
Appeal Reference:	2022/A0122
Appeal by:	FJS Contracts
Appeal against:	The refusal of outline planning permission
Proposed Development:	New dwelling and garage
Location:	Between 21 and 23 Iniscarn Road, Moneymore
Planning Authority:	Mid Ulster District Council
Application Reference:	LA09/2020/1476/O
Procedure:	Written representations and Commissioner's site visit on 21 st March 2024
Decision by:	Commissioner Cathy McKeary, dated 5 th April 2024

Decision

1. The appeal is dismissed.

Preliminary Matter

2. From the evidence, it is apparent that the Council erroneously omitted Policy CTY8 from its second refusal reason. However, they included it in their statement of case at appeal. The appellant is aware and has addressed this policy within their statement of case. Accordingly, no prejudice arises.

Reasons

3. The main issues in this appeal are whether the proposal is acceptable in principle in the countryside and if it would extend ribbon development.
4. 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, 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.
5. The Magherafelt Area Plan 2015 (MAP) operates as the relevant LDP. In that plan, the site is located within Slieve Gallion Slopes, Area of High Scenic Value (AHSV). Policy CON1 thereof relates and it states, inter alia, that planning permission will not be granted to development proposals that would adversely affect the quality and character of the landscape. There were no credible objections raised in respect of this policy. Accordingly, I must infer that the proposal complies with the plan.

6. 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 PPS21 – ‘Sustainable Development in the Countryside’ (PPS21). 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 retained policy contained in PPS21 applies.
7. The appeal site comprises of a roadside field in the countryside, on the Iniscarn Road, approximately 6Km north of Moneymore. The northern and western boundaries of the appeal site are delineated by post and wire fencing which is punctuated with some mature trees. The southern roadside boundary comprises of a hedge of around 1.5m in height and the eastern boundary is undefined. There is a dwelling, garage and shed at No. 21 Iniscarn Road to the east of the appeal site. There is also a dwelling and garage at No. 23 Iniscarn Road to the north west of the appeal site which are set back and accessed via a driveway from Iniscarn Road. There is a maintained grassed area beside the driveway at No. 23 which abuts the western boundary of the appeal site. This grassed area is partially defined along the roadside with a rendered wall which has a decorative railing on top, and a decorative pedestrian gateway which leads back onto the laneway. The eastern and western boundaries of the grassed area comprise of post and wire fence. The northern boundary of the grassed area is defined by a partial post and wire fence and wooden gate.
8. Policy CTY1 of PPS 21 identifies a range of types of development which, in principle, are considered acceptable in the countryside. 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. This policy is titled ‘Ribbon Development’ and it indicates that planning permission will be refused for a building which creates or adds to a ribbon of development. However, 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. There is no dispute that the buildings at No. 21 have a frontage to the Iniscarn Road and that they constitute two of the three required buildings. However, the Council argues that No. 23 does not have frontage to the road. They consider that its approved curtilage area does not extend to the road and that even though the driveway abuts the road it cannot be considered as having frontage. The appellant considers that the small section of grass to the east of the laneway is maintained and developed in such a way that it forms part of the garden of No. 23 and therefore part of the curtilage which provides a frontage onto the road.

10. While there is access to the grassed area adjacent to the driveway provided by a small wooden gate, the grassed area is physically and functionally separated from the curtilage of the dwelling at No. 23 by post and wire fencing. The planning history indicates that this dwelling was approved within what would be colloquially known as a 'flag shaped' site. This means that only the access driveway abuts the road with the buildings set back off the road in their own defined curtilage area. Even though the driveway is finished with tarmac, kerbed and is flanked on one side by a strip of grass and the other by the larger, maintained grassed area, I do not consider this to be part of the front garden of the dwelling. Furthermore, there is no planning permission for an extension to domestic curtilage of which I have been made aware. For these reasons, the dwelling at No. 23 does not have frontage onto the road and does not constitute a third building required to make up the substantial and continuously built-up frontage.
11. The justification and amplification 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. 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 (my emphasis). There is an existing ribbon of development consisting of the dwelling and shed at No. 21 (which have common frontage onto Iniscarn Road) and the dwelling at No. 23 which does not have road frontage, but which is visually linked with them.
12. The proposal would share a common frontage onto Iniscarn Road with the dwelling at No. 21 and its shed. It would also visually link with the dwellings at No. 21 and No. 23 when viewed travelling in both directions along Iniscarn Road. The proposal would, therefore, add to the existing ribbon of development. The removal of vegetation on some of the appeal site's boundaries has therefore not assisted the appellant's case.
13. The appeal site forms an important green visual break in the developed appearance of this local area of countryside and helps diminish the impact of the existing ribbon of development. The visual linkage described above, between the proposal and the existing buildings, would also create suburban style build up, which would further erode the rural character of this area. Overall, the proposal does not represent an exception to the policy. Instead, it would extend an existing ribbon of development along the road. The proposal would fail to meet Policy CTY8 of PPS21 for the reasons given.
14. The third parties raised concerns including impact on privacy, loss of light, impact of the removal of vegetation on priority species, impact on Slieve Gallion and road safety. The proposed dwelling could be located and orientated in such a way that it would not negatively impact on the privacy or light of neighbouring residents. No evidence has been provided to demonstrate how the proposal would negatively impact on fauna, the ASHV and road safety. I also note that such matters were not raised by the Council nor the relevant consultees. These objections would not, either individually or cumulatively, warrant the withholding of planning permission.
15. The proposal does not represent one of the types of development which are considered acceptable in the countryside and there is no evidence of any overriding reasons why the development is essential. The proposal is contrary to

policies CTY1 and CTY8 of PPS21 and the related provisions of the SPPS. Although the proposal accords with the development plan, the failure to comply with more recent regional policy outweighs the provisions of the plan. The Council's refusal reasons are sustained and the appeal must fail.

This decision is based on the following drawing:-

- 01, Location Plan, scale 1:2500 stamped refused by Mid Ulster District Council on 20th September 2022.

COMMISSIONER CATHY MCKEARY

List of Documents

Planning Authority:- Statement of Case by Mid Ulster District Council

Appellant:- Statement of Case by CMI Ltd.