling and garage can reasonably be sited without detriment to residential amenity in relation to impacts associated with drainage/sewerage'*. The Environmental Health (EHO) response states that they *'recommend (emphasis added) that any septic tank should be no less than 7m from the dwelling it is serving and 15m from any other dwelling'*. The Council do not state that adherence to such distances is a regulatory requirement, nor would they appear to be mandatory. Furthermore, their response is a recommendation only, so whilst the septic tank would not meet the recommended 15m distance from No 55d, it would be around 9m from the proposed dwelling, according with EHO's advice. In my judgement the shortfall on this discrete matter, would in itself, not warrant the dismissal of this appeal as no persuasive evidence has been provided to demonstrate that the treatment plant could not be located, as shown on the proposed site plan. Furthermore, the Council do not demonstrate how or why the proposed soakaway would be *'insufficient'* or how it would have a detrimental impact on residential amenity.
20. The Council and the Third-Party do not specify how the location of the proposed treatment plant would have a detrimental effect on either future residents of the proposed dwelling or those of No. 55d. Neither do they adequately describe the impacts associated with the drainage/sewerage provision. Given the paucity of information provided on this matter, I cannot sustain these objections.
21. The Council's fourth and fifth reasons for refusal are interrelated as they address matters relating to pollution and associated impacts on the environment arising from the provision of non-mains sewerage infrastructure and, as such, are

therefore considered together. The Council argued that it has not been demonstrated that all necessary services, including the provision of non-mains sewerage, can be provided without significant adverse impact on the environment, nor has it been demonstrated that there is sufficient capacity to discharge effluent to a watercourse and that this would create or add to a pollution problem.

22. In response to the Council's concerns, the Appellant argues that a package treatment plant *'such as Viltra WO system giving 98.5% purity of effluent discharge'* into an existing field drain that leads to the Ravarnet River via a soakaway could be used. It is further argued that *'Discharge Consent'* would normally be made at the same time as a Building Control application and that this *'would not be unreasonably withheld'*. In any event, neither matter was contested by the Council or Third Party at the Rebuttal Stage, which could infer concession on such matters.
23. Policy WM 2 of the PS titled *'Treatment of Waste Water'* states *'development relying on non-mains sewage treatment will only be permitted where it is demonstrated to the Council and its statutory consultees that there is sufficient capacity to discharge treated effluent to a watercourse and that this will not create or add to a pollution problem or create or add to flood risk'*.
24. The Council's concerns appear to stem from their EHO response, which advised, *'This is a very small site, and the area for the soakaway would most likely be insufficient. The requirements of the Water (Northern Ireland) Order 1999 must be met, therefore, prior approval for consent to discharge must be obtained from the Northern Ireland Environment Agency. In addition, Environmental Health recommends that any septic tank should be no less than 7m from the dwelling it is serving and 15m from any other dwelling'*. As I read it, the Council's EHO response is directional in nature, requiring that the Appellant comply with a separate regulatory control regime outside of the planning process. EHO does not raise pollution concerns regarding the impact of the proposal on the environment.
25. Policy WM 2 places the onus on the Appellant to demonstrate that the proposal would not create or add to a pollution problem. Notwithstanding, it is noted from the background papers that the Council consulted with DfI Rivers, NI Water and NIEA Water Management Unit during the processing of the application and none raised any concerns subject to conditions and informatives. There was no mention of any existing or potential pollution problems within the vicinity of the appeal site or wider area. In such circumstances and given the limited evidence from the Council to justify its ultimate position, it is difficult to sustain such objections.
26. The Appellant suggests that a condition could be imposed to secure the delivery of a package treatment plant and discharge consent. NIEA Water Management Unit direct to the conditions and informatives contained within their standing advice. It contains a condition stating that *'no development should take place on-site until the method of sewage disposal has been agreed in writing with NI Water or a consent to discharge has been granted'*. I am satisfied that an appropriately worded condition could be imposed to ensure that a suitable method of sewage disposal could be provided without creating or adding to a pollution problem or creating an adverse impact on the environment. Within the evidential context provided, I am not persuaded that the concerns raised by the Council and Third Party with regard to Policy COU 16 or Policy WM 2 of the PS would warrant the

refusal of planning permission. Furthermore, the Council has not advanced an argument as to how a septic tank/treatment plant that would normally be below ground would have an adverse impact on the character of the area. As such, the objection on this matter is not sustained.

Designated Sites

27. The Third Party raises additional concerns relating to the protection of EU Designated sites as set out in Regulation 56 of The Conservation (Natural Habitats, etc) Regulations 1994, citing that it is unclear how the tests in *Landelijke Vereniging Tot Behoud Van De Waddenzee v Staatsecretaris Van Landbouw (C-127/02) [2005] 2 CMLR 3* and *People Over Wind & Sweetman v. Coillte Teoranta (C-323/17) (Sweetman II)* have been provided for or how the policy provisions contained within the SPPS and Policy NH1 of the PS have been complied with.
28. Policy NH 1, titled 'European and Ramsar Sites-International' states that planning permission will only be granted for a development proposal that, either individually or in combination with existing and/or proposed plans or projects, is not likely to have a significant effect on, a) a European Site (Special Protection Area, proposed Special Protection Area, Special Areas of Conservation, candidate Special Areas of Conservation and Sites of Community Importance) b) a listed or proposed Ramsar Site.
29. The Third Party does not state which Designated Sites, if indeed there are any, would be impacted or how they would be impacted upon beyond those impacts associated with effluent and discharge to a watercourse via a soakaway. As indicated above, the Appellant has identified the location of the proposed treatment plant and soakaways and also stated that such a treatment plant could achieve 98.5% purity of effluent discharge, which is uncontested by the parties. As such, I have no persuasive evidence before me to suggest that the residual effects from such a treatment plant would have an adverse impact on Designated Sites or water quality locally. In any event, as I have found the principle of development to be unacceptable, there can be no adverse impact on the integrity of any Designated Sites on this occasion, nor would an Appropriate Assessment be necessary.

Design, Layout and Amenity

30. In addition to the Council's stated objections, the Third Party raised concern that the proposed design and layout of the appeal development would be contrary to criterion f) of Policy COU 16 of the PS, which relates to residential amenity and that it would not be integrated contrary to Policy COU 15 of the PS. They argue that the proposal would be crammed into the site and subsequently cause dominance, overlooking and privacy issues for existing and proposed occupants.
31. The proposed single-storey dwelling would be situated within the northernmost section of the appeal site to the rear of No. 55d. Its orientation would be easterly and would be angled towards its access, and the attached garage to the rear of No. 55d. The proposed dwelling would be approximately 14.9m to the rear garage or approximately 17m to the dwelling of No. 50d. The front elevation of the proposed dwelling would have several windows orientated towards a small section of rear amenity space pertaining to No. 55d and a blank gable-ended wall. These windows would be associated with three bedrooms, a porch and a drawing room which would be low occupancy rooms. Whilst there would be some perception of

overlooking, I am not persuaded, given the nature and type of the rooms, including the orientation of the proposed dwelling away from the habitable rooms and usable amenity areas of No. 55d, that the proposal would have an adverse impact on residential amenity in terms of overlooking or loss of light. Furthermore, even though no levels have been provided, from my observations on site, the proposed dwelling would be on a comparable level to 55d, and as such, I am not persuaded that No. 55d would dominate the appeal development or vice versa.

32. The Third Party also states that the residential amenity of No. 55d would be *'irrevocably harmed'* by noise and visual intrusion associated with the proposed access arrangements. Whilst I accept that the access to the proposed dwelling would run close to the eastern boundary of No. 55d, I am not persuaded that the level of traffic associated with one dwelling would be such that it would result in an adverse impact on the residential amenity of No. 55d by way of noise. Regarding the visual intrusion element of the objection, an access laneway to the site already exists, so I am not persuaded that 'visual intrusion' would be significantly worse.
33. Turning now to consider the arguments presented in relation to impacts on No. 55 and No. 55c. From my observations on site, given the siting, angle, distance and orientation of the proposed dwelling relative to No. 55, I am not persuaded that the proposal would be dominated by No. 55 to an unreasonable extent. No. 55c abuts the eastern boundary of the appeal site and its access. It is situated on higher ground than the appeal site, however, given its bungalow nature, gable-ended orientation towards the proposed dwelling and separation distance involved, I am not persuaded that it would dominate the appeal development, nor would it have an adverse impact on its residential amenity.
34. The Third-Party argues that the appeal site is not suitably enclosed and would rely primarily on the use of new landscaping to integrate. From my on-site observations, I am satisfied that the vegetation along the eastern and northeastern boundaries extending to circa 6m high and the vegetation circa 2-3m high within the elevated side garden of No. 55 along part of the northwestern boundary would provide a suitable degree of enclosure and a backdrop to satisfactorily integrate the single storey dwelling proposed. As such, I am not persuaded that appeal development would rely on the use of new landscaping for integration purposes.
35. Taken in the round, I am not persuaded that the design and layout of the proposed dwelling would be inappropriate for the site or its locality, nor would the residential amenity of the adjacent or proposed occupants be adversely impacted for the reasons stated above. As such, the Third Party's concerns on such matters are not sustained.

Build up

36. The Third Party also argues that the appeal development would result in a suburban style build up that would significantly alter the character of the area. Policy COU 16 is entitled 'Rural Character and other Criteria'. Whilst Policy COU 16 does not explicitly deal with the build-up phenomenon, criterion (e) states that *'a new development proposal will be unacceptable where it has an adverse impact on the rural character of the area'*. Given my conclusions above regarding the principle of development, a dwelling on the appeal site would read with No. 55, 55d and 55c when travelling along Bailliesmills Road, adding to the built-up appearance of this area and further eroding its rural character contrary to criterion

(e). As such, all of the criteria within Policy COU 16 would not be satisfied when read as a whole. The Third Party's concerns in relation to rural character and other criteria are therefore sustained to the extent specified.

Flooding

37. The Third Party raises concerns regarding flooding and argues that DfI Rivers misinterpreted the former regional policy on which the Council based its consideration and that this *'demonstrates the dangers of disproportionate reliance on presumptively expert consultees warned against in the McCann Case Law [2022] NICA 60 (MBA9)'*. The Council contends that the appeal development is policy compliant regarding this issue, and, as such, did not request either a drainage or flood risk assessment.
38. The DfI Rivers consultation response regarding development and surface water states, *'the Flood Hazard Map (NI) indicates that the site is affected by portions of predicted pluvial flooding along the north-eastern boundary'.. 'although this development does not exceed the thresholds as outlined in Policy FLD 3 and subsequently a Drainage Assessment is not required, there may be potential for surface water flooding as indicated by the surface water layer of the Flood Hazard Maps (NI). As such, it is the developer's responsibility to assess the flood risk and drainage impact and to mitigate the risk to the development and any impacts beyond the site'*.
39. Whilst DfI River's response was predicated on former regional policy, it is similar to Policy FLD 3, 'Development and Surface Water (Pluvial) Flood Risk Outside Flood Plain' of the PS. It states that 'a Drainage Assessment (DA) will be required for development proposals that exceed any of the following thresholds:
- a residential development of 10 or more units
 - a development site in excess of 1 hectare
 - a change of use involving new buildings and/or hard surfacing exceeding 1,000 square metres in area.
- It goes on to state that *'a DA will also be required for any development proposal, except for minor development where:*
- it is located in an area where there is evidence of historical flooding*
 - surface water run-off from the development may adversely impact on other development or features of importance to nature conservation, archaeology or historic environment features'*.
40. Considering DfI River's consultation response and the third party's submission of the NI strategic flood map which shows the site is affected by portions of predicted pluvial flooding along the north-eastern boundary the above policy is engaged. The appellant has failed to submit sufficient information on this issue. Given the lack of information regarding potential flood risks, site levels and potential mitigation measures from the appellant, I cannot be certain that the appeal site and development therein would not be prone to flooding or that surface water runoff from the appeal development would not adversely impact on other development in the area. In this evidential context, I find that the proposal therefore also fails to comply with Policy FLD 3 of the PS.

Precedent Cases

41. The Appellant provided a list of planning applications within the Bailliesmills area where dwellings were approved as part of a cluster. No details of these were

provided for comparative purposes. However, the Council and Third-Party state that those approvals were applied for under former regional policy, which allowed for development at a crossroads. This is no longer applicable given the change in policy context, and, as such, the approvals do not assist the Appellant's case.

42. The Appellant also referred to an unspecified appeal decision in which it was stated that *'there can be instances where failure to adhere to all criteria of a policy is not fatal, with that a matter of judgement individual to each proposal. In my judgement, I find the failure against the third criterion of Policy CTY2a is not, in this case, critical, and the various site-specific matters referred to above outweigh that failure as there would be no demonstrable harm to interests of acknowledged importance'*. Again, no details of this decision were provided for comparative purposes, and that decision also engaged former regional policy. Whilst I accept it is not necessary to slavishly adhere to policy, there are no site-specific circumstances in this case to outweigh the policy objections outlined above.
43. The Appellant argues that if the appeal site is not developed, it will become unsustainable and a potential dumping ground. I am not persuaded that this argument amounts to exceptional circumstances or betterment that would outweigh the policy objections outlined above. Even if such dumping were to occur, there is separate statutory responsibility for pollution control.
44. The Appellant also argues that the proposal would have been approved under the former regional policy had it been dealt with within the statutory recommended timescales for determining such applications. He further argues that the appeal should be assessed under the policy context at the time the application was made valid.
45. Regional policy has been superseded following the adoption of the PS, which currently provides the relevant policy context for considering the appeal proposal (see paragraphs 3-6 above which relate to the legislative provisions in place). No persuasive evidence has been presented to demonstrate that the length of time the proposal has been in the planning system represents exceptional circumstances that outweigh those legislative arrangements and the sustained policy objections to the proposal. Furthermore, the Appellant was professionally represented and should therefore have known that the PS was at an advanced stage and could have invoked his right under Section 60 of the Act to appeal against the non-determination of his application in a timely manner as acknowledged by the *'Glebe Homes Limited v Lisburn and Castlereagh City Council [2024] NIKB 42'* case law. This could have ensured assessment under the former regional policy, but compliance with same may not have been forthcoming, considering some of my conclusions above.
46. All in all, I am not persuaded that the delay and any resultant financial consequences arising outweigh the legislative provisions pertaining to the primacy of the plan. There is a separate process to deal with matters of dissatisfaction with the Council's processes, which lies outside of this appeal. As the proposal does not comply with Policy COU 2 or the provisions of Policy COU 16, it also fails to comply with Policy COU 1 of the PS. The Council's objections to the appeal development are sustained as specified above. Accordingly, the appeal must fail.

This decision is based on the following drawing: -

- 1:2500 scale site location plan and proposed elevations 1:100 scale. Drawing No. 01 date stamped received by the Council 9th January 2023.
- Unscaled site layout plan and 1:100 scale proposed floor plans. Drawing No. 02, date stamped, received by Council on 9th January 2023.
- 1:500 scale 'Access Arrangement plan Drawing No. 03 date stamped received by Council on 15th May 2023.

COMMISSIONER KIERAN O'CONNELL

List of Documents

- Planning Authority: - Statement of Case by Lisburn & Castlereagh City Council.
Rebuttal Statement by Lisburn & Castlereagh City Council.
- Appellant: - Statement of Case by G.T. Design.
Rebuttal Statement by G.T. Design.
- Third Party: - Statement of Case by MBA Planning.
Rebuttal Statement by MBA Planning.