
Appeal Reference:	2022/A0109
Appeal by:	Mr and Mrs Thomas Hughes
Appeal against:	The refusal of outline planning permission
Proposed Development:	Dwelling and garage
Location:	55m South-West of 2 Killymallaght Road, Cullion
Planning Authority:	Derry City and Strabane District Council
Application Reference:	LA11/2022/0384/O
Procedure:	Written Representations with Commissioner's site visit on 30 August 2024
Decision by:	Commissioner Stevenson, dated 3 September 2024

Decision

1. The appeal is dismissed.

Reasons

2. The main issues in this appeal are whether the appeal proposal would be acceptable in principle in the countryside and if it would detrimentally change the rural character of the area.
3. The Planning Act (NI) 2011 ("the Act") requires that regard be had to the Local Development Plan (LDP), so far as material to the application, and to any other material considerations. Where in making any determination, regard is to be had to the LDP, Section 6(4) of the Act states that the determination must be made in accordance with the plan unless material considerations indicate otherwise. The Strabane Area Plan (SAP) is the LDP that operates across the area wherein the appeal site is located. In the SAP, the appeal site is in the countryside. There are no policy provisions in the SAP that are material to the appeal proposal.
4. The Strategic Planning Policy Statement for Northern Ireland 'Planning for Sustainable Development' (SPPS) sets out transitional arrangements that operate in circumstances where no Plan Strategy (PS) is adopted for the area. Under those arrangements, certain Planning Policy Statements (PPSs) are retained namely Planning Policy Statement 21 'Sustainable Development in the Countryside (PPS21). No conflict or change in policy direction arises between the SPPS and PPS21 insofar as they relate to this appeal. The latter therefore provides the policy context for assessing the appeal proposal.

5. Policy CTY1 'Development in the Countryside' of PPS21 lists 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. The policy states that planning permission will be granted for an individual dwelling house in the countryside where the proposal would accord with Policy CTY2a or Policy CTY8 of PPS21. It goes on to say that 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. If a proposal satisfies either Policy CTY2a or Policy CTY8, it will also satisfy Policy CTY1 of PPS21.
6. The appeal site comprises a L-shaped parcel of land cut out of a large corner field. The host field is bounded on two sides by the road network. Duncastle Road abuts the western boundary and Killymallaght Road adjoins the southern boundary. The site sits on high ground above the Duncastle Road. Mature dense vegetation defines its boundaries. To the east of the appeal site are several dwellings that face onto the Killymallaght Road. North of the appeal site is a detached dwelling at No. 114 Duncastle Road. The proposed dwelling and garage would be accessed from the Killymallaght Road.
7. Policy CTY2a of PPS21 is entitled 'New Dwellings in Existing Clusters' and it states that planning permission will be granted for a dwelling at an existing cluster of development provided certain criteria are met. While there is no amplification text in Policy CTY2a to define what constitutes a cluster of development, the first three criteria give an indication of the intended meaning of a "cluster" of development. The Council contends that the second, third and fifth criteria are offended. I will therefore focus on whether there is a cluster of development before considering the fifth disputed criterion.
8. The first criterion of Policy CTY2a requires that the cluster of development lies outside of a farm and consists of four or more buildings (excluding ancillary buildings such as garages, outbuildings and open sided structures) of which at least three are dwellings. The cluster of development must therefore be formed by buildings. The appellants contend that there are 13 dwellings and outbuildings that lie outside a farm. The Council does not dispute this. The buildings which comprise the alleged cluster are Nos. 1, 2, 4A, 5, 5A, 6, 8, 9 and 11 Killymallaght Road in addition to Nos. 114 and 115 Duncastle Road.
9. The second criterion requires that the cluster appears as a visual entity in the local landscape. The appellants indicate that the Council erected two signposts identifying the area as "Cullion" and argue that the development reads as a visual entity when viewed from an aerial view. However, the Council contends that viewing the landscape from above would not be an appropriate test for this criterion. The wording of the second criterion of Policy CTY2a explicitly requires that the development appears as a visual entity *in the local landscape* (my emphasis). Given this wording, the development should be assessed from the Council's identified critical viewpoints on the ground in its local surroundings. I therefore do not accept that viewing the development from a bird's eye aerial map is sufficient to meet the policy. In relation to the signs, while the Council may refer to the area as "Cullion", this does not inevitably mean that the identified development appears as a visual entity in the local landscape.

10. The Council identifies three viewpoints and refers to another that the appellants raise. I viewed the alleged cluster of development from all four viewpoints. The first two viewpoints are along the Duncastle Road in both directions. From the south along the Duncastle Road, there is no awareness of the buildings associated with the alleged cluster due to the landform, vegetation and given that most of the identified buildings of the alleged cluster are located off the Killymallaght Road. From the north along the Duncastle Road towards the junction with the Moyagh Road, the viewer's eye is drawn to No. 114, which sits on high ground and is fully visible. The buildings on Killymallaght Road identified as part of the alleged cluster are not visible because of the intervening landform and mature vegetation.
11. From the north along the Killymallaght Road, the alleged cluster is not apparent by car or by foot due to the amount of intervening vegetation. From the appellant's identified viewpoint from Dullerton Road, the alleged cluster of development is not apparent from that road given that the subject buildings are a considerable distance away. Even if the subject buildings are apparent, No. 114 reads as a separate entity to the rest of the alleged cluster given the amount of mature vegetation that divides it from the other buildings. Accordingly, the alleged cluster does not appear as a visual entity in the landscape. The appeal proposal therefore fails to meet the second criterion of Policy CTY2a.
12. The third criterion requires that the cluster is associated with a focal point such as a social/community building/facility or is located at a cross-roads. The first element in criterion three reinforces that the existing cluster of development is to be formed by buildings. While this list is not exhaustive, those examples indicate that a social/community building or a cross-roads are considered to be a focal point. To my mind, this infers that a focal point is either of interest or of importance to its local community or is at a cross-roads.
13. The appellants refer to an historic map and allege that it identifies the appeal site adjacent to a demolished meeting house. While there may well have once been a meeting house, that building no longer exists. The policy refers to an *existing* cluster of development (my emphasis) and that existing cluster must be associated with a focal point. To my mind, the focal point must currently exist on the ground. Given that the alleged meeting house does not exist, it is not a focal point.
14. The appellants also allege that the local bus stop is a focal point. That bus stop is located at the junction of Duncastle Road and Killymallaght Road. It is located approximately 50-60 metres from the nearest building in the alleged cluster of development and the junction that the bus stop is located at, is not a cross-roads. At the bus stop, a standard shelter of solid construction provides a seating area. In my opinion, while some locals may stand or sit at the bus shelter while waiting for a bus, the structure is not of any particular interest, nor any different to any other bus shelter. Furthermore, the bus stop and its shelter are approximately 50-60 metres from the nearest building in the alleged cluster. The appeal proposal would offend the third criterion of Policy CTY2a.

15. The fifth criterion requires that the development of the site be absorbed into the existing cluster through rounding off and consolidation and that it will not significantly alter its existing character, or visually intrude into the open countryside. The dwelling at No. 114 is divorced from the buildings on Killymallaght Road due to the separation distance, the landform, mature intervening vegetation and that it faces onto a different road. The appeal proposal would extend the alleged cluster of buildings from the Killymallaght Road to the Duncastle Road, rather than rounding it off or consolidating it. In fact, the proposed dwelling and garage would visually intrude into the open countryside and be harmful to rural character. The fifth criterion of Policy CTY2a is not met, nor given my conclusions above, the policy read as a whole. The appeal proposal offends Policy CTY2a of PPS21. The Council's second reason for refusal is therefore sustained.
16. Policy CTY8 of PP21 states that planning permission will be refused for a building which creates or adds to a ribbon of development. However, the policy permits the exception that development of a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage and provided this respects the existing development pattern along the frontage in terms of size, scale, siting and plot size and meets other planning and environmental requirements. For the purposes of the policy, the definition of a substantial and built up frontage includes a line of three or more buildings along a road frontage without accompanying development to the rear.
17. Criterion (d) of Policy CTY14 'Rural Character' of PPS21 also requires that a new building will not create or add to a ribbon of development. That criterion cross-references to Policy CTY8. In addition, Policy CTY14 states that a new building will be unacceptable where it results in a suburban style build-up of development when viewed with existing and approved buildings. A building has frontage to the road if the plot on which it stands, abuts or shares a boundary with the road. An access driveway alone does not constitute frontage to the road. As the access alone would abut the Killymallaght Road, the plot on which the proposed dwelling and garage would be on do not have frontage to that road. The proposed dwelling and garage have frontage to Duncastle Road only.
18. While the appeal site shares common frontage with the dwelling at No. 114 Duncastle Road, the dwelling at No. 1 Killymallaght Road is separated from Duncastle Road by a field. That dwelling therefore does not have common frontage with the proposed dwelling and garage along Duncastle Road. Given that there is not a line of three or more buildings along Duncastle Road, there is no substantial and built up frontage along Duncastle Road.
19. The buildings at Nos. 2, 4a, 6 and 8 Killymallaght Road are east of the appeal site, and each have frontage to the road. As there are three or more buildings along the Killymallaght Road frontage, there is a substantial and built up frontage on that road. The proposed dwelling and garage would be at the end of that line of buildings that make up an otherwise substantial and continuously built up frontage. Given that there is no building with common frontage to the west of the appeal site, the proposed dwelling and garage would not be on a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise

substantial and continuously built up frontage. The appeal proposal is therefore not permitted under the exception in Policy CTY8.

20. The Council contends that the proposed dwelling and garage would create a ribbon of development along Duncastle Road and that it would add to a ribbon of development along Killymallaght Road and that this would result in suburban style build-up of development. Paragraph 5.33 of the amplification text of Policy CTY8 states that a 'ribbon' does not necessarily have to be served by individual accesses nor have a continuous or uniform building line. It expands to say that 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.
21. I have already found that the dwelling at No. 1 Killymallaght Road does not have common frontage with No. 114 Duncastle Road given that there is a field between that dwelling's plot (No. 1) and the Duncastle Road. Notwithstanding the mature intervening boundary vegetation, there would be transient views of the proposed dwelling with No. 114. However, the proposed dwelling and garage would not create or add to a ribbon of development along Duncastle Road given that there would only be two buildings.
22. The Council argues that four dwellings and associated outbuildings to the immediate east of the appeal site at Nos. 2, 4a, 6 and 8 Killymallaght Road share a common frontage to that road and appear as a ribbon of development. The Council goes on to allege that while a dwelling on the appeal site would be set back from that road, it would access onto the Killymallaght Road and would have common frontage with the adjacent ribbon of development. However, I have already found that as only its access would abut the Killymallaght Road, the proposed dwelling and garage would not share common frontage with the buildings along Killymallaght Road.
23. Given that vegetation would need to be removed to allow for the driveway entrance and visibility splays, this would open up the appeal site and there would inevitably be transient views and an appreciation of the proposed dwelling and garage together with the neighbouring dwellings on Killymallaght Road. As a consequence, they would be visually linked and the appeal proposal would add to a ribbon of development along the Killymallaght Road. This would also result in a suburban style build-up of development which would be detrimental to the rural character of the area. As the proposal would add to a ribbon of development and result in build-up, Policy CTY8 and Policy CTY14 would be offended insofar as stated. The Council's third reason for refusal is therefore sustained to that extent.
24. The appellants refer to appeal decisions 2017/A0222 and 2016/A0095. The appellants indicate that in those appeals, it was found that not meeting the policy in its entirety is not fatal but that the overall thrust of the policy is to consolidate development. However, those appeal decisions are not comparable to this appeal proposal given that I have found that the proposed dwelling and garage would not consolidate development but that it would significantly alter the local landscape and visually intrude into the countryside.

25. Given that the proposed dwelling and garage does not satisfy Policies CTY2a or CTY8 and no overriding reasons were provided that demonstrate that the development is essential and could not be located in a settlement, the appeal proposal is not acceptable in the countryside and fails Policy CTY1 of PPS21. The Council's first reason for refusal is therefore sustained.
26. The third party objects to the proposed dwelling and garage on other grounds. Other concerns identified by that third party are that the proposal would add to flooding, road safety concerns and that there would be a detrimental impact on two alleged nesting Yellowhammer birds. With respect to the latter, I am not persuaded that Yellowhammers are a priority species protected by law. Moreover, there is no persuasive evidence that the proposed development on the appeal site would have an unacceptable adverse impact on that species.
27. I am not persuaded that the proposed single dwelling and garage would exacerbate surface water flooding to such an extent that it would cause harm. In any event, drainage measures could alleviate run off during heavy rainfall. I also consider that the vehicular traffic associated with the proposed dwelling would not prejudice road safety or significantly inconvenience the flow of traffic given my on-site observations, that the Department for Infrastructure Roads Service had no objections to the proposed access arrangements and that there would be adequate capacity on the road network to accommodate the vehicle movements associated with the single dwelling. Those third party's concerns are not upheld or determining in this appeal.
28. Nevertheless, as all three of the Council's refusal reasons are sustained to the extent specified above, the appeal must fail.

This decision relates to a drawing numbered 01, entitled Block Plan that is to scale 1:2500 @A3 and is date stamped received by the Council on 25 February 2022.

COMMISSIONER B STEVENSON

List of Documents

Planning Authority: -

A Statement of Case and Appendices
Derry City and Strabane District Council

A1 Rebuttal Statement
Derry City and Strabane District Council

Appellant: -

B Statement of Case and Appendices
CMI Ltd on behalf of Mr and Mrs Hughes

Third Party: -

C Statement of Case
Mr Alderdice