
Appeal Reference:	2022/A0120
Appeal by:	Jude McCusker
Appeal against:	The refusal of full planning permission
Proposed Development:	Erection of infill development of 2no. dwellings and detached garages
Location:	60m SE of 64 Glenbank Road, Portadown, Armagh
Planning Authority:	Armagh City, Banbridge & Craigavon Borough Council
Application Reference:	LA08/2021/1357/F
Procedure:	Informal Hearing on 9 th May 2024
Decision by:	Commissioner Trudy Harbinson, dated 28 th June 2024

Decision

1. The appeal is allowed and full planning permission is granted, subject to the conditions below.

Reasons

2. The Commission issued a decision on this appeal on 28th September 2023. Following an application for a judicial review to the High Court, the decision was quashed and remitted to the Commission for redetermination. Parties were afforded an opportunity to submit supplementary statements of case. I have considered this appeal afresh, taking into account the background papers, the written evidence previously submitted, the supplementary evidence and the oral evidence at the hearing.
3. The main issues in this appeal are whether or not the appeal development would:
 - be acceptable in principle;
 - result in ribbon development;
 - erode the rural character; and
 - unduly affect residential amenity.
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. The Armagh Area Plan 2004 as amended by AAP Alteration 1: Countryside Proposals, operates as the relevant LDP for the area. The appeal site is located in the countryside and the Armagh Countryside Policy Area (CPA). Whilst the LDP contains no specific policy or guidance in respect of single dwellings in the

countryside, Policy CPA 1 relates to CPAs. It states that development proposals within CPAs will be controlled in accordance with the provisions of regional policy, which is now found within Planning Policy Statement 21 'Sustainable Development in the Countryside' (PPS21). Given this regional policy has overtaken the rural policies in the plan, no determining weight can be attached to them. The relevant regional policy is considered below.

6. The Strategic Planning Policy Statement for Northern Ireland (NI) 'Planning for Sustainable Development' (SPPS) is material to all decisions on individual planning applications and appeals. It sets out transitional arrangements that will operate until a Plan Strategy (PS) for the Council area is adopted. In this Council area, no PS has been adopted. The SPPS sets out transitional arrangements to be followed in the event of a conflict between the SPPS and retained policy. Any conflict between the SPPS and any policy retained under the transitional arrangements must be resolved in favour of the provisions of the SPPS.
7. No conflict arises between the provisions of the SPPS and retained policy PPS21 insofar as they relate to this appeal proposal. The retained PPS21 therefore provides the policy context for assessing the proposal. Supplementary planning guidance for buildings in the countryside is set out in the document 'Building on Tradition' – A Sustainable Design Guide for Northern Ireland Countryside (BoT).

The appeal proposal

8. The appeal site is located on the eastern side of Glenbank Road, south of a farmyard. It comprises a cut out of a larger field and its boundaries are defined by the gable of an agricultural building within the farmyard to the northwest, a post and wire fence to the northeast and roadside hedge to the southwest. The southeastern boundary is defined in part by an agricultural building and is otherwise undefined albeit there is a post and wire fence parallel to and set back from the boundary and within the appeal site. The appeal site is relatively flat.
9. The agricultural building which defines the northwest boundary sits gable end to the Glenbank Road, to its north a linear agricultural building faces the road and further north of that is a dwelling at number 64 Glenbank Road. The agricultural building on the southeastern boundary of the appeal site is three sided, with its opening facing into the appeal site. There is a dwelling on the opposite side of Glenbank Road further south of the appeal site.
10. The appeal development comprises two dwellings, each with a detached garage. The dwellings have the appearance of bungalows but are a storey and a half with accommodation in the roof space. They are to be finished in white render with natural stone cladding to a projecting porch and single storey side projection. The pitched roofs will be laid with flat black slates with a series of skylights. They each have an individual driveway and front and back garden. The garages are to be positioned to the rear side of each dwelling, they are single storey and to be finished to match the host dwellings. The eastern and southern boundaries are to be planted with native hedge and trees. The roadside hedge will be replaced with an indigenous hedge and timber post and rail fence to the new boundary.

Principle of Development / Ribbon Development

11. Policy CTY1 of PPS21 'Development in the Countryside' sets 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 within an otherwise substantial and continuously built-up frontage in accordance with Policy CTY8 titled 'Ribbon Development'. It follows that if the development complies with Policy CTY8 it will also comply with Policy CTY1.

12. Policy CTY8 of PPS21 'Ribbon Development' states that planning permission will be refused for a building which creates or adds to a ribbon of development. However, it goes on to state 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 (SCBUF) 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. The policy states that for its purposes, the definition of a SCBUF includes a line of 3 or more buildings along a road frontage without accompanying development to the rear.
13. The first step is to ascertain whether there is a SCBUF. To the north of the appeal site, the dwelling at number 64 and the two adjacent agricultural buildings within the farmyard have frontage on to the Glenbank Road. To the south of the appeal site, a three sided agricultural building sits within the adjacent field, and along the appeal site boundary. On 14th February 2019 a Certificate of Lawfulness for a Proposed Use or Development (CLPUD) was issued to certify that the 'construction of agricultural building' in that field would constitute permitted development. Irrespective of the Appellant's issues with how the Council initially viewed the agricultural building, it has accepted that the agricultural building now also has a frontage on to Glenbank Road for the purposes of the policy. Those buildings constitute a SCBUF for the purposes of the policy within which the appeal site is situated.
14. The second part of the policy test is whether there is a small gap site sufficient only to accommodate up to a maximum of two houses. It was not suggested that the site is an important visual gap. At the hearing, whilst the Council did not withdraw the reason for refusal, it conceded that with the lawful agricultural building in place the appeal site constituted a small gap site within a SCBUF. I concur with this assessment. Of note, the Council went on to state that it had no issue in respect of the other aspects of the exceptional test within Policy CTY8 and that it was satisfied the appeal development was an exception, as well as satisfying Policy CTY8 when read as a whole. Given this context, the second refusal reason cannot be sustained.

Rural Character

15. Policy CTY14 of PPS21 entitled 'Rural Character' states that planning permission will be granted for a building in the countryside where it does not cause a detrimental change to, or further erode the rural character of an area. The Council had been of the view that the proposal failed to meet criteria (b), (c) and (d) of the policy, which relate respectively to suburban style build-up, the traditional pattern of settlement and ribbon development. However, having conceded that the proposal was an exception under Policy CTY 8 and fully met the terms of that policy, irrespective of various comments relating to the disposition of other buildings on other parts of Glenbank Road, it does not follow that such development deemed fully compliant with Policy CTY8 would offend any of the

provisions of Policy CTY14. The Council's third reason for refusal is not sustained.

Residential Amenity

16. Paragraph 4.11 and 4.12 of the SPPS are set out under 'Safeguarding Residential and Work Environs' and state that there are a wide range of environment and amenity considerations to be taken into account by planning authorities.
17. The Council have argued that the proximity of adjacent third party farm buildings to the north west of the appeal site would have an adverse impact upon the amenity of the residents of the proposed dwelling on the north western plot by virtue of undue noise, odours and flies/insects. Environmental Health (EH) offered no objection, however the Council stated that the Appellant had not demonstrated any control over the farmyard. It stated that the blue line boundary, to indicate ownership and/or control, as delineated on the site location plan that had accompanied the planning application, did not include the farmyard buildings. In addition, the Council was also concerned with the agricultural shed to the south east, its frontage directly into the appeal site and relationship with the proposed dwelling on the southern plot.
18. With respect to the configuration of the agricultural shed and its opening into the appeal site, the Appellant stated that it is their intention, when boundaries for the dwellings are being put in place, to block off that opening and to access the building from another doorway. They stated that as the building was permitted development in the first place this change to its opening would also not require permission.
19. The Appellant confirmed that he is in ownership of all these agricultural buildings, both in the farmyard and within the field to the southeast boundary. He referenced the CLPUD under which the agricultural building on the southeast boundary had been confirmed as permitted development. That Certificate is in the Appellant's name, and the site location plan for it encompassed the farm yard buildings and the field to the south east, within which the three sided agricultural building is located. The Appellant stated that the CLPUD was allowed as the new agricultural building proposed was within 75m of the farm buildings. I was told that the two houses were for the Appellant and his brother who both farm the land and have full control over all the buildings associated with those farming activities.
20. The Council agreed, that if it was the case that the Appellant owns and controls these farmyard buildings, this would address their concern with respect to the potential impact on residential amenity of future residents. Other than highlighting the extent of the blue line on the site location plan it did not present any evidence to counter the Appellant's assertion that he owns the agricultural buildings. Taken together with the ownership as indicated on the approved certificate, I am satisfied that the Appellant is in control of these buildings. Given this and the lack of objection from EH I am satisfied that the appeal development would not unduly affect residential amenity of the proposed dwellings by reasons of noise, odour and flies/insects. The Council's fourth reason for refusal is not sustained.

Conclusions

21. As the appeal development complies with Policy CTY8 it is acceptable in principle in the Countryside and meets Policy CTY1 of PPS21 and the related provisions of the SPPS. The Council's first reason for refusal is not sustained.
22. As the Council's reasons for refusal have not been sustained, the appeal shall succeed. The matter of conditions remains to be addressed. A negative condition requiring the access and visibility splays to be implemented prior to any other development taking place, along with their permanent retention thereafter, would be necessary in the interests of road safety. The imposition of a condition including provision of hard landscaping prior to occupation of the dwellings would obviate the need for a separate condition relating to provision of in-curtilage parking spaces. Whilst the Appellant suggested phasing of landscaping for each of the two dwellings, given the rural location of the appeal site and its undefined southern boundary, implementation of landscaping for the development as a whole would be necessary in the interests of rural amenity. For the same reasoning retention of existing vegetation would be required as would replacement of any dying or damaged vegetation within the first 5 years of planting.

Conditions

- (1) The vehicular access points, including visibility splays and any forward sight distance, shall be provided in accordance with drawing 02 dated 14th September 2021 prior to the commencement of the development hereby permitted. The visibility splays shall be retained and kept clear thereafter.
- (2) The existing trees and hedging as indicated to be retained on the approved drawing 02 dated 14th September 2021 shall be permanently retained intact and no lopping, topping felling or removal shall be carried out without the prior written approval of the Council. If any of the existing trees and hedging as indicated to be retained are removed, die, or become seriously damaged, another of the same species and size as that originally planted shall be planted at the same place, unless the Council gives its written consent to any variation.
- (3) All hard and soft landscape works shall be carried out in accordance with the details contained in approved drawing 02 dated 14th September 2021. The hard landscaping works shall be carried out prior to the occupation of the dwellings and the soft landscaping works shall be carried out in the first available planting season following occupation of the dwellings. Trees or shrubs dying, removed or becoming seriously damaged within five years of being planted shall be replaced in the next planting season with others of a similar size and species unless the Council gives written consent to any variation.
- (4) The development shall be begun before the expiration of five years from the date of this permission.

The decision is based on the following drawings submitted with the application:

DRAWING No.	TITLE	SCALE	DATE STAMP RECEIVED
01	Location Map	1:2500	14 th September 2021
02	Site Plan	1:500	14 th September 2021

03	Proposed Floor Plans	1:100	14 th September 2021
04	Proposed Elevations	1:100	14 th September 2021
05	Proposed Garage Plan	1:100	14 th September 2021

COMMISSIONER TRUDY HARBINSON

List of Appearances

Planning Authority:- David MacRory, Armagh City, Banbridge and Craigavon Borough Council

Appellant:- Mr Tom Wilson, Tom Wilson Planning
Mr Jude McCusker

List of Documents

Planning Authority:- Statement of Case (Armagh City, Banbridge and Craigavon Borough Council)
Rebuttal (Armagh City, Banbridge and Craigavon Borough Council)

Appellant:- Statement of Case (Tom Wilson Planning)
Supplementary Evidence (Tom Wilson Planning)