
Appeal Reference:	2022/A0113
Appeal by:	Mr Thomas Eugene Quayle
Appeal against:	The refusal full planning permission.
Proposed Development:	Two infill dwellings.
Location:	45 metres Northeast of No. 45 Myra Road, Downpatrick.
Planning Authority:	Newry, Mourne and Down District Council
Application Reference:	LA07/2021/1697/F
Procedure:	Written representations and Commissioner's site visit on 9 th September 2024
Decision by:	Commissioner Jacqueline McParland, dated 11 th September 2024.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue in this appeal is whether the proposal is acceptable in principle in the countryside.
3. Section 45(1) of the Planning Act (Northern Ireland) 2011 (the Act) requires the Commission, in dealing with an appeal, to have regard to the local development plan, 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 Local Development Plan (LDP), the determination must be made in accordance with the plan unless material considerations indicate otherwise.
4. The Ards and Down Area Plan 2015 (ADAP) operates as the LDP for the area within which the appeal site lies. In it, the appeal site is located within the countryside and is identified as being within the Strangford and Lecale Area of Outstanding Natural Beauty (AONB). The ADAP does not contain any strategic policies relating to the appeal proposal. I now turn to consider the regional planning policies.
5. The Strategic Planning Policy Statement for Northern Ireland (SPPS) sets out transitional arrangements that will operate until a Plan Strategy for a Council area is adopted. In this Council area, no Plan Strategy has been adopted yet. As such, during the intervening transitional period, the SPPS retains certain Planning Policy Statements (PPSs) including PPS 21 – 'Sustainable Development in the Countryside' (PPS 21). The SPPS sets out the transitional arrangements to be

followed in the event of a conflict between it and retained policy. Any conflict arising between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the SPPS. As no such conflict arises in this instance, the aforementioned retained PPS applies.

6. The appeal site is sited between Nos. 45 and 47 Myra Road. No. 47 is a detached bungalow which has a garage sited to its rear. The access to No. 47 is taken directly from the Myra Road. Its boundary with the appeal site is defined by a 1 metre post and wire fence. To the west of the dwelling at No. 47 and within its curtilage lies a structure which is sited on metal wheels. It is constructed of wood and has the appearance of a wooden shed, with wooden stairs and small decked area to provide access to it. The appeal site itself is on elevated land which rises steeply from the boundary of No. 47 and the Myra Road in a southwestern direction. The appeal site's boundary with the Myra Road is defined by a 1.8 metre hedgerow set behind a 1 metre grass verge. Its boundary with No. 45 is demarcated by coniferous trees around 10 metres in height. The appeal site's boundary to the southeast is undefined to the remainder of a larger agricultural field. No. 45 Myra Road comprises a detached bungalow with an integral garage sited within a mature landscaped curtilage. Both dwellings at Nos. 45 and 47 have curtilages which abut Myra Road.
7. Policy CTY1 of PPS 21 'Development in the Countryside' set out 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 of these is the development of a small gap site sufficient only to accommodate up to two houses within an otherwise substantial and continuously built-up frontage, in accordance with Policy CTY 8 of PPS 21.
8. 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. It continues that "an exception will be permitted for the 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 purpose of this 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.
9. The Council and third parties consider that the proposal is contrary to the exception contained within Policy CTY 8 as there is no substantial and continuously built-up frontage along the Myra Road. The appeal site shares a common road frontage with No. 47 Myra Road to the northeast and No. 45 Myra Road to the southwest. No. 47 Myra Road comprises of a bungalow with a garage within its curtilage. The garage is subservient and the majority of it is sited behind the rear elevational wall of the dwelling at No. 47, when viewed from the Myra Road. Consequently, I do not consider that it has frontage to the Myra Road.
10. The appellant also considers that the wooden style structure to the side garden of No. 47, which he refers to as a caravan, is a building. The appellant states that this structure constitutes a building as defined by the Act as providing the appropriate definition of a building. This section of the legislation provides supplementary

interpretation of what constitutes a building and is a guide to the interpretation of the Act itself. While the definition includes “any structure or erection, and any part of a building, as so defined, but does not include plant or machinery comprised in a building” it is envisaged that the policy writers would not have considered ‘any structure’ or ‘any part of a building’ as referred to in the Act as an appropriate building for the purpose of applying the policy. Accordingly, its usefulness in respect of interpreting Policy CTY 8 is limited, especially given the overall wording of the policy. The mere fact that something has been erected on land is not sufficient to make it a building for the purposes of the policy and it is for the decision maker to determine what constitutes a building on a fact and degree basis.

11. The wooden style structure is akin to a wooden shed, with a porch area to the front and a roll top felt roof. It has a window to each side elevation, and patio doors to its front elevation. It is sited on a metal support frame attached to metal wheels, with a decked patio area and stairs located along the front elevation. The structure itself could be moved off the curtilage it shares with No. 47 on the wheelbase it is sited on or lifted off the site in one section. The absence of a curtilage or typical foundations or indeed any base which links the structure itself to the ground in a permanent manner indicates that it is not of a typically permanent construction. Whilst the patio and stairs are fixed to the ground by fence posts, none of the external walls are attached to the ground. Therefore, the only elements of the structure which are connected to the ground are the posts of the stairs and patio which provide access to the structure. These are secured in concrete to provide support to the patio and stairs, but I consider that these could be dismantled easily, nor are they an integral element of the wooden structure itself. The patio and stairs, in themselves, do not constitute a building. As alluded to above, the mere fact that something has been on land over time with a limited degree of physical attachment does not necessarily make it a building and for reasons given, this structure cannot be regarded as a building under Policy CTY8. Accordingly, only the dwelling at No. 47 has frontage onto Myra Road.
12. No. 45 Myra Road comprises of a bungalow with an attached garage. Consequently No.45 also comprises of one building with frontage onto the Myra Road. As I have found that there are just two buildings with frontage onto the Myra Road, the appeal site does not meet the exceptional test of being a small gap site sufficient only to accommodate up to a maximum of two houses within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY8 of PPS 21.
13. The third parties have also raised concerns that the proposal would result in a ribbon of development along Myra Road. The appeal proposal would result in the addition of two dwellings along Myra Road. When travelling along the Myra Road in a westerly direction, the proposed dwellings would be read together with No. 47 Myra Road, which would result in the creation of a ribbon of development. The third parties concern in this regard is upheld.
14. The proposal does not represent one of the specified types of development considered acceptable in principle in the countryside within Policy CTY 1 of PPS 21. Policy CTY1 goes on to state 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 nearby settlement. I was given no persuasive

evidence that the appeal development is essential and could not be located in a settlement. The appeal development is therefore contrary to Policy CTY1 of PPS 21 and the Council has sustained its reason for refusal.

15. As the Council has sustained its reason for refusal and the third parties' concerns relating to the creation of ribbon development has been upheld, they are determining, and the appeal must fail.

This is based on the following drawings: -

Drawing No.57-05, Scale 1:500, proposed and existing site sections, date stamped 22 September 2021;

Drawing No. 57-06, Scale 1:100, Proposed house plans, date stamped 22 September 2021;

Drawing No. 57-04 R1, Scale 1:200, Proposed site plan, date stamped 22 September 2021; and

Drawing No.57-01 R1, Scale 1:2500, Site Location Plan, date stamped 22 September 2021.

COMMISSIONER JACQUELINE MCPARLAND

List of Documents

Planning Authority: - "A1" Statement of Case

Appellant: - "B1" Statement of Case
"B2" Rebuttal

Third Parties: - "C1" Statement of Case, Occupiers of 45 Myra Road,
Downpatrick.