
Appeal Reference: 2024/A0011 (Appeal 1).
Appeal by: Mr. Eric Wallace.
Appeal against: The refusal of outline planning permission.
Proposed Development: Site for a dwelling, garage and associated site works.
Location: Lands 30m west of 7 Derriaghy Road, Lisburn, BT28 3SF.
Planning Authority: Lisburn & Castlereagh City Council.
Application Reference: LA05/2021/1048/O.
Procedure: Written Representation with Accompanied Site Visit on 3rd September 2024.
Decision by: Commissioner Kieran O’Connell, dated 27th September 2024.

Appeal Reference: 2024/A0012 (Appeal 2).
Appeal by: Mr. Eric Wallace.
Appeal against: The refusal of outline planning permission.
Proposed Development: Site for a dwelling, garage and associated site works.
Location: Lands 30m east of 5 Derriaghy Road, Lisburn, BT28 3SF.
Planning Authority: Lisburn & Castlereagh City Council.
Application Reference: LA05/2021/1049/O
Procedure: Written representation with Accompanied Site Visit on 3rd September 2024.
Decision by: Commissioner Kieran O’Connell, dated 27th September 2024.

Decisions

1. Appeal 1 is dismissed.
2. Appeal 2 is dismissed.

Reasons

1. The main issues in each appeal are whether the development would:
 - be acceptable in principle in the countryside;
 - add to a ribbon of development, and
 - adversely impact the rural character of the area.
2. 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.

3. The Lisburn and Castlereagh City Council Local Development Plan 2032 Plan Strategy (PS) was published on 26th September 2023. It 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.
4. 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 green belt. 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. The appeal site also falls within the green belt designated within the draft BMAP 2004. However, it, too, does not contain any policies material to the appeal development.
5. 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.
6. 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 is the development of a small gap within an otherwise substantial and continuously built-up frontage, in accordance with Policy COU 8 'Infill/Ribbon Development'. Policy COU 1 goes on to state that any proposal for development in the countryside will also be required to meet all of 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'.
7. Policy COU 8 states that *'planning permission will be refused for a building which creates or adds to a ribbon of development'*. However, exceptionally, it allows for the development of a small gap, sufficient to accommodate two dwellings within an otherwise substantial and continuously built-up frontage provided that the proposed dwellings respect the existing pattern of development in terms of siting and design and be appropriate to the existing size, scale, plot size and width of neighbouring buildings that constitute the frontage of development. For the purpose of this policy, the definition of a substantial and continuously built-up frontage is *'a line of four or more buildings, of which at least two must be dwellings, excluding domestic ancillary buildings such as garages, sheds, and greenhouses, adjacent to a public road or private laneway'*. Policy COU 8 also

requires buildings forming a substantial and continuously built-up frontage to be visually linked.

8. The two sites are located in the same field to the north of Derriaghy Road, between No. 5 to the west and No. 7 to the east. The landform rises from the road in a northerly direction. Appeal Site 1 comprises the eastern half of the field. Its eastern boundary is adjacent to No. 7 and is defined by deciduous hedgerows approximately 1.5-3m high. Its western boundary is undefined and forms a common boundary with Appeal Site 2 (eastern boundary). The northern boundary, common to both sites, is defined by deciduous hedgerows circa 2m high with intermittent trees approximately 6m high. The western boundary to Appeal Site 2 is defined by a post and wood fence with stock-proof fencing attached. There is a mixed species hedgerow and trees within the plot of No. 5. Access is proposed from an existing shared access and laneway onto Derriaghy Road. This access serves the semi-detached dwellings at No. 1 & 3 and the detached dwelling at No. 5. The southern boundary of both sites extends along the proposed access laneway. It is defined by dense mature woodland trees approximately 8-10m high. It is set back from the road by a grass verge and bus layby.
9. No's 1, 3 and 5 are west of the appeal sites. No. 1 & 3 are two-storey, semi-detached dwellings set back from the Derriaghy Road, and access is via a shared laneway with the single-storey dwelling and garage at No. 5. The plot of No. 5 extends to the grass verge adjacent to the road. No. 7, a recently constructed two-storey dwelling, is situated east of both appeal sites. It is within a sizable plot and set back from the road. It is accessed via a shared private laneway on its eastern side. Within its plot, there is also a one-and-a-half-storey pitched roof building and a single-storey tin shed located on its southern side near the road.
10. The Council did not provide a Statement of Case or attend the Accompanied Site Visit, which is unprofessional. I, therefore, must rely on its decision notices and Case Officer Reports (CORs). Both state that there is no substantial and continuously built-up frontage owing to the lack of qualifying buildings. The Appellant does not dispute this as there would not be the required four qualifying buildings for the purposes of Policy COU 8 of the PS. Four dwellings are present along Derriaghy Road. However, as No's 1 & 3 do not have frontage to the road, there is no substantial and continuously built-up frontage, which is a fundamental requirement of the policy exception, so no infill opportunity arises.
11. The Justification and Amplification of Policy COU 8 states that '*a ribbon of development cannot be defined by numbers, although, if there are two buildings fronting a road and beside one another, there could be a tendency to ribboning*'. It also notes that most frontages are not intensively built up and have substantial gaps between buildings, giving visual breaks in the developed appearance of the locality. It further states that the infilling of these gaps is visually undesirable and, in most cases, creates or adds to a ribbon of development. The Council considered that the appeal development would create a ribbon of development along Derriaghy Road.
12. From my on-site observations, whilst I agree with the Council that the curtilages of No. 1 & 3 do not extend to the public road, Policy COU 8 merely requires them to be beside one another and front a road. As such, because No. 1, 3, and 5 are beside one another and front Derriaghy Road, they form a ribbon of development.

The proposed dwellings would add to this, and with No. 7, which also fronts onto the road, reinforcing the ribbon of development. The second reason for refusal is sustained.

13. Policy COU 16 of the PS requires that 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 raised concern that the appeal development would be contrary to criteria (c), (d) and (e) of Policy COU 16 in that the proposal would not respect the traditional pattern of settlement exhibited in the area, it would result in urban sprawl and would have an adverse impact on the rural character of the area.
14. Regarding criterion (d), the Council's COR merely states that '*the proposal if approved, would result in urban sprawl which in turn would have an adverse impact on the rural character of the area contrary to criteria (d) and (e)*'. The Council has not substantiated their objection on this issue. As such, the Council's concerns cannot be sustained. However, given my conclusions above regarding ribbon development, the proposal would have an adverse impact on the rural character of the area. The Council's concerns in relation to rural character are therefore sustained to this extent.
15. Third parties raised concerns regarding road safety and indicated that the Appellant does not control all the lands necessary for the proposed access. The Council raised no objections on this basis, nor did DfI Roads, subject to conditions requiring the provision of visibility splays. In this evidential context, I am satisfied that the necessary access requirements are capable of being provided subject to the provision of negative conditions requiring that no development takes place until the works required to provide access, including visibility splays, have been carried out. Such negative conditions would ensure that if third-party lands were required, the Appellant could not commence development lawfully without their consent.
16. Subject to the above conditions, I am not persuaded that the introduction of two dwellings would result in significant traffic movements that would lead to an unacceptable level of intensification onto the protected route so as to prejudice road safety. Nor would such matters, of themselves, warrant rejection of either appeal.
17. The Appellant did not challenge any of the Council's refusal reasons following the publication of the PS and the change in the policy context. Instead, he raises administrative fairness as a material consideration in the appeal. The Appellant alleges that his applications were not processed efficiently and provided a timeline comparing his planning applications with 35 other applications with '*infill*' in the *description* lodged after his (24th September 2021). The information provided shows that his applications took 726 days to determine, whilst the others were determined between 136 and 756 days.
18. Regarding the processing of the subject applications, the Appellant says that he attempted to contact the Case Officer in October 2021, January 2022 and on 15th March 2022. He was informed that the Case Officer was on a career break on the latter date, and then on 9th August 2022, the new Case Officer requested a Biodiversity checklist and PEA if required (completed by an ecologist). Despite

misgivings over providing this costly information without any indication from the Council regarding their thinking on the principle of the development proposed, they succumbed to providing the Biodiversity Checklist and PEA on 23rd February 2023. It is indicated that the documents had to be submitted in hard copy despite other case officers accepting *electronic versions*. Satisfactory consultation responses were received from the *'Natural Environment Division and Water Management Unit'* on 15th May 2023. The Appellant alleges that the Case Officer requested a badger survey in May 2023 that had been carried out as a part of the documentation already submitted and that the Case Officer agreed to review (June 2023). The Appellant alleges that he had no further contact from the Council until the respective applications appeared on their delegated list on 22nd September 2023 with a recommendation to refuse planning permission *'under the new 'infill' policy following the adoption of the PS'*. The decision was then issued on 19th December 2023.

19. Given the Council's failure to take part in the appeal process, I have no reason to dispute the Appellant's chain of events. However, on plain reading of the evidence, the delays in the decision-making process do not rest solely with the Council. It would seem that the agent did not communicate with the Council between 16th March 2022 and 25th July 2022 (131 days or just over four months). The Biodiversity Checklist and PEA were not provided until 23rd February 2023, some 198 days (6 months) after the request was made, and the requested hard copy took an additional two months to provide. It is appreciated this takes time, but the Appellant was professionally represented and thus should have been aware that the proposals would require the removal of woodland vegetation, requiring the submission of a Biodiversity Checklist and Ecological Appraisal from the outset based on standing advice. Earlier provision of these documents could have reduced the time taken for the Council to determine the applications prior to the adoption of the PS.
20. Regarding the 35 other applications, the details of such have not been provided to allow for direct comparison. Some could relate to urban-based infill development proposals, and others may not have required additional appraisals, unlike the subject applications. I also note that four of the stated cases relate to Reserved Matters applications whereby the principle of development had already been established, unlike the Appeal cases before me. Additionally, the Appellant also refers to 'Glebe Homes applications' and recent decisions by the courts; however, no details of these have been provided for comparative purposes.
21. The Appellant's frustration is understandable, but it would appear from the evidence that long delays are not unusual within this Council area. However, even if I had found the Council entirely culpable for the delay in the determination of the subject applications, the Appellant should have known that the PS was at an advanced stage, and he could have invoked his right under Section 60 of the Act to appeal against the non-determination of his applications. All in all, I am not persuaded that the delay and any resultant financial consequences outweigh the legislative provisions pertaining to the primacy of the plan. There is a separate process to deal with such matters of dissatisfaction with the Council's processes, which lies outside of this appeal.
22. Even if I were to consider the appeals under former regional policy, the Council's objections relating to respecting the existing pattern of development have merit as

the width of each of the proposed frontages would be smaller than those of the adjacent frontages at No. 5 and No. 7 Derriaghy Road. Furthermore, the overall plot size of each appeal site would be smaller than the average plot size along the frontage. For these reasons, I am not persuaded that planning permission would have been granted under the former regional policy.

23. In conclusion, as neither of the appeal developments comply with Policy COU 8 or the provisions of Policy COU 16, they also fail to comply with Policy COU 1 of the PS. The Council's objections to the appeal developments are sustained as specified above. Accordingly, both appeals must fail.

These decisions are based on the following drawings: -

2024/A0011 (Appeal 1)

01	1:1250 Site Location Plan -date stamped received by the Council 24 th September 2021
02	1:1250 Site Location Plan/ Indicative Context Map -date stamped received by the Council 24 th September 2021.

2024/A0012 (Appeal 2)

01	1:1250 Site Location Plan -date stamped received by the Council 24 th September 2021
02	1:1250 Site Location Plan/ indicative Context Map -date stamped received by the Council 24 th September 2021.

COMMISSIONER KIERAN O'CONNELL

List of Appearances

Appellant: Mr. Coffey (Agent)
Mr. Wallace (Appellant).

List of Documents

2024/A0011 (Appeal 1)

Appellant: - Statement of Case by Mr Coffey.
Rebuttal Statement by Mr Coffey.

Third Party: - Statement of Case by Mr Christopher & Ms Caroline Smyth.
Statement of Case by Mr Stephen & Ms Alison Harrison.

2024/A0012 (Appeal 2)

Appellant: - Statement of Case by Mr Coffey.
Rebuttal Statement by Mr Coffey.

Third Party: - Statement of Case by Mr Christopher & Ms Caroline Smyth.
Statement of Case by Mr Stephen & Ms Alison Harrison.