
Appeal Reference:	2022/A0138
Appeal by:	William Jess
Appeal against:	The refusal of outline planning permission
Proposed Development:	Site for infill dwelling and garage
Location:	Adjacent to and west of 21 Wests Road, Loughbrickland, Banbridge
Planning Authority:	Armagh City, Banbridge, & Craigavon Borough Council
Application Reference:	LA08/2021/0860/O
Procedure:	Written representations and Commissioner's site visit on 23 rd September 2024.
Decision by:	Commissioner Cathy McKeary, dated 4 th October 2024

Decision

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

Preliminary Matter

2. Initially the Council considered that the proposal would be contrary to Planning Policy Statement 2: Natural Heritage, Policy NH 5 - Habitats, Species or Features of Natural Heritage Importance in that it had not been demonstrated that the proposal will not likely result in the unacceptable adverse impact on, or damage to known wetlands (includes river corridors) or priority species. The appellant then provided a Biodiversity Checklist and Statement as part of their statement of case to this appeal. In their rebuttal, the Council accepted its findings and withdrew their second refusal reason. Therefore, only the first reason for refusal remains outstanding for consideration.

Reasons

3. The main issue in this appeal is whether the proposal would cause unacceptable adverse impact on residential amenity due to noise, odour and pests.
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 Banbridge, Newry and Mourne Area Plan 2015 (BNMAP) operates as the relevant LDP. In that plan, the site is located within undesignated countryside. There are no policies within the plan that are pertinent to the appeal proposal.
6. The Strategic Planning Policy Statement (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 lies on Wests Road, Loughbrickland, a dead end road which accesses onto the Annaghbane Road, approximately 9km southwest of Banbridge. Wests Road is bounded on the other side by, but without access onto, the A1 Dublin Road dual carriageway. The site comprises a portion of the side garden of no. 21 Wests Road, a 1.5 storey red brick dwelling. The site is relatively flat and laid out in lawn with some mature trees within it. The southwestern boundary of the appeal site is defined by hedgerow, mature trees with some wood panel fencing. The northern, roadside boundary comprises of ranch fencing approximately 1m high. The eastern boundary is undefined.
8. There are three dwellings to the east of the appeal site, nos. 21, 23 and 25 Wests Road. There is also an agricultural building and yard immediately abutting the western boundary of the appeal site, but which is separated by a group of intervening mature vegetation. The building contains some farm implements and stalls with the largest bay of the shed being used to store silage under black plastic held in place by tyres. There is another silage heap stored against the northeastern elevation of the shed near the appeal site. The wider area is rural in character with some residential development along the road.
9. Policy CTY1 of PPS21 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 as laid out in Policy CTY8 – Ribbon Development. Policy CTY8 requires that the gap site is within a substantial and continuously built-up frontage. The Council considered that the proposed dwelling was acceptable in principle in respect to Policy CTY8 in that there is a substantial and built-up frontage with the required number of buildings. It, however, raised other concerns which I address later.
10. On my site inspection, I noted that dwellings at nos. 21, 23 and 25, to the east of the appeal site, all have frontage onto Wests Road. The farm building to the west of the appeal site also has frontage onto the road. Consequently all these buildings constitute an otherwise substantial and continuously built up frontage in accordance with Policy CTY8. Given the disposition of the buildings along the frontage and the relatively modest size of the gap, it is not an important visual break in the countryside. I concur that a dwelling on the appeal site constitutes a

small gap site sufficient only to accommodate a maximum of two houses and that it would also respect the development pattern along the frontage in terms of size, scale, siting and plot size in accordance with Policy CTY8.

11. The exception under Policy CTY8 also requires that the proposal meets other planning and environmental requirements. The Council's objections fall under this element of the policy and relate to potential amenity impacts on the proposed dwelling arising from a nearby agricultural building. The SPPS in paragraph 4.11 'Safeguarding Residential and Work Environs' states that there are a wide range of environment and amenity considerations, including noise and air quality, which should be taken into account by planning authorities when proposing policies or managing development. Paragraph 4.12 goes on to say that other amenity considerations arising from development, that may have potential health and well-being implications, include design considerations, impacts relating to visual intrusion, general nuisance, loss of light and overshadowing.
12. The Council has concerns that the proposal's residential amenity would be unacceptably adversely impacted by virtue of noise, odour, and pests caused by the adjacent agricultural building and that permission should be refused on that basis alone. This is in conflict with the Council's Environmental Health Officer (EHO) who stated in their consultation response that they had no objection in principle to the proposed development. EHO also stated that noise, odour and pests would exist but considered that the appellant would be aware of them, and unable to make complaint unless the adverse impact increased or intensified.
13. The Council's EHO, also in their consultation response, has confirmed that there have been no statutory nuisance service requests even though there are six dwellings along the road relatively near the agricultural shed. Notwithstanding this, I acknowledge that the threshold for unacceptable adverse impact on residential amenity may not be as high as to constitute a statutory nuisance.
14. The appeal site lies within 175m of the A1 dual carriageway and on the day of my site visit I could clearly hear the traffic noise while standing at the site. As the agricultural shed was only being used for storage of silage there was no noise emanating from it at all. Due to the dual carriageway the area already experiences near constant background noise levels over and above those which would be ordinarily experienced in more general rural locations. Notwithstanding this, I am not persuaded that the noise from the use of the shed would exceed the background noise environment to any extent that would give rise to any unacceptable adverse impact on the amenity of prospective occupants of the appeal development. Furthermore, there is no substantive evidence from the Council to justify their position in relation to noise nuisance or in respect of the nature and type of noise likely to emanate from within the building.
15. The Council has not indicated what type and from where any odour would emanate. It would not be unusual for a degree of odour to occur from agricultural activities in the countryside. The appellant states that the shed is used for silage (which has an odour) but only for a limited time within the year. This was not disputed by the Council. On the day of my site visit I noted some odour from the silage stored in the shed while standing immediately in front of it and at the entrance to it. However, I did not note any such odour when standing on the

appeal site. Overall, there is no substantive evidence from the Council to justify their position on odour.

16. In terms of pests, the Council has not indicated what type or number of pests may be present. On the day of the site visit, I did not see or hear any pests, nor any evidence of pests. I have received no substantive evidence that would persuade me that there would be an adverse impact arising from pests beyond that normally experienced in a rural setting, nor which would warrant the withholding of planning permission on that basis.
17. The appeal site is formed from part of the garden of no. 21 Wests Road. Approval of the appeal development would result in a dwelling situated closer to the agricultural building, within its own separate curtilage. A garden, though not likely to be used all the time, still forms part of the domestic setting of the existing dwelling. The appellant states his dwelling and garden have not been unacceptably impacted by the use of the adjacent agricultural shed. Although that statement is somewhat self-serving, the Council did not dispute this. Notwithstanding the closer proximity of the proposed dwelling to the agricultural building compared to no. 21, for the reasons given above I am not persuaded that the prospective occupants of the proposed dwelling would experience any unacceptable adverse impact on their amenity.
18. The Council refers to “Miller v Jackson 1977” and “Fearn v Tate Gallery (2019)” in that if planning permission were approved it is possible that the residents of the dwelling could bring a claim in nuisance against the owners of the adjacent agricultural building. Further, that if it was held that a nuisance existed, the owners of the agricultural building could not rely upon the defence that the ‘claimant came to the nuisance’. The case law was not provided in evidence, and the Council did not provide adequate explanation to allow comparative analysis, therefore the context could be quite different to that before me. Also as referenced above, there is limited evidence of any nuisance at this appeal site. The caselaw is of limited assistance. This appeal falls to be considered within its own evidential and site specific context.
19. The Council EHO notes that the appeal site is within 75m of the agricultural building, but there is no explanation as to the relevance of this measurement or from which legislation, policy or guidance it came. The agricultural building’s current state does not look ideal for holding livestock or to undertake more intensive agricultural activities in the long term. I acknowledge, however, that the building could be repaired or upgraded to facilitate this without the need for planning permission. Notwithstanding this, there is no persuasive evidence of an adverse impact that would be caused by the existing use of the building upon the amenity of future occupants of the appeal development that would warrant refusal of the appeal.
20. Appeal decision 2021/A0047 related to an off site replacement dwelling where a Certificate of Lawfulness of Existing Use or Development (CLEUD) had been issued for a proposed agricultural building for holding livestock and associated slurry tank near the appeal site. This is not directly comparable to this appeal where the shed is existing, does not hold livestock, and there is no stated intent

through a CLEUD to do so. It does not assist the Council's case and would not in itself or in combination with other matters justify the refusal of this appeal.

21. Overall, I am not persuaded that there would be an unacceptable adverse impact on the proposed dwelling arising from noise, odour and pests, thus I am satisfied that the appeal development also meets the other planning and environmental tests element of Policy CTY8 of PPS21. Thus, the appeal development complies with Policy CTY8 read as a whole and consequently also Policy CTY1 of PPS21 and the related provisions of the SPPS. As the Council's sole remaining reason for refusal has not been sustained, the appeal shall succeed. The matter of conditions remains before me.
22. The dwellings adjacent to the site and along the eastern stretch of Wests Road are no more than storey and a half in height, with the appeal site being flat and consequently a new dwelling unlikely to require significant under-build. A ridge height of no more than 7.5m from the lowest point within the proposed footprint would be necessary in order to respect the local built character. Notwithstanding the nature of the site, I consider that levels be provided to properly assess the development. A condition requiring provision of the visibility splays prior to any other development and their permanent retention thereafter would be necessary to ensure road safety.
23. There is also a mature vegetation boundary between the appeal site and the agricultural shed which should be retained to maintain privacy for the proposed dwelling and to ensure adequate integration into the site. Further planting is also required along the roadside boundary behind the required visibility splays to ensure integration of the site into the countryside, as well as replacement of any dying or damaged vegetation within the first five years of planting to ensure that satisfactory integration is maintained. The Council's suggested condition requiring, prior to any development taking place, that details of the proposed sewerage treatment shall be agreed in writing with the Council, is unnecessary, as it is commonplace to ascertain a suitable means of sewage disposal prior to implementing development and the process itself is administered under a separate legislative regime.

Conditions

- (1) Except as expressly provided for by Conditions 2, 3, 4, and 5, the following reserved matters shall be as approved by the planning authority – the siting, design and external appearance of the dwelling and garage, the means of access thereto and the landscaping of the site.
- (2) The ridge height of the dwelling and garage shall not exceed 7.5 metres above existing ground level at the lowest point within its footprint.
- (3) Any application for approval of reserved matters shall incorporate plans and sections indicating existing and proposed ground levels and proposed finished floor levels, all in relation to a known datum point.

- (4) Visibility splays of 2 metres by 33 metres shall be laid out in both directions onto Wests Road prior to the commencement of any building works and shall be permanently retained thereafter.
- (5) No development shall take place until there has been submitted to and approved by the planning authority a landscaping scheme showing:
- trees and hedgerows to be retained along the southwestern boundary of the site; and
 - planting of a new indigenous species hedgerow to the rear of the visibility splays.
- The landscaping scheme shall detail the location, numbers, species and sizes of trees and shrubs to be planted within the site. The scheme of planting as finally approved shall be carried out during the first planting season after the dwelling is occupied. 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 planning authority gives written consent to any variation.
- (6) Application for approval of the reserved matters shall be made to the planning authority before the expiration of three years from the date of this decision.
- (7) The development shall be begun before the expiration of five years from the date of this permission or before the expiration of two years from the date of approval of the last of the reserved matters to be approved, whichever is the later.

Drawing No.	Title	Scale	Date
WJ/01/2021	Location Plan	1:1250 @A4	Stamped received by Armagh City, Banbridge and Craigavon Council on 2 nd June 2021

COMMISSIONER CATHY MCKEARY

List of Documents

Planning Authority:- Statement of case by Armagh, Banbridge, & Craigavon
Borough Council

Rebuttal by Armagh, Banbridge, & Craigavon Borough
Council

Appellant:- Statement of case on behalf of William Jess

Rebuttal on behalf of William Jess